

To be Argued by:
NICHOLAS S. CORTESE
(Time Requested: 10 Minutes)

New York Supreme Court
Appellate Division—Third Department

ST. LAWRENCE COUNTY and RENEE COLE, in her
capacity as the duly elected Treasurer for the County of St. Lawrence,

Case No.:
534539

Plaintiffs-Appellants,

– against –

CITY OF OGDENSBURG, OGDENSBURG CITY SCHOOL DISTRICT,
JEFFREY M. SKELLY, in his official capacity as Mayor of the City of
Ogdensburg, and STEPHEN JELLIE, in his official capacity as the
City Manager for the City of Ogdensburg,

Defendants-Respondents.

BRIEF FOR DEFENDANTS-RESPONDENTS
CITY OF OGDENSBURG, JEFFREY M. SKELLY,
AND STEPHEN JELLIE

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QUESTIONS PRESENTED

Question: Did St. Lawrence County Supreme Court (Farley, J.) correctly grant the motion pursuant to CPLR 3211 (a) (2) and (a) (7) of Respondents- Respondents the City of Ogdensburg, Mayor Jeffrey M. Skelly and City Manager Stephen Jellie (hereinafter collectively referred to as the “City”) dismissing the Verified/Petition Complaint of Petitioners-Appellants St. Lawrence County and County Treasurer Renee Cole (hereinafter collectively referred to as the “County”)?

Answer: *Yes.* In dismissing this hybrid action/proceeding, Supreme Court correctly ruled that the City of Ogdensburg’s amendments to the City Charter enacted via Local Law No. 2-2021 validly transferred the City’s former delinquent real property tax collection and enforcement authority to the County. The Court properly held that the Charter Amendments do not unconstitutionally impair the powers of the County, and do not violate provisions of the Municipal Home Rule Law (hereinafter referred to as the “MHRL”) or the Real Property Tax Law (hereinafter referred to as the “RPTL”).

NATURE OF THE CASE

On September 27, 2021, the Ogdensburg City Council adopted Local Law No. 2-2021, which amended certain provisions of City Charter and Administrative Regulations (hereinafter collectively referred to as the “Charter Amendments”). Taken together, the Charter Amendments transfer the City’s former authority to collect and enforce delinquent City real property taxes to the County. In response, the County commenced this hybrid action for declaratory judgment and proceeding pursuant to CPLR Article 78, which raises a number of objections to the Charter Amendments.

The County’s primary objections, which appear to be issues of first impression in this State, are whether the Charter are that the Charter Amendments (1) violate Article IX, § 2 (d) of the New York State Constitution, which states, in relevant part, that “a local government shall not have power to adopt local laws which impair the powers of any other local government”; (2) violate MHRL § 10 (5), which is identical to the above Constitutional provision; and (3) are inconsistent with and/or preempted by the RPTL because, in the County’s view, the RPTL preempts the entire field of real property tax regulation.

Regarding the Constitutional question, the City makes much of the idea that upholding the City’s Charter Amendments would open the door for cities across the state to enact charter amendments of their own that shift delinquent tax collection

and enforcement authority to counties, which would, in turn, cause counties to incur increased administrative and financial costs. However, as Supreme Court correctly held, even if the City's Charter Amendments do have such an effect on the County at some point in the future, such outcomes, at most, may affect a county's day-to-day operations, but do not amount to an unconstitutional impairment of the County's powers to develop budgets, manage employees or enact appropriate legislation. Giving credence to the court's conclusion is the fact that, in this case, the County does not offer a single citation to any statutory or local legislative source from which it derives its purported "powers", nor does the County offer anything other than bare, conclusory statements as to how such "powers" would actually be "impaired" by the enactment of the City's Charter Amendments.

Inasmuch as MHRL § 10 (5) is a reiteration of the constitutional prohibition against local legislation that impairs the powers of other local governments, the analysis and conclusions are the same as above. Additionally, and significantly, MHRL §§ 10 [1] [ii] [a] [8] & [9] expressly provides that all cities have the ability to adopt local laws related to the levy, collection and administration of "local taxes authorized by the legislature", and may do so as long as the local law in question is "not inconsistent with the provisions of the constitution or not inconsistent with any general law. . . whether or not they relate to the property, affairs or government of

such local government, except to the extent that the legislature shall restrict the adoption of such a local law”.

Finally, with respect to the County’s allegations that the Charter Amendments are inconsistent with and/or preempted by the RPTL, the language of article 11 of that statutory scheme, which addresses delinquent tax enforcement procedures, clearly indicates otherwise. Specifically, RPTL § 1102 (6) (b) notes that cities are not tax districts and, thus, have no power to enforce their own delinquent real property taxes, if “the county enforces delinquent taxes pursuant to the city charter”. In other words, the RPTL expressly contemplates that a city may amend its charter to abrogate its status as an RPTL Article 11 tax district and transfer to the county the authority to enforce and collect delinquent city real property taxes, which is precisely what the City’s Charter Amendments do. To conclude otherwise would impermissibly render the language of RPTL § 1102 (6) (b) superfluous.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

In its own wide-ranging factual recitation, County spills a great deal of ink recounting and describing events, documents and statutes that are irrelevant to the issues on appeal. These include, among other things, an unrelated issue between the County and the City regarding sales tax, a detailed description of the RPTL article 9 tax collection process, and selected anecdotes of the history of the parties' negotiating history. However, the facts that are actually germane to this case are relatively simple and straightforward.

Prior to September 2021, the Charter of the City of Ogdensburg contained a number of provisions governing the City's authority to collect real property taxes, and to enforce tax liens on properties within the City's limits in the event that a property owner should become delinquent on his or her tax payments [R: 124-129]. Under the former Charter provisions, the City was responsible for collecting its own taxes, as well as taxes levied by the County [R: 124-125, 128-129]. The former Charter provisions also obligated the City to enforce and collect delinquent City and County taxes by placing tax liens on delinquent properties within the City and conducting tax foreclosure sales to recoup the unpaid taxes. The former Charter stated that the City's tax liens "shall be prior and superior to all other liens and encumbrances" [R: 126].

In order to ensure the priority of its tax liens, the City also had a practice of making the County whole, or crediting the County for unpaid County taxes within the City, whether or not the City was able to actually collect the taxes, even though the former Charter did not expressly provide for such an arrangement [R: 124-129]. The City also collected and enforced delinquent property taxes on behalf of the Ogdensburg City School District pursuant to article 13 of the RPTL [R: 116].

Subsequently, on September 13, 2021, the City introduced Local Law No. 2-2021, which would amend certain provisions of City Charter and Administrative Regulations in order to absolve the City of its Charter-based tax enforcement authority in favor of following the provisions of RPTL Article 11, which would shift such authority to the County [R: 130-134]. Most relevant to the instant action/proceeding are the amendments to Section C-80, which deleted the former Charter section, and replaced it with the requirement that “[t]he County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the [RPTL]” [R: 133], section C-81, which borrows language from RPTL § 936 and requires the County to make the City whole for delinquent taxes the County is unable to collect [R: 133-134], and the deletion of section C-83, which previously set forth the manner in which the City would collect and remit County taxes back to the County [R: 134].

On September 27, 2021, after a duly noticed public hearing at which no members of the public spoke in favor of or against the Charter amendments, the City Council unanimously adopted Local Law No. 2 of 2021, which became effective on January 1, 2022 [R: 117, 134].

In response to the adoption of the Charter Amendments, on November 17, 2021, the County commenced by order to show cause [R: 85-87] the instant hybrid action/proceeding seeking a declaratory judgment that, among other things, the Local Law violates the New York State Constitution (hereinafter referred to as the “Constitution”) insofar as it allegedly impairs the powers of the County, as well as provisions of the MHRL and the RPTL. The County’s Verified Petition/Complaint also seeks relief pursuant to CPLR Article 78 sounding in mandamus to compel the City to continue to enforce their own delinquent real property taxes, as well as prohibition to prevent the City from doing otherwise [R: 31-51].

On December 2, 2021, the Ogdensburg City School District (hereinafter referred to as the “School District” or the “District”), which was joined to the action/proceeding as a necessary party, submitted a verified answer to the County’s Verified Petition/Complaint, together with cross-claims against the City [R: 96-112]. The cross-claims alleged, among other things, that the School District is entitled to a declaratory judgment requiring the City to continue to collect and enforce delinquent school taxes on the District’s behalf pursuant to RPTL article 13, due to

its apparent belief that the City's Charter Amendments would operate to transfer that obligation to the County as well [R: 107-109].

While the Charter Amendments make no explicit reference to the collection or enforcement of delinquent School District taxes [R: 133-134], the City understood that the legislative process leading up to the enactment of those Amendments may have created confusion as to whether the City intended to retain its responsibility for collecting and enforcing delinquent school property taxes. As a result, the City Council subsequently chose to rectify this issue by enacting Local Law 1-2022, which provides an additional amendments to the City Charter reaffirming the City's continuing obligation to the School District [*see* Addendum to Brief]. While the City Council was unable to enact the 2022 Charter amendment prior to the issuance of Supreme Court's ruling in this case, the law has since been adopted and filed with the Secretary of State [*see id.*].

On the same day that the School District filed its verified answer with cross-claims, December 2, 2021, the City moved to dismiss the County's Verified Petition/Complaint pursuant to CPLR 3211 (a) (2) and (a) (7) [R: 113-114] on the grounds that (1) the Charter Amendments' transfer to the County of delinquent City real property tax enforcement authority is substantively constitutional and is not inconsistent with any relevant provision of State law; and (2) the County's requests for Article 78 relief sounding in mandamus and prohibition were, for a variety of

reasons, unavailable as a matter of law under the circumstances of this case [R: 115-123].

After oral argument [R: 16-30], St. Lawrence County Supreme Court (Farley, J.) issued a Decision, Order & Judgment dated December 10, 2021, which, among other things, granted the City's motion to dismiss the County's Verified Petition/Complaint. In its decision, the court agreed with the City's position that the Charter Amendments do not offend the Constitution, inasmuch as they do not impair the powers of the County, and were not inconsistent with any relevant provision of the MHRL or RPTL [R: 6-14]. Accordingly, the court issued a declaration in the City's favor deeming the Charter Amendments to be constitutional and valid. As a consequence of its holding, the court summarily dismissed the County's claims for Article 78 relief as well [R: 12].

The County now appeals [R: 3-4].

ARGUMENT

POINT I

THE SCHOOL DISTRICT'S DISPUTE OVER THE CITY'S OBLIGATION TO COLLECT AND ENFORCE DELINQUENT SCHOOL TAXES IS NOW MOOT

As an initial matter, it should be noted that since the issuance of the Decision, Order & Judgment on appeal, the School District's dispute with the City over the

version of the Charter Amendments enacted as Local Law 2-2021 has been rendered moot, and should now be dismissed on that ground.

At the outset of this action/proceeding, the School District opposed the 2021 version of the Charter Amendments based upon the District's belief that the City was attempting to abrogate its obligation to collect and enforce delinquent school property taxes pursuant to RPTL article 13 [R: 107-109]. While the 2021 Charter Amendments make no explicit reference to the collection or enforcement of School District taxes [R: 133-134], the City understood that the legislative process leading up to the enactment of those Amendments may have created confusion as to whether the City intended to retain its responsibility for collecting and enforcing delinquent school property taxes. As a result, the City Council chose to rectify this issue by enacting subsequent amendments to the City Charter, which affirm the City's continuing obligation to the School District.

Though the enactment of the subsequent Charter Amendments was still pending at the time of the Decision, Order & Judgment on appeal [R: 177], that process is now complete. On January 10, 2022, the Ogdensburg City Council passed local law 1-2022, which re-amended section C-80 of the Charter to read as follows:

§ C-80 Unpaid Taxes

The County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the Real Property Tax Law. The City Comptroller shall be responsible for the enforcement of delinquent City School District taxes for properties located within the boundaries

of the City in accordance with Article 13 of the Real Property Tax Law and other applicable law.

[see Addendum to Brief, *infra*].

Inasmuch as the County, through the 2022 Charter Amendment, has expressly reaffirmed its obligation to continue to collect and enforce on behalf of the School District delinquent school taxes pursuant to RPTL article 13, it is submitted that there is no longer a live controversy between the City and the School District. As such “the rights of the parties cannot be affected by the determination of this appeal” and the action/proceeding should be dismissed on mootness grounds as between the City and the School District (*Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]).

POINT II

THE COUNTY’S REQUESTS FOR RELIEF PURSUANT TO CPLR ARTICLE 78 ARE INAPPOSITE TO THE FACTS OF THIS CASE

In the proceedings before Supreme Court, the County advanced a series of misguided arguments that it is entitled to relief pursuant to CPLR Article 78. Specifically, the County contended in that it is entitled to mandamus relief compelling the City to continue to collect and enforce its own delinquent real property taxes because the City’s enactment of the Charter Amendments somehow amounted to a failure to perform “functions that are dictated to it by law” [R: 43-46]. Also, in what can be fairly characterized as a gross misunderstanding of Article 78 relief in nature of prohibition, The County further argued that the City should be

“prohibited” from enacting the Charter Amendments because they are purportedly preempted by state law [R: 47-50; 142-146].

While Supreme Court did not expressly pass upon the County’s Article 78 claims, it is submitted at the outset that the Court can, and should, summarily dismiss them, as it is beyond dispute that the County’s sole objective in this case is to challenge the overall validity of the City’s Charter Amendments, and it is well established that “Article 78 proceedings are inappropriate vehicles to test . . . the validity or non-validity of statutes, ordinances, rules or regulations passed by a [local municipality]” *Matter of Clark Disposal Serv. v Town of Bethlehem*, 51 AD2d 1080, 1080 [3d Dept 1976]; see *Lakeland Water Dist. v Onondaga County Water Auth.*, 24 NY2d 400, 407 [1969]; *Matter of Lund v Town Bd. of Town of Philipstown*, 162 AD2d 798, 800 [3d Dept 1990]). Aside from the fact that the facial impropriety of the Article 78 portion of this hybrid action/proceeding, in and of itself, warrants dismissal of that portion of the County’s Verified Petition/Complaint, numerous other justifications exist for the dismissal of the County’s requests for relief in the nature of mandamus and prohibition.

A. Mandamus

1. The County Has Abandoned its Mandamus Argument on Appeal

On appeal, the County appears to acknowledge the impropriety of its Article 78 claims, at least with respect to its request for mandamus relief. Indeed, in its

appellate brief, the County’s only references to the term “mandamus” are found in its lengthy recapitulation of the record evidence [County’s Br. at 14, 18-19], and in a point-heading of its appellate brief [County’s Br. at 27]. Aside from these few passing references, the County’s brief is devoid of anything resembling an affirmative argument on appeal regarding this claim. “Since a party’s failure to raise an issue in its appellate brief is tantamount to abandonment or waiver of the issue”, it is submitted that the Court should deem the County’s Article 78 claim sounding in mandamus to be abandoned on appeal (*Matter of Lehigh Portland Cement Co. v Assessor of Town of Catskill*, 263 AD2d 558, 560 [3d Dept 1999]; *see Edwards v Martin*, 158 AD3d 1044, 1046 n 1, 2 [3d Dept 2018]).

2. The County’s Request for Mandamus Relief is Not Ripe for Judicial Review

Even if it were the case that the County did not abandon its claim for mandamus relief, this specific claim is not ripe for judicial review.¹ “In order for an [agency] decision to be ripe for judicial review in a CPLR article 78 proceeding, the

¹ In its appellate brief, the County makes a general argument – not specific to any particular form of relief it requests – that the controversy between the parties is ripe for resolution. The City wishes to clarify that it agrees with the County to the extent that the issues of the facial constitutionality and overall validity of the Charter Amendments are live controversies here. The City did not argue to the contrary before Supreme Court, and does not do so now. However, the City does maintain the specific ripeness argument that it raised before Supreme Court [R: 120-121], namely, that the County’s (now-abandoned) request for mandamus relief is unripe because the County’s allegations of the supposed harm it would suffer if the City were not compelled to continue to enforce its own delinquent taxes are purely speculative at this juncture. Moreover, there are further steps the County can take that could significantly ameliorate the alleged harm (*see infra*).

challenged action must be final. An action is considered to be final when it represents a definitive position on an issue which imposes an obligation, denies a right or fixes some legal relationship, resulting in an actual, concrete injury” (*Matter of Guido v Town of Ulster Town Bd.*, 74 AD3d 1536, 1536 [3d Dept 2010] [internal quotation marks, brackets and citations omitted]). “Further, there must be a finding that the apparent harm inflicted by the action may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party” (*Matter of Gordon v Rush*, 100 NY2d 236, 242 [2003] [internal quotation marks and citation omitted]). Where such additional steps are available to either party and “the harm sought to be enjoined is contingent upon events which may not come to pass, the claim to enjoin the purported hazard is nonjusticiable as wholly speculative and abstract” (*Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v Cuomo*, 64 NY2d 233, 240 [1984]).

Though the City’s Charter Amendments do represent a definitive position on the issue of the shifting the enforcement and collection of delinquent City real property taxes to the County, the County has not alleged any “actual, concrete injury” that it has suffered or will suffer if the City is not compelled to continue enforcing its own tax liens. For example, to the extent the County alleges that the Charter Amendments may cause the County future economic harm due to increased

administrative costs and having to make the City whole for its unpaid taxes, such allegations are purely speculative at this juncture. Indeed, the County is now the sole authority capable of foreclosing on tax liens within the City's limits, whereas prior to the Charter Amendments, that authority belonged to the City [R: 124-129]. Accordingly, it is possible that for the County to mitigate or altogether eliminate any potential economic impact through tax foreclosure sales and other available judicial and transactional remedies.

The County's further arguments regarding the Charter Amendments' purported "impairment" of its budgetary process and the "usurpation" of the assignment of work to its employees [County's Br. at 27] are similarly speculative, and substantively false. The City has no control over the County's budget or workforce, and nothing in the Charter Amendments affects the County's ability to exercise its powers or authority in either regard (*see* Point IV.B., *infra*).

Thus, because the County's allegations of harm consist of nothing more than speculation, and because there are further steps the County can take that could significantly ameliorate whatever harm it alleges, it is submitted that the County's claim for Article 78 mandamus relief is not ripe for judicial review (*see Matter of Adirondack Council v Adirondack Park Agency*, 92 AD3d 188, 191 [3d Dept 2012]).

3. Mandamus Relief is Unavailable in this Case, Even if Such a Claim Were Properly Asserted to Challenge the Charter Amendments

Supposing, *arguendo*, that County were able to overcome all of the other deficiencies its mandamus argument, which it cannot, such relief is unavailable under the facts presented here. “[M]andamus is an extraordinary remedy which will lie only to enforce a clear legal right. It will not lie to compel performance of a discretionary duty by an administrative body, but only to compel performance of an act commanded to be performed by law and involving no exercise of discretion” (*Matter of Young v Town of Huntington*, 121 AD2d 641, 642 [2d Dept 1986]; see *Klostermann v Cuomo*, 61 NY2d 525, 539 [1984]).

Significantly, the County never affirmatively asked Supreme Court – and certainly does not ask this Court – to compel the City to perform any non-discretionary duties with respect to delinquent City tax enforcement. Rather, the County sought a judgment pursuant to CPLR Article 78 “requiring the immediate rescission” of the Charter Amendments to the extent that they transfer to the County what it perceives to be the City’s responsibility to enforce its delinquent real property taxes, and to “immediately cease any and all activities” that seek to accomplish the same [R: 50].

In other words, the County sought to compel the City to repeal, amend and/or not enforce the Charter Amendments, a fact that the County did not dispute before Supreme Court and does not dispute now. However, the adoption, repeal,

amendment and enforcement of local laws are all discretionary functions of City government that cannot be compelled via an Article 78 proceeding sounding in mandamus (*see* MHRL §§ 10 [1] [ii] [c] [1]; 10 [2]; *Matter of Davis v Pomeroy*, 283 AD2d 874, 875 [3d Dept 2001]; *Matter of Dyno v Village of Johnson City*, 261 AD2d 783, 784 [3d Dept 1999]). Thus, it is submitted that, if the Court does not summarily dismiss the County’s claim for Article 78 mandamus relief, it should disregard it as abandoned or unripe, or it should dismiss the first cause of action of the Verified Petition/Complaint, as it fails to state a cause of action.

B. Prohibition

1. The Article 78 Remedy of Prohibition Does not Apply to Purely Legislative Acts

In an attempt to establish that Article 78 relief in the nature of prohibition is available in this case – as explained above, it is not – the County first focuses on its perception of the purported impact of the Charter Amendments on the County’s operations. This amounts to a transparent attempt to divert this Court’s attention away from the fact that the City’s enactment of the Charter Amendments is a purely legislative act not subject to prohibition.

“It is well established that a CPLR article 78 proceeding seeking the extraordinary remedy of prohibition is only available to prevent a judicial or quasi-judicial body or officer from proceeding or threatening to proceed without or in excess of its jurisdiction, and then only if a clear legal right to that relief has been

established” (*Matter of Jay Alexander Manor v Novello*, 285 AD2d 951, 952 [3d Dept 2001] [internal quotation marks and citations omitted]; see *Dondi v Jones*, 40 NY2d 8, 13 [1976]). “[P]rohibition will not lie to correct procedural or substantive errors of law, nor may it issue against legislative, executive or ministerial action. . . . Thus, customarily, the proceeding is initiated to control or inhibit courts or Judges”, not municipal legislative bodies or individual members thereof (*Matter of Schumer v Holtzman*, 60 NY2d 46, 51 [1983] [internal citations omitted]).

Here, the County does not dispute that the City of Ogdensburg is a judicial or quasi-judicial body, or that Mayor Jeffrey Skelly or City Manager Stephen Jellie are judicial or quasi-judicial officers; they are not. Nor does the County dispute that the Ogdensburg City Council’s adoption of the Charter Amendments was a purely legislative act; it was. Thus, it is submitted that the portion of the County’s Second Cause of Action for Article 78 relief sounding in prohibition must be dismissed, as that remedy is inapplicable to the facts and circumstances presented here.

2. The County’s Argument that a Writ of Prohibition Should Issue Because the Charter Amendments are Preempted by the RPTL is both Inapposite and Incorrect

Even though Article 78 relief in the nature of prohibition is clearly unavailable to annul the City’s enactment of the Charter Amendments, the County claims that a writ of prohibition should nonetheless issue in this case because “[c]ourts have allowed writs of prohibition to lie where a proposed local legislative action is pre-

empted by state law” [County’s Br. at 28].² This argument is both inapposite, and incorrect.

In the first instance, the City is unaware of any case in which a court has held that an Article 78 prohibition claim can be based upon a preemption argument. The two cases cited by the County in support of its argument to the contrary do nothing to undermine this conclusion, as neither of the cases even remotely indicate a legal relationship between Article 78 relief in the nature of prohibition and a preemption claim (*see Matter of Brucia v County of Suffolk*, 90 AD2d 762 [2d Dept 1982] [*mandamus* proceeding to compel county to remove unauthorized advisory referendum from general election ballot]; *Matter of Citizens for Orderly Energy Policy (COEP) v County of Suffolk*, 90 AD2d 522 [2d Dept 1982] [same]).

Furthermore, as this Court has previously held, “[p]rohibition will not lie where its proponent has access to another adequate legal remedy unless, in the rare instance, it would furnish a more complete and efficacious remedy. Indeed, the proponent must demonstrate that, if he or she is relegated to another avenue of judicial review, irreparable harm will result” (*Matter of Hampshire v Scarano*, 270

² The County raised this specific argument for the first time in its reply affirmation in opposition to the City’s motion to dismiss [*compare* R: 31-51 *with* R: 143-146]. To the extent that this argument is property before the Court, this is the first available opportunity that the City has had to submit an argument in opposition thereto.

AD2d 794, 795 [3d Dept 2000] [internal quotation marks, punctuation and citations omitted]; see *Matter of Dick v Kane*, 284 AD2d 688, 689-690 [3d Dept 2001]).

Here, the County undoubtedly has another legal remedy to pursue a claim that the City's enactment of the Charter Amendments is preempted by state law, namely, to assert it as a claim for declaratory relief. Moreover, at no point in these proceedings has the County demonstrated, much less alleged, that it would suffer irreparable harm if required to pursue its preemption argument via a declaratory judgment action. Nor should the Court countenance any attempt by the County to do so on reply, inasmuch as that is the only appropriate form in which to present such a claim. As previously discussed, "[a]n article 78 proceeding is not an appropriate vehicle for challenging legislative enactments; [the County's] remedy is by way of a declaratory judgment action" (*Matter of Lund v Town Bd. of Town of Philipstown*, 162 AD2d 798, 800 [3d Dept 1990]).

As the foregoing makes clear, the County's position that its preemption argument can somehow save its Article 78 claim sounding in prohibition is completely unsupported by any relevant case law, and is, in fact, contradicted by decades of controlling precedent. These facts serve to reinforce the unavailability of relief in the nature of prohibition as a matter of law (*see* Point II.B.1., *supra*), and require the dismissal of the County's claim requesting such relief.

POINT III

THOUGH THE COUNTY’S PREEMPTION ARGUMENT IS IMPROPERLY ASSERTED AS A BASIS FOR ARTICLE 78 RELIEF, THE CITY’S CHARTER AMENDMENTS ARE NOT PREEMPTED BY THE RPTL

As has been established, the County’s preemption argument is incorrectly shoehorned into its already inapposite request for Article 78 relief in the nature of prohibition (*see* Point II.B., *supra*). However, if the Court chooses to excuse this defect and address the preemption issue on the merits, it is submitted that the City’s Charter Amendments are not inconsistent with any provision of Article 11 of the RPTL and, thus, are not preempted.

“Municipalities generally have the authority to adopt local laws to the extent that they are not inconsistent with either the State Constitution or any general law” (*Eric M. Berman, P.C. v City of New York*, 25 NY3d 684, 690 [2015]). This authority is expressly extended to local laws related to the levy, administration and collection of legislatively authorized local taxes, such as real property taxes (*see* MHRL § 10 [1] [ii] [a] [8]-[9]; NY Const art IX § 2 [c] [8]).

State laws can preempt inconsistent local laws in two ways. The first, known as conflict preemption, occurs “when a local government adopts a law that directly conflicts with a State statute” (*DJL Rest. Corp. v City of New York*, 96 NY2d 91, 95 [2001] [internal citations omitted]). The second, known as field preemption, occurs “when a local government legislates in a field for which the State Legislature has

[expressly or impliedly] assumed full regulatory responsibility” (*Id.*). “An implied intent to preempt may be found in a ‘declaration of State policy by the State Legislature . . . or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area’” (*Id.*, quoting *Consolidated Edison Co. of N.Y. v Town of Red Hook*, 60 NY2d, at 105). In such cases, “a local government is precluded from legislating on the same subject matter unless it has received ‘clear and explicit’ authority to the contrary” (*People v De Jesus*, 54 NY2d 465, 469 [1981], quoting *Robin v Incorporated Vil. of Hempstead*, 30 NY2d 347, 350-351 [1972]; accord *DJL Rest. Corp. v City of New York*, 96 NY2d at 95).

Here, as limited by its appellate brief, the County argues only that the RPTL presents an example of field preemption. In the County’s view, “[t]he New York State legislature has clearly evinced an intention to occupy the field with respect to real property tax law”, which would prevent the City from enacting any type of local legislating in this area absent a grant of express authority to do so [County’s Br. at 30-31].³ However, the County points to no express articulation of the Legislature’s

³ The County’s citation to special legislation enacted in 1965 that provided the City of Geneva with collection and enforcement authority over Ontario County (*see* RPTL § 999) [County’s Br. at 31] does nothing to support its field preemption argument. Indeed, the version of the City Charter that was in effect immediately prior to the Charter Amendments at issue established a similar tax collection dynamic between itself and the County that existed for decades without special state legislation [R: 128]. Moreover, the fact that a municipality can obtain special legislation to authorize a particular act does not mean that the same act cannot be accomplished through local legislation (*see e.g. Matter of Ricket v Mahan*, 97 AD3d 1062, 1065 [3d Dept 2012] [rejecting argument that Town could only supersede Public Officers Law residency requirement

intent to occupy the entire field that the Charter Amendments embrace – *i.e.* delinquent real property tax enforcement – and it is submitted that no such articulation exists.

This leaves implied field preemption as the County’s only theoretically viable theory of preemption. And while, generally speaking, the RPTL does provide a host of regulations governing several different aspects of the levy, collection and enforcement of local real property taxes, that does not, in and of itself, establish a legislative intent to prevent cities from enacting charter amendments that address the discrete issue of transferring the authority to collect and enforce delinquent city real property taxes to the county (*cf. Matter of Zorn v Howe*, 276 AD2d 51, 53-54 [3d Dept 2000] [finding unpersuasive “[the] respondent’s effort to utilize the comprehensive statutory scheme embodied in RPAPL article 7 as a predicate for its preemption argument when but one discrete ground for eviction is truly at issue”]). In fact, the unambiguous language of RPTL Article 11, which governs the collection and enforcement of delinquent real property taxes, indicates that the opposite is true.

The most obvious indication that the statutory scheme of the RPTL does not imply an intent to preempt *all* local laws addressing delinquent tax enforcement authority is the fact that Article 11 contains a supersession clause that explains in no

for municipal official after receipt of express approval from Legislature, rather than by local law, as neither Public Officers Law nor Town Law contains such a requirement]).

uncertain terms when preemption applies to such local laws, and when it does not. Specifically, RPTL § 1104 (1) states that “[t]he provisions of [RPTL Article 11] shall apply to all counties, cities, towns and villages in this state, and shall supersede any inconsistent general, special or local law, subject to [certain exceptions not applicable to the City].”

Indeed, as this Court has recently acknowledged, RPTL § 1104 creates the potential for *express*, rather than implied preemption. In *Matter of City of Schenectady (Permaul)*, the Court observed that, in light of the language of section 1104, “where a local law expressly conflicts with [RPTL article 11], or . . . ‘impose[s] prerequisite additional restrictions on rights under [article 11], so as to inhibit [its] operation’” the local law will be deemed “inconsistent with RPTL article 11, rendering it superseded and unenforceable” (201 AD3d 1, 11 [3d Dept 2021], quoting *Consolidated Edison Co. of N.Y. v. Town of Red Hook*, 60 NY2d 99, 108 [1983]). Thus, it logically follows that any local law that does not expressly conflict with RPTL article 11, and does not restrict any rights granted thereunder,⁴ is valid and enforceable, inasmuch as section 1104 only supersedes/preempts “inconsistent” local laws.

⁴ It should be noted that nowhere in the County’s submissions on appeal does it identify any rights granted to it by RPTL article 11 that are restricted by the City’s Charter Amendments, and it is submitted that there are none.

Turning to the language of the City’s Charter Amendments, the County primarily objects to the amendments to section C-80, which deleted the former Charter section, and replaced it with the requirement that “[t]he County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the [RPTL]”, and to section C-81, which requires the County to make the City whole for delinquent taxes the County is unable to collect [R: 133-134]. It is submitted that these amendments are not inconsistent with any provision of RPTL article 11. To the contrary, they are fully consistent with the statutory scheme.

The City derives its authority to enact the above amendments from the definition of the term “tax district” (*see* RPTL § 1102 [6]), and its application within article 11. Broadly stated, a municipality that is a “tax district” for purposes of RPTL article 11 has the authority to designate an official of the municipality to serve as an “enforcing officer”, who is empowered to enforce delinquent tax liens on behalf of the tax district (*see* RPTL §§ 1102 [3], [6]; 1122, 1123, 1124, 1160). Because article 11 only permits “enforcing officers” of “tax districts” to enforce delinquent tax liens (*see* RPTL § 1160), it follows that if a municipality is not an Article 11 tax district, it lacks the ability to independently enforce its own tax liens. Under such circumstances, when local real property taxes go unpaid, the municipal official responsible for collecting property taxes “shall make and deliver to the county treasurer an account . . . of all taxes listed on the tax roll which remain unpaid[.] . . .

[Subsequently t]he county treasurer shall, if satisfied that such account is correct, credit him [or her] with the amount of such unpaid delinquent taxes” (RPTL § 936 [1]).

Significantly, while the RPTL designates certain types of municipalities as article 11 tax districts by default, procedures exist by which such municipalities can abrogate that status. For example, villages are tax districts, but villages can shift delinquent tax enforcement to a county if the county passes a local law allowing for such an arrangement subsequent to a village’s adoption of a resolution requesting the change (*see* RPTL §§ 1102 [6] [c]; 1442 [1]).

Cities are also tax districts, but the procedure by which the RPTL allows a city to shift delinquent tax enforcement responsibility to a county is much simpler (*compare* RPTL § 1102 [6] [b], *with* § 1102 [6] [c]). Specifically, RPTL § 1102 (6) (b) notes that cities are not tax districts if “the county enforces delinquent taxes *pursuant to the city charter*” (emphasis added). In other words, the RPTL expressly contemplates that a city may amend its charter to abrogate its status as an RPTL Article 11 tax district and transfer to the county the authority to enforce and collect delinquent city real property taxes, which, in turn, requires the county to make the city whole pursuant to RPTL § 936. This is precisely what the City accomplished when it enacted the Charter Amendments [R: 133-134].

In light of the foregoing, it cannot be credibly argued that the City's the Charter Amendments are inconsistent with RPTL article 11 [R: 133-134]. To conclude otherwise would essentially render the language of RPTL § 1102 (6) (b) superfluous, which, as Supreme Court correctly held [R: 11-12], would violate the basic tenet of statutory construction that "meaning and effect should be given to all [of a statute's] language, if possible, and words are not to be rejected as superfluous when it is practicable to give to each a distinct and separate meaning" (NY Statutes Law § 231).⁵ Thus, it is submitted that the County's preemption argument should be rejected, as the Charter Amendments at issue do not expressly conflict with any provision of RPTL article 11, nor do they restrict any rights the County possesses as an article 11 tax district.

⁵ To the extent that the County attempts to utilize this same tenet of statutory construction to support an argument that the "only way" the City could validly transfer delinquent tax enforcement authority to the County is through an agreement authorized by RPTL § 1150, it is submitted that such argument should be rejected. While it is true that an RPTL § 1150 agreement is one method by which a transfer of enforcement authority may be accomplished, the above-cited provisions of article 11 clearly establish that it is far from the "only way." Furthermore, § 1150 authorizes only "tax districts . . . to make agreements with one another[.]" Because the City's Charter Amendments have effectively abrogated its status as a tax district pursuant to the language of RPTL § 1102 (6) (b) and the operation of that language throughout article 11, the City is not eligible to enter into such an agreement with the County.

POINT IV

SUPREME COURT CORRECTLY DETERMINED THAT THE CITY'S CHARTER AMENDMENTS CONSTITUTIONALLY AND VALDILY SHIFT THE AUTHORITY TO COLLECT AND ENFORCE DELINQUENT CITY REAL PROPERTY TAXES TO THE COUNTY

Finally, the County argues that Supreme Court erred in dismissing its claim for declaratory relief, which alleges that the Charter Amendments violate the New York State Constitution, the MHRL and the RPTL.⁶ Though the County attempts to bolster its claim with irrelevant distinctions between the home rule powers granted to all municipalities versus the additional powers granted to cities [*see* County's Br. at 35-36], and accusations that Supreme Court's thorough analysis of the parties' arguments is somehow damaged by a reference to the word "foreclosure" [*see* County's Br. at 44-45], the County's constitutional/statutory argument is, at bottom, limited to one basic issue. Specifically, the County contends that the Charter Amendments unconstitutionally "impair" the County's powers. This argument is meritless.

A. Relevant Legal Standards Pertaining to the City's Motion to Dismiss the County's Claim for Declaratory Judgment

"On a motion to dismiss pursuant to CPLR 3211(a) (7) for failure to state a claim, [courts] afford the complaint a liberal construction, accept the facts as alleged

⁶ This Point IV focuses on the County's meritless allegations that the Charter Amendments violate the Constitution and the MHRL. The County's arguments regarding the Amendments' purported inconsistencies with the RPTL are discussed in Point III, *supra*.

in the pleading as true, confer on the nonmoving party the benefit of every possible inference and determine whether the facts as alleged fit within any cognizable legal theory” (*Graven v Children's Home R.T.F., Inc.*, 152 AD3d 1152, 1153 [3d Dept 2017] [internal quotation marks and citations omitted]). However, “this liberal standard will not save allegations that consist of bare legal conclusions or factual claims that are flatly contradicted by documentary evidence” (*County of Saratoga v Delaware Eng'g, D.P.C.*, 189 AD3d 1926, 1927 [3d Dept 2020] [internal quotation marks and citation omitted]; see *Simkin v Blank*, 19 NY3d 46, 52 [2012]). Notably, where, as here, a motion to dismiss a declaratory judgment cause of action is predicated solely on a question of law or statutory interpretation, rather than on disputed issues of fact, “the motion to dismiss for failure to state a cause of action should be taken as a motion for a declaration in the defendant’s favor and treated accordingly” (*Matter of Tilcon N.Y., Inc. v Town of Poughkeepsie*, 87 AD3d 1148, 1150 [2d Dept 2011] [internal quotation marks, brackets and citations omitted]; see *Dodson v Town Bd. of Town of Rotterdam*, 182 AD3d 109, 112-113 [3d Dept 2020]).

B. The City’s Charter Amendments are Constitutional and do not Violate State Law.

The County primarily alleges that the Charter Amendments violate Article IX, § 2 (d) of the New York State Constitution, which states, in relevant part, that “a local government shall not have power to adopt local laws which impair the powers of any other local government”, and MHRL § 10 (5), which is identical to the above

Constitutional provision. However, it is beyond dispute that the purpose and effect of the Charter Amendments is to vest the County with the sole authority to enforce and collect delinquent real property taxes within City limits, which authority the County did not possess prior to the Charter amendments; the City did [*compare* R: 124-129, *with* R: 133-134].

As Supreme Court correctly found, this transfer of authority affected by the Charter Amendments does not violate Article IX § 2 (d) of the Constitution, as it constitutes an expansion of the County’s tax enforcement authority, not an unconstitutional impairment of the County’s powers [R: 9]. In response, the County argues that Supreme Court’s determination ignores the fact that the Charter Amendments’ transfer of delinquent tax enforcement authority and requirement that the County make the City whole for its unpaid real property taxes “unilaterally imposes an unfunded mandate upon the County”, creates “additional budgetary constraints” and “dictates the terms of the work that must be performed by County employees” [County’s Br. at 37]. However, Supreme Court’s apt observation in its Decision, Order & Judgment remains applicable to the County’s argument on appeal:

The County's additional argument – shifting the administrative burdens and associated costs to the County for enforcement of City taxes ‘impairs’ County operations – misses the point. Article IX, § 2 (d) concerns only impairment of the powers of a local government, not whether the action of one local governmental body imposes additional costs, burdens, or inconveniences upon another. Whether the Local

Law affects the operations of the County simply is not germane to the question before the Court.

[R: 9 (emphasis in original)].

Stated another way, the County’s purported examples of how its “powers” would be “impaired”, are, in reality, complaints about the perceived administrative and financial inconveniences it may experience as a result of its expanded tax enforcement authority. Indeed, at no point in these proceedings has the County offered a single citation to any statutory or local legislative authority from which it derives these supposed powers. Nor has the County offered anything other than “bare legal conclusions” as to how the Charter Amendments would actually affect the County’s ability to exercise its authority to develop budgets or manage its employees. Moreover, as previously discussed (*see* Point II.A.2., *supra*), even these perceived inconveniences are, at best, speculative.

As the County readily admits, prior to the enactment of the Charter Amendments, the County was already handling delinquent tax enforcement for every town and village in St. Lawrence County [R: 35]. Considering that the City of Ogdensburg is the only city in the county (*see* “St. Lawrence County Municipalities” <https://stlawco.org/Departments/CountyClerk/MunicipalityListing>, last accessed April 7, 2022), it follows that the County has heretofore been collecting and enforcing delinquent taxes for *every* municipality *except* the City of Ogdensburg. Thus, it seems somewhat disingenuous for the County to argue that

the Charter Amendments “dictate[] the terms of work that must be performed by County employees”, inasmuch as it has already been performing that work for many years, which would necessarily require it to have the administrative infrastructure in place to handle delinquent tax enforcement responsibilities.

Regarding the “additional budgetary constraints” the County claims it would suffer as a result of the Charter Amendment’s “make whole” requirement, the County offers, with no supporting evidence, that “[t]he annual amount of the warrant . . . is *presumed to be approximately* \$1.6 million each year that the City would expect the County to pay to them” [R: 70 (emphasis added)]. Furthermore, as previously stated, the County’s newfound, exclusive authority to conduct tax foreclosure proceedings on properties located within the City have the ability to mitigate whatever financial perceived financial harm it may suffer in the future (*see* Point II.A.2., *supra*).

In addition to finding the Charter Amendments to be constitutional, Supreme Court also correctly held that they do not violate the MHRL [R: 9-10]. While it is true that MHRL § 10 (5), states as Article IX § 2 (d) of the Constitution does, that “a local government shall not have power to adopt local laws which impair the powers of any other public corporation”, the MHRL also expressly provides that all cities have the ability to adopt local laws related to the levy, collection and administration of “local taxes authorized by the legislature” (MHRL §§ 10 [1] [ii]

[a] [8] & [9]), and may do so as long as the local law in question is “not inconsistent with the provisions of the constitution or not inconsistent with any general law. . . whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law” (MHRL § 10 [1] [ii]; *see also* NY Const art IX § 2 [c] [8] [providing a virtually identical authorization]). This Court has previously interpreted these provisions to “specifically permit[] a [City] to enact a local law concerning taxes *even though such an enactment may relate to affairs other than its own*. The only limitation is that the State Legislature must not have restricted the adoption of such a local law” (*County of Rensselaer v City of Troy*, 102 AD2d 976, 976 [3d Dept 1984] [emphasis added] [internal citation omitted]).⁷

Here, the City’s Charter amendments deal with the collection and enforcement of delinquent City property taxes, which taxes are indisputably authorized by the Legislature. Furthermore, as stated above, the Charter amendments are not

⁷ In its appellate brief, the County grossly misreads the above-quoted language of the Court’s holding in *County of Rensselaer*. The full quote reads as follows: “[W]e cannot agree with Special Term’s conclusion that because a repeal of the 1918 law would affect the county’s property, affairs and government, *the city could not act unilaterally*. Section 10 (subd. 1, par. [ii], cl. a, subcl. [9]) of the Municipal Home Rule Law specifically permits a municipality to enact a local law concerning taxes even though such an enactment may relate to affairs other than its own. The only limitation is that the State Legislature must not have restricted the adoption of such a local law” (*Rensselaer County v City of Troy*, 102 AD2d at 976 [emphasis added] [internal citation omitted]). Inexplicably, the County reads this quotation to stand for the proposition that the City *cannot* pass a local law regarding taxes that affects the County’s affairs [County’s Br. at 42], even though it clearly stands for the opposite proposition (*i.e.*, that the City *can* pass such a law). The Court should disregard the County’s characterization of the holding in that case.

inconsistent with the Constitution's or the MHRL's restriction on local laws that impair the powers of other municipal governments, inasmuch as the amendments serve only to expand the County's authority to enforce and collect delinquent property taxes with City limits. Further still, the fact that the Amendments shift the enforcement of unpaid City taxes to the County is, on its face, permitted by the MHRL and the Constitution because, as this Court has acknowledged, the MHRL allows Cities to pass laws concerning taxes that may affect the affairs of a County government (*see Rensselaer County v City of Troy*, 102 AD2d at 976). Thus, it is further submitted that the City's Charter amendments are valid, and not contrary to the provisions of the MHRL.

C. The County Misinterprets the Limited Authority that Speaks to the Tax Enforcement Dynamic Between Counties and Other Municipalities

Outside of the language of the Constitution, the MHRL (*see* Point IV.B., *supra*) and the RPTL (*see* Point III, *supra*), all of which support the validity of the City's Charter Amendments, it would appear that there is no judicial or advisory authority that directly opines on the question of whether a city can shift enforcement and collection of its own delinquent taxes to a county via a charter amendment, a fact which the County acknowledges [County's Br. at 37].

There is, however, at least one advisory opinion issued in 1972 by the former State Board of Equalization and Assessment (now the State Board of Real Property Tax Services), that addresses the ability of a city to shift somewhat different tax

collection and enforcement responsibilities to a county, which indirectly provides additional support for the City's Charter amendments (*see* 2 Ops Counsel SBEA No. 100, 1972 WL 19610 [Nov. 15, 1972]).

In the aforementioned opinion, the SBEA addressed several questions posed in response to a judicial decision holding that the City of Newburg could adopt a local law relieving itself of its prior obligation under the city's charter to enforce and collect state and county taxes (*see Orange County v City of Newburgh*, 68 Misc 2d 998, 1000 [Sup Ct, Orange County 1972]). One such question was "whether there are any cities in the state which collect city and county taxes and then turn over the delinquent accounts to the county for collection and enforcement" (2 Ops Counsel SBEA No. 100, 1972 WL 19610 at *1). The SBEA responded that it knew of at least two instances in which the city collected the taxes, but relied on the county for the enforcement of all delinquent taxes, including city taxes (*see id.*). If nothing else, this advisory opinion provides confirmation that arrangements in which counties handle the collection and enforcement of delinquent city real property taxes are not unprecedented, and have existed for at least 50 years.

The County cites the same SBEA advisory opinion for the proposition that "[a] city charter cannot be amended to require the county to collect and enforce taxes *according to procedures established by the city*" (2 Op Counsel SBEA No. 100, 1972 WL 19610 at *1) [County's Br. at 39]. However, here, as the language of the

City's Charter Amendments makes clear, the City is not attempting to require the County to enforce delinquent taxes according to any special procedures established by the Charter itself. Rather, the Charter simply states that "[t]he county shall be responsible for the enforcement of delinquent City taxes *in accordance with Article 11 of the [RPTL]*", which is entirely consistent with, and does not run afoul of, the SBEA's advisory opinion [R: 133 (emphasis added)].

In another vain attempt to find relevant authority that undermines the City's Charter Amendments, the County's references Comptroller Opinion 86-76 [R: 82-84], which opined that a village could not validly pass a local law pursuant to the MHRL that provided for the collection of unpaid utility bills in the same manner as delinquent village taxes, because such a law would essentially create an unlawful tax [R: 83-84]. The Comptroller further opined, in dicta, that even if a village could collect unpaid utility bills in the same manner as delinquent village taxes, a local law to that effect it would still violate MHRL § 10 (5) if the county were responsible for the collection and enforcement of delinquent village taxes, and for remitting "make whole" payments to the village as a result of the same [R: 84].

Contrary to the County's assertion that the above fact pattern is "exactly what [the Charter Amendments] do[] here" [County's Br. at 40], Comptroller Opinion 86-76 is inapposite to the instant case, inasmuch utility charges are not legislatively authorized taxes, as real property taxes are. Thus, the hypothetical MHRL § 10 (5)

violation posited by the Comptroller in this Opinion does not support the County's "impairment" argument, as it suggests. Rather, it shows only that a County cannot be required to provide "make whole" payments to another municipality to the extent that those payments would include amounts for delinquent charges other than real property taxes (*i.e.* unpaid utility bills). Accordingly, the County's interpretation of Comptroller Opinion 86-76 is inaccurate, and should be disregarded as well.

In sum, the City's Charter amendments, which shift the collection and enforcement of delinquent City real property taxes to the County, do not run afoul of the Constitution or the MHRL. To the contrary, the City's ability to enact local laws regarding the levy, collection and administration of real property taxes is protected by both of those sources of law, even if such local laws affect the County, provided that they are not inconsistent with relevant provisions of State law addressing real property tax collection and enforcement. And, as has been established above (*see* Point III, *supra*), the relevant provisions of the RPTL contemplate the City's ability to amend its Charter to abrogate its responsibility to enforce delinquent City taxes, and to transfer that responsibility to the County. Accordingly, the Court should affirm Supreme Court's dismissal of so much of the County's Verified Petition/Complaint that requests a declaration that the Charter amendments are unconstitutional and violate provisions of state law and, moreover, affirm the dismissal of this entire hybrid action/proceeding.

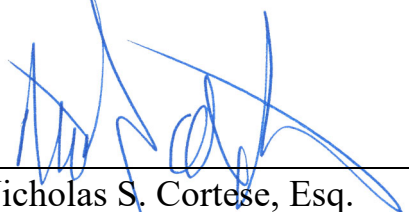
CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the Decision, Order & Judgment of the Supreme Court dismissing the County's Petition/Complaint in its entirety.

Dated: Binghamton, New York
April 8, 2022

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Dated: April 8, 2022

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ADDENDUM

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Ogdensburg

FILED
STATE RECORDS

JAN 19 2022

DEPARTMENT OF STATE

Local Law No. 1 of the year 2022

A local law providing for changes in the Ogdensburg City Charter to affirm the City's
(Insert Title)
responsibility for the enforcement of delinquent City School District taxes.

Be it enacted by the City Council of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Ogdensburg as follows:

See attached

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2022 of the ~~(County)(City)(Town)(Village)~~ of Ogdensburg was duly passed by the Ogdensburg City Council on January 10 2022, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 2022, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

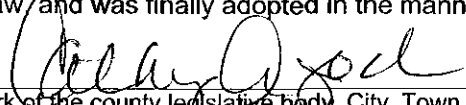
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law and was finally adopted in the manner indicated in paragraph 1 above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 1/11/2022

(Seal)

LOCAL LAW #1 of 2022

AMENDING THE OGDENSBURG CITY CHARTER TO AFFIRM
THE CITY'S RESPONSIBILITY FOR THE ENFORCEMENT OF
DELINQUENT CITY SCHOOL DISTRICT TAXES

A Local Law providing for changes in the Ogdensburg City Charter to affirm the City's responsibility for the enforcement of delinquent City School District taxes.

Be it enacted by the City Council of the City of Ogdensburg as follows:

SECTION 1. Article XVII, § C-80 of the City Charter of the City of Ogdensburg entitled Unpaid Taxes shall be amended as follows:

§ C-80 Unpaid Taxes

The County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the Real Property Tax Law. The City Comptroller shall be responsible for the enforcement of delinquent City School District taxes for properties located within the boundaries of the City in accordance with Article 13 of the Real Property Tax Law and other applicable law.

SECTION 2. EFFECTIVE DATE. This local law shall take effect upon filing with the New York State Secretary of State.