Adopting Local Laws In New York State

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

NEW YORK STATE
Andrew M. Cuomo
Governor

DEPARTMENT OF STATE
Cesar A. Perales
Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
99 WASHINGTON AVENUE
ALBANY, NEW YORK 12231-0001
http://www.dos.ny.gov

Publication Date: May 1998
Reprint Date: 2012



CONTENTS

PAGE

Home Rule Today 1

Grants of Home Rule Powers 1
Restrictions on Local Law Powers 3
Exercise of Local Police Power 7

Developing and Adopting a Local Law 10

- Referendum Considerations 11
- General Determinations 11
- Major Procedural Steps 12

Drafting Techniques 15

Sources of Drafting Assistance 15
- Standard Guidelines 16
- Effective Date of the Local Law 18

Adoption, Filing and Publication 19

Adoption of Local Laws 20
- Submission for Filing 21

Publication 22
- Observance of Filing Requirements 23
- Summary of Rules for Filing Local Laws with the Secretary of State 23
- Local Law Time Schedule 25
- Executive Approval Time Schedule 26

Adoption and Amendment of County and City Charters 27

Local Government Publications 28

Appendix 28

PREFACE

Since colonial times, citizens of New York State have looked to local governments for basic services. Even as we approach the twenty-first century, citizens continue to rely on cities, counties, towns and villages for a great many of their needs.

The enactment of Article IX of the State Constitution, the Municipal Home Rule Law and the Statute of Local Governments have provided local governments the means to meet the challenges of our times. Through the adoption of local laws, cities, counties, towns and villages may implement the policies as mandated by the demands of the people and the times.

The power to enact local laws is granted by the State Constitution. The scope of this power and the procedures for implementing it are set out in the Municipal Home Rule Law. A local law has the same status as an act of the State Legislature. Accordingly, it is important that the legal procedures for the adoption of local laws be closely observed.

This publication was originally prepared in 1972 by the Office for Local Government as a resource for municipal attorneys who have the responsibility for seeing that all proper procedures are carried out in enacting a local law. In 1983 a revised edition was published. This edition, our third, is intended for the elected official, government employee and private citizen who are interested in improving local governments as well as for the municipal attorney. It has been both revised and updated.

HOME RULE TODAY

The starting point in an examination of local lawpowers and procedures is the status of home rule today in the State of New York. The initial determination is whether the subject matter of the proposed local legislation falls within the general or specific grants of power contained in the State Constitution and statutes.

Grants of Home Rule Powers

Constitutional Provisions

The present Article IX of the Constitution, adopted in 1963, is not a radical departure from its predecessor. It does, however, represent a substantial simplification of previous provisions, and introduces several novel features. Among these are a Bill of Rights for Local Governments (Section 1) and provision for a unique Statute of Local Governments, under which home rule powers may be given quasi-constitutional protection against change (Section 2(b)(1)).

Constitutional home rule power is now granted to all counties outside New York City, and all cities, towns and villages (Section 3(d)(1)). Prior to 1963 no towns and only some villages had constitutional home rule power.

Bill of Rights. Among the rights and powers enumerated under the Bill of Rights for Local Governments are the rights to have a legislative body elected by the people; power to adopt local laws; the right to have local officers elected or appointed by the local residents or officers; the power to agree, as authorized by the Legislature, with the federal government, a State or other government to provide cooperatively governmental services and facilities.

Also included are the power of eminent domain; the power to make a fair return on the value or property used in the operation of certain utility services, and the right to use the profits therefrom for refunds or any other lawful purpose; and the power to apportion costs of governmental services of functions upon portions of local areas as authorized by the Legislature.

The Bill of Rights prohibits annexation of a territory unless the people thereof consent in a referendum and unless the governing boards of each local government consent to the annexation or, in the absence of such consent, the courts find that the annexation is in the overall public interest.

Finally, the Bill of Rights also protects the right of counties, other than those within a city, to adopt alternative forms of county government, subject to double or triple mandatory referendum requirements and, in some cases, permissive referendum requirements in the event of certain structural changes. This double referendum requirement has been upheld by the United States Supreme Court (*Town of Lockport v. Citizens for Community Action at Local Level*, 423 U.S. 808).

Basic Limitation on State Power. Article IX, Section 2, is the key section controlling the allocation of power between the State Legislature and local governments. There are basically two sides to this provision of the Constitution. The first limits the power of the Legislature to act in relation to local governments.

Under Section 2(b)(2), the State Legislature is specifically prohibited from acting with respect to the "property, affairs or government" of any local government except by general law or by special law enacted at the request of two-thirds of the membership of a local legislative body or at the request of its chief executive officer, concurred in by a majority of the legislative body, or, except in the case of the City of New York, by a two-thirds vote of each house upon receiving a certificate of necessity from the Governor.

Section 3(a) makes it clear, however, that these limitations (on State power) in no way restrict the State's power with respect to (1) the public school system or retirement systems pertaining thereto, (2) the courts, and (3) matters other than the property, affairs or government of a local government.

Basic Source of Home Rule Powers. The other side to the home rule provision of the Constitution is the set of affirmative grants of home rule power contained in Article IX, Section 2(c). There every local government is empowered:

(1) To adopt or amend local laws relating to its "property, affairs or government" which are not inconsistent with the provisions of the Constitution or of any general law; and
(2) To adopt or amend local laws, not inconsistent with the Constitution or any general law, relating to ten enumerated subjects, whether or not they relate to its "property, affairs or government" subject, however, to the power of the Legislature, under Section 2(b)(3), to restrict the adoption of such a local law not relating to property, affairs or government.

Finally, the State Legislature is expressly granted power to confer upon local governments additional powers not relating to their property, affairs or government and to withdraw or restrict such additional powers.

To all intents and purposes, these are the same powers which were first enumerated in Article XII, Section 2, of the Constitution of 1924.

Statute of Local Governments

Pursuant to Article IX, Section 2(b)(1), the Legislature enacted the Statute of Local Governments, to accord to those home rule powers not warranting constitutional protection, a form of quasi-constitutional protection. Under the Statute of Local Governments, no power granted to a local government therein can be repealed, diminished, impaired or suspended except by the action of two successive Legislatures with the concurrence of the Governor. However, powers granted under the Statute of Local Governments may be encroached upon or even superseded by ordinary legislative enactment where matters of State concern are involved (Wambat Realty Corp. v. State, 41 N.Y. 2d 490, 393 N.Y.S. 2d 949).

Section 11 of the Statute of Local Governments contains specific reservations of power to the Legislature with references to the grants in Section 10 thereof.

Municipal Home Rule Law

Section 10 of the Municipal Home Rule Law contains the constitutional grants of power to local governments and adds thereto the powers to collect local taxes authorized by the Legislature, to provide for the protection and enhancement of the physical and visual environment, the apportionment of local legislative bodies, and assessments for local improvements, as well as the powers granted to local governments in the Statute of Local Governments.

Various other powers are conferred separately on counties, cities, towns and villages. Included among these, in the case of villages, is the power to supersede any general law contained in the Village Law relating to property, affairs or government or the other subjects listed in the Constitution, unless expressly prohibited by the State Legislature. A village local law which superseded the Village Law by granting the Board of Trustees rather than the Mayor the power to appoint, supervise and terminate officers and employees was upheld (*Rozler v.*

Franger, 61 A.D., 2d 46, 401 N.Y.S. 2d 623, aff'd 413 N.Y.S. 2d 654, 46 N.Y. 2d 760). Towns have a similar power to supersede the Town Law, except for state statutes relating to the following areas: (1) special or improvement districts, (2) creation of areas of taxation, (3) referendums, and (4) town finances as provided in Article 8 of the Town Law. Local laws of towns which supersede Town Law sections relating to zoning have been upheld (*Yoga Society of New York, Inc. v. Inc. Town of Monroe*, 56 A.D. 2d 842, 392 N.Y.S. 2d 81; *Sherman v. Frazier* 84 A.D. 2d 401, 446 N.Y.S. 2d 372).

A cautionary note was sounded by the court in the case of *Turnpike Woods, Inc. v. Town of Stony Point*, 70 N.Y. 2d 735. There, the Court of Appeals held that in superseding a provision of the Town Law, a town's local law must refer specifically to the section of the Town Law being superseded, and must expressly describe the manner in which it is being superseded. The law of the Turnpike Woods case doubtless applies to villages as well.

Restrictions on Local Law Powers

The next point is an examination of local law powers and procedures is to determine whether there are legal restrictions or limitations which would inhibit the exercise of the powers of local legislation.

This topic will now be dealt with at some length, not to take away from the wide scope which is afforded to adopt local laws but rather to put the reader on guard in relation to an unavoidable aspect of the subject.

Generally speaking, restrictions on local law powers are found (1) in the source of the local law power itself, and (2) in other legislative enactments.

Restrictions in Source of Authority

The first place to look for any restrictions on the power to adopt local laws is in the phrasing of the grant of such power whether by the Constitution or State statute. This involves a restriction based upon the fact that the power itself is limited. Obviously, a local law may not be adopted if its subject matter is not within a grant of the local law power.

Rule of Conformity. The local law powers granted in Article IX of the Constitution as implemented by the Municipal Home Rule Law, Section 10, are phrased in two-fold fashion: (1) the power generally relating to "property, affairs or government," and (2) powers relating to enumerated subjects appearing there, whether or not they relate to "property, affairs or government."

Under the language of the Constitution, local laws relating to "property, affairs or government" may not be inconsistent with the provisions of the Constitution or of any general law (See *City of Amsterdam v. Helsby*, 371 N.Y.S. 2d 404, 37 N.Y. 2d 19; *Toia v. Regan*, 387 N.Y.S. 2d 309, 54 A.D. 2d 46, aff'd 387 N.Y.S. 2d 832, 40 N.Y. 2d 837, appeal dismissed 429 U.S. 1082). Local laws relating to the powers enumerated in Municipal Home Rule Law, Section 10(1)(ii)(a) also may not be inconsistent with the provisions of the Constitution or any general law. As noted earlier, the Legislature is specifically authorized to restrict the power to adopt local laws relating to the enumerated powers. However, where a local government is otherwise authorized to act, it will be prohibited from legislating in a subject area only if the State pre-empts the field through legislation evidencing a State purpose to exclude this possibility of varying local legislation (*Monroe-Livingston v. Town of Caledonia*, 51 N.Y. 2d 679, 435 N.Y.S. 2d 966; *Albany Area Builders' Assn. v. Town of Guilderland*, 74 N.Y. 2d 372).

A "general law" is defined as a State statute which in terms and effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages (Municipal Home Rule Law, Section 2(5)). It is to be contrasted with a "special law" which is a State statute that 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 (Municipal Home Rule Law, Section 2(12)).

Constitutional Restrictions. No local law may be inconsistent with any provision of the State Constitution -- which necessarily involves the restrictions generally applicable to all laws, such as due process of law and equal protection of laws, as well as specific restrictions in Article IX or other articles of the State Constitution. Thus a local law may not ignore the provisions of Article VIII, Section 1, restricting gifts of public moneys and loans of public credit. A local law of a non-charter county, providing that a vacancy in the office of county legislator occurring other than by expiration of its term be filled by the remaining membership of the body was upheld, notwithstanding Article XIII, Section 3 of the State Constitution which provides that, "the legislature shall provide for filling vacancies in office" (*Resnick v. County of Ulster*, 405 N.Y.S. 2d 625, 44 N.Y. 2d 279). The court reasoned that Article IX, Section 2 of the State Constitution, which grants local governments authority to adopt and amend local laws relating to the mode of selection and removal of their officers, authorized the adoption of such local laws. To the extent that there is an inconsistency between Article IX, Section 2 and Article XIII, Section 3 of the State Constitution, the later amendment to the Constitution (Article IX, Section 2) would prevail. (See also, *Westchester County CSEA v. DelBello*, 70 A.D. 2d 604, 418 N.Y.S. 2d 914 (dissenting opinion), rev'd 47 N.Y. 2d 886, 419 N.Y.S. 2d 494).

Restrictions on Enumerated Powers

The enumerated powers in Article IX, Section 2, also contain various express restrictions.

The first enumerated power, relating to the powers, duties, qualifications, number, mode of selection or removal of a local government's officers and employees specifically provides that cities and towns shall not have this power with respect to the members of the legislative body of the county (board of supervisors) in their capacity as county officers.

The second enumerated power relating to membership and composition of its legislative body applies to cities, towns or villages but not to counties. However, this power is available to counties through adoption or amendment of a county charter under the County Charter Law (Municipal Home Rule Law, Article 4).

The fourth and eighth enumerated powers, relating to the incurring of obligations and the levy, collection and administration of local taxes and assessments for local improvements, in addition to being limited grants, contain a further restriction to the effect that local laws relating to the issuance of evidences of indebtedness and the levy, collection and administration of local taxes and assessments for local improvements must be consistent with laws enacted by the Legislature. In other words, local laws enacted pursuant to these provisions must be consistent with any law enacted by the legislature, whether general or special.

Restrictions Applicable to Particular Units

The Municipal Home Rule Law grants further specific powers of local legislation to particular local governments, some of which contain restrictions. For example, a town's power to regulate or license businesses and occupations, unless otherwise specifically provided, may be

exercised only in the area of the town outside of villages (Municipal Home Rule Law, Section 10(1)(a)(12) and Section 11(3)).

Certain powers of a county board of supervisors to delegate certain functions, powers and duties are restricted to prevent a local law from divesting the board of such functions, powers and duties (Municipal Home Rule Law, Section 10(1)(b)(3) and (4)).

Impairment of Powers of Other Units

An express restriction in Article IX of the Constitution on the power to adopt local laws is found in paragraph d of Section 2(3), which provides that a local government shall not have power to adopt local laws which impair the power of any other local government, except in the case of a transfer of functions under an alternative form of county government (county charter). The statutory implementation of this restriction in the Municipal Home Rule Law is not limited to local laws impairing powers of other local governments. Subdivision 5 of Municipal Home Rule Law, Section 10, contains a broader restriction in that it bars local laws which impair the powers of any other public corporation (see General Construction Law, Section 66). In addition to other counties, cities, towns and villages, the prohibition protects such entities as school districts, fire districts and public authorities.

Regulation of Businesses. The concept of impairment of powers may be somewhat elusive, but a simple example is found in local power to license business and occupations.

Counties, cities, towns and villages have the power to regulate and license businesses and occupations under subparagraph (12) of subdivision 1 of Section 10 of the Municipal Home Rule Law. The prohibition therein, however, would prevent a county from adopting a local law relating to the licensing and regulation of businesses or professions to the extent that it would impair the power of cities, towns and villages to enact such a local law. The Municipal Home Rule Law authorizes counties to adopt local laws on the subject but limits the effectiveness of any such county local law to the area of the county outside of any city, village or town during such time as the city, village of town is regulating or licensing the particular occupation or business.

Local Laws Adopted by Towns. Subdivision 3 of Section 11 of the Municipal Home Rule Law relates to the effect of local laws adopted by towns. It provides that such a local law shall be effective and operative only in that portion of the town outside of any village or villages therein except in the case where the power of the town board extends to and includes the area of the town within any such village or villages. This appears to be a clarification and modification of the restriction on the local law power insofar as it would impair the powers of another local government.

Inconsistency with State Laws

Subdivision 1 of Section 11 of the Municipal Home Rule Law contains specific restrictions on the power to adopt local laws. It expressly provides that a local government shall not be deemed authorized to adopt a local law which supersedes a State statute relating to the subjects set forth therein.

General or Special Laws. Whether a particular law is general or special is often difficult to determine; while on its face a given statute may be a general law, an exception may exist in another statute which would render the so-called general law a special law within the meaning of the Municipal Home Rule Law. For example, Town Law, Section 23 and Public Officers Law, Section 3 both require town officers in general to

reside within the town. Amendments to each of these sections create, however, an exemption allowing the town highway superintendent in the Town of New Castle, in Westchester County, to reside outside the town. These amendments in effect render Town Law, Section 23 and Public Officers Law, Section 3 special laws regarding the residence requirements for town highway superintendents, since their general requirements regarding that office no longer apply to all towns in like manner. Any town may, therefore, adopt alternative residence requirements for its town highway superintendent simply through the adoption of a local law.

Inconsistency with a General Law. Whether or not a local law is inconsistent with a general law is sometimes difficult to ascertain. As a general statement, a local law which neither prohibits what the State law permits nor allows what the State law prohibits is not inconsistent. Thus, a penal statute in which a local law provides a greater penalty than a State law is not void for reasons of inconsistency. (*People v. Lewis*, 295 N.Y. 42, 64 N.E. 2d 702). On the other hand, a local law of a town that added additional requirements for the incorporation of villages within its borders to those already in the Village Law was determined to be inconsistent with a general law of the State (*Marcus v. Baron*, 57 N.Y. 2d 862, 456 N.Y.S. 2d 39, rev'g 84 A.D. 2d 118, 445 N.Y.S. 2d 587 (Hopkins J., dissenting)).

Where, however, the extension of the principle of a State law by means of a local law results in a situation where what would be permissible under State law becomes a violation of a local law, the local law is inconsistent and, therefore, unauthorized (*Jewish Consumptives' Relief Soc. v. Town of Woodbury*, 230 A.D. 228, 243 N.Y.S. 686, aff'd 256 N.Y. 619, 117 N.E. 165).

Matters of State Concern

As a general principle, a local government may not adopt a local law relating to a "matter of state concern" unless it is within the powers enumerated in the constitutional grant, or unless the Legislature has specifically granted such power by law.

"Matter of state concern" is a phrase born in judicial opinions rather than in the Constitutions or statutes. Court cases, construing the home rule grants, have indicated that "state concern" includes such matters as taxation, incurring of indebtedness, education, water supply, transportation and highways, health, parks, social services, aspects of civil service and banking. (See, *Wambat Realty Corp. v. State*, supra: *Toia v. Regan*, N.Y.S. 2d 309, 54 A.D. 46, aff'd 387 N.Y.S. 2d 309, 54 A.D. 2d 46, aff'd 387 N.Y.S. 2d 832, 40 N.Y. 2d 837, appeal dismissed 429 U.S. 1082).

Some areas of "state concern" are expressly reserved to the Legislature in both the Constitution and the Municipal Home Rule Law. As noted earlier, Section 3 of Article IX of the Constitution expressly preserves the Legislature's power in three areas of State concern -- (1) the public school system or any retirement system pertaining to the public school system, (2) the courts, and (3) matters other than "property, affairs or government" of a local government.

Doctrine of State Pre-emption

A subject which is somewhat analogous to "matters of state concern" is pre-emption by the State of a particular subject of regulation. Pre-emption may occur when a State law clearly indicates a State purpose to pre-empt or occupy a particular field of regulation. This type of pre-emption was noted in the unsuccessful attempt of the City of New York to establish a minimum wage by local law where a general State law

already existed (*Wholesale Laundry Board of Trade v. City of New York*, infra). A general law of the State mandating binding arbitration in the case of an impasse in collective bargaining negotiations between a public employer and its firemen and policemen may not be superseded by local law *(City of Amsterdam v. Helsby*, 371 N.Y.S. 2d 404, 37 N.Y. 2d 19).

In certain instances there is a clear expression in the law itself to the effect that the State has exercised the right of jurisdiction over the particular subject involved (see for example, Village Law, Sections 5-532 and 9-916). A further discussion of the pre-emption doctrine follows, in Section 3 Exercise of Local Police Power).

Restrictions in Other Laws

Restrictions on local law powers may be found in other acts of the Legislature. For example, when the finance article of the Village Law was codified by Chapter 767 of the Laws of 1967, section 3 of the act provided that no local law shall be adopted changing, amending or superseding any of the provisions of such article. This restriction did not appear in the Village Law, but only in the session laws.

Valid restrictions on local law powers may be contained in the provisions of county, city and village charters. These could take the form of additional referendum requirements and prohibitions against the adoption of certain local laws. Charters should be checked for any such restrictions on the adoption of local laws.

Reference is made to subdivision 2 of Section 11 of the Municipal Home Rule Law. This subdivision restricts the adoption of local laws by the legislative body of a county, city or village which:

(1) Amend the charter of the county, city or village contrary to any provision of such charter regulating its own amendment; or which

(2) The legislative body is by provision of the charter prohibited from adopting.

In some instances, therefore, it may be necessary to obtain an act of the Legislature to remove certain charter restrictions on local law powers if it is deemed advisable to remove the restrictions.

Exercise of Local Police Power

The exercise of police power by local governments merits separate consideration in the board context of home rule.

Police Power Defined. The police power has been defined generally as the power to regulate persons and property for the purpose of securing the public health, safety, welfare, comfort, peace and prosperity of the municipality and its inhabitants (*Village of Carthage v. Frederick*, 122 N.Y. 268). The power is as old as is the organization of municipalities. In fact, some courts have said that the State imparts police power to the municipality by the mere organization of it. It is implied in the grant to govern (*Carollo v. Town of Smithtown*, 20 Misc. 2d 435, 190 N.Y.S. 2d 36).

Scope of Police Power. The scope of the municipal police power has been given, from time to time, a broad construction in municipal practice and in the courts. Within precise limits, it has included the prevention, suppression and abatement of public nuisances, including street nuisances and air pollution; preservation of the public peace and tranquility; regulation of hours of business; protection of the public against offenses in violation of the public morality and decency; regulation of public amusements, recreations and resorts.

Also, protection of the public health in connection with regulation of sanitation, disposal of waste products, interments, cemeteries, keeping of animals; protection of the public from the deleterious effects of industrial and commercial developments, fraudulent sales, weights and measures; proper growth of the municipality through zoning.

Also, regulation of business, occupations and trades such as filling stations, garages, laundries and dry cleaning, junk and second-hand dealers, peddlers, markets, billboards; protection against fire and explosion; regulation of buildings and housing; regulation of streets, traffic; and numerous other subjects related to the protection of the public health and welfare.

Local laws and ordinances enacted in the exercise of the police power are rarely struck down on grounds that the subject matter is not within the scope of municipal police power.

Grants of Police Power

General Grants of Police Power. General grants of the police power to local governments are contained in the State Constitution Article IX; Municipal Home Rule Law, Section 10; General City Law, Section 20; Town Law, Section 130; Village Law, Section 4-412, and the various city and village charters.

A general grant may be found in the usual general welfare clause which carries the power to enact all laws necessary. One example would be the provisions contained in Municipal Home Rule Law, Section 10(1)(12), namely, the power to enact local laws with respect to the "government, protection, order, conduct, safety, health and well-being of persons or property therein."

The courts have held that a general grant of police power is one which grants broad power with respect to a specific subject such as the power to act with respect to streets or the power to regulate businesses and occupations (*Safee v. City of Buffalo*, 204 A.D. 561, 198 N.Y.S. 646).

In the well-known case of *Wells v. Town of Salina*, 119 N.Y. 280, the Court of Appeals said that towns and other municipal corporations possess only such powers as are expressly conferred by State law or necessarily implied from such express powers. The fact of the matter is that the Town of Salina case related to a financial matter and is not related to the exercise of the police power by the town. The case is not, therefore, properly applicable to the construction of the effect and scope of a general grant of police power. It would seem that what was said by the Court of Appeals in the Town of Salina case concerning express and implied powers has been misconstrued by attorneys and others to mean that a grant of police power to a local government must be specific and that the general grant is somehow insufficient.

It could also be maintained that the Town of Salina case has been modified or superseded to the extent of the home rule power granted in Article IX of the Constitution, a point often overlooked by some attorneys in applying court decisions written before 1964 to current legislation.

Specific Grants of Police Power. A specific grant of police power is one which authorizes enactment of a local law or ordinance on a specific subject and defines its details and mode of enforcement (*Safee v. City of Buffalo*, supra: *Matter of Stubbe v. Adamson*, 220 N.Y. 459).

It has been held, with respect to regulations enacted by ordinances pursuant to a general grant of police power, that evidence on the reasonableness of the ordinance may be received by the court. On the other hand, evidence on the reasonableness of an ordinance enacted pursuant to a specific grant may not be presented (id.).

While the foregoing principle might be applicable to a local law enacted solely under a legislative delegation of police power, there are sound reasons why it should not apply to a local law enacted pursuant to a constitutional grant of police power. The latter type of local law is co-equal with "and just as binding" as an act of the Legislature (*Matter of Mooney v. Cohen*, 272 N.Y. 33). It could therefore be concluded that, when it is within the scope of the constitutional power, such a local law is entitled to the same presumption of reasonable exercise of constitutional power as an act of the Legislature.

In determining consistency of an ordinance or local law with State statutes, it seems that a local law or ordinance which is enacted pursuant to a specific legislative grant has a greater change of overcoming the argument of State pre-emption than an ordinance enacted under a general grant since it may be reasonably presumed that the State, by specifically authorizing a local government to act upon a subject, did not intend to pre-empt that field.

Further Test of Validity

In addition to meeting the requirements of being within the scope of a legislative grant and not being inconsistent with State statutes, to be valid, a local law or ordinance adopted pursuant to the police power must also meet the following criteria:

(1) The State must not have indicated an intention to pre-empt the field; and
(2) In regulating the conduct of individuals the action must be reasonable.

To determine whether any regulation is reasonable, it must be shown that (a) a problem exists; (b) the means selected to curt the problem have a real and substantial relation to the result sought; and (c) the means availed of must not unduly infringe upon or oppose fundamental rights of those whose activities or conduct is curbed.

State Pre-emption. The case of *Wholesale Laundry Board of Trade, Inc. v. City of New York*, 17 A.D. 2d, 327, 234 N.Y.S. 2d 862, aff'd 12 N.Y. 2d 998, 239 N.Y.S. 2d 128, is of particular significance regarding the question of pre-emption. In that case New York City enacted a local law establishing a higher minimum wage within the city than that established throughout the State. An action was brought to declare the law invalid on the grounds that the subject matter was not within the police power and that it was inconsistent with the statewide minimum wage law.

The city contended that the law was within the scope of the police power, and cited *People v. Lewis*, 295 N.Y. 42, in which the Court of Appeals upheld the validity of a New York City local law imposing more severe penalties than those imposed by the State for violation of Federal price control regulations. The City further argued that the local law was consistent with the State Minimum Wage Law because any person complying with the local law would also be complying with the State law.

The Appellate Division unanimously held that the State law indicated a purpose to occupy the entire field. It cited a provision of the City Home Rule Law to the effect that the powers granted in such law could not be exercised to supersede any provision of the Labor Law. The Court also cited the State Minimum Wage Law itself, which it said contained elaborate machinery for the determination of an adequate wage in any occupation and locality in the State.

In a landmark case regarding the financing of public improvements, *Albany Area Builders Association v. Town of Guilderland* 74 N.Y. 2d 372, the Court of Appeals struck down a town's

Transportation Impact Fee Law, which had provided for the financing of town highway improvements through fees charged to applicants for development approvals. The court held that the provisions of the Town Law and the Highway Law dealing with the expenditure of town moneys for highway purposes evidenced a "detailed regulatory scheme in the field of highway funding, pre-empting local legislation on the subject."

General Limitations. Except for the tests of validity outlined above, a local law enacted by a municipality pursuant to the police power is in all other respects subject to the same limitations as an act of the State Legislature enacted under its police power. It must not be inconsistent with the State or Federal constitutions, there must be an actual or reasonable anticipated evil to be remedied and the measures provided must bear a reasonable relationship to this purpose. It must not violate the equal protection clauses of the State and Federal constitutions or any other provisions thereof.

DEVELOPING AND ADOPTING A LOCAL LAW

The municipality is usually requested by a local officer to prepare legislation on a specific subject because there is a need for a new local law; or because there is need to change the existing law, to supplement it, or to amplify it. There are a variety of considerations in the development and adoption of a local law.

Local Law Defined

A local law is defined in Municipal Home Rule Law, Section 2(9) as follows:

> "a law (a) adopted pursuant thereto or to other authorization of a State statute or charter by the legislative body of a local government, or (b) proposed by a charter commission or by petition, and ratified by popular vote, as provided in article four of this chapter or as provided in a state statute, charter or local law; but shall not mean or include an ordinance, resolution or other similar act of the legislative body or of any other board or body."

A local law may be viewed as a form of municipal legislation which is superior to the older forms of municipal legislation by ordinance, resolution, rule or regulation, because the local law power is granted by the State Constitution, and is not a strictly delegated power from the State Legislature.

Local Law Status

A valid local law has status equivalent with a law enacted by the Legislature. A local law has the quality that it may be inconsistent with a law enacted by the Legislature and may amend, supersede or repeal such a law, providing, of course, that the State law is not a general law, or that the Legislature has not restricted the local law power on a particular subject. The courts have recognized the difference between a local law and an ordinance, resolution or other similar act of a legislative body, not only in form but also in substance. Among these terms there are decided differences. Municipal Home Rule Law, Section 2(9) provides that a "local law" shall not include an ordinance, resolution or other similar act of the legislative body.

Local Law Power

Whenever a local law is under consideration, the municipal attorney must reach a decision as to the existence and extent of local law power in relation to the subject matter at hand. This entails, in substance, the resolution of three threshold questions, as follows:

(1) Does the proposed subject matter of the local law fall within the general or specific grants of power contained in the Municipal Home Rule Law or elsewhere?
(2) Are there, however, restrictions, limitations or prohibitions which would militate against the exercise of such power?
(3) Is there overriding general law on the subject or has the state pre-empted the field?

After having resolved these issues, the municipal body can turn to the several steps involved in the development and adoption of the local law. This is a teamwork effort involving the municipal attorney, local government officials, the citizens, the local legislators and the clerk of the local legislative body. If active and willing cooperation and coordination is provided by each participant during the process, a successful local law will be achieved.

Referendum Considerations

Policy Aspects

Initially the municipal attorney should check to see whether the proposed local law would be subject to a mandatory referendum or referendum on petition under Sections 23 or 24 of the Municipal Home Rule Law. If he determines that the proposed local law is subject to referendum, he might want to raise a policy question with the members of the local legislative body as to whether they desire to adopt a local law which would be subject either to a mandatory referendum or to a referendum on petition. The questions raised by the referendum requirements should be carefully considered in light of the local situation, the desires and attitudes of municipal officials, civic organizations and citizens generally.

Required Procedures

Procedural referendum requirements are found in Municipal Home Rule Law, Sections 23 and 24. Section 23 relates to local laws subject to mandatory referendum and requires that proposed local laws within this category be voted upon at the next general election of "state or local governmental officers" in the local government, unless the local law itself provides for submission at a special election to be held on a designated day, or unless there is a valid petition requesting that it be submitted at a special election -- in which case the local legislative body would be required to fix a date for such special election.

Section 24 relates to local laws subject to referendum on petition and provides requirements for petitions in such cases. There is no provision in the Municipal Home Rule Law whereby a local legislative body may determine for itself whether to submit a local law to referendum.

Where under Section 24 a valid petition is received for a referendum on a proposed local law adopted by the local legislative body, the referendum is required to be held at the "next general election of state or local government officers" held in the local government, unless the petition requests that the referendum be at a special election and in accordance therewith the local legislative body takes action by local law to submit the matter to such a special election.

General Determinations

Assuming that no referendum is required or that the problem concerning referendum has been resolved in favor of taking action by local law, the next problem would relate to the approach to be taken in the local law that is to be drafted. The techniques of drafting are covered in Chapter 3, but prior to actual drafting, questions would arise such as:

(1) Is the subject matter such that a legislative finding would be desirable for the purpose of reciting legislative intent or objective? This may help in sustaining validity in the event of litigation. If so, consideration should be given to the specific language that would precisely express the findings or intent.
(2) What officer or agency of the local government is to have the power or duty?
(3) How should the adjustment of a local law be phrased? Should it be phrased in terms of a direct requirement or should an officer or agency of the local government be authorized to determine whether or not to act?
(4) Is an officer or agency to be empowered to adopt and promulgate rules and regulations as authorized by Municipal Home Rule Law, Section 10(4)(a)? If so, legislative standards will have to be provided and the municipal attorney will have to develop an adequate statement of such standards.
(5) What enforcement remedies, if any, should be provided? Municipal Home Rule Law, Section 10(4)(b) provides a broad authorization for penalties and fines and for legal and equitable remedies, including the power to grant public servants the authority to issue appearance tickets.

With respect to some of these matters, the Municipal Home Rule Law provides specific authorizations; with respect to others, it does not. Some of these matters require a basic knowledge concerning the scope of police power and the manner of its exercise, the regulation of activities and businesses by administrative agencies, and the review of administrative determinations by the courts. Here, again, the other chapters of the handbook are designed to provide helpful guidelines.

Major Procedural Steps

After a local law has been drafted, the procedural requirements of Municipal Home Rule Law, Article 3 take effect.

Introduction of the Local Law

After the proposed local law has been drafted and is ready for introduction in the local legislative body, sufficient copies should be prepared in accordance with the requirements of the legislative body. It should be determined whether it is planned to introduce the proposed local law at a meeting of the legislative body or whether it is proposed to introduce it by mailing a copy to each member under the procedure provided in Section 20(4) of the Municipal Home Rule Law. The Municipal Home Rule Law makes it clear that a proposed local law may be introduced only by a member of the local legislative body.

While not required by the Municipal Home Rule Law, it is suggested that local legislative bodies establish a system of introductory and print numbers for proposed local laws and amendments thereof and that the present practice in some local governments of assigning a final number to each proposed local law as it is introduced be discontinued. Numbering will be discussed in more detail in Chapter 4.

Legislative Stage

After introduction, the proposal is ready for consideration by the local legislative body. It may be debated, and hearings open to the public and regular and executive meetings of the legislative body may be held with respect to it. Local officials, representatives of civic organizations and interested persons may be heard or their views solicited concerning the proposal.

Waiting Time. Possibly, one or more amendments may be considered and accepted. Assuming that the proposed local law is to be amended, it should be rewritten and reproduced in its amended form and given the same introductory number but a new print number. It would then be subject to the requirements of the Municipal Home Rule Law, Section 20(4), concerning being on the desks or table of the members for at least seven calendar days (exclusive of Sundays) or having been mailed to the members at least ten calendar days (exclusive of Sundays) before the local legislative body may act on it.

The waiting period requires exact computations of time that involve not only the Municipal Home Rule Law but also the General Construction Law. In counting days, the day on which a local law is placed on the desk or mailed should not be counted (General Construction Law, Section 20). It has also been held that the day of passage should not count in the waiting period *(London v. Wagner*, 22 Misc. 2d 360, 195 N.Y.S. 2d 550, aff'd 13 A.D. 2d 479, 214 N.Y.S. 2d 647, aff'd 11 N.Y. 2d 762, 227 N.Y.S. 2d 13).

In regard to the theory of substantial compliance as expressed in *Commission of Public Charities of City or Hudson v. Wortman*, 225 App. Div. 241, 7 N.Y.S. 2d 631, the court in *London v. Wagner* held that "the Court of Appeals has long since declared that almost identical language is mandatory and compliance is required. *People ex rel. Hatch v. Reardon*, 184 N.Y. 431, 439, 77 N.E. 970, 971, 8 L.R.A., N.S. 314."

Emergency Message. The Municipal Home Rule Law does, however, provide an emergency procedure for waiving the above waiting time requirements in the event there is necessity for immediate passage of the proposal (Section 20(4)). This requires a message of necessity from the elective or appointive chief executive officer, if there be one, or otherwise the chairman of the board of supervisors in the case of a county, the mayor in the case of a city or village, or the supervisor in the case of a town.

It has been held that the courts cannot inquire into the motives of the mayor or a city in sending an emergency message to the municipal assembly dispensing with the necessity that local laws be in their final form and on the desks of the members at least seven calendar days prior to final passage. The statute does not require that the emergency message shall set forth the facts constituting the emergency. (*Murway v. O'Brien*, 161 Misc. 438, 293, N.Y.S. 481).

Adoption of the Local Law. It is still possible that in its amended form the proposed local law will not be completely acceptable and that further amendments will be determined upon and the proposal further amended accordingly and then considered. Regardless of the number of times a proposed local law is amended, it must still be on the desks or table of the members, or mailed to them as the case may be, for the required time period in its final form, prior to passage.

Assuming that the local legislative body eventually reaches the point where it is ready to act on the proposal, it may do so by a majority vote of the total authorized membership of the body, except that a two-thirds vote is required for immediate passage under the emergency procedure. The courts have held that this overrides the provisions of the Second Class Cities Law (*Grady v. Yonkers*, 303 N.Y.S. 2d 620, 3d. case).

If the chief executive officer vetoes a proposed local law, the local legislative body may, within thirty days after receipt of the veto at a regular meeting thereof, reconsider the local law and override the veto by a two-thirds vote.

Public Hearings

A public hearing must be held on each proposed local law. Where the elective chief executive officer of the local government has power to approve or to veto a proposed local law, he is required to give notice of and hold a public hearing before he approves or disapproves. If there is not such elective chief executive officer with power to approve or to veto, then the public hearing must be held by the local legislative body before it may take action to adopt a local law.

Time Frame. It is the responsibility of the municipal attorney to see that the format of procedures has been adhered to. For this reason and for clarification the following sequence is provided as a guide for moving an idea through the system to the adoption of a local law.

Step I. The local governing body has heard citizen complaints or has received information regarding a problem within the municipality. This complaint or problem has created a need for a local law.

Step II. The municipal attorney is requested to draft a law which deals with the problem at hand.

Step III. The law is presented to the municipal governing body and introduced by one of its members.

Step IV. A notice of hearing is published which informs the public governed by this proposed law, that such a matter is before the municipal body (or the chief executive officer who must finally approve the law, as the case may be) and their comments will be heard on the issue.

Note: Five (5) days must lapse between the notice of public hearing and the public hearing itself. The local government may, however, adopt a local law setting its own hearing-notice requirement for all local laws adopted by that municipality. If it does so, such a local law, which must itself have a hearing held on five days' notice, may set a general notice period of as little as three days.

Step V. The public hearing is held and the issues heard. If no changes are made to the proposed law, the municipal body moves to adoption (Step VI).

If the proposed law is changed, go to Step VII.

Step VI. As soon as is practicable after the hearing is concluded, the proposed law can be voted on and adopted or approved by the chief executive officer as the case may be. However, there must be a seven (7) day lapse (ten days if mailed) between the introduction of the proposed law and the adoption (between Step III and Step VI). Municipal attorneys should keep in mind that Sundays are not counted in the 7 day time frame. It should be useful to note that the 7 day (or ten day) introduction period can run concurrently with the hearing notice time period.

Step VII. The municipal attorney may be required to amend or redraft the proposed law based on the input from the local residents at the public hearing. If so, the procedure will start over at Step II and follow the same time frame as the original draft.

Notice of Hearing. There is no guideline set forth as to the content of the notice or how extensive the public hearing should be. *(Carlen v. The City of Glens Falls*, 35 Misc. 2d 363, 230 N.Y.S. 2d 965).

Sufficiency of Hearing. The hearing should provide for a complete presentation of arguments for and against the proposed law by the public in attendance at the hearing. Information generated at the hearing is then reduced to writing and used for reference by the legislative body prior to the enacting of the proposed law.

Cases have been heard concerning the issue of sufficiency of the hearing and the right to terminate the public hearing when it was felt that all arguments were heard. *(Miner v. The City of Yonkers*, 189 N.Y.S. 2d 762 and *Martin v. Flynn*, 19 A.D. 2d 653, 241 N.Y.S. 2d 883).

Lastly, during the local law adoption process, the municipal attorney should be aware of other statutory requirements, such as a required referral to a state or county agency, which may affect the procedure for adoption of the local law.

DRAFTING TECHNIQUES

The preparation of the drafted legislation by the involved citizens, boards, consultants, or municipal attorneys is a step-by-step process designed to follow guidelines within the Constitution, applicable statutes, court decisions, prior legislation and government agencies. The municipal attorney should be employed to review and scrutinize the material presented in the draft to assure the municipality that what is submitted, is workable and addresses the matter at hand.

Sources of Drafting Assistance

Municipal Home Rule Law

There are two sections of the Municipal Home Rule Law that specifically deal with the drafting of a local law. Municipal Home Rule Law, Section 20(2) details the enacting clause, while subdivision 3 limits such laws to one subject matter. The latter subdivision was recently amended so that local laws codifying or recodifying ordinances or local laws are deemed to embrace only one subject. Municipal Home Rule Law, Section 22(1) contains some instructions for the draftsman when a local law changes or supersedes the provisions of a State statute, a prior local law or ordinance.

Assistance from State Agencies

In some instances, State agencies may be of assistance in rendering advisory services. Sometimes they have sample or model laws that may be used as drawn, modified to fit the local situation or used as a guide to accomplish the local objective. At other times the agency staff may be available to review or critique a local law which is in draft form. Rarely, because of staff and time limitations, can state agencies actually draft local laws.

Published Volumes of Local Laws

Prior to 1974 bound volumes of all local laws filed were published by the Secretary of State. These volumes remain a valuable source of assistance in drafting local laws.

The drafting and enactment of any local law should, however, be undertaken with the advice and assistance of experienced legal counsel. As there have been several judicial decisions on the extent to which municipalities may regulate various activities, provisions found in the local laws of other municipalities should not be used out-of-hand unless they are determined to be legally sound for your local government.

Bill Drafting Manual

Perhaps the best source for form, style and techniques is the *Bill Drafting Manual* published in limited quantity by the Legislative Bill Drafting Commission. Although the manual is oriented towards the drafting of State Laws, its principles apply equally well to drafting local laws.

Standard Guidelines

Every local law should contain four formal parts, each of which will be separately considered in the order named:

(1) The title
(2) The enacting clause
(3) The body
(4) The effective date

Title of the Local Law

Municipal Home Rule Law, Section 20(3) provides as follows: "Every such local law shall embrace only one subject. The title shall briefly refer to the subject matter. For purposes of this chapter, a local law relating to codification or recodification of ordinances or local laws into a municipal code shall be deemed to embrace only one subject. As used herein codification or recodification shall include amendments, deletions, repeals, alterations or new provisions in the municipal code; provided, however, that the notice of public hearing required by this section shall briefly describe the codification or recodification."

General Principles. Modern authorities on local law drafting assert that the best title is one which is brief and kept in general terms, not one which is an abstract of all the incidental provisions of the local law.

Some authorities assert that the title is the last part of a local law to be prepared. Certainly a title should be carefully checked after the local law is completed, to ascertain if all provisions of the local law are germane to the title. However, if the draftsman first carefully considers the object or purpose of the proposed local law, and prepares a title expressive of this object or purpose, it will be a useful guide for him in drafting the local law and should require little if any, later amendment.

Judicial Guidelines. A law may not be used to conceal another provision which would create legislative logrolling. In *Burke v. Kern*, 287 N.Y. 203, the court stated that although a law must be limited to one subject, it may embrace the carrying out of that subject matter in various objective ways, provided the objectives are naturally connected with the subject matter and the title could be said to apprise the reader of what may reasonably be found in the statute.

Since this case was decided in 1941, it has consistently been followed in the Court of Appeals and the lower courts. Twenty years later the Appellate Division, Third Department, using these guidelines ruled that a local law of the City of Glens Falls was valid because:

> "...the title clearly indicates and correctly describes the subject as the enactment of a minimum salary schedule and a reading of the proposed law will disclose nothing at variance therewith. That the title recites, whether diffusely or unnecessarily, a number of purposes -- again as distinct from the subject -- is not enough to condemn the form of the projected act." (*in re Mitrione's Petition*, 14 A.D. 2d 716, 291 N.Y.S. 2d 866)

Examples of Titles

> A local law establishing standards of conduct for officers and employees of the City of Schenectady
>
> A local law relating to the establishment of a commissioner for conservation of the City of Ithaca
>
> A local law to establish a narcotics guidance council in the town of Putnam Valley

Enacting Clause of the Local Law

The enacting clause is specifically stated in Municipal Home Rule Law, Section 20(2), where it is stipulated that the style of the local law shall be "Be it enacted by the (naming the legislative body) of the (name of local government) as follows:" This quoted wording must appear in every local law.

Failure to include an enacting clause renders a local law invalid. (*Noonan v. O'Leary*, 206 Misc. 175, 132 N.Y.S. 2d 726)

Examples of Enacting Clauses

> Be it enacted by the board of supervisors of the county of Saratoga as follows:
>
> Be it enacted by the legislature of the county of Erie as follows:
>
> Be it enacted by the common council of the city of Utica as follows:
>
> Be it enacted by the town board of the town of German Flats as follows:
>
> Be it enacted by the board of trustees of the village of Herkimer as follows:

Body of the Local Law

Basic Rules. The body of any local law contains the legislative objective and expresses how it is to be accomplished. It should be set forth clearly, concisely, and logically within the limitations of the Municipal Home Rule Law.

Although the law does not specifically use the term, it takes cognizance of the body of a local law in two instances. The most important rule to be observed is stated in Municipal Home Rule Law, Section 20(3) viz., "Every such local law shall embrace only one subject," The other basic rule to be followed is expressed by Municipal Home Rule Law, Section 22(1) which states:

> "In adopting a local law changing or superseding any provision of a state statute or of a prior local law or ordinance, the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede, but the failure so to specify shall not affect the validity of such local law. Such a superseding local law may contain the text of such statute, local law or ordinance, section, subsection or subdivision and may indicate the changes to be effected in its text or application to such local government by enclosing in brackets, or running a line through, the matter to be eliminated therefrom and italicizing or underscoring new matter to be included therein."

Division into Sections. The body of every proposed local law consists of one or more parts referred to as sections, which should be consecutively numbered with Arabic numbers (1, 2, 3, etc.) commencing with 1. In the first section of every proposed local law, the word "section" should be written out and in each succeeding section the section symbol (§) should be used.

There are various types of sections, e.g., legislative declarations, separability clauses, effective dates, appropriations, etc. Most frequently, sections are used to identify the portions of law to be affected, that is, amendments or repeals of existing provisions or additional provisions.

In doing this, the section of the proposed local law must not only identify any portion of existing law being affected, but also indicate by number and year the State or local law, which added, last numbered or last amended the portion of law identified in the section.

For example, assume section 3 of Local Law No. 6 for the year 1985 of a local government was part of the original enactment of such law and was amended once by Local Law No. 1 for the year 1987. If it is proposed to amend section 3, the first section must set forth the law, the section to be amended, and the local law and the year in which the most recent change was made to the section, as shown in the following example:

> Section 1. Section three of local law number six of 1985, as amended by local law number one of 1987, is hereby amended to read as follows:

Important Details. Drafting is even further refined by guidelines for the proper expression of numbers, the use of abbreviations or capital letters, how to use brackets and underlining and many other items. These can become so minute that it is best to read the detailed discussion of them in the legislative bill drafting manual.

Good draftsmanship and common sense indicates that the requirements of Municipal Home Rule Law, Section 22(1) be followed meticulously to achieve clarity and definiteness. However, failure to specify the chapter, number, year or act of the statute does not affect the validity of the local law. (*Commission of Public Charities of City of Hudson v. Wortman*, 255 A.D. 241, 7 N.Y.S. 2d 631, aff'd. 279 N.Y. 711).

There is also latitude given local laws that amend a city or county charter. A charter need not be amended piecemeal by a series of separate local laws, but a single charter amendment may be proposed dealing with the various provisions of the charter. (*City of Albany v. Yaras et al*. 283 A.D. 214, 126 N.Y.S. 2d 733 and cases cited therein, aff'd., 308 N.Y. 864).

Judicial Standards. In many instances litigation regarding local laws involves the requirement that every local law shall embrace but one subject, and that the title shall briefly refer to the subject matter. All of the cases previously cited in regard to title, enacting clause and charter amendments discuss the proposition that the local law shall embrace only one subject. There are many shades of gray, and all of the cases should be read and digested in order too ascertain the trend of judicial opinion.

The principles enunciated in *Burke v. Kern*, supra, are still employed. Courts will differ in their application. In the Mitrone case, supra, the Supreme Court held the local law invalid, but the Appellate Division overruled, holding that there was but one subject within the law even though it was clouded by the recitation of numerous purposes. However, if the law obviously violates these requirements, the courts will reject it summarily.

In another case, the court stated that from a reading of the petition it was obvious that the proposed local law contained matters requiring either mandatory or permissive referendum, and that more than one subject was covered. In the absence of referenda and by covering more than one subject, it appeared that the law was not ready for filing. (*Village of Massena v. Lomenzo*, 58 Misc. 2d 40, 294 N.Y.S. 2d 657.

Effective Date of the Local Law

Basic Rules. The Municipal Home Rule Law recognizes that a local law should have an effective date. Section 27, subdivision 3, states that notwithstanding the effective date of any local law, a local law shall not become effective before it is filed in the Office of the Secretary of State. Subdivision 4 of the same section states that subject to the provisions of subdivision 3 thereof, every local law shall take effect on the twentieth day after it shall finally have been adopted, unless a different time shall be prescribed therein or required by either the

Municipal Home Rule Law or other provisions of law.

Qualifying Conditions. While it is strongly advocated that every local legislative enactment should conclude with an effective date, this still requires careful consideration. For example, if a local law imposes new duties upon a local agency, consideration should be given to postponing the effective date of the local law sufficiently to permit the agency affected to make adequate preparation for the proper administration of the new duties.

The same need is apparent for delaying the effective date of a local law which affects local legal procedures, or which defines as a crime some act or omission not previously a crime, or which affects or imposes limitation upon a person's rights, obligations or duties. The moving consideration should be to allow ample time for those who have been affected by the new law to become acquainted with its provisions.

Local Laws Subject to Referendum. A properly structured effective date may prevent severe complications in a locality. Municipal Home Rule Law, Section 23(1) provides that a local law subject to mandatory referendum becomes operative as prescribed therein only if approved by the qualified electors voting upon the proposition. This provision must, however, be read together with Section 27(3), which in any case prohibits a local law from becoming effective until filed with the Secretary of State.

A law of a city, county or town subject to referendum on petition does not take effect until at least 45 days after adoption, providing no petition is filed. If a petition is filed, the law does not take effect until approved by the qualified electors voting for its approval. In each of these cases the effective date still hinges upon the law being filed with the Secretary of State. A definite expression within the law stating an effective date could prevent complications. The procedure for village local laws subject to referendum on petition is set out in Article 9 of the Village Law. In the case of villages, the local law takes effect 30 days after adoption if no petition is filed.

A local law that is not subject to a referendum should specify an effective date, especially if it is one that imposes new duties upon a local agency or which defines as a crime some act or omission not previously a crime.

Examples of Effective Date

> This local law shall take effect immediately.
>
> This local law shall take effect twenty days after it is filed as provided in section twenty-seven of the Municipal Home Rule Law.
>
> This local law shall take effect on January first, nineteen hundred ninety-three.

ADOPTION, FILING AND PUBLICATION

Municipal Home Rule Law, Section 27 details the procedure required for the filing and publication of local laws. Publication is the duty of the Secretary of State. The clerk or other official designated by the legislative body is responsible for the multiple filings required by this section.

The "Sequence of Events" outlined at the end of this chapter provides a scheduling guide to aid legislators with prescribed steps in the law making procedure. Omission or failure to observe these technicalities may embarrass local officials, delay the effective date of the local law and render the local law invalid.

Adoption of Local Laws

Laws Not Subject to Referendum

If the local law is not subject to referendum, it is ready for filing after it has been finally adopted. Final adoption occurs after it has received the required public hearing and after it receives the majority affirmative vote of the total voting power of the legislative body in those local governments which do not have an elective chief executive officer with the power to veto local laws.

Approval by Elective Chief Executive. In those local governments with an elective chief executive officer possessing power to veto local laws, final adoption occurs when the elective chief executive officer holds a hearing and approves the law presented to him by the legislative body. It should be noted that the elective chief executive officer has 30 days to either approve or disapprove a local law.

An elective chief executive officer is defined as "The chief executive officer of a county elected on a county-wide basis or if there be none, the chairman of the board of supervisors, the mayor of a city or village or the supervisor of a town, where such officer is vested with power to approve or veto local laws or ordinances." (Municipal Home Rule Law, Section 2(4))

Such power to approve or veto local laws by the elective chief executive officer may be conferred by a state law or it may result from the passage of a local law granting such power to the elective chief executive officer of the local government.

Disapproval by Elective Chief Executive. It the elective chief executive officer disapproves the law, he must return it to the clerk of the legislative body with his objections stated in writing. The clerk is then directed to present the disapproved law, with the objections, to the legislative body at its next regular meeting. The objections are then entered in the record of the proceedings of the legislative body. The legislative body thereafter, within 30 days, may reconsider the law.

There is a distinct prohibition against the clerk of the legislative body presenting the vetoed law at any meeting but the next regular meeting. If the legislative body convenes a special meeting to receive the executive's veto and to override that veto, the law is not legally adopted. (*Barile v. City Comptroller of City of Utica*, 56 Misc. 2d 190, 288 N.Y.S. 2d 191)

Once the veto and message have been presented at the next regular meeting, the legislative body within the next 30 days may, however, convene a special meeting to override the executive's veto. *(Barile v. The City of Utica*, supra)

Laws Subject to Referendum

If the local law is subject to a referendum -- mandatory or on petition -- it cannot take effect until it receives the affirmative vote of a majority of the qualified electors voting thereon at a general or special election.

If the local law is subject to a referendum on petition and no valid petition is filed requesting such referendum, it cannot take effect until after the time for the filing of such petition expires. Such a petition must be filed with the clerk of the legislative body within 45 days after the adoption of the law in the case of a city, county or town, and within 30 days in the case of a village.

Even though Municipal Home Rule Law, Section 27, states that a local law must be filed within 20 days after final adoption, the courts have held that a local law which is subject either to a mandatory referendum or to a referendum on petition is not ready for filing until after the question of the

referendum has been settled. (*Village of Massena v. Lomenzo*, 58 Misc. 2d 40).

Submission for Filing

Preparation of Required Copies

When a local law is ready for filing, the clerk, or other officer designated by the legislative body, should prepare at least four copies of the local law and if it is a county local law, an additional copy should be prepared. These copies are prepared upon forms furnished by the Department of State which are the official forms required for filing local laws.

Style of Copies. If additional pages are required, they must be of the same size as the form furnished by the Department of State. For convenience, printed, mimeographed or typewritten copies of the local law may be pasted on the form but these must not be a size larger than the form. Only true and legible copies will be accepted for filing. (19 NYCRR, Section 130.3)

Each certified copy shall contain the text only of the local law. If the local law amends an existing local law, each certified copy shall contain the text only as amended. There should not be included in such copy brackets, deletions, italics or underscoring to indicate changes. Do not include in such certified copy any parts of the old law to be omitted and do not italicize any new matter. (See Municipal Home Rule Law, Section 27(2))

Numbering Local Laws

At this time, the local law should be given a number. Proper technique and procedure dictate that while a proposed local law is being considered for adoption or approval, it should be given an introductory number. If this system is not used, confusion can result.

Consider for a moment what happens when identifying numbers are not used. As a case in point, a town may have under consideration the adoption of four local laws which are numbered respectively Local Law 1, 2, 3 and 4 of the year 1992. Local Law 1 is finally adopted and duly filed with the Secretary of State. Local Law 2 is not adopted and consequently not forwarded for filing. Local Law 3 is subject to permissive referendum and therefore cannot be filed until after the expiration of the forty-five day period or after its approval by the electors. Local Law 4 is finally adopted and submitted for filing to the Secretary of State.

Under the above circumstances, the Department of State's records would show that only Local Law 1 has been filed when it received Local Law 4. The Department of State would then want to know what happened to Local Laws 2 and 3. This, needless to say, creates problems which could be easily avoided by proper numbering.

Importance of Introductory Numbers. When introductory numbers are used, neither the local government nor the Department of State will have any problems with respect to the correct numbering of local laws. Take the same four proposed local laws just discussed and give them appropriate introductory numbers such as: Proposed Local Law 1, 2, 3 and 4, respectively.

Under the given illustration, Proposed Local Law 1 was finally adopted and being the first local law submitted for filing in the year 1992 would be identified and filed as Local Law 1 of 1992. An appropriate notation to the effect should be entered in the local clerk's records. Proposed Local Law 2 was not adopted and therefore would not bear a local law number. Since Proposed Local Law 4 was finally adopted while the fate of Proposed Local Law 3 had not been

determined, Proposed Local Law 4 would become identified and filed as Local Law 2 of 1992. An appropriate entry to this effect should be made by the local clerk in his records. The local government's determination of the correct local law number should therefore be based on the date of final readiness for filing, regardless of other actions taken preliminary to that date.

Certification of Copies

Each required copy of a local law must have affixed to it a certification by the clerk of the legislative body or other officer designated by the legislative body. The exact type of certification is provided by the Department of State on its form. (19 NYCRR, Section 130.5)

Each copy of the local law must also contain a certification to be completed by the county attorney, corporation counsel, town or village attorney or other principal law officer of the local government, certifying that it contains the correct text and that all proper proceedings have been had or taken for the enactment of such local law. The exact form of this certification is also provided in the forms of the Secretary of State. (19 NYCRR, Section 130.7)

Places for Filing Copies

After the proper number of copies have been prepared and certified by the clerk and the attorney, the multiple filings should be accomplished within 20 days. One certified copy is filed in the office of the clerk of the legislative body in a separate book which contains an index, and three certified copies are filed with the Secretary of State. If the local law has been adopted by a county, an additional certified copy is filed in the office of the county clerk.

Publication

Processing by Secretary of State

When a local law is received by the Secretary of State, it is referred to the State Records and Law Bureau for processing. There it is checked for compliance with the formal requirements of the Municipal Home Rule Law and the rules of the Department of State. If the formal requirements are met, the local law is filed and a filing stamp containing the date of filing is impressed thereon. If the formal requirements are not met, the local law is returned promptly and the Bureau points out what needs to be done to make the local law acceptable for filing.

Before returning a local law, the Bureau reviews the subject matter of the local law for the purpose of ascertaining whether or not a delay in filing could cause complications for the local government. When the Bureau has reason to believe that it might, it will alert the clerk or attorney by phone in order that a responsible local officer will have a clear understanding of the defect or omission and suggestions can be made to expedite filing. Minor corrections, such as proper numbering, may be accomplished by a letter from the local government rather than return of the local law for correction and recertification. More substantial corrections will be handled on a case-by-case basis through communication with the local government.

Publication

After a local law has been accepted for filing, it is filed and indexed. The indices of local laws are maintained in Albany by the Secretary of State. In this way, general knowledge concerning all local laws adopted by local governments throughout the State is available. Counties must publish local laws in their official newspapers as required by County Law, Section 214.

Observance of Filing Requirements

Since a local law does not become effective until it is filed in the office of the Secretary of State, the determination of the Department of State with respect to whether or not a local law has been filed with control. This has produced litigation.

Municipal Home Rule Law, Section 27(1) requiring the filing of local laws with the Secretary of State within (at that time) five days of final adoption was held to be directory, not mandatory. Late filing delays the effective date of the law but does not invalidate the law. (*Schacht v. City of New York*, 30 Misc. 2d 77, 219 N.Y.S. 2d 53, modified on other grounds, 14 A.D. 2d 526, 217 N.Y.S. 2d 278). It should be noted that the time for filing local laws has now been extended to 20 days.

Problems Created by Late Filing. Late filing may create local problems. In one case a local law provided it was to become effective when approved by the electors at a referendum. The law was not filed with the Secretary of State until 35 days after such approval. The court concluded that the law become effective upon its filing with the Secretary of State but made a distinction between the effective date of a statute and its operative date.

The court further held that a legislative body may prescribe that a law shall be operative at a time either before or after its effective date. In this instance the court felt it was intended that, no matter what the effective date of the law might be, it should become operative at the time of its approval at the referendum. Thus, it became effective when filed with the Secretary of State, but operative from the date of its approval at the referendum. (*Hehl v. Gross*, 35 A.D. 2d 570, 313 N.Y.S. 2d 422)

Discretionary Power of Secretary of State. In some cases an attempt is made to force the Secretary of State to accept and file a local law. The technical requirements of Municipal Home Rule, Sections 20-27 must be observed meticulously or the action will fail. It has been stated that the Secretary of State may exercise discretion in the filing of local laws. (*Village of Massena v. Lomenzo*, supra).

The use of local laws can bring prompt and effective control of local matters applying the wisdom and knowledge of those people who are best acquainted with the problem and the locality to achieve a well-reasoned solution that is tailored to local conditions. It would be highly inappropriate to frustrate this process by failing or omitting to observe the technical requirements of proper filing.

Summary of Rules for Filing Local Laws With the Secretary of State

1. Each local law shall be filed with the Secretary of State as required by Section 27 of the Municipal Home Rule Law. The cited statute provides that a local law shall not become effective before it is filed in the office of the Secretary of State.

2. At least one copy filed with the Secretary of State shall be an original or first copy. The others may be legible carbons or photo copies.

3. Each local law shall be filed on a form provided by the Department of State. In case additional pages are required, they must be of the same legal size as the form provided. For convenience, printed, mimeographed or typewritten copies of the local law may be pasted on the form, but these must not be of a size larger than the form and printing must be on one side of the sheet only. Only true and legible copies will be accepted for filing.

4. Each copy of a local law filed with the Secretary of State shall have affixed to it a certification by the Clerk of the County legislative body or the City, Town or Village Clerk or other officer designated by the local legislative body. There shall also be attached or annexed thereto a certification executed by the County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney that the local law contains the correct text and that all proper proceedings have been had or taken for its enactment. Certification forms will be forwarded together with local law forms upon request.

5. Only the number, title and text of the local law shall be filed. In case of a local law amending a previously enacted local law or ordinance, the text must be that of the law as amended. Do not include in copy parts of old law to be omitted.

6. For the purpose of filing with the Secretary of State, number local laws consecutively, and start with number one in each calendar year. It is suggested that introductory identifying numbers be used while a proposed local law is being considered.

For filing purposes, local laws shall be mailed or delivered as follows:

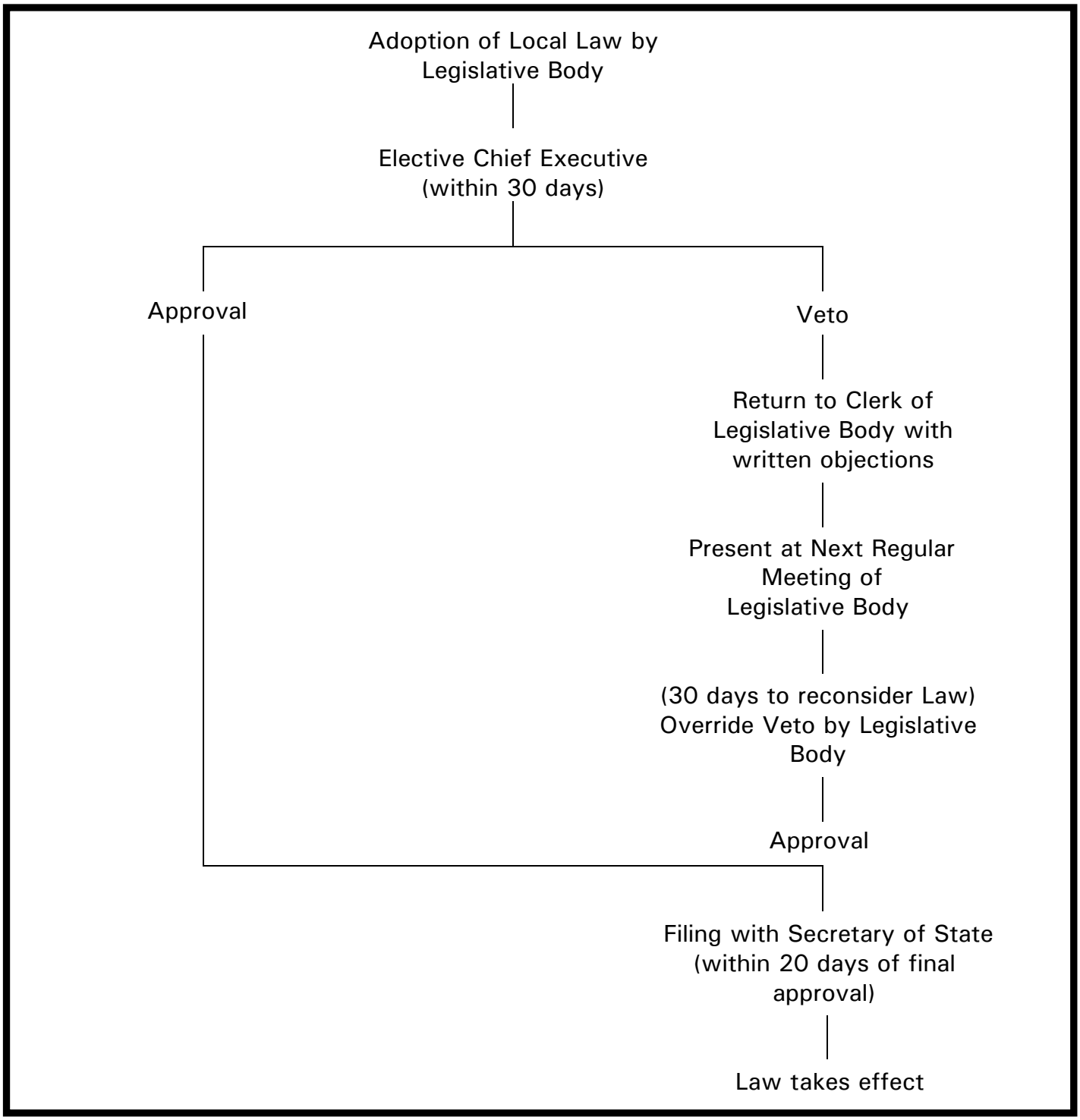
Department of State
State Records and Law Bureau
One Commerce Plaza
99 Washington Ave
6th Floor, Suite 600
Albany, New York 12231
(518) 474-2755

LOCAL LAW TIME SCHEDULE

Minimum Time Frame			Sequence of Events
7 calendar days exclusive of Sundays if placed on desk of members	10 calendar days exclusive of Sundays if mailed to each member	5 days	Introduction of Proposed Law to the Governing Municipal Body
			Notice of Public Hearing
			Public Hearing
			Adoption of Local Law after Vote
20 days	20 days (maximum)		Recorded by Clerk of the Legislative Body upon approval*
			Filing with Secretary of State
			3 copies for Secretary of State (including at least one original).
			Date Law takes effect (if not otherwise stated)

*Elective Chief Executive, see page 26.

EXECUTIVE APPROVAL TIME SCHEDULE



ADOPTION AND AMENDMENT OF COUNTY AND CITY CHARTERS

The organization and administration of government in most counties of the State are prescribed generally by the County Law and various special laws enacted upon local request. In 1935, however, the State Constitution was amended to authorize the Legislature to enact "alternative" forms of county government with the power to transfer functions of local political subdivisions to the county on referendum.

At the November 1958 general election, the people approved an extensive amendment of the Constitution relating to county government. A significant provision in this amendment required the Legislature, on or before July 1, 1959, to confer by general law on all counties outside the City of New York, power to prepare, adopt and amend their own charters, "subject to such limitations as the legislature may by general law from time to time impose."

The constitutional provisions relating to powers of counties to provide alternative forms of government for themselves were continued in the new constitutional Home Rule Amendment which took effect January 1, 1964 and the County Charter Law was continued in the New Municipal Home Rule Law which also took effect on such date (Municipal Home Rule Law, Sections 30-35).

Under these constitutional and statutory authorizations, counties outside the City of New York have broad powers to draft and adopt their own charters by action of the legislative body and approval of the voters at a general or special election. To become effective, a county charter, with or without the transfer of a function, must be approved by the voters of the cities in the county considered as one unit and also by the voters outside the cities considered as one unit. A proposed transfer of powers from villages or a class of villages must be approved by the voters in the affected villages, considered as one unit.

All cities in the State are governed by city charters which set forth the basic organization and administration of government for the city. Cities are authorized to enact new or revised city charters and to amend existing charters.

The enactment of a new or revised city charter should initially be distinguished from mere amendment of a portion of the charter by local law enacted by the governing body of the study of the charter as a whole with the view towards making basic changes in the organization and administration of city government. Such a study may be undertaken directly by the governing body of the city pursuant to the authority granted in Municipal Home Rule Law, Section 10(1c(1)) or by a charter commission established pursuant to the provisions of Municipal Home Rule Law, Section 36.

Whether Section 36 or Section 37 is used as the basis of authority for charter revision, the proposed charter or amendments may effect only such results as can be accomplished by the legislative body of the city by local law (Municipal Home Rule Law, Sections 36(5)(a) and 37(4)). To put it another way, Sections 36 and 37 do not grant to charter commissions greater powers than those granted to the legislative body of the city in Municipal Home Rule Law, Section 10. Consequently, it may be necessary to seek State legislation in given situations to accomplish certain charter revisions.

DEPARTMENT OF STATE LOCAL GOVERNMENT PUBLICATIONS

Handbooks provide basic guidelines for legislative bodies, citizen groups and charter commissions in the performance of their task, amending existing charters or adopting new ones.

The Department of State's Division of Local Government can provide useful information in helping municipalities accomplish their goals. Some of the publications available to local officials are:

Adopting and Amending County Charters. Provides historical, technical and legal information for the commission members and staff involved in drafting or revising a county charter.

Revising City Charters. Describes in detail the legal methods and requirements of revising a city charter, and provides statistical data and technical guidance for charter committee members and staff.

Guide to Planning and Zoning Laws in New York State. This essential publication for municipal officials, attorneys and planning board is newly revised. It has the complete text of relevant laws -- including statutory changes from the 2006 Legislative Session.

Check the Division of Local Government Services website for a complete list of available publications:
http://www.dos.ny.gov/lg/publications.html

APPENDIX

The Laws of 1993, Chapter 605, section 6, which became effective August 4, 1993, amended Municipal Home Rule Law, section 27, subdivision 1 as follows:

"1. Within twenty days after a local law shall finally have been adopted, the clerk, or other officer designated by the legislative body, shall file one certified copy thereof in the office of such clerk except that in the case of a county it shall also be filed in the office of the county clerk and <three> one certified <copies> copy in the office of the secretary of state. In the case of a local law subject to a referendum, however, such local law shall be filed within twenty days after its approval by the electors, or where the local law was subject to a permissive referendum and n o petition was filed requesting the referendum, the local law shall be filed within twenty days after the time for filing of such petition shall have expired."

As of the effective day of the above provision, only one certified copy of each local law must be filed with the Secretary of State, rather than the three copies previously required.