

CHAPTER 49

OFFICERS AND EMPLOYEES

Sec. 1100. Head of department; whole time. Every head of an administration or department or elected officer except council members who receives a salary from the city shall give whole time to the duties of the office and shall not engage in any other occupation, profession or employment.

Sec. 1101. Deputies. a. Any head of a department established by this charter may appoint and, at pleasure, remove so many deputies as may be provided for by law and determine their relative rank, and may appoint and, at pleasure, remove a secretary to the department if so provided and, except as otherwise provided by law, shall assign to them their duties and may by instrument in writing filed in the department designate any deputy to possess any of the powers and exercise such of the duties of the head of the department and for such times and under such conditions as such head of a department may specify

b. During a vacancy in the office of the head of an administration or a department established by this charter, or whenever by reason of illness or absence from the city such official shall be prevented from attending to the duties of office, the highest ranking deputy not absent or under disability shall act as the head of the administration or department.

c. The head of each mayoral department, including each such department within an administration, shall designate a deputy commissioner of the department or a senior officer reporting directly to the head of the department who shall be responsible for the personnel, management and budget administration functions of the department and for financial planning and management in the areas of payroll, purchasing, vouchering, accounting and related areas assigned by the head of the department.

Sec. 1102. Organization of department. a. Any head of an administration or a department established by this charter, to the extent to which the organization of the administration or department is not prescribed by law, shall by instrument in writing filed in the agency organize the administration or department into such divisions, bureaus or offices and make such assignments of powers and duties among them, and from time to time change such organization or assignments, as the head of the administration or department may consider advisable.

b. Except as provided in section eleven, where divisions, bureaus or offices have been established by law, the mayor may consolidate any two or more divisions, bureaus or offices in any agency under the jurisdiction of the mayor and change the duties of any such division, bureau or office and in like manner reverse or modify any such action.

Sec. 1109. Summary inquiry. A summary inquiry into any alleged violation or neglect of duty in relation to the property, government or affairs of the city may be conducted under an order to be made by any justice of the supreme court in the first, second or eleventh judicial district on application of the mayor, the comptroller, the president of the council, any five council members, the commissioner of investigation or any five citizens who are taxpayers, supported by affidavit to the effect that one or more officers, employees or other persons therein named have knowledge or information concerning such alleged violation or neglect of duty. Such inquiry shall be conducted before and shall be controlled by the justice making the order or any other justice of the supreme court in the same district. Such justice may require any officer or employee or any other person to attend and be examined in relation to the subject of the inquiry. Any answer given by a witness in such inquiry shall not be used against such witness in any criminal proceeding, except that for all false answers on material points such witness shall be subject to prosecution for perjury. The examination shall be reduced to writing and shall be filed in the office of the clerk of such county within the first, second or eleventh judicial district as the justice may direct, and shall be a public record.

Sec. 1110. Trusteeship of public property The council and the council members and all other officers and employees of the city are hereby declared respectively trustees of the property, funds and effects of the city, so far as such property, funds and effects are or may be committed to their management or control. Such trustees are hereby made subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by the city or by any officer thereof.

Sec. 1110-a. Capital plant inventory and maintenance estimates.

a. For the purposes of this section:

1. "Maintenance" or "maintain" shall denote those activities necessary to keep the relevant portion of the capital plant in good repair so as to preserve its structural integrity and to prevent its deterioration.

2. "Major portion of the capital plant" shall mean (a) any capital asset (1) which is a capital facility or system comprising a component of the public domain or infrastructure general fixed assets of the city or a building comprising a component of the general fixed assets of the city and (2) which, as of December thirty-first, nineteen hundred eighty-eight, or, as the result of any reconstruction or expansion after such date, has a replacement cost of at least ten million dollars and a useful life of at least ten years, or if purchased or constructed after such date, has an original cost of at least ten million dollars, and an original useful life of at least ten years; and

(b) any other capital asset of the city designated by the mayor for the purposes of this section; provided, however, that it shall not include any asset which is leased to or otherwise under the cognizance and control of a public benefit corporation or which is otherwise covered, pursuant to state law, by requirements which are substantially similar to the requirements of this section.

b. Not later than October first of nineteen hundred eighty-nine, the head of each agency shall submit to the mayor, for each major portion of the capital plant for which the agency or any officer or employee thereof is responsible, the following information: the date of original acquisition or construction, the dates of any significant alterations or reconstructions, the original cost and original useful life, and the current replacement cost and remaining useful life. Such information shall be categorized by project type.

c. Not later than October first of nineteen hundred ninety, the head of each agency shall submit to the mayor an agency capital plant inventory presenting, for each major portion of the capital plant for which the agency or any officer or employee thereof is responsible, an update of the information required by subdivision b of this section as well as an assessment of its condition and a schedule, by year, of maintenance activities. The head of each agency shall submit amendments of such agency capital plant inventory to the mayor as necessary to ensure that such inventory, including the condition assessments and maintenance schedules, is complete, current and accurate. Such inventory and amendments thereto shall be categorized by project type.

d. Such maintenance schedules and amendments thereto, other than amendments reflecting the disposition or demolition of any portion of the capital plant, shall be prepared or reviewed by professional engineers or architects registered in the state of New York and such engineers or architects shall set forth in writing (1) their opinions as to the reasonableness and sufficiency of the activities set forth in such schedules for maintaining such portions of the capital plant and (2) their recommendations, if any, for changes in such schedules. Such opinions and recommendations shall be based upon commonly used standards for acceptable levels of maintenance, the performance and other specifications to which such portions of the capital plant were designed, and such other engineering or architectural standards as may be appropriate. Such professional engineers or architects may be officers or employees of the city of New York.

e. The mayor shall transmit copies of such agency capital plant inventories, and all amendments thereto, to the council, the comptroller and the city planning commission and shall ensure that all information from such inventories as amended, including the condition assessments and maintenance schedules, and the opinions and recommendations related to such maintenance schedules are centrally stored and accessible to such officials, the agencies involved and other interested parties.

f. Not later than the first day of October of each year, commencing in nineteen hundred ninety, the mayor shall transmit to the council estimates for the ensuing fiscal year and for each of the three succeeding fiscal years of the amounts, by agency and project type and, within project type, by personal services and other-than-personal services, necessary to maintain all major portions of the capital plant, consistent with the maintenance schedules on file with the mayor pursuant to subdivision e of this section. Such estimates shall be prepared or reviewed by the professional engineers or architects who prepared or reviewed such maintenance schedules or by professional engineers or architects registered in the State of New York and employed by the office of management and budget or the agencies involved. Such architects or engineers shall set forth in writing (1) their opinions as to the reasonableness of such estimates and whether such estimates have been logically derived from such maintenance schedules and (2) their recommendations, if any, for changes in such estimates. Such opinions and recommendations shall be centrally stored and accessible to any interested party

Sec. 1111. Authorization to incur liabilities; expenses not to exceed appropriation. The head of each agency shall establish the procedure by which charges and liabilities may be incurred on behalf of the agency. Such procedures shall ensure that no officer or employee, on behalf of or in the name of the agency, shall incur a liability or an expense for any purpose in excess of the amount appropriated or otherwise authorized therefor; and no charge, claim or liability shall exist or arise against the city, or any of the counties contained within its territorial limits, for any sum in excess of the amount appropriated or otherwise authorized for the particular purpose.

Sec. 1112. Reports to mayor. The heads of administrations and departments established by this charter, borough presidents and such officers as the mayor may require shall in addition to any other reports required by this charter, once in each year and at such other times as the mayor may direct, make to the mayor, in such form and under such rules as the mayor may prescribe, reports of their operations and action. Notice of the availability of copies of each of such annual reports shall be published in the City Record within thirty days of the publication of the report involved. The heads of all agencies shall, when required by the mayor, furnish to him or her such information as the mayor may demand, within such reasonable time as he or she may direct.

Sec. 1115. Officer not to hold any other civil office. Any person holding office, whether by election or appointment, who shall, during such person's term of office, accept, hold or retain any other civil office of honor, trust or emolument under the government of the United States, except commissioners for the taking of bail, or of the state, except the office of notary public or commissioner of deeds or officer of the national guard, or who shall hold or accept any other office connected with the government of the city, or who shall accept a seat in the legislature, shall be deemed thereby to have vacated any office held by such person under the city government; except that the mayor may accept, or may in writing authorize any other person holding office to accept, a specified civil office in respect to which no salary or

other compensation is provided. No person shall hold two city or county offices, except as expressly provided in this charter or by statute; nor shall any officer under the city government hold or retain an office under a county government, except when such officer holds such office ex officio by virtue of an act of the legislature, and in such case shall draw no salary for such ex officio; provided, however, that any member of the police force or any member of the fire department may hold office as a member of a board of education outside of the city of New York if otherwise qualified to serve thereon.

Sec. 1116. Fraud; neglect of duty; wilful violation of law relative to office. a. Any council member or other officer or employee of the city who shall wilfully violate or evade any provision of law relating to such officer's office or employment, or commit any fraud upon the city, or convert any of the public property to such officer's own use, or knowingly permit any other person so to convert it or by gross or culpable neglect of duty allow the same to be lost to the city, shall be deemed guilty of a misdemeanor and in addition to the penalties imposed by law and on conviction shall forfeit such office or employment, and be excluded forever after from receiving or holding any office or employment under the city government.

b. Any officer or employee of the city or of any city agency who shall knowingly make a false or deceptive report or statement in the course of duty shall be guilty of a misdemeanor and, upon conviction, forfeit such office or employment.

Sec. 1117. Pensioner not to hold office. If a person receiving a pension or a retirement allowance made up of such pension and an annuity purchased by the pensioner from the city or any agency, or out of any fund under the city or any agency, by reason of such person's own prior employment by the city or any agency, shall hold and receive any compensation from any office, employment or position under the state or city or any of the counties included within the city or any municipal corporation or political subdivision of the state, except the offices of inspector of election, poll clerk or ballot clerk under the election law or commissioner of deeds or notary public or jury duty, the payment of said pension only shall be suspended and forfeited during and for the time such person shall hold and receive compensation from such office, position or employment; but this section shall not apply where the pension and the salary or compensation of the office, employment or position amount in the aggregate to less than one thousand eight hundred dollars annually.

Sec. 1118. Officers and employees not be ordered to work outside public employment. No officer or employee of the city or of any of the counties within its limits shall detail or cause any officer or employee of the city or of any of such counties to do or perform any service or work outside of the public office, work or employment of such officer or employee; and any violation of this section shall constitute a misdemeanor.

Sec. 1119. Action of boards. Except as otherwise provided by law:

1. Whenever any act is authorized to be done or any determination or decision made by any commission, board or other body, the act, determination or decisions of the majority of the commission, board or other body shall be held to be the act, determination or decision of the commission, board or other body.

2. A majority of the members of any commission, board or other body shall constitute a quorum of such commission, board or other body.

3. Each commission, board or other body may choose at its own pleasure one of its members who shall be its president and one who shall be its treasurer and may appoint a secretary or chief clerk within the appropriation therefore.

Sec. 1120. Additional powers and duties. Any elected or appointed officer of the city or any board or commission or any member thereof shall, in addition to the powers and duties vested in such officer, board or commission by this charter, perform any duties and exercise any powers vested in such officer or in such board or commission by any other provision of law and any power necessary to carry out the powers and duties vested in such officer, board or commission.

Sec. 1122. Bonds. Unless otherwise provided by law, each officer of the city who has possession of or control over any funds of the city shall give bond for the faithful performance of the duties of such officer in such sum as may be fixed and with sureties to be approved by the comptroller. Such bonds shall run to the city of New York, and in case there is another officer who is responsible for the officer giving the bond, shall run also to such officer.

Sec. 1123. Failure to testify. If any council member or other officer or employee of the city shall, after lawful notice or process, wilfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the city or of any county included within its territorial limits, or regarding the nomination, election, appointment or official conduct of any officer or employee of the city or of any such county, on the ground that the answer of such council member, officer or employee would tend to incriminate him or her, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he or she may be asked to testify upon any such hearing or inquiry, the term or tenure of office or employment of such council member, officer or employee shall terminate and such office or employment shall be vacant, and he or she shall not be eligible to election or appointment to any office or employment under the city or any agency

Sec. 1124. Civil rights protected. Nothing in this charter contained shall affect any rights given or secured by section fifteen of the civil rights law, including the right of officers and employees, as citizens, to appeal to the legislature or to any public officer, board, commission or other public body for the redress of their grievances as such officers and employees.

Sec. 1125. Salaries of the district attorneys. Each of the district attorneys of the counties of New York, Bronx, Kings, Queens and Richmond shall receive an annual salary equal to the compensation received by a justice of the supreme court in the county in which such district attorney has been elected and is serving, or ninety-seven thousand dollars a year, whichever is greater.

Sec. 1126. Political activities forbidden. No member or officer or employee of the department of personnel or the civil service commission shall hold office or serve as a member of any committee in any political organization or association, nor shall such member, officer or employee serve as a delegate to any political convention. Any member, officer or employee violating this provision shall forfeit such office or employment.

Sec. 1127. Condition precedent to employment. a. Notwithstanding the provisions of any local law, rule or regulation to the contrary, every person seeking employment with the city of New York or any of its agencies regardless of civil service classification or status shall sign an agreement as a condition precedent to such employment to the effect that if such person is or becomes a nonresident individual as that term is defined in section 11-1706 of the administrative code of the city of New York or any similar provision of such code, during employment by the city, such person will pay to the city an amount by which a city personal income tax on residents computed and determined as if such person were a resident individual, as defined in such section, during such employment, exceeds the amount of any city earnings tax and city personal income tax imposed on such person for the same taxable period.

b. Whenever any provision of this charter, the administrative code of the city of New York or any rule or regulation promulgated pursuant to such charter or administrative code employs the term "salary", "compensation", or any other word or words having a similar meaning, such terms shall be deemed and construed to mean the scheduled salary or compensation of any employee of the city of New York, undiminished by any amount payable pursuant to subdivision a of this section.

Sec. 1128. Interference with investigation. a. No person shall prevent, seek to prevent, interfere with, obstruct, or otherwise hinder any study or investigation being conducted pursuant to the charter. Any violation of this section shall constitute cause for suspension or removal from office or employment.

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

Sec. 1129. Members of police department; no other office. Any police commissioner or any member of the police force who shall accept any additional place of public trust or civil emolument except as a member of a community board, or who shall during his or her term of office be nominated for any office elective by the people, except a member of the police force appointed, nominated or elected to a board of education outside of the city of New York, and shall not, within ten days succeeding same, decline the said nomination, shall be deemed thereby to have resigned his or her commission and to have vacated his or her office, and all votes cast at any election for any person holding the office of police commissioner, or within thirty days after he or she shall have resigned such office, shall be void.

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

Sec. 1130. Members of fire department; no other office. Any commissioner or any member of the uniformed force of the fire department who shall accept any additional place of public trust or civil emolument except as a member of a community board, or who shall during his or her term of office be nominated for any office elective by the people, except a member of the force appointed, nominated or elected to a board of education outside of the city of New York, to a party position as defined within the New York state election law or to a board of fire commissioners established in accordance with section 3-308 of the village law or section one hundred seventy-four of the town law, and shall not, within ten days succeeding the same, decline the said nomination, shall be deemed thereby to have resigned his or her commission and to have vacated his or her office. The provisions of this section shall apply as long as it does not interfere with his or her performance as a member of the department.

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

Sec. 1131. School officers not to be interested in contracts; removal. The board of education shall have the power to remove from office any school officer who shall have been directly or indirectly interested in the furnishing of any supplies or materials, or in the doing of any work or labor, or in the sale or leasing of any real estate, or in any proposal, agreement or contract for any of these purposes, in any case in which the price or consideration is to be paid, in whole or in part, directly or indirectly, out of any school moneys, or who shall have received from any source whatever any commission or compensation in connection with any of the matters aforesaid; and any school officer who shall violate the preceding provisions of this section shall be deemed guilty of a misdemeanor, and shall also forfeit such office and be ineligible to any office or employment under the board of education or under the city or any agency. The provisions of this section shall not apply to authors of school books used in any of the public schools because of any interest they may have as authors in such books.

Sec. 1132. Contributions to political funds, etc., prohibited. Neither the city superintendent of schools, nor any associate or assistant superintendent of schools, nor any member of the board of examiners, nor any member of the supervising or teaching staff of the board of education of the city shall be permitted to contribute any moneys directly or indirectly to any fund intended to affect legislation increasing their emoluments, but nothing herein shall be construed to deny any right afforded by section eleven hundred twenty-four.

Sec. 1133. Transmission of reports; disposal of records; destruction of other materials. a. The head of each agency shall transmit to the municipal reference and research center at least four copies of each report, document, study or publication of such agency, immediately after the same shall have been issued. The agency head shall transmit to the center four copies of each report, document, study or publication prepared by consultants, or other independent contractors, as soon as such report or study is released.

b. No records shall be destroyed or otherwise disposed of by an agency, officer or employee of the city unless approval has been obtained from the commissioner of records and information services, the corporation counsel and the head of the agency which created or has jurisdiction over the records who shall base their determinations on the potential administrative, fiscal, legal, research or historical value of the record. Approval for records disposal shall be contained in an approved records disposal schedule and remain in force until the status of the records changes. The commissioner of records and information services or the head of the agency which created or has jurisdiction over the records may initiate action to eliminate records eligible for disposal. The commissioner of records and information services shall insure the destruction of disposable records within six months of the date of eligibility. Records retained for historical or research purposes shall be transferred, upon request of the commissioner of records and information services, to the municipal archives for permanent custody.

c. Other materials not included within the definition of records in this charter may be destroyed, if not otherwise prohibited by law, at any time by the agency in possession of such materials without the approval of the commissioner of records and information services. Such commissioner may, however, formulate procedures and interpretations to guide in the disposition of such materials.

Sec. 1134. The head of each agency shall promptly transmit to the council copies of all final reports or studies which the charter or other law requires the agency or any official thereof to prepare. The head of each agency shall also promptly transmit to the council copies of all final audits, audit reports and evaluations of such agency prepared by state or federal officials or by private parties.

Sec. 1135. Restriction on community board membership of employees of council members and borough presidents. No person who is employed by a borough president or a council member may be appointed to serve on a community board to which such borough president may make appointments or to which such council member may make recommendations for appointment.

Sec. 1136. Certification of officers and employees. a. On or before the tenth day after an individual becomes a public servant, such individual shall file a written statement with the city clerk that such individual has read and shall conform to the provisions of this chapter.

b. On or before the tenth day after the head of any mayoral agency commences the performance of official duties, such agency head shall, in addition, file a written statement with the city clerk that such agency head has read and shall conform to the provisions of chapter sixteen.

c. The department of personnel shall make available such copies of chapters sixteen and forty-nine as are necessary to fulfill the requirements of this section.