Creating a Manager/Administrator Position in New York State: Legal Considerations

This policy brief provides a summary of the options available in New York state law for cities, towns, and villages to create the position of manager or administrator. As might be expected, there are common features and variations across the three municipal types in the state. This brief on legal considerations is a supplement to recent work summarizing the efforts of four communities in New York that more recently took initiative to consider change in the administration of their local government. In particular, they assessed the changes needed to create the position of a central manager or administrator for their communities. These local initiatives were reviewed and summarized in 2020-22 by the Public Management Program (PMP), Department of Public Administration, SUNY Brockport. Reference to the four cases and an overall summary are provided at the end of this policy brief.

Creating a Village Manager/Administrator

A number of villages in New York State have created the position of village “manager” or “administrator” by local law pursuant to the Municipal Home Rule Law or Article 18 of the Village Law (the Village of Tuckahoe case provides a recent example, see page 6 for the text of the law). State law does not define the powers or responsibilities of manager or administrator. Consequently, the position of manager or administrator must be created locally, with the position’s responsibilities and duties being defined via resolution and potentially local law. The village board of trustees that creates this position determines the scope of the duties of the manager or administrator. Because the positions of administrator and manager are not defined in statute, one village may have a “manager” who performs the exact same job responsibilities as another village’s “administrator.”

Village managers or administrators are usually the administrative head of the village government and implement the policies of the village as established by the board of trustees. The manager/administrator attends the meetings of the board and reports on the needs and status of the various government operations. If the manager/administrator is the village budget officer, they would be responsible for preparing the tentative budget. In addition, a manager/administrator is likely going...
to be the village’s chief executive officer responsible for appointing subordinate officers and employees, overseeing day-to-day operations of the village, posting and distributing the village’s code of ethics, declaring local states of emergency, and requesting assistance from outside local police. In some villages, the board has appointed the manager/administrator to serve as village clerk or village clerk-treasurer.

The position of manager or administrator is created in one of two ways:

1. A village board of trustees may establish a village manager form of government pursuant to Article 18 of the Village Law. Under this Article, the board passes a local law establishing a commission to study and prepare a local law that would both create the position of village manager and also define the manager’s duties and responsibilities. The local law creating the commission is subject to a permissive referendum. Additionally, the local law creating the position of village manager and defining the position’s duties and responsibilities is subject to a mandatory referendum. A village manager created under this article is a public officer of the village.

2. A village board of trustees may create the position of village manager or administrator by local law pursuant to Municipal Home Rule Law § 10. The position may be created as a public office that serves a term of office whose terms of employment are governed by Civil Service Law and employment contract, depending on the duties defined in the local law. The powers and duties of the position will determine whether the local law is subject to a permissive or mandatory referendum under Municipal Home Rule Law §§ 23 and 24. If the position of village manager is created as a public office, Municipal Home Rule Law § 24(2)(k) requires a permissive referendum to create and abolish the office.

Summary of Village Options. A village board can use option 2 (above) to draft a local law that creates a range of authority and responsibility for a village manager/administrator. The position’s role can vary in administrative duties, scope in staff hiring, and departmental oversight. In a local law resulting from exercising option 2, the new administrative position created can be as fully robust or broad as under option 1 that requires the creation of a commission. A village board using Option 2 (above) can vary in their approach to assessing and crafting a proposal for change. For example, they may create a special committee and/or a public participation process to create the law provisions that meets their particular community’s practices and needs. Depending on the local law’s delegation of authority to the manager/administrator, the local law may be subject to a mandatory referendum (e.g., if the manager is given authority to hire the police chief – a role with implications for state law designations).

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3 General Municipal Law § 806.
4 Executive Law § 24.
5 General Municipal Law § 209-m.
6 Village Law § 18-1820.
7 The existence of Option 1 is related to a 1971 revision of state law. A small number of villages operate under the council-manager form of government established pursuant to former Village Law Article 15-A. In those villages, the manager has the exclusive authority to appoint individuals to all positions, except the positions of clerk, treasurer, and attorney which are board appointments. A village manager’s appointments are not subject to board approval. For those villages, the manager retains the duties provided for under former Village Law, Article 15-A, unless the duties were subsequently changed by local law.
Creating a City Manager/Administrator

A number of cities in New York State have created the position of “manager” or “administrator” by local law pursuant to the Municipal Home Rule Law. Similar to villages, state law does not define the powers or responsibilities of city manager or administrator. Consequently, the position of city manager or administrator must be created locally, with the position’s responsibilities and duties being defined via resolution and potentially local law. The city council that creates this position determines the scope of the duties of the manager or administrator. Because the positions of administrator and manager are not defined in statute, one city may have a “manager” who performs the exact same job responsibilities as another city’s “administrator.”

The powers and duties of the position will determine whether the local law is subject to a permissive or mandatory referendum under Municipal Home Rule Law §§ 23 and 24. If the position of manager/administrator is created as a public office, Municipal Home Rule Law § 24(2)(k) requires a permissive referendum to create and abolish the office.

Creating a Town Manager/Administrator

The town board is responsible for the administrative oversight of town operations. In towns of the suburban class, the town supervisor may assume many of these duties in accordance with article 3-a of the Town Law. To assist in town administration, town boards may create positions, such as the town manager or town administrator. Towns have the authority to create the position of a town manager by local law pursuant to article 3-b of the Town Law. Article 3-b was added by Chapter 367 in 1976. Prior to 1976, towns had the opportunity to create a town manager plan pursuant to Chapter 699 of the laws of 1938. No towns utilized this authority, and it was subsequently repealed in 1957 by Chapter 129. A renewed interest led to the adoption of article 3-b in 1976, which has now been used by a number of towns to create the position of town manager. Alternatively, towns may create the position of town administrator by local law pursuant to Municipal Home Rule Law, §10 (Op Atty. Gen. Inf. No 81-10). In addition, some towns have created positions with administrative functions similar to that of a town manager or administrator, which may be accomplished by town board resolution in accordance with Town Law, §20(1)[a][b].

The procedure to adopt a local law is set forth in the Municipal Home Rule Law. A summary of the process for adopting a local law is in the Appendix at the end of this policy brief. A local law creating the office of manager or administrator will be subject to a mandatory referendum if the local law seeks to transfer or curtail the duties of an elected officer.

Duties and Authority. Pursuant to Town Law, §58-a, the town manager is the chief administrative officer of the town and may be given such powers and duties by local law, as provided by the town board (for a local law example, see pages 6-8 from the Town of Canandaigua case). A local law creating the position of town administrator might also be given the title of chief administrative officer. Local town boards will need to consult with the county civil service rules and requirements regarding titles and classification of these positions. As noted above, a local law transferring the authority or duties of

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8 The General City Law makes passing references to “manager” but does not define it or describe how it is created. “Administrator” isn’t really discussed/addressed at all. See sections 23 or 24 of Municipal Home Rule law. City charters can be amended by local law with various conditions and exceptions.

9 It is also important to note that an individual town may have received special state legislation regarding the office of town manager, town administrator or a similar position.
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an elected official to the town manager or administrator is subject to a mandatory referendum (Municipal Home Rule Law, §23 (2)(f)). In 1981, the Attorney General’s Office issued an advisory opinion that discussed the differences between transferring and delegating power to a town manager or administrator. The Attorney General’s Office noted that:

“[i]f a local law confers upon the town administrator or manager sufficient powers to establish an independent executive branch of government, this would be a transfer of powers requiring a referendum under section 23(2)(f). A local law transferring the administrative powers of the town board is a transfer of the powers of an elective officer.”

The Attorney General’s Office also discussed delegating authority to the appointed town manager or administrator.

“To have the characteristics of a delegation rather than a transfer, the local law should provide for the officer to perform assigned duties on behalf of the town board and to be subject to its supervision and control. The local law might provide that the town board by resolution could assign, modify or revoke administrative powers from time to time and might require the officer to report periodically to the board. If the local law delegates but does not transfer powers of an elective officer, no referendum is required,” (Op Atty Gen Inf. No 81-10).

The Attorney General’s Office further explained:

“[i]f a local law permits the town administrator or manager to act only with the approval of the town board, there is no transfer of powers. The town board could approve or disapprove any action proposed by the administrator, thus retaining ultimate decision-making authority. Such a local law would not be subject to mandatory referendum under Municipal Home Rule Law, §23(2)(f).” (Op Atty Gen Inf. No 81-10). To ensure that the local law creating the duties of a town manager or administrator is a delegation of duties rather than a transfer, some local laws creating the office of town manager/administrator have used language such as “subject to the approval, direction and control of the supervisor and board.”

The Attorney General further explained in a subsequent opinion:

In a prior opinion, we found that a town may establish the position of town administrator using section 10 of the Municipal Home Rule Law as the source of authority, 1981 Op Atty Gen (Inf) 101. Under section 10(1)(ii)(a)(1), a county, city, town or village may enact a local law relating to the powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, etc., of its officers and employees. We found that if the local law permits the town administrator to act only with the approval of the town board, there is no transfer of powers. We stated that the town board could approve or disapprove any action proposed by the administrator, thus retaining ultimate decision-making authority. A second possibility is a local law which assigns or delegates but does not transfer administrative powers to a town administrator. We envisioned a local law that would provide for the administrator to perform assigned duties on behalf of the town board and subject to its supervision and control. We suggested that the local law provide for the town board to assign, modify or revoke administrative powers from time to time and require the officer to report periodically to the board. Under these two scenarios, we found that the local law establishing the position of administrator would not be subject to a mandatory
referendum in that there would occur no transfer or curtailment of the power of an elective officer, (Op. Atty. Gen. Inf. No. 95-11).\(^\text{10}\)

**Appointment, Residency and Qualifications.** Once the position of town manager or administrator is created, the town board may fill the position by town board appointment, in accordance with applicable civil service regulations (Town Law, §§58; 20). The position of town manager is a public office (Op Atty Gen Inf. No 90–62; Ops St Comp, No. 77-524). Depending upon the duties and responsibilities of the town administrator it also could be considered a public office, or alternatively, a position of employment. Public officers are required to be town residents unless there is a contrary county civil service rule (Town Law §23; Public Officers law, §3). Towns may expand the residency requirements of the appointed town manager or administrator by local law or special state legislation. A local law may impose additional qualifications, such as a college degree in public administration and relevant work experience. The town board should also work with the local civil service commission or personnel director regarding pertinent civil service qualifications.

**Term of Office.** There is no statutory term of office provided for the office of town manager or administrator; therefore, the town manager or administrator serves at the pleasure of the town board and is subject to applicable civil service laws and regulations (Town Law, §24). A town board may adopt a local law subject to a mandatory referendum to provide a designated term of office for the position of a town manager or administrator (1988 N.Y. Op. Atty. Gen. (Inf.) 79).

**Salary and Benefits.** The town manager or administrator’s salary and benefits are set by the town board (Town Law, §27; General Municipal Law, §§ 90, 92, 92-a) and are general fund expenses (Ops St Comp, 1977 No. 77-524).

**Creating a Village, City or Town Manager/Administrator: Points to Consider**

Important issues to address when considering or creating the position of city, village, or town manager or administrator\(^\text{11}\):

- A local law creating the office of manager or administrator will be subject to a mandatory referendum if the local law seeks to transfer or curtail the duties of one or more other elected local government officers.

- Regardless of the title of the position or the means of its creation, the municipal governing board should consult with the county civil service commission or personnel office to ensure compliance with civil service rules and regulations.

- Both local law language and communication with citizens should make clear that the governing board remains the policymaking authority in the local government and board members will continue their role as elected representatives to listen to and discuss citizen concerns and viewpoints on local policy and service delivery.

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\(^{10}\) The Attorney General’s Office has further noted that a local law transferring the manager’s or administrator’s authority or responsibilities to another official would not trigger a mandatory referendum because the manager/administrator is an appointed – rather than an elected – official (1980 N.Y. Op. Atty. Gen. (Inf.) 195).

\(^{11}\) See [https://www.icma.org/page/council-manager-form-government-resources](https://www.icma.org/page/council-manager-form-government-resources) for more valuable resources on managers and the council-manager form.
In addition, it is valuable to clarify the following:

- The manager’s qualifications and the method of appointment or election.
- If appointed, will the manager be a public official who serves a term of office or a public officer or an employee whose employment is governed by Civil Service Law and/or an employment contract?
- The manager’s responsibilities.
- The proposed relationship between the manager and: (1) the governing board, (2) other elected officials, and (3) department heads.
- Manager residency requirements.
- Procedure for removing the manager and provisions for an acting manager, including clarifying an acting manager’s authority.

State policy consideration

This brief notes that state law previously contained more detailed provisions for a “council-manager” plan for local government organization for towns and villages. Those interested in this form of organization as an option in New York State could consider the value of state law changes that would re-institute updated provisions for local adoption of a council manager plan for towns, villages, and cities.

References

*Project Case Study Policy Briefs*


Appendix: Text of Relevant Laws and the Procedure for Adopting a Local Law

Village Law § 18-1820 Establishment of a commission for village manager. The board of trustees of any village may, as an alternative to the adoption of a local law establishing the position of village manager, adopt a local law providing for the creation of a commission to study and prepare a local law establishing the position of village manager and defining the duties and responsibilities thereof. Such local law shall be subject to a permissive referendum. The local law creating the commission shall provide for the organization and method of procedure for such commission, including, but not limited to, (a) the number of members of such commission, which shall not exceed seven and of which number more than one-half shall not be members of the board of trustees, (b) the compensation, if any, of the members of the commission, (c) the employment of staff or consultants, if any, and (d) the date by which such commission shall report its recommendations to the board, which date shall be no later than two years after the final appointment of all members of the commission. The appointment of members of the commission, and the filling of any vacancies on such commission, shall be made as provided in this chapter.

Village Law § 18-1822. Establishment of commission by petition. Notwithstanding the provisions of section twenty of the municipal home rule law, a proposed local law creating a commission as provided in section 18-1820 of this article shall be submitted to referendum providing such proposed local law is submitted with a petition requesting that such proposed local law be submitted to the electors of the village for their approval or disapproval in accordance with the provisions and procedures set forth in article nine of this chapter.

Town Law § 58. Town manager. Any town may, by local law, establish the office of town manager, provide for his appointment and delegate to such office such powers and duties as may be prescribed, modified or revoked from time to time by the town board.

Town Law § 58-a. Powers and Duties. The town manager shall be the chief administrative officer of the town and may be given such powers and duties by local law, as the town board in its discretion shall prescribe notwithstanding the provisions of any general or special law to the contrary, unless the legislature expressly shall have restricted or prohibited the adoption of a local law relating to the delegation or grant of such powers provided, however, that the powers of legislation and appropriation shall be exercised by the town board. Subject to the provisions of sections twenty-three and twenty-four of the municipal home rule law, the town board may also, by local law, grant or transfer to such town manager powers and duties held by elected officials of the town.

Adopting a Local Law
Briefly, a local law must be introduced by a member of the governing board at a board meeting or in a manner that is otherwise prescribed by the board’s rules of procedure (Municipal Home Rule Law, §20(4)). The board must schedule and hold a public hearing before a local law may be adopted (Municipal Home Rule Law, §20(5)). Public notice must be provided at least five days prior to the date of the public hearing (Municipal Home Rule Law, §20(5)). A proposed local law must be in final form on the board members’ desks or available in a file sharing program for at least seven calendar days, exclusive of Sundays, or the proposed local law must be mailed or emailed to each member at least 10 days, exclusive of Sundays, prior to passage unless the town supervisor certifies as to the necessity for its immediate passage (Municipal Home Rule Law, §20...
(4)). An approved local law must be filed with the New York State Department of State, at which point, it would become effective immediately upon filing unless the local law provides for an alternative effective date. Sections 24 and 23 of the Municipal Home Rule Law should be reviewed to determine if a referendum is required. For example, a local law creating the office of manager or administrator will be subject to a mandatory referendum if the local law seeks to transfer or curtail the duties of an elected officer. A local law may be subject to a permissive referendum if the local law changes the statutory purchasing or auditing procedures. A local law that is subject to a mandatory referendum must go before the voters; a local law that is subject to a permissive referendum will go before the voters only if a qualified petition is timely filed. A local law that is subject to a mandatory referendum may not be filed with the Department of State unless it is approved by a majority of those voting on the proposition during a general or special election. The same would be true for a local law subject to a permissive referendum if a qualified petition is timely filed. The New York State Department of State (NYSDOS) publishes a guide on the authority and procedure to adopt local laws that outlines in more detail the procedural requirements. You can review the NYSDOS publication “Adopting Local Laws in New York State” on its website at: (www.dos.ny.gov/lg/publications/Adopting_Local_Laws_in_New_York_State.pdf). In addition, NYSDOS also hosts a website where you can find filed local laws regarding town managers and administrators (https://locallaws.dos.ny.gov/).