

## **CHAPTER 892**

AN ACT to repeal the village law, and to amend the agriculture and markets law, the conservation law, the correction law, the county law, the election law, the general business law, the general municipal law, the public health law, the real property actions and proceedings law and the real property tax law, to conform to the provisions of this law

Became a law June 8, 1972, with the approval of the Governor. Passed by a majority vote, three-fifths being present

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

Section 1. The village law, chapter sixty-four of the laws of nineteen hundred nine and all amendments thereto are hereby repealed.

§ 2. Section three hundred fifty of the village law is hereby repealed.

§ 3. A new village law is hereby enacted, to read as follows:

### **CHAPTER SIXTY-FOUR OF THE CONSOLIDATED LAWS**

#### **VILLAGE LAW**

- Article 1. Short title.
2. Incorporation.
3. Officers and elections.
4. Powers, duties and compensation of officers.
5. Finances.
6. Streets, sidewalks and public grounds.
7. Building zones.
8. Police department.
9. Permissive referendum.
10. Fire department.
11. Water.
12. Light.
13. Self-supporting improvements.
14. Sewers.
15. Cemeteries.
16. Reincorporation.
17. Provisions applicable to a village embracing the entire territory of a town.
18. Alterations and form of government.

19. Dissolution of villages.
20. Actions involving the village; ordinances.
21. Hearings.
22. Local improvements.
- 22-A. Joint fire districts.
23. Construction; laws repealed; effective date.

## ARTICLE 1

### **SHORT TITLE**

Section 1-100 Short title.

1-102. Powers of incorporated village

**§ 1-100 Short title.** This chapter shall be known as the "Village law".

### **§ 1-102. Powers of incorporated village**

**The citizens of the state of New York, from time to time inhabitants of the territory comprised within the** boundaries of any village heretofore or hereafter incorporated shall continue to be a municipal corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate in fact and in law, with power of perpetual succession. The village shall have power:

1. To take, purchase, hold, lease, sell and convey such real and personal property as the purposes of the corporation may require.

2. To take by gift, grant, bequest or devise and hold real and personal estate absolutely or in trust for any purpose of the corporation or for any public use upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said corporation and to provide for the proper administration of the same.

3. To take unconditionally by gift, grant, bequest or devise for any other purpose any real or personal property or estate or interest

therein, to hold same for only such time as is reasonably necessary to sell, convey or to dispose thereof, and to so sell, convey or dispose thereof; notwithstanding that the holding of such property would not be for a purpose of the corporation or for a public use.

4. To make, have and use, and from time to time alter, a common seal.

5. To contract and be contracted with, to sue and be sued, to complain and defend and to institute, prosecute, maintain, defend and intervene in, any action or proceeding in any court.

6. To have and exercise all the rights, privileges and jurisdiction essential to a proper exercise of its corporate function, including all that may be necessarily incident to, or may be fairly implied from the powers specifically conferred upon such corporation.

7. To have and exercise all the rights, privileges, functions and powers prescribed and exercised by it under existing or subsequent laws and not inconsistent with the provisions of this chapter.

## ARTICLE 2

### **INCORPORATION**

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**§ 2-200 Population and area requirements.** 1. A territory containing a population of at least one thousand five hundred persons who are regular inhabitants thereof, as hereinafter defined, may be incorporated as a village under this chapter provided such territory does not include a part of a city or village and further provided the limits of such territory:

- a. do not contain more than five square miles; or
- b. are coterminous with the entire boundaries of a school, fire, fire protection, fire alarm, town special or town improvement district; or
- c. are coterminous with parts of the boundaries of more than one

school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within one town; or

d. are coterminous with the entire boundaries of a town.

2. Definitions. a. "Regular inhabitants" as used herein and for the purpose of this article shall include all persons residing in the territory proposed to be incorporated except such persons who themselves, or who are persons under the age of eighteen years residing with persons who, maintain a residence outside such territory which is used as their address for purposes of voting.

b. "Commission" as used herein and for the purposes of this article shall mean the village incorporation commission, as established by section 2-260 of this article.

c. "Secretary" as used herein and for the purposes of this article shall mean the secretary of state.

**§ 2-202 Petition for incorporation.** 1. A proceeding for the incorporation of such territory as a village shall commence with a petition. The requirements for such petition are as follows:

a. Petitioners. Signatures from at least twenty percent of the residents of such territory qualified to vote for town officers in a town in which all or part of such territory is located shall be required in order to commence a proceeding for the incorporation of such territory as a village.

b. Contents of petition. The petition shall contain the following information:

(1) An allegation of the basis on which the petition is signed.

(2) The name of the proposed village.

(3) An allegation that such territory contains a population of at least one thousand five hundred regular inhabitants.

(4) The manner in which the area requirements of section 2-200 of this article are satisfied.

(5) A designation of at least one but no more than three persons, giving full names and addresses, on whom and at which addresses all papers required to be served in connection with the proceeding for incorporation, shall be served. A majority of such designees must reside in such territory.

(6) Each page of the petition and all exhibits and certifications shall be securely fastened together.

c. Exhibits and certifications. Each copy of the petition shall have attached thereto prior to the signature pages:

(1) A description of such territory sufficient to identify the location and extent of such territory with common certainty and which shall be in one of the following forms or a combination thereof: (a) a metes and bounds description; (b) a description made with reference to existing streets and navigable waters or a combination of same; or (c) a map showing existing streets and navigable waters or a combination of same forming boundaries or metes and bounds or the entire boundaries of one or more districts of an entire town.

(2) A list of the names and address of the regular inhabitants of such territory.

(3) Study of proposed village and surrounding town or towns. A study that addresses the fiscal, service, and taxation interests of the population which would constitute the residents of such territory to be incorporated as a village, as indicated in clause (a) of this subparagraph, and that provides for an impact assessment that shall evaluate the fiscal and operational effects of incorporation of the proposed village on the surrounding town or towns wherein the village would be incorporated, as indicated in clause (b) of this subparagraph. The study shall include a certification that it sets forth all the elements required by this section.

(a) Fiscal, service, and taxation assessment of proposed village. An assessment of the fiscal, service, and taxation interests of the population which would constitute the residents of such territory to be incorporated as a village, must include the following elements of the proposed village:

(i) Inventory. List the number of parcels by property classification. For each such property, list the full valuation and taxable assessed value as appearing on the most recent applicable final assessment roll.

(ii) Taxes. Provide a fiscal estimate of all taxes that could be collected for the structures and places listed on the inventory this clause requires to be developed. The town or towns' current property tax rate and assessment should be used in developing the fiscal estimate.

(iii) Revenue. Other than taxes, list all other sources of revenue expected to be generated for the area of the proposed village.

(iv) Operations. Provide an estimate of what it would cost to operate the proposed village listing expenditures required in connection with the appointment or hiring of personnel to provide the services identified pursuant to item (v) of this clause, the holding of meetings of the board of trustees, and designating an official newspaper.

(v) Services. List the municipal services currently provided within the area of the proposed village and how such services are provided, list all municipal services proposed to be provided upon incorporation of the proposed village, and how such municipal services are expected to be provided. Municipal services may include, but are not limited to: police; fire; water; sewer; enforcement of any planning, zoning, and land use regulations; and, enforcement of the New York state uniform fire prevention and building code and energy conservation construction code.

(b) Impact assessment and study of surrounding town or towns. An impact assessment that provides an evaluation of the fiscal and operational effects of incorporation of the proposed village on the surrounding town or towns wherein the village would be incorporated, must include the following elements:

(i) Revenue and expenditures. List the estimated taxes, other revenue and expenditures for the area of the town or towns outside of the proposed village.

(ii) Fiscal impact. A description of the manner and means by which the residents of the area of the town or towns outside the proposed village will continue to be furnished municipal services following the village's incorporation, an estimation of any change in the property tax rate for the area of the town or towns outside of the proposed village to continue such services. Provide such estimate with respect to the area

.....

(signature of witness)

Sworn to before me

This ..... day of ....., .....  
(day) (month) (year)

.....  
(official title of officer)

e. Filing and deposit. (1) Filing. The original petition, the study and all exhibits and certifications required by this section shall be filed with the commission. Duplicate originals, photocopies or other similar reproductions of the original petition, the study and all exhibits and certifications required by this section shall be filed with the town clerk of each town in which any portion of such territory is located.

(2) Deposit. At the time of filing of the petition there shall be deposited with the department of state, on behalf of the commission, the sum of six thousand dollars to pay the cost of posting, publishing and serving required notices, stenographic services and services of inspectors of election in the event incorporation is not effected.

2. Study attached to the petition. The study to be submitted shall be a study prepared by a third-party jointly selected by the petitioner or petitioners and the supervisors of the town or towns which shall be confirmed in writing by the petitioner or petitioners and clerks of the town or towns, or a study prepared pursuant to paragraph f of subdivision two of section 2-260 of this article; and provided further, that the department of state shall post such study on its website within ten days of receiving the study from the petitioner or petitioners. Such study shall be paid for by the petitioner or petitioners except in cases where an appropriation has been provided to pay for the study.

**§ 2-204 Notice of hearing.** 1. No later than three days after the filing of a petition, the study and all exhibits and certifications required by section 2-202 of this article or copies thereof, the commission shall direct the town clerk of each town in which any portion of such territory is located to cause to be posted in six public places

of the portion of the territory of each town where such proposed village is to be located and also to be published at least twice in the newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of the town law, a notice issued by the commission: that a petition for the incorporation of the village of (naming it) has been received; that at a place in such territory and on a day, not less than one hundred nor more than one hundred twenty days after the date of the posting and first publication of such notice, which date and place shall be specified therein, a hearing will be had upon such petition; that such petition, the study and all exhibits and certifications required by section 2-202 of this article, will be available for public inspection in the office of each town clerk and on the website of the department of state until the date of such hearing; that the purpose of the hearing is to consider whether the village incorporation petition meets all requirements of this article; that objections to the sufficiency of the petition must be in writing and signed by one or more of the residents of such town; and that any group of persons having one or more objections in common may make designation in writing and signed by them of at least one but no more than three persons giving the full names and addresses on whom and at which addresses all papers required to be served in connection with the proceeding for incorporation shall be served. Within five days of receiving direction from the commission pursuant to this subdivision, the town clerk or clerks shall provide to the commission a list of the six locations where such notices are to be posted. Should the commission object to any such locations submitted by the town clerk or clerks, the commission shall, no later than seven days after receipt of such list of locations, direct the town clerk or clerks to post such notices in alternative locations designated by the commission. The postings of such notices shall be made by the town clerk or clerks no later than twenty days after the filing of such petition, the study and all exhibits and certifications required by section 2-202 of this article or copies thereof. A majority of such designees must reside in such town or towns. In the absence of any other suitable place, such hearing shall be held in a school building, if any, located in such territory. If such territory is located in more than one town that fact shall be included in the notice of hearing. For the purposes of this section, in the event that the town maintains a website, one of

the posting requirements required by this section may be fulfilled by posting such information on the town's website.

2. The department of state shall post the study on the department of state's website beginning at such time as required by section 2-202 of this article at least until the procedures pursuant to section 2-234 or 2-236 of this article are satisfied, whichever occurs sooner.

**§ 2-206 Proceeding on hearing.** 1. The commission shall meet at the time and place specified in such notice and shall hear objections which may be presented as to the incorporation based upon any of the following grounds:

a. That a person signing such petition was not qualified therefor;

b. That the petition does not contain the signatures of at least twenty percent of the residents in such territory qualified to vote for officers of a town in which all or part of such territory is located;

c. That such territory is part of a city or village;

d. That if such territory is less than an entire town, it contains more than five square miles and the limits of such territory are not coterminous with the entire boundaries of one school, fire, fire protection, fire alarm, town special or town improvement district and the limits of such territory are not coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within one town;

e. That such territory does not contain a population of at least one thousand five hundred regular inhabitants;

f. That the petition in any other specified respect does not conform to the requirements of this article;

g. That a study as required by section 2-202 of this article has not been submitted and made available to the public for public review for at least ninety days before the hearing required by this article;

h. That the proposed village is incapable of providing services;

i. That the tax revenue collected by such proposed village would not sufficiently defray the cost of municipal services at a property tax rate that favorably compares to the property tax rate of the town or towns; or

j. That the incorporation would increase tax burdens on those located in the town or towns within which such proposed village would be established.

2. The commission shall conduct the hearing.

3. All objections must be in writing and signed by one or more residents qualified to vote for town offices a town in which all or part of such territory of the proposed village is located. Testimony as to objections may be taken at the hearing which shall be reduced to writing and subscribed by those testifying. All written objections and signed testimony shall clearly state the name and address of the objector.

4. The hearing may be adjourned but must be concluded within twenty days from the date fixed in the notice of hearing.

5. The town clerk and any other official or employee of each town in which any portion of such territory is located shall assist the commission in verifying the validity of the petition in connection with any objection raised pursuant to paragraph a or b of subdivision one of this section.

**§ 2-208 Decision to commence village incorporation election.** 1. Within ten days after such hearing is concluded the commission shall determine whether the petition complies with the requirements of this article and

shall make and sign a decision as to whether a village incorporation shall proceed to election. The commission's decision shall be based on an evidentiary record consisting of the incorporation petition, the study and all exhibits and certifications required by section 2-202 of this article, and any objections made pursuant to section 2-206 of this article. If the members of the commission cannot agree, the decision shall be deemed to be adverse to the petition. If the decision be adverse to the petition, the decision shall contain a brief statement of the reasons on which the adverse decision is based or the reasons on which the members of the commission determined not to proceed to a village incorporation election.

2. The original copy of the decision, copies of the notice of the hearing together with affidavits of posting and publishing same, the written objections and the minutes of proceedings taken on the hearing including signed testimony shall be filed by the commission within fifteen days after the hearing is concluded, with the town clerk of the same town in which the original copy of the petition was filed and the secretary of the state. Duplicate copies of the said papers shall be filed with the town clerks of all towns in which any part of such territory is located.

3. If no proceeding be instituted to review such decision within thirty days after such filing of the original copy thereof, the decision shall be final and conclusive. In the event that the decision is adverse to the petition, a new proceeding for incorporation may be commenced immediately.

**§ 2-210 Review of decision.** 1. The decision of the commission as to the petition and whether a village incorporation shall proceed to election shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

2. Such proceeding must be instituted within thirty days after the filing of the original copy of such decision as required by section 2-208 of this article.

3. The proceeding may only be instituted by a resident in a town in which a part of such territory is located.

4. In addition to the requirements of said article seventy-eight:

a. Notice of such a proceeding in accordance with article seventy-eight of the civil practice law and rules shall be given to the secretary and the town clerk of each town in which any part of such territory is located, each of whom shall cause same to be filed in their office.

b. If the proceeding be brought to review a decision adverse to the petition, copies of all papers in connection therewith shall be served on all persons designated by objectors to the petition pursuant to section 2-204 of this article and on all other objectors who have made no such designations and whose objections were submitted in writing and signed. Service shall be sufficient if made either personally or by certified mail with a return receipt.

c. If the proceeding be brought to review a decision sustaining the petition, copies of all papers in connection therewith shall be served on all persons designated in the petition to receive same.

d. All persons served pursuant to paragraphs b and c of this subdivision shall be parties to such proceeding under said article seventy-eight.

e. All issues in any proceeding hereunder shall have preference over all other civil actions and proceedings.

5. The successful party to any such proceeding shall file a certified copy of the decision and order in the office of the clerk of each town in which any part of such territory is located and with the secretary of state who shall give notice of the receipt of the decision and order to the commission within three days.

**§ 2-212 Right to election.** 1. An election to determine the question of incorporation shall be held no later than one hundred eighty days and no earlier than ninety days after the first occurring of either of the following two events:

a. The expiration of thirty days from the filing of the original of a decision by the commission to proceed to a village incorporation election pursuant to section 2-208 of this article and no proceeding having been instituted to review same, or

b. The filing of a final order affirming the decision of the commission to proceed to a village incorporation election pursuant to section 2-208 of this article or reversing the decision of the commission not to proceed to a village incorporation election pursuant to section 2-208 of this article after such a proceeding to review.

2. The procedure for conducting said election shall be pursuant to the election law.

**§ 2-214 Notice of election.** No later than three days after the right to an election is complete, the commission shall direct the town clerk of each town in which any portion of such territory is located to post in six public places in that part of such territory located in such town and also to be published at least twice in the newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of the town law, a joint notice by the clerks of all such towns that at a convenient place in such territory, between the hours of twelve o'clock noon and nine o'clock in the evening and on a day not less than twenty nor more than thirty days after the date of the posting and first publication, which date and place shall be specified therein, an election will be held to determine whether the proposed village of (naming it) shall be incorporated. No later than five days after receiving direction from the commission, the town clerk or clerks shall provide to the commission a list of the six locations where such notices are to be posted. Should the commission object to any such locations

submitted by the town clerk or clerks, the commission shall, no later than seven business days after receipt of such list of locations, direct the town clerk or clerks to post such notices in alternative locations designated by the commission. In such instance, the postings of such notices shall be made by the town clerk or clerks no later than twenty days after the right to an election is complete. Such election shall not be held on a day of a town election or of a general election in a town in which any part of such territory is located. For the purposes of this section, in the event that the town maintains a website, one of the posting requirements required by this section may be fulfilled by posting such information on the town's website. Such posting shall also be made on the secretary of state's website.

**§ 2-216 Qualification of voters.** Each resident in such territory qualified to vote for town officers may vote at such election.

**§ 2-218 Registration list of voters.** 1. Preparation. It shall be the duty of the clerk of each town in which a portion of such territory is located to make and file in their office, at least twenty days before such election an accurate list of voters, alphabetically arranged, who are qualified to vote at such election. Such list shall be copied from the registration poll records for the last preceding general election, and shall be modified in accordance with whatever information the town clerk may have or receive from the board of elections.

2. Inspection of and additions to registration list. At least three days prior to such election and not on a Sunday the registration list for such election shall be open for inspection by the public in the office of the town clerk preparing same between the hours of twelve o'clock noon and nine o'clock in the evening where and when any person claiming to be qualified to vote at such election whose name is not included in the registration list of voters therefor may apply to such clerk for a revision of such list to include his or her name. The clerk, upon presentation of proper proofs showing that such person is or will at the time of such election be qualified to vote for town officers of

such town as a resident of such territory, shall revise such list to include the name of such person.

3. Notice of availability of list for inspection and additions. Within ten days after the right to an election is complete the town clerk of each town in which any portion of such territory is located shall cause to be posted in six public places in that part of such territory located in such town and also to be published at least twice in the newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of the town law, a notice: that a registration list of voters qualified to vote at such election will be available for inspection in their office between the hours of twelve o'clock noon and nine o'clock in the evening on a day specified therein which day shall not be on a Sunday and shall be at least three days prior to such election; that at said time and place said list will be available for inspection by the public; and also that at said time and place persons claiming to be qualified to vote at such election whose names are not on such list may, upon presentation of proper proofs, have their names added thereto. Prior to posting, the town clerk or clerks shall provide to the commission a list of the six locations where such notices are to be posted. Should the commission object to any such locations submitted by the town clerk or clerks, the commission shall, no later than seven days after receipt of such list of locations, direct the town clerk or clerks to post such notices in alternative locations designated by the commission. The postings of such notices shall be made by the town clerk or clerks no later than twenty days after the right to an election is complete. For the purposes of this section, in the event that the town maintains a website, one of the posting requirements required by this subdivision may be fulfilled by posting such information on the town's website.

4. No person shall be entitled to vote at such election whose name does not appear on the registration list of voters.

**§ 2-220 Conduct of election.** 1. Time and place. An election shall be held at the time and place specified in the notice of election.

2. Manner of voting. Voting may be either by voting machine or by paper ballots. Paper ballots may be written or printed and shall be consecutively numbered. Ballots shall contain the words "for incorporation" and "against incorporation".

3. Inspectors of election. The election shall be conducted by a board of inspectors of election consisting of the town clerks and supervisors of each town in which any portion of such territory is located. The town clerk of each such town shall serve a copy of the notice of election and a notice of the composition of the board of inspectors of election upon the supervisor or supervisors thereof at least ten days before the date fixed for such election. The town board or boards of such towns shall also jointly designate four alternate members of the board of inspectors of election who shall be qualified voters of such territory to substitute for any of the original board of inspectors of election who do not attend at the time and place fixed for such election. Notice of such designation together with copies of the notices herein required to be served on supervisors shall be served on such designees at least ten days prior to such election. If less than all of the officers constituting the original board of inspectors of election attend at the time and place fixed for the election, those attending shall appoint such number of the aforementioned alternate designees as are necessary to form a full board. The inspectors conducting the election shall receive such compensation as shall be fixed by the town board or boards appointing them.

4. Powers and duties of inspectors. The inspectors shall execute the constitutional oath of office and file same in the office of the town clerk wherein was filed a copy of the petition. They shall supervise and conduct such election and in connection therewith shall possess all the powers conferred by law upon a board of inspectors of election at a town election, so far as the same are applicable.

5. Applicability of election law. The provisions of the election law not inconsistent herewith shall apply to such election so far as the same are practicable.

**§ 2-222 Canvass of election.** 1. At the close of the polls and as soon thereafter as the inspectors of election shall have completed their other duties as provided in this chapter and in the applicable provisions of the election law, the inspectors thereat shall publicly canvass and ascertain the vote without adjournment or postponement and upon the completion of the canvass shall make and sign a certificate of the holding of the election and of the canvass showing for the territory or for each part of each town in the territory and computed separately for each such part, as the case may be, the whole number of such votes, the number of blank and void ballots, if any, the number for incorporation and the number against incorporation. If a majority of the valid votes cast in the territory or in each part of each town in the territory and computed separately for each such part, as the case may be, is for incorporation, the proposed village shall be incorporated as provided in section 2-234 of this article. The inspectors of election shall also and before nine thirty o'clock in the forenoon of the following day file the original of such certificate in the office of the clerk of the town wherein was filed the original of the petition for incorporation and duplicate copies thereof in the offices of the clerks of all other towns in which a portion of such territory is located.

2. If the certificate shows that less than a majority of the valid votes cast in the territory or in any part of any town in the territory and computed separately for such part, as the case may be, at such election is for incorporation then no proceeding for the incorporation of the same territory shall be commenced within one year from the date of such election.

**§ 2-224 Review of election.** A person qualified to vote at such election may, not more than ten days after the filing of the original of the certificate of election, institute a proceeding to determine the validity or regularity of such election before the supreme court or any justice thereof within the judicial district in which such territory or any part of it is located. Such court or justice thereof shall, in

connection therewith, determine any question arising and make such order as justice may require in respect to the validity and regularity of such election. The proceeding shall be heard upon verified petition and such oral or written proof as may be offered and, in addition to the notice hereinafter required, upon such further notice to such persons as the court or justice shall direct. The proceeding shall be summarily determined and shall have preference over all other causes in all courts. Certified copies of the decision shall be filed in the office of the clerk of each town in which any portion of such territory is located. No costs shall be allowed to any party to such proceeding.

**§ 2-226 Notice of proceeding for review of election.** A person instituting a proceeding under section 2-224 of this article shall serve a copy of the verified petition on which same is to be heard on each town clerk with whom the original or a copy of the certificate of election was filed and also upon each person designated in the petition for incorporation, or designated in written objections to said petition, to receive service of papers in connection with the proceeding for incorporation. In addition the person instituting such proceedings shall cause copies of such petition to be posted in five conspicuous places in such territory.

**§ 2-228 Stay of further proceedings.** The institution of a proceeding under section 2-224 of this article shall serve to stay all further proceedings in connection with the proposed incorporation of such territory until the final determination thereof and the expiration of the time within which to take an appeal with no appeal having been taken.

**§ 2-230 New election.** If the election is set aside as a result of a final determination in a proceeding instituted pursuant to section 2-224 of this article, a new election shall be held. The right to such an election shall be complete upon the filing of certified copies of such final determination with the town clerks of the towns in which any

portion of such territory is located. Upon such filing such clerks shall give notice of a new election. All the provisions of this article regulating the first election shall apply to a new election. Further new elections shall be held in like manner if any subsequent election is set aside.

**§ 2-232 Report of incorporation.** After ten and within fifteen days from the filing of the certificate of election certifying that a majority of the votes cast were cast for incorporation and if no proceeding is instituted to review the validity and regularity of the election or within fifteen days after the filing of a final determination in such a proceeding sustaining the validity and regularity of the election, the town clerk with whom the original of the certificate of election was filed shall prepare and deliver a report of incorporation to the secretary of state, state comptroller, commissioner of taxation and finance and to the county clerk and county treasurer of each county and to the clerk of any other town in which any part of such territory is located. Such report of incorporation shall include:

a. A copy of the certificate of election certified by the inspectors of election.

b. A statement that the time to institute a proceeding for a review of the election has expired and that no such proceeding has been commenced; or a certified copy of the final determination, if any, of the court or justice sustaining the results of the election.

c. An outline map and a metes and bounds description of the territory within such village which the clerk shall furnish or cause to be prepared at the original expense of the towns in which such territory is located. Such original expense shall be borne equally by each such town unless otherwise agreed.

d. A statement of the population of the territory as it appears by the exhibit attached to the petition for incorporation.

**§ 2-234 Date and certificate of incorporation and effective dates. 1.**

The secretary of state upon receipt of the report of incorporation shall forthwith file same in his office and, in a certificate of incorporation, shall certify, under the seal of his office, to the clerk of each town in which any portion of such territory is located that said report has been filed in his office giving the date of filing thereof. The village shall be incorporated as of the date of the filing of said report; provided, however, that such incorporation shall only become effective on the following dates for the following purposes:

a. from the date of incorporation:

(1) to perform any and all acts authorized in sections 2-236 through 2-250 inclusive, hereof

(2) to appoint a village clerk, treasurer, attorney

(3) to hold meetings of the board of trustees

(4) to appoint a zoning commission

(5) to engage necessary clerical assistants to the clerk

(6) to designate an official newspaper

(7) to fix the compensation of and to pay all salaries, fees, costs and disbursements in connection with any of the foregoing and to borrow by tax anticipation notes in the manner provided in the local finance law, such money as may be needed to make such payments.

(8) such officers, commission, and employees as are authorized by this paragraph shall have power to perform their necessary duties.

b. from the first day of January next succeeding the date of incorporation:

(1) to perform all acts and fulfill all requirements of title two of article fourteen of the real property tax law

(2) to perform all acts and fulfill all requirements of this chapter in the article entitled "Finances".

(3) to pay all necessary costs and disbursements in connection with the foregoing and to borrow by tax anticipation notes in the manner provided in the local finance law, such money as may be needed to make such payments.

c. from the first day of June following the first day of January next succeeding the date of incorporation, to have and exercise all the rights, powers, duties, privileges and immunities granted villages by the constitution or any other provision of law.

2. The town clerks of all towns in which any part of such territory is located shall, upon the appointment of the village clerk as provided in section 2-240 of this article, deliver to said clerk the certificates of incorporation filed with them for permanent inclusion in the official records of said village.

**§ 2-236 Payment of expenses incurred in proceedings for incorporation if village not incorporated.** If the incorporation of the proposed village be not effected by the proceedings authorized in this article, the expenses incurred by the towns in which any part of such territory is located for payment of cost of posting, publishing and serving required notices, stenographic services and services of inspectors of election shall be paid from the fund deposited with the department of state, on behalf of the commission. If such fund so deposited is not sufficient to pay all of such expenses, the costs in excess of such fund shall be a general town charge.

**§ 2-240 Appointment of village clerk.** 1. Within five days after the filing of the certificate of incorporation in the offices of the clerks of each town in which any portion of the village is located, such clerks shall jointly appoint a resident of the village to serve as village clerk until his successor is chosen by the first elected board of trustees.

2. A copy of such joint appointment shall be delivered to such village clerk and copies thereof shall be filed in the office of each such town clerk. Within three days after his appointment the village clerk shall file the constitutional oath of office with the town clerk with whom the original of the certificate of election was filed and shall file a copy thereof with the town clerks of all other towns in which any part of the

village is located.

**§ 2-242 First election of officers, terms of office.** 1. Except as provided in section 17-1703 of this chapter, an election, which shall be deemed a special election, shall be held pursuant to the election law in the village no more than sixty days after the appointment of the village clerk.

2. At such first election a mayor and four trustees shall be chosen.

3. If such first election be held on or after the first Monday in April and before the first Monday of October in any one year, the terms of office of two of the trustees shall expire at noon on the first Monday in April next succeeding such first election.

4. If such first election be held at any other time, the terms of office of such two trustees shall expire one year after the first Monday in April next succeeding such first election.

5. The terms of office of the mayor and the other two trustees shall expire at noon on the first Monday in April next succeeding the expiration of the terms of office of the first two trustees above mentioned.

6. The terms of office of officers elected under this section commence as soon as they have qualified in the manner hereinafter provided in this chapter.

**§ 2-244 Notice of election, appointment of inspectors.** 1. Within ten days after his appointment, the village clerk shall cause to be conspicuously posted, in at least six public places in the village, and also to be published at least once in a newspaper of general circulation therein, a notice of such election specifying the time and place of holding the election, the hours of opening and closing the polls which shall be from twelve o'clock noon to nine o'clock in the evening, and

the offices and the terms thereof to be filled. For the purposes of this section, in the event that the village maintains a website, one of the posting requirements required by this subdivision may be fulfilled by posting such information on the website.

2. Also within ten days after his appointment the village clerk shall appoint four persons qualified to vote at the first election of officers to serve as inspectors of such election. The persons so appointed shall file their constitutional oath of office with the village clerk within three days after their appointment.

3. The provisions of this section shall not apply to villages incorporated to embrace the entire territory of a town.

**§ 2-246 Conduct of first village election.** 1. All persons qualified to vote for town officers and who have been residents of the village for thirty days prior to such election may vote for such village officers.

2. The inspectors of election appointed by the village clerk shall conduct such election in the manner provided in this chapter for the election of village officers at an annual village election so far as practicable and shall be paid at the same rate as inspectors at the last preceding general election held in such territory.

**§ 2-248 First meeting of the board of trustees.** As soon as is practicable after such first election the mayor and trustees elected thereat shall meet and appoint a clerk and treasurer and such other officers as are authorized by law.

**§ 2-250 Town legislation to carry over.** For a period of two years after the date of incorporation, all local laws, ordinances, rules or regulations, which otherwise would apply to and affect only such part of a town as is outside the limits of any incorporated village, of any town in which the village, or a part thereof, is located in effect on the

date of incorporation of the village, including but not limited to zoning ordinances, shall remain in effect in such village or such part thereof as if same had been duly adopted by the board of trustees, provided, however, that such local laws, ordinances, rules and regulations so carried over shall be enforced and administered by the appropriate town officials until the first day of June following the first day of January next succeeding the date of incorporation and thereafter by the appropriate village officials; and provided further, however, that any such local law, ordinance, rule or regulation shall cease to be in effect in the village or any part thereof when so determined by any general, special or local law, or when replaced by any general or special law covering the same subject matter; and provided further, however, from the date of incorporation the village may prepare and enact local laws, resolutions, rules, and regulations to be effective as provided in such local laws, resolutions, rules and regulations.

**§ 2-252 Town and district services continued.** 1. a. Any town in which any part of a newly incorporated village is located shall, from the date of such incorporation until the first day of June following the first day of January next succeeding such date of incorporation, continue to perform and to render to and in such incorporated area all those functions and services performed and rendered by it therein and therefore on the date of the filing of the petition for incorporation which function and services, except for the requirements of this section, would otherwise have ceased to be required to be performed or rendered therein upon such incorporation.

b. Any town improvement district and any fire district, fire protection district or fire alarm district partially located in a newly incorporated village and which upon the incorporation of such area would by operation of law or could thereafter pursuant to law, cease to exist in such village shall, nevertheless, from the date of such incorporation until the first day of June following the first day of January next succeeding such date of incorporation, continue to perform and to render to and in such incorporated area all those functions and services rendered by it therein and therefore on the date of the filing of the

petition for incorporation.

2. The cost and expense of so performing and so rendering said functions and services shall be budgeted, levied upon, assessed against and collected from the entire town or district, as the case may be, as if such village had not been incorporated. In budgeting such cost and expense such town or district shall provide for a full year's cost and expense of providing such functions and services in the incorporated area.

3. The collector or receiver of taxes of a town and the treasurer of a county shall continue to perform their duties in respect to the property included in such incorporated area until all taxes and assessments extended and levied against such property prior to the village incorporation or subsequent thereto, as provided in subdivision two of this section, have been collected.

4. Such collector or receiver of taxes of a town and such treasurer of a county shall, on the first day of June following the first day of January next succeeding the date of incorporation, pay over to the treasurer of the village seven-twelfths of the collected taxes and assessments extended and levied against the real property in said area for the functions and services referred to in subdivision one hereof. Such collector or receiver of taxes of a town and such treasurer of a county shall, commencing on the first day of July following the first day of January next succeeding the date of incorporation, pay over to the treasurer of village monthly, as collected after the first day of June, seven-twelfths of the taxes and assessments extended and levied against the real property in said area for the functions and services referred to in subdivision one hereof. However, the village, town and district or any of them may agree to a different amount or manner of payment or both.

5. All sums received by the village treasurer pursuant to this section shall be deposited in the general village fund.

6. Nothing contained in this section shall be deemed to cause or require the abolition or diminution of such a town improvement district, a fire district, a fire protection district, or a fire alarm district.

## **§ 2-254 Effect of incorporation on all districts entirely within**

**village.** 1. Whenever the term "district" is used in this section it shall be construed as referring to a fire district, fire protection district or fire alarm district, or a town special district, or a town improvement district; and the term "governing body" as used in this section shall be construed as referring to all boards, bodies or persons, in which any of the governing powers of a district are vested.

2. If on the date of incorporation of a village the limits of the village are coterminous with the limits of, or wholly include, the territory of a district, such district shall cease to exist at the end of the fiscal year of such district next following the first day of June following the first day of January next succeeding the date of incorporation; except as otherwise provided in this section, the powers and duties of the governing body of the district and of all the officers of the district in connection therewith shall then cease and determine; and any board of commissioners, any office of commissioner and any other office of any such district shall also cease to exist at such time.

2-a. If the limits of a village incorporated prior to the first day of April, nineteen hundred sixty-five are coterminous with the limits of, or wholly include the territory of, a district, the board of trustees of the village, by local law or pursuant to the provisions of article seventeen-A of the general municipal law, may abolish any such district. In addition to any other notice required in connection with the adoption of such local law generally, thirty days' written notice of the hearing to be held in connection with such local law shall be given to the governing body of any such district and to the town clerk. A certified copy of any such local law shall be served upon or mailed to such governing body and clerk within five days following the adoption thereof. Except as otherwise provided in this section, the powers and duties of the governing body of a district so abolished and of all the officers of the district in connection therewith shall cease and determine upon the effective date of such local law and any board of commissioners, any office of commissioner and any other office of any such district shall also cease to exist at such time. No such local law shall become effective except on the last day of a fiscal year of the town or district, as the case may be.

3. a. The obligations and the contracts of a district which shall so cease to exist and the obligations and contracts of a town for the benefit of or chargeable to such a district shall not be impaired by this section.

b. Notwithstanding the dissolution of a district pursuant to this section,

(1) an amount shall be levied and collected annually sufficient to pay in regular course the principal of and interest on all bonds or obligations issued pursuant to the local finance law or otherwise by or on behalf of such district which are outstanding and unpaid as of the date of the dissolution of the district. Such annual levy and collection shall continue until all such outstanding bonds and obligations are paid in full.

(2) all levies, assessments, fees, rates or other charges of the district unpaid as of the date of dissolution and all penalties and interest thereon shall be collected.

(3) all moneys collected under subparagraph two of this paragraph which would be available for district purposes if the district were not dissolved shall be applied to the payment of all obligations of the district, other than those described in subparagraph one of this paragraph, which are due and payable at the time of the dissolution of the district. All such moneys so collected and not required for such purpose shall be paid over to the village treasurer.

(4) the levies, collections and payments described in subparagraphs one, two and three of this paragraph shall be made in the same manner as if the district had not been dissolved, except that for the purposes of this paragraph:

(a) if a fire district is dissolved, the board of trustees of the village shall constitute the board of fire commissioners of the former fire district and

(b) if a district other than a fire district is dissolved, the powers of the governing body of the district shall be exercised and performed by the town board of the town in which the district is located.

(5) in lieu of the requirements set forth in subparagraph one of this paragraph, the board of trustees by resolution, subject to permissive

referendum, may provide that the village shall assume responsibility for the levy and collection, as a general village charge, of all amounts required to pay the bonds or obligations therein described. In such event the village shall annually pay an amount sufficient to pay the principal and interest on such bonds or obligations as same become due and payable in regular course. In the case of bonds or obligations of a district other than a fire district, such payment shall be made to the supervisor of the town in which the district is located. In the case of fire district bonds or obligations, payment shall be made directly to the holder of such bonds or obligations. The board of trustees shall give written notice of such resolution to the town board before same shall become effective. Nothing herein contained shall prevent the village from prepaying to the town for the purpose of redeeming such bonds or obligations, other than those of a fire district, in whole or in part provided the bonds or obligations permit such part payment or redemption. Nothing herein contained shall prevent the village from prepaying or redeeming such fire district bonds or obligations in whole or in part provided the bonds or obligations permit such part payment or redemption.

c. All contracts of or on behalf of and chargeable to a district which ceases to exist hereunder, including all amounts unpaid under such contracts but excluding all amounts unpaid thereunder which were due and payable at the time of dissolution of such district, other than obligations incurred pursuant to the local finance law, shall, to the extent they are the responsibility of or beneficial to such a district, be assumed by the village and all expenditures under such contracts shall be charged as provided in subdivision six of this section. The terms and conditions and all rights of or on behalf of the district, including any right of amendment or rescission of such contract, shall inure to the benefit of the village.

4. The governing body of a district shall be responsible for the payment of all obligations of the district other than those described in subparagraph one of paragraph b of subdivision three of this section which are due and payable at the time of the dissolution of the district. The governing body of a district shall be responsible for the

payment of all obligations of the district described in subparagraph one of paragraph b of subdivision three of this section.

5. Upon a district ceasing to exist hereunder, all property of a district shall automatically become the property of the village and, in connection therewith, the governing body and any other officer or person empowered to transfer title to or having the custody or control of any moneys of such district, any moneys in a reserve fund, any real or personal property of such district or used or applied for the purposes of such district, any policies of insurance for the benefit of such district, any documents, instruments and other muniments of title to district property and of any official books, records and other data relating to the operation and management of such district shall prepare or cause to be prepared an inventory of all such property, shall certify same, shall deliver same to the village clerk and shall:

a. pay over to the village treasurer all such moneys except so much thereof as was collected for the purpose of paying principal of and interest on bonds or other obligations issued pursuant to the local finance law or otherwise by or on behalf of the district and further except so much of the balance of such moneys as may be required to pay those obligations of the district described in subdivision four of this section. The village treasurer on receipt of such moneys, shall set same aside and apply them pursuant to law to the purposes of the district which ceases to exist hereunder so long as the village continues to provide the service or function thereof and thereafter to be applied in reduction of village taxes levied against the area of such former district; provided, however, that so long as the village provides the service or function of the former district any moneys held by or on behalf of a district in a reserve fund subject to the provisions of article two of the general municipal law or section fifty-five-a of the town law shall be held and administered by the village as a reserve fund subject to those provisions of article two of the general municipal law pertaining to villages for the same or similar purpose for which any such fund was established.

b. surrender and deliver all such insurance policies, books, such real

or personal property.

c. assign such policies of insurance and its interest thereunder to the extent permitted therein to the village.

d. surrender and deliver all such insurance policies, books, records and other data to the village clerk. Copies of official books, records and other data relating to the operation and management of such district and certified by the officer responsible for same shall be sufficient to satisfy the requirements of this paragraph. No fees or expenses shall be charged for the making of such copies and same shall be entitled to the same admissibility in evidence in a court proceeding as the originals thereof.

e. surrender and deliver all other such personal property to such village officer, employee, board or commission as the board of trustees of the village shall designate. The failure of the governing body or any other officer or person to comply with the requirements of this subdivision shall in no way impair the automatic transfer to the village of the right, title or interest of the district of, in or to such property.

6. Upon a district ceasing to exist hereunder and until such time as the village may discontinue the service or function pursuant to subdivision seven of this section, the service or function of such former district shall become a village service or function and shall be continued as, in the discretion of the board of trustees of the village, may be needed in all territory which previously received same and the board of trustees shall have all the powers and duties granted by law to village officials in connection with such service or function and such additional powers formerly held by the governing body or any officer of the district which may be necessary to continue the service or function of the district, provided, however:

a. if the limits of a district which ceases to exist hereunder are wholly within but are not coterminous with those of the village and the service or function formerly provided by such district is not extended

outside the limits of the former district, all the costs and expenses of such service or function may be chargeable only to the territory of such former district.

b. if the limits of a district which ceases to exist hereunder are wholly within but are not coterminous with those of the village and the service or function formerly provided by such district is extended outside the limits of such former district, so much of all costs and expenses of such extension of service or function to such outside territory as is represented by the payment of the principal and interest on obligations incurred therefor by the village pursuant to the local finance law may be chargeable to and collected from such outside territory; and all other costs and expenses of such service or function may be chargeable only to that part of the entire territory of the village in which such service or function is provided. In any event and regardless of the territory to which such other costs and expenses may be made chargeable, same shall be apportioned and collected uniformly and without discrimination within such territory.

c. upon any fire district ceasing to exist hereunder, all fire, hose, protective or hook and ladder companies and all authorized squads or other units of such district, including the memberships thereof, shall continue to exist and shall not be affected thereby except as follows:

(1) the members of all such companies, squads or units shall constitute a corporation and the fire department of the village.

(2) all such companies, squads or units shall thereafter be subject to and governed by all the provisions of this chapter regulating and pertaining to any such company, squad or unit and the fire department of the village.

d. upon the incorporation of a village all existing fire, hose, protective or hook and ladder companies and all other firemanic squads or units independently organized and incorporated which are not companies, squads or units of any fire district ceasing to exist hereunder and the boundaries of which companies, squads or units as specified in their certificates of incorporation or charters or any laws establishing such companies, squads or units are coterminous with or

wholly included within the limits of the village and the memberships thereof shall continue to exist and shall not be affected thereby except as follows:

(1) the members of all such companies, squads or units shall constitute a corporation and the fire department of the village.

(2) all such companies, squads or units shall thereafter be subject to and governed by all the provisions of this chapter regulating and pertaining to any such company, squad or unit and the fire department of the village.

e. all officers and employees of any district which ceases to exist hereunder shall to the greatest extent practicable in the discretion of the board of trustees be continued in the same or similar positions as village employees and, in connection therewith, shall have all the rights provided by the civil service law as if their former positions with the district had originally been established by the village.

7. The board of trustees of the village at any time by local law may discontinue the service or function of the former district in all or any part of the village; provided, however, that any such local law shall be subject to a permissive referendum of the qualified voters in the territory receiving the service or function at the time of the adoption of such local law and in which the service or function is proposed to be discontinued. For the purpose of such referendum such territory shall be considered as if it comprised the entire territory of the village.

8. This section shall not apply to any special assessment area or any area of assessment for benefit the boundaries of which are coterminous with or wholly included within the limits of the village, which was established only to pay the original cost of any special improvement or facility or any addition thereto, benefitting such area. As to any such area the assessments therein established shall continue to be levied and collected as if the village had not been incorporated. However, any such publicly owned improvement or facility shall become the property of the village in the same manner as provided in subdivision five of this section for property of a district.

9. Any other special assessment area or any other area of assessment for benefit the boundaries of which are coterminous with or wholly included within the limits of a village, shall be considered as a district subject to the provisions of this section and chapter if same was established not only to pay the original cost of any special improvement or facility, or any addition thereto, benefitting such area but also to pay the cost of the operation, maintenance, repair or replacement thereof.

**§ 2-256 Liability to special districts and collection of funds.** If the territory so incorporated as a village includes within its boundaries part of a special district established by the town for a sewer, water, light, fire, park, health, police or any other special district for municipal purposes the territory so included within the boundaries of the village shall not be relieved from bearing its proportionate share of any liability or indebtedness incurred for such special district purposes while such territory was a part of such special district and until such liability is discharged, or such indebtedness paid the proportionate share to which such territory would be liable if it had not been included in the boundaries of the village shall be levied upon, assessed and collected from such territory by the proper officers of such village in the same manner as if such territory had not been included within the boundaries of the village. All moneys so collected shall be paid over from time to time by the village treasurer to the supervisor of the town to discharge such liability. The collector or receiver of taxes of a town and the treasurer of a county shall continue in the execution of his duties in respect to the property included in the boundaries of a village incorporated under the provisions of this article until he shall have collected the taxes authorized or assessed for the year of such incorporation or which have been extended on the town assessment roll and become a lien after such incorporation and pay to the treasurer of the village when collected the taxes extended on the assessment roll against property within the village for highway, health, water, light, fire, park, sewer, police or other special district purposes.

**§ 2-258 Apportionment of property and obligations of a special district of a town upon the incorporation of a part in a village.** If the territory so incorporated as a village includes within its boundaries part of a special district established by the town for a sewer, water, light, fire, park, health, police or any other special district for municipal purposes, the proportion of the bonded debt incurred by the town and payable by a tax against the property within a special district, for whose benefit the bonds were issued which shall be assumed by the village and the apportionment of personal and real property belonging to the special district shall be determined according to the relative assessed valuation of the personal and real property in that portion of the special district without the village and that portion within the village, in the following manner: the town board of the town when acting as a board for special district exclusive of a member who may reside in the village or the commissioner or commissioners of a special district where the special district is managed by a commissioner or commissioners exclusive of a member who may reside in the village and the trustees of the village being unable to agree within six months after the incorporation of the village becomes complete upon the proportion of the debt and the apportionment of the personal and real property, then the supreme court shall have power to determine such division and to enforce such award, division and determination as shall be made in the premises in a suit in equity to be brought in the name of either of the said parties.

**§ 2-259 Fiscal study reporting.** 1. A fiscal study required pursuant to paragraph g of subdivision one of section 2-206 of this article shall be completed prior to any village incorporation election takes place.

2. Such fiscal study referenced in subdivision one of this section shall be submitted to the department of state and shall be posted by the department of state on the public facing portion of its website; provided however, that approval of a village incorporation petition shall not be deemed effective until the study has been completed and publicly posted for a minimum of ninety days.

**§ 2-260 Village incorporation commission and general administration.**

1. a. There is hereby established within the department of state a village incorporation commission. The commission shall consist of three members appointed as follows:

- (1) one member appointed by the secretary of state;
- (2) one member appointed by the comptroller; and
- (3) one member appointed by the attorney general.

b. Each member of the commission shall serve a term of four years. The members shall be eligible for reappointment and shall serve until their successors are appointed and qualified, and the term of the successor of any incumbent shall be calculated from the expiration of the term of that incumbent. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

c. A majority of the members of the commission shall constitute a quorum for the purpose of conducting the business thereof and a majority vote of all the members in office shall be necessary for action.

d. The member appointed by the secretary of state shall be chairperson of the commission, provided that in the absence of the secretary of state's appointee at any meeting of the board the appointee of the attorney general or the comptroller, in such order, if either or both be present, shall act as chairperson.

e. No member of the commission shall be disqualified from holding any other public office, nor shall employment be forfeited by reason of the member's appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance, county or city charter.

2. The commission shall have powers and duties as provided in this subdivision. A petitioner may seek relief from the commission under paragraph f of this subdivision in the event that the petitioner or petitioners and town or towns are unable to jointly select a third-party

to prepare the study required by section 2-202 of this article within thirty-days of the filing of such a request with the town clerk:

- a. To accept petitions filed pursuant to this article;
- b. To hold hearings as required by this article;
- c. To accept and deposit with the state comptroller all such monies required to be paid by those seeking to incorporate a village pursuant to this article;
- d. To evaluate petitions filed pursuant to this article to ensure all components required by section 2-202 of this article have been included;
- e. To make decisions with regard to whether a village incorporation election shall proceed based upon the commission's judgment of the criteria established in sections 2-200 and 2-206 of this article and any other requirements established in this article.
- f. To select a third-party designee from a list submitted by the petitioner or petitioners and town or towns to prepare the study required to be attached to the petition pursuant to section 2-202 of this article;
- g. To direct the town clerk or clerks to post notices of hearing in alternative locations pursuant to section 2-204 of this article;
- h. To direct the town clerk or clerks to post notices of election in alternative locations pursuant to section 2-214 of this article; and
- i. To direct the town clerk or clerks to post notices of availability of list for inspection and additions pursuant to section 2-218 of this article.

3. Prior to issuing its decision with regard to whether a village incorporation election shall proceed, and upon receiving a complete petition seeking village incorporation, the commission shall review the

study attached to such petition, as required by section 2-202 of this article, to determine whether such study conforms to the requirements of section 2-202 of this article.

4. Commission review. The commission shall determine whether:

a. the petitioner has submitted a study pursuant to section 2-202 of this article having all the elements required by this article and that such study was provided for public review on the department of state's website for at least ninety days before any public hearing on the petition;

b. the proposed village is capable of providing services to the area proposed to be incorporated;

c. the tax revenue collected by such proposed village would sufficiently defray the cost of municipal services at a property tax rate that favorably compares to the property tax rate of the town or towns; and

d. the incorporation would increase tax burdens on those located within the town or towns within which such proposed village would be established.

5. A village incorporation election shall not proceed if the commission determines based on the evidentiary record that the petition or the study or other exhibits or certifications with the petition does not meet the requirements of this article or that the proposed village would not satisfy the criteria of paragraph b, c, or d of subdivision four of this section.

6. A notice of the commission's decision with regard to whether a village incorporation shall proceed to election shall be by majority vote, and the department of state shall post a notice of the commission's decision on the public-facing portion of the department of state's website. No village incorporation election shall proceed in the event the commission rules adversely to such incorporation, except

pursuant to the provisions of section 2-210 of this article.

### ARTICLE 3

#### OFFICERS AND ELECTIONS

Section 3-300 Eligibility for election or appointment to, and continuance in office.

3-301 Village officers.

3-302 Official year, terms of office, extension or reduction of terms, biennial elections.

3-303 Additional village justices in certain villages.

3-304 Changing number of trustees.

3-306 Official undertakings.

3-308 Separate boards of commissioners.

3-310 Abolition of separate or municipal boards.

3-312 Filling of offices and vacancies by election or appointment.

**§ 3-300 Eligibility for election or appointment to, and continuance in office.** 1. In addition to any other legal requirements or prohibitions, no person shall be eligible to be elected or appointed as mayor, trustee or member of any board or commission, and, no person, if elected or appointed to such office, shall be eligible to continue to serve therein, who is not a citizen of the United States of America, at least eighteen years of age, and a resident of the village.

2. No person shall be eligible to be appointed to or to hold any other village office who: is not a citizen of the United States; is not at least eighteen years of age; except as may otherwise be provided by law, is not a village resident; and, if eligibility to or holding of such office is subject to regulation under the civil service law or any other law, does not meet the requirements of such law or laws. Notwithstanding any other provisions of law to the contrary; (a) the board of trustees of a village may provide, in lieu of any other residency requirement imposed by law, that any appointed village officer may reside within a county in which the village is wholly or partially situated, (b) the

board of trustees of a village with a population of less than three thousand may provide, in lieu of any other residency requirement imposed by law, that the village justice may reside within a county in which the village is wholly or partially situate.

3. No person shall simultaneously hold an elective and an appointive village office except that: not more than two members of the board of trustees may be members of each board and commission; members of the board of trustees may be single commissioners in charge of village departments except as provided in the zoning article in this chapter.

4. Except as is otherwise provided by law, no person shall be disqualified from holding a village office by reason of holding any public office unless such public officer could not fully discharge the duties and obligations of the village office while carrying out the duties and obligations of any such other office.

\* 5. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Croton-on-Hudson, Westchester county, may, by resolution, provide that the village clerk of the village of Croton-on-Hudson, Westchester county, need not be a resident of said village but must be a resident of New York state.

\* NB (Expired first Monday of the month following general village election, 1980)

6. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of New Square, Rockland county, may, by resolution, provide that the village justice of the village of New Square, Rockland county, need not be a resident of said village but must be a resident of New York state.

7. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Russell Gardens, Nassau county, may, by resolution, provide that the village clerk and deputy clerk of the village of Russell Gardens, Nassau county, need not be a resident of

said village, but must be a resident of New York state.

8. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of New Paltz, Ulster county, may, by resolution, provide that the village clerk-treasurer and deputy clerk-treasurer of the village of New Paltz, Ulster county, need not be a resident of said village, but must be a resident of New York state.

9. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of West Haverstraw, Rockland county, may, by resolution, provide that the village clerk, village justice and the village treasurer of such village, need not be residents of said village, but must be residents of New York state.

10. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Saltaire, Suffolk county, may, by resolution, provide that any appointed village officer of the village of Saltaire, Suffolk county, need not be a resident of said village, but must be a resident of New York state.

11. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Penn Yan, Yates county, may, by resolution, provide that the office of justice court clerk of such village may be held by a person who is not a resident of such village, provided that such person resides in the county of Yates or a county which adjoins the county of Yates.

12. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Arkport, Steuben county, may, by resolution, provide that the office of clerk/treasurer of such village may be held by a person who is not a resident of such village, provided that such person resides in the county of Steuben or a county which

adjoins the county of Steuben.

13. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Goshen, Orange county, may, by resolution, provide that the office of treasurer of such village may be held by a person who is not a resident of such village, provided that such person resides within the county in which such village is located or in an adjoining county within the state of New York.

14. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Aurora, Cayuga county, may, by resolution, provide that the office of treasurer of such village may be held by a person who is not a resident of such village, provided that such person resides within the county in which such village is located or in an adjoining county within the state of New York and may, by resolution, provide that the office of clerk of such village may be held by a person who is not a resident of such village, provided that such person resides within the county in which such village is located or in an adjoining county within the state of New York. Provided, however, the person performing the functions of village clerk in any other village shall be an elector of such village, unless otherwise provided by an act of the state legislature.

15. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Islandia, Suffolk county, may, by resolution, provide that the office of village justice of such village may be held by a person who is not a resident of such village, provided that such person resides within the county in which such village is located or in an adjoining county within the state of New York.

16. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Trumansburg, Tompkins county,

may, by resolution, provide that the village clerk-treasurer and deputy clerk of the village of Trumansburg, Tompkins county, need not be a resident of said village, but must be a resident of New York state, provided that such person resides in the county of Tompkins or in a county which adjoins the county of Tompkins.

\* 17. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Honeoye Falls, Monroe county, may, by resolution, provide that the code enforcement officer and building inspector of the village of Honeoye Falls, Monroe county, need not be a resident of such village, but must be a resident of New York state, provided that such person resides in the county of Monroe or in a county which adjoins the county of Monroe.

\* NB There are 2 sb 17's

\* 17. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Deposit, Broome and Delaware counties, may, by resolution, provide that the village clerk-treasurer, deputy clerk-treasurer and court clerk of the village of Deposit, Broome and Delaware counties, need not be a resident of said village, but must be a resident of one of the counties in which such village is located or in an adjoining county within the state of New York.

\* NB There are 2 sb 17's

18. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Wellsville, Allegany county, may, by resolution, provide that the office of village justice of such village may be held by a person who is not a resident of such village, provided that such person resides in the town of Wellsville.

19. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Sag Harbor, Suffolk county, may, by resolution, provide that the office of village justice of such village may be held by a person who is not a resident of such village, provided that such person resides within either the town of East Hampton

or the town of Southampton within Suffolk county.

20. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Haverstraw, Rockland county, may by resolution, provide that the office of assessor of such village may be held by a person who is not a resident of such village, provided that such person resides in the counties of Rockland, Westchester, Orange, or Putnam.

21. Notwithstanding the provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of West Hampton Dunes, Suffolk county, may, by resolution, provide that a constable of the incorporated village of West Hampton Dunes, Suffolk county, need not be a resident of such village, but must be a resident of the county of Suffolk, state of New York.

\* 22. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the village of Macedon, Wayne county, may, by resolution, provide that the clerk/treasurer of the village of Macedon, Wayne county, need not be a resident of such village, but must be a resident of New York state.

\* NB There are 2 sb 22's

\* 22. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Penn Yan, county of Yates, may, by resolution, provide that the office of village clerk-treasurer of such village may be held by a person who is not a resident of such village, provided that such person resides in the county of Yates or in an adjoining county within the state of New York.

\* NB There are 2 sb 22's

23. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the village of Macedon, Wayne county, may, by resolution, provide that the deputy clerk/treasurer of the village of Macedon, Wayne

county, need not be a resident of such village, but must be a resident of New York state.

24. Notwithstanding the provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Victory, Saratoga county, may, by resolution, provide that the village clerk-treasurer of the village of Victory, Saratoga county, need not be a resident of such village, but must be a resident of the county of Saratoga, state of New York, or of a county which adjoins the county of Saratoga.

25. Notwithstanding the provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Victory, Saratoga county, may, by resolution, provide that the deputy clerk-treasurer of the village of Victory, Saratoga county, need not be a resident of such village, but must be a resident of the county of Saratoga, state of New York, or of a county which adjoins the county of Saratoga.

26. Notwithstanding the provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Aurora, Cayuga county, may, by resolution, provide that the code enforcement officer of the village of Aurora, Cayuga county, need not be a resident of such village, but must be a resident of the county of Cayuga, state of New York, or of a county which adjoins the county of Cayuga.

\* 27. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Fair Haven, Cayuga county, may, by resolution, provide that the office of village clerk-treasurer or deputy clerk of such village may be held by a person who is not a resident of such village, provided that such person resides in the county of Cayuga or in an adjoining county within the state of New York.

\* NB There are 2 sb 27's

\* 27. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Mannsville, Jefferson county,

may, by resolution, provide that the village clerk of the village of Mannsville, Jefferson county, need not be a resident of said village, but must be a resident of the county in which such village is located or an adjoining county within the state of New York.

\* NB There are 2 sb 27's

\* 28. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Spring Valley, Rockland county, may, by resolution, provide that the office of village justice of such village may be held by a person who is not a resident of such village, provided that such person resides within either the town of Ramapo or the town of Clarkstown within Rockland county.

\* NB There are 3 sb 28's

\* 28. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Mount Morris, Livingston county, may, by resolution, provide that the office of court clerk and deputy clerk/treasurer of such village need not be a resident of such village, provided that such person resides in the county of Livingston or in an adjoining county within the state of New York.

\* NB There are 3 sb 28's

\* 28. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of St. Johnsville, Montgomery county, may, by resolution, provide that the village clerk/treasurer and code enforcement officer of the village of St. Johnsville, Montgomery county, need not be a resident of said village, but must be a resident of the county in which such village is located or an adjoining county within the state of New York.

\* NB There are 3 sb 28's

29. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Airmont, Rockland county, may, by resolution, provide that the office of building inspector, fire inspector and code enforcement officers of such village may be held by a person who is not a resident of such village, provided that such person

resides within Rockland county or an adjoining county within the state of New York.

30. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Riverside, Steuben county, may, by resolution, provide that the village clerk/treasurer and code enforcement officer of the village of Riverside, Steuben county, need not be a resident of such village, but must be a resident of the county in which such village is located or an adjoining county within the state of New York.

\* 31. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Buchanan, Westchester county, may, by resolution, provide that the office of building inspector, fire inspector and code enforcement officers of such village, may be held by a person who is not a resident of such village, provided that such person resides within Westchester county or an adjoining county within the state of New York.

\* NB There are 2 sb 31's

\* 31. Notwithstanding any provisions of this chapter or any other chapter, general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Northville, Fulton county, may, by resolution, provide that the office of treasurer, village clerk, and code enforcement officer of such village may be held by a person who is not a resident of such village, provided that such person resides within Fulton county or an adjoining county within the state of New York.

\* NB There are 2 sb 31's

\* 32. Notwithstanding any provisions of this chapter or any other chapter, general law, local law, ordinance, or special act, the village board of trustees of the village of Scarsdale, Westchester county, may, by resolution, provide that the office of court clerk, building inspector, assistant building inspector, village clerk, assistant village clerk, village treasurer, assistant village treasurer, assessor, village engineer, or village planner of such village may be held by a person who is not a resident of such village, provided that such person

resides within Westchester county or an adjoining county within the state of New York, except that the village treasurer may also reside within Dutchess county.

\* NB There are 3 sb 32's

\* 32. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Voorheesville, Albany county, may, by resolution, provide that the office of clerk, treasurer, clerk-treasurer, deputy clerk, deputy clerk treasurer, and building inspector of the village of Voorheesville, Albany county, need not be a resident of such village, but must be a resident of the county in which such village is located or an adjoining county within the state of New York.

\* NB There are 3 sb 32's

\* 32. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Chestnut Ridge, Rockland county, may, by resolution, provide that the village justice of the village of Chestnut Ridge, Rockland county, may be held by a person who is not a resident of such village, provided that such person resides within Rockland county.

\* NB There are 3 sb 32's

\* 33. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Maybrook, Orange county, may, by resolution, provide that the office of village justice of such village may be held by a person who is not a resident of such village, provided that such person resides within either the town of Montgomery or the town of Hamptonburgh within Orange county.

\* NB There are 4 sb 33's

\* 33. Notwithstanding any provisions of this chapter or other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Laurel Hollow, in the county of Nassau, may, by resolution, provide that the office of village justice and/or associate justice of such village may be held by a person who is not a resident of such village, provided that such person resides within the county of Nassau or the town of Huntington, in the county of Suffolk.

\* NB There are 4 sb 33's

\* 33. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Cold Spring, county of Putnam, may, by resolution, provide that the village clerk/treasurer and the deputy clerk of the village of Cold Spring, Putnam county, need not be residents of such village, but shall be residents in the county in which such village is located or an adjoining county within the state of New York. Provided, however, the person performing the functions of village clerk/treasurer in any other village shall be a resident of such village, unless otherwise provided by an act of the state legislature.

\* NB There are 4 sb 33's

\* 33. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Otisville, Orange county, may, by resolution, provide that the village clerk/treasurer and deputy village clerk/treasurer of the village of Otisville, Orange county, need not be residents of such village, but must be residents in the county in which such village is located or an adjoining county within the state of New York. Provided, however, the person performing the functions of village clerk/treasurer and deputy village clerk/treasurer in any other village shall be a resident of such village, unless otherwise provided by an act of the state legislature.

\* NB There are 4 sb 33's

34. Notwithstanding any provisions of this chapter or other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Cayuga Heights, in the county of Tompkins, may, by resolution, provide that the office of village justice and/or associate justice of such village may be held by a person who is not a resident of such village, provided that such person resides within the county of Tompkins.

35. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance, or special act, the village board of trustees of the incorporated village of Portville, Cattaraugus county, may, by resolution, provide that the village clerk/treasurer of the

village of Portville, Cattaraugus county, need not be residents of such village, but must be residents in the county in which such village is located or an adjoining county within the state of New York. Provided, however, the person performing the functions of village clerk/treasurer in any other village shall be a resident of such village, unless otherwise provided by an act of the state legislature.

\* 36. Notwithstanding any provisions of this chapter or any other chapter, general law, local law, ordinance, or special act, the village board of trustees of the village of Croton-on-Hudson, Westchester county, may, by resolution, provide that the office of assistant village engineer of such village may be held by a person who is not a resident of such village, provided that such person resides within Westchester county, an adjoining county within the state of New York, or within Dutchess county.

\* NB There are 2 sb 36's

\* 36. Notwithstanding any provisions of this chapter or any other general law, local law, ordinance or special act, the village board of trustees of the incorporated village of Baxter Estates, Nassau county, may, by resolution, provide that the office of village clerk-treasurer or deputy clerk of such village may be held by a person who is not a resident of such village, provided that such person resides in the county of Nassau or in an adjoining county within the state of New York.

\* NB There are 2 sb 36's

**§ 3-301 Village officers.** 1. Every village shall have the following officers:

a. a mayor;

b. four trustees, except that the board of trustees of a village may change the number of trustees as authorized by section 3-304 of this article;

c. a treasurer;

d. a clerk.

2. Any village may have the following officers:

a. except as provided in section 3-303 of this article, no more than two village justices, but in the event a village has one justice, it shall also have an associate justice who shall serve when requested by the village justice or in the absence or inability of the village justice to serve. The office of village justice is continued in every village in which it is now established. The board of trustees of any other village may establish such office by resolution or local law, subject to a permissive referendum. The board of trustees of any village by resolution or local law, subject to permissive referendum, may abolish such office, but to take effect only upon the expiration of the then current term of such office, or establish the office of additional village justices, which justice once elected shall have all the powers and duties of a village justice. The resolution or local law in the latter case shall provide for a term pursuant to section 3-302 of this article. The clerk of the court of a village shall be discharged from employment only upon the advice and consent of the village justice or justices when the clerk, in his or her village duties, works solely for the village justice or justices.

b. assessor or assessors, provided, however, that the board of trustees by resolution or local law may consolidate the offices of clerk, treasurer, and assessor or any two of such offices. The board of trustees may also determine, by local law or resolution, that such board of trustees shall act as the board of assessors or may appoint such board from their members. Notwithstanding the foregoing provisions of this paragraph, a village which has enacted a local law as provided in subdivision three of section fourteen hundred two of the real property tax law shall not have an assessor or assessors in any year in which such local law is in effect.

c. such other officers, including deputies, as the board of trustees shall determine, provided, however, that the board of trustees by resolution or local law may consolidate the offices of deputy clerk, and deputy treasurer.

3. The mayor, trustees and village justices shall be elective officers. All other officers shall be appointed by the mayor, subject to the approval of the board of trustees.

4. The mayor and the trustees of a village shall constitute the board of trustees thereof.

5. A person who has been convicted of a felony pursuant to the laws of this state or who has been convicted in federal court or in another state for a crime or offense that would constitute a felony under the laws of this state shall be permanently ineligible to be a candidate for village justice or to be appointed or continue to hold such office.

**§ 3-302 Official year, terms of office, extension or reduction of terms, biennial elections.** 1. An official year begins at noon on the first Monday in the month following the date of the general village election or the date such an election would have been held had elections been held annually.

2. The term of office of each elective village officer shall commence at the start of the official year following his election; the term of office of each officer appointed at the annual meeting of the board of trustees shall commence at the start of the official year in which he is appointed; and the term of office of each officer appointed at any other time shall commence at the time of his appointment.

3. Except as is otherwise provided herein or in this chapter, the term of office of mayor, each trustee, treasurer and clerk shall be two official years and the term of office of village justice shall be four official years.

If the board of trustees of any village establishes a second office of village justice pursuant to section 3-301 of this article or a third office of the village justice pursuant to section 3-303 of this article the resolution or local law therefor may provide for a single term of

one, two or three years for such second or third village justice who shall serve a single term of one, two or three years, as provided in such resolution or local law, commencing on the first day of the official year following his election in order to provide that village justices shall thereafter be elected every two years. The successor of such justice shall thereafter be elected for a full four year term.

3-a. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Spring Valley, instead of providing for the election of the successor of the village justice in the village of Spring Valley whose term expires at noon on the second day of April, nineteen hundred seventy-nine, may, by resolution of said board, provide for a single term of eight months for the office of village justice in said village, which term shall commence at noon on the second day of April, nineteen hundred seventy-nine, and shall expire at noon on the third day of December, nineteen hundred seventy-nine. In such case, the mayor shall appoint a village justice for such term, subject to approval of the board of trustees. The successor of such justice shall thereafter be elected for a full four year term.

3-b. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Scotia, instead of providing for the election of the successor of the village justice in the village of Scotia whose term expires at noon on the fifth day of April, nineteen hundred eighty-two, may, by resolution of said board, provide for a single term of eight months for the office of village justice in said village, which term shall commence at noon on the fifth day of April, nineteen hundred eighty-two, and shall expire at noon on the sixth day of December, nineteen hundred eighty-two. In such case, the mayor shall appoint a village justice for such term, subject to approval of the board of trustees. The successor of such justice shall thereafter be elected for a full four year term.

3-c. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Gouverneur may appoint a village justice to serve from the date of such

appointment to December seventh, nineteen hundred eighty-seven. A successor to such justice shall be elected at the general election to be held in November of nineteen hundred eighty-seven, to hold office for a term of four years to commence on December seventh, nineteen hundred eighty-seven and to end on December second, nineteen hundred ninety-one. Thereafter, the election of the village justice in the village of Gouverneur shall be held at the general election to be held in November of the year in which the term of office of such village justice shall expire.

3-d. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Potsdam may appoint a village justice to serve from the date of such appointment to December fifth, nineteen hundred eighty-eight. A successor to such justice shall be elected at the general election to be held in November of nineteen hundred eighty-eight, to hold office for a term of four years to commence on December fifth, nineteen hundred eighty-eight and to end on December seventh, nineteen hundred ninety-two. Thereafter, the election of the village justice in the village of Potsdam shall be held at the general election to be held in November of the year in which the term of office of such village justice shall expire.

3-e. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of East Hills, Nassau county, may, by resolution of said board, provide for the appointment to the office of village justice in said village, which term shall commence at noon on the third day of April, nineteen hundred eighty-nine, and shall expire at noon on the first Monday in April, nineteen hundred ninety-one. In such case, the mayor shall appoint a village justice for such term, subject to approval of the board of trustees. Thereafter, the election of the village justice in the village of East Hills, Nassau county, shall be held at the general election to be held in March, nineteen hundred ninety-one and continuing thereafter, the successor of such justice shall be elected for a four year term of office.

3-f. a. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Massena, St. Lawrence county, may, by resolution of said board, provide for the appointment to the office of village justice in said village, which term shall commence at noon on the third day of April, nineteen hundred eighty-nine, and shall expire at noon on April second, nineteen hundred ninety. In such case, the mayor shall appoint a village justice for such term, subject to approval of the board of trustees. Thereafter, the election of the village justice in the village of Massena, St. Lawrence county, shall be held at the general election to be held in March, nineteen hundred ninety, and continuing thereafter, the successor of such justice shall be elected for a four year term of office.

b. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Massena, St. Lawrence county, may, by resolution of said board, provide for the extension of the current term of office of the village justice of said village to expire at noon on December fifth, nineteen hundred ninety-four. Thereafter, the election of the village justice in the village of Massena, St. Lawrence county, shall be held at the general election to be held in November, nineteen hundred ninety-four, and continuing thereafter, the successor of such justice shall be elected for a four year term of office.

3-g. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Mill Neck, Nassau county, may, by resolution of said board, provide for the election to the office of village justice in said village, which term shall commence at noon on the first Monday of July, nineteen hundred ninety-four, and shall expire at noon on the first Monday in July, nineteen hundred ninety-seven. In such case, the election of the village justice of the village of Mill Neck, Nassau county, for such term, shall be held at the general election to be held on the third Tuesday of June, nineteen hundred ninety-four. Thereafter, the election of the village justice in the village of Mill Neck, Nassau county, shall be held at the general election to be held on the third Tuesday of June, nineteen hundred ninety-seven and continuing thereafter, the successor of such

justice shall be elected for a four year term of office.

3-h. Notwithstanding any provisions of this chapter or any other general law, ordinance or special act, the village board of trustees of the incorporated village of Greenport in the county of Suffolk may, by resolution or local law subject to mandatory referendum, abolish the office of village justice.

3-i. Notwithstanding the provisions of this chapter or any special or local law to the contrary, the board of trustees of the village of Canastota, Madison county, may, by resolution of said board, provide for the election to the office of village justice of said village, which term shall commence at noon on the first Monday of April, two thousand nine, and shall expire at noon on the first Monday in April, two thousand ten. Thereafter, the election of the village justice in the village of Canastota, Madison county, shall be held at the general election to be held on the third Tuesday of March, two thousand ten and continuing thereafter, the successor of such justice shall be elected for a four year term of office.

4. The terms of office of any other village officer for whom no other term of office is provided in this chapter shall be one official year or the remaining portion thereof; provided, however, that any officer permanently appointed to an office classified in the competitive class of the civil service shall hold such office for an indeterminate term subject to the provisions of the civil service law.

5. Four year terms for mayor and trustees. a. The board of trustees, by resolution or local law subject to permissive referendum, may extend to four years the term of office of mayor, the terms of office for all trustees, or the terms of office of mayor and all trustees. If such resolution or local law shall become effective, the offices, the term or terms of which have been extended, shall thereafter, except as is otherwise provided in subdivision seven of this section, be filled for terms of four years commencing at the beginning of the official year following the next general village election at which such offices are to be filled. No such resolution or local law, however, shall become

effective within thirty days prior to a general village election.

b. The board of trustees of any village which has adopted the four year term of office for mayor, for all trustees, or for mayor and all trustees, by resolution or local law and subject to permissive referendum, may at any time thereafter reduce to two years the term of office of mayor, the term of office of all trustees, or the terms of office of mayor and all trustees. If such resolution or local law shall become effective, the offices, the term or terms of which have been reduced, shall thereafter, except as is otherwise provided in subdivision seven of this section, be filled for terms of two years commencing at the beginning of the official year following the next general village election at which such offices are to be filled. No such resolution or local law, however, shall become effective within thirty days prior to a general village election.

6. Four year terms for treasurer and clerk. a. The board of trustees of any village in which a resolution or local law has been adopted pursuant to the provisions of this section extending the term of office of the mayor and trustees to four years, by resolution or local law and subject to permissive referendum, may extend to four years the term or terms of office of the treasurer or clerk or both, except that the first term shall be of the required number of years so that it shall expire at the end of the term of office of the mayor then in office. If such resolution or local law shall become effective, the offices, the term or terms of which have been extended, shall thereafter be filled for terms of four years, commencing at the expiration of the term of office of the treasurer or clerk or both in office at the time the resolution or local law is adopted.

b. The board of trustees of any village which has adopted the four year term of office for treasurer or clerk or both, by resolution or local law and subject to permissive referendum may at any time thereafter reduce to two years the terms of office of the treasurer or clerk or both except that the first term shall be of the required number of years so that it shall expire at the end of the term of office of the mayor then in office. If such resolution or local law shall become

effective, the offices, the term or terms of which have been reduced, shall thereafter be filled for terms of two years, commencing at the expiration of the term of office of the treasurer or clerk or both in office at the time the resolution is adopted.

7. Biennial elections. a. The board of trustees of any village which has provided that the terms of office of all trustees, or the terms of office of mayor and all trustees shall be four years, may, subject to permissive referendum, adopt a separate resolution or local law providing that general village elections shall be held biennially in the odd numbered years or in the even numbered years, as they shall determine, or may include in any resolution or local law providing that the terms of office of all trustees, or the terms of office of mayor and all trustees shall be four years, a provision that general village elections shall be held biennially in the odd numbered years or in the even numbered years. No such resolution or local law, however, shall become effective within thirty days prior to a general village election.

b. If such resolution or local law shall become effective between a general village election in an even numbered year and thirty days prior to a general village election in the next odd numbered year and shall provide that general village elections shall be held in the even numbered years, the successor to a police justice, mayor or trustee whose term of office expires in an odd numbered year shall, at the general village election preceding the expiration of such term of office, be elected for a single three year term and their successors shall thereafter be elected for terms of four years.

c. If such resolution or local law shall become effective between a general village election in an even numbered year and thirty days prior to a general village election in the next odd numbered year and shall provide that general village elections shall be held in the odd numbered years, the successor to a police justice, mayor or trustee whose term of office expires in an even numbered year shall, at the general village election preceding the expiration of such term of office, be elected for a single five year term and their successors shall thereafter be elected for terms of four years.

d. If such resolution or local law shall become effective between a general village election in an odd numbered year and thirty days prior to a general village election in the next even numbered year and shall provide that general village elections shall be held in the odd numbered year, the successor to a police justice, mayor or trustee whose term of office expires in an even numbered year shall, at the general village election preceding the expiration of such term of office, be elected for a single three year term and their successors shall thereafter be elected for terms of four years.

e. If such resolution or local law shall become effective between a general village election in an odd numbered year and thirty days prior to a general village election in the next even numbered year and shall provide that general village elections shall be held in the even numbered years, the successor to a police justice, mayor or trustee whose term of office expires in an odd numbered year shall, at the general village election preceding the expiration of such term of office, be elected for a single five year term and their successors shall thereafter be elected for terms of four years.

f. The board of trustees of any village which has provided that general village elections shall be held biennially and shall subsequently provide by resolution or local law adopted pursuant to subdivision five of this section that the terms of office of all trustees, or the terms of office of mayor and all trustees shall be two years, shall also provide in said resolution or local law that general village elections shall be held annually and shall further provide therein that if the general village elections under the biennial elections had been held in the odd numbered years, all trustees, or the mayor and all trustees to be elected in the first odd numbered year after the adoption of the resolution or local law shall be elected for a single three year term and their successors shall thereafter be elected for a term of two years and that all trustees, or the mayor and all trustees to be elected in the second odd numbered year after the adoption of the resolution or local law shall be elected for a two year term and their successors shall also be elected for a term of two years.

g. The board of trustees of any village which has provided that general village elections shall be held biennially and shall subsequently provide by resolution or local law adopted pursuant to subdivision five of this section that the terms of office of all trustees, or the terms of office of mayor and all trustees shall be two years shall provide in said resolution or local law that general village elections shall be held annually and shall further provide therein that if the general village elections under the biennial elections had been held in the even numbered years, all trustees, or the mayor and all trustees to be elected in the first even numbered year after adoption of the resolution or local law shall be elected for a single three year term and their successors shall thereafter be elected for a term of two years and that all trustees, or the mayor and all trustees to be elected in the second even numbered year after the adoption of the resolution or local law shall be elected for a two year term and their successors shall also be elected for a term of two years.

**§ 3-303 Additional village justices in certain villages.** At least one hundred fifty days prior to any village general election and subject to a permissive referendum, as provided by article nine of this title, the board of trustees of the following villages may adopt a resolution determining that such village shall have three village justices with the third village justice to be elected by the electors at the next village general election to begin serving a term of office beginning at the start of the official year next succeeding such village general election:

The village of Spring Valley in Rockland county.

**§ 3-304 Changing number of trustees.** The board of trustees by resolution or local law, subject to permissive referendum, may change the number of trustees. Such action shall be in accordance with the following:

a. If the number of trustees be increased, the additional trustees shall be elected at the next general village election when trustees are regularly scheduled to be elected. At that election half of the additional trustees shall be elected for a single term equal to half of the full term for which said office is regularly scheduled to be filled and the other half for a full such term. At all subsequent general village elections such offices shall be filled for full terms.

b. If the number of trustees be reduced, no trustees shall be elected, other than to fill an unexpired term, until by expiration of terms of office the number of trustees in office shall equal that prescribed by such resolution. Thereafter at the next general village election one-half of such prescribed number of trustees shall be elected for a single term equal to half of the full term for which said office is regularly scheduled to be filled and the other half of such trustees shall be elected for a full term. At all subsequent general village elections such offices shall be filled for full terms.

**§ 3-306 Official undertakings.** The board of trustees on behalf of the village or the board in control of a village owned utility plant shall post an official undertaking in such sum and form, and with such sureties as the board of trustees or the board in control of the village owned utility plant shall direct and approve for the treasurer, clerk, village justice, acting village justice, and such other officers and employees as may be required by the board of trustees, or by the board in control of a village owned utility plant. The board of trustees may by resolution determine that such undertaking shall be executed by a surety company authorized to transact business in this state and that the expense thereof shall be a charge upon the village. The board in control of a village owned utility plant may by resolution determine that such undertaking shall be executed by a surety company authorized to transact business in this state and that the expense thereof shall be paid from the proceeds of the operation of such utility plant.

**§ 3-308 Separate boards of commissioners.** 1. The board of trustees may

establish or abolish a board or boards of fire, ambulance, water, light, sewer, park or cemetery commissioners or a single municipal board having the powers, duties and responsibilities of two or more such separate boards.

2. The board of trustees may also establish or abolish a separate board of police commissioners.

3. The board of trustees shall establish the composition, powers, duties and responsibilities of each board of commissioners and may, from time to time, amend same.

4. Any board established hereunder shall be composed of not less than three members, who shall perform their duties subject to the approval of the board of trustees.

5. The mayor, subject to the approval of the board of trustees, shall appoint the members of any board of commissioners and the first appointments of members thereto shall be for terms so fixed that at least one will expire at the end of each official year commencing at the end of the current such year and continuing in succeeding year until the entire original appointments run out. No such term shall exceed five years.

6. Commencing with the first annual meeting following the establishment of any such board, and continuing annually thereafter, successors to former appointees, the term of whose offices have then expired, shall be appointed for a full term. The length of such term shall be determined by the board of trustees but in no event shall exceed five years.

7. A person who has been convicted of arson in any degree shall not be eligible for appointment to any board of fire commissioners. Any fire commissioner who is convicted of arson in any degree during his term of office shall be disqualified from completing such term of office.

8. The board of trustees may also abolish any such board or boards

established under any prior provision of law. If not so abolished such board or boards shall continue and the commissioners thereof shall continue in office during their respective terms.

9. Any action of the board of trustees hereunder establishing, relating to or abolishing any such board or fixing the terms of office of the members thereof shall be by resolution or local law adopted at a regular meeting by a majority vote of the entire board. No such action shall be taken unless a public hearing has first been held of which at least ten days public notice shall have been given by publication in the official village newspaper, or, if there be none, in a newspaper of general circulation in the village.

**§ 3-310 Abolition of separate or municipal boards.** If a resolution or local law is adopted by the board of trustees abolishing any separate board, the abolition of such board or boards shall take effect immediately. The clerk of the village shall forthwith notify the members of such board or boards in writing and they shall within ten days deliver to the clerk of the village its records, books and papers; and shall also within the same time deliver to the treasurer all funds, and to the mayor all other property in its possession or under its control.

**§ 3-312 Filling of offices and vacancies by election or appointment.**  
1. Elective offices shall be filled at the general village election next preceding the expiration of the terms thereof.

2. Appointive offices shall be filled at the annual meeting immediately following the expiration of the terms thereof or, in the case of newly established offices, at the time of the establishment thereof.

3. Vacancies in offices caused other than by expiration of the terms thereof shall be filled by the mayor, except the office of mayor which shall be filled by the board of trustees, to the extent and for the

periods of time set forth herein:

a. In appointive offices for the balance of unexpired terms

b. In elective offices as follows:

(1) If such vacancy occurs at least seventy-five days prior to the third Tuesday of the month preceding the end of the current official year, for the balance of such year.

(2) If such vacancy occurs less than seventy-five days prior to the third Tuesday of the month preceding the end of the current official year, for the balance of the year and, if the term of office does not expire at the end of such year, by further appointment to the end of the next official year.

(3) Whenever a village, pursuant to section 15-104 of the election law, has provided that village elections shall occur on the day of the general election such vacancy shall be filled in accordance with subdivision one of section forty-two of the public officers law.

4. Elective offices, which have been filled by appointment for part of the unexpired terms thereof shall further be filled for the remaining part of such terms by election at the general village election, if any, regularly scheduled to be held prior to the end of the period of such appointment. In the event no general village election is scheduled, a special village election shall be held on the third Tuesday of the month preceding the end of the period of such appointment. Such special elections shall be noticed, held and conducted in the same manner as a general village election.

5. A village trustee shall be eligible for appointment to fill a vacancy in the office of mayor. If a trustee shall accept such appointment, his office as trustee shall be vacant.

6. The village clerk shall, within three days after the appointment of a village officer, notify each person so appointed of his appointment and the date thereof, and that, in order to qualify: he is required to file his oath of office with such clerk together with proof by affidavit of his eligibility to hold such office before entering upon the duties

thereof; and if an official undertaking be required by or in pursuance of law, that he is also required to file the same with such clerk and that upon his failure to do so, he will be deemed to have declined the office. In the case of a person appointed to fill a vacancy in the position of village justice or acting village justice, such notice shall further state that the filing of his oath with the county clerk of the county and with the chief administrator of the courts is also required. If an undertaking is required of a village officer after entering upon the duties of his office, the clerk of the village shall thereupon serve upon such officer, personally, a written notice that he is required to file such undertaking with the clerk within ten days after the service of the notice and that upon his failure to do so his office will become vacant.

#### ARTICLE 4

##### **POWERS, DUTIES AND COMPENSATION OF OFFICERS**

Section 4-400 Mayor.

4-402 Clerk.

4-404 Taking of affidavits by village officers.

4-406 Permits; franchises; filing; duty of clerk.

4-408 Treasurer.

4-410 Village justices; accounts, fees, and fines.

4-411 Disposition of fines and penalties.

4-412 The board of trustees.

4-414 Assessments other than for local improvements.

**§ 4-400 Mayor.** 1. It shall be the responsibility of the mayor:

a. To preside at the meetings of the board of trustees, and may have a vote upon all matters and questions coming before the board and he shall vote in case of a tie, however on all matters and questions, he shall vote only in his capacity as mayor of the village and his vote shall be considered as one vote;

b. to provide for the enforcement of all laws, local laws, rules and

regulations and to cause all violations thereof to be prosecuted;

c. (i) to appoint all department and non-elected officers and employees subject to the approval of the board of trustees however, the mayor may delegate the power to appoint certain employees to other village officers or employees;

(ii) to appoint the clerk of the court of the village, if the village has a court, only upon the advice and consent of the village justice or justices notwithstanding the provisions of subparagraph (i) of this paragraph.

d. to institute, at the direction of the board of trustees, all civil actions in the corporate name of the village;

e. to exercise supervision over the conduct of the police and other subordinate officers of the village;

f. to intervene in any and all actions, at the direction of the board of trustees, where deemed necessary to protect the rights of the village and its inhabitants;

g. to serve as an ex-officio member of each separate board of commissioners;

h. to appoint one of the trustees as deputy mayor at the annual meeting, who, during the absence or inability of the mayor, is vested with all the powers and may perform all the duties of the mayor;

i. to execute all contracts in the name of the village;

j. to sign orders to pay claims with the village clerk or deputy village clerk when authorized by the board of trustees when the same individual serves as both clerk and treasurer or deputy clerk and deputy treasurer;

k. to sign checks in the absence or inability of the treasurer or deputy treasurer, if any, when authorized by the board of trustees by

resolution, or local law, and a certified copy of such resolution or local law shall be notice to the depository of such authorization;

l. to cause all claims to be thoroughly investigated and for such purpose he shall have the power to issue subpoenas to compel the attendance of the claimant or any other person or persons to appear, to be sworn or affirmed and to testify before him or the village clerk or the village counsel relative to such claim, and when so sworn or affirmed to answer as to any facts relative to the justness of such claim. The result of such examination shall be reported to the board of trustees. Subpoenas issued pursuant to this section may be served at any place within the state of New York in the same manner in which subpoenas issued out of the supreme court are served. This subsection shall not be applicable to claims which are included within the provisions of section fifty-h of the general municipal law.

m. to issue all licenses and for such purpose shall be the "licensing officer" unless he designates another village officer which designation shall be filed with the village clerk.

2. If the mayor and deputy mayor are both absent or unable to perform the duties of the office, the trustees shall appoint one of their number to act as deputy mayor during the absence or inability of the mayor and deputy mayor appointed by him.

**§ 4-402 Clerk.** The clerk of each village shall, subject to the direction and control of the mayor:

a. have custody of the corporate seal, books, records, and papers of the village and all the official reports and communications of the board of trustees;

b. act as clerk of the board of trustees and of each board of village officers and shall keep a record of their proceedings;

c. keep a record of all village resolutions and local laws;

d. prepare, sign and transmit to the village treasurer an order directing the village treasurer to pay the claims therein specified, which order shall contain an abstract of all claims audited and ordered paid by the board of trustees or other board having power to audit, showing the names of the claimants, the amounts approved for payment and the appropriations chargeable therewith. In any village in which the same individual serves as both clerk and treasurer or as deputy clerk and deputy treasurer, such order shall be signed by the mayor. A duplicate of such order shall be filed in the office of the village clerk. Except as otherwise provided in section fourteen hundred thirty-eight of the real property tax law, all monies belonging to the village received by such clerk in any month shall be paid to the village treasurer on or before the tenth day of the next succeeding month;

e. shall, during office hours as prescribed by the board of trustees, on demand of any person, produce for inspection the books, records and papers of his office, and shall furnish a copy of any portion thereof, certified in the proper form to be read in evidence, upon payment of his fees therefor, at the rate of twenty cents per folio;

f. shall collect taxes and assessments of the village as provided in this act if the board of trustees shall, by resolution, determine that the taxes and assessments of the village be collected by the clerk;

g. shall keep an indexed record of all written notices which he shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice or snow upon, any village street, highway, bridge, culvert, sidewalk or crosswalk, which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist, and the name and address of the person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defective, unsafe, dangerous or obstructed condition, or the location of accumulated snow or ice. He shall at the board meeting next following receipt of such written notice by him, or within ten days, whichever is sooner, cause said written notice to be brought to the attention of the

board of trustees. The record of each notice shall be preserved for a period of five years after the date it is received;

h. may administer the oath of office to all village officers;

i. shall also perform such other duties not inconsistent with his office as shall be determined by resolution of the board of trustees.

**§ 4-404 Taking of affidavits by village officers.** The village clerk or any member of the board of trustees may administer oaths and take affidavits upon any claim or account against the village. The village clerk may also administer oaths and take affidavits upon matters in connection with village business.

**§ 4-406 Permits; franchises; filing; duty of clerk.** Duplicate originals of every resolution, certificate or other instrument whereby a village, or any board or officer thereof, grants a franchise, including a privilege or consent of any kind, to a public service corporation shall be executed and deposited with the village clerk; and such franchise shall not be operative for any purposes until so executed and deposited. The village clerk, upon receiving the same, shall file one such duplicate in his office with the records and papers of the village and shall immediately cause the other to be filed in the office of the clerk of the county in which the village is situated.

**§ 4-408 Treasurer.** The treasurer of each village shall be the chief fiscal officer of the village and it shall be his responsibility to:

a. have custody of all moneys belonging to the village, and keep accounts of all receipts and expenditures in conformance with a uniform system of accounts formulated and prescribed by the state comptroller pursuant to section thirty-six of the general municipal law.

b. deposit, within ten days after receipt thereof, in the name of the

village, in a bank or trust company designated by the board of trustees, all monies received by him;

c. he may sign checks with the facsimile signature of the treasurer, as reproduced by a machine or device commonly known as a checksigner, when authorized by resolution or local law of the board of trustees;

d. pay out monies in the village treasury only as authorized by sections 5-524 and 5-526 of this chapter, unless in pursuance of a judgment or order of a court. All such payments, except as authorized by section 5-526 shall be by check;

e. file in the office of the village clerk, within sixty days after the end of the fiscal year, a statement showing in detail all revenues and expenditures during the previous fiscal year and the outstanding indebtedness of the village as of the end of the fiscal year, except that the village treasurer, if authorized by the board of trustees, may, within the time period prescribed in section thirty of the general municipal law, submit to the village clerk a copy of the annual report required by section thirty of the general municipal law, provided, however, that if the time for the filing of the annual report has been extended by the state comptroller as provided in the said statute, then the time for submitting a copy of the report to the village clerk similarly shall be extended. The board of trustees shall, within ten days, cause to be published in the official newspaper either a notice that the annual financial statement has been filed and is available for inspection or a summary of such statement in a form approved by the state comptroller, with an endorsement thereon that details thereof are on file in the office of the village clerk. The board of trustees shall audit, or cause to be audited by an officer or employee of the village or by a certified public accountant or a public accountant engaged for that purpose, such report and supporting records;

f. shall also perform such other duties not inconsistent with his office as shall be determined by resolution or local law of the board of trustees.

**§ 4-410 Village justices; accounts, fees, and fines.** 1. The village justice:

a. shall not receive for his own benefit any fees, costs or expenses in any action or proceeding, but shall demand and receive the same fees, costs and expenses therein as are provided by law to be paid to a town justice in any civil matter and shall keep account thereof and of fines collected by him;

b. shall pay all such costs, fees and expenses and all fines or other money so paid to him on any proceeding during any calendar month to the state comptroller within the first ten days of the month following collection. Such money, except as otherwise provided by law, shall be the property of the village of which such justice is an officer;

c. shall report the fact that he has not received any costs, fees, expenses and fines during any month to the state comptroller within the first ten days of the succeeding month. Upon receipt of notice from the state comptroller that a justice has not properly reported or properly accounted for monies received by such justice, it shall be unlawful for the village to make any further payment of compensation to such justice until receipt of notice from the comptroller that a proper accounting has been made;

d. shall not receive or disburse any monies unless he shall furnish or receive a proper receipt therefor, or make a memorandum or record of such transaction, in such form and detail as the state comptroller shall prescribe.

2. All the expenses of maintaining the village court, including the fees of the village justice if he is not paid a salary, shall be a village charge. The fees allowable to villages for the services of magistrates and the fees allowable to other officers for services in criminal proceedings, for or on account of an offense which a court of special sessions has not jurisdiction to try, shall be a county charge, if the magistrate had jurisdiction of the proceedings in which the

services were rendered. A county shall pay any amount due to a village for the services of a village justice which are a county charge upon presentation to it of a claim by the state comptroller for such charges each quarter. If any fine legally payable to the state, shall have been erroneously paid to the village treasurer, the board of trustees may, and is hereby authorized to, appropriate in its next annual budget such sum as may be necessary to reimburse the state for such fine so paid.

**§ 4-411 Disposition of fines and penalties.** Except as otherwise provided by law, all fines and penalties imposed for the violation of a village local law, ordinance or regulation shall be the property of the village, whether or not the village has established the office of village justice. Nothing in this section shall be deemed to affect the disposition of mandatory surcharges, sex offender registration fees, DNA databank fees or crime victim assistance fees as provided by section 60.35 of the penal law, or of mandatory surcharges as provided by section eighteen hundred nine of the vehicle and traffic law, or of fines, penalties and forfeitures as provided by section eighteen hundred three of the vehicle and traffic law relating to traffic offenses.

**§ 4-412 The board of trustees.** 1. General powers of the board of trustees. a. In addition to any other powers conferred upon villages, the board of trustees of a village shall have management of village property and finances, may take all measures and do all acts, by local law, not inconsistent with the provisions of the constitution, and not inconsistent with a general law except as authorized by the municipal home rule law, which shall be deemed expedient or desirable for the good government of the village, its management and business, the protection of its property, the safety, health, comfort, and general welfare of its inhabitants, the protection of their property, the preservation of peace and good order, the suppression of vice, the benefit of trade, and the preservation and protection of public works. The board of trustees may create or abolish by resolution offices, boards, agencies and commissions and delegate to said offices, boards, agencies and commissions so much of its powers, duties and functions as it shall deem

necessary for effectuating or administering the board of trustees duties and functions.

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

2. Procedure for meetings. The mayor of the village shall preside at the meetings of the board of trustees as provided in section 4-400 of this article. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn and compel the attendance of absent members. Whenever required by a member of the board, the vote upon any question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the minutes. The board may determine the rules of its procedure, and may compel the attendance of absent members by the entry of a resolution in the minutes, directing any peace officer, acting pursuant to his special duties, or police officer residing within the village to arrest such absent member and take him before the board of trustees to answer for his neglect. A copy of the resolution, certified by the clerk of the village, shall be sufficient authority to such officer residing in the village to arrest such absent member and bring him before the board.

3. In addition the board of trustees:

(1) Drains. May, for the purpose of arresting and preventing damage to property within the village resulting from floods or erosion, construct drains, culverts, dams and bulkheads, and dredge channels, and regulate water courses, ponds and watering places within or without the village. Power and authority is hereby conferred upon the board of trustees of a village, in the name of the village, to acquire property necessary for such public improvements, whether located within or without such village, by purchase or by condemnation in the manner provided by the condemnation law. No property shall be acquired or such a public improvement constructed without the corporate limits of a village except

with the consent of the governing board or body of the city, town or village in which such property is situated or such public improvement is proposed to be constructed. Such consent may only be given after a public hearing held within such city, town or village pursuant to notice published at least once and at least ten days prior to the hearing in a newspaper having general circulation in the municipality in which the hearing is to be held. Consent given by the governing board or body by any such municipality shall not impose a liability against the city, town or village and the maintenance and repair of any such improvement shall remain the responsibility of the village making the improvement. The cost of the work, including the acquisition of property, shall be a charge against the village, except that in respect of improvements wholly within the village, or that part thereof located therein, the work may be done wholly at the expense of the village or of the owners of the property benefited, or partly at the expense of each as a local improvement. The term "property" as used in this section is defined to include lands, structures, rights in lands, including lands under water, riparian rights and any and all other things and rights usually included within the said town, and shall include also easements, rights of way, uses, leases, licenses and any and all interests in such property less than full title.

(2) Banks of deposit. Shall designate in the manner provided by section ten of the general municipal law the depositaries for the deposit of all moneys received by the treasurer, clerk, receiver, and town receiver who is designated and appointed as village receiver; and may require a report by the cashier thereof to each regular meeting of the board of the amount on deposit to the credit of the treasurer and such other village officers.

(3) Payment and compromise of claims. The board of trustees may pay or compromise claims equitably payable by the village, though not constituting obligations legally binding on it in those cases in which there has been a payment to the village through error or mistake and to which funds the village is not entitled, but the trustees 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.

(4) Waste disposal. May, whenever in its judgment, the interest of the village require it, purchase or acquire by condemnation proceedings,

lands for the establishment of a public waste disposal site or disposal plant within or without any such village, and prohibit the use of any other lands within the village for such purpose. But no land shall be acquired without the corporate limits of the village for such purpose without the consent of the board of trustees, town board, common council or other similar legislative body of the village, town or city in which such land is situate.

(5) Sale of abandoned or lost property. May transfer to the general fund the proceeds realized from the sale of lost or abandoned property.

(6) Franchises; competing light or water system. May grant rights and franchises or permission to use the streets, highways, public places or any part thereof or the space above or under them or any of them for any specific purpose upon such terms and conditions as it may deem proper and as may be permitted by law. No franchise shall be granted without a public hearing notice of which shall be given by publication in the official newspaper at least ten days before the meeting. If a village operates a municipal lighting system or water system the granting of a right or franchise in competition with such system shall be subject to a permissive referendum as defined in this chapter.

(7) Acceptance of dedicated streets. Is authorized to accept the dedication of lands in the village for a public street or streets in the village.

(8) Public docks. Subject to the provisions of general law, may acquire, construct, enlarge, extend or improve public docks, as a municipal purpose, within or without the corporate limits thereof and may acquire land therefor, provided however that one end of any such dock shall be within the corporate limits of the village. Before any such dock shall be acquired, constructed or extended beyond the corporate limits of the village into a town, the consent of the town board shall be obtained. Charges for use of the facilities of any such dock may be imposed.

(9) Fire protection and ambulance service. a. May contract for the furnishing of fire protection within the village with the fire department in the village or with any city, village, fire district, or incorporated fire company having its headquarters outside such village and maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such village. The contract also may

provide for the furnishing of emergency service in case of accidents, calamities or other emergencies in connection with which the services of firefighters would be required, as well as in case of alarms of fire. The contract also may provide for the furnishing of general ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal law. In the event that the fire department or fire company furnishing fire protection within the village pursuant to contract does not maintain and operate an ambulance then a separate contract may be made for the furnishing within the village of emergency ambulance service or general ambulance service, or both, with any city, village or fire district the fire department of which, or with an incorporated fire company having its headquarters outside the village which, maintains and operates an ambulance subject, however, in the case of general ambulance service, to the provisions of section two hundred nine-b of the general municipal law.

a-1. (i) Except as provided in clause (ii) of this subparagraph, prior to commencing the negotiation process for such contract with an incorporated fire company, the incorporated fire company shall file with the board of trustees a statement itemizing the estimated costs of the incorporated fire company attributable to the provision of services under the prospective contract. The estimated costs attributable to the provision of services under the prospective contract itemized in the statement shall include, at a minimum, those, if any, for: supplies; materials; operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs. If the fire company is required to prepare any of the following documents, copies shall be included with the statement:

(A) the fire company's most recent annual report of directors pursuant to section five hundred nineteen of the not-for-profit corporation law;

(B) the fire company's most recent verified certificate pursuant to subdivision (f) of section fourteen hundred two of the not-for-profit corporation law;

(C) the fire company's most recent internal revenue service form 990; and

(D) the fire company's most recent annual report pursuant to section thirty-a of the general municipal law.

(ii) Upon good cause shown, the board of trustees may, by resolution, waive in whole or in part the requirement that the fire company file the statement, and copies of documents, required by clause (i) of this subparagraph.

b. The period for which such service may be furnished under any such contract shall not exceed five years. The contract shall specify a definite sum to be paid each year for such service. No such contract shall be entered into until a public hearing has been held by the board of trustees. Notice of such hearing shall be published at least once in at least one newspaper having general circulation in the village. Such notice shall specify the time when and place where said hearing will be held, and describe in general terms the proposed contract. The first publication thereof shall be at least ten days prior to the day specified for such hearing.

c. By mutual consent of the contracting parties, and after a public hearing held pursuant to notice in the manner aforesaid, any such contract heretofore or hereafter executed may be (1) amended, (2) terminated, or (3) terminated and a new contract may be entered into in lieu thereof, if the board of trustees, after such hearing, shall determine, by resolution, that it is in the public interest so to do. Such notice shall state in general terms the reason why any existing contract is to be amended or terminated, and if a new contract is to be entered into the notice shall also describe the new contract in general terms.

d. The provisions of this subdivision shall not be deemed to have amended subdivision two of section two hundred nine-b or section two hundred nine-d of the general municipal law, or any other general, special or local law requiring the consent of a fire department, fire company or an emergency rescue and first aid squad to the entering into of a contract for services to be performed by such department, company or squad.

e. The term "fire protection", as used in this section, includes inspections of buildings and properties in the village or portion thereof, required to be protected under a contract for fire protection pursuant to the provisions of this subdivision, for the purposes specified in and as authorized by sections eight hundred seven-a and eight hundred seven-b of the education law, subdivision four of section three hundred three of the multiple residence law, and section two hundred fourteen of this chapter.

(10) Air rights and subsurface areas. May, in addition to such powers as may be granted by any other law, 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 village acquired or to be acquired for street purposes, public parking garages, parking spaces or public off-street loading facilities. Such lease may only be entered into when such air rights or subsurface areas are not needed for village purposes. Any such lease may be for a term not exceeding fifty years and may be renewed for such additional term or terms as the board of trustees may provide. Any such lease shall contain provisions requiring the lessee to construct facilities adequate to support and maintain, without interference, the village parking or off-street loading facilities being conducted by the village and in such manner as to minimize or avoid the relocation of public utility facilities and may also contain such other provisions, conditions and restrictions, including the responsibility of the lessee to excavate land or erect or construct buildings, structures, substructures or superstructures at the expense of the lessee, as the board of trustees may prescribe. Such lease must provide that title to any buildings, structures, substructures or superstructures erected or constructed by the lessee shall vest in the village at the termination of the lease. Any such buildings, structures, substructures, or superstructures, the title to which remains in the lessee, during the term of the lease, 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.

(11) Every officer, board or agency of a village shall let all contracts for public work and all purchase contracts to the lowest responsible bidder after advertisement for bids where so required by

section one hundred three of the general municipal law.

(12) An officer or person who assumes to create a liability or appropriate money or property of the village without authority of law, or assents thereto, is personally liable for such debt, or to the village for such money or property. Each member of a village board present at a meeting thereof when such unlawful action is taken is deemed to have assented thereto, unless he expressly dissents and requests such dissent to be entered upon the minutes of the meeting. If any person shall have heretofore appropriated or shall hereafter appropriate money or property of the village, contrary to law, and the facts in relation thereto are known to the board of trustees, and, after this section as amended takes effect, such board fail for thirty days to bring an action against such person to recover such money or property, each member of the board having such knowledge shall be guilty of a misdemeanor and liable to removal from office unless within such period of thirty days he shall file with the village clerk a written request, signed by him, requesting the bringing of, such action or shall cause to be entered upon the minutes of a meeting of the board a motion made by him for the bringing of such action, or his vote in favor of such a motion.

(13) Loitering. May prohibit and punish 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.

**§ 4-414 Assessments other than for local improvements.** Whenever an owner of property is required by general special or local law to make an improvement, perform any work or do any act on such property in the interest of public safety, health, comfort, and general welfare and such owner shall fail to make the improvement or perform the work or act required and the board of trustees shall cause such improvement, work or act to be done on such property or a contract has been awarded therefor by the board, the cost of such improvement, work or act may be assessed, levied and collected as may be provided by local law.

## ARTICLE 5

### FINANCES

#### Section 5-500 Definitions.

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**§ 5-500 Definitions.** For the purposes of this article the following terms shall be defined as follows: 1. "Administrative unit" shall mean an office, department, division, bureau, board, commission or other agency or specific activity of village government.

2. "Budget officer" shall mean the mayor or, in a village which has adopted the village manager plan, the village manager. The mayor or village manager, as the case may be, may designate any other village officer or employee to be budget officer, to serve at his pleasure.

3. "Character of expenditure" shall mean the classification of an expenditure as to periods of benefit as follows: a. current expenses, b.

debt retirement or c. capital projects.

4. "Fiscal year" shall mean the period commencing on the first day of June in one calendar year and ending on the thirty-first day of May in the following calendar year, unless the board of trustees shall have established a different fiscal year pursuant to the provisions of former section one hundred seventeen of the village law as enacted by section fourteen of chapter eight hundred nine of the laws of nineteen hundred fifty-four or pursuant to section 5-510 of this article or section 17-1729 of article seventeen.

5. "Fund" shall mean a group of accounts set aside for the purpose of accounting for moneys or other resources of general functions or specific activities of water supply, capital projects or other activities of a village in accordance with a system of accounts.

6. "System of accounts" shall mean a system prescribed by the state comptroller. In the case of water utilities it shall also mean a system recommended by the public service commission or a system generally recognized as a national standard and provided either such alternate system has been approved by the state comptroller following receipt of an application and a certified copy of a resolution adopted by the board of trustees of a village authorizing the maintenance of such alternate accounting records for a water utility.

7. "Object of expenditure" shall mean the classification of an expenditure as to types of articles purchased or services rendered.

8. "Unappropriated unreserved fund balance" shall mean the difference between the total assets for a fund and the total liabilities, deferred revenues, encumbered appropriations, amounts appropriated for the ensuing fiscal year's budget, and amounts reserved for stated purposes pursuant to law, including reserve funds established pursuant to the general municipal law for the fund, as determined through application of the system of accounts prescribed by the state comptroller pursuant to section thirty-six of the general municipal law.

**§ 5-502 Submission of estimates.** 1. On or before the eighth day of February in each year, or such other date as may be applicable pursuant to section 5-510 of this article, the budget officer shall give written notification to the head of each administrative unit that he shall submit estimates, schedules, and statements as hereinafter provided. Such notice shall specify the form in which such information shall be submitted.

2. On or before the first day of March in each year, or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen, and except as may be otherwise provided in subdivision four of this section, the head of each administrative unit shall submit to the budget officer an estimate of revenues and expenditures of such administrative unit for the ensuing fiscal year. Such estimate shall show the sources of all revenue, shall itemize the character and object of each expenditure and shall contain such additional information as the budget officer shall prescribe.

3. If the head of an administrative unit shall fail to submit an estimate as herein provided, the budget officer shall forthwith prepare an estimate for such administrative unit.

4. An estimate shall not be submitted as above provided for a municipal electric, gas or steam utility service, but the head of such utility service shall submit in lieu thereof a statement showing:

a. The amount required for payment of installments of principal of and interest on indebtedness incurred for the purposes of the service to become due and payable during the next fiscal year; and

b. The estimated operating and non-operating income and estimated expenditures for the next fiscal year, classified in accordance with the requirements of the public service commission, but in such detail only as the board of trustees shall require; and

c. A proposed schedule of salaries and wages to be paid for personal

services.

5. The board of trustees of a village which owns and operates a water utility and which maintains an alternate system of accounts approved by the state comptroller as defined in subdivision six of section 5-500 of this article may require that a statement shall be submitted in lieu of an estimate as in the case of a municipal electric, gas, or steam utility service.

**§ 5-504 Preparation and filing of tentative budget.** Upon receipt of the estimates of the head of each administrative unit, the budget officer shall prepare a tentative budget. He may also prepare a budget message explaining the main features of the budget and containing such additional information as he may deem advisable. He shall furnish a copy of the tentative budget and the budget message, if any, to each member of the board of trustees and he shall reproduce for public distribution as many copies as he may deem necessary. On or before the twentieth day of March, or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen, he shall file in the office of the village clerk the tentative budget, the budget message, if any, and the estimates, schedules and statements submitted by the heads of the administrative units.

**§ 5-506 Form and content of tentative budget.** 1. The tentative budget shall consist of the following schedules and statements:

a. A schedule of appropriations for all expenses authorized or required by law, other than expenses of operation of a municipal electric, gas or steam utility service, or a water utility for which an annual estimate is not filed pursuant to subdivision five of section 5-502 of this article, and also for all expenditures to be financed from special assessments and proceeds of obligations authorized by the local finance law. The appropriations shown on such schedule shall be classified by funds, administrative units, character and object of expenditure and shall be so arranged as to show in parallel columns the

following comparative information:

- (1) Expenditures for the last completed fiscal year;
- (2) Appropriations for the current fiscal year reflecting supplemental appropriations to a date not more than forty-five days prior to the filing of the tentative budget with the village clerk; and
- (3) The budget officer's recommended appropriations for the ensuing fiscal year. Such schedule may contain an amount recommended as necessary to be appropriated for contingencies, which amount shall not exceed ten per centum of the total of other appropriations excluding debt service and judgments. A statement of the amount recommended to be appropriated for a reserve for uncollected taxes may also be included, which amount shall be not less than the principal amount of taxes levied by the board of trustees for the last completed fiscal year and remaining uncollected at the end of such year, including the amount of such taxes sold to the village at tax sale and unredeemed at the end of such last completed fiscal year.

b. A schedule of estimated revenues to be received by the village during the ensuing fiscal year other than real estate taxes to be levied as stated in paragraph e of subdivision one of this section, income from operations of a municipal electric, gas or steam utility service or a water utility for which an annual estimate is not filed, pursuant to subdivision five of section 5-502 of this article, proceeds of special assessments for capital projects and proceeds of obligations authorized by the local finance law. The estimated revenues shown on such schedule shall be classified by funds and itemized as to sources and shall be so arranged as to show in parallel columns the following comparative information:

- (1) revenues for the last completed fiscal year;
- (2) estimated revenues for the current fiscal year reflecting modifications to a date not more than forty-five days prior to the filing of the tentative budget with the village clerk; and
- (3) the budget officer's estimate of revenues for the ensuing fiscal year.

c. A schedule of fund balances estimated to be on hand at the close of the current fiscal year, classified by funds, together with a breakdown

of such fund balance estimated for encumbrances, amounts appropriated for the ensuing fiscal year's budget, amounts reserved for stated purposes pursuant to law, including reserve funds established pursuant to the general municipal law, and the remaining unappropriated unreserved fund balance, provided that the remaining estimated unappropriated unreserved fund balance for each fund shall not exceed a reasonable amount, consistent with prudent budgeting practices, necessary to ensure the orderly operation of village government and the continued provision of services, taking into account factors including, but not limited to, the size of the fund, cash flows, the certainty with which the amounts of revenues and expenditures can be estimated, and the village's experience in prior fiscal years. Such schedule shall not include fund balance of any fund established as the result of issuance and sale of obligations pursuant to the provisions of the local finance law.

d. A schedule of each special reserve fund showing for each such fund the purpose for which established and by parallel columns the amount therein as of a date not more than forty-five days prior to the filing of the tentative budget, and the amount, if any, recommended to be spent therefrom to meet appropriations for the ensuing fiscal year. A requirement of law that an expenditure from any such reserve fund be subject to a permissive or mandatory referendum shall not prevent the inclusion of a recommendation for such expenditure in the tentative budget.

e. A schedule showing the computation of the amount to be levied on real estate which amount shall be equal to the difference between the total of all recommended appropriations as shown in the schedule required by paragraph a of subdivision one of this section and the total of estimates shown in the schedules required by paragraph b through d of subdivision one of this section. Such schedule shall be so arranged as to show such recommendations and estimates by funds in parallel columns.

f. A schedule of wages and salaries to be paid which shall be subdivided by administrative units and shall show in parallel columns, for each office or position of employment, the title, the number of

persons in the title, the recommended rate of compensation for the title and the total recommended appropriation for the title.

g. A statement of the estimated income and proposed expenditures of a municipal electric, gas or steam utility service or a water utility for which an annual estimate is not filed, pursuant to subdivision five of section 5-502 of this article which shall be in the form and detail prescribed in subdivision four of section 5-502 of this article.

2. The tentative budget shall include any other data which the board of trustees may, by resolution, require or which the budget officer shall deem advisable.

**§ 5-508 Adoption of budget.** 1. The village clerk shall present the tentative budget to the board of trustees at a regular or special meeting to be held on or before the thirty-first day of March or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen. At such meeting the board of trustees shall review the tentative budget and make such changes, alterations and revisions as it shall consider advisable, provided that:

a. The statement of the amount estimated for any object or purpose for which an appropriation is required to be made by law shall not be reduced below the minimum so required.

b. The board of trustees shall enter in its minutes a statement of the basis for any increase in or addition to any statement of estimated revenues.

2. If the board of trustees shall make any changes in the tentative budget, such adjustments shall be made which are necessary so that the total estimated revenues, appropriated fund balance and appropriated reserves together with the amount of taxes to be levied shall equal the total estimated expenditures.

3. A public hearing shall be held upon the tentative budget, as changed, altered or revised, on or before the fifteenth day of April or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen. Notice of such public hearing shall be published at least once in the official newspaper and in such other newspapers and for such other additional times as the board of trustees, by resolution, may direct. At least five days shall elapse between the date of the first publication of such notice in the official newspaper and the date specified for the hearing. The notice of hearing shall state the time when and place where such public hearing will be held, the purpose thereof and that a copy of the tentative budget is available at the office of the village clerk where it may be inspected by any interested person during office hours. The notice shall also state the compensation proposed to be paid to each member of the board of trustees. The hearing may be adjourned from day to day but not beyond the twentieth day of April or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen.

4. After completion of the public hearing, the board of trustees may further change, alter and revise the tentative budget, subject, however, to the conditions and restrictions imposed by subdivision one of this section. Such budget, as so revised, shall be adopted by resolution not later than the first day of May, or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen and such adoption of appropriations and the means of financing the same shall be indicated in each schedule and schedule in a column parallel to those required by section 5-506 of this article. Unless the resolution specifically sets forth the appropriations in greater detail, the appropriations shall be deemed to have been made for each administrative unit by the following objects of expenditure: personal services, equipment, other expenses and special objects of expenditure as may be prescribed in a uniform system of accounts by the state comptroller. Upon adoption of the resolution required by this section the amounts proposed to be appropriated shall thereupon be appropriated and the wages and salaries shown in the schedule thereof shall be fixed at the amounts shown therein. In the event that the board of trustees

shall fail to adopt a budget on or before the first day of May or such other date as may be applicable pursuant to section 5-510 of this article or section 17-1729 of article seventeen, the tentative budget, with such changes, alterations and revisions as shall have been made by resolution of the board of trustees, shall constitute the budget for the ensuing fiscal year.

**§ 5-510 Change in fiscal years.** 1. The board of trustees of any village may, by resolution, adopt a fiscal year to commence on the first day of August and end on the thirty-first day of July. If the board of trustees shall so adopt a fiscal year commencing on the first day of August as aforesaid, all of the provisions of this article and of the real property tax law fixing times or dates within which or by which certain acts shall be performed in relation to the preparation of the assessment roll, the preparation of the budget and the levy and collection of taxes and special assessments shall be correspondingly changed so that the collection of taxes shall commence on the first day of the fiscal year.

2. The board of trustees of a village which has elected, pursuant to former section one hundred seventeen of the village law as enacted by section fourteen of chapter eight hundred nine of the laws of nineteen hundred fifty-four, to retain its fiscal year or which has adopted or hereafter adopts, pursuant to this section, a fiscal year commencing on the first day of August may, at any time determine, by resolution, to change to a fiscal year commencing on the first day of June.

3. The board of trustees of a village which has enacted a local law as provided in subdivision three of section fourteen hundred two of the real property tax law may, by resolution, adopt a fiscal year to coincide with the fiscal year of the town or towns or county within which the village is located. If the board of trustees shall adopt such a fiscal year, all of the provisions of this article and of the real property tax law fixing times or dates within which or by which certain acts shall be performed in relation to the preparation of the budget and the levy and collection of taxes and special assessments shall be

correspondingly changed so that the collection of taxes shall commence on the first day of the fiscal year.

4. A certified copy of a resolution adopting a new fiscal year shall be filed within ten days in the office of the state department of audit and control at Albany, New York.

**§ 5-512 Financing interim fiscal period.** 1. Whenever the fiscal year of a village is changed by action of the board of trustees taken pursuant to section 5-510 of this article, the current fiscal year shall be automatically extended to include the interim period between the last day of the current fiscal year and the first day of the new fiscal year, unless the board of trustees shall elect to treat such interim period as a separate fiscal year, as provided in subdivision three of this section.

2. The board of trustees may raise all or part of the amount necessary to pay the obligations and other expenses of the village for the interim period by the issuance of obligations pursuant to the local finance law; provided, however, that revenues and other income resulting from special assessments for capital projects or from operation of revenue producing undertakings, enterprises and utilities, including but not limited to water supply, sewerage, electric, steam or gas, for which obligations may become due during the interim period shall be applicable to payment of obligations and expenses therefor as provided by law and to that extent bonds or notes shall not be issued therefor.

3. The board of trustees may treat such interim period as a separate fiscal year, in which case all of the provisions of this article and of the real property tax law relative to the preparation of a budget and the assessment, levy and collection of taxes shall apply to such interim period; provided, however, that the amount to be raised by tax on real estate in any such interim period shall not exceed the limitations prescribed by article eight of the constitution, divided by twelve and multiplied by the number of months contained in such interim period.

**§ 5-514 Limitation of tax levy.** I. The amount which may be raised by general village tax on real estate in any fiscal year for village purposes, shall be the same amount as a village may raise under the provisions of article eight of the constitution.

2. 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 village outside the limitations applicable to villages set forth in 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 village 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 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.

**§ 5-516 Lien of special assessment.** 1. Any provision of law to the contrary notwithstanding, in any case in which a special or local assessment is levied against real property a lien shall attach as of the time when the assessment is confirmed by the body authorized to finally determine the amount of such assessment, and shall continue until paid or cancelled as herein below provided, which lien shall have the same priority as a village tax.

2. Whenever an assessment remains unpaid and is included in the annual tax levy, as provided in section 5-518, the lien thereof shall be cancelled as of the date upon which the annual tax becomes a lien and the lien of the annual tax shall include the amount of such assessment, with penalties.

3. Whenever an assessment remains unpaid and is thereafter divided into annual installments so as to retire obligations as they mature, the lien thereof shall be cancelled as of the date of such division and at that time a lien in the amount of the first installment shall attach, which lien shall continue until cancelled by inclusion of such installment in the next succeeding annual tax levy, in the manner provided above. Subsequent installments, unless prepaid as provided in section 5-518 of this article, shall become liens on the respective anniversary dates of such division and such liens shall be cancelled in the same manner.

**§ 5-518 Collection of special assessments.** 1. Any provision of law to the contrary notwithstanding, all special or local assessments levied against real property shall be collected as in this section provided.

2. Whenever an expenditure is made or a contract awarded for a purpose for which bonds cannot be issued and the amount of a local or special assessment, inclusive of interest to maturity of obligations, if any, issued to finance such expenditure, is finally fixed, determined and confirmed, such assessment may be paid without penalty at any time within a period of thirty days, computed from the date of such confirmation.

3. If an expenditure is made or a contract awarded for a purpose for which bonds may be issued pursuant to the local finance law, the board of trustees may provide for the payment of special assessments by any one of the following methods:

a. The board of trustees may adopt the procedure described in subdivision two of this section.

b. The board of trustees may determine that such assessments may be paid in annual installments. In such case, it may give a period of thirty days from date of confirmation in which assessments may be paid in full without penalty. Upon the expiration of such period, obligations

shall be issued pursuant to the local finance law for the total unpaid assessments. The amount of the unpaid assessment against each parcel of land shall be divided into such annual installments as shall be necessary to completely amortize the principal amount of such obligations as they shall mature. There shall be added to the amount of each installment a sum sufficient to meet a pro rata share of the annual interest payable on such obligations. The board of trustees shall annually levy the amount of the annual installment, unless same shall have been prepaid as provided in paragraph c of this subdivision, with interest as aforesaid, on a special assessment roll and such amount shall be extended on such roll against the real property benefited. The board of trustees may determine that such annual installment shall be due at the same time as real property taxes, in which event the amount of such installment shall be extended in a separate column in the annual tax roll. In the latter case, the same penalties for non-payment shall attach as in the case of non-payment of the village tax, as provided in the real property tax law and there shall be no relevy of the unpaid installment as prescribed in subdivision five of this section, but such unpaid installment shall be collected as provided in said real property tax law.

c. Whenever an unpaid assessment has been divided into annual installments pursuant to paragraph b of this subdivision the board of trustees may, at the time of making such division, or at any time thereafter, provide that all future annual installments may be prepaid together with a sum sufficient to meet all future pro rata shares of the annual interest payable on such obligations and which would otherwise have been added to such future installments had same not been prepaid. All sums received from such prepayments shall be deposited and retained in a separate account in a depository designated in the manner provided by section ten of the general municipal law to be applied only to the payment of the obligations issued pursuant to paragraph b of this subdivision. Notwithstanding the foregoing, such sums so received may be invested in the manner permitted in section eleven of the general municipal law.

4. If any assessment or annual installment thereof be not paid within

the prescribed thirty day period, penalties shall be computed from the expiration date of such thirty day period at the rate of one-half of one per centum per month or portion thereof until the assessment is paid or discharged. All penalties collected shall be credited to the general fund.

5. At least thirty days before the end of the fiscal year, the officer or official charged with the collection of such special or local assessments shall transmit to the board of trustees a statement of all delinquent special or local assessments, showing the amounts thereof with penalties computed to the first day of the month following the month in which the fiscal year commences, and thereafter he shall not collect or receive payment of any such special assessment in default. The board of trustees shall include the amounts shown on such statement in the annual tax levy and such amounts shall be extended on the annual tax roll against the real properties concerned in a separate column. Such special assessments shall thereafter be deemed for the purposes of collection to be a part of the annual village tax and the assessment shall be deemed to have been cancelled as of the date of the tax levy.

6. Whenever any special assessment or installment thereof shall be extended on the village tax roll, whether pursuant to subdivision three or subdivision five of this section, the special assessment account shall be credited with the amount of the special assessment or installment, less penalties. The amounts so extended, including penalties, when collected, shall be paid into the general fund.

**§ 5-520 General budgetary controls.** 1. A separate account shall be kept for each appropriation. Each such account shall show the amount appropriated, the several amounts expended therefrom and the unexpended balance.

2. No expenditure shall be made, nor shall any contract which in any manner involves the expenditure of money or the incurring of any pecuniary liability be entered into, unless an amount has been appropriated for the particular purpose and is available therefor or has

been authorized to be borrowed pursuant to the local finance law. Nothing in this subdivision shall prevent the making of a contract or lease for a term exceeding one year when authorized by law nor shall anything in this subdivision require a village which has entered into a contract or lease for a term exceeding one year to pay during the current fiscal year any amounts larger than those which become due and owing during that year under the terms of such lease or contract.

3. Whenever during a fiscal year it shall appear probable to the budget officer that the moneys available for such year will be insufficient to meet the amounts appropriated, he shall forthwith notify the board of trustees of such fact, stating the probable amount of such deficiency. The budget officer may include his recommendations as to the action which should be taken. The board of trustees may reduce any appropriation or appropriations by resolution so as to prevent the making of expenditures in excess of moneys available. An appropriation shall not be reduced below the minimum amount required by law to be appropriated, nor shall an appropriation be reduced by more than the balance therein less outstanding and unpaid claims chargeable to such appropriation.

4. The board of trustees, during a fiscal year, by resolution, may make additional appropriations or increase existing appropriations. Moneys therefor may be provided by transfer from the unexpended balance of an appropriation, from the appropriation for contingencies, from unappropriated unreserved fund balance, or unanticipated revenues within a fund, or by borrowing pursuant to the local finance law. For the purposes of this subdivision, unappropriated unreserved fund balance or unanticipated revenues shall be available for transfer only to the extent that the total of all revenues of such fund recognized or reasonably expected to be recognized in the current fiscal year, including unappropriated unreserved fund balance, exceeds the total of all revenues of such fund as estimated in the budget, including appropriated fund balance.

5. Notwithstanding the provisions of subdivision four of this section, grants in aid from the state and federal governments, other gifts which

are required to be expended for particular objects or purposes, and insurance proceeds for the loss, theft, damage or destruction of real or personal property, when proposed to be used or applied to repair or replace such property, may be appropriated by resolution of the board of trustees at any time for such objects and purposes.

**§ 5-522 Lapse of appropriations.** 1. Each appropriation to the extent that it shall not have been expended or obligated, shall lapse at the close of the fiscal year for which made, except that an appropriation for a capital project shall continue in force until the purposes for which it was made shall have been accomplished or abandoned.

2. For the purposes of this section "capital project" shall mean

a. any physical public betterment or improvement or any preliminary studies and surveys relative thereto,

b. land or rights in land,

c. any furnishings, machinery, apparatus or equipment for any physical public betterment or improvement when such betterment or improvement is first constructed or acquired, or

d. any combination of paragraphs a, b, and c.

**§ 5-524 Audit and payment of claims.** 1. The term "claim", as used in this section, shall include all bills, accounts and demands for the payment of money, of whatever nature, asserted against the village.

2. In a village which has not established the office of auditor, the board of trustees shall audit all claims against the village, except that it may, by resolution, authorize and empower a separate board of commissioners, a board possessing the powers of two or more such boards or another board possessing like powers to audit and order paid all claims incurred by such board and payable out of the funds within its

jurisdiction.

3. In a village which has established the office of auditor, the auditor shall audit and order paid all claims against the village. Such order shall be in the form prescribed in this chapter for similar orders of the village clerk. The auditor shall transmit such order directly to the village treasurer and shall retain a duplicate thereof in his office.

4. Except as hereinafter provided, no claim shall be ordered paid unless such claim is in writing and itemized and approved by the officer or employee whose action gave rise or origin to the claim. The board of trustees may determine, by resolution, that claims shall be certified or verified by oath of the claimant or his duly authorized agent.

5. Fixed salaries, debt service, amounts becoming due upon lawful contracts for periods exceeding one year and the compensation for services of employees or officers regularly engaged by the village at agreed wages by the hour, day, week, month or year may be paid without prior audit. All payrolls, or other claims for compensation, for personal services rendered to the village by any person other than an elective village officer shall be certified by the village officer or employee having direct supervision of the claimant to the effect that such services indicated on such payroll or claim were actually performed by the person or persons mentioned therein. If the rules of the state civil service commission, the county civil service commission or the county personnel officer, as the case may be, have been extended to apply to any such employees or officers, no claim for compensation shall be paid unless the payroll or claim shall have been certified by such commission or personnel officer to the effect that the appointment or employment of such officers and employees has been made in accordance with the civil service law and rules.

6. The board of trustees may by resolution authorize payment in advance of audit of claims for public utility services, postage, freight and express charges. All such claims shall be presented at the next regular meeting for audit, and the claimant and the officer incurring or

approving the same shall be jointly and severally liable for any amount disallowed by the board of trustees.

As used in this subdivision, the term public utility services shall mean electric, gas, water, sewer and telephone services.

7. The actual and necessary expenses of all officers, employees, and, when authorized by the board of trustees, the actual and necessary expenses of the volunteer chief and assistant volunteer chiefs of the village fire department incurred in the performance of their official duties shall be a village charge. For the purposes of this subdivision "actual and necessary expenses", as it applies to a volunteer chief or assistant volunteer chief of the village fire department, means only such expenses incurred in the performance of their extra official duties as volunteer chief or assistant volunteer chief. The board of trustees of any village, in lieu of auditing and allowing the claim of a village officer, employee, or volunteer chief and assistant volunteer chiefs of the village fire department for actual and necessary expenses for travel, may determine by resolution to allow and pay such officer, employee, or volunteer chief and assistant volunteer chiefs of the village fire department a reasonable mileage allowance for use of his own automobile for each mile actually and necessarily traveled by him in the performance of the duties of his office or position, or in attending a convention, conference or school pursuant to section seventy-seven-b of the general municipal law. The actual and necessary expenses incurred by a police justice who does not also hold the office of town justice in attending a training school for justices provided by the education department or given within his county by the county magistrate's association shall be a charge against the village of which he is police justice. No such person, however, shall be allowed such expenses for attending a regional school unless his village shall be included within the area of such region as established by the education department.

8. Notwithstanding the provisions of subdivisions two, three and four of this section or of any other law, any village by vote of its board of trustees may enter into a mutual aid agreement with other villages or political subdivisions of the state, pursuant to the provisions of the

New York state defense emergency act, and all acts amendatory thereof and supplemental thereto, for the purpose of civil defense as defined in said act and may raise money by tax to defray the expense of its participation in such mutual aid agreement. Such villages may also enter into a financial agreement or arrangement with such other participating villages or political subdivisions of the state, provided, however, that:

a. the treasurer of one such participating village shall be designated as treasurer of a joint mutual aid or civil defense fund;

b. each of such participating villages may from time to time advance and pay to such mutual aid or civil defense fund its proportionate share of an amount of money agreed upon by all such participating villages for the purpose of defraying the necessary and proper expenses of mutual civil defense aid;

c. the treasurer of such joint fund as herein provided shall make necessary and proper disbursements from said fund and shall account monthly to each village for such disbursements.

All moneys advanced or otherwise disbursed by each such village to carry out the provisions of this subdivision, shall be only from moneys appropriated for such purposes and included in the annual budget of said village.

9. Any officer of the village who shall knowingly audit, order paid or pay any claim contrary to the provisions of this section shall be guilty of a misdemeanor.

**§ 5-525 Purchasing of products for public use.** Notwithstanding the provisions of section one hundred three of the general municipal law, when purchasing products the officer, board or agency of a village may, wherever recycled products meet contract specifications and the price of such products is reasonably competitive, purchase such products. For the purpose of this section and until July first, nineteen hundred

ninety-six, "recycled product" shall mean any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and meets secondary material content requirements adopted by the office of general services under subdivision one of section one hundred seventy-seven of the state finance law for products available to the village under state contract or, if no such contract for such product is available, any product which meets the secondary material content requirements adopted by the village with respect to a specific commodity procurement by the village. After July first, nineteen hundred ninety-six, "recycled product" shall mean, for the purposes of this section, any product which is manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and which meets the requirements of subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto. For the purpose of this section, "reasonably competitive" shall mean that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product is generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product.

Whenever such officer, board or agency shall purchase or cause the purchase of printing on recycled paper pursuant to this section, he or she shall require the printed material to contain the official state recycling emblem established pursuant to subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto if such paper has been approved by the department of environmental conservation as satisfying the requirements of such statute and regulations, or, if such paper has not been so approved, require the printed material to include a printed statement which indicates the percentages of pre-consumer and post-consumer recycled material content of such paper.

**§ 5-526 Petty cash account.** 1. The board of trustees may, by resolution, establish a revolving petty cash account for any administrative unit or officer in such amount as is deemed necessary. Any such petty cash account shall continue in existence from year to year until abolished by like action.

2. Expenditures from a petty cash account may be made only for payment, in advance of audit and upon receipt of properly itemized bills for materials, supplies or services furnished to the village for the conduct of its affairs and upon terms calling for the payment of cash to the vendor upon the delivery of any such materials or supplies or the rendering of any such services. Any such bill in an amount of more than five dollars shall also be certified or verified.

3. A list of all expenditures made from such petty cash account, together with the bills supporting such expenditures, shall be presented periodically to the auditing board or village auditor for audit.

4. The auditing board or auditor, as the case may be, shall direct the village treasurer to reimburse such petty cash account from the appropriate budgetary item or items, in an amount equal to the total of such bills which shall be so audited and allowed.

5. Any of such bills or any portion of any such bills as shall be disallowed upon audit shall be the personal liability of the officer responsible for the use of the petty cash account from which payment on account thereof was made, and such officer shall promptly reimburse such petty cash account in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to such officer after the action of the auditing board or village auditor in disallowing an amount so expended, such amount shall be withheld from such salary payment and, if necessary, subsequent salary payments, and paid into such petty cash account until an amount equal to the amount so disallowed has been repaid to the petty cash account. Any bond or undertaking filed by any such officer shall be available to the village for recovery of any losses incurred by reasons of the operation of any such petty cash account.

**§ 5-528 Appropriations to maintain municipal conferences and associations.** 1. The board of trustees of any village is hereby authorized to annually include in the budget and raise by taxation a sum to meet its proportionate share of the actual and necessary expenses of maintaining and continuing the conference of mayors and other municipal officials 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 government thereof.

2. The board of trustees of any village is hereby authorized and empowered to include annually in the budget and raise by taxation in such village, a sum sufficient to defray the proportionate share of such village to meet the actual and necessary expenses of maintaining and continuing a conference of village officials of the villages in the county in which such village is located or a conference composed of village officials of villages located in an area of adjoining counties, and any of its activities in this state, for the purpose of devising practical ways and means of promoting and obtaining greater economy and efficiency in the government of such village.

3. The board in control of an electric utility, owned and operated by the village is hereby authorized to pay from the proceeds of the operation of said utility 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 municipally owned electric light plants.

**§ 5-530 Villages authorized to impose taxes on utilities.** 1. Notwithstanding any other provisions of law to the contrary, any village is hereby authorized and empowered to adopt and amend local laws imposing in any such village 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 village; provided, however, that nothing herein contained shall be construed so as to prevent any village 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 village, 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 village, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

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

3. 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.

4. Notwithstanding any other provisions of this section or of section one hundred eighty-six-a of the tax law, the words "gross income" shall include:

a. In the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the village; and

b. In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the village.

5. 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 the proceeding is commenced within ninety days after the giving of the notice of such final determination; provided, however, that any such proceeding under said article seventy-eight 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, ordinance or resolution, 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.

6. 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 commenced within ninety 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.

7. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed under this section, after the expiration of more than three years from the date of the filing of a return, provided, that where no return has been filed as provided by local law the tax may be assessed at any time.

**§ 5-532 Inconsistent local laws.** No local laws shall be adopted changing, amending or superseding any of the provisions of this article.

## ARTICLE 6

### **STREETS, SIDEWALKS AND PUBLIC GROUNDS**

Section 6-600 Definitions.

6-602 Separate highway district.

6-604 Care of bridges.

6-606 When village may construct or repair bridges.

6-608 When village may relinquish care of bridges.

6-610 Dedication of streets.

6-612 Street improvement or acceptance.

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6-616 Changing grade of street or bridge.

6-618 Streets on boundary lines.

6-620 Sidewalks, payment for construction.

6-622 Pavements.

6-624 Acquisition of lands for parks, squares, athletic fields and playgrounds.

6-626 Streets by prescription.

6-628 Liability of village in certain actions.

6-630 Provisions governing the improvement of highways in villages.

6-632 Incumbering streets; encroachments.

**§ 6-600 Definitions.** The term "street" as used in this article also includes a highway, road, avenue, lane or alley which the public have a right to use; and the term "pavement" includes a macadam, asphalt, brick, concrete or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

**§ 6-602 Separate highway district.** The streets and public grounds of a

village constitute a separate highway district and are under the exclusive control and supervision of the board of trustees or other officers of the village when such control is delegated to them by such board.

**§ 6-604 Care of bridges.** If the board of trustees of a village has the supervision and control of a bridge therein, it shall continue to exercise such control under this chapter. In any other case, every public bridge within a village shall be under the control of the superintendants of highways of the town in which the bridge is wholly or partly situated, or such other officer as may be designated by special law, and the expense of constructing and repairing such bridge and the approaches thereto is a town charge, unless the village assumes the whole or part of such expense.

**§ 6-606 When village may construct or repair bridges.** A village may assume the control, care and maintenance of a bridge or bridges wholly within its boundaries, upon the adoption of a resolution of the board of trustees therefor; such action, however, shall be subject to a permissive referendum as provided in this chapter or the board of trustees may enter into an agreement with the town, in which any part of such village is situated, to construct or repair a bridge in any part of the village included in such town, at the joint expense of the village and town, which agreement shall fix the portion to be paid by each. Such action of the board of trustees shall be subject to a permissive referendum as provided in this chapter.

Nothing in this section shall be deemed to limit the power of villages to enter into agreements for the construction and repair of bridges pursuant to the provisions of article five-G of the general municipal law.

**§ 6-608 When village may relinquish care of bridges.** Any village which has the supervision, control, care and maintenance of any bridge

or bridges wholly within its boundaries, or which has entered into an agreement with a town as provided in sections 6-604 and 6-606 of this chapter, may with the consent of the town board of the town within which any such bridge is situated, by resolution of the board of trustees subject to a permissive referendum as defined in this chapter, terminate the right of such village to supervise, control, care for and maintain such bridge or bridges, or cancel any such agreements made by it with such superintendants of highways, and thereafter every public bridge within the boundaries of said village shall be under the supervision, control, care of and maintenance of the superintendants of highways of the town as provided in section 6-602 of this chapter. Such action, however, shall in no way cancel or interfere with the validity of any obligation or indebtedness of the village incurred during the period that the village exercised the supervision, control, care and maintenance of such bridge or bridges, or during the period that said agreement was operative.

**§ 6-610 Dedication of streets.** An owner of land in a village who has laid out a street thereon may dedicate such street, or any part thereof, or an easement therein, to the village for a public street, or an owner may dedicate for such purpose land not laid out as a street. Upon an offer in writing by the owner to make such a dedication, the board of trustees may, by resolution, determine to accept a dedication of the whole or any part of the land described in such offer or the whole or any part of such street, to be described in such resolution. Upon the adoption of such a resolution the owner may execute and deliver to the village clerk a proper conveyance of the land to be dedicated. The board of trustees may by resolution, accept the conveyance, and the conveyance, shall thereupon be recorded in the office of the county clerk. Upon the acceptance of the conveyance the land described therein shall become and be a public street of the village. No street less than two rods in width shall be accepted by dedication, unless the resolution adopting same is passed by unanimous vote of the board of trustees. All offers of dedication must be entered at length in the minutes of the board of trustees.

**§ 6-612 Street improvement or acceptance.** The board of trustees may by resolution provide for laying out, altering, widening, narrowing, discontinuing or accepting the dedication of a street in the village.

**§ 6-614 Notice of meeting of board.** Upon adoption of a resolution the board shall immediately give notice of a hearing thereon at specified time and place to consider the resolution, and such hearing shall be conducted as provided in article twenty-one herein. The notice must state the general object of the resolution and if it be for the laying out of a street, a general description of its proposed course, and in any other case, the name of the street proposed to be changed, discontinued or accepted. If the street to be laid out, altered, widened, narrowed, discontinued or accepted shall cross a railroad such notice shall be served upon the railroad company as required by section ninety of the railroad law.

**§ 6-616. Changing grade of street or bridge.** 1. If a village has exclusive control and jurisdiction of a street or bridge therein, it may change the grade thereof. If such change of grade shall injuriously affect any building or land adjacent thereto, or the use thereof, the change of grade, to the extent of the damage resulting therefrom, shall be deemed the taking of such adjacent property for a public use. A person claiming damages from such change of grade must present to the board of trustees a verified claim therefor within sixty days after such change of grade is effected. The board may agree with such owner upon the amount of damages to be allowed to him, or make to him a verified offer to settle or compromise such claim. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply pursuant to the eminent domain procedure law, to the supreme court to determine the compensation to which he is entitled. Notice of the application must be served upon the board of trustees at least ten days before the hearing thereof. All proceedings shall be taken in accordance with the provisions of the eminent domain procedure law, so far as applicable. The amount agreed upon for such damages or

the award therefor, together with the costs, if any, allowed to the claimant, shall be a charge against such village.

2. Whenever the grade of any street, highway or bridge in any village in this state shall be changed or altered so as to interfere in any manner with any building or buildings situate thereon, or adjacent thereto, or the use thereof, or shall injure or damage the real property adjoining such highway so changed or altered, the owner or owners of such building or real estate may apply pursuant to the eminent domain procedure law, to the supreme court in the judicial district in which such property is situated to ascertain and determine the amount of damage sustained thereby; due notice of such application shall be given to the person or persons having competent authority to make such change or alteration. No person or property owner shall be entitled to recover any damages who shall, in writing, request or assent that the said grade of any such street shall be changed or altered. All damages ascertained and determined under the provisions of this subdivision, together with the costs of such proceedings, shall be a charge, when allowable, upon the village, town or other municipality chargeable with the maintenance of the street, highway or bridge so altered or changed; but no property owner or person instituting proceedings to recover damages under the provisions of this subdivision shall be entitled to costs, unless the claim for such damages shall have first been presented to and rejected by, or neglected to have been adjusted for thirty days after presentation by the trustees or other proper officers of said village, town or municipality, nor in case such trustees or other proper officers shall have made an offer to settle or compromise such claim, which offer is declined by said property owner, unless he shall recover more than is so offered.

This subdivision shall not apply to the change of grade of streets, highways or bridges by village authorities nor to the change of grade, made by the state, of a bridge or state highway, which is under the exclusive control, supervision or jurisdiction of the state, nor to the change of grade, made by a county, of a bridge or county highway, which is under the exclusive control, supervision or jurisdiction of the county.

3. No proceeding or action under this section shall be maintained against the villages unless the same shall be commenced within one year after the filing of the verified claim.

**§ 6-618 Streets on boundary lines.** Whenever a street is on a line between two villages, or between a village and a city or town, the highway or street commissioners of such adjoining municipalities shall, on or before the first day of May in each year, meet at a time and place to be determined by them, and divide such street. The officers present at such meeting shall allot a part of the street to each municipality in such manner that the labor and expense of keeping such street in repair may be equal as nearly as practicable. The officers making such division shall, within ten days thereafter, file in the office of the clerk of each municipality a certificate showing the part of such street allotted to each.

**§ 6-620 Sidewalks, payment for construction.** Whenever the owner or occupant of lands adjoining a street constructs along such street a sidewalk of stone, cement, brick or other similar materials to be approved by the board of trustees, and the board consents to bear a portion of the expense of construction thereof, the board of trustees may pay to such owner or occupant a sum to be fixed by the board of trustees not exceeding one-half of the actual and necessary expense of constructing such sidewalk. Before the board of trustees shall so consent to bear a portion of the expense of construction of any such sidewalk, it shall fix the proportionate amount that shall be paid by the village for all walks of the same kind which may thereafter, with such consent, be constructed therein; and such proportionate amount may be changed from time to time thereafter by the board of trustees, but at no time within one year from the date of the last fixing or changing thereof.

**§ 6-622 Pavements.** The board of trustees may cause a street in the

village or a part thereof, to be graded and paved or repaved wholly at the expense of the village, or wholly at the expense of the owners of the adjoining land or partly at the expense of each. If the street or part thereof is wholly within the village, but the exterior line thereof constitutes the village boundary, such improvements may be made as to the part of such street within the village either wholly at the expense of the village or wholly at the expense of the owners of adjoining land within and without the village or partly at the expense of each. Before any such street or portion thereof is graded or paved, wholly or partly at the expense of the owners of the adjoining land, a hearing shall be held and notice thereof given as hereinbefore provided for. If such expense, or any part thereof, is to be assessed upon adjoining land, the board of trustees may apportion it upon the lands and assess the same as a whole or by installments. Provided, however, where a street is so improved wholly at the expense of the owners of the adjoining land, the cost thereof shall be assessed in proportion, as nearly as may be, to the benefit which each lot or parcel will derive therefrom.

**§ 6-624 Acquisition of lands for parks, squares, athletic fields and playgrounds.** The board of trustees may, on behalf of the village, accept by grant or devise a gift of land for a public park, square, athletic field or playground, within the village or wholly within five miles of the boundaries thereof, or may, if such land is outside of the village and wholly within three miles of the boundaries thereof, upon the adoption of a resolution by unanimous vote purchase such land accordingly. If unable to agree with the owners for the purchase thereof, the board of trustees on behalf of the village may acquire title thereto by condemnation. If such land is within the village, the board of trustees on behalf of the village may upon the adoption of a resolution, purchase such land accordingly, or if unable to agree with the owners for the purchase thereof, may acquire title thereto by condemnation. The board of trustees may lease in the name of the village, lands within the village or outside of such village and wholly within three miles of the boundaries thereof for a public park, athletic field or playground and may equip the same with suitable buildings, structures and apparatus and may thereafter maintain and improve the

same at the expense of the village. The amount of such rent shall be paid in annual installments commencing with the date of the lease. Upon the acquisition of land for the purposes of this section, either by gift, purchase or lease, the board may establish and maintain the same for its intended purposes and shall have the power to perform all the duties of a separate board of park commissioners as provided for in this chapter.

**§ 6-626 Streets by prescription.** All lands within the village which have been used by the public as a street for ten years or more continuously, shall be a street with the same force and effect as if it had been duly laid out and recorded as such.

**§ 6-628 Liability of village in certain actions.** No civil action shall be maintained against the village for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructed or for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any sidewalk, crosswalk, street, highway, bridge or culvert unless written notice of the defective, unsafe, dangerous or obstructed condition or of the existence of the snow or ice, relating to the particular place, was actually given to the village clerk and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or to cause the snow or ice to be removed, or the place otherwise made reasonably safe.

**§ 6-630 Provisions governing the improvement of highways in villages.**  
1. The term "highway improvement," as used in this section, shall mean the filling, excavating, grading, paving, draining and the laying of curbs, gutters, sidewalks upon or otherwise improving a state highway, or a highway constructed under a special act of the legislature having the status of a state highway, in any village, or any one or more or all of such improvements.

2. The board of trustees of any village may cause any highway improvement to be made on its own motion pursuant to the following procedure: Upon the approval of plans and specifications for such highway improvement by the board of trustees, such board of trustees, by majority vote, may pass a resolution of intention to make such improvements and provide for the method of apportioning the cost thereof and a public hearing therefor called by the board of trustees shall be held thereupon. The notice of hearing shall state the time and place of the hearing and, in general terms, the purpose thereof and the proposed method of apportioning the costs of the contemplated improvement, and such notice shall be published at least twice in the official newspaper of the village, or, if there be no official newspaper, then in a newspaper of general circulation in the village, the first publication to be made not less than ten days before the date of hearing. After the hearing the board of trustees may determine to proceed with such highway improvement or may abandon the same.

3. If the board of trustees determines to proceed with such highway improvement, such highway improvement may be made and contracts therefor may be let as in the case of other village street improvements, but no contract shall be entered into unless and until such proposed improvement has been consented to and the plans and specifications therefor have been approved by the board, officer, governing body or governing bodies having control, supervision or jurisdiction over such highway.

4. The board of trustees, in its discretion, may provide that the cost of any one or more or all of such highway improvements shall be borne partly by the village at large and partly by the lands benefited thereby; or such board may provide that the cost of any one or more or all of such highway improvements shall be borne by the village at large; or such board may provide that the cost of any one or more or all of such highway improvement may be assessed entirely upon the lands benefited thereby.

5. At any time after letting the contract or contracts, if all or any part of the cost of the proposed improvements is to be borne by special

assessment, assessments may be made, levied and confirmed.

6. A resolution, passed pursuant to the provisions of this section, including any resolution for making the improvement or apportioning the cost thereof shall not be subject to permissive referendum under the provisions of the village law unless the entire cost of any one or more or all of such improvements is to be borne by the village at large and is to be paid from taxes levied for the fiscal year in which such expenditure is to be made, in which case the resolution, authorizing the improvement, shall be subject to permissive referendum as provided in the village law.

**§ 6-632 Incumbering streets; encroachments.** 1. May regulate the use of sidewalks, stores, house and other building fronts; may regulate and prohibit the erection and construction of any stoop, steps, platform, curb pumps, bay windows, stairs, cellar, area, areaway, descent to or ascent from any building or any projection from any building in, to, upon, over or under any street or public place; may control, regulate and prohibit the building, use and occupancy of any cellar, underground areaway or excavation under the sidewalk or street or any part thereof, including tanks for the storage of gasoline, kerosene or other oils and may provide terms and conditions of any permitted use; may control and prohibit and remove any grating, manhole cover, or other construction in the walks or streets.

2. If the front or other exterior wall of any building erected on or before the first day of January, nineteen hundred forty, in any village 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 village, 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.

3. If the front or other exterior wall of any building erected after the first day of January, nineteen hundred forty, in any village 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 village, 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 an interest in the property on which such building stands may serve a notice on the village clerk, village mayor or any village trustee of the village 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.

4. 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.

5. If the front or other exterior wall of any building erected on or before the first day of January, nineteen hundred sixty-five in any village encroaches not more than six inches upon any village street or village highway, the local legislative body of any village 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 village or the state.

6. The owner of real property upon which the front or exterior wall of any building thereon encroaches upon any village street or highway, may submit a request, in writing, to the board of trustees of such village for authorization to maintain such front or exterior wall during the time such wall is in existence.

7. Upon presentation of such request, notice thereof shall be given to the superintendent of public works, who shall recommend to the board of trustees the proposed action on such request. Within thirty days of the presentation of such request, the board of trustees shall determine if the granting of such request shall adversely impact upon the users of the village street or highway. In the event a determination is made that such encroachment does adversely impact upon the use of the village 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 village street or highway, the board of trustees of such village 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 village street or highway shall be given notice by certified mail of such public hearing.

8. If, upon the completion of the public hearing, the board of trustees determines that such front or exterior wall does not interfere or impede the right of the public to use such village street or highway, the board of trustees 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 village shall have the authority to revoke such license at any time in the event the board of trustees determines that such village 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 village street or highway; provided, further, that such license shall not confirm any right or claim against such village. 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 village street or highway.

9. 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 village.

10. The authority granted to a village pursuant to subdivisions six, seven, eight and nine of this section may, by local law, be assigned to any department or agency of the village.

#### ARTICLE 7 **BUILDING ZONES**

|               |                                                                      |
|---------------|----------------------------------------------------------------------|
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- 7-742 Separability clause.

**§ 7-700 Grant of power.** For the purpose of promoting the health, safety, morals, or the general welfare of the community, the board of trustees of a village is hereby empowered, by local law, to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. As a part of the comprehensive plan and design, the village board is empowered by local law, to regulate and restrict certain areas as national historic landmarks, special historic sites, places and buildings for the purpose of conservation, protection, enhancement and perpetuation of these places of natural heritage. Such regulations shall provide that a board of appeals may determine and vary their application in harmony with the general purpose and intent, and in accordance with general or specific rules therein contained.

**§ 7-701 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 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 are 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, a board of trustees is hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as a village board of trustees deems necessary and appropriate that are consistent with the purposes of this section. 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 the transfer of development rights, and the sending and receiving districts, shall be established in accordance with a comprehensive master plan within the meaning of section 7-722 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 board of trustees, 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 village 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 village 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 village, 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 village 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 board of trustees 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 board of trustees shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. Any development right which has been transferred by conservation easement shall be evidenced by a certificate of development right which shall be issued by the village 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 village 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 village. Villages 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 village 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 village 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 village 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. The board of trustees adopting or amending procedures for transfer of development rights pursuant to this section shall follow the procedure for adopting and amending a local law including all provisions for notice applicable for changes or amendments to a zoning ordinance or local law.

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.

**§ 7-702 Districts.** For any or all of said purposes the board of trustees may divide the village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this

article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in one district may differ from those in other districts.

**§ 7-703 Incentive zoning; definitions, purpose, 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 local law for a specific purpose authorized by the village board of trustees.

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 village board of trustees.

c. "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted to applicants 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 village board of trustees is hereby empowered, as part of a zoning local law adopted pursuant to this article, to provide for a system of zoning incentives, or bonuses, as the village board of trustees 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 village's specific physical, cultural and social policies in accordance with the village'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 comprehensive plan within the meaning of section 7-704 of this article.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.

a. The village board of trustees shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning local law. In providing for such system the board shall follow the procedure for adopting and amending its zoning local law, including all provisions for notice and public hearing applicable for changes or amendments to a zoning local law.

b. Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the village zoning local law and shall be incorporated in any map adopted in connection with such zoning local law or amendment thereto.

c. Each zoning district in which incentives or bonuses may be authorized shall have been found by the village board of trustees, 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 village board of trustees 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 village board of trustees for any zoning district in which the granting of incentives or bonuses may have significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the village board of trustees if there

are material changes in circumstances that may result in significant adverse impacts. Any zoning local law 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 village board of trustees shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe:

(1) the incentives, or bonuses, which may be granted by the village to the applicant;

(2) the community benefits or amenities which may be accepted from the applicant by the village;

(3) 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 village;

(4) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(5) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law 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 local law pursuant to this section to establish a system of zoning incentives or bonuses the village board 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 village. Further, the village board of trustees shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the village 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 village board of trustees determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the village of a sum to be determined by the board. If cash is accepted in lieu of other community benefit or amenity, provisions shall be made for such sum to be deposited in a trust fund to be used by the village board of trustees exclusively for specific community benefits authorized by the village board of trustees.

4. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any village board of trustees.

**§ 7-703-a Planned unit development zoning districts.** A village legislative body is hereby authorized to enact, as part of its zoning local law, 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 village comprehensive plan and zoning local law.

**§ 7-704 Purposes in view.** Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the

streets; to secure safety from fire, panic, floods and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar thermal, photovoltaics, wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, farm waste electric generating equipment as defined in paragraph (e) of subdivision one of section sixty-six-j of the public service law and fuel cells; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

**§ 7-706 Method of procedure.** 1. The board of trustees shall provide for the manner in which such regulations, restrictions and the boundaries of such districts including any amendments thereto shall be determined, established and enforced. However, no such regulations, restrictions or boundaries shall become effective until after a public hearing in relation thereto, at which the public shall have an opportunity to be heard. At least ten days notice of the time and place of such hearing shall be published in a paper of general circulation in such village.

2. Service of written notice. At least ten days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts, including amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the village upon each person or persons as listed below:

(a) the property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto;

(b) the boundary of a city, village or town; upon the clerk thereof;  
(c) the boundary of a county; upon the clerk of the board of supervisors or other person performing like duties;  
(d) the boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.

3. Public hearing. The public, including those served notice pursuant to subdivision two of this section, shall have the opportunity to be heard at the public hearing. Those parties set forth in paragraphs (a), (b), (c) and (d) of subdivision two of this section, however, shall not have the right of review by a court as hereinafter provided.

4. Additional requirements. The procedural requirements set forth herein shall be in addition to the requirements of the provisions of sections two hundred thirty-nine-l and two hundred thirty-nine-m of the general municipal law relating to review by a county planning board or agency or regional planning council; the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations which are codified in part six hundred seventeen of title six of the New York codes, rules and regulations and any other general laws relating to land use and any amendments thereto.

5. Filing. Every zoning law and every amendment thereto (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the village board and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in the official newspaper and a copy of such local law or amendment together with a summary or abstract of any map incorporated therein shall be posted conspicuously at or near the main entrance to the office of the village clerk and affidavits of the publication and posting thereof shall be filed with the village clerk. Such minutes shall describe and refer to any map adopted in connection with such local law or amendment.

6. Map. Each village clerk shall maintain every map adopted in connection with a zoning local law or amendment.

7. Effective date. Such local law shall take effect upon filing in the office of the secretary of state, but such local law or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the village clerk; and showing the date of its passage and entry in the minutes.

**§ 7-708 Changes.** Such regulations, restrictions and boundaries may from time to time be amended. An amendment shall be effected by a simple majority vote of the board of trustees, except that an amendment shall require the approval of at least two-thirds of the members of the board of trustees in villages having three members on such board, and three-fourths of the members of the board of trustees in all the other villages in the event such amendment is the subject of a written protest, presented to the board and signed by:

1. the owners of twenty percent or more of the area of land included in such proposed change; or

2. 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

3. 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.

The provisions of the previous section relative to public hearings shall apply equally to all proposed amendments.

**§ 7-709. 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 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 village 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 provisions of the zoning ordinance or local law, if any, in force and effect at the time of the filing of 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 village:

(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 village but there was no planning board in said village 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 village 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 village 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.

**§ 7-710 Adoption of first zoning local law.** 1. In order to avail itself of the powers conferred by this article, the board of trustees of any village shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

2. Where a planning board already exists in the village, it may be appointed as the zoning commission.

3. Such commission shall make a preliminary report and hold one or more public hearings thereon as deemed appropriate by the commission before submitting its final report.

4. The board of trustees shall not hold its public hearing, or take action, until it has received the final report of such commission.

5. Upon adoption of a resolution by the board of trustees of the village accepting the final report, such commission shall cease to exist as a separate body.

**§ 7-712 Zoning 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. Appointment of members. Each village board of trustees which adopts a local law and any amendments thereto pursuant to the powers granted by this article shall create a board of appeals consisting of three or five members as shall be determined by such local law. The mayor shall appoint the board of appeals and the chairperson thereof, subject to the approval of the board of trustees. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The board of trustees 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 by the board of trustees for such purpose.

3. Board of trustees ineligible. No person who is a member of the village board of trustees shall be eligible for membership on such board of appeals.

4. 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 of terms so fixed that one member's term shall expire at the end of the village 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 by the board of trustees 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 a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any board of trustees may, by local law, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution 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.

7. Decreasing membership. A board of trustees which has increased the number of members of the board of appeals to five may, by local law, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms.

7-a. Training and attendance requirements. (a) Each member of the board of appeals 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 board of trustees 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 village pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the board of trustees when, in the judgment of the board of trustees, it is in the best interest of the village 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. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor shall appoint the new member for the unexpired term.

9. Removal of members. The mayor 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 minimum requirements relating to meeting attendance and training as established by the village board of trustees by local law.

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. A village board of trustees may, by local law or as a part of the local law 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, subject to the approval of the board of trustees, for terms established by the village board of trustees.

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, and service on other boards, shall also apply to alternate members.

**§ 7-712-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 village clerk within five business days and shall be a public record.

3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the village for such assistance as shall be deemed necessary and as shall be authorized by the village board of trustees. 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, 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 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 village.

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 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 village board of trustees may, by resolution, require that such filings instead be made in the village 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 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 village 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 village clerk 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 as codified in title six, part six hundred seventeen of the New York codes, rules and 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.

**§ 7-712-b Permitted action by board of appeals.** 1. 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 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.

2. Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such 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, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(4) that 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 proved 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.

3. 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 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: (1) 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; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) 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.

4. 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

local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

**§ 7-712-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 village, 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 village 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 at 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.

**§ 7-714. Remedies.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used, or any land is divided into lots, blocks or sites in violation of this act, or of any local law or

other regulation made under authority conferred thereby, the proper local authorities of the village, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. All issues in any action or proceeding for any of the purposes herein stated shall have preference over all other civil actions and proceedings.

**§ 7-716 Conflict with other laws.** Wherever the regulations made under authority of this act require a greater width of size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local law or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute, or local ordinance or regulation shall govern.

**§ 7-718 Planning board; creation, appointment.** 1. Authorization. The village board of trustees of each village is hereby authorized by local law 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 subject to the approval of the board of trustees. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The village board of trustees may, as part of the local law creating said planning board, provide for the compensation of planning board members.

2. Appropriation for planning board. The village board of trustees is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. 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 village board of trustees for such planning board.

3. Village board of trustees ineligible. No person who is a member of the village board of trustees shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of members of the planning board first appointed shall be so fixed that the term of one member shall expire at the end of the village 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 village official year shall, upon the expiration of their term, hold office until the end of the village 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.

6. Increasing membership. Any village board of trustees may, by local law, 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 village board of trustees which has seven members on the planning board may, by local law, 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 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 board of trustees 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 village pursuant to this subdivision.

c. The training required by this subdivision may be waived or modified by resolution of the board of trustees when, in the judgment of the board of trustees, it is in the best interest of the village 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 shall appoint the new member for the unexpired term.

9. Removal of members. The mayor 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 village board of trustees by local law.

10. 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.

11. Appointment of agricultural member. Notwithstanding any provisions of this chapter or any general, special or local law, the mayor may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such village, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said village. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the village planning board by reason of serving as a member of the town or county planning board.

13. Rules and regulations. The planning board may recommend to the village board of trustees regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law of the village. Adoption of any such recommendations by the village board of trustees shall be by local law.

14. Report on referred matters; general reports. a. The village board of trustees may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision ten of

this section, to the planning board before final action is taken thereon by the village board of trustees or other office or officer of said village having final authority over said matter. The village board of trustees 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 village board of trustees in said resolution, to submit the report.

b. The planning board may review and make recommendations on a proposed village 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 village as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Planning commission. In any village in which there is a planning commission created under article twelve-A of the general municipal law, the board of trustees, 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, provided, however, that in such village section two hundred thirty-eight of the general municipal law shall not be in force.

16. Alternate members. a. A village board of trustees may, by local law or as a part of the local law 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, subject to the approval of the board of trustees, for terms established by the village board of trustees.

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, 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.

**§ 7-722 Village comprehensive plan.** 1. 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 village government is the authority and responsibility to undertake village 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 village government of a village comprehensive plan which can be readily identified, and is available for the public, is in the best interest of the people of each village.

(d) The great diversity of resources and conditions that exist within and among the villages of the state compels the consideration of such diversity in the development of each village comprehensive plan.

(e) The participation of citizens in an open, responsible and flexible

planning process is essential to the designing of the optimum comprehensive plan.

(f) The village comprehensive plan is a means to promote the health, safety and general welfare of the people of the village and to give due consideration to the needs of the people of the region of which the village 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 that status or validity of existing master plans, comprehensive plans, or land use plans.

## 2. Definitions. As used in this section, the term:

(a) "village 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 village.

(b) "land use regulation" means an ordinance or local law enacted by the village 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 village board of trustees to prepare a proposed comprehensive plan and/or an amendment thereto.

## 3. Content of a village comprehensive plan. The village comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the village:

(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 village 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 village.

4. Preparation. The village board of trustees, or by resolution of such village board of trustees, the planning board or a special board, may prepare a proposed village 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 village board of trustees.

5. Referrals. (a) Any proposed comprehensive plan or amendment thereto that is prepared by the village board of trustees or a special board may be referred to the village planning board for review and recommendation before action by the village board of trustees.

(b) The village board of trustees 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 village 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.

6. Public hearings; notice. (a) In the event the village board of trustees prepares a proposed village comprehensive plan or amendment thereto, the village board of trustees 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 village board of trustees shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the village board of trustees 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 village board of trustees 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 village 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 village clerk and may be made available at any other

place, including a public library.

7. Adoption. The village board of trustees may adopt by resolution a village comprehensive plan or any amendment thereto.

8. Environmental review. A village 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 village 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.

9. Agricultural review and coordination. A village comprehensive plan and any amendments thereto, for a village containing all or part of an agricultural district or lands receiving agricultural assessment 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 village 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.

10. Periodic review. The village board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

11. Effect of adoption of the village comprehensive plan. (a) All village 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 village comprehensive plan adopted pursuant to this

section shall take such plan into consideration.

12. Filing of village comprehensive plan. The adopted village comprehensive plan and any amendments thereto shall be filed in the office of the village clerk and a copy thereof shall be filed in the office of the county planning agency.

**§ 7-724 Official maps, changes in official map; notice of hearing.**

Every village may by resolution of its board of trustees establish an official map of the village 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. The clerk of every village which has established such an official map shall immediately file a certificate of that fact with the clerk or register of the county in which said village is located. Such board of trustees 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 village so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. There shall be a public hearing on any proposed action with reference to any such change in the official map. Before making any such addition or change the board of trustees shall refer the matter 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 village, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon. The granting by the board of trustees of a petition for the approval of the laying out, altering, widening, narrowing or discontinuing of a street, shall be deemed to be an addition or change of the official map and shall be subject to all the provisions of this article with regard to such additions or changes. Drainage systems may

also be shown on this map.

**§ 7-725-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 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 7-728 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 village board of trustees may, as part of a local law adopted pursuant to this article or 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 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 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 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 village board of trustees in such local law.

(b) When an authorization to approve site plans is granted by the village board of trustees 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, applications

may be made to the zoning board of appeals for an area variance pursuant to section 7-712-b of this article, 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 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 village.

5. Waiver of requirements. The village board of trustees 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 or 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 village. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the village 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 requirements 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 village board of trustees. 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 village 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, 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 village 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 village by the owner. Such security shall be provided to the village pursuant to the provisions of subdivision nine of section 7-730 of this article.

8. Public hearing and decision on site plans. In the event a public hearing is required by local law adopted by the village board of trustees, 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 such hearing, and shall give public notice of said hearing in a newspaper of general circulation in the village 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 village 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 village 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 village 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.

**§ 7-725-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 local law, subject to requirements imposed by such local law to assure that the proposed use is in harmony with such local law and will not adversely affect the neighborhood if such requirements are met.

2. Approval of special use permits. The village board of trustees may, as part of a zoning 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 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 7-712-b of this article, 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 village.

5. Waiver of requirements. The village board of trustees 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 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 or 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 village 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 village 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 or 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 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.

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 village 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 village 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 village board of trustees 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.

**§ 7-728 Subdivision review; approval of plats; development of filed plats.** 1. Purpose. For the purpose of providing for the future growth and development of the village and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the village board of trustees, 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 village board of trustees,

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 village 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 village 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 village 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 the 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 village 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 village 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 village 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 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 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 final 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 village 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 the 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 village clerk as determined by the village board of trustees.

(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 village 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 village 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 village 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 village clerk in each village 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 7-708 of this article.

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.

**§ 7-730 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, village comprehensive plan or functional/master plans, 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 village;

(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 or 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 village departments except as hereinafter provided, or alternatively that a performance bond or other security be furnished to the village, as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the village, the lots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section 7-738 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 village. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the village 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 village board of trustees. 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 moneys 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 village 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 regulations, application may be made to the zoning board of appeals for an area variance pursuant to section 7-712-b of this article, 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. Installation of fire alarm devices. The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant to this section only with the approval of: (a) the town board if the village is included in a central fire alarm system established pursuant to subdivision eleven-c of section sixty-four of the town law, (b) the board of supervisors or legislative body of the county if the village is included in a central fire alarm system established pursuant to paragraph (h) of subdivision one of section two hundred twenty-five of the county law, or (c) the board of fire commissioners of the village in any other case unless the installation is to be made in a fire district within the village, in which event only the approval of the board of fire commissioners of such fire district shall be necessary. The planning board may, with the approval of the appropriate board, completely waive any or all requirements in connection with the installation of fire alarm signal devices including necessary connecting facilities. When required, such installation shall be made in accordance with standards, specifications, and procedures acceptable to such board.

9. 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 village 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 village 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 7-728 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 village, approved by the village board of trustees and also approved by the village 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 village, such security shall be held in a village 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 village board of trustees, 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 village board of trustees 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 village 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.

10. Suffolk county sewer districts. If in the county of Suffolk the plat is not entirely situate within a county, town or village sewer district and the county department of environmental control or the county health department shall have directed that disposal of sewage from the plat shall be provided for by a communal sewerage system, consisting of a treatment plant and collection system, then the Suffolk county sewer agency shall determine, specify and direct the means and method by which the aforesaid system shall be best provided by and at the expense of the developer. Among the alternative means and methods the Suffolk county sewer agency may direct, shall be: (a) that the developer, at its own cost and expense, install, build and construct such system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost to the Suffolk county sewer agency, or its nominee, and the developer shall also petition to form a county district, but if the Suffolk county sewer agency shall determine that a suitable complete communal sewerage system of adequate size cannot be properly located in the plat or is otherwise not practical, then, (b) the developer shall install, build and construct temporary cesspools or septic tanks together with a sewage collection system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost, to the Suffolk county sewer agency or its nominee, and in addition thereto, the agency may also require the payment to the Suffolk county sewer agency of a sum of money in an amount to be determined by the Suffolk county sewer agency, and the developer shall also petition to form a

county district, or (c) the developer shall install, build and construct temporary cesspools or septic tanks and, in addition thereto, shall pay to the Suffolk county sewer agency a sum of money in an amount to be determined by the Suffolk county sewer agency and the developer shall also petition to form a county district, or (d) the developer shall provide such other means and methods or combination thereof as the Suffolk county sewer agency may determine, specify and direct.

Any sums paid to the Suffolk county sewer agency pursuant to any provisions of this section, shall constitute a trust fund to be used exclusively for a future communal sewerage system which shall be owned and operated by a county sewer district, which district shall include the subject plat within its bounds. Such moneys and accrued interest, if any, when paid to such district, shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the subject plat as may exist at the time of the payment of such moneys and accrued interest to such district.

The useable value of any sewage collection system built under paragraph (b), (c) or (d) of this subdivision shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the plat as may exist at the time such system is incorporated into a county sewer district which shall include the subject plat within its bounds.

**§ 7-732 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 village.

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 village 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 7-728 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.

**§ 7-734 Buildings in streets; permits; hearings; review.** 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 village which has established such a board having power to make variances or exceptions 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 village. 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 other shall have an opportunity to be heard. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

**§ 7-736 Construction of municipal utility in streets; permits for erection of buildings; appeal; review by court.** 1. No public municipal street utility or improvement shall be constructed by the village in any street or highway until it has become a public street or highway and is duly placed on the official map or plan; except that the board of trustees may authorize the construction of a public municipal street utility or improvement in or under a street which has not been dedicated, but which has been used by the public as a street for five years or more, prior to March second, nineteen hundred thirty-eight, and is shown as a street on a plat of a subdivision of land which had been filed prior to March second, nineteen hundred thirty-eight, in the office of the county clerk or register of the county in which such village is located.

2. 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, or if there be no official map or plan, unless such street or highway is (a) an existing state, county, town or village highway, or (b) a street shown upon a plat approved by the planning board as provided under the provisions of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats. Before such permit shall be issued

such 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 village officers as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board or other appropriate village departments designated by such board shall be furnished to the village by the owner. Such performance bond shall be issued by a bonding or surety company approved by the board of trustees or by the owner with security acceptable to the board of trustees, and shall also be approved by the village attorney 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 appropriate board in substantial conformity with section 7-730 of this article.

3. 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 village 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 7-712-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 in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

**§ 7-738 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 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 section 7-702 of this article.

## 2. Authorization; purpose.

(a) The village board of trustees may, by local law, 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. Such local law 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 village. Provided, however, that in granting such authorization to the planning board, the village board of trustees 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 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 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 village board of trustees may require that such conditions shall be approved by the board of trustees 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 7-728 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 village clerk, who shall make appropriate notations and references thereto on the village zoning map required to be maintained pursuant to section 7-706 of this article.

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 local law applicable to such lands.

**§ 7-739 Coordination with agricultural districts program.** 1. Policy of local governments. Local governments shall exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm operations in contravention of

the purposes of article twenty-five-AA of the agriculture and markets law, unless it can be shown that the public health or safety is threatened.

2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the village board of trustees, planning board, or zoning board of appeals pursuant to this article, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The village board of trustees, planning board, or zoning board of appeals shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the

site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

5. Notice to county planning board or agency or regional planning council. The clerk of the village board of trustees, planning board, or zoning board of appeals shall refer all applications requiring an agricultural data statement to the county planning board or agency or regional planning council as required by sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law.

**§ 7-740 Review of decisions of planning board.** Any officer, department, board or bureau of the village, with the approval of the board of trustees, or 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, may bring a proceeding to review in the manner provided 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 village clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, 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 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.

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.

**§ 7-741 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 village to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each village 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, including those relating to the duration, extension or termination of the agreement.

(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 board. 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.

**§ 7-742 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 8

### **POLICE DEPARTMENT**

Section 8-800 Police departments.

8-802 Powers and duties of police officers.

8-804 Discipline and charges.

8-806 Review.

**§ 8-800 Police departments.** The board of trustees of a village may, by resolution, establish a police department in such village and appoint a chief of police and such personnel as may be needed, and fix their compensation. The board of trustees may abolish a police department established pursuant to this section by local law, subject to permissive referendum, and the department shall be deemed abolished as presented in

such proposition. The board of trustees of a village, upon establishing or abolishing a police department, shall notify the commissioner of the division of criminal justice services of such action within thirty days thereafter.

**§ 8-802 Powers and duties of police officers.** The police officers so appointed shall have all the powers and be subject to the duties and liabilities of constables of towns in serving process in any civil action or proceeding. In addition to other powers conferred by law, said police officers shall have power to execute any warrant or process issued by a court of the county or counties in which such village is situated.

**§ 8-804 Discipline and charges.** 1. Except as otherwise provided by law, a member of such police force or department shall continue in office unless suspended or dismissed. The board of trustees or municipal board shall have power and is authorized to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police force or department. Except as otherwise provided, no member or members of such police force or department shall be fined, reprimanded, suspended, removed or dismissed until written charges shall have been examined, heard and investigated in such manner or procedure, practice, examination and investigation as the board may by rules and regulations from time to time prescribe. Any member of such police force or department at the time of the hearing or trial of such charges shall have the right to a public hearing and trial and to be represented by counsel at any such hearing or trial, and any person who shall have preferred such charges or any part of the same shall not sit as judge upon such hearing or trial. Any and all witnesses produced in such support of all or any part of such charges shall testify thereto under oath. Any member of such force or department who shall have been so dismissed shall not be reinstated as a member of such force or department unless he shall within twelve months of his dismissal file with such board a written application for a rehearing of the charges

upon which he was dismissed. Such board shall have the power to rehear such charges and, in its discretion, reinstate a member of the force or department after he has filed such written application therefor. Any member of such force or department found guilty upon charges, after five days' notice and an opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or violation of rules and regulations, or disobedience, or incompetency, to perform official duty, or an act of delinquency seriously affecting his general character or fitness for office, may be punished by the board of trustees or other municipal board having jurisdiction, by reprimand, forfeiture and the withholding of salary or compensation for a specified time not exceeding twenty days, suspension from duty for a specified time not exceeding twenty days and the withholding of salary or compensation during such suspension, or by dismissal from the department. Such board shall have the power to suspend, without pay for a period not to exceed thirty days, pending the trial of charges, any member of such police force or department. If any member of such police force or department so suspended shall not be convicted by such board of the charges so preferred, he shall be entitled to full pay from the date of suspension, notwithstanding such charges and suspension. 2. Notwithstanding any other provision of law, no charges shall be commenced more than three years after the occurrence of the alleged neglect or dereliction in the performance of official duty, or violation of rules and regulations, or disobedience, or incompetency, to perform official duty, or an act of delinquency seriously affecting his general character or fitness for office, complained of and described in the charges provided, however, that such limitation shall not apply where the aforementioned conduct complained of and described in the charges would, if proven in a court of appropriate jurisdiction, constitute a crime.

**§ 8-806 Review.** The conviction of any member of such police force or department shall be subject to review by the supreme court in the judicial district in which such village is located, in the manner provided by article seventy-eight of the civil practice law and rules on the ground that said conviction is illegal provided the proceeding is

commenced within sixty days after the conviction.

## ARTICLE 9

### PERMISSIVE REFERENDUM

Section 9-900 Acts or resolutions of the board of trustees that are subject to referendum on petition.

9-902 Referendum on petition; registration list of electors.

9-904 Proposition for the submission of acts or resolutions.

9-906 Reconsideration of act or resolution upon submission to referendum.

9-908 Referendum on acts or resolutions of the board of trustees without petition.

9-910 Referendum for adoption of local law at village elections.

9-912 Propositions--submission and special election.

9-914 Resubmission of defeated propositions.

9-916 Inconsistent local laws.

**§ 9-900 Acts or resolutions of the board of trustees that are subject to referendum on petition.** 1. Whenever this chapter shall expressly provide that an act or resolution of the board of trustees is subject to a permissive referendum, such act or resolution shall be subject to a referendum on petition as set forth in the next section.

2. Within ten days after the performance of any act or the adoption of any resolution by the board of trustees which is subject to a permissive referendum as above described, the village clerk shall, in the same manner as is provided for notice of a general village election, post and publish a notice which shall set forth the date of the adoption of the act or resolution and contain an abstract of such act or resolution concisely stating the purpose and effect thereof, and indicating that such act or resolution is subject to a permissive referendum.

3. Whenever any state statute shall provide that any local law or resolution of the board of trustees is subject to a mandatory referendum and if no other procedure is otherwise provided for, such referendum

shall be conducted as provided in this article as if such referendum were a permissive referendum upon which a valid petition had been filed with the date of adoption of such act or resolution by the board of trustees being deemed the date of the filing of the petition. In the event a mandatory referendum on the adoption of a local law is held at a time other than at the time of a general village election for officers as provided by section twenty-three of the municipal home rule law, such referendum shall be conducted as provided in this article as if such referendum were a permissive referendum upon which a valid petition had been filed with the date of the adoption of such local law by the board of trustees being deemed the date of the filing of the petition.

4. Whenever a village has provided that village elections shall occur on the day of the general election pursuant to section 15-104 of the election law, and:

a. whenever this chapter or any state statute shall provide that any local law or resolution of the board of trustees is subject to a mandatory referendum and if no other procedure is otherwise provided for, such referendum shall be conducted as provided in section twenty-three of the municipal home rule law; or

b. whenever this chapter or any state statute shall provide that an act of resolution of the board of trustees is subject to a permissive referendum, such act or resolution shall be subject to a referendum on petition as set forth in paragraph a of subdivision one of section twenty-four of the municipal home rule law.

**§ 9-902 Referendum on petition; registration list of electors.** 1. An act or resolution of the board of trustees as described in the preceding section shall not take effect until thirty days after its adoption; nor until approved by the affirmative vote of a majority of the qualified electors of such village voting on such proposition for its approval if within thirty days after its adoption there be filed with the village clerk a petition signed and acknowledged by electors of the village in number equal to at least twenty per centum of such electors in the

village, as shown on the register of electors for the previous general village election, protesting against such act or resolution and requesting that it be submitted to the electors of the village for their approval or disapproval.

2. Unless the ownership of real property is otherwise required by law as a qualification for voting on a proposition, any person qualified to vote at a general village election may vote upon any proposition submitted at a village election.

3. Except as otherwise provided in the election law, it shall be the duty of the village clerk to make and file in his office, at least ten days before any such proposition is submitted at a special election called solely for that purpose an accurate registration list of electors, alphabetically arranged, qualified to vote on the proposition. The village clerk may use any or all of the following to obtain the information necessary to properly prepare such list:

(a) Register of electors in last preceding village election.

(b) Towns register of electors for last preceding general election covering all the area of the village.

(c) Last preceding county register of electors.

(d) Any other official record or source that will aid in producing the most accurate registration list of electors.

Such registration list of electors shall be made available and disclosed to any elector of the village upon request. Any elector of the village claiming to be qualified to vote upon such a proposition whose name is not included in the registration list of electors therefor as made by the village clerk, may apply to such clerk for a revision of such list of electors to include his or her name. The village clerk upon the presentation of proper proofs showing that the applicant is a duly qualified elector shall revise such list of electors to include the name of the applicant. The application to revise any such list of electors may be made to the village clerk on or before the date of the election at which the proposition is to be submitted.

4. The failure or refusal of the village clerk to revise any such list

of electors to include the name of a qualified elector so applying may be reviewed in a proceeding under article seventy-eight of the civil practice law and rules. The court upon petition for such a review shall cause to be served upon the village clerk an order directing such clerk to show cause why the statement should not be revised to include the name of the petitioner. Such order must be made returnable on a date to be fixed by the court not less than twenty-four hours after the order is issued and served. If it shall appear upon the return of the order that the petitioner is qualified to vote upon the proposition, the court shall order the name of the petitioner to be included in the list of electors and the village clerk shall revise such list accordingly. The provisions of article seventy-eight of the civil practice law and rules, not inconsistent with this act, shall apply to the review provided by this section.

5. If such petition be so filed after the first day of the month in which the general village election is to be held and before the first day of the month two months prior to the next general village election, a proposition for the approval of such act or resolution shall be submitted at a special election of such village to be held not less than ten nor more than sixty days after the filing of such petition.

6. If such petition be so filed on or after the first day of the month two months prior to the month in which the general village election is to be held and on or before the first day of the month in which the general village election is to be held, a proposition for the approval of such act or resolution shall be submitted at the said general village election.

7. A special election hereunder shall be noticed, conducted, canvassed and otherwise held in the same manner as a general village election.

8. Petition shall be made upon white paper containing the signatures of qualified electors of the village. The sheets of such a petition shall be numbered consecutively beginning with number one at the foot of each sheet. Such petition must set forth in every instance the correct date of signing, the full name of the signer, his present residence, the

ward if any and the village election district if any. A signer need not himself fill in the date, residence, ward, or election district.

Each sheet of such petition shall be signed in ink and shall be substantially in the following form:

To the Board of Trustees of this Village of .....  
County of ....., State of New York.

We, the undersigned, duly qualified electors of the village  
of ..... respectfully petition that the following proposed act  
or resolution ..... here insert title, abstract or identifying  
number ..... be submitted to a vote of the qualified electors of the  
village for their approval or rejection as provided by law.

| Date  | Signature-Residence | Ward<br>if any | Village Election<br>District if any |
|-------|---------------------|----------------|-------------------------------------|
| ..... | .....               | .....          | .....                               |
| ..... | .....               | .....          | .....                               |
| ..... | .....               | .....          | .....                               |

Statement of Witness:

I, .....state: I am over the age of eighteen years and now  
reside at ..... (residence  
address, or postoffice address if not identical) in the Village  
of ..... in the State of New York, County  
of ..... Each of the electors whose names are subscribed  
to this petition sheet containing .....(fill in number) signatures,  
subscribed his name in my presence.

I understand that this statement will be accepted for all purposes as  
the equivalent of an affidavit and, if it contains a material false  
statement, shall subject me to the same penalties as if I had been duly  
sworn.

.....

Date

.....

Signature of Witness

9. If, within five days after the filing of such petition, a written

objection thereto be filed with the village clerk, the supreme court or any justice thereof of the judicial district in which such village or any part thereof is located, shall determine any question arising thereunder and make such order as justice may require. Such proceeding shall be heard and determined in the manner prescribed by section 16-116 of the election law.

**§ 9-904 Proposition for the submission of acts or resolutions.** A proposition submitting an act or resolution of the board of trustees to the approval of the electors pursuant to this chapter shall contain an abstract of such act or resolution concisely stating the purpose and effect thereof. The village clerk shall prepare such abstract proposition in the form in which it is proposed to be submitted to the board of trustees for approval. Said board shall submit the approved proposition at an annual or special election in accordance with the provisions of this chapter. If there be more than one such proposition to be voted upon at such election, each proposition shall be separately and consecutively numbered.

**§ 9-906 Reconsideration of act or resolution upon submission to referendum.** At any time after the adoption of an act or resolution and not later than fifteen days prior to the election, the board of trustees of the village may reconsider its action thereon and if upon such reconsideration the said act or resolution is repealed, the proposition for its approval shall not be submitted at such election or if submitted, the vote of the electors thereon shall be without effect.

**§ 9-908 Referendum on acts or resolutions of the board of trustees without petition.** The board of trustees may, upon its own motion, cause to be submitted for the approval of the qualified electors of such village, an act or resolution of such board in connection with which a petition could be filed as provided in this article and the proceedings thereunder shall be the same as if such petition had been filed in accordance with the provisions of this article.

**§ 9-910 Referendum for adoption of local law at village elections. 1.**

Whenever, pursuant to law, public sports, exercises or shows are permitted on the first day of the week after five minutes past one o'clock in the afternoon upon the adoption of a local law by the board of trustees of a village and the board of trustees of any village has neglected, failed or refused to adopt a local law permitting such sports, exercises or shows on the first day of the week after five minutes past one o'clock in the afternoon, a petition, signed and acknowledged by electors of the village qualified to vote as provided by the election law may be filed with the village clerk requesting the board of trustees to submit, at a village election, a proposition upon the question of permitting such sports, exercises or shows on the first day of the week after five minutes past one o'clock in the afternoon.

2. Upon the presentation of such petition, the board of trustees shall cause the proposition to be submitted as hereinafter provided.

3. The proposition shall embody therein the language of local law designed to permit such sports, exercises or shows on the first day of the week after five minutes past one o'clock in the afternoon.

4. If such local law shall be approved by the affirmative vote of a majority of the qualified electors of such village as above described voting on such proposition, it shall be and become a local law of such village without being adopted by the board of trustees thereof.

5. A local law adopted as provided in this section may be amended or repealed in the same manner herein provided for its adoption.

6. If a petition under this section be filed after the first day of the month in which the general village election is to be held and before the first day of the month two months prior to the next general village election, a special election shall be held not less than ten nor more than sixty days after the filing of such petition.

7. If a petition be so filed on or after the first day of the month two months prior to the month in which the general village election is to be held and on or before the first day of the month in which the general village election is to be held, the proposition shall be submitted at the said general village election.

8. No special election shall be held hereunder in the month of March.

9. A special election hereunder shall be noticed, conducted, canvassed and otherwise held in the same manner as a general village election.

**§ 9-912 Propositions--submission and special election.** 1. The board of trustees may, upon its own motion, and shall, upon the petition of at least two hundred electors in villages containing a population of five thousand or more; by at least one hundred fifty electors in villages containing a population of at least three thousand and less than five thousand; and by at least one hundred electors in villages containing a population of one thousand and less than three thousand; and in villages containing a population of less than one thousand, by electors numbering at least ten percent of the number of voters registered for the last general village election, cause a proposition on any of the questions set forth in the following subdivision to be submitted at a regular or special village election as such elections are defined in the election law. If such petition request the holding of a referendum at a time other than at such regular or special village election, such petition must contain twice the number of signatures otherwise required. If such petition does not request the holding of such a referendum, such question shall be submitted at the next regular or special village election for officers, held not less than thirty days after the filing of such petition. If such petition requests the holding of a referendum at a time other than at such regular or special village election, such referendum shall be held no less than thirty, nor more than sixty, days after the filing of such petition.

2. The questions which may or shall be submitted as propositions upon petition or motion of the board of trustees, as hereinbefore provided,

are:

- (a) Whether or not the area of the village should be diminished.
- (b) Whether or not the village should be reincorporated.
- (c) Whether or not the name of the village should be changed.
- (d) Whether or not the month of the general village election should be changed.

3. A special election for submission of a proposition shall be noticed, conducted, canvassed and otherwise held in the same manner as a general village election; provided, however, that a proposition for the consolidation or dissolution of a village shall be noticed, conducted, canvassed and otherwise held pursuant to, and in accordance with, the provisions of article seventeen-A of the general municipal law.

**§ 9-914 Resubmission of defeated propositions.** A proposition submitted in pursuance of section 9-912 of this article or of section 9-900 of this article and which has been defeated, or in the case of a permissive referendum in which the action of the board of trustees has been disapproved by a vote of the electors, shall not again be submitted to such electors until after the expiration of three months or until the next general village election, whichever shall be the later.

**§ 9-916 Inconsistent local laws.** No local law shall be adopted changing, amending or superseding any of the provisions of this article.

## ARTICLE 10

### **FIRE DEPARTMENT**

Section 10-1000 General powers of the board of fire commissioners.

10-1002 Rules and regulations.

10-1004 Organization of companies.

10-1006 Volunteer members of village fire companies.

10-1008 Incorporation of fire department.

10-1010 Election of company officers and delegates.

10-1012 Chief and assistant chiefs.

- 10-1014 Council of fire department.
- 10-1016 Annual meeting of fire department.
- 10-1018 Duties of chief and assistants.
- 10-1020 Abolition of fire department; employment of paid firefighters.
- 10-1022 Fire inspection in contract areas.

**§ 10-1000 General powers of the board of fire commissioners.** The board of fire commissioners of a village, subject to the approval of the board of trustees:

1. Has the care, custody and control of all village property of the fire department.
2. May purchase such equipment as is suitable and necessary to prevent and extinguish fires within the village, or for the purposes of any emergency and first aid squad organized within the fire department, and uniforms for all active members of the fire department and keep the same in good condition and repair.
3. May erect and maintain suitable and necessary buildings for the fire department.
4. May construct and maintain reservoirs and cisterns and supply them with water for use at fires.
5. May adopt rules for the admission, suspension, removal and discipline of the members, officers and employees of the fire department, may prescribe their powers and duties, and fix their compensation not inconsistent with section 10-1018 of this article.
6. May adopt rules and regulations governing fire companies and fire departments, prescribing the duties of the members thereof, and may enforce discipline and provide for public drills, parades, funerals, inspections and reviews of the village fire department, or any company or unit thereof, within the village or at other places within the state,

any adjoining state or in Canada. Such rules and regulations shall not authorize any member of the board of fire commissioners to interfere with the duties of the fire chief or the assistant fire chief at such times as the fire department or any company or squad thereof is on duty.

7. May appoint persons other than members or officers of the department to take charge of village property, and may fix their compensation.

8. May employ duty or " persons on call," to serve on a part-time basis when necessary, and fix their duties and compensation. Such part-time paid firefighters in the event of injury shall be entitled to the applicable benefits provided for such part-time paid firefighters under section two hundred seven-a of the general municipal law and in the event of injury or death shall be entitled to the applicable benefits, if any, provided for such part-time paid firefighters under the retirement and social security law and the workers' compensation law. Persons who are volunteer members of the village fire department may be employed as such part-time paid firefighters, but in the event of injury, death, disease, or infection, resulting from services performed in line of duty as such part-time paid firefighters they shall not be entitled to any of the benefits provided for volunteer firefighters under the volunteer firefighters' benefit law, or under any policy of blanket accident insurance purchased by the village or purchased by the fire department to cover only volunteer members of such department.

9. May inquire into the cause and origin of fires occurring in the village and may take testimony in relation thereto.

11. Notwithstanding any other provisions of law to the contrary, a village may include as part of its budget an appropriation to fund an annual firefighters' inspection-dinner for each fire company within the village.

**§ 10-1002 Rules and regulations.** The board of fire commissioners may adopt rules and regulations for the following purposes:

(a) To protect and preserve the village property and apparatus of the fire department.

(b) To prevent danger from fires and to protect property exposed to destruction or injury by fire.

(c) To provide for pulling down, blowing up and the removal of buildings and property to arrest the progress of fires or extinguish the same.

(d) To provide for the installation of yard hydrant systems connected with the public water supply system in accessible locations on private property for the protection of multiple residences enumerated in the multiple residence law where the possibility of a serious fire hazard is determined by the board to exist.

**§ 10-1004 Organization of companies.** The board of fire commissioners, with the approval of the board of trustees, may organize and maintain fire, hose, protective and hook and ladder companies, whenever in its judgment the public interests require. The board of fire commissioners may, by resolution, with the approval of the board of trustees, consent to the incorporation of any of the companies so organized by them, or may, by like approval, consent to the incorporation or the organization without incorporation of as many companies voluntarily organized in said village as may be deemed necessary.

**§ 10-1006 Volunteer members of village fire companies.** 1. The volunteer members of a fire company shall be elected and appointed as provided in this section.

2. The board of fire commissioners shall appoint residents of the village as the volunteer members of any newly organized fire company. Thereafter, the fire company may elect other eligible persons, including village 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. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving, within forty days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the village clerk, either personally or by mail.

3. Any person elected to membership as a volunteer member as a fire company shall be a resident of the village or of territory outside the village which is afforded fire protection by the fire department of the village, 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 village or of any territory outside the village which is afforded fire protection but the fire department of the village, 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 village and is not protected by the fire department of the village, 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 or his or her usual occupation he or she will be available to render active service as a volunteer firefighter in the village or in territory outside the village which is afforded fire protection pursuant to a contract for fire protection by the fire department of the village, 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. Such authorization shall be deemed to have been approved pursuant to this subdivision in

the event that no action is taken by the board of fire commissioners, either approving or disapproving, within forty days after service of written notice of such authorization shall have been made by the secretary of the fire company upon the village clerk, either personally or by mail. 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 of this section. In the case of a village 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 or his or her usual occupation he or she will be available to render active service as a volunteer firefighter in the village or in territory which is afforded fire protection pursuant to a contract for fire protection by the fire department of the village or a fire company thereof. Such 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 not become effective unless approved by resolution of the board of fire commissioners. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving, within seventy days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the village clerk, either personally or by mail. 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 of this section. In the case of a village 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, provided however, that the provisions of this subdivision shall not apply to the membership of the village of Blasdell volunteer fire department, provided however, that the provisions of this subdivision shall not apply to the membership of the village of Delanson volunteer fire company in the village of Delanson, county of Schenectady, provided however, that the provisions of this subdivision shall not apply to membership of the village of Port Dickinson Fire Department, within the village of Port Dickinson, Broome County, provided however, that the provisions of this subdivision shall not apply to the membership of the village of Briarcliff Manor fire department, within the village of Briarcliff Manor, county of Westchester, provided however, that the provisions of this subdivision shall not apply to the membership of the village of Ardsley volunteer fire department, within the village of Ardsley, county of Westchester, provided however, that the provisions of this subdivision shall not apply to the membership of the Buchanan Engine Company No. 1, within the village of Buchanan, county of Westchester.

8. The board of trustees, or the board of fire commissioners subject to approval of the board of trustees, 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 village. Any volunteer member who then resides in territory outside the village 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 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 continued or authorized pursuant to subdivision five or six of this section, shall

have all the powers, duties, immunities, and privileges of resident volunteer members, except (1) non-residents of the state may not be appointed or elected to any office in the fire company or fire department, and (2) 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 village or by the fire department or a fire company thereof for the furnishing of fire protection to an area outside the village. 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. In a village where there is no board of fire commissioners, the board of trustees shall have the powers and perform the duties of such board which are prescribed in this section.

13. 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 village.

14. A village may not adopt a local law changing, amending or superseding this section.

15. Any person:

(1) who was recognized prior to the first day of July, nineteen hundred fifty-four, as a volunteer member of any fire company of a village subject to the provisions of this article by the board of trustees or board of fire commissioners of the village or by the officers and members of his fire company, and

(2) who rendered active service with such fire company prior to such date, and

(3) who was, at the time of his or her nomination for membership, a resident of the village or of territory outside of the village which was afforded fire protection by the fire department of the village, or any fire company thereof, pursuant to a contract for fire protection, shall for all purposes in law be considered to have been duly nominated and appointed to membership in such fire company as of the date of such appointment, if any, and, if none, then as of the date of such nomination; notwithstanding that there may have been some legal defect in such nomination, or the proceedings precedent thereto, or a failure of the board of fire commissioners or board of trustees to appoint such member, as provided by law in force at the time of such nomination, and the status of such person as a volunteer firefighter as of the date of such appointment or nomination is hereby legalized, validated and confirmed. An election to membership in a fire company shall be deemed equivalent to a nomination for membership for the purposes of this subdivision in the event that a formal nomination for membership was never presented to a board of fire commissioners or board of trustees as provided by the law in force prior to the first day of July, nineteen hundred fifty-four, and, for the purposes of this subdivision, such election, and the proceedings precedent thereto, shall be considered to have been held and conducted in the manner required by law. This subdivision shall not apply to a person, if any, whose volunteer membership in a fire company was declared invalid by a court of competent jurisdiction prior to the first day of January, nineteen hundred fifty-five.

16. Any person:

(1) who was recognized on and after the first day of July, nineteen hundred fifty-four and prior to the first day of January, two thousand eleven, as a volunteer member of any fire company of a village subject to the provisions of this article by the board of trustees or board of fire commissioners of the village 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 village or of territory outside the village which was afforded fire protection by the fire department of the village, 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 subdivisions 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 board of trustees, 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 board of trustees 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 the 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 trustees or board of fire commissioners or declared invalid by a court of competent jurisdiction prior to the first day of January, two thousand eleven.

17. (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.

18. A person who has been convicted of arson in any degree shall not be eligible to be elected or appointed as a volunteer member of a fire company. The membership of any volunteer member of a fire company shall immediately terminate if he is convicted of arson in any degree while a member of a fire company.

19. Upon application by any person for membership in a fire company operating pursuant to this section, the fire chief shall cause the applicant's background to be checked pursuant to section eight hundred thirty-seven-o of the executive law for a criminal history involving a conviction for arson and conviction of a crime which requires the person to register as a sex offender under article six-C of the correction law. Where such criminal history information includes conviction of a crime which requires the person to register as a sex offender under article six-C of the correction law, a fire company shall determine whether or not such person shall be eligible to be elected or appointed as a volunteer member of such fire company. Such determination shall be made in accordance with the criteria established in sections seven hundred fifty-two and seven hundred fifty-three of the correction law.

**§ 10-1008 Incorporation of fire department.** The members of all the fire, hose, protective and hook and ladder companies of a village, organized and maintained in pursuance of law, constitute a corporation by the name of the "fire department of....." The term, fire department of a village, as used in this chapter, refers to such a corporation.

**§ 10-1010 Election of company officers and delegates.** Each of the several companies whose members constitute the fire department of the village shall hold an annual meeting on the first Tuesday in April in each year, except those fire companies constituting the fire department of the village of Fishkill, Dutchess county, and the village of Croton-on-Hudson, Westchester county, which shall hold such annual meetings on the first Tuesday in December of each year. At such meeting the members of each company shall elect by ballot from their own number a captain and a lieutenant, and such further officers if any as may be provided for in the by-laws of the company, who must be approved by the board of fire commissioners, one warden and one delegate to the general convention of the fire department. The terms of office of the captain and lieutenant and such further officers if any, as are elected as herein provided, shall be one year, the wardens two years, and the delegates three years, respectively, and any vacancies occurring in any such offices shall be filled by election in like manner. At the first annual meeting after this act takes effect two wardens and three delegates shall be elected, the wardens to serve for one and two years, respectively, and the delegates for one, two and three years, respectively. Any person who has been convicted of arson in any degree shall not be eligible for election to the office of captain, lieutenant, warden, delegate and any other offices provided for in the by-laws of the company. Any captain, lieutenant, warden, delegate or other officer of the company who is convicted of arson in any degree during their term of office shall be disqualified from completing such term of office.

**§ 10-1012 Chief and assistant chiefs.** 1. The chief and the first and second assistant chiefs and such additional assistant chiefs, if any, as

may be provided for in the by-laws of the fire department shall each be a member thereof and a resident of the state of New York; provided, however, that fire department officers of the fire department of the village of Hancock, Delaware county, need not be residents of the state of New York. In addition, the board of trustees, or the board of fire commissioners subject to the approval of the board of trustees, may, by resolution, require that any or all of such fire department officers shall be residents of the village. The delegates elected to the general convention of the fire department shall meet at the council room thereof on the Thursday following the first Tuesday in April, except the elected delegates of the fire department of the village of Fishkill, Dutchess county, which shall meet on the first Tuesday in December, and nominate a person for each of such offices and except the elected delegates of the fire department of the village of Croton-on-Hudson, Westchester county, which shall meet on the Thursday following the first Tuesday in December; but the fire commissioners of any village may adopt a rule requiring all such nominations to be made on the day of the meeting by a vote of the duly qualified members of the department, in which case the meeting of the delegates in general convention, as provided for in this section, shall be dispensed with. The person acting as secretary of such convention shall forthwith file in the office of the village clerk a certificate of such nominations. The board of fire commissioners at its next meeting shall consider the nominations and appoint such persons to the offices to which they are respectively nominated or, if a nomination is not approved the board shall reconvene the general convention, which shall submit a new nomination to take the place of any nomination not approved, which procedure shall continue until a full set of officers is approved. A person who has been convicted of arson in any degree shall not be eligible for nomination, election or appointment to the office of chief or assistant chief. Any fire chief or assistant chief who is convicted of arson in any degree during their term of office shall be disqualified from completing such term of office.

2. Notwithstanding the provisions of any general, special or local law inconsistent herewith any such chief or assistant chief of a village fire department need not be a resident of the village in order to serve as a member of the council of the fire department of the village

pursuant to section 10-1014 of this article unless the board of trustees, or the board of fire commissioners subject to the approval of the board of trustees, has, by resolution, as provided in this section, required that any or all of such fire department officers shall be residents of the village. Except as otherwise provided pursuant to this subdivision, a person shall not hold the office of village mayor or village trustee and the office of chief or assistant chief of a village fire department at the same time. A village trustee who does not, either as an individual or as a member of a board, appoint or approve the appointment of the chief or assistant chief of a village fire department, may hold the office of chief or assistant chief at the same time. Notwithstanding any inconsistent provision of law, a person who is the chief or an assistant chief of a village fire department, if he is otherwise qualified, may be elected to the office of village mayor or village trustee or may be appointed to the office of village mayor or village trustee to fill a vacancy and, if he is so elected or appointed, his office as chief or assistant chief, as the case may be, shall become vacant upon his taking his oath of office as village mayor or village trustee.

**§ 10-1014 Council of fire department.** In a village in which separate fire commissioners are not appointed, the chief, the assistant, and the wardens of the several companies constitute the council of the fire department. The council shall meet on the third Tuesday in April in each year, except for the council of the fire department of the village of Fishkill, Dutchess county, which shall meet on the first Tuesday of December, and choose from its own number a secretary, a treasurer and a collector of the fire department, who shall hold their respective offices for one year unless sooner removed by the council. A vacancy in the office of secretary, treasurer or collector shall be filled by the council at its next meeting for the balance of the unexpired term. Such council shall have all the powers and be subject to all the liabilities and perform all the duties of a separate board of fire commissioners, as prescribed in section 10-1000 of this article, except subdivisions two, three, four and eight and the fixing of compensation under subdivisions five and seven of such section, and as to the provisions of such

subdivisions such council shall only recommend to the board of trustees of the village. A majority of the members of such council constitute a quorum, and may make and prescribe by-laws for the proper management of the affairs and the disposition of the funds of the fire department, may call meetings of the members, and designate one or more days in each year for public exercise, inspection and review.

**§ 10-1016 Annual meeting of fire department.** The members of the several companies constituting the fire department shall hold an annual meeting at such time and place as the council may direct.

**§ 10-1018 Duties of chief and assistants.** The chief shall be president of the council and of the meetings of the fire department. He shall, under the direction of a separate board of fire commissioners, if any, have exclusive control of the members at all fires, inspections and reviews, the supervision of the engines, hose and other apparatus owned by the village for the prevention or extinguishment of fires, of all property owned by the fire department, and of all officers and employees thereof elected or employed by the council or by a separate board of fire commissioners, if any. He shall, whenever required by the board of fire commissioners, report to the board the condition of the property of the department and such other information respecting the department as may be required. He shall hold the members, officers and employees of the department strictly to account for neglect of duty, and may, in a village in which separate fire commissioners are not appointed, suspend or discharge them at any time, subject to the approval of two-thirds of the members of the council at the next meeting. He shall, upon application, and if authorized by the council, or a separate board of fire commissioners, if any, issue through the secretary of the fire department a certificate of the time of service of a member of the fire department, and shall give to each officer of the department immediately after his election a certificate thereof countersigned by the secretary. In case of the inability or absence of the chief, the first assistant and in case of the absence or inability of both the chief and first assistant, the second assistant, and in the absence of the second

assistant, the third assistant, if any, and in the absence of the third assistant, if any, the fourth assistant, if any, shall perform the duties and have all the powers of the chief.

**§ 10-1020 Abolition of fire department; employment of paid firefighters.** The board of trustees of any village may, by resolution, abolish, in whole or in part, the fire department in such village, which action of the board of trustees shall be subject to a permissive referendum as defined in this chapter; if such fire department is abolished, all the money and property of such department shall be turned over by the officers of such department or by the fire commissioners to the board of trustees within ten days after service of notice on such officers or commissioners of the action of the board of trustees. Or, the board of trustees may, by resolution, determine that one or more firefighters shall be employed to act with such voluntary department and may fix the salary of such firefighters; the board of trustees may also determine that such paid firefighters shall have charge of all apparatus and other equipment and that the voluntary department shall act under the orders of such paid firefighter or firefighters.

**§ 10-1022 Fire inspection in contract areas.** The chief officer of the fire department or fire company which is to furnish fire protection service to a village under a contract for fire protection may inspect (1) any public building and (2) with the consent of the owner, any privately-owned building, located within the village or the portion thereof required to be protected under such contract, for fire hazards, or such chief officer may delegate such power of inspection to an officer or member of such department or company.

The term "building," as used in this section does not include a multiple dwelling which may be inspected by such fire department or company under and pursuant to the provisions of subdivision four of section three hundred three of the multiple residence law.

The failure of any such officer or member to discover and properly

report any such fire hazards or his or her neglect or omission to perform such duties shall not subject him or her, his or her fire department, fire company, or the city, village, fire district or town in which or of which he or she is a firefighter to any civil or other liability. Any such fire officer or member shall not be liable civilly for any act or acts done by him or her as a firefighter in the performance of such duties, except for wilful negligence or malfeasance, but the provisions of this section shall not relieve any such city, village, fire district, town, or fire company from liability, if any, for the negligent or wrongful acts of the officer or member in the actual performance of such duty.

## ARTICLE 11

### **WATER**

Section 11-1100 Contracts for water supply.

11-1102 Resolution for establishment of water works.

11-1104 Acquisition of existing system.

11-1106 Establishment of water works.

11-1108 Supervision and extension of system.

11-1110 Water pipes in highways outside of village.

11-1112 Connection with mains.

11-1114 Alternative provision for connections with mains.

11-1116 Rules, regulations, and local laws.

11-1118 Establishment of water rents.

11-1120 Supplying water outside of corporate limits.

11-1122 Outside extension of mains.

11-1124 Contracts for purchase and sale of water.

11-1126 Water mains connecting with reservoirs of New York city.

11-1128 Sale or lease of water supply and distribution system.

**§ 11-1100 Contracts for water supply.** The board of water commissioners may contract, in the name of the village, with an individual or corporation for supplying water to the village for extinguishing fires or for other public purposes; but such contracts shall not be made for a longer period than forty years. The amount of such contract shall be

paid in installments in accordance with the resolution of the board authorizing same.

**§ 11-1102 Resolution for establishment of water works.** The board of trustees of any village may by resolution determine upon the establishment of a system of water works for supplying the village and its inhabitants with water, or for the acquisition of an existing private system, at an expense in either case not exceeding the sum stated in the resolution.

**§ 11-1104. Acquisition of existing system.** If a resolution be adopted for the acquisition of an existing system of water works, the board of water commissioners may purchase the same at a price not exceeding the sum specified therein. If the board cannot agree with the owners of the system for its purchase, proceedings may be taken to acquire the same pursuant to the provisions of the eminent domain procedure law.

**§ 11-1106 Establishment of water works.** If a resolution to establish a system of water works be adopted, the board of water commissioners shall proceed to construct such system accordingly. It shall prepare a map and plans showing the sources of water supply and a description of the lands, streams, water or water rights to be acquired therefor, and the mode of constructing the proposed water works and the location thereof, including reservoirs, mains, distributing pipes and hydrants. The water commissioners, their agents, servants and employees, may enter upon any lands for the purpose of preparing such map and plans. The map and plans shall be filed with the village clerk, and a certified copy of such map shall also be filed in the county clerk's office of each county in which any of the lands are situated. The board of water commissioners may acquire, in the name of the village, by purchase, if it can agree with the owners, or otherwise by condemnation, any land, streams, water or water rights necessary for such system. The board may amend the map and plans at any time and such amended map shall be filed in the office of the village clerk, and of the county clerk, in like manner as the

original. The board may construct such water system by contract or otherwise, and may appoint, and at pleasure remove, a superintendent to take charge of the system, and may fix his compensation or may, by resolution, provide that any other village officer shall also act as the superintendent of water.

**§ 11-1108 Supervision and extension of system.** A system of water works acquired or established under this article shall be under the control and supervision of the board of water commissioners. The board shall keep it in repair and may, from time to time, extend the mains or distributing pipes within the village, replace obsolete, inadequate, damaged, destroyed or worn-out apparatus and equipment, improve or reconstruct existing facilities and appurtenances and acquire or construct additional facilities. The board of water commissioners may determine that the cost of extending the mains or distributing pipes, as herein provided, shall be borne wholly by the village, or wholly by the owners of land benefited or abutting on the street on which said work is done, or partly at the expense of each. If such expense or any part thereof is to be assessed upon adjoining land, the board of water commissioners may apportion it upon the land and assess the same as a whole or by installments. Such assessment and the collection thereof shall be made pursuant to the provisions of article five of this chapter.

**§ 11-1110 Water pipes in highways outside of village.** The board of water commissioners of a village may cause water pipes to be laid, relaid or repaired under any public highway in a county in which any part of such village is situated, or in an adjoining county, for the purpose of introducing water into and through the village; and shall cause the surface of such highway to be restored to its usual condition; and said board of water commissioners may also acquire, take over, and accept from any individual or corporation, gratuitously, or at a nominal consideration any water pipes which have been heretofore laid under any of such public highways in a county in which any part of such village is situated, or in an adjoining county, for the purpose of continuing the

supply of water or for the purpose of introducing water into and through such territory, outside of such village, where such water pipes are situated, and supplying the inhabitants thereof with water.

**§ 11-1112 Connections with mains.** 1. Supply pipes, connecting with mains and used by private owners or occupants, shall be laid and kept in repair at their expense, as in this section or in other sections of this act provided. Such pipes can only be connected with the mains by the permission and under the direction of the board of water commissioners and in accordance with their rules and regulations. A member of the board or its authorized agents may at any time enter a building or upon the premises where there is a supply pipe or pipes, and make necessary examinations or repairs.

2. The board of water commissioners may cause a notice to be published in the official newspaper of the village, requiring the owners or occupants of any and all property fronting or abutting on any street or portion thereof in or upon which any public water main or distributing pipe is about to be laid or is being laid or has been laid by the said board to make and lay connection pipes to and from the water mains or distributing pipes in said street or any portion thereof in front of each separate piece of property or to repair such connection pipes to and from the water mains or distributing pipes in said street or any portion thereof in front of or upon each separate piece of property and where directed by said board, within such time and in such manner and under such inspection as said board shall prescribe, and whenever any such owner or occupant shall have made default in making such connections with said water mains or distributing pipes opposite the lands and premises owned or occupied by him or whenever such owner or occupant shall have made default in repairing supply pipes connecting with mains opposite or upon the land and premises owned or occupied by him as directed in and required by said printed notice therefor in the manner and within the time specified, the said board shall have power and authority to so make, extend and complete the same and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the trustees of the

village upon each separate piece of property opposite or upon which the same shall be done and completed and shall be a lien and liens on said premises and lots of land respectively, and the same shall be collected in the same manner as other local assessments or assessments for local improvements as provided by the special charter of the village or the general village laws of the state as the case may be, and when so collected the amount thereof shall be paid into the water fund of the village. Nothing herein contained shall be construed to prevent the financing, in whole or in part, pursuant to the local finance law, of any expense incurred by the village pursuant to this section.

3. If the notice published by the board of water commissioners, pursuant to the provisions of subdivision two of this section, contains a statement that the failure to comply with such notice shall cause the board of water commissioners to discontinue the water supply to the property concerned, the board of water commissioners may, after mailing a copy of the notice to the owner of the property at his last known address, discontinue the water supply within thirty days after the time for making the repairs which was set forth in the notice that had elapsed.

**§ 11-1114 Alternative provision for connections with mains.** The board of commissioners shall have authority to determine the manner and conditions under which said supply pipes shall be installed and shall have authority to install and maintain said supply pipes and to adopt such uniform service charges as they deem just for each supply pipe so connected with the mains or distributing pipes and extending to the street or right of way lines, regardless of the location of said water mains or distribution pipe within said streets or rights of way lines and regardless of the soil, rock or other physical conditions within said streets or rights of way lines.

Such uniform service charge as the board may adopt shall be any percentage of the cost up to but not exceeding the average actual cost of installing such supply pipes as before described. Such percentage of the average actual cost of installing such supply pipes as may not be

charged shall be borne by the village.

The said board shall have authority to apply such percentage of the average actual cost of installing such supply pipes as the village might pay, to such other supply pipe connection for the same property or properties as in the judgment of the board might be advisable.

The board of water commissioners may cause a notice to be published in the official newspaper of the village and if so published, shall serve on the owners or occupants a printed notice notifying such owners and occupants of any and all property fronting or abutting on any street, right of way or portion thereof, in or upon which any public water main or distributing pipe is about to be laid or is being laid or has been laid by said board, that connection pipes to and from the water mains or distribution pipes in said street, right of way or any portion thereof in front of each separate piece of property and where directed by said board, shall be installed by said board in such manner and under such conditions and at such prices as said board shall prescribe.

The said board shall have authority to assess the actual cost of such connection pipes or such service charge as may be determined and the actual cost of maintaining the same upon the property so connected. Should the owner of said property so connected fail to pay the cost or charge thereof, the said board shall have authority to add such cost or charge to the annual tax on such property and collect the same, therewith, and when so collected, the amount thereof shall be paid into the water fund of the village. Nothing herein contained shall be construed to prevent the financing, in whole or in part, pursuant to the local finance law, of any expense incurred by the village pursuant to this section.

**§ 11-1116 Rules, regulations, and local laws.** The board of water commissioners may adopt rules, regulations and local laws not inconsistent with law, for enforcing the collection of water rents and relating to the use of the water, and may enforce observance thereof by cutting off the supply of water.

**§ 11-1118 Establishment of water rents.** The board of water commissioners shall establish a scale of rents for use of water, to be called "water rents", and to be paid at such times and in such manner as the board may prescribe. The board may provide that a discount shall be allowed for the prompt payment of water rents within the time required by the board for the payment thereof. Such rents, together with the amount of any penalty prescribed by the board and due for non-payment of such rents within a time prescribed by the board, shall be a lien on the real property upon which or in connection with which the water is used, and such a lien is prior and superior to every other lien or claim, except the lien of an existing tax. Such board shall certify to the village clerk the amounts of all such unpaid water rents, including penalties computed to the first day of the month following the month in which the fiscal year commences, with a description of the real property affected thereby. The village clerk shall present such certificate to the board of trustees and shall enter the same or an abstract thereof in the minutes of the meeting. The board of trustees shall include such amounts in the annual tax levy and shall levy the same upon the real property in default. Whenever an unpaid water rent shall be included in the annual village tax levy, as above provided, the water fund shall be credited with the amount of the unpaid rent, including penalties, and the amount so levied, when collected, shall be paid into the general fund.

**§ 11-1120 Supplying water outside of corporate limits.** The board of water commissioners may sell to a corporation, individual or water district outside the village the right to make connections with the mains or reservoirs of such village for the purpose of drawing water therefrom and fix the prices and conditions therefor. The board of water commissioners of any village may contract with the state of New York or with the state authority having control and supervision of any state institution to furnish water to such state or state institution either within or without the corporate limits of said village upon such conditions and conferring such powers in the state or such state

authority and for such compensation as said board of water commissioners and the state of New York or such state authority may agree. If the mains are or shall be laid in or through another municipal corporation not having a public system of water works, the board of water commissioners may itself lay additional pipes for the purpose of distributing water from such mains, and shall have the same rights in the streets or highways of such other municipal corporation as if the principal system were established therein. The board shall not sell nor permit the use of water under this section if thereby the supply for the village or its inhabitants will be insufficient.

**§ 11-1122 Outside extension of mains.** The board of trustees may, by resolution, determine to extend water mains outside the village. Such resolution shall contain a general description of the proposed extension and the estimated expense thereof and the amount thereof, if any, to be expended by the village. If the resolution be adopted, the board of water commissioners shall make the extension accordingly. If such extension is made, the board of water commissioners shall adopt rules, regulations and rates to apply to all consumers outside of the village.

**§ 11-1124 Contracts for purchase and sale of water.** 1. The board of water commissioners may contract with the town board on behalf of the town or a water supply, fire alarm or fire protection district thereof, or with the board of trustees of a village or the board of fire commissioners of a fire district, respectively, to furnish water for the extinguishment of fires, including the furnishing, erection, maintenance, care and replacement of fire hydrants, the erection and maintenance of markers therefor, and the removal of snow and ice to provide access thereto, or for sanitary or other public purposes, for any period not exceeding ten years. The amount payable each year under such a contract shall be raised as a part of the expenses of such town or water supply, fire alarm or fire protection district thereof, village or fire district, and paid to the treasurer of the village owning such system of water works. Nothing herein contained shall be deemed to alter or remove any of the limitations, restrictions or procedural

requirements provided in sections one hundred eighty-four-a and one hundred eighty-four-b of the town law.

2. The board of water commissioners of any village maintaining its own water distribution system may contract in the name of such village with any public corporation or improvement district which possesses the power to sell a supply of water, for the purpose of purchasing all or any portion of the water supply of such village from such public corporation or improvement district for such period as may be deemed necessary, but not in excess of forty years. The term "public corporation" as used in this subdivision shall mean a public corporation as defined in the general corporations law and also any joint water works corporation formed under the provisions of chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, as amended.

**§ 11-1126 Water mains connecting with reservoirs of New York city.** A proposition may be submitted at a village election to authorize any incorporated village of the state of New York to contract with the city of New York to take and receive from any of the reservoirs, aqueducts, conduits, streams or pipes of the city of New York, including any water supply, reservoir, works, et cetera, for the supply of any public institution of said city, a supply of water for the uses and purposes of the said village, on such terms, conditions and stipulations as such village and city may deem necessary and to that end such village is authorized and empowered to lay the necessary mains and pipes to the source of supply, valves, hydrants, supply pipes, and other necessary appurtenances for the use of said water, including its purification, without the consent of any board, officer, bureau, or department of the state, or any subdivision thereof, and to issue its bonds to pay therefor. The connections with said reservoirs, aqueducts, conduits, streams or pipes shall be made at the expense of such village, and such village shall pay to the city of New York water charges or rates in the same amounts as are charged by the city of New York to persons using water in that city. Any such village desiring to take and receive water under the provisions of this section shall make application to the proper officer in charge of the water supply of the city of New York in

writing, stating the place and manner in which it is proposed to make said connections, which said officer in charge of the water supply of the city of New York shall have exclusive jurisdiction in the premises, to the exclusion of any other board, officer, bureau or department of the state or any subdivision thereof. Provided said city agrees to sell and said village agrees to purchase water, it shall be the duty of the said officer to grant a permit or authorization for the said connections, under reasonable rules and regulations, including the installation of proper meters, or other devices for ascertaining the quantity of water thus taken.

**§ 11-1128 Sale or lease of water supply and distribution system.**

Notwithstanding the provisions of any other law, general or special, a village may (1) sell or lease its water supply and distribution system, 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 or (2) sell, transfer or lease properties constituting its water supply and distribution system, or any part thereof, for a fair consideration, to any person or public corporation for any use other than the supply or distribution of water for potable purposes upon a determination by the board of trustees of the village that the properties to be sold, transferred or leased are no longer necessary for water supply or other village purposes. The proceeds of such sale, transfer or lease shall be deposited in a reserve fund established for the purpose of retiring outstanding obligations issued by the village 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 village purpose.

**ARTICLE 12**

**LIGHT**

Section 12-1200 Contracts for lighting.

12-1202 Establishment of lighting system.

12-1204 Supervision and extension of system.

12-1206 Rules and regulations.

12-1208 Establishment of light rents.

**§ 12-1200 Contracts for lighting.** The board of light commissioners may contract, for a period not to exceed ten years, in the name of the village, with an individual or corporation, for lighting the streets, public grounds and public buildings of the village by gas, electricity or other substance.

**§ 12-1202 Establishment of lighting system.** The board of trustees may, by resolution, provide for the establishment of a system for supplying the village and its inhabitants with light by any approved method, or for the acquisition of an existing private system, at an expense in either case not exceeding the sum stated in the resolution.

**§ 12-1204 Supervision and extension of system.** The lighting system acquired or established under this article shall be under the control and supervision of the board of light commissioners. The board shall keep it in repair and shall have authority to purchase such supplies and materials as may be needed for the operation and maintenance of such system for periods not exceeding one year. Such board may, from time to time extend, alter or reconstruct such system and may use therefor surplus funds it has on hand. However, nothing contained in this section shall be construed to prevent the village from financing, in whole or in part, expenditures for any such improvements pursuant to the local finance law. Such system may with the permission and approval of the public service commission be so extended, altered or reconstructed outside the village wherever franchises are first obtained from the local authorities. If such system shall be so extended, altered or reconstructed outside of a village into a town or a lighting district thereof, the board of light commissioners of the village may contract

with the town board of such town for lighting the streets, highways, public grounds and public buildings of such town or lighting district, in pursuance of the provisions of article twelve of the town law, which shall be applicable to such contract and to the levying of a tax for the payment of the amounts which shall be payable thereunder to the treasurer of the village. Wherever such system shall be so extended, altered or reconstructed outside of a village, occupants of premises adjacent to such extended, altered or reconstructed system outside of the village shall be entitled to be supplied with light therefrom under such conditions and at such rates as the board of light commissioners shall determine.

**§ 12-1206 Rules and regulations.** The board of light commissioners may adopt rules and regulations, not inconsistent with law, for enforcing the collection of light rents and relating to the use of light, and may enforce observance thereto by cutting off the supply of light.

**§ 12-1208 Establishment of light rents.** The board of light commissioners shall establish a scale of rents for the use of light, to be called "light rents" and to be paid at such times and in such manner as the board may prescribe.

## ARTICLE 13

### SELF-SUPPORTING IMPROVEMENTS

Section 13-1300 Definitions.

13-1302 Acquisition or establishment of self-supporting improvements.

13-1304 Use of self-supporting improvements.

13-1306 Charge for use of self-supporting improvements.

**§ 13-1300 Definitions.** As used in this article:

The term, "self-supporting improvement" shall mean any recreational

facility, and parking areas in connection therewith, established pursuant to this article from which revenues are obtained by the imposition and collection of rates, fees, tolls or admissions.

The term "charges" shall mean any fees, tolls, rates or admissions.

**§ 13-1302 Acquisition or establishment of self-supporting improvements.** The board of trustees of any village may, by local law, provide for the acquisition, construction, lease or purchase of any self-supporting improvement, or may establish any existing recreational facility, and parking areas in connection therewith, as a self-supporting improvement, pursuant to the provisions of this article.

**§ 13-1304 Use of self-supporting improvements.** The board of trustees of any village may, by local law, rule, or regulation after a public hearing, held on notice, limit the use of such self-supporting improvement to residents of the village and/or limit the number of persons who may be permitted to use any self-supporting improvement at any time to the number of users which such board of trustees shall find such self-supporting improvement may efficiently and economically serve or accommodate and limit admission or use to the persons applying therefor in the order in which applications for admission are made.

**§ 13-1306 Charges for use of self-supporting improvements.** The board of trustees of any village may by local law, rule, or regulation after a public hearing held on notice, held on notice, establish or revise charges for the use or enjoyment of self-supporting improvement. Such board of trustees shall establish charges for the use or enjoyment of any such improvement for a daily, hourly or single use of such improvement. In addition to such daily, hourly or single use charges, the board of trustees of any such village may establish weekly, seasonal or annual charges for the use or enjoyment of any self-supporting improvement. Applications for weekly, seasonal or annual permits to use such self-supporting improvement shall be made on forms supplied by the

officer or employee placed in charge thereof by the board of trustees of the village and the charges therefor shall be paid upon the issuance of such permits. Such charges shall be used only for the purpose of operating, maintaining and improving such self-supporting improvement, including reserves and the payment of principal and interest on any bonds, notes or other obligations issued for the acquisition, construction, lease, purchase, improvement or reconstruction of any such self-supporting improvement.

## ARTICLE 14

### SEWERS

Section 14-1400 Establishment of sewerage system.

14-1402 Extension of sewerage systems beyond village limits and acquisition of property therefor.

14-1404 Use by the state, individuals and corporations outside corporate limits.

14-1406 Construction of a sewerage system at expense of village.

14-1408 Establishment or enlargement of sewage treatment plant.

14-1410 Construction of sewerage system at joint expense of village and of property benefited.

14-1414 Contracts for construction of system.

14-1416 Apportionment of local assessment.

14-1418 Appeal from apportionment.

14-1420 Hearing of appeal.

14-1422 Reapportionment.

14-1424 Procedure by new commissioners.

14-1426 Fees of commissioners.

14-1428 Expense of construction; how raised.

14-1430 Tax for unpaid assessments.

14-1432 Levy of taxes and assessments to pay bonds issued for a sewerage system.

14-1434 Assessments from year to year to pay bond maturities.

14-1436 Contracts with other municipalities, sewer districts, et cetera.

14-1438 Sewer connections.

**§ 14-1400 Establishment of sewerage system.** The board of trustees of any village may, upon its own motion or shall upon the petition of twenty five owners of real property within the village, according to the last completed village assessment roll, cause a map and plan to be prepared for a complete sewerage system for the village. The board of trustees may establish, extend and maintain a sewerage system, including laterals, therein in accordance with the provisions of this chapter, and may, as provided by this chapter, abolish an existing sewer or wastewater disposal district created under the town, county or general district law, coterminous with or wholly included in the limits of the village, and use the sewerage system of such abolished district as a complete village sewerage system or as a part or extension of any existing village sewerage system. Before taking any proceeding for the construction of a sewerage system or any part thereof the board, at the expense of the village, shall, unless such map and plan have been heretofore officially approved by the state commissioner of health and copies filed in the state department of health and in the office of the village clerk, cause a map and plan of a permanent sewerage system for such village to be made, with plans and specifications for sewage treatment or disposal works. It may also include any existing sewerage or private on-site wastewater disposal system in the village, which on examination by the village engineer shall be found feasible and proper to incorporate or include in the proposed system. Such map and plan shall be comprehensive and shall cover all portions of the village, but the village may construct the whole of the said system or may temporarily omit any portion thereof until such portions may be necessary, subject to the approval of such omission by the state commissioner of health as hereinafter provided. Such map and plan shall be submitted to the state commissioner of health for his approval, and if approved shall be filed in the office of the state commissioner of health. A copy thereof shall also be filed in the office of the village clerk. The map and plan may be amended, with the approval of the state commissioner of health, and when so amended and approved shall be filed in the same offices as the original. No work of any kind shall be done on or for the construction, extension, reconstruction, removal or modification of any system of sewerage or of any part thereof until a

map and plan covering the entire system shall first have been duly approved and filed as above provided, and in the execution of the construction, extension, reconstruction, removal or modification of any system of sewerage or of any part thereof, no deviations from the plans as finally approved and filed shall be made until plans or descriptions adequately showing such deviations are first approved and filed as above provided. Whenever the board of trustees of the village shall deem it desirable to the interests of the village that a portion of the permanent general system of sewers, private on-site wastewater disposal systems and sewage disposal thereof may be temporarily omitted or deferred, it shall certify that fact in writing to the state commissioner of health, designating by a map or otherwise the portions of the system to be omitted, or the portion not to be omitted, and on receipt of the same the state commissioner of health may approve of such temporary omission and shall certify his determination to the board of trustees of the village. The term "sewerage system" as used in this article shall be understood to mean a complete system for the removal, treatment or disposal of sewage or wastewater, including private on-site wastewater disposal systems. The village board of trustees is authorized to establish and impose sewer rents pursuant to the provisions of article fourteen-f of the general municipal law.

**§ 14-1402 Extension of sewerage systems beyond village limits and acquisition of property therefor.** The board of sewer commissioners of a village may construct or extend the sewerage system without the village limits and may construct a sewage disposal plant without such village and acquire land for such purposes. If such commissioners are unable to agree with the property owners for the purchase of real property necessary for the construction or extension of the sewerage system, they may acquire the same by condemnation proceedings, whether it be necessary to acquire the fee or an easement for a right of way therein, and whether the property and easements necessary to be so acquired are within or without the village limits. But no such sewerage system or sewage disposal plant shall be constructed or extended by a village without its limits into another town, village or a city without the consent of the board of trustees, town board, common council or other

similar legislative body of such town, village or city.

**§ 14-1404 Use by the state, individuals and corporations outside corporate limits.** The board of sewer commissioners may sell to a corporation, or to an individual, the right to make connection with its sewerage system for the purpose of discharging sewage or wastewater therein from outside the village limits, and fix the term, consideration and conditions therefor. The board shall not sell nor permit the use of its sewerage system under this section if thereby such system will be rendered inadequate for the village or its inhabitants. The term "corporation" shall mean a corporation as defined in section one hundred two of the business corporation law. The board of sewer commissioners of any village 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 village, to provide sewerage and sewage disposal facilities for the conveyance, treatment and disposal of the sewage or wastewater of such state or state institution either within or without the corporate limit of said village 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. The board of sewer commissioners of any village 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 or wastewater of such federal institution or installation either within or without the corporate limits of the village 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.

**§ 14-1406 Construction of a sewerage system at expense of village.**

The board of trustees of any village may, by resolution adopted at a regular meeting, determine upon the construction of the whole or any part of the sewerage system at the expense of the village. The resolution shall describe the portion of the system proposed to be so constructed, and shall also contain a statement of the estimated maximum cost thereof.

**§ 14-1408 Establishment or enlargement of sewage treatment plant.** The board of trustees of any village may establish a sewage treatment plant or enlarge or remodel an existing sewage treatment plant at the expense of the village by resolution adopted at a regular meeting. The resolution shall state the maximum amount to be expended for such work.

**§ 14-1410 Construction of sewerage system at joint expense of village and of property benefited.** The board of trustees of any village may, by resolution adopted at a regular meeting, determine upon the construction of the whole or any part of the sewerage system at the joint expense of the village and of the property benefited. The resolution shall describe the portion of the system as a general village charge or as a local assessment on property benefited or proposed to be so constructed, shall contain a statement of the estimated maximum cost thereof, and also, if applicable, of the proportion of the expense to be assessed upon the village at large, and the aggregate proportion to be assessed upon the property benefited. If the resolution be adopted, such aggregate proportion shall be equitably adjusted with reference to the benefits to be derived therefrom.

**§ 14-1414 Contracts for construction of system.** The board of sewer commissioners of a village authorized to construct the whole or any part of a sewerage system shall provide for the construction thereof, either under an entire contract, or in parts or sections, as the board may determine. All contracts shall be let to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law. No contract shall be made by which

a greater amount shall be agreed to be paid than the maximum stated in the resolution or in the petition for the construction of such sewerage system. Nothing herein contained shall make it unlawful for the village authorities to make extensions to sewerage systems or to construct additional sewerage systems through or by the officers or employees of a village and authority is hereby granted to all villages to extend sewerage systems and to construct new sewerage systems by village employees under the direction of the superintendent of public works, street commissioner or similar officer, when authorized by resolution of the board of trustees and when in accordance with plans approved by the state department of health.

**§ 14-1416 Apportionment of local assessment.** If the whole or any part of the expense of constructing a sewerage system is to be assessed upon the lands benefited, the board of sewer commissioners shall prepare and file in the office of the village clerk a map and plan of the proposed area of local assessment. Such expense shall thereupon be apportioned upon the lands within such area in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom, and the ratio of such benefit shall be established. After making such apportionment the board shall serve upon each land owner a notice thereof and of the filing of such map and plan, and that at a specified time and place a hearing will be had to consider and review the same. The board shall meet at the time and place specified and hear objections to such apportionment. It may modify and correct the same, or exclude land from the area of local assessment. The board of sewer commissioners, upon the completion of such apportionment, shall file the same in the office of the village clerk. The apportionment shall be deemed final and conclusive, unless an appeal be taken therefrom within fifteen days after the filing thereof.

**§ 14-1418 Appeal from apportionment.** A person aggrieved by an apportionment may, within fifteen days after the filing thereof, appeal therefrom to the county court of a county in which any part of the village is situated. Such appeal shall be taken by a notice, stating the

grounds thereof, addressed to the board of sewer commissioners, and filed with the village clerk.

**§ 14-1420 Hearing of appeal.** Either party may bring on the appeal upon a notice of not less than ten nor more than twenty days. All appeals from the same apportionment must be consolidated and heard as one appeal. The county court may affirm or reverse the apportionment. If it be reversed upon the ground that it is erroneous, unequal or inequitable, the court shall by the order of reversal appoint three disinterested freeholders of the village as commissioners to make a new apportionment, and no appeal shall be allowed from such order.

**§ 14-1422 Reapportionment.** A reapportionment shall be made in the following cases:

1. By the commissioners appointed by the county court, where the original apportionment is reversed on the ground that it is erroneous, unequal or inequitable.

2. By the board of sewer commissioners where the original apportionment is reversed upon any other ground. A reapportionment under this subdivision shall be made in like manner as the original.

**§ 14-1424 Procedure by new commissioners.** The commissioners appointed by the county court shall give notice of the time and place at which they will meet to make such reapportionment, and shall serve notice thereof at least ten days before such meeting upon each owner of land within the area of local assessment as finally fixed by the board of sewer commissioners. They shall meet at the time and place specified and make such reapportionment in the manner herein prescribed for the board of sewer commissioners. They shall file such reapportionment in the office of the village clerk, and it shall be final and conclusive.

**§ 14-1426 Fees of commissioners.** Each commissioner appointed by the county court is entitled to five dollars for each day necessarily spent in making such reapportionment, besides his actual necessary expenses. Such fees and expenses are a charge against the village, and must be audited by the board of trustees. The amount thereof shall be added to the portion of the expense of constructing such sewerage system which is to be assessed against property specially benefited.

**§ 14-1428 Expense of construction; how raised.** The expense of constructing a sewerage system may be raised in an entire amount or in smaller sums from time to time as the board of sewer commissioners may determine. If such expense or any part thereof is to be assessed upon property benefited, the board may assess the same, or the instalment to be raised, on the several benefited lots or parcels pursuant to the provisions of article twenty-two of this chapter. Nothing contained in this section shall be construed to prevent the financing of such expense, in whole or in part, pursuant to the local finance law.

**§ 14-1430 Tax for unpaid assessments.** The board of trustees shall include in the annual tax levy the principal or interest accruing during the same fiscal year upon bonds, notes or certificates of indebtedness issued on account of default in the payment of local assessments under this article, and shall levy the same upon the lots or parcels in default.

Such principal shall be apportioned among the lots or parcels in default so that the tax thereon will be the same as if an equal portion of the assessment were then to be paid. Interest on an unpaid assessment shall be added to such tax at the rate payable by the bond, note or certificate of indebtedness, which must be computed to the time when the principal or an instalment will become due; or if no principal will become due during the fiscal year, then the interest accruing during that year upon the assessment must be levied upon such lot or parcel.

**§ 14-1432 Levy of taxes and assessments to pay bonds issued for a sewerage system.** The board of trustees of any village which shall have heretofore issued or may hereafter issue bonds for the purpose of paying the cost of constructing in said village a sewerage system, whether including or not including trunk lines, outfall sewers, disposal plants or lateral sewers, or private on-site wastewater disposal systems may, notwithstanding that any part of the expense of constructing such sewerage system or private on-site wastewater disposal system has theretofore been assessed upon lands benefited, determine and order that any portion of such cost, not exceeding in amount the aggregate amount of such bonds then outstanding, shall be assessed upon the lands benefited by the construction of such sewerage system or private on-site wastewater disposal system in the manner provided in this section. Any such resolution shall determine the aggregate amount of such bonds which shall then be outstanding and unpaid and shall fix the portion of each installment of maturities of said bonds which is thereafter to be assessed upon lands benefited, in the manner provided in this section. Any such resolution shall be subject to a permissive referendum. Prior to the first day of May in each year the board of trustees shall compute the aggregate amount of the portion of the principal of said bonds, to become due during the ensuing fiscal year which is required by said resolution to be assessed upon the lands benefited, and also the interest on such portion of said bonds to become due during such fiscal year, and shall assess such amount on the lands within said village, in proportion as nearly as may be to the benefit which each lot or parcel will derive from the construction of said sewerage system. After making such apportionment, the board of trustees shall serve on the owner of each such lot or parcel of land a notice of the completion of such apportionment and that at a specified time and place a hearing will be held to consider and review the same.

The board of trustees shall meet at the time and place specified in such notice and hear objections to such apportionment, and may modify and correct the same. The board of trustees upon the completion and correction of such apportionment, shall forthwith file the same in the office of the village clerk, and shall give notice of the filing of such completed and corrected apportionment in the manner provided for by

section fourteen hundred ten of the real property tax law as to towns. The apportionment shall then be deemed final and conclusive, unless an appeal is taken therefrom as hereinafter provided within fifteen days after the filing thereof. The board of trustees shall, in the annual tax levy for such fiscal year, levy upon each such lot or parcel of land the sum so apportioned to such lot or parcel of land, and the amount so levied shall be collected in the same manner as other village taxes. In the event that any such resolution shall become effective, any lot or parcel of land assessed by any previous assessment or apportionment of any part of the cost of constructing such sewerage systems shall be freed from the lien of such former assessment or apportionment, except to the extent that any part of such cost so apportioned to such lot or parcel of land shall have been included in the annual tax levies of said village. The powers conferred by this section shall be in addition to the powers conferred by any other law, including any general or special law, and such powers may be exercised without regard to the restrictions contained in any other law other than the village law.

**§ 14-1434 Assessments from year to year to pay bond maturities.** Where a sewerage system to serve part of a village has been financed and constructed pursuant to a resolution of its board of trustees authorizing such improvement at the joint expense of such village, the United States of America and the lands benefited and determining the portion of such expense to be borne by such lands, and where such village has issued bonds maturing in annual installments over a period of fifteen or more years to pay such portion, and such board has adopted a resolution that the respective amounts of such installments and interest be assessed from year to year upon such lands, such amounts shall be so assessed and no part of such expense shall otherwise be or become a lien upon any such lands. Such board shall annually compute the amount necessary to pay such principal and interest due and to become due during the fiscal year and apportion and assess the same upon such lands in proportion as nearly as may be to the benefit which each parcel thereof will derive from the construction of such sewerage system. After making such apportionment such board shall give notice of the completion thereof and that at a specified time and place a hearing

will be held to consider and review the same. Such board shall meet at the time and place so specified and hear objections to such apportionment and modify, correct and file the same in the office of the village clerk whereupon the same shall be deemed final and conclusive unless, within fifteen days, an appeal is taken therefrom. Such board may cause any amount so assessed upon any such parcel to be collected in the manner provided by law for the collection of assessments for local improvement or cause the same to be included in an annual tax levy upon such parcel. An assessment heretofore made as provided herein shall be deemed valid for all purposes.

Where lateral sewers are constructed at the expense of the village and property benefited, as an addition to the sewerage system constructed with federal aid, special assessments may be levied for such laterals from year to year and the cost thereof apportioned as though said laterals had constituted a part of the original sewerage system constructed with federal aid. Nothing contained in this section shall be construed to prevent the financing of such expense, in whole or in part, pursuant to the local finance law.

**§ 14-1436 Contracts with other municipalities, sewer districts, et cetera.** The board of sewer commissioners may contract for the connection of the sewerage system thereof with the sewerage system of another village, or of a town, or city, or of a sewer district or wastewater disposal district established under the provisions of article twelve of the town law; or jointly with such other village or a town or city or sewer district or wastewater disposal district established as aforesaid, may construct, maintain, operate or use sewers, outlets or disposal works or private on-site wastewater disposal systems; or may contract with any such other village, or town, or city, or sewer district or wastewater disposal district established as aforesaid for the right to construct and maintain through any such other village, town or city, or sewer district or wastewater disposal district established as aforesaid, an outlet sewer, including the right to acquire real property for such sewer outlet, which thereupon may be acquired either at private sale or by condemnation as authorized by this act. No sewerage system of any

other village, town or sewer district or wastewater disposal district thereof, or city, shall be constructed in any village without the approval of the board of sewer commissioners of the village in which such sewerage system shall be constructed, and no such contract shall be made unless a resolution therefor be adopted by the trustees of the village constructing the sewerage system, stating the maximum expense.

**§ 14-1438 Sewer connections.** 1. The board of sewer commissioners may cause a notice to be published in the official newspaper of the village requiring the owners or occupants of any and all property fronting or abutting on any street or portion thereof in or upon which any public sewer is about to be laid or is being laid or has been laid by the said board to make and lay connection pipes to and from the sewer mains in said street or any portion thereof in front of each separate piece of property and where directed by said board, as in this section or in other sections of this act provided, within such time and in such manner and under such inspection as said board shall prescribe and whenever any such owner or occupant shall have made default in making such connections with said sewer mains opposite the lands and premises owned or occupied by him as directed in and required by said printed notice therefor in the manner and within the time specified, the said board shall have power and authority to so make, extend and complete the same to the property line of the lands and premises so owned or occupied opposite thereto and in front thereof and to connect the same with any existing connecting pipes in front thereof and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the trustees of the village upon each separate piece of property opposite which the same shall be done and completed and shall be a lien and liens on said premises and lots of land respectively, and the same shall be collected in the same manner as other local assessments or assessments for local improvements as provided by the special charter of the village or the general village laws of the state as the case may be, and when so collected the amount thereof shall be paid into the sewer fund of the village.

2. The board of sewer commissioners shall also have authority to

determine the manner and conditions under which said sewer laterals shall be installed and maintained and shall have authority to install and maintain said sewer laterals and to adopt such uniform service charges as they deem just for each sewer lateral so connected with the public sewer and extending to the street or right of way lines, regardless of the location of said public sewer within said streets or rights of way lines and regardless of the soil, rock or other physical conditions within said streets or rights of way lines. Notice shall be served pursuant to subdivision one of this section.

Such uniform service charge as the board may adopt shall be any percentage of the cost up to but not exceeding the average actual cost of installing such sewer laterals as before described. Such percentage of the average actual cost of installing such sewer laterals as may not be charged shall be borne by the village. Should the owner of property so connected default, the board shall act in the manner prescribed in subdivision one of this section.

The said board shall have authority to apply such percentage of the average actual cost of installing such sewer laterals as the village might pay, to such other sewer lateral connection for the same property or properties as in the judgment of the board might be advisable.

3. Nothing herein contained shall be construed to prevent the financing, in whole or in part, pursuant to the local finance law, of any expense incurred by the village pursuant to this section.

## **ARTICLE 15**

### **CEMETERIES**

Section 15-1500 Acquisition of lands for cemeteries.

15-1502 Division into lots; conveyances of lots.

15-1504 Rules and regulations.

15-1506 Assessment of lots.

15-1508 Abandonment of cemeteries.

15-1510 Cemetery and funeral home combinations.

**§ 15-1500. Acquisition of lands for cemeteries.** The board of cemetery commissioners of a village may, in behalf of the village, accept by gift, grant or devise thereto, land for one or more village cemeteries within the village, or wholly within five miles of the boundaries thereof. The board of trustees may, by unanimous vote, adopt a resolution to purchase for such purpose, any lands so located, which resolution must specify the maximum amount to be paid therefor and the mode of raising such amount; provided, however, that if the lands to be purchased are within the village and are to be used for park purposes such resolution may be adopted by majority vote. If the resolution be adopted, the board of cemetery commissioners may purchase such lands accordingly, or if unable to agree with the owners for the purchase thereof, may acquire the title thereto pursuant to the provisions of the eminent domain procedure law. All lands acquired by gift, grant, devise or purchase for a village cemetery shall be a part of the territory of the village, and upon the acquisition of same, a map and description thereof shall be filed in the office of the village clerk and if located outside of the village, in the office of the secretary of state.

**§ 15-1502 Division into lots; conveyances of lots.** The board of cemetery commissioners shall have the supervision and control of all village cemeteries. It shall cause the same to be divided into lots, and provide for the conveyance thereof to individuals for the sole purpose of interments, and upon the payment of the purchase-price of any lot, shall, in the name of the village, execute, acknowledge and deliver a conveyance to the purchaser thereof. The clerk of the village shall keep a record of the sale of each lot, its number, the date of sale and the name of the purchaser; and shall record each conveyance thereof. No sale, transfer or assignment of such lot or any interest therein subsequent to the sale by the village shall be valid, unless by an instrument in writing signed and duly acknowledged and recorded in the office of the village clerk. The clerk shall be entitled to the same fees as the county clerk for the recording of each conveyance.

**§ 15-1504 Rules and regulations.** The board of cemetery commissioners may adopt reasonable rules and regulations for:

1. The care, management and protection of the cemetery grounds.
2. The use, care and protection of lots in such cemeteries.
3. The conduct of persons within the cemetery grounds, and the exclusion of improper persons therefrom.
4. Regulating the dividing marks between the various lots and parts of lots in cemeteries and their size, shape and location.
5. Preventing or regulating monuments, effigies and structures within the same.
6. Regulating or preventing the introduction and growth of plants, trees and shrubs within such grounds.
7. The prevention of the burial in any lot or part of any lot of any person not entitled to be buried therein.

Such rules and regulations, when adopted, shall be printed and conspicuously posted in at least five places upon the cemetery grounds.

**§ 15-1506 Assessment of lots.** 1. The board of cemetery commissioners of any village shall have, in addition to the powers granted by section 15-1502 of this chapter, the power to assess the owners of lots in any cemetery in its respective village subject to its jurisdiction and control an amount not exceeding twelve dollars per year for the purpose of raising moneys to keep the lots in such cemetery in good and proper condition, and the trustees of each such village for that purpose shall have all the powers mentioned in section fourteen hundred one of the not-for-profit corporation law.

2. If the assessments so levied remain unpaid for a period of ten

years or more the amount thereof with interest shall be a lien on the unused portion of the lot which is subject to such assessment, and no portion of the lot shall be used by the owner thereof for burial purposes, while any such assessment remains unpaid.

3. If at the expiration of ten years from the date of the first assessment, any such assessment or interest thereon shall remain unpaid, the commission may sell the unused portion of such lot at public auction, on the cemetery grounds, providing a written notice stating the amount of such unpaid assessment and that such unused portion of such lot will be sold at a time therein to be specified, not less than thirty days from the date of the service of such notice, shall be personally served upon the owner of record or his successor in interest, or if personal service on such person cannot with due diligence be made, then such notice of sale shall be forwarded by registered mail securely wrapped and addressed to the last owner of record and also by posting such notice of sale in three conspicuous places located within the village where the cemetery is located. In the event that the village maintains a website, one of the posting requirements may be fulfilled by posting such information on the website. Said sale shall not be held within thirty days of the date of personal service or of mailing registered notice as the case may be. The surplus proceeds of sale remaining after paying all assessments, interest, costs and charges shall be set aside by the commissioners as a fund for the care and improvement of the portion of such lot that has been used for burial purposes.

**§ 15-1508 Abandonment of cemeteries.** a. Petition for removal of remains. The mayor of any village may submit a verified petition to a judge of a court of record seeking an order directing the removal of the remains of any deceased person or persons buried in a potter's field or any neglected or abandoned cemetery owned by the village in which no deceased person shall have been interred within twenty years, and directing their reinterment in a properly kept cemetery in the same county.

b. Contents of petition. The verified petition shall contain the following:

(1) Name of petitioner and a statement that petitioner is the mayor of the village in which the cemetery is located;

(2) Name of deceased person or persons whose remains are sought to be removed, if known;

(3) Name and location of cemetery in which interred and from which removal is asked to be made;

(4) Name and location of cemetery to which remains are desired to be removed and reinterred; and

(5) Facts showing reasons for such removal.

c. Order to show cause. The judge to whom such a petition is presented shall make an order to show cause, returnable before such judge at a time and place within the county not less than twenty days from the date of presentation, why the remains should not be removed and reinterred as provided in the petition.

d. Publication. The order to show cause shall provide for its publication in each week for two successive weeks in a newspaper, to be designated in the order, which is published nearest to the cemetery from which removal is to be made. Proof of publication shall be filed with the court.

e. Hearing. Any relative of the deceased person or persons or the officer of any cemetery in which the remains of the deceased person or persons were originally interred may oppose the granting of such an order.

f. Order. (1) If no objection is made, and upon the filing of proof of publication of the order to show cause, the judge shall make an order directing at village expense the removal of the remains of the deceased person or persons to the cemetery designated in the petition in which the remains are to be buried.

(2) If an objection is made, the judge shall make such order as the justice and equity of the application shall require.

(3) The petition and order shall be filed in the office of the clerk

of the county in which the remains of the deceased were originally interred, and a certified copy of the final order shall be served upon the cemetery to which the remains are to be removed prior to any removal.

g. Removal and resetting of headstone or monument. Any headstone or monument which marks the grave of the deceased person or persons shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made. Such headstone or monument need not be so removed and reset where the order provides for the purchase or erection of a new headstone or monument.

h. Expenses. The order shall provide the amount of expense of all removals and reinterment and resetting of the headstone or monument, including the expenses of proceedings under this section. All expenses shall be paid by the village whose mayor made the petition.

i. Care of reinterred remains. The expense for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the village whose mayor made the petition and shall be paid annually to the cemetery to which the remains were reinterred. Alternatively, the village may pay the cemetery to which the remains were removed an amount sufficient to provide perpetual care.

j. Report. Upon completion of the removal, reinterment and resetting of the headstone or monuments, the person or persons designated in the order as having charge of the removals and reinterments shall file a report in the office of the county clerk.

k. Use of lands. After remains have been removed and reinterred pursuant to this section, the lands where originally interred may be used for any village purposes and may be conveyed or disposed of in the same manner as other village lands.

**§ 15-1510 Cemetery and funeral home combinations.** 1. No village shall, directly or indirectly:

- (a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;
- (b) commingle funds used for cemetery purposes with a funeral entity;
- (c) direct or carry on its cemetery related business or affairs with a funeral entity;
- (d) authorize control of its cemetery related business or affairs by a funeral entity;
- (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (g) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

2. Only the provisions of paragraphs (a) and (b) of subdivision one of this section shall apply to villages with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

3. For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

## ARTICLE 16

### **REINCORPORATION**

Section 16-1600 Reincorporation of special village under this chapter.

16-1602 Notice and conduct of election.

16-1604 Certificate of election.

16-1606 Effect of reincorporation.

16-1608 Reincorporation of certain villages confirmed.

**§ 16-1600 Reincorporation of special village under this chapter.** A village incorporated by special law and subject to its provisions may be reincorporated under this chapter by adopting a proposition therefor. Such a proposition may be submitted at an annual election or at a special election to be called for that purpose.

The board of trustees of such village may, upon its own motion, and shall, upon the petition of twenty-five electors assessed upon the last assessment-roll of the village, cause to be submitted at a village election a proposition for such reincorporation. The ballots to be used at such an election may be written or printed, and shall contain the words "For the reincorporation of the village of (naming it) under the village law."

A proposition for the reincorporation of a village under this article shall not be submitted at a special election during the months of February or March.

**§ 16-1602 Notice and conduct of election.** If the proposition is to be submitted at an annual election, notice thereof shall be given by the board of trustees by posting notices in five public places in the village, and publishing the same in the official newspaper at least twenty days before such annual election. In the event that the village maintains a website, one of the posting requirements may be fulfilled by posting such information on the website. If it is to be submitted at a special election, notice of such election and of the submission of such proposition thereat, shall be given in the same manner and for the same time as for the submission of such a proposition at an annual election. Such a special election shall be held by the same officers and conducted and the result canvassed in the same manner as provided by law for an annual election in such village.

**§ 16-1604 Certificate of election.** The officers conducting such election shall make a certificate thereof, showing the whole number of votes cast upon such proposition, and the number in favor of and against it, and within twenty-four hours after the closing of the polls of such election, must file such certificate in the office of the village clerk. If the proposition be adopted the village clerk shall within ten days after the election file a certified copy of such certificate in the office of the clerk of each county in which any part of such village is situated, and also in the office of the secretary of state.

**§ 16-1606 Effect of reincorporation.** If the proposition be adopted, the reincorporation of the village under this chapter shall take effect immediately upon the filing of the certificate of election in the office of the village clerk and the secretary of state. From and after such filing such village shall be deemed incorporated under this chapter, and shall possess all the powers, enjoy all the privileges and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated thereunder. Such reincorporation shall not affect any action then pending or cause of action existing by or against such village, nor property rights thereof under the provisions of any law to which it was then subject, nor affect the validity of any lawful ordinance previously enacted. The officers of the village in office when the reincorporation takes effect shall continue to hold their offices until the end of their term or until their successors shall have qualified. The term of office of an officer elected at an annual election, at which the proposition to reincorporate was adopted, shall not be affected by such reincorporation and such term shall begin at noon on the first Monday in the month following such election and continue for a full term expiring on the first Monday in the month following the election at which their successors shall have been elected.

**§ 16-1608 Reincorporation of certain villages confirmed.** All villages

in the state incorporated by special laws and subject to their provisions which have attempted to reincorporate under the provisions of chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven and the acts amendatory thereof, between July first, eighteen hundred and ninety-seven and January first, nineteen hundred and four, or under the provisions of chapter sixty-four of the laws of nineteen hundred and nine to the date of the adoption of this chapter, and which have held their elections, elected their officers and conducted their municipal affairs under or agreeably or substantially under or substantially agreeable to the provisions of said law for the period of one year, or longer are hereby declared to be regularly and duly incorporated villages under this chapter; and, so far as any defects, omissions or irregularities to the proceedings for such reincorporation affect their annual and special elections and meetings and their acts and proceedings at such elections and meetings and the election of their mayors and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, their said annual and special elections and meetings and the election of their mayors and trustees and their other village officers and all acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, are hereby declared to be legal and valid; and so far as any defects, omissions or irregularities in their proceedings for such reincorporation affect the title to the offices held by their mayors, trustees and other officers, their said mayors, trustees and other officers are hereby declared to be legally holding and entitled to their offices de jure until the expiration thereof as provided by this chapter.

This section shall not affect any action or proceeding now pending in any court.

#### ARTICLE 17

#### **PROVISIONS APPLICABLE TO A VILLAGE EMBRACING THE ENTIRE TERRITORY OF A TOWN**

Section 17-1700      Application.

17-1702      Effect of alteration of town boundaries.

- 17-1703 Filling of village offices, election of officers.
- 17-1703-a Filling of town offices; election of officers.
- 17-1704 Succession of powers and duties.
- 17-1706 Succession of powers and duties relating to public bridges and highways.
- 17-1708 Trustees as town board.
- 17-1710 Bond or undertaking by town and village officer.
- 17-1712 Water districts.
- 17-1714 Establishment and maintenance of hospitals.
- 17-1716 Lamp or street lighting districts.
- 17-1718 Sewer districts.
- 17-1719 Wastewater disposal districts.
- 17-1720 Fire districts; preservation of fire districts, fire protection districts and fire alarm districts.
- 17-1722 Assessment-roll; completion; notice, tax.
- 17-1722-a Single assessment roll for both town and village purposes.
- 17-1724 Taxation and assessment.
- 17-1726 Obligations and property.
- 17-1728 Town budgets.
- 17-1729 Change in fiscal years.
- 17-1730 Officers.
- 17-1732 Trees and shrubs and shade tree commission.
- 17-1734 Town assessment-roll official.
- 17-1735 Town legislation to carry over.

**§ 17-1700 Application.** This article shall apply to any village which has been or may hereafter be incorporated to embrace the entire territory of a town, to any village which has annexed or may hereinafter annex territory to embrace the entire territory of a town, and to any town which has been or may hereafter be created to be coterminous with any village.

**§ 17-1702 Effect of alteration of town boundaries.** 1. The boundaries of a village incorporated or which has annexed territory to embrace the

entire territory of a town, shall be deemed to embrace the entire territory of such town as such territory may thereafter be extended, diminished or altered pursuant to law. Whenever the territory of any other village to which this article applies is extended, diminished or altered pursuant to law, other than by consolidation, then the territory of the town which is coterminous with such village shall be deemed to be correspondingly extended, diminished or altered.

2. The real property excluded by law from the territory of a town shall not be subject to further assessment or taxation for either general or local purposes by a village embracing the entire territory of such town, but taxes for the purposes of such village and local assessments may be levied and collected against the real property annexed by law to the territory of such town in the same manner and with the same force and effect as taxes and local assessments are levied and collected against other real property within the village. Taxes or local assessments, if any, theretofore assessed against real property excluded from such town shall be levied and collected in the same manner and with the same force and effect as prior to such exclusion.

3. The extension, diminution or alteration of the boundaries or territory of a town wholly embraced within the boundaries of a village shall in no way affect or impair the boundaries or territory of a school district nor shall the assessment, levy or collection of taxes for school district purposes be affected or impaired thereby.

4. Such extension, diminution or alteration of the boundaries or territory of a town shall in no way affect or impair the jurisdiction of any court with respect to pending actions or proceedings, nor with respect to the prosecution of crimes committed prior thereto, and all courts shall have and retain jurisdiction of such actions, proceedings and prosecutions as though such extension, diminution or alteration had not been made.

**§ 17-1703. Filling of village offices, election of officers.** 1. Upon the filing of the certificate of incorporation of each village which has

been incorporated to embrace the entire territory of a town in the office of the clerk of the town, the town board of such town shall constitute the interim board of trustees of the village for all purposes and the supervisor of such town shall be the interim mayor of such village for all purposes until the first election in such village of a board of trustees and mayor. Upon the qualification and filing of the oath of office by the mayor and trustees elected in accordance herewith, the holding of the office, ex officio, of mayor or trustee by any town officer shall terminate.

2. A first election of village officers shall be held pursuant to the election law at the same time, date and places, and in substantially the same manner as the first regularly scheduled election of town officers occurring not less than thirty days after such filing of the certificate of incorporation of such village.

3. At such first election, a mayor and two trustees shall be chosen to serve as village officers for terms of two years each and two other trustees shall be chosen to serve as village officers for terms of four years each measured from the first day of January next succeeding such election notwithstanding the provisions of subdivision one hereof.

4. For purposes of electing successors to the village officers elected at the first village election as herein provided the terms of office of trustees shall be four years and the term of office of the mayor shall be two years and such terms of office shall commence on the first day of January next succeeding the date of election.

5. Nothing herein contained shall diminish the power of the board of trustees pursuant to section 3-302 of this chapter or any other provision of law.

**§ 17-1703-a Filling of town offices; election of officers.** 1. In any village as to which a town is created to be coterminous with such village, and in any village which after July first, two thousand twelve annexes territory to embrace the entire territory of a town, there shall

be submitted to the voters in such village at the November general election next preceding the effective date of the creation of such town or annexation of such territory, a proposition as follows: "Shall the local government of                      operate PRINCIPALLY AS A VILLAGE or PRINCIPALLY AS A TOWN?" Such proposition shall be presented so that the choice to be indicated by the voter shall be either "VILLAGE" or "TOWN". In any village which annexed territory prior to July first, two thousand twelve to embrace the entire area of a town, the board of trustees may, upon its own motion, submit such a proposition to the voters of such village at the next succeeding November general election.

2. Upon the effective date of the creation of the town coterminous with a village, the mayor and the board of trustees of such village shall constitute respectively the interim supervisor and town board of such town for all purposes until their successors shall have been elected and commenced their terms of office as hereinbelow provided for. All other elected and appointed village officers shall constitute respectively and corresponding interim officers of such town until their respective successors shall have been elected or appointed, as the case may be, and commenced their terms of office as hereinbelow provided for or as otherwise regularly provided by law.

3. In any case in which the proposition provided for in subdivision one of this section shall have resulted in favor of the local government operating principally as a village, the holders of village offices shall, from and after the effective date of the creation of the town or annexation of such territory, by virtue thereof also hold town offices, as follows:

(a) The mayor and the board of trustees shall constitute respectively the supervisor and the town board.

(b) The assessor, clerk and treasurer of the village shall be, respectively, the assessor, clerk and receiver of taxes of the town, each for a term of office corresponding to the term of the village office, and the office of superintendent of highways of such town shall be held by such officer or employee of the village as the village board shall designate by resolution.

(c) Each village justice shall be appointed to fill a vacancy in the

office of town justice, and if there shall have been only one village justice in such village, then the village board shall appoint a second town justice to serve for the remainder of the then current calendar year and the office of acting village justice in such village, if any, shall be thereupon abolished. The term of any then incumbent village justice who shall become a town justice hereunder shall terminate at the end of the then current calendar year, notwithstanding that such justice may originally have been appointed or elected as a village justice for some longer term. Town justices shall be elected at the next ensuing village election for the remainder of the unexpired terms and thereafter at village elections for the terms of office regularly provided by law, and each town justice shall enter upon and commence his term of office at the January first next following his election. All elections of officers thereafter to be held shall be village elections, to be held in the same manner and at the same times as otherwise provided by law for the election of village officers, and there shall be no separate election of any town officers, except as provided above herein with respect to town justices.

4. In any case in which the proposition provided for in subdivision one of this section shall have resulted in favor of the local government operating principally as a town, then, at the regular village election next ensuing, all offices to be filled thereat shall be filled for terms to end at the conclusion of the then current calendar year. The term of office of each other elected village office shall also end at the conclusion of said then current calendar year, notwithstanding that any such term of office originally extended beyond such date. The offices of supervisor, four town council members and two town justices shall be filled by election as hereinafter provided at the November general election next following the effective date of the creation of such town or annexation of such territory; all other town offices shall be appointive. The election of the supervisor, council members and justices shall be for terms of office as follows:

(a) If such election is held in an even-numbered year, then the term of office for supervisor shall be the term regularly provided by law; the terms of office for two council members shall be the terms regularly provided by law and the terms for the other two council members shall be

two years each; the term for each justice shall be the term regularly provided by law. Upon the expiration of the two year term for council members as above provided, the terms for such offices shall be as regularly provided by law.

(b) If such election is held in an odd-numbered year, then the term of office for supervisor shall be one year; the terms of office for council members shall be one year for two council members and three years for the other two council members and the terms of office for each justice shall be for the remainder of the then unexpired terms. Thereafter, each office shall be filled for the term regularly provided by law.

5. In any case in which the proposition provided for in subdivision one of this section shall have resulted in favor of the local government operating principally as a town, then each town officer elected or appointed as provided in subdivision four shall constitute also the corresponding village officer, and no separate election of village officers shall thereafter be held. All elections of town officers shall be held in the manner and at the times regularly provided by law for the election of town officers.

6. Nothing contained in this section shall diminish the power of the board of trustees pursuant to section 3-302 of this chapter or any other provision of law.

**§ 17-1704 Succession of powers and duties.** In every such village, all the powers and duties imposed by law upon the town board of the town or upon any officer of the town or commissioners or boards of any district in relation to any water district, or any lamp or street lighting district, or any sewer district, or any fire district, created or organized under the provisions of the town law, shall devolve and are hereby imposed upon the board of trustees of such village, and all contracts in relation to such districts or any improvements therein shall be performed and completed by the said board of trustees.

**§ 17-1706 Succession of powers and duties relating to public bridges**

**and highways.** In every such village all powers and duties granted to or imposed upon the town board of a town, or upon any officer of a town, in relation to any public bridge or bridges, street or streets, highway or highways, wholly or partly within such town, are hereby granted to and imposed upon the board of trustees of such village. The board of trustees of any such village shall have full power and authority to repair, replace, construct or re-construct any public bridge over any boundary of such village. If the project is to be paid from taxes levied for the fiscal year in which the expenditure is to be made, the board of trustees may submit to the voters of the village qualified to vote at such an election, a proposition for the repair, replacement, construction or re-construction of any such bridge partly at the expense of such village and such board of trustees shall also have power to complete any proceedings commenced under the town law, or under the highway law, for the repair, replacement, construction or re-construction of any such bridge.

**§ 17-1708 Trustees as town board.** 1. In any village which has been or may hereafter be incorporated to embrace the entire territory of a town the town board of such town may, upon its own motion, and shall on a petition signed and acknowledged by not less than fifty taxpayers of the said town submit at any biennial town meeting or at any special town meeting called for the purpose, a proposition substantially in the following form: "Shall the board of trustees of the village of .....constitute the town board of the town of ..... for all purposes?" In case the said proposition be adopted by a majority vote of the electors of the said town voting thereon, the board of trustees of the said village, as the same shall be constituted from time to time, shall, from and after the first day of January next following the date of the said election, constitute the town board of the said town for all purposes, and shall have all the rights, powers and duties thereof and neither the supervisor nor the town clerk, nor the justices of the peace of the said town, shall, by virtue of their offices, be members of the said town board. The town board of the said town as so organized shall keep a separate journal of its proceedings and the town clerk shall be the clerk thereof.

2. If in the village of Scarsdale in Westchester county, a proposition has been adopted as set forth in subdivision one of this section, and the supervisor is not, by virtue of his office, representative of the town or the county board or other county legislative body, such town board of the town may by local law or ordinance abolish the position of supervisor and thereupon shall assign his duties to such official or officials as it may determine.

3. In any village which has been or may hereafter be incorporated to embrace the entire territory of a town, the proposition proposed and submitted as provided in subdivision one of this section, may be in substantially the following form: "Shall the offices of town supervisor and town council member, as presently constituted, be deemed vacant and the mayor and board of trustees of the village of \_\_\_\_\_ hereafter constitute the supervisor and town board, respectively, of the town of \_\_\_\_\_ for all purposes?" In case the said proposition be adopted by a majority of the electors of the said town voting thereon, the mayor of the said village, as the office shall be held from time to time, and the board of trustees of the said village, as the same shall be constituted from time to time, shall, from and after the first day of January next succeeding the date of said election, constitute the supervisor and town board of the said town for all purposes, and shall have all the rights, powers and duties thereof and neither the town clerk, nor the town justices of the said town, shall by virtue of their offices be members of the said town board. The town board of the said town as so organized shall keep a separate journal of its proceedings and the town clerk shall be the clerk thereof.

4. In any village where a proposition has been adopted as provided in subdivisions one or three of this section, the incumbent and successor holders of any village offices which thereby are constituted as town offices shall, by virtue of their village offices, also hold such town offices; and, from and after the date of adoption of such proposition, no separate election for such town offices shall be conducted.

5. Notwithstanding the provisions of article seventeen of the election law, elections held in incorporated villages which are incorporated as coterminous village pursuant to the provisions of this chapter shall be conducted in the same manner as election for town offices.

**§ 17-1710 Bond or undertaking by town and village officer.** In every such village where one individual holds more than one office either under the village, town or other law, whether elective or appointive, in which it is required that he shall give a bond or undertaking he may give one bond covering him in all capacities.

**§ 17-1712 Water districts.** In every such village any water districts created or organized under the provisions of the town law, shall continue and the board of trustees shall be and they are hereby vested with the full management and control of such districts, and the water systems constructed therein, and the assessment of the cost and expenses thereof, which water districts shall until discontinued in the manner hereinafter provided, be managed, controlled and operated and may be extended or enlarged, by said board of trustees in the manner provided in the town law; provided, however, that if any such village shall adopt a general village water system, such water district or districts may be discontinued upon the adoption of a proposition for such discontinuance at a village election. In every such village any water supply district organized under the town law or under the transportation corporations law shall continue and the boundaries thereof may be extended or modified by the board of trustees, or the board of trustees may establish one or more additional water supply districts in said village, by filing a certified copy of a resolution describing the bounds thereof as extended or modified, or as established by the board of trustees, in the office of the village clerk; and may contract with any corporation in the name of the village to supply water for fire or other public purposes to any such district or districts, or in case any such village shall own or operate a water supply system the board of trustees may supply water therefrom to any such district or districts for such purposes and fix the amount of the rentals and charges therefor; and the

rentals or expenses thereof under any such contract, or for the supply of water by the village shall annually, and in the same manner as other expenses of the village are raised, be assessed, levied upon and collected from the taxable property within such water supply districts, respectively. No such contract shall be made for a longer period than five years, nor shall the tax in any year for such rentals and expenses exceed four mills on each dollar of the assessed value of the taxable property within any such water supply district.

**§ 17-1714 Establishment and maintenance of hospitals.** 1. For the purpose of enabling such villages to procure federal aid under the provisions of the national industrial recovery act in the establishment of hospitals, the board of trustees of any village which has been or may hereafter be incorporated or which has annexed territory to embrace the entire territory of a town, and which is adjacent to a city or town in which a hospital is maintained by a duly incorporated membership corporation, may acquire by gift or purchase title to lands in such city or town in trust for hospital purposes. If such land is to be acquired by gift, the acquisition shall be subject to a permissive referendum or if such land is to be acquired by purchase, the acquisition shall be subject to a permissive referendum if it is to be paid from taxes levied for the fiscal year in which such expenditure is made. The board may construct and maintain on such land suitable buildings and equip the same for hospital purposes and, from time to time, enter into one or more agreements with such membership hospital corporation for the control and operation thereof, and such board of trustees may accept on such terms as the president of the United States shall prescribe, any grants made by him pursuant to the provisions of the said national industrial recovery act in aid of the establishment of the said hospital.

2. There shall be levied and assessed annually upon the taxable property in the said village in the manner prescribed by law a sum sufficient to defray the cost of the operation and maintenance of the said hospital in each year, as estimated by the board of trustees of such village.

3. Hospital corporations duly incorporated under the provisions of the membership corporation law are hereby empowered to dedicate, grant and release to any such village lands for said purposes, upon terms and conditions to be approved by its board of governors, and to enter into agreements with the board of trustees of any such village for the control, operation and maintenance of any hospital or hospitals to be constructed as hereinbefore provided.

**§ 17-1716 Lamp or street lighting districts.** In every such village any lamp or street lighting districts created or organized under the provisions of the town law, shall continue and the board of trustees shall be and they are hereby vested with the full management and control of such districts, and the lighting system thereof, and the assessment of the cost and expenses of such lighting, which lighting district shall until discontinued in the manner hereinafter provided, be managed, controlled and operated and may be extended or enlarged, by said board of trustees, in the manner provided in the town law; provided, however, that the board of trustees of such village may, in its discretion, by resolution, discontinue any such lighting district, in which case the provisions of the village law in relation to street lighting shall apply to any such village.

**§ 17-1718 Sewer districts.** 1. In every such village any sewer district created or organized under the provisions of the town law shall continue, and the board of trustees shall be and they are hereby vested with the management and control thereof, and of the sewer systems constructed or to be constructed therein, and of the assessment of the costs and expenses thereof, and in every such village the board of trustees may establish one or more additional sewer districts as hereinafter provided, which such sewer districts shall be managed, and the costs and expenses thereof shall be assessed, as herein provided.

2. In case a system of sewers to serve the said district shall have been authorized as provided in the town law and maps and plans therefor

shall have been approved by the state department of health the board of trustees may construct and complete the sewers so authorized and may make extensions thereof and may modify and change the plans thereof, by resolution at any regular or at any special meeting called for the purpose; provided notice that the board of trustees will act upon the question of authorizing the construction of specified portions of such sewer system, or specified extensions thereof, or upon specified modifications thereof, at a time and place to be stated therein, shall have been posted in at least four public places in the said sewer district and shall have been published in the official paper, or if there be no official paper, in such newspaper published in the county as the board of trustees may select, at least twenty-one days before such meeting. In the event that the village maintains a website, one of the posting requirements may be fulfilled by posting such information on the website.

3. Any moneys advanced from the general fund of such village for the payment of the principal and interest of any obligations issued to pay for all or part of such construction shall be reimbursed from the assessments hereinafter provided.

4. In case the board of trustees shall authorize the construction of any such extension or extensions to the sewer system, which have not been approved by the state engineer or in case the board of trustees shall modify or change the plans for the construction and completion of the said sewer system or any portion thereof or of any such extensions which have theretofore been approved by the state engineer, maps and plans of such extension or extensions and of the portions of the system so modified or changed, prepared by a competent engineer under the authority and direction of the board of trustees shall be approved by the state department of health as required by law before the same shall be constructed.

5. The board of trustees shall advertise for proposals for the construction of such extension or extensions according to such maps and plans either under an entire contract or in parts, or sections, as the board may determine, and such advertisement shall be published once in

each of two successive weeks in the official paper, or if there be no official paper then in such newspaper published in the county as the trustees may select. The board of trustees may accept or reject any or all proposals and shall let the contract to the lowest responsible bidder. The board of trustees may require bidders to give a bond or other security to be forfeited to the village in case the bidder to whom the award is made shall refuse or neglect to enter into the required contract, and may require the successful bidder to give a bond or other security in an amount to be fixed by the board of trustees conditioned upon the faithful performance of the contract. Such contracts shall be executed in the name of the village in duplicate and one copy thereof shall be filed in the office of the village clerk.

6. The board of trustees may employ engineers, and such inspectors as may be necessary, to prepare maps, plans, specifications and estimates, and to supervise the construction, and may fix their compensation which, together with the cost of preparing the maps, plans and specifications, and the cost of the necessary real property or interest therein, shall be treated as a part of the expense of construction.

7. If the board of trustees are unable to agree with the owners for the purchase of any real property or any interest therein necessary for the construction of the said sewer system or of any extension or extensions thereto they may acquire the same by condemnation, in the name of the village.

8. The board of trustees shall determine by resolution the amount of moneys required to pay the principal and interest of all outstanding obligations issued to pay the cost of constructing the sewer system, and the extensions thereto, and the cost of maintaining and operating the same, and all other lawful charges against the said sewer system for the ensuing fiscal year and assess the amount thereof upon the lands within the sewer district in proportion as nearly as may be to the benefit which each lot or parcel shall derive therefrom, and shall enter such assessments in a book suitable for the purpose, which shall show the section, block and lot number, or other suitable description of each piece or parcel of land in the said sewer district, with the amount

assessed against each such piece or parcel of land respectively. Thereafter the provisions of the village law relating to the filing, correction, completion and review of the village assessment-roll, and relating to the levy, collection and lieu of village taxes shall apply to the filing, correction, completion and review of such sewer assessment and to the levy, collection and lien thereof, as nearly as may be, except that the powers and duties of the assessors with respect thereto shall devolve upon and be performed by the board of trustees.

9. In case there be an unexpended balance remaining after the completion of any contract or contracts for the construction of any such sewer system or of any extension or extensions thereto and such balance is not derived from bonds, bond anticipation notes or capital notes the board of trustees shall, by resolution, use the same or any part thereof for the payment of the cost of constructing extensions to such sewer system in said district or for the purpose of retiring outstanding bonds issued to pay for the construction of such sewer system or extensions thereto. Any unexpended balance remaining from the proceeds of bonds, bond anticipation notes or capital notes shall be disposed of pursuant to section 165.00 of the local finance law.

10. The board of trustees shall adopt rules and regulations to govern the maintenance and use of the sewer system and shall therein fix the amount of fees that shall be chargeable to individuals or property owners who may wish to enter or use the sewer system, which fee shall be sufficient in amount to pay for the cost of inspection, and may prescribe the terms and conditions upon which connections may be made therewith, and the manner in which the same shall be made, and may provide reasonable penalties for the violation of such rules and regulations to be collected at the suit of the village for the use of the sewer district.

11. The board of trustees may cause a notice to be published in the official paper and posted in at least ten conspicuous public places in the district, requiring the owners or occupants of all property fronting or abutting on any street or portion thereof in the town in which any public sewer is about to be laid or is being laid or has been laid to

make and lay connection pipes to and from the sewer mains in such street or any portion thereof in front of each separate piece of property, within such times and in such manner and under such inspection as such board shall prescribe; and whenever any such owner or occupant shall have made default in making such connection as directed in and required by such printed notice therefor, in the manner and within the time specified, such board shall have power and authority to make, extend and complete the same to the property line of the lands and premises so owned or occupied opposite thereto and in front thereof, and to connect the same with any existing pipe in front thereof, and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the board upon each separate piece of property opposite which the same shall be done and completed. For the purposes of this section, in the event that the village maintains a website, one of the posting requirements required by this subdivision may be fulfilled by posting such notice on the website.

12. In every such sewer district it shall be the duty of the owners, or if the owner be a nonresident of the district, of the occupants, of premises which can be connected with any portion of the sewer system at any time constructed, and which premises are occupied or used for residential, business, or other purposes in which sewage matter originates, to connect such premises with the said sewer system under the rules and regulations adopted by the board of trustees relating thereto, and in case such owner, or occupants, shall fail or neglect to make and complete such connections within thirty days from the personal service upon him of a certified copy of a resolution of the board of trustees requiring such connection or connections to be made he shall be liable to a fine not exceeding fifty dollars in amount and shall, in addition thereto, be liable to a fine not exceeding ten dollars in amount for each day during which such default shall continue after the expiration of such period of thirty days, to be collected at the suit of the village for the use of the sewer district. In case the cost of such connection shall be paid by the occupant he may recover the same from the owner or may deduct the same from any sums due or to become due from him to such owner.

13. Nothing herein shall prevent the construction of extensions to such sewer system in accordance with the provisions of article fourteen of this chapter.

14. (a) In every such village the board of trustees on a petition signed and acknowledged by the owners of more than fifty per centum in value of the taxable real property in any proposed sewer district, as shown by the last completed village assessment roll, and after a public hearing thereon, may, by resolution, establish one or more sewer districts in such village. Such petition shall describe the boundaries of the proposed sewer district and each subscriber thereto shall set opposite his name the assessed value of the real property owned by him therein, as shown on the said last completed assessment roll, and such petition shall contain a statement of the maximum amount proposed to be expended in the construction of such sewerage system and shall also have a statement conspicuously printed thereon as follows: "The cost of construction and maintenance of such sewer system shall be assessed, from year to year, by the board of trustees, upon the land within the sewer district in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom"; and such petition shall have annexed thereto a map of such proposed sewer district and a plan for a comprehensive system of sanitary sewers designed, when completed, to serve the entire district together with plans and specifications for sewage treatment or disposal works. The signature of a property owner shall be acknowledged by him or it may be proved by the oath of a witness who shall swear that he knows the property owners and that the petition was signed by the property owners in the presence of the witness. The petition may be in the form of separate sheets, each sheet containing at the top thereof, the complete wording of the petition, and when bound together and offered for filing, these shall be deemed to constitute one petition. On receipt of such petition the board of trustees shall grant a public hearing before taking any action on the petition at which time full opportunity to be heard shall be granted to all officials, residents, voters, taxpayers, property owners or other persons or corporations in any way affected by the granting, modification or denial of the petition. Notice of the time, place and purpose of such hearing, containing a description of the extent of the

proposed sewer system, shall be given by such board by posting such notice in four of the most public places within the village at least twenty-one days prior thereto and by publishing a notice in the official newspaper once in each of the three weeks immediately preceding the week in which the hearing is to be held. In the event that the village maintains a website, one of the posting requirements may be fulfilled by posting such information on the website. After a hearing held in accordance with this notice and upon the evidence given thereat the board of trustees shall determine whether it is in the public interest to grant the petition, modify it or deny the relief sought. A signed or certified copy of the determination of the board of trustees shall be duly recorded in the office of the county clerk of the county in which such village is located and when so recorded shall be presumptive evidence of the regularity of the creation of the sewerage system by said board. Said action shall be subject to review by certiorari upon application made within thirty days following date of filing with the county clerk which application shall be accompanied by an undertaking approved by the supreme court or a justice thereof, providing for reimbursing the expenses of the board of trustees in the event their determination is not modified. At the expiration of the period allowed for certiorari proceedings and subject to the reviewing court's order, if any, the board of trustees shall proceed to construct such sewerage system but before any part of the sewerage system is constructed in any such sewer district the maps and plans therefor shall be approved by the state department of health. In passing upon said plans due consideration shall be given to the adaptability of the proposed sewerage system for the district to possible future enlargements and to inclusion in a general sewerage system to care for the village as a whole or parts of the village forming natural drainage areas. The cost of preparing such maps and plans in the first instance shall be borne by the petitioners, but the reasonable amount thereof as audited and allowed by the board of trustees, shall be a charge against the said sewer district, if the same is established.

(b) In case any such sewer district shall be established, as herein provided, the board of trustees may from time to time authorize the construction under one or more contracts, or by village forces of all, or any portion or portions of, the sewer system therein. The amounts of

principal and interest of any obligations issued for the construction of the sewer system falling due in any year, together with the cost of maintaining, repairing and operating the said sewers, shall be assessed from year to year upon the real property within such district in proportion as nearly as may be to the benefit which each lot or parcel of land will derive therefrom.

(c) The board of trustees of said village and the body, officer or board having control of the sewers in any other municipality shall have power to contract in the names of their respective municipalities for the use of any such sewer district or outlet or other facilities and appurtenances owned, controlled or operated by such other municipality, and agree upon the value thereof and upon the method and times of payment therefor.

(d) The board of trustees may appoint a sewer commission to construct, manage and operate the sewers in any such sewer district, whose members shall hold office during the pleasure of the board of trustees, and who shall perform such duties and exercise such powers as the board of trustees may from time to time prescribe.

(e) The provisions of section 17-1718 of this article shall apply to any sewer district established pursuant to the provisions of this subdivision.

**§ 17-1719 Wastewater disposal districts.** All of the provisions of section 17-1718 of this article, relating to the continuance of sewer districts, shall apply to the continuance of wastewater disposal districts.

**§ 17-1720 Fire districts; preservation of fire districts, fire protection districts and fire alarm districts.** 1. In every such village any fire districts created or organized under the provisions of the county law, shall be merged in and consolidated with such village and shall become a part of such village for fire protection purposes and all buildings, engines, fire apparatus, and other property belonging to such fire district shall be vested in such village and maintained and administered by it as a part of the fire protection system thereof. All

the powers and duties of the commissioners of such fire district shall be and are hereby devolved upon and transferred to the board of trustees of such village. For the purpose of paying the principal and interest of any bonds of any such fire district which may be outstanding and unpaid at the date of the incorporation of any such village, the board of trustees of such village shall levy, assess and collect upon all the taxable property in such village, a tax sufficient to pay the interest thereof as the same accrues and sufficient also to provide for the payment of the principal of such bonds at maturity.

2. At any time after the date the report of incorporation is delivered to the secretary of state pursuant to section 2-232 of the village law, and prior to the first day of June following the first day of January next succeeding the date of incorporation, the board of trustees of any village in which a majority of the electors has approved a proposition submitted to the voters in accordance with subdivision three of section 17-1708 hereof, may adopt a local law providing that any fire district, fire protection district, fire alarm district or any district functioning pursuant to section one hundred eighty-six of the town law which is located wholly or partly within the boundaries of such village, shall continue to function in all respects whatsoever, and all officers and employees of such entity shall continue to hold their offices and exercise their powers and duties, as though such village were not incorporated.

3. In the event that the board of trustees adopts a local law pursuant to subdivision two of this section, then notwithstanding any provision of sections 2-252, 2-254, 2-256, 2-258, 17-1704, 17-1720 or 17-1726 of the village law, any such fire district, fire protection district, fire alarm district or any district functioning pursuant to section one hundred eighty-six of the town law which is located wholly or partly within the boundaries of such village, shall continue to function, in all respects whatsoever, and all officers and employees of such entity shall continue to hold their offices and exercise their powers and duties, as though such village were not incorporated.

**§ 17-1722 Assessment-roll; completion; notice, tax.** 1. The board of trustees of any village which embraces the entire territory of any town in a county in which the town assessor or assessors are required to complete the assessment-roll of such town on or before the first day of June in each year may determine, by resolution, that such board of trustees shall act as the board of assessors of such village, and may adopt the assessment-roll of the said town so to be completed on or before the first day of June in each year as the basis of the village assessment-roll for the said year, and shall prepare the village assessment-roll in the form and manner required by law and deposit a copy thereof in the office of the village clerk on or before the said first day of June in each year for public inspection, and at the same time shall cause a notice to be published in each newspaper published in the village, and to be posted conspicuously in at least five public places in the village, at least ten days before the date fixed for the hearing, that the assessment-roll has been so filed and the board of trustees will meet at a place specified therein on a named date, which shall be not later than the twelfth day of June, and during not less than four consecutive hours to be named, for the purpose of completing the said assessment-roll and of hearing and determining complaints in relation thereto and they may adjourn such meeting from day to day without further notice, and with respect thereto the board of trustees in any such village shall have all the powers of town assessors. In the event that the village maintains a website, one of the posting requirements may be fulfilled by posting such information on the website.

2. When the board of trustees in any such village shall have completed the village assessment-roll, they, or a majority of them, shall severally make and subscribe and attach to or, where the assessment roll is prepared in accordance with the provisions of article fifteen-C of the real property tax law, file with such roll an oath which shall be to the effect that the assessments therein are a transcript of the assessments from the said town assessment-roll as prepared by the town assessors for the said year, and that such roll contains, to the best of their knowledge and belief, a true statement of the property, persons and corporations liable to assessment and taxation within the village,

as the same appear on the said assessment-roll of the said town, except as to changes made therein upon proper proof submitted to them. The roll as so completed and verified shall be filed in the office of the village clerk on or before the fifteenth day of June.

3. After completing and filing the annual assessment-roll, the board of trustees shall cause notice thereof to be published at least once in the official paper and copies of such notice to be posted in not less than five public places in the village specifying the date of filing and that the same will remain on file with the village clerk subject to public inspection for ten days after the date of such notice. In the event that the village maintains a website, one of the posting requirements may be fulfilled by posting such information on the website. A proceeding to review an assessment appearing on such assessment-roll shall be commenced within such ten days in the manner provided by the real property tax law.

4. As soon as practicable after the completion of the annual village assessment-roll and on or before the twenty-fifth day of June the board of trustees of any such village shall levy the tax for the current fiscal year. Upon the completion of the tax levy, and not later than the twenty-fifth day of June, the clerk shall deliver to the treasurer a duplicate tax roll with warrant attached, or filed therewith if the rolls are prepared in accordance with the provisions of article fifteen-C of the real property tax law.

5. Notice of receipt of the tax roll shall be published on or before the first day of July and collection of taxes shall commence on the first day of July. Interest shall be collected on all taxes remaining unpaid after the first day of August.

6. The board of trustees shall take action to recover unpaid taxes within seven days after the return of unpaid taxes by the clerk or treasurer. Publication of the notice of tax sale must be completed on or before the tenth day of May and such sale shall commence and be completed not later than the fourth Wednesday of May.

7. The annual village tax shall be a lien on real property on which it is levied from the first day of July of the fiscal year for which it is levied until paid or otherwise satisfied or discharged.

**§ 17-1722-a Single assessment roll for both town and village purposes.**

1. Except in the town and village of Mount Kisco, Westchester county, and notwithstanding the provisions of section 17-1722 of this chapter or of any general, special, local or other law to the contrary, in any village which embraces the entire territory of a town there shall be a single assessment roll for both town and village purposes, which assessment roll shall be prepared by the town in the manner provided by law.

2. In any village subject to the provisions of subdivision one of this section, the taxable status date of the town shall be controlling for village tax purposes and all acts required by law to be performed by the town in the preparation of the assessment roll, including but not limited to, the giving of notice and the hearing of complaints shall inure to the village and shall have the same force and effect as if the same had been performed by the village.

3. Notwithstanding the provisions of any general, special, local or other law to the contrary, commencing with the first assessment roll prepared pursuant to this section, assessments made or approved by the commissioner of taxation and finance for town purposes and determinations made by the commissioner of taxation and finance pursuant to titles two-a and two-b of article four of the real property tax law for town purposes shall be deemed to have been made, approved or determined for village purposes and the state equalization rate established by the commissioner of taxation and finance for the town pursuant to article twelve of the real property tax law shall be deemed to be the state equalization rate established for the village.

4. On or before the twenty-fifth day of June the board of trustees of any such village shall levy the tax for the current fiscal year. Upon the completion of the tax levy, and not later than the twenty-fifth day

of June, the clerk shall deliver to the treasurer a duplicate tax roll with warrant attached or filed therewith if the rolls are prepared in accordance with the provisions of article fifteen-C of the real property tax law.

5. Any final order in a proceeding under article seven of the real property tax law which orders or directs the correction or striking of an assessment appearing on an assessment roll prepared pursuant to this section shall be binding on the town and the village and any refund of taxes required to be made by reason of such final order shall be made in the manner provided in section seven hundred twenty-six of the real property tax law.

**§ 17-1724 Taxation and assessment.** In every such village all property shall be assessed for taxation for state, county, town, village and district purposes, in the manner provided by the laws applicable to the county in which such village may be situated.

**§ 17-1726 Obligations and property.** The outstanding obligations, contracts, and bonds of any such town or of any district therein, incurred, made or issued for the purpose of improving the highways thereof, or constructing overhead or undergrade crossings, or constructing sidewalks or for sewers or sewer district purposes, or for water or water district purposes, or for fire district purposes, including all obligations now outstanding or hereafter imposed upon any such town or district therein, shall devolve upon and be assumed by any such village, and the board of trustees of any such village, is hereby authorized and empowered, and it shall be its duty, to provide for the payment and discharge of such obligations, contracts and bonds by taxation or assessment of taxes in the same manner as the board of supervisors or county legislative body, town board, or supervisor or officers of such town, or of any district therein are or may be authorized to provide therefor or by taxation of all the taxable property in such village in any case in which by virtue of any provision of this act or of any other statute such obligations, contracts or bonds

are or may be made a general village charge. All moneys, credits and property of the said town, including all public moneys payable to the said town, or to its supervisor, for general town purposes under any present or future law, shall be paid to any such village for the general purposes of such village, and all the moneys, credits and property of any sewer district, water district, fire district, or other tax district now existing or hereafter established therein, including all moneys payable under any present or future law to any such town or to its supervisor for specified town or district purposes, shall be paid and delivered to such village by the several custodians thereof and applied by the board of trustees of such village to the said purposes. In any such village the treasurer thereof shall serve as the fiscal officer of any such town, and the receiver, collector or custodian of any taxes or other moneys payable to the supervisor of any such town under any present or future law, shall pay the same to the village treasurer who shall apply the same under the direction of the town board, or of the supervisor, or otherwise, to the lawful purposes for which the same shall have been raised. In every such village all taxes and assessments levied or assessed before incorporation upon the taxable property in the said town or upon the taxable property in any water district, fire district, lighting district, or sewer district therein for town or district purposes shall, when collected, be paid over to such village and used by such village for the purposes for which the same were levied and assessed.

**§ 17-1728 Town budgets.** In every such town, the town board shall annually, during the month of December, or such other date as may be applicable pursuant to section 17-1729 of this article, prepare and file with the clerk of such village an itemized statement in writing of the estimated revenues and expenditures of such town for the period ending with the next ensuing fiscal year of such village and such itemized statement shall be included by the board of trustees of such village in its next annual estimate, and the amount thereof as finally allowed and determined by the said board of trustees shall be included in the budget of the said village for the said ensuing fiscal year, and included in the general village tax levied during the said year and the several sums

estimated for expenditures therein and the several sums therein enumerated as estimated revenues shall be and become applicable in the amounts therein named for the purpose of meeting such appropriations.

**§ 17-1729 Change in fiscal years.** 1. The board of trustees of any village in which a majority of the electors has approved a proposition submitted to the voters in accordance with subdivision three of section 17-1708 or of any village in which a proposition has been submitted to the voters in accordance with subdivision one of section 17-1703-a, hereof, may, by resolution, adopt a fiscal year for such village to commence on the first day of January and end on the thirty-first day of December. If the board of trustees shall so adopt a fiscal year commencing on the first day of January as aforesaid, all of the provisions of article five, sections 17-1722 and 17-1722-a of this chapter and of the real property tax law fixing times or dates within which or by which certain acts shall be performed in relation to the preparation of the assessment roll, the preparation of the budget and the levy and collection of taxes and special assessments shall be changed to the times and dates applying to the town which is coterminous with such village and the board of review of such town shall constitute the board of review of such village.

2. A certified copy of a resolution adopting a new fiscal year shall be filed within ten days in the office of the state department of audit and control at Albany, New York.

3. Whenever the fiscal year of a village is changed by action of the board of trustees taken pursuant to subdivision one of this section, the current fiscal year shall be automatically extended to include the interim period between the last day of the current fiscal year and the first day of the new fiscal year, unless the board of trustees shall elect to treat such interim period as a separate fiscal year, as provided in subdivision five of this section.

4. The board of trustees may raise all or part of the amount necessary to pay the obligations and other expenses of the village for the interim

period by the issuance of obligations pursuant to the local finance law; provided, however, that revenues and other income resulting from special assessments for capital projects or from operation of revenue producing undertakings, enterprises and utilities, including but not limited to water supply, sewerage, electric, steam or gas, for which obligations may become due during the interim period shall be applicable to payment of obligations and expenses therefor as provided by law and to that extent bonds or notes shall not be issued therefor.

5. The board of trustees may treat such interim period as a separate fiscal year, in which case all the provisions of article five of the village law and of the real property tax law relative to the preparation of a budget and the assessment, levy and collection of taxes shall apply to such interim period; provided, however, that the amount to be raised by tax on real estate in any such interim period shall not exceed the limitations prescribed by article eight of the constitution, divided by twelve and multiplied by the number of months contained in such interim period.

**§ 17-1730 Officers.** In any such village a person otherwise qualified to hold a village office shall not be disqualified by reason of holding a town office, whether elective or appointive.

**§ 17-1732 Trees and shrubs and shade tree commission.** In any such village the board of trustees may annually raise by taxation and appropriate and expend for planting, care and preservation of trees and shrubs in and upon the public highways and public places thereof a sum not exceeding twenty-five hundred dollars, except that the village of Scarsdale may raise by taxation and expend for the purposes of this section such sum as may be necessary and appropriate therefor; and in any such village the board of trustees may regulate the planting, maintenance, protection and control of shade trees upon the public highways or public places of such village, and for that purpose shall have power to enact, amend and repeal an ordinance or ordinances, providing for the appointment of a shade tree commission (which may be

the village planning commission) and for the planting, care, preservation, maintenance, protection and control of shade trees and shrubs upon the public highways or public places of such village, and for the enforcement thereof by fines and penalties. Every such ordinance shall provide that the members of such shade tree commission serve without compensation.

**§ 17-1734 Town assessment-roll official.** The assessment-roll prepared by the board of assessors of such a town shall be the official assessment-roll for the town and each special tax district and school district or portion thereof, so far as it relates to property lying within the limits of such town. The assessment-roll shall be prepared in duplicate and after revision and correction both rolls shall be delivered to the supervisor of the town. The town board may publish or cause to be published the assessment-roll in whole or in part.

**§ 17-1735 Town legislation to carry over.** Notwithstanding any general or special law to the contrary in any village which has been or may hereafter be incorporated to embrace the entire territory of a town, and in any village which has annexed territory to embrace the entire territory of a town, all local laws, ordinances, resolutions, rules and regulations in effect in such town, on the date of incorporation shall remain in effect in such village, and such local laws, ordinances, resolutions, rules and regulations may be amended from time to time by the town board, and such amendments shall be in effect in such village, and new local laws, ordinances, resolutions, rules and regulations may be enacted from time to time by the town board and shall be in effect in such village, as if the same had been duly adopted by the board of trustees provided, however, that such local laws, ordinances, resolutions, rules and regulations shall cease to be in effect in the village or any part thereof when so determined by duly enacted village local law, resolution, rule or regulation as may be appropriate, or when replaced by duly enacted village local law, resolution, rule or regulation covering the same subject matter. Any such local laws, ordinances, resolutions, rules or regulations, and any local laws,

resolutions, rules or regulations enacted by any such village, may be administered and enforced by either such town or such village.

## ARTICLE 18

### **ALTERATIONS AND FORM OF GOVERNMENT**

Section 18-1800 Change of name.

18-1802 Taxes to pay interest and principal of town highway bonds.

18-1804 Diminishing boundaries.

18-1820 Establishment of a commission for village manager.

18-1822 Establishment of commission by petition.

18-1824 Form of proposition.

18-1826 Powers and duties of the commission.

18-1828 Vote on commission report.

**§ 18-1800 Change of name.** The name of a village may be changed upon the adoption of a proposition therefor at an annual or special election. The proposition must contain the proposed new name, and be accompanied by written notice to the United States Postal Service of such change. If the proposition be adopted a certificate thereof, attested by the mayor and clerk of the village, shall, within ten days after the election, be filed in the office of such clerk, in the office of the county clerk of each county in which any part of the village is situated, and also in the office of the secretary of state. The change of name takes effect upon the filing of the certificate in the office of the village clerk.

**§ 18-1802 Taxes to pay interest and principal of town highway bonds.** The board of trustees of a village which has had or may hereafter have its boundaries extended when authorized by a majority vote of the electors thereof at a referendum duly called therein, in behalf of said village, may by contract with the town or towns in which said village lies agree to assume and pay that part of the town taxes to be levied in future years by such town or towns to pay principal and interest of obligations sold to improve and pave highways in said town or towns

which taxes will, when levied, become a lien upon property in territory annexed to said village, and to the extent contracted for, the said taxes shall be collectible by the town or towns from said village and become a general village charge, and when said village shall have paid such part of said town taxes the property in the annexed territory subject to such levy shall be relieved from paying the part thereof paid by said village.

**§ 18-1804 Diminishing boundaries.** The boundaries of a village may be diminished by excluding from its corporate limits territory not adjacent to nor benefited by either street or sidewalk improvements, electric lights, sewers, water works system or fire protection, when any of such benefits, improvements or system have been completed in a village. A petition for diminishing the boundaries of a village by excluding territory therefrom may be presented to the board of trustees of such village. Such petition shall describe the territory sought to be excluded, and shall state the number of inhabitants thereof and the names of the owners and occupants of each parcel of land therein, and shall be signed and duly acknowledged by a majority of the persons residing therein, if any, qualified to vote for village officers, or by the owners of a majority in value of the real property sought to be excluded, assessed upon the last preceding village assessment-roll. Each person signing such petition shall state opposite his name the assessed valuation of all property owned by him in such territory, together with the amount of such village taxes paid thereon during the preceding year. Such statement of assessed valuation and taxes paid shall be duly verified by each person signing such petition. The petition must also be accompanied by the consent in writing of a majority of the town board of the town in which the territory sought to be excluded is situated. Upon the presentation of such petition and consent, the board of trustees shall cause a proposition for so diminishing such boundaries to be submitted at the next succeeding annual village election, or a special election called for the purpose of voting upon such proposition. If the proposition be adopted, the petition, consent and certificate of the result of the vote cast upon the proposition shall be recorded in the village book of records. Within

twenty days after the adoption of such proposition, a certificate containing a description of the territory sought to be excluded, stating the assessed valuation thereof and the number of inhabitants therein, shall be filed in the town clerk's office of each town, and in the county clerk's office of each county in which the village is wholly or partly situated, and also in the office of the secretary of state. Territory so excluded from the village shall not be relieved from bearing its proportionate share of any liability or indebtedness occurred by such village while such territory was a part thereof, and until such liability is discharged, or such indebtedness paid, the proportionate share to which such territory would be liable if it had not been excluded shall be levied upon, assessed and collected from such territory by the proper officers of such village, in the same manner as if such territory had not been excluded therefrom. The board of trustees shall also cause an outline map of the corporate limits of such village to be made, which map shall plainly describe the territory excluded. Such map together with a description of the territory excluded shall be filed in the office of the secretary of state. The diminishing of such boundaries shall take effect upon the receipt of the village clerk of the certificate of the secretary of state under the seal of his office, certifying that he has received and placed on file in his office, such outline map and description of the corporate limits of such village with the portion excluded. For the purpose of determining whether or not such boundaries have been diminished a substantial compliance with the provisions of this section shall be deemed sufficient and no action or proceeding shall be taken by any person questioning the validity thereof unless so taken within one year of the diminution as above provided.

**§ 18-1820 Establishment of a commission for village manager.** The board of trustees of any village may, as an alternative to the adoption of a local law establishing the position of village manager, adopt a local law providing for the creation of a commission to study and prepare a local law establishing the position of village manager and defining the duties and responsibilities thereof. Such local law shall be subject to a permissive referendum. The local law creating the commission shall provide for the organization and method of procedure for such

commission, including, but not limited to, (a) the number of members of such commission, which shall not exceed seven and of which number more than one-half shall not be members of the board of trustees, (b) the compensation, if any, of the members of the commission, (c) the employment of staff or consultants, if any, and (d) the date by which such commission shall report its recommendations to the board, which date shall be no later than two years after the final appointment of all members of the commission. The appointment of members of the commission, and the filling of any vacancies on such commission, shall be made as provided in this chapter.

**§ 18-1822 Establishment of commission by petition.** Notwithstanding the provisions of section twenty of the municipal home rule law, a proposed local law creating a commission as provided in section 18-1820 of this article shall be submitted to referendum providing such proposed local law is submitted with a petition requesting that such proposed local law be submitted to the electors of the village for their approval or disapproval in accordance with the provisions and procedures set forth in article nine of this chapter.

**§ 18-1824 Form of proposition.** The proposition submitting such local law to the electors of the village shall be in substantially the following form: Shall local law number.....of nineteen.....creating a commission to prepare a local law establishing the position of village manager and defining the duties and responsibilities thereof for the village of.....be approved?

**§ 18-1826 Powers and duties of the commission.** The commission created pursuant to this article shall have all the powers, duties and responsibilities set forth in the local law creating such commission and shall immediately, upon final appointment of all members, proceed to discharge such powers, duties and responsibilities.

**§ 18-1828 Vote on commission report.** A commission appointed pursuant to this article shall report to the board of trustees within the time provided in the local law creating such commission unless the board of trustees, on its own motion, elects to extend such time, but in no event, shall such time to report be extended more than ninety days. In the event the commission prepares a local law establishing the position of village manager, such local law shall be filed with the board of trustees who shall submit such local law to the village attorney or an attorney employed by the village to review the legal sufficiency of such local law. The attorney shall review such local law and report to the board whether or not such local law complies with sections twenty and twenty-seven of the municipal home rule law and whether such local law is consistent with the constitution and other laws of this state. If such local law be filed after the first day of the month in which the general village election is to be held and before the first day of the month two months prior to the next general village election, a proposition for the approval of such local law shall be submitted at a special election of such village to be held not less than ten nor more than sixty days after the filing of such petition. If such local law be so filed on or after the first day of the month two months prior to the date on which the general village election is to be held and on or before the first day of the month in which the general village election is to be held, the proposition for the approval of such local law shall be submitted at the said general village election. A special election hereunder shall be noticed, conducted, canvassed and otherwise held in the same manner as provided in article nine of this chapter.

## ARTICLE 20

### **ACTIONS INVOLVING THE VILLAGE; ORDINANCES**

Section 20-2000 Orders, rules and regulations.

20-2002 Traffic orders, rules or regulations.

20-2003 Discharge of firearms in the village of Green Island.

20-2004 Proof of ordinance adopted prior to September first, nineteen hundred seventy-four.

20-2006 Violation of ordinances.

**§ 20-2000 Orders, rules and regulations.** An order, rule or regulation which contains a penalty therein may be adopted by local law. Any rule, by-law or regulation adopted by any separate board, the violation of which shall result in a fine or imprisonment shall be approved by the board of trustees and notice of hearing and publication shall be conducted by the board of trustees in the same manner as the enactment of a local law prior to such approval.

**§ 20-2002 Traffic orders, rules or regulations.** In the event the board of trustees of a village adopts any order, rule or regulation pursuant to the authority of the vehicle and traffic law or delegates any powers granted to such village by the vehicle and traffic law to any official, board or agency of such village as authorized by section sixteen hundred three of the vehicle and traffic law, any orders, rules or regulations adopted by such board of trustees, official, board or agency shall take effect immediately upon adoption, subject to the limitations imposed by section sixteen hundred eighty-four of the vehicle and traffic law, without notice or hearing, providing traffic control devices complying with the manual and specifications thereof as adopted by the department of transportation are placed and maintained as shall be deemed necessary to indicate and carry out the provisions of such orders, rules or regulations as required by section sixteen hundred eight-two of the vehicle and traffic law.

No orders, rules or regulations heretofore adopted by any board of trustees, or by any official, board or agency as authorized by the provisions of section sixteen hundred three of the vehicle and traffic law shall be deemed invalid or ineffective solely because such order was adopted without notice or hearing.

**§ 20-2003 Discharge of firearms in the village of Green Island.** The local legislative body of the village of Green Island in the county of Albany is authorized to prohibit by local law, rule or regulation the

discharge of firearms in areas in which such activity may be hazardous to the general public or nearby residents, and providing for the posting of such areas with signs giving notice of such local law, rule or regulation, which local laws, rules and regulations may be more, but not less restrictive than any other provision of law. Thirty days prior to the adoption of any such local law, rule or regulation, a notice must be sent to the regional supervisor for fish and game of the environmental conservation department notifying him of such intention.

**§ 20-2004 Proof of ordinance adopted prior to September first, nineteen hundred seventy-four.** The certificate of the village clerk setting forth the records of the village showing the adoption of one or more ordinances and the publishing of the notice of adoption shall be presumptive evidence of such adoption and publication in any action or special proceeding in any court or otherwise.

**§ 20-2006 Violation of ordinances.** 1. The board of trustees of a village may enforce obedience to its ordinances adopted prior to September first, nineteen hundred seventy-four as follows:

a. by prescribing therefor fines for each violation thereof not to exceed two hundred fifty dollars. b. by prescribing therefor that for each violation thereof it shall constitute a violation pursuant to the penal law. However, in no case shall the fine imposed exceed two hundred fifty dollars. c. in all cases the board of trustees may enforce obedience of its ordinances by injunction.

1-a. A violation of a zoning ordinance adopted prior to September first, nineteen hundred seventy-four is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months,

or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of such zoning ordinance shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

2. Except as otherwise provided by subdivision two-a, upon the adoption of a resolution by the board of trustees of a village authorizing the village attorney or an attorney other than the one regularly employed to prosecute a violator of a village ordinance or local law or a person accused of committing any offense, infraction or criminal act within the village and providing the village attorney or an attorney other than the one regularly employed is designated as an assistant district attorney, as provided by law, to prosecute in the name of the people of the state of New York, the violator of a village ordinance or local law or a person accused of committing any offense, infraction or criminal act within the village, the board of trustees may pay a reasonable compensation to such village attorney or an attorney other than the one regularly employed therefor.

2-a. On the adoption of a resolution by the board of trustees of a village within a county having a population of more than one million inhabitants and adjacent to a city having a population of more than one million inhabitants, authorizing a village attorney or an attorney, other than one regularly employed, to prosecute in the village courts of such county a violator of a village ordinance or local law, or a person accused of committing any offense, infraction or criminal act within the village, such attorney may prosecute in the name of the people of the state of New York and the board of trustees may pay a reasonable compensation to such attorney. Nothing herein shall be construed to abrogate or otherwise limit the authority of the district attorney of such a county to prosecute an offense cognizable by a village court within such a county.

3. Any ordinance or local law heretofore adopted by the board of trustees of any village which provides that any person violating such ordinance or local law shall be a disorderly person shall continue to be valid and any violator of such ordinance or local law may be prosecuted pursuant to the criminal procedure law for the violation of a petty offense and such disorderly person shall be deemed to have committed a petty offense.

## ARTICLE 21

### HEARINGS

Section 21-2100 Notice of hearings.

21-2102 Conduct of hearings.

**§ 21-2100 Notice of hearings.** 1. Any local law adopted pursuant to the powers granted by this chapter shall be in accordance with the procedure prescribed by the municipal home rule law. Any other action taken by a village board of trustees in the exercise of its powers and upon which a public hearing is required to be conducted shall be in accordance with this section unless otherwise specifically required by statute. Any notice of a hearing, not otherwise specifically required by law shall be given in the following manner:

by publication of such notice in the official newspaper of the village or if there be none, in a newspaper of general circulation in the village wherein the hearing is to be held.

2. Such hearing shall be conducted not less than seven days after publication of such notice.

**§ 21-2102 Conduct of hearings.** 1. The hearing shall be held at the time and place designated in the notice. Such hearing may be adjourned by the board conducting such hearing provided the adjourned date is announced at such public hearing. The board conducting such hearing

shall have minutes taken of such proceedings.

2. Within sixty-two days after such hearing is concluded the board of trustees shall make a decision accordingly. The original of such decision, copies of the notice of the hearing together with affidavits of publishing same, in compliance with rule forty-five hundred thirty-two of the civil practice law and rules, the written objections and the minutes of proceedings taken on the hearings, including signed testimony, shall be filed by the board of trustees with the village clerk within five days after the decision is rendered.

## ARTICLE 22

### **LOCAL IMPROVEMENTS**

Section 22-2200 Local improvements; apportionment; bonds.

**§ 22-2200 Local improvements; apportionment; bonds.** 1. Whenever the board of trustees of any village shall make local improvements at the expense of the owners of the lands benefited thereby, or partly at the expense of such owners and partly at the expense of the village at large, the board, before making any such local improvements, shall give notice to all persons interested by publishing a notice in the official newspaper that a hearing will be held, not less than ten days after the first publication of such notice, to consider the same, and after such hearing the board may make such improvements, either by contract or by village employees, and determine the portion of the cost to be assessed upon the lands benefited thereby and the portion, if any, to be borne by the village at large, and also determine what lands will be benefited by such local improvements, and shall prepare and file in the office of the village clerk a map or plan of the proposed assessment district, showing the lands so determined to be benefited, as soon as practicable after such hearing.

2. When the cost of any such local improvements has been determined the board shall apportion and assess the part of the expense to be raised by local assessments upon the lands in such assessment district,

according to frontage, area, or otherwise, as the board may determine during the proceedings to be just and equitable, and file a copy thereof in the office of the village clerk. After making such apportionment the board shall publish in the official paper and serve upon each land owner, personally or by mail, at least ten days before the hearing, a notice of the filing of such apportionment and assessment map or plan, and that at a specified time and place a hearing will be had to review and complete the same, and that the said apportionment and the said map or plan can be examined by any person interested therein at the office of the village clerk during usual business hours, prior to such hearing. The board shall meet at the time and place specified in such notice and hear objections to such apportionment and to such assessment map. It may modify and correct the same and add or exclude land to or from the area of local assessments, but no assessment shall be increased, and no lands added thereto without notice to the owner and an opportunity to be heard. The board may adjourn the hearing from time to time without further notice and, as soon as practicable, shall complete the said apportionment and assessment, and the said assessment map and file the same in the office of the village clerk, and publish notice of such completion and filing in the official paper, and any person deeming himself aggrieved thereby may, within fifteen days after the filing of such apportionment and map apply to a court of record for an order of certiorari to review said assessments. The apportionment, the assessments and the map shall be deemed final and conclusive unless such an application to be made within such fifteen days.

3. The expense of any such local improvement may be raised in an entire amount or in installments as the board of trustees may determine. If any portion of such expenses to be borne by the village at large, or if the entire expense of such improvement is to be assessed against the property benefited thereby, such expense may be financed pursuant to the local finance law.

4. All local assessments levied against real property as provided herein shall be collected pursuant to section 5-518 of this chapter.

## ARTICLE 22-A

### JOINT FIRE DISTRICTS

Section 22-2210 Establishment of joint fire districts.

22-2212 Operation of joint fire districts in towns.

**§ 22-2210 Establishment of joint fire districts.** The town board of a town or the town boards of more than one town, and the board of trustees of an incorporated village or the boards of trustees of more than one incorporated village located in said town or towns are hereby authorized to establish and/or extend in such town or towns and village or villages a joint fire district for the purposes stated and in the manner provided in article eleven-A of the town law, provided all of the territory in such joint fire district shall be contiguous.

**§ 22-2212 Operation of joint fire districts in towns.** In all respects the provisions of article eleven-A of the town law shall apply to the establishment, extension, operation and management of any joint fire district provided for by this article.

## ARTICLE 23

### CONSTRUCTION; LAWS REPEALED; EFFECTIVE DATE

Section 23-2200 Savings clause.

23-2202 Exceptions.

23-2204 Effect of chapter.

23-2206 Pending actions and proceedings.

23-2208 Existing rights and remedies preserved.

**§ 23-2200 Savings clause.** The repeal of the village law, chapter sixty-four of the laws of nineteen hundred nine and amendments thereto, shall not affect or impair the validity or operation of any local law, ordinance or resolution adopted pursuant to such law. For the purposes of actions or proceedings which may or have been taken or rights which may or have been granted or obtained thereunder, such law and such local

laws, ordinances or resolutions shall continue in force and effect as fully and to the same extent as if such law had not been so repealed.

**§ 23-2202 Exceptions.** This chapter shall not be deemed to repeal or otherwise affect the provisions of any special or local law or ordinance of any county, city or village charter, or other special form of government, it being the intention of the legislature that the same shall continue in full force and effect until and unless otherwise duly amended, repealed or affected.

**§ 23-2204 Effect of chapter.** Provisions of this chapter that are substantially the same in substance and effect as those which are in force immediately prior to the time this chapter shall take effect and which are repealed by this chapter are intended to be codifications and continuations of such latter provisions of law and not new enactments.

**§ 23-2206 Pending actions and proceedings.** No action or proceeding pending at the time when this chapter shall take effect shall be affected by any provision of this chapter, but the same may be prosecuted, defended or enforced as if this chapter had not been enacted.

**§ 23-2208 Existing rights and remedies preserved.** No existing right or remedy of any character shall be lost, impaired or affected by reason of this chapter, nor shall the validity of any action taken by any public official under the law in force immediately prior to the time this chapter shall take effect be affected by the enactment of this chapter.