



**THE AUTHORITY
OF A MUNICIPAL
CHIEF
EXECUTIVE
DURING AN
EMERGENCY**

*A discussion of Article 2-B
of the Executive Law*



New York State Conference of Mayors
and Municipal Officials

The Authority of a Municipal Chief Executive During an Emergency

A discussion of Article 2-B of the Executive Law

A project of the
New York State Conference of Mayors and Municipal Officials

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Introduction

The 21st Century reached a defining moment at 8:45 a.m. on Tuesday, September 11, 2001 when a domestic airliner, hijacked by terrorists, crashed into and engulfed in flames the north tower of the World Trade Center in lower Manhattan. While anguished New Yorkers looked on in horror, the attack was repeated only 18 minutes later when a second hijacked plane rammed into the south tower, setting it ablaze. In just over an hour, both massive buildings collapsed, releasing a tremendous cloud of debris and smoke, and killing more than 6,000 people including the passengers of both planes.

At 9:43 a.m., another hijacked domestic airliner crashed into the Pentagon in Washington, D.C. killing 189 people, including all 64 passengers aboard the plane. At 10:10 a.m., a fourth hijacked plane crashed in an open field in Somerset County, southeast of Pittsburgh, Pennsylvania, killing all 45 crew and passengers aboard.

While Americans have never seen an attack of such magnitude on the mainland of the United States, the emergency preparedness and response of federal, state and local agencies averted what could have been an even more disastrous day. For example, in the first two hours of the emergency: the Federal Aviation Administration (FAA) shut down all NYC area airports; the Port Authority of NY & NJ ordered all bridges and tunnels in the NY area closed; the FAA halted all flight operations at U.S. airports; the White House was evacuated; the State and Justice departments were evacuated, along with the World Bank; and all inbound transatlantic aircraft flying into the US were diverted to Canada.

In the 10 years prior to these horrific terrorist attacks, the worst natural and man-made disasters to severely impact New York State municipalities and the Northeast consisted of hurricanes, severe winter storms, the 1995 bombing of the underground garage of the World Trade Center, floods and mudslides, tornadoes, and train derailments.

In the 21st Century, New Yorkers and Americans face very different challenges. Beginning with the recovery from September 11, 2001, to dealing with threats of biological, chemical, and cyber terrorism, threats to our public water and energy supplies, infrastructure, government buildings and schools, and economic security, life as we know it has changed.

Municipalities in New York will continue to experience the problems associated with natural disasters, including transportation and electrical service interruption; coastal erosion; structural damage to homes, businesses and highways; displaced businesses and unemployment; deaths, injuries and other health-related impacts; and unmet human needs such as shelter. Hence, the need for a publication like this one.

This publication explores the extraordinary authority granted to the local chief executive in the event of a disaster, public emergency, or terrorism, pursuant to Article 2-B of the New York State Executive Law. It includes examples of emergency orders, including a form declaration of a local state of emergency; a model local emergency management plan; public alert and notification information; a fact sheet on the State Emergency Management Office; and information on the Federal Emergency Management Agency.

While this publication is filled with valuable information, the key is to read it when all is well, and to know its location when disaster strikes. It is our hope that neither you nor your municipality will ever experience a disaster. But in that event, this publication will assist you in responding to the disaster and recovering from its consequences.

We dedicate this publication to the thousands of people who died in the terrorist attack of September 11, 2001, and to the police, fire fighters, emergency services providers, rescuers, recovery workers, and volunteers who risked their lives to save victims of the terrorist attack.

A Note on Disaster Preparedness

While this publication focuses on the extraordinary authority of a local chief executive during a disaster, it is important that we provide some perspective on disaster preparedness.

Prior to a disaster, every municipality should consider how it will deal with a disaster and formalize that process into a written plan. The exercise of pre-planning will not solve all of the problems that will be presented during an emergency. However, it will give the municipality a head start and will save time that is critical during the initial stages of an emergency.

This publication includes a model local emergency management plan which can be used as a starting point for most localities. We stress that this is an initial planning document and should not take the place of a thoughtfully drafted plan that includes input and participation from all local government departments.

The following suggestions will provide some guidance as your municipality undertakes the pre-planning process.

- Identify all possible disaster or emergency conditions that might occur within your jurisdiction.
- Pre-plan what actions will be taken and by whom if one of these conditions occur.
- Schedule meetings or drills to walk through what actions or steps will be taken during the course of the disaster or emergency.
- Inventory existing municipal equipment and manpower that may be available to respond to a disaster or emergency.
- Prepare a listing of other equipment and manpower sources from nearby municipalities and contractors that may be available to supplement or provide specialized assistance in an emergency.
- Develop a communications plan for emergency staff to coordinate activities of all personnel. Assume that there are no telephones or electricity.
- Maintain flexibility. No matter how well you plan, the unexpected will occur. Assume that plans will need to be altered to meet existing conditions.

What is Article 2-B?

Article 2-B of the Executive Law requires state and local disaster preparedness planning and provides local chief executives with extraordinary authority during the course of a disaster. Article 2-B is an extremely important statute, an understanding of which can assist the efforts of local chief executives to plan for, respond to, and recover from a disaster.

One of the main components of Article 2-B is the State Disaster Preparedness Commission.

The Commission consists of the commissioners of transportation, health, state energy office, division of criminal justice services, education, social services, commerce, agriculture and markets, housing and community renewal, general services, and environmental conservation, the superintendent of state police, the secretary of state, the state fire administrator, the chairman of the public service commission, the industrial commissioner, the adjutant general and three additional members, appointed by the governor, including chief executives. The governor designates the chairman of the Commission.

The Commission has a variety of functions including, but not limited to:

- preparing state disaster preparedness plans, preparing and distributing to chief executives an inventory of programs relevant to readiness, response and recovery from disasters;
- directing and coordinating state disaster operations with local disaster operations following the declaration of a state disaster emergency;
- assisting in federal recovery efforts and coordinate recovery assistance by state and private agencies; and providing for briefings, drills, or exercises to familiarize federal, local or state personnel with response and recovery plans.
- The Commission is required to prepare a state disaster preparedness plan and to review it annually. The purpose of the plan is to minimize the effects of disasters by identifying prevention measures, develop mechanisms to coordinate resources during and after disasters, provide aid and reduce human suffering from a disaster, and provide for recovery and redevelopment after disasters.
- The plans should address prevention, response and recovery.

The Local Role

Local Disaster Preparedness Plans

Each municipality is authorized to prepare disaster preparedness plans. The Commission provides assistance and advice for the development of these plans. City, town and village plans must be coordinated with the county plan.

The purpose of these plans is to minimize the effect of disasters by identifying local prevention measures, developing mechanisms to centrally coordinate local resources during and after disasters, providing aid to reduce human suffering from a disaster, and providing for recovery and redevelopment after disasters.

In preparing plans, cooperation, advice and assistance must be sought from local government officials, regional and local planning agencies, policy agencies, fire departments and fire companies, local civil defense agencies, commercial and volunteer ambulance services, health and social services officials, community action agencies, organizations for the elderly and the handicapped, other interested groups and the general public. Advice and assistance may be obtained through public hearings.

All plans for disaster preparedness developed by local governments or any revisions thereto must be submitted annually to the Disaster Preparedness Commission by **December 31** to facilitate state coordination of disaster operations.

Plans must include, but not be limited to:

Prevention

- identification of potential disasters and disaster sites;
- recommended disaster prevention projects, policies, priorities and programs, with suggested implementation schedules, which outline federal, state and local roles;
- suggested revisions and additions to building and safety codes and zoning and other land use programs;
- such other measures as reasonably can be taken to prevent disasters or mitigate their impact.

Response

- centralized coordination of resources, manpower and services, utilizing existing organizations and lines of authority and centralized direction of requests for assistance;
- the location, procurement, construction, processing, transportation, storing, maintenance, renovation, distribution or use of materials, facilities and services which may be required in time of disaster;
- a system for warning populations who are or may be endangered;
- arrangements for activating municipal and volunteer forces, through normal chains of command so far as possible, and for continued communication and reporting;

- a specific plan for rapid and efficient communication and for the integration of local communication facilities during a disaster including the assignment of responsibilities and the establishment of communication priorities and liaison with municipal, private, state and federal communication facilities;
- a plan for coordinated evacuation procedures including the establishment of temporary housing and other necessary facilities;
- criteria for establishing priorities with respect to the restoration of vital services and debris removal;
- a plan for the continued effective operation of the criminal justice system;
- provisions for training local government personnel and volunteers in disaster response operations;
- providing information to the public;
- care for the injured and needy and identification and disposition of the dead;
- utilization and coordination of programs to assist victims of disasters, with particular attention to the needs of the poor, the elderly, the handicapped, and other groups which may be especially affected;
- control of ingress and egress to and from a disaster area;
- arrangements to administer state and federal disaster assistance;
- procedures under which the county, city, town, village or other political subdivision and emergency organization personnel and resources will be used in the event of a disaster;
- a system for obtaining and coordinating disaster information including the centralized assessment of local disaster effects and resultant needs; and
- continued operation of governments of political subdivisions.

Recovery

- recommendations for replacement, reconstruction, removal or relocation of damaged or destroyed public or private facilities, proposed new or amendments to zoning, subdivision, building, sanitary or fire prevention regulations and recommendations for economic development and community development in order to minimize the impact of any potential future disasters on the community;
- provision for cooperation with state and federal agencies in recovery efforts;
- provisions for training and educating local disaster officials or organizations in the preparation of applications for federal and state disaster recovery assistance.

Declaring a Local State of Emergency

In the event of a disaster, the local chief executive is authorized to declare a local state of emergency within the municipality and to issue local emergency orders to protect life and property or to bring the emergency under control.

These orders may provide for:

- establishment of a curfew;
- prohibition/control of traffic, except essential emergency vehicles and personnel;
- designation of specific zones within which the occupancy/use of buildings and the ingress/egress of vehicles and persons may be prohibited or regulated;
- regulation and closing of places of amusement and assembly;
- suspension or limitation of the sale, dispensing, use or transportation of alcoholic beverages, firearms, explosives, and flammable materials and liquids;
- prohibition and control of the presence of persons on public streets and places;
- the establishment or designation of emergency shelters and/or emergency medical shelters; and
- suspension of any of its local laws, ordinances or regulations which may prevent, hinder, or delay necessary action in coping with a disaster or recovery only when (1) a request for the governor's assistance has been made, or (2) whenever the governor has declared a state disaster emergency. Suspension of any local law, ordinance or regulation in this manner is subject to standards and limits listed in the statute.

A local emergency order is effective from the time and in the manner prescribed in the order and must be published as soon as practicable in a newspaper of general circulation in the area affected by the order and provided to the media (radio and television) for publication and broadcast. These orders may be amended, modified and rescinded by the local chief executive during the state of emergency. These orders terminate five days after issuance or by declaration of the local chief executive that the state of emergency no longer exists, whichever occurs sooner. The local chief executive may extend these orders for additional periods up to five days each during the local state of emergency. The legislature may, by concurrent resolution, terminate emergency orders at any time.

The local emergency orders of a county chief executive must be executed in triplicate and must be filed within 72 hours or as soon as practicable in the office of the clerk of the governing board of the county, the office of the county clerk, and the office of the secretary of state.

The local emergency orders of a chief executive of a city, town or village must be executed in triplicate and must be filed within 72 hours or as soon as practicable in the office of the municipal clerk, the office of the county clerk, and the office of the secretary of state.

A local government board may grant its chief executive any additional duties or responsibilities deemed appropriate.

Any person who knowingly violates any local emergency order of a chief executive issued pursuant to this section will be guilty of a class B misdemeanor.

Whenever a local state of emergency is declared by a local chief executive, the chief executive of the county in which the local state of emergency is declared, or where a county is wholly contained within a city, the city mayor, may request the governor to remove all or any number of sentenced inmates from institutions maintained by the county in accordance with Correction Law §93.

Whenever a local state of emergency has been declared, the county chief executive, or the city chief executive where the county is wholly contained within a city, may request the governor to provide assistance, provided the chief executive determines that the disaster is beyond the capacity of local government and state assistance is necessary to supplement local efforts.

Use of Local Government Resources in a Disaster

When a disaster or the threat of disaster occurs, the local chief executive is authorized to use the facilities, equipment, supplies, personnel and other resources of the municipality as necessary to deal with the disaster. Coordinated assistance may also be obtained from the county chief executive.

The local chief executive may also obtain assistance from any other political subdivision, on mutually agreed upon terms and conditions. Local chief executives are authorized to give, lend or lease any services, equipment, facilities, supplies or other municipal resources to assist a municipality in emergency relief, reconstruction, or rehabilitation from a disaster.

The local chief executive may request assistance from the civil defense and disaster preparedness forces of another municipality, but only if those forces have already been activated within the requesting municipality. A local chief executive who receives such a request is authorized to respond.

Governmental Immunity

A municipal official will not be liable for any claim based upon the exercise, performance or failure to exercise or perform a discretionary function or duty in carrying out the provisions of Executive Law §25, Use of Local Government Resources in a Disaster.

Any elected or appointed municipal official will not be held responsible for acts or omissions of disaster preparedness forces or civil defense forces when performing disaster assistance.

Additionally, local chief executives, officers and employees are immune from liability when performing disaster assistance pursuant to a civil defense plan, drill or test. Employees may be entitled to indemnification under the General Municipal Law if they are not granted immunity by Article 2-B. Where the immunity provisions of Article 2-B do not apply, local executives, officers and employees may raise the defense of governmental immunity.

Continuity of Local Governments

Every municipality is authorized to provide by local law, for its continuity and that of its elective and appointive officers, when, in the event of a disaster, any of its officers is unable to discharge the powers and duties of office or is absent from the political subdivision.

The local law may authorize a lower level official who is temporarily filling an office to continue serving in that capacity if the officer replaced subsequently becomes able to serve. A referendum is not necessary for the local law to become effective, however, one certified copy must be filed with each the municipal clerk, the state comptroller, and three with the secretary of state.

Local Use Of Civil Defense Forces

During and immediately following a disaster, the county chief executive may direct the county civil defense director to hold a civil defense drill and training exercise at the scene of the disaster and at any other appropriate places within the county, in which civil defense forces may perform civil defense duties.

The county civil defense force is a reserve disaster force activated by the county civil defense director at the direction of the county chief executive when local municipal and private agencies are insufficient to cope with the disaster.

The county chief executive may activate or deactivate the county civil defense forces on his own or upon the request of the chief executive officer of a village, town or city located within the county of which he is an officer.

Where the local office of civil defense in a city is independent of the county office of civil defense, the county chief executive may direct the county civil defense director to render assistance within the city, only when the city's chief executive officer has certified that the city civil defense forces have been activated and that all local resources are insufficient to cope with the disaster.

When performing disaster assistance, county civil defense forces operate under the direction of the county civil defense director and have the same powers, duties, rights, privileges and immunities they would have when performing their duties in a locally sponsored civil defense drill or training exercise in the civil or political subdivision where they are enrolled, employed or assigned civil defense responsibilities.

The chief executive officer of a city is responsible for the conduct of disaster operations within the city, including the operations directed by the county civil defense director when providing disaster assistance within a city.

In towns and villages, the county sheriff, and in Nassau County, the Nassau County police commissioner, supervise the operations of the civil defense director when rendering peace officer duties incident to disaster assistance. The sheriff and commissioner may delegate supervisory power to an elected or appointed town or village official in the affected area.

The local chief executive or any elected or appointed municipal official will not be held responsible for acts or omissions of disasters preparedness forces or civil defense forces when performing disaster assistance.

City Use Of Civil Defense Forces

During and immediately following a disaster, the city chief executive may direct the city civil defense director to hold a civil defense drill and training exercise at the scene of the disaster and at any other appropriate places within the city, in which all or any civil defense forces may perform civil defense duties.

The city civil defense force is a reserve disaster force activated by the city civil defense director at the direction of the city chief executive when local municipal and private agencies are insufficient adequately to cope with the disaster.

The city chief executive may activate or deactivate the city civil defense forces on his own or upon the request of the head of the city police force.

Where the local office of civil defense in a city is under the jurisdiction of a consolidated county office of civil defense, the city chief executive must request civil defense force assistance from the county chief executive in which the city is located.

When performing disaster assistance, city civil defense forces operate under the direction of the city civil defense director and have the same powers, duties, rights, privileges, and immunities they would have when performing their duties in a locally sponsored civil defense drill or training exercise in the city where they are enrolled, employed or assigned civil defense responsibilities.

When city civil defense forces have been directed to assist in local disaster operations and local resources are insufficient to cope with the disaster, the city chief executive may request the county chief executive to direct the county civil defense director to render assistance in the city.

The city chief executive is responsible for the conduct of disaster operations within the city, including the operations directed by the county civil defense director, when rendering disaster assistance within a city.

The local chief executive or any elected or appointed municipal official will not be held responsible for acts or omissions of disaster preparedness forces or civil defense forces when performing disaster assistance.

The State Role

State Disaster Declaration

The governor may declare a disaster emergency by executive order whenever a disaster occurs or is imminent and for whichever local governments are unable to respond adequately. This action may be on the governor's initiative or upon request from one or more chief executives.

The executive order must include a description of the disaster and the affected area. The order, or orders, will remain in effect for up to six months or until rescinded by the governor, whichever occurs first. The governor may issue additional orders to extend the state disaster emergency for up to six months.

The governor is authorized to request federal assistance whenever a disaster is beyond the response capability of the state and affected jurisdictions.

In the event of a radiological accident, the governor must direct chief executives and emergency services organizations to notify the public that an emergency exists, and take protective actions. The governor may direct that other actions be taken by chief executives pursuant to the extraordinary authority granted to them under the Executive Law.

Post-Disaster Recovery Planning

Whenever a state disaster emergency has been declared, any county, city, town or village included in the disaster area must prepare a local recovery and redevelopment plan, unless the local legislative body determines that the plan is unnecessary or impractical. Prior to making this determination, the municipality must notify the Disaster Preparedness Commission of its intent to forego preparation and provide the Commission an opportunity to comment. Within 15 days after a state disaster declaration, any local government included in the disaster area must report to the Commission whether preparation of a plan has begun, and if not, the reasons for not preparing a plan. Within 60 days after the state disaster declaration, the Commission must report to the governor and the legislature the status of local recovery and redevelopment plans, including the name of any municipality which has **failed** or **refused** to develop a plan.

The Commission must provide technical assistance upon request to local governments developing plans.

A local recovery and redevelopment plan must include, but need not be limited to: plans for replacement, reconstruction, removal or relocation of damaged or destroyed facilities; proposed new or amended regulations such as zoning, subdivision, building or sanitary ordinances and codes; and plans for economic recovery and community development. Plans must take into account, and to the extent practicable incorporate, relevant existing plans and policies and the need to minimize the potential impact of any future disasters on the community.

Proposed plans must be presented at a public hearing upon five days notice published in a newspaper of general circulation in the area affected and transmitted to the radio and television media for publication and broadcast. The notice must state the time and place of the hearing and indicate where copies of the proposed plan may be inspected or obtained. Any county, city, town, or village preparing a recovery and redevelopment plan may, upon mutual agreement with any other county, city, town or village, hold a joint hearing to consider the plan.

Plans must be prepared within 45 days after a state disaster declaration and must be transmitted to the Commission. The Commission must provide comments on the plan within 10 days after receipt.

A plan must be adopted by a county, city, town or village within 10 days after receipt of the Commission's comments. The adopted plan may be amended at any time in the same manner as originally prepared, revised and adopted. The adopted plan will be the official policy for recovery and redevelopment within the municipality.

State Disaster Assistance

The governor may direct that state assistance be provided in the event of a state disaster declaration. This assistance may include:

- utilizing, lending, or giving to political subdivisions - with or without compensation - equipment, supplies, facilities, services of state personnel, and other resources, other than the extension of credit;
- distributing medicine, medical supplies, food and other consumable supplies through any authorized public or private agency;
- performing temporary emergency work to protect public health and safety, clearing debris and wreckage, making emergency repairs to and temporary replacements of damaged or destroyed public facilities; and
- making any other use of their facilities, equipment, supplies and personnel as may be necessary to assist in coping with the disaster.

Suspension of Other Laws

The governor may, by executive order, temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with these provisions would prevent, hinder, or delay action necessary to cope with the disaster.

Suspensions are subject to the following standards and limits:

- no suspension may exceed 30 days, however, the governor may extend a suspension for up to 30 days;
- a suspension must safeguard the health and welfare of the public and be reasonably necessary to the disaster effort;
- a suspension order must specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;
- an order may provide for a suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of a statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;
- a suspension order must provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the disaster action deemed necessary; and
- when practicable, specialists must be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from the suspension.

Suspensions are effective from the time and in the manner prescribed in the order and must be published as soon as practicable in the state bulletin. The legislature, by concurrent resolution, may terminate executive orders at any time.

State Use of Civil Defense Forces

The governor may direct the state civil defense commission to conduct a civil defense drill, under its direction, in which the civil defense forces of the state may be used to perform the duties assigned to them in a civil defense emergency. In this event, civil defense forces in the state would operate under the direction and command of the state director of civil defense, and possess the same powers, duties, rights, privileges and immunities applicable in a civil defense drill held at the direction of the state civil defense commission under the provisions of the New York State Defense Emergency Act.

Public Alert and Notification

The emergency broadcast system (EBS) is designed to facilitate and coordinate government access to, and use of radio, television and cable broadcast media in times of emergency. EBS is not to be used to disseminate messages or other program material consisting solely of general incident-related news and information. Broadcast access and use is voluntarily provided by participating media outlets, and is limited to governments' timely transmission and distribution of warnings, alerts, notifications and related information to the general public.

Chief elected officials are authorized to request activation of EBS. In the event of an emergency in your jurisdiction requiring a protective action, such as sheltering or evacuation, contact 911 and request EBS activation. The 911 operator will notify the local participating radio station of the activation request, along with the caller name and telephone number. The station will verify the problem and obtain information for broadcast. If the radio station activates the EBS, it will need a scripted message for broadcast. The station will then take the message and determine the broadcast format, i.e. EBS or news item.

EBS Checklist

- 1. Decide if the public needs to be informed of protective action. If EBS is chosen, draft an EBS message with the following information as a guide:**

Chief Executive authorizing message

Example:

- “The following message has been released by Mayor Jones;”
- Location of the emergency, including street address and city, town or village name;
- What is wrong there (chemical spill, gas release, bomb threat);
- Time incident began, time it is expected to be "safe" or "over";
- Boundaries (street names) of area which this may cover;
- What do you want people to do: evacuate or shelter in place;
- Any other special protective actions (close windows, go to the basement); and
- Advise persons to minimize telephone use and continue to listen to the radio or television station on which they heard this message.

2. Call 911 and advise them that you require a 911 center supervisor to initiate an EBS message.

The following is a sample EBS operational message.

“We interrupt this program because of an emergency. This is not a test.”

“Repeating ... This is not a test. The Emergency Broadcast System has been activated by the Smith County Emergency Management Office because of a chlorine gas leak in Center City.”
“Important information will follow thirty seconds from now.”

“We interrupt this program because of an emergency. This is not a test.”

“Repeating ... This is not a test. The Emergency Broadcast System has been activated by the Smith County Emergency Management Office because of a chlorine gas leak in Center City.”

“Please listen to this entire message for important information concerning this emergency.”

“An overturned truck at the corner of Main Street and First Avenue in Center City is leaking chlorine gas into the air. Chlorine gas can be harmful to anyone who inhales it.”

“Everyone within one-half mile of Main Street and First Avenue in Center City should leave the area now. Travel away from the scene of the gas leak. Offer a ride to a neighbor. Chlorine gas does not explode, but it is toxic. To prevent inhaling the fumes, keep your vehicle windows and vents closed and do not use the air conditioning or heater.”

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“Everyone within one-half mile of Main Street and First Avenue in Center City should leave the area now. Travel away from the scene of the gas leak. Offer a ride to a neighbor. Chlorine gas does not explode, but it is toxic. To prevent inhaling the fumes, keep your vehicle windows and vents closed and do not use the air conditioning or heater.”

“We now resume regular programming... with a reminder that you stay tuned to this station for further information. Reports will be updated regularly during the course of this emergency. This is the Emergency Broadcast System.”

What is SEMO?

The New York State Emergency Management Office (SEMO) is responsible for coordinating all activities necessary to protect New York's communities from natural and technological disasters and other emergencies that threaten the State. SEMO coordinates Emergency Management Services for the State by providing leadership, planning, education and resources to protect lives and property and the environment. In times of emergency or disaster, SEMO coordinates the response of State agencies ensuring the most appropriate resources are dispatched to the impacted area. SEMO works with local governments, volunteer organizations and the private sector throughout New York State to develop disaster preparedness plans, mitigation activities and provide training and exercise programs. Major programs are listed below.

Chemical Preparedness

SEMO, under SARA Title III, directs and supervises Local Emergency Planning Committees to mitigate emergencies involving acutely toxic substances and other hazardous materials. SEMO continues to seek and receive Federal training funds to promote chemical emergency preparedness.

Disaster Recovery Assistance

SEMO receives and disburses millions of dollars annually in Federal and State disaster public assistance funds to local governments, State agencies and other eligible applicants. Since 1995, there have been 13 federally-declared disasters or emergencies in the state. More than \$247 million in reimbursements have been made to affected entities.

Following federal declarations, SEMO also coordinates the delivery of these federal Individual Assistance programs:

- Individual Family Grant Program, administered by the NYS Dept. of Labor, which provides grants to meet serious disaster-related needs and necessary expenses not covered by insurance or other federal, state or voluntary agencies;
- Disaster Housing Assistance, which provides grants for temporary housing or for emergency repairs needed to make a residence safe, secure and sanitary; and
- Small Business Administration which provides low interest loans to individuals and businesses to recover from disasters.

Emergency Communications

SEMO has state of the art communications technology to assist county and local government and State agencies in times of emergency. The State Emergency Coordination Center operates on a 24-hour basis providing support to federal, state and local governments in reporting and responding to incidents.

Emergency Management Assistance

SEMO continues to seek, manage and distribute millions of dollars to county and city governments in Federal Emergency Management Agency program funds annually.

Emergency & Public Information

SEMO disseminates information to protect public health and safety during emergencies and declared disasters. SEMO also develops and distributes educational materials to raise the public's level of awareness regarding natural and technological threats.

Emergency Stockpile Equipment

SEMO's stockpile is designed primarily for drought relief and power generation. Equipment is available for a short-term loan.

Emergency Operations

SEMO coordinates all State response and initial recovery activities in accordance with Article 2-B of the State Executive Law and the State Comprehensive Emergency Management Plan to support and augment county and local government operations during an emergency. Operations consists of headquarters staff in the State Emergency Operations Center and five regional offices. SEMO also coordinates Federal resources to support the State's activities.

Mitigation

SEMO initiates and promotes mitigation projects to lessen the risks and costs of disasters on communities. Programs include hazard and flood mitigation, Joint Loss Reduction Partnership, Protecting Home and Family, Project Impact, community loss reduction planning, and hurricane preparedness.

Planning

SEMO provides planning assistance to counties and municipalities in assessing hazards and developing emergency plans. SEMO also maintains the State Comprehensive Emergency Management Plan.

Radiological Preparedness

SEMO assists the seven counties in proximity to nuclear power generating plants and coordinates State agencies with federally-mandated planning, training and emergency response and recovery activities.

Training and Exercises

SEMO offers exercise assistance and training opportunities in emergency management topics and professional development for emergency services staff throughout the state. For course offerings, visit their website at www.nysemo.state.ny.us.

WHAT IS FEMA?

The Federal Emergency Management Agency (FEMA) is an independent agency of the federal government which reports to the President. Since its founding in 1979, FEMA's mission has been clear: to reduce loss of life and property and protect our nation's critical infrastructure from all types of hazards through a comprehensive, risk-based, emergency management program of mitigation, preparedness, response and recovery.

There are 10 FEMA regions in the United States. FEMA Region II serves the federal emergency management needs of the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands. Region II employs 67 full-time employees, and can draw on a cadre of over 700 Disaster Temporary Employees (DTEs) or "reservists" during a Presidential Disaster Declaration.

FEMA Region II is located at 26 Federal Plaza, Suite 1311, New York, NY 10278. FEMA's website is www.fema.gov.

Local and State governments share the responsibility for protecting their citizens from disasters, and for helping them to recover when a disaster strikes. In some cases, an appropriate response disaster is beyond the capabilities of the state and local government.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended (the Stafford Act) was enacted to support state and local governments and their citizens when disasters overwhelm them. This law establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available under the Stafford Act, and sets the conditions for obtaining that assistance. The following explains the declaration process and provides an overview of the assistance available.

The Declaration Process

The Stafford Act (§§401 and 501) requires that: "All requests for a declaration by the President that a major disaster or emergency exists shall be made by the Governor [chief executive] of the affected State." The Governor's request is made through the regional FEMA office. State, local, and federal officials conduct a preliminary damage assessment (PDA) to estimate the extent of the disaster and its impact on individuals and public facilities. The information gathered during the PDA documents the severity and magnitude of the event and is included in the Governor's request. Normally, the PDA is completed prior to the submission of the Governor's request. However, when an obviously severe or catastrophic event occurs, the Governor's request may be submitted prior to the PDA. Nonetheless, the Governor must still make the request and damage assessments are still conducted.

As part of the request, the Governor must note that the State's emergency plan has been implemented and the situation is of such severity and magnitude that the response is beyond State and local capability and Stafford Act assistance is necessary. The Governor shall furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sector, and provide an estimate of the type and amount of assistance needed under the Stafford Act. In addition, the Governor will need to certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant portion) will comply with all applicable cost-sharing requirements.

Based on the Governor's request, the President may declare that a major disaster or emergency exists, thus activating an array of Federal programs to assist in the response and recovery effort.

Assistance Available Under A Major Disaster Declaration

Not all programs, however, are activated for every disaster. The determination of which programs are to be activated, is based on the needs found during the joint preliminary damage assessment and, any subsequent information that may be discovered.

Federal disaster assistance available under a major disaster declaration falls into three general categories:

Individual Assistance - aid to individuals, families and business owners;

Public Assistance - aid to public (and certain private non-profit) entities for certain emergency services and the repair or replacement of disaster-damaged public facilities;

Hazard Mitigation Assistance - funding for measures designed to reduce future losses to public and private property. In the event of a major disaster declaration, all counties within the declared State are eligible to apply for assistance under the Hazard Mitigation Grant Program.

Some declarations will provide only individual assistance or only public assistance. Hazard mitigation opportunities are assessed in most situations.

Forms

*The following forms are
for your use in
your municipality.*

Model Emergency Preparedness Plan

_____, New York
(City/village name)

(date)

(updated)

PURPOSE

The purpose of this plan is to cite the authority, formulate procedures, and provide guidance for coordinated action in rendering assistance to the citizens within this municipality in the event of a disaster.

BASIS

Disaster planning is based on the New York State Defense Emergency Act, the regulations and orders of the State Defense Council and the State Civil Defense Commission; the Emergency Plan for the Natural Disaster of the State of New York; and the Nation Plan for Natural Disaster Mobilization.

This municipality recognizes that planning and preparatory actions are required before an emergency. Emergency preparedness allows this municipality to prepare and react to emergency situations to save life and property if the city/village is threatened or hit by a disaster and major emergency.

The city/village council/board shall have the primary responsibility to see that everything possible is done to prepare for any disaster and to provide for the safety and security of the community during a disaster.

MOBILIZATION

Designate Emergency Operations Center (EOC)

The Emergency Operations Center for this municipality will be in the _____

(name, place and location). Once the mayor or next in line has declared an emergency exists, the Emergency Operations Center will be staffed on a 24-hour basis until the declared emergency subsides. The Emergency Operations Center will forward all warnings, directives, information, etc. to various local departments as appropriate. This will be done through the use of department representatives, telephones (located in the Emergency Operations Center), radios in the Police, Fire, Highway and Civil Defense Departments and in the offices of cooperating agencies. Each member assigned to the Emergency Operations Center will be familiar with this plan, particularly with the section pertaining to each responsible person's service duties.

Essential Emergency Operations Records

The Mayor and Clerk, functioning at the Emergency Operations Center, are responsible for the maintenance and availability of records, documents, plans and other materials required to discharge their and others' functions during an emergency.

Sequence of Action

Members of the council/board and other designated personnel will assemble as soon as possible at the Emergency Operations Center upon notification of the existence of an emergency. To cope with the effects of an emergency, appropriate steps will be taken at the Emergency Operations Center to mobilize fully the available personnel, resources, facilities, supplies and materials in this municipality according to the guidelines set forth in this plan.

1. The Mayor or the designated emergency coordinator is responsible for notification and declaration of an emergency or disaster.
2. Each department head in is responsible for assuring maximum effectiveness and utilization of all personnel and equipment of the department to accomplish the city's/village's responsibilities. Each department head will retain control of the assigned department and implement orders received from the Emergency Operations Center.
3. This municipality should seek the cooperation and aid of any or all surrounding communities in the event of an emergency or disaster. Arrangements for mutual aid should be made prior to any emergency or disaster.
4. This municipality should contact the county civil defense office regarding any major emergency or disaster situation. Civil defense assistance should be requested when local or mutual aid resources are exhausted. All requests for county civil defense assistance of any nature by any department will be approved by the mayor or other designated person and will be made to the county director of civil defense by direct phone contact or by the Civil Defense radio network.
5. Military assistance requests will be made by the Mayor to the County Executive who will forward the request to the County Civil Defense Office which will forward it to the State Natural Disaster Commission.
6. The American Red Cross is recognized as the agency responsible for mass care to persons immediately following a disaster. Local Red Cross chapters can extend natural disaster relief assistance to individuals and families and the Red Cross can assume administrative and financial responsibility in providing such assistance. American National Red Cross has been assigned this responsibility by the Congress of the United States. The Red Cross chapter responsible for the municipality is (give name, address, contact person & phone number)

RESPONSIBILITIES AND FUNCTIONS

The responsibilities and functions listed below recognize only basic duties. Each of the position descriptions may be altered or expanded to suit the needs of the individual city or village. One person may fill one or more of the below-listed descriptions.

1. The mayor is responsible for the conduct of disaster operations within this municipality.

The mayor shall use any and all facilities, equipment, supplies, personnel, and other resources of this municipality in such a manner as may be necessary or appropriate to cope with the disaster.

The mayor shall direct the activities of all agencies within this municipality against the effects of emergency in conformance with the approved plans for the rescue and relief of the people, the recovery and the rehabilitation of this community. The mayor will utilize services of the Emergency Operations Center and its staff for implementation of necessary measures to achieve emergency operations.

2. The council/board as the elected body of the people, shall take all appropriate steps to prepare for any disaster or emergency and shall generally be responsible for the implementation of this and other emergency preparedness plans.
3. The clerk is responsible for the maintenance and availability of essential records, documents and other materials, required during the emergency.
4. The emergency coordinator appointed by the mayor directs the implementation of the comprehensive plan for the Emergency Operations Center, under the direction of the mayor. Also, under the direction of the mayor, the emergency coordinator coordinates the emergency operations of the Emergency Operations Center, prepares estimates of the situation, advises the mayor of operational priorities and recommends requests for assistance from (name) County Civil Defense radio network.
5. The fire chief and fire officers Will be responsible for the direction of all action to contain and extinguish fires resulting from emergencies and the removal of trapped and injured persons from damaged buildings and flooded areas. The local fire chief may call upon the _____ (name) County Fire Coordinator or the County Civil Defense, under mutual aid, for advice and/or assistance concerning fire related emergencies, relief operations, and coordination of emergency shelter and feeding operations.
6. The local police may designate a traffic control officer to be part of the Emergency Operations Center for the purpose of controlling traffic and population movements. The local police will direct all action to maintain order, prevent looting, and help alleviate panic; direct injured to medical installations, and assist handicapped persons by obtaining transportation and directing them to the nearest Emergency Operations Center. The police chief may call upon the _____ (name) County Sheriff's Department and/or the New York State Police for advice and/or assistance.
7. The local superintendent/director of highways is responsible for the maintenance of streets and bridges and all official trucks, cars and equipment. The superintendent will direct action to check, restore and maintain essential public facilities and services, such as streets, bridges, public buildings and other vital community services, calling upon all public works and engineering services of _____ (name) County for such assistance. The highway director will work in conjunction with the local electric and gas utility, the local telephone company, the local water and sewer board, and with any other local utility in the restoration of the various essential services.
8. The building inspector of the city/village will be responsible for safety inspection of damaged homes and businesses before evacuees are allowed to reoccupy such buildings.
9. The public information officer under the supervision of the mayor directs the local dissemination of emergency information, the issuance of news reports to the public and notifies the County Civil Defense office on the status and development of emergency measures, using all media of public communication.
10. The communications officer or staff supervises, directs, arranges and restores communications for all emergency purposes using available communications means and methods. Maximum use of all available forms of communications will be planned by all departments to aid the communications staff in carrying out their duties.
11. The medical officer or staff directs all action to render health and medical services to the community. The officer or staff should alert hospitals and ambulances in the area regarding anticipated medical needs.
12. The supply officer carries out measures necessary to the emergency handling of all local resources.
13. The manpower officer directs the assignment of personnel to the various emergency services as requested.

14. The transportation officer carries out measures necessary to the utilization of all transportation modes for support and rescue operations.

15. The school representatives direct the action related to care for school students in school during an emergency situation.

16. Additional responsibilities and functions: All department heads and/or those responsible for carrying out parts of the emergency operations for this municipality shall have their responsibilities and functions listed within this plan. List below any additional responsibilities and functions:

Local State of Emergency Proclamation

A State of Emergency is hereby declared in _____ for a period of time beginning at _____ hours on the date of _____ and continuing in effect for a period not to exceed five (5) days and ending at _____ hours on the date of _____.

The State of Emergency has been declared due to emergency conditions produced by:

Such conditions threaten or imperil the public safety of the citizens of this municipality.

As Chief Executive of this municipality, I have exercised the authority given to me under New York State Executive Law, Article 2-B, to preserve the public safety and hereby render all required and available assistance vital to the security, well-being and health of the citizens of the community.

I hereby direct the Department(s) of _____ to take whatever steps necessary to protect life and property, public infrastructure and other such emergency assistance as deemed necessary.

Signed: _____

Title

Date

Order Controlling Presence of Persons on Public Streets and Places

As Chief Executive of _____ in accordance with a proclamation of State of
Emergency executed on the _____ day of _____, 20__ do hereby declare that the
following areas within this municipality are restricted and all pedestrian and vehicular
movement, standing and parking, is prohibited; except for the provisions of designated essential
services such as fire, police and hospital services including transportation of patients thereto,
utility emergency repair and emergency calls by physicians:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

Said restrictions shall apply until removed by order of the _____ of this municipality.

Signed this _____ day of _____, 20__, at _____ o'clock, in _____, New York.

Witness

Order Establishing Curfew

I, _____, _____, of _____, New York, in accordance with a Proclamation of State of Emergency executed on the _____ day of _____, 20____, do hereby declare that a curfew is established and imposed.

The curfew will commence at _____ o'clock on the _____ day of _____, 20____, until removed by the _____ of this municipality.

During the period of such curfew, all pedestrian and vehicular traffic, except essential emergency vehicles and personnel shall be prohibited from the use of the public streets within this municipality between the hours of _____ and _____.

Signed this _____ day of _____, 20____, at _____ o'clock in _____, New York.

Witness

Order Prohibiting Sale and Distribution of Alcoholic Beverages

I, _____, _____, of the _____ of _____, New York, in accordance with a Proclamation of State of Emergency executed on the ____ day of _____, 20____, do hereby order that the sale and distribution of alcoholic beverages (as defined by Section 3 of the Alcoholic Beverage Control Law, but not included patented medicines) are hereby prohibited within this municipality effective immediately until such order is rescinded by the _____.

Signed this _____ day of _____, 20____, at _____ o'clock in _____, New York.

Witness

Order Closing Places of Amusement and Assembly

I, _____, _____ of the _____ of _____, New York, in
accordance with a Proclamation of State of Emergency executed on the _____ day of _____,
20____, do hereby order the closing of all places of amusement and assembly within this
municipality effective immediately and continuing until further order of the
_____.

Signed this _____ day of _____, 20____, at _____ o'clock in _____, New
York.

Witness

Order Regulating the Purchase, Storage, etc. of Flammable Materials

I, _____, _____ of the _____ of _____, New York, in accordance with a Proclamation of State of Emergency executed on the _____ day of _____, 20____, do hereby order the prohibition of the sale or other transfer, with or without consideration, of gasoline or any other flammable or combustible liquid or of any explosive, or the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid (except that delivery into a tank properly affixed to an operable motor driven vehicle and necessary for the propulsion thereof shall not be prohibited hereunder). Signed, this _____ day of _____, 20____, at _____ o'clock in _____, New York.

Witness

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INTRODUCTION

Over the years, village officials have indicated an interest in studying the feasibility of incorporating a village into a new city. This interest results primarily from the fact that village residents are required to pay taxes to the town for services that oftentimes are not provided to vil-

lage residents. This disparity that has led some villages to consider becoming a city since cities do not pay town taxes.

This report identifies and briefly analyzes a variety of factors involved in considering whether a village would be better governed under a city form of government. The following discussion is meant to serve as a policy neutral fact sheet to explain the process and potential impacts of a village becoming a city.

This analysis attempts to encompass a wide range of policy issues associated with city incorporation, but it cannot cover every possible contingency. Additionally, the many local circumstances which play an important role in this process are not considered here. Therefore, this publication should be used as a guide which is supplemented by the expertise of local officials and individuals interested in the local, political, fiscal, and service implications of a village becoming a city.

Edward C. Farrell

CITIES

- **Cities – Formation and History**

There is no statutory process for city incorporation, unlike the village incorporation provisions of Article 2 of the Village Law. A city is a municipal corporation created by the State Legislature upon the submission and legislative approval of a locally drafted charter, followed by passage of a referendum by the

residents of the proposed city. In the State of New York, there are 62 cities ranging in population from the City of Sherrill, in Oneida County, with just under 3,000 residents, to New York City with more than 7.3 million inhabitants. There is no statutory minimum size, either in population or geographical area, which must be met for an area to be a city. Generally, cities are located along waterways or other major transportation routes, and are characterized by concentrated populations. The need to provide services for these dense population centers gave rise to the creation of cities.

Each of New York State's 62 cities is a unique governmental entity with its own special charter. A charter is a grant of power from the State which creates a city. A charter is also the document outlining the legal boundaries of the city: defining its organization, powers, functions, and procedures. Cities may change their charters and adopt new charters by local action. Additionally, cities draw authority from the General City Law, the General Municipal Law, and the Municipal Home Rule Law.

With the exception of 12 villages which were granted special charters many years ago, the form and structure of village government is provided in the Village Law. While villages have considerable local law authority to modify many provisions of the Village Law, some provisions cannot be changed by local law. This limitation results in the perception that cities have somewhat more authority to modify the structure and form of their government than villages. (See below for discussion of home rule authority.)

The first State Constitution, adopted in 1777, recognized the existing colonial charters of New York and Albany and authorized the Legislature " . . . to arrange for the organization of cities and incorporated villages and to limit their power of taxation, assessment, borrowing and involvement in debt."

By 1834, six new cities had been chartered along the State's principal trading route, the Hudson-Mohawk arterial between New York City and Buffalo. These new cities were Brooklyn, Buffalo, Hudson, Rochester, Schenectady and Troy. Thirty-two more cities were created between 1834 and 1899. The city of Rye is the most recent city to be created in 1942.

In 1987, the Village of Newark and the Town of Arcadia sought legislative approval of a locally-drafted charter to form the City of Newark-Arcadia. The bill to establish the State's first new city in 45 years was vetoed by Governor Mario M. Cuomo, who cited numerous substantive deficiencies and technical problems.

• **Home Rule and Scope of Authority**

The grant of local law powers to cities is derived from the New York State Constitution, Article IX, as implemented by, and specified in, the Municipal Home Rule Law. Under this basic grant of local law power, cities may:

1. Adopt or amend local laws in relation to their "property, affairs or government" that are not inconsistent with the provisions of the Constitution or with any general law; and
2. Adopt or amend local laws not inconsistent with the Constitution or any general law relating to several specifically enumerated subjects, whether or not these subjects relate to the "property, affairs or government" of cities.

The term "property, affairs or government," as used in Municipal Home Rule Law §10, constitutes a broad grant of local law power to cities to manage their governmental affairs and operations and to discharge their responsibilities to satisfy local needs.

Municipal Home Rule Law § 10(1)(ii) specifically enumerates the areas in which a city may adopt local laws:

- the powers, qualifications, number, mode of selection, removal, terms of office, compensation and hours of work of its officers and employees;

- the creation and discontinuance of government departments;
- the protection of its environment;
- the health, safety and welfare of persons and property within its boundaries;
- the licensing of businesses and occupations;
- the levy, collection and administration of local taxes and assessments;
- acquisition and management of real and personal property;
- authorization of benefit assessments for local improvements; and
- the membership and composition of its legislative body.

These areas of authority are substantially the same for villages. However, unlike counties, towns, and villages, cities are authorized to adopt local laws relating to tax collection which may be inconsistent with State laws.

The power of cities to enact local laws is subject to several limitations.

First, a local law cannot be inconsistent with a general State law or the New York State Constitution. A general law is a law enacted by the State Legislature that by its terms and effect applies alike to all cities.

Second, the State Legislature, in enacting the Municipal Home Rule Law, specifically restricted adopting local laws with respect to several particular subject areas. For example, a local law may not supersede a State statute if the local law removes a restriction relating to the issuance of bonds or other evidences of indebtedness; affects the maintenance, support or administration of the educational system or a teachers' pension or retirement system; or applies to or affects the courts.

Third, the scope of local law authority is restricted with respect to subjects that are determined to be areas of State concern. A matter of State concern is a subject area that courts have determined affects the residents of the entire State rather than only the "property, affairs or government" of a particular locality. The courts have determined that such areas include taxation, transportation and highways, parks, incurring of indebtedness, water supply, education, social services, health, banking, rapid transit, civil service, housing and municipal boundaries. Generally, a city may not adopt a local law relating to a matter of State concern unless the enactment is specifically authorized by Municipal Home Rule Law §10(l)(ii) or unless the State Legislature has specifically granted such power to the city.

Finally, local laws may not be enacted with respect to subjects for which State law clearly indicates a State purpose to preempt or completely occupy a particular field. Preemption occurs when State regulation in a particular area is so comprehensive as to indicate an intention to exclude local legislation. The courts have determined that municipalities are preempted from enacting legislation in many areas including the sale of alcoholic beverages, campaign financing, or the penalties for the sale of drugs. Local legislation in a particular area can also be expressly preempted by State law, such as in the case of local regulation of licensing motor vehicle drivers or rules of the road which is expressly preempted by the Vehicle and Traffic Law.

• **Common Forms of City Government**

Cities in New York State share few similarities. Each city has its own individual charter and the ability to revise it by local action. All cities have elected councils; elections are by wards, at large or a combination of

the two. All but two cities have mayors who are elected at-large by the voters. Otherwise, city government in New York exhibits a variety of forms. There is no requirement that a city use any of these forms.

In general, city government falls into three broad categories:

Mayor - Council. Under this form of city government, the mayor and council share a wide-range of authority from “strong” mayor to “weak” mayor. Under a “strong” mayor, the mayor is the chief executive and administrative head of the city and the council is the policy making body.

The mayor has the power to appoint and remove agency heads, with or without council confirmation; to prepare the budget; and to exercise broad veto powers over council actions.

Under a “weak” mayor, the mayor is mainly a ceremonial figure with no veto power and the council is the policy making body which appoints and removes agency heads and prepares budgets. Forty-five cities operate under the mayor-council form.

Council - Manager. Under this form of city government a professional manager is the administrative head of the city, the council is the policy making body and the mayor, if the position exists, is mainly a ceremonial figure. The manager usually has the power to appoint and remove department heads and to prepare the budget, but does not have veto power over council actions. Fourteen cities operate under the council-manager form.

Commission. Under this form of city government, commissioners are elected by the voters to administer the individual departments of the city government and together form the policy making body. In some cases one of the commissioners assumes the ceremonial duties of mayor, on a rotating basis. Three cities operate under a commission.

One of these three forms of city government will need to be included in the proposed city charter.

- **The City Charter vs. The City Code**

While both play a vital role in the overall operation and administration of city government, the charter should not be confused with the code.

The charter, as previously discussed, is the document which delineates the legal boundaries of the city, defines its organization, powers, functions, and procedures. Generally, the charter is the place to find matters of a more permanent and historical nature, such as the composition of the city council, the various departments, and the procedure for assessment and tax collection. The charter is the basic framework of the city.

The code is the official collection or compendium of laws, rules, or regulations of the city consolidated and classified according to subject matter. The subject matter of the local laws found in the code - with certain restrictions as specified in the next section - can range from regulating amusements to zoning. Generally, the code includes provisions implementing sections of the charter, as well as other general legislation. For example, while the charter may establish a sewer department, the code may contain provisions outlining sewer use and sewer rents. The code provisions reflect the ongoing needs of the city and its residents and can be amended easily. For example, a code provision might regulate vendors and solicitors. This provision could include a permit fee schedule which is amended from time to time.

Some publishers may divide the code between administrative legislation and general legislation. This is more of a housekeeping measure and has no legal significance.

If the charter is the frame of a house, then the code consists of the sheet rock, insulation and siding to complete the house. Together, the charter and the code make up the official body of local enactments by which the city and its residents are governed.

• **The Essential Elements of a City Charter**

All city charters are somewhat similar to each other in that they set forth the basic organization of, and allocate the powers and responsibilities for, their respective city governments. Beyond this, however, each city charter must be individually tailored to meet the circumstances, requirements and preferences of the communities they are designed to serve. The following is a list of issues to be consider when writing a city charter:

Legislative Body

What will the legislative body and its members be called?

What powers will the legislative body have?

Are there any powers which should be specifically denied to the legislative body?

Are there any qualifications for members in addition to those required by the Public Officers Law?

How many members will be on the legislative body and what will their term of office be?

Should terms be staggered or concurrent?

Will the members be elected by wards or districts, at-large, or a combination of both?

If elected by ward or district, how will the wards be apportioned?

What happens if a vacancy occurs in office? Who appoints and for how long? What happens if an appointment is not made? Are there additional qualifications for office for an appointed member?

Will there be any procedure provided for removing a council member in addition to the procedure provided by the Public Officers Law? Will there be term limits?

Legislative Body Procedure

Will there be a presiding officer of the legislative body and how will they be chosen? What is their voting power?

Who prepares the agenda for meetings and how are items added to the agenda?

Is there a time and place for regular meetings?

Is there a procedure for calling special meetings? What can be done at a special meeting? Who is responsible for compliance with the Open Meetings Law?

When is the legislative body required to use a local law, ordinance, or resolution? How are ordinances and resolutions adopted? Will there be a procedure for emergency adoption of ordinances or resolutions?

What are the rules for voting (tie votes, abstentions), quorums, and other rules of procedure.

Office of Mayor

What are the qualifications for office and how will the mayor be elected? By the citizens or the legislative body? What is the term of office?

Will the mayor have veto power? How is it exercised? Can the legislative body override the mayor's veto? What happens if the mayor takes no action within the allotted time? Does the veto power apply to all local laws, ordinances or resolutions of the legislative body? Or only to local laws?

Will the mayor be a voting member of the legislative body and can the mayor participate in meetings?
What is the mayor's relationship to the legislative body?

Who takes over in the absence of disability of the mayor? For how long? What is their authority? Who decides when there has been an absence or disability?

How will a vacancy in this office be filled and will there be any procedure for removal?

What powers will the mayor have?

For Cities with a City Manager

What are the manager's qualifications and the method of appointment or election? If appointed, will the manager be a public official or employee?

What are the manager's responsibilities? What is the relationship between the manager and other elected officials?

Is the manager required to be a resident of the city?

Will there be a procedure for removing the manager and is an acting manager provided for? What authority does an acting manager have?

Administration

How much detail about departments will be spelled out in the charter and how much will be in the administrative code?

Will boards or commissions be established in the charter or the administrative code?

Who will supervise the administration? Are there any department heads which will not be under the authority of a chief elected, legislative body, or administrative officer?

Who appoints all appointed public officials and employees? Are any elected?

Will appointed individuals be public officers required to comply with the Public Officers Law and have a term of office or will they be employees?

Who creates new departments, boards, or commissions? Do all departments, boards and commissions have to be created in the charter or can they be created in the code?

Who has the authority to discipline or remove individuals in administration?

Budget Procedure

What is the municipal fiscal year?

Who is responsible for preparing the budget and what must be in it?

How and when is the budget adopted?

Will the mayor have veto power over the entire budget, and/or line items?

What is the procedure for amendment of the budget once it has been adopted?

How is the budget implemented and administered?

How are real property taxes administered and collected?

What are the procedures for administering and collecting non-property tax revenue (e.g., fees and assessments)?

What happens if the city council fails to pass a budget in a timely fashion?

Miscellaneous

When must the village form of government be dissolved?

Will ethical standards be outlined in the charter or provided by administrative code?

If approved by the voters, when does the new charter take effect?

When is the first election of officers held under the new charter?

How will staggered terms be implemented?

Will all appointed public officials continue in office during the transition and when will their term expire?

How is the charter amended and how often is the charter reviewed?

FACT FINDING

Municipal officials and community members interested in converting a village into a city should ask a series of questions and make a series of determinations to ascertain how a change in government form would meet the requirements of their community, including:

- Is the population of the village growing, static, or declining?
- Is the village primarily residential, commercial, industrial or some combination thereof?
- Is the village an economic and social center for the area?
- Are there growing and active suburban areas surrounding the village?
- What is the economic, ethnic, and social profile of the community?
- Are the residents of the village primarily interested in stability, or increasing or slowing the pace of change?
- What is a realistic appraisal of the current and future range and quality of municipal services in the village?

These inquiries boil down to two generic questions:

- What kind of community currently exists, and
- What kind of community do the residents want over the short and long term?

Once municipal officials and community members have discussed these issues, it is time to move to the next step in the process. The following provides an analysis of some of the most likely financial and ser-

vice impacts a village can expect to encounter when converting to a city form of government.

Financial Impacts

- **Separation From the Town**

One of the major reasons why the city form of government is financially attractive to village taxpayers is that the new city will cease to be part of the town and, as a result, town taxes no longer need be paid by real property owners in the new city.

However, the city residents will still be responsible for a portion of town indebtedness incurred prior to the city incorporation. The city's share of prior town indebtedness will equal the ratio of the value of taxable real property in the prior village to the total taxable valuation town wide (as shown in the last completed town assessment roll prior to the effective date of incorporation). Thus, a village with 40% of the total town-wide assessed valuation of taxable property will owe 40% of the town debt accumulated prior to incorporation. The procedure for ascertaining the amount of debt and its proper apportionment between the town and the city should be clearly delineated in the State legislation approving the city charter.

As a city, residents' liability for county and school taxes will change to the extent to which the new city's equalization rate differs from the equalization rate of the town in which the former village was located.

- **State Revenue Sharing**

Another factor of considerable fiscal importance is the enhancement in State revenue sharing that may flow from achieving city status. However, estimating the dimensions of the anticipated increase in State general purpose aid is extremely problematic, because revenue sharing in its present form is no longer driven by a per capita aid formula. Since 1987, annual aid amounts for each local government have been determined by applying a percent change to the local governments prior year amount. A newly incorporated city's aid would most likely be set as part of the first State budget immediately succeeding city incorporation. The amount of such aid would be a matter of negotiation between the Governor, the Senate and the Assembly. There is no active formula that will necessarily provide an increase in aid relative to what the former village was receiving.

- **CHIPS (Consolidated Local Street and Highway Improvement Program)**

The CHIPS program supplies funds to municipalities to assist in the construction, operation and/or maintenance of local streets and bridges which are not part of the State highway system. CHIPS is separated into two specific programs: Operation and Maintenance Aid, and Capital Reimbursement Aid.

Operation and Maintenance Aid: Equal quarterly payments are made in April, June, September and November to each municipality within the State which reports road mileage. No application is necessary to receive this apportionment, but there is a "maintenance of effort" requirement.

Capital Reimbursement Aid: Allocates a maximum amount of reimbursement aid to each municipality. The municipality must complete capital construction (i.e., project within the right-of-way and with a minimum service life of ten years) and request reimbursement prior to specified payment dates (9/30, 12/16, 3/16). Unutilized reimbursement eligibility may be carried over to the subsequent State fiscal year.

CHIPS Aid is allocated between and within each class of local government in proportion to the percent of vehicle miles of travel. As a result, if a village were to become a city and be considered a city for purposes of the CHIPS program, the city would receive approximately double the amount of CHIPS Aid.

- **Other State Aid**

There are several other aid programs available to cities, but of limited application and monetary value.

For additional descriptions, see “Catalog of State and Federal Programs Aiding New York’s Local Governments,” New York State Commission on State-Local Relations, 1999 edition (518-455-5035).

- **Tax Collection and Enforcement**

A city is responsible for the initial collection of property taxes as well as all subsequent efforts to collect unpaid property taxes, including delinquent city school district taxes levied within the city. Therefore, the city must compensate the school district for the amount of uncollected school district taxes. (In situations where the city school district boundaries extend beyond the city limits, the county enforces collection of unpaid city school district taxes on property outside the city.) The city retains the 5% fee on delinquent school taxes for its services. Villages are only responsible for the collection and enforcement of village taxes, unless their county has agreed to enforce village taxes pursuant to Real Property Tax Law § 1442.

- **Non-Property Taxes**

The only non-property tax villages are authorized to impose is the 1% tax on gross operating income of utility companies. Some villages do receive a portion of county sales tax revenues but only at the discretion of the county government or as a result of a city pre-empting a portion of the county sales tax. A city can pre-empt up to one-half of the county sales tax levied within the city; or, if the surrounding county does not impose a sales tax, the city can levy up to a 3% tax on sales within the city.

Cities are also authorized to impose the 1% tax on utility gross operating income. Cities not imposing a general sales tax are authorized to selectively impose a sales tax upon the following (at a maximum of 3%): consumer utility billings, restaurant meals, hotel room occupancy, and amusement park admissions.

- **Mortgage Tax**

Cities and villages receive State mortgage tax monies, but under different formulas. The tax is administered by counties and imposed at a minimum rate of \$.75 for each \$100 of debt secured by a mortgage on real property. Each county initially retains \$.50 of this portion with the remaining \$.25 going to the New York State Mortgage Agency.

While cities and towns receive the entire net tax revenue (counties only keep that portion necessary to offset their administrative expenses) generated by mortgages on property within their jurisdictions, a village's share is a portion of the total received by the town and is based on the proportion that the assessed valuation of the village bears to twice the assessed valuation of the town. This formula, which guarantees villages a share of the town's mortgage tax receipts, benefits small villages with few real estate transfers; at the same time, it discriminates against villages with a healthy real estate market relative to the entire town. For the latter type of village, incorporating as a new city would increase their aid under the mortgage tax formula, because city's aid allotment is proportionate to the value of mortgages taken on real property within the city.

- **Tax and Debt Limits**

The New York State Constitution has for many years provided tax and debt limitations for cities at 2% and 7%, respectively, of five year average full valuations, the same as for villages. For cities of 125,000 or more residents, the 2% tax limitation includes property taxes for their dependent city school districts, and the debt limitation, again including education, is 9%.

In the past, the tax limits for city school districts had a seriously adverse impact upon potential new city incorporations. School districts located in villages, which have no similar tax limits, would simply oppose any attempt at the incorporation of their village into a new city, since this would have the effect of constitutionally limiting the size of the school district's tax levy.

This deterrent to the incorporation of new cities was removed when the voters of this State in November of 1985 approved an amendment of the New York Constitution (Article 8, § 10[e]), which abolished the tax limit for city school districts in cities of less than 125,000 in population.

- **Relationship With School District**

School districts inside and outside of cities must submit their annual school budget to a vote of the district's eligible voters. Small city school districts in cities under 125,000 in population are authorized to impose one non-property tax: a sales tax on consumer utility bills, at a maximum rate of 3%.

- **Bond Issue Referenda**

A referendum on a bond issue is not required in a city, unless the city, on its own initiative, enacts a local law providing for a mandatory or permissive referendum on bond issues. The city may stipulate, in a local law of this kind, for a referendum only on bond issues in excess of a specified dollar amount. In villages, bond issues are subject to a permissive referendum, with specific exceptions pursuant to Local Finance Law § 36.00.

Service Impacts

Depending upon statute, local circumstances, and custom, some villages may be receiving varying degrees of services from their respective towns, counties and/or the State which will not be furnished to a city. There also may be instances where villages are already providing services similar to those which a city would furnish its residents. The varying aspects of these situations are briefly described below.

- **Local Streets, County Roads and State Highways**

While we commonly drive, walk, and ride over them, streets, roads and highways are hard to define. The definitions vary depending on whether one examines the Highway Law, Vehicle and Traffic Law, Village Law, or City Law. The term "highway" as defined by the Highway Law refers to State and town highways and county roads and it includes the "necessary sluices, drains, ditches, waterways, embankments, retaining walls, and culverts. . . ." The Village Law § 6-600 defines the term "street" to also include a "highway, road, avenue, lane or alley which the public has a right to use. The term 'pavement' includes macadam, asphalt, brick, concrete or other improved roadbed and is applied only to the part of the street between the sidewalks or established curb lines." This term also encompasses curbs and sidewalks.

In most villages, the road system is comprised of village streets, county roads, and State highways. Generally, villages are responsible for maintaining village streets, the counties are responsible for maintaining county roads, and the State is responsible for maintaining State arterial highways.

When a village converts into a city, all village streets become city streets and the new city will be responsible for maintenance and repairs for those streets.

County roads generally are not within the boundaries of cities unless specifically so included. However, upon the recommendation of the county superintendent of highways and pursuant to a written agreement with the governing body of a town, village, or city, the county may remove a road or part of a road from the county road system. If this is done, the road or portion of the road shall revert to the town, village, or city where the road is located and thus the municipality must maintain that road in the same way as other municipal streets are maintained within its borders.

The State usually bears the ultimate responsibility for maintaining and repairing the arterial highways that are part of the State highway system. A State highway is a street that is constructed or improved pursuant to the Highway Law at the sole expense of the State. When a village becomes a city, the State will be responsible for the paved area of the highway in cities, but the city is responsible for sidewalks, facilities and appurtenances to the highway. Special rules apply regarding maintenance for cities having a State arterial highways passing through the city. The Highway Law § 349-c governs the arterial maintenance agreements between the State and cities. Curbs are considered part of the roadway and the State would be required to maintain them.

Before incorporating as a city, village officials should consider:

- the number of county and State roadways presently located within the village;
- the current cost and means of financing the maintenance of those county and State roads;
- the cost and means of financing the maintenance of those roads after the city is created.

- **City Representation in the County**

In those counties in which town supervisors serve on a county board of supervisors and where weighted voting is used, a new city would have direct representation on the county board of supervisors, thereby diminishing the impact of the town's weighted vote. In counties where county legislators are elected from districts of equal population, there would be no change in the representation on the county board or in the method of electing county legislators.

- **Elections**

Village elections are conducted under the special provisions of Article 15 of the Election Law. These provisions often differ from the provisions of the Election Law that cover the general State elections held in November. Most village elections are held on the third Tuesday in March, unless another date is specifically authorized by a village.

If a village becomes a city, the election of city officers would be conducted on the same date as the Statewide general election, which is the first Tuesday following the first Monday in November, generally in odd-numbered years. City elections are conducted pursuant to the general provisions of the Election Law and are held under the auspices of the County and State Boards of Election.

- **School District**

The proposed charter should address whether the creating the new city will affect the existing school district within which the village is located. The charter should stipulate whether the existing school district will remain unchanged in boundaries and type, or if it will become a city school district or an enlarged city school district.

- **Special Districts**

There may be, in some villages, town special purpose districts which are partly within, and partly outside the village boundaries. Should a new city be formed, any portion of a town special purpose district located in the former village would have to be separated and removed from any portion of the district remaining in the town because special purpose districts may not extend into cities. Of course, the village residents who were formerly a part of such a special purpose district will not be able to walk away from their share of the responsibility for long term financial obligations for any capital improvements undertaken by the district. A proposed new city would have to reach some sort of agreement with the particular district(s) in question in relation to those items. Language could be included in the city charter approved by the State Legislature to address this issue.

In any event, where such multi-jurisdictional special purpose districts are encountered, the circumstances of each local situation will have to be analyzed for viable solutions to particular local problems.

- **Municipal Cooperation**

Villages and cities have comparable authority to enter into municipal cooperation agreements under Article 5-G of the General Municipal Law for the joint performance of functions or services.

- **Public Safety Services**

Police and fire protection and certain inspection services are the responsibilities of a city to its inhabitants, should it choose to provide them.

A volunteer fire department in a village may continue as a volunteer fire department in a city. A number of cities presently have volunteer fire departments or combinations of paid and volunteer services.

If police protection in a village presently is provided by a town police force and/or county or State police, under a contractual arrangement, that may be extended. If a village has an existing police department, the charter could provide for confirmation that department as the new city police department.

Inspection and regulatory services, such as building inspector, sealer of weights and measures, and an examining board of plumbers and/or plumbing inspector would be city responsibilities, though all are optional.

- **Courts**

Unlike village justice courts, city court systems are directly funded by the State. For example, salaries of judicial personnel are borne by the State while justice courts salaries are a village expense. Cities, however, remain responsible for the cost of goods, services, and facilities for the city court.

The 61 cities outside of New York City each have a City Court. Pursuant to Article VI, §17 of the Constitution of New York State, the State Legislature prescribes the number and manner of selection of judges for each city court. Such provisions would either have to be included in the city charter or in a separate piece of enabling legislation which establishes the city court.

All city court judges must be attorneys admitted to the practice of law for at least five years unlike village justices who may be non-attorneys who have completed a course of training prescribed by the Legislature. While city and village justice courts have similar jurisdiction over criminal matters, the civil jurisdiction of city courts is more extensive.

Subject to certain exceptions, villages (that have established the office of village justice) and cities retain fines imposed for violations of Title 7 of the Vehicle and Traffic Law. However, a village is entitled only to an amount equal to five dollars per village resident for fines imposed for speeding violations. The remainder of the fine collected is the property of the State (there is no analogous restriction for cities).

Additionally, village justice courts receive a fifteen dollar per case reimbursement from the State for services provided in criminal actions and proceedings in which the State retains the fines associated with the violations. City courts do not receive this reimbursement.

- **Assessing**

While villages have the option to terminate their status as an assessing unit, cities are required to be an assessing unit (unless they are in a county with the power to assess real property - currently, only Nassau and Tompkins counties).

- **Civil Service and Personnel**

A significant difference between a city and a village is the authority for a city to establish its own agency for the administration of civil service. Under existing provisions of law, the county administers the civil

service function for a village. However, provisions of the Civil Service Law authorize a city to establish either a city civil service commission or to provide for the administration of civil service through the appointment of a personnel officer. Regardless of the form of administration selected, the appointment of the members of a commission or the appointment of a personnel officer is a power which would vest with the individual having the general power of appointment of other city officers and employees. Should a city choose not to exercise this function, an agreement with the existing county civil service agency would be executed so that this responsibility would be carried out by the county agency. The initial charter could resolve this matter and could limit the statutory right of the eventual legislative body to otherwise alter the form of civil service administration.

- **Planning and Zoning**

Cities possess the same ability to enact zoning provisions as do villages. Like villages, any city which adopts zoning provisions must create a zoning board of appeals. Villages and cities also possess the same ability to create planning boards if they chose to do so. Revisions to State law enacted throughout the 1990's have brought conformity to land use and zoning statutes. State law governing the zoning and planning authority of cities now mirrors provisions applicable to villages.

- **Issuance of Licenses**

Issuance of licenses or permits that village residents obtain from either the village or town clerk would become the responsibility of the city. Such duties are usually conferred upon the city clerk.

- **Maintenance of Records**

Village clerks are responsible for the custody and maintenance of village records. In cities, the custody and maintenance of records is usually the responsibility of the city clerk. The Record Retention Schedule MU-1 promulgated by the State Archive and Records Administration can be used by both villages and cities.

VILLAGE TO CITY -- THE NEED FOR A CHARTER

State law is silent with respect to the creation of new cities. It is also silent as to the process for converting a village into a city. Even though there is no specific State law to guide us through this process, the following observations lead us to certain conclusions:

- Every city in New York has a charter, therefore, a newly created city must also have a charter;
- Every city charter to date has been approved by the State Legislature and then approved by the voters of the affected region, therefore, a newly created city must also adhere to this procedure, and;
- At some point in the transition from village to city government, the village must cease to exist as a legal entity.

- **Drafting the Charter**

The section of this report entitled: "Essential Elements of a City Charter" provides a beginning point for charter drafting. The charters of New York's 62 cities may also be useful in crafting a new city charter. NYCOM has many of these charters on file for review.

Cities undertaking charter revision often utilize a charter commission to develop proposed amendments.

Villages attempting to draft a charter for a proposed city may also wish to use a charter commission to draft a comprehensive charter.

A charter commission is generally responsible for proposing a charter which is then submitted to the citizens of the city at a referendum to accept or reject. A charter commission should consist of the core group of individuals interested in, and responsible for, investigating and ultimately drafting a new city charter. The charter commission should be composed of the elected officials of the community -- the mayor and the village board of trustees. The charter commission may be supplemented by adding other interested representatives from the community whose presence could broaden the commission's perspective. In any event, the charter commission members should be public-spirited individuals willing to cooperate with each other, and work diligently to develop a comprehensive framework designed to meet the long-term interests of the community.

Members of the charter commission may require the assistance of certain experts or consultants, such as attorneys or municipal planners, in exploring the framework for, and actually drafting, a proposed city charter. Choosing a consultant is difficult. Local government operation and administration is a complicated, ever-changing field of study. A consultant should possess experience with local governments in New York State and be aware of all the constitutional and legal points that must be considered in drafting a charter in New York.

Any consultant involved in the drafting process should make a complete study of State law by which a city is bound. Even though charters are written and adopted locally, they still must comply with federal and State constitutional guarantees, and State statutes and regulations. Understanding the village's existing local laws and resolutions is also important, as they will be effected by a change in the form of government.

If your consultant is not an attorney, have the proposed charter reviewed by an attorney knowledgeable in municipal law. An attorney with a government law background will be able to point out legal difficulties that the draftsman may not have encountered.

Certain experts may request to be paid for their services. Prior to engaging the services of any professional expert or consultant, the village board of trustees should determine that a valid municipal purpose exists to hire particular individuals to perform certain services in connection with incorporating the village as a city. Once this determination has been made, it should be fully articulated in a resolution of the board of trustees, with a description of the types of services to be procured. Additionally, the village should adhere to its duly adopted policy outlining the procedure for procuring professional services.

However, villages may not use municipal funds to convey favoritism, partisanship, partiality, approval or disapproval of local legislation. Public funds are trust funds and are to be used only for the operation of government. No agency may misuse any such funds for promoting its own opinions, whims or beliefs, irrespective of the high ideals or worthy causes it espouses, promotes or promulgates.

If the village board decides against using village money to fund this effort, it may accept donations from private citizens groups to offset the costs associated with the change in the form of government.

- **Charter Into Bill**

Once the proposed city charter has been presented as a bill, it must be accompanied by a home rule request pursuant to Municipal Home Rule Law § 40. This statute provides that the village mayor, with the consent of the board of trustees, may request the State Legislature to pass a specific bill relating to the property, affairs or government of the subject village which does not in terms and in effect apply alike to all villages. The home rule request may be made separately by two or more local governments affected by the same bill.

Every home rule request must state that a necessity exists for the State Legislature to pass the bill and must include the facts establishing the necessity. The form of home rule request and the manner of its communication to the State Legislature must conform to the rules promulgated by the Senate and Assembly. In adopting the home rule request, the village board of trustees must follow Municipal Home Rule Law § 20(1).

The New York State Constitution, Article IX contains the general grants of home rule power to local governments, as well as certain limitations on the power of the State Legislature in relation to local governments. New York State Constitution, Article IX, Section 2(b)(2) and (3) specifically limits the power of the State Legislature in relation to local governments, stating in pertinent part:

“(b) Subject to the bill of rights of local governments and other applicable provisions of this Constitution, the Legislature:

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the City of New York, on certificate of necessity from the governor reciting facts which in his judgment constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

(3) Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.”

The terms “general law” and “special law” are defined in Article IX, Sections 3(d)(1) and (4) as follows:

(1) “General law.” A law which in terms and in effect applies alike to all counties all counties other than those wholly included within a city all cities all towns or all villages.

(4) “Special law.” A law which in terms and in effect applies to one or more but not all counties counties other than those wholly included within a city cities towns or villages.

Proponents of a new city should understand that special legislation requires the active support of their own Senator and Assembly member. If either official opposes the concept, a bill to create a city has little chance of passage in the State Legislature. Additionally, the town may oppose the creation of a city, because the incorporation results in removing village real property from the town's assessment rolls. The county government may be concerned, as the incorporation could impact the distribution of sales tax money (i.e., cities may preempt a portion of the county sales tax) and the county's finances. Therefore, before time and money are spent on a feasibility study or charter, preliminary discussions should be held with State and local legislators to gauge their support for the incorporation.