Committee on Governmental Operations

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**THE COUNCIL OF THE CITY OF NEW YORK**

**Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON GOVERNMENTAL OPERATIONS**

Hon. Fernando Cabrera, *Chair*

**February 12, 2020**

**Int. No. 1091:** By Council Member Koo

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to the posting of machine readable executive orders

**Administrative Code:** Adds a new section 7-115

**Int. No. 1872:** By Council Member Cabrera

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to the online publication of unconsolidated local laws

**Administrative Code:** Amends section 7-111

**Int. No. 1871:** By Council Member Cabrera

**Title:** A Local Law to amend the New York city charter, in relation to separability of unconsolidated local laws

**Charter:** Adds a new section 32-a

**Int. No. 1874:** By Council Member Chin

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to permitting interested parties to receive notification of items published in the City Record

**Administrative Code:** Adds a new section 23-107

**Int. No. 1878:** By Council Member Powers

**Title:** A Local Law to amend the New York city charter, in relation to the city administrative procedure act

**Charter:** Amends section 1043

**Int. No. 1879:** By Council Member Powers

**Title:** A Local Law to amend the New York city charter, in relation to the designation of administering offices or agencies

**Charter:** Adds a new section 11.1

# **Introduction**

On February 12, 2020, the Committee on Governmental Operations, chaired by Council Member Fernando Cabrera, will hear the following legislation: Int. No. 1091, in relation to the posting of machine readable executive orders, sponsored by Council Member Peter A. Koo; Int. No. 1872, in relation to the online publication of unconsolidated local laws, and Int. No. 1871, in relation to separability of unconsolidated local laws, both sponsored by Council Member Cabrera; Int. No. 1874, in relation to permitting interested parties to receive notification of items published in the City Record, sponsored by Council Member Margaret S. Chin; and Int. No. 1878, in relation to the city administrative procedure act, and Int. No. 1879, in relation to the designation of administering offices or agencies, both sponsored by Council Member Keith Powers.

Those expected to testify include representatives from the New York City Law Department, the New York City Department of Records and Information Services (“DORIS”), the Department of Citywide Administrative Services (“DCAS”) and other interested members of the public.

# **Legislative Analysis**

## Int. No. 1091

 Int. No. 1091 (Koo) would require the creation of a compilation of executive orders issued by New York City mayors. As the City’s chief executive officer, the Mayor has the authority to issue orders to executive branch agencies, offices, divisions, and bureaus.[[1]](#footnote-1) Generally, executive orders concern the implementation of laws and mayoral policies.[[2]](#footnote-2) Executive orders may be amended, modified or repealed by subsequent executive orders.[[3]](#footnote-3)

Currently, the City makes executive orders available online in two places. First, DORIS maintains a website with all executive orders from 1974 to 2013, separated into pages for Mayors Abraham D. Beame (1974 - 1977), Edward I. Koch (1978 - 1989), David N. Dinkins (1990 - 1993), Rudolph W. Giuliani (1994 - 2001) and Michael R. Bloomberg (2002 - 2013).[[4]](#footnote-4) Separately, executive orders issued by current Mayor Bill de Blasio are posted to the “News” page of the Office of the Mayor.[[5]](#footnote-5) To find executive orders, one must filter by type to separate them from press releases, statements, public schedules and other media hosted on the website.

Executive orders on both DORIS’ and Mayor de Blasio’s websites are posted in portable document format (“PDF”). Not every PDF enables readers to search within the executive order, but instead may present the document as a fixed image. Some executive orders include handwritten notes, such as DORIS’ publication of Executive Order No. 40 (1975), upon which is a handwritten annotation that it was amended by a subsequent executive order.[[6]](#footnote-6) Neither DORIS’ nor Mayor de Blasio’s websites allow one to search the text of multiple executive orders at once.

Int. No. 1091 would require DORIS and the Corporation Counsel, head of the Law Department, to make available a compilation of all executive orders issued by mayors from 1974 to the present. Such compilation shall be in a searchable, machine-readable format, or formats that are capable of being downloaded in bulk. This compilation must indicate any executive order that has been explicitly superseded or amended by a later executive order by annotating the superseded or amended executive order. In addition to making executive orders available in searchable and machine-readable format, the Corporation Counsel and DORIS may still make executive orders available as an image file or other fixed layout format.

## Int. No. 1872

 Int. No. 1872 (Cabrera) would require publication of unconsolidated laws enacted by the Council. Unlike consolidated provisions of local law, unconsolidated provisions are not codified in either the Administrative Code or Charter.[[7]](#footnote-7) Unconsolidated provisions nevertheless carry the force of law.[[8]](#footnote-8) Unconsolidated laws are commonly used where the law is meant to apply for a limited duration, for example, a local law requiring a report, plan, pilot program, task force or advisory board that will meet for a finite period and then dissolve.[[9]](#footnote-9)

Local laws passed by the Council may also include both consolidated and unconsolidated sections. Such unconsolidated sections may, for example, outline legislative intent,[[10]](#footnote-10) define a local law’s applicability,[[11]](#footnote-11) direct City agencies to take certain actions to implement a local law or report on its implementation,[[12]](#footnote-12) or be severability clauses.[[13]](#footnote-13)

Advocates have expressed confusion in the past when trying to find unconsolidated laws. Unconsolidated portions of enacted local laws are included as annotations to the Administrative Code and Charter as published by subscription-based databases such as Westlaw. However, members of the public without access to such resources may be unable to find these unconsolidated provisions.

Int. No. 1872 would require the Corporation Counsel to make available through the City’s website a true and complete compilation of unconsolidated local laws enacted after January 1, 1985. Unconsolidated portions of local laws enacted after that date must be presented as annotations to relevant amended sections of the Charter or Administrative Code, except that such annotations shall not include enactment clauses.

## Int. No. 1871

Int. No. 1871 (Cabrera) would create a default severability clause for unconsolidated local laws. A severability clause provides that the legislature intends to preserve portions of an enacted law if a court strikes down other provisions.[[14]](#footnote-14) Charter § 1153 and Administrative Code § 1-105 are severability clauses (termed “separability” clauses in each) that apply throughout those bodies of law, thus providing by default that the Council intends to preserve portions of an enacted local law if a court strikes down other provisions. However, these severability clauses do not apply to unconsolidated laws.

## Int. No. 1874

Int. No. 1874 (Chin) would permit individuals to sign up to receive notifications pertaining to items in the City Record. The print edition of The City Record is the official publication for city government notices including public hearings, meetings, court notices, property dispositions, procurements, agency public hearings and agency rules.[[15]](#footnote-15) The City Record print edition and the City Record Online (“CROL”) are published by DCAS.[[16]](#footnote-16) CROL allows individuals to sign up to receive email notifications relating to information published in the City Record by agencies individuals select.

Int. No. 1874 would expand on existing CROL notifications. CROL would be required to permit individuals to sign up to receive notifications by either email or text message, or both. Individuals would be permitted to limit their receipt of such notifications by, at minimum, relevant agency or affected community board district, as well as by category, such as public hearings, agency rules and procurement notices. Text message notifications would provide notice that information on a selected subject has been published and direct subscribers to where they can find further information at no cost. CROL would also include a short description of the core functions of each available agency. CROL would be required to automatically sign up Council members and community board district managers to receive the entirety of each day’s City Record, but Council members and community board district managers would be permitted to opt out of such receipt.

## Int. No. 1878

Int. No. 1878 (Powers) amends the City Administrative Procedure Act, which governs the rulemaking process for City agencies,[[17]](#footnote-17) to grant express authority to agencies to promulgate rules before a local law’s effective date. Many local laws delegate authority to agencies to promulgate rules to effectuate the provisions of the law. As such, a clause in the law is often inserted to specifically grant administering agencies authority to promulgate rules prior to the date the local law goes into effect in order to allow the law to take effect in an orderly way. For example, a local law may read in part, “This local law takes effect 180 days after it becomes law, except that prior to such effective date the administering agency may take such measures as are necessary for the implementation of this local law, including the promulgation of rules.” Int. No. 1878 eliminates the need for this type of authorization by providing, as a default, express authority to promulgate rules to the applicable agency or agencies before a local law’s effective date. The Council would retain the power to prohibit or require pre-effective date rulemaking.

## Int. No. 1879

Int. No. 1879 (Powers) requires the Mayor to take certain steps when designating an agency to administer provisions of local law. Local laws passed by the Council often give the Mayor discretion in designating an agency responsible for administering the requirements of the law. However, the Mayoral administration is not uniformly required to notify the Council when an agency designation is made. Instead, that information might only be disclosed when Council members or staff specifically ask, which can lead to regulatory uncertainty for members of the public.

Int. No. 1879 would standardize the process by which the Mayor designates administering agencies. It would require that for every law or rule that requires the Mayor to designate an agency or office to administer or enforce the law or rule, the Mayor must make the agency designation in writing. Within 10 days of such designation, a copy of the document shall be published on the City’s website and on the website of the agency or office, and shall be electronically submitted to the Speaker of the Council. The Mayor would also be required to publish past designations online and submit them to the Speaker.

# **Conclusion**

The legislation the Committee will hear is principally concerned with increasing the public’s access to laws and regulations that govern the City of New York. The Committee will solicit feedback from impacted agencies regarding how they can implement these proposed local laws.

Int. No. 1091

By Council Member Koo

A Local Law to amend the administrative code of the city of New York, in relation to the posting of machine readable executive orders

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 7 of the administrative code of the city of New York is amended to add a new section 7-115, to read as follows:

§  7-115 Online publication of executive orders. a. The corporation counsel and the department of records and information services shall make available through the city's website a true and complete compilation of all executive orders issued from 1974 to present. Such compilation shall be in a searchable, machine-readable format or formats that are capable of being downloaded in bulk, and which are chosen for the purpose of making such compilations available to the greatest number of users and for the greatest number of applications. Such compilation shall indicate any executive order that has been explicitly superseded or amended by a later executive order by annotating the superseded or amended executive order.

b. The corporation counsel and the department of records and information services, in their discretion, may also make executive orders available in formats that are not searchable or machine-readable, such as an image file or other fixed layout format, but the availability of executive orders in such formats shall not satisfy the requirements of this section.

§ 2. This local law takes effect 120 days after it becomes law.

BJR

LS 6458

6/29/18  5:47PM

Int. No. 1872

Council Member Cabrera

A Local Law to amend the administrative code of the city of New York, in relation to the online publication of unconsolidated local laws

Be it enacted by the Council as follows:

Section 1. Section 7-111 of the administrative code of the city of New York, as added by local law number 37 for the year 2014, is amended to read as follows:

§ 7-111 Online publication of city laws. The corporation counsel shall make available through the city’s website a true and complete compilation of the charter, the administrative code, the unconsolidated local laws enacted after January 1, 1985 and the rules of the city of [new york]New York. Such compilations of the charter and the administrative code shall include unconsolidated portions of local laws enacted after January 1, 1985 as annotations to relevant sections amended, provided that such annotations shall not include enactment clauses. Such compilation shall be in a searchable, machine-readable format or formats that are capable of being downloaded in bulk, and which are chosen for the purpose of making such compilations available to the greatest number of users and for the greatest number of applications. Such compilation shall be updated to reflect changes to such compilation no later than four weeks after such changes are made.

§ 2. This local law takes effect 120 days after it becomes law.

BJR/dfc

LS #4303 4304

01/21/20 6:15 p.m.

Int. No. 1871

Council Member Cabrera

A Local Law to amend the New York city charter, in relation to separability of unconsolidated local laws

Be it enacted by the Council as follows:

Section 1. Chapter 2 of the New York city charter is amended to add a new section 32-a to read as follows:

§ 32-a. Separability of unconsolidated local laws. If any clause, sentence, paragraph, section or part of an unconsolidated local law, or unconsolidated section or sections of a local law, shall be adjudged invalid or ineffective by any court of competent jurisdiction, such judgement shall not affect, impair or invalidate the remainder of such unconsolidated local law, or unconsolidated section or sections of such local law, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 2. This local law takes effect immediately.

DFC

LS #2238

01/21/20 6:10 p.m.

Int. No. 1874

By Council Member Chin

A Local Law to amend the administrative code of the city of New York, in relation to permitting interested parties to receive notification of items published in the City Record

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 23 of the administrative code of the city of New York is amended by adding a new section 23-107 to read as follows:

§ 23-107 Notification of items in City Record. The website of the City Record shall permit individuals to sign up to receive text message or e-mail notifications or both relating to information published in the City Record. Such website shall permit individuals to limit their receipt of such notifications by, at minimum, relevant agency, affected community board district and category, such as public hearings, agency rules and procurement notices. Such notification sign-up website shall include a short description of the core functions of each available agency. Such website shall automatically sign up council members and community board district managers to receive the entirety of each day’s City Record, but council members and community board district managers shall be permitted to opt out of such receipt. Text message notifications shall provide notice that information on a subject the receiving individual signed up for has been published, and shall direct such individual to where they can find further information at no cost.

                     § 2. This local law takes effect 180 days after it becomes law.

DSS/JJ

LS #567/Int. 0380-2014

LS #5632 02/09/2018 4:25PM

Int. No. 1878

By Council Member Powers

A Local Law to amend the New York city charter, in relation to the city administrative procedure act

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 1043 of the New York city charter is amended to read as follows:

a. Authority. 1. Each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law. No agency shall adopt a rule except pursuant to this section. Each such rule shall be simply written, using ordinary language where possible.

2. Each agency may adopt rules necessary to carry out the power and duties delegated to it by a local law that has not yet gone into effect, except as otherwise provided by law.

§ 2. Paragraph 1 of subdivision f of section 1043 of the New York city charter, as amended by local law number 42 for the year 1989 and relettered by local law number 46 for the year 2010, is amended to read as follows:

1. No rule shall be effective until

(a) the rule is filed by the agency with the corporation counsel for publication in the Compilation,

(b) the rule and a statement of basis and purpose is transmitted to the council for its information,

(c) in the case of a rule adopted pursuant to a local law, the effective date of the provision or provisions of such local law that delegated the applicable power and duties to the promulgating agency, and

[(c)] (d) the rule and a statement of basis and purpose have been published in the City Record and thirty days have elapsed after such publication. The requirement that thirty days shall first elapse after such publication shall not apply where a finding that a substantial need for the earlier implementation of a program or policy has been made by the agency in writing and has been approved by the mayor prior to the effective date of the rule and such finding and approval is contained in the notice.

                     § 3. This local law takes effect immediately.

LS #3343

GZ/JJD/dfc

1/21/20 5:28 p.m.

Int. No. 1879

By Council Member Powers

A Local Law to amend the New York city charter, in relation to the designation of administering offices or agencies

Be it enacted by the Council as follows:

                     Section 1. Chapter 49 of the New York city charter is amended to add a new section 11.1 to read as follows:

§ 11.1. Designation of administering offices or agencies. Whenever the mayor designates one or more offices or agencies to administer or enforce provisions of the charter or administrative code pursuant to local law, the mayor shall make such designation in writing. Within 10 days of such designation or change thereto, a copy of such writing shall be published on the city’s website and on the website of such office or agency, and shall be electronically submitted to the speaker of the council.

§ 2. This local law takes effect immediately, except that for every local law that (i) took effect before the effective date of this local law, (ii) remains in effect and (iii) requires the mayor to designate one or more offices or agencies to administer or enforce provisions of the charter or administrative code, the mayor shall make such designation in writing, publish a copy of such designation on the city’s website and on the website of such office or agency, and electronically submit a copy of such designation to the speaker of the council by no later than July 1, 2021.

BJR/dfc

LS # 4394

1/21/20 5:50 p.m.

1. *See* N.Y.C. Charter § 8 (providing that the mayor may by executive order create positions within his or her executive office and delegate to or withdraw from any member of such office specified functions, powers and duties); N.Y.C. Dep’t of Rec. and Info. Serv., Executive Orders, <https://www1.nyc.gov/site/records/historical-records/executive-orders.page> (last visited Jan. 29, 2020). [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. *Id.; See e.g.* Exec. Order No. 1 (Jan. 1, 2014), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2014/eo_1.pdf> (Mayor de Blasio executive order providing that executive orders in effect on Dec. 31, 2013 are continued unless specifically revoked, revised or superseded by a subsequently-issued executive order). [↑](#footnote-ref-3)
4. Executive Orders, *supra* note 1. [↑](#footnote-ref-4)
5. Off. of the Mayor (N.Y.C), News, <https://www1.nyc.gov/office-of-the-mayor/news.page> (last visited Jan. 29, 2020). [↑](#footnote-ref-5)
6. Exec. Order No. 40 (Sept. 25, 1975), *available at* <https://www1.nyc.gov/assets/records/pdf/executive_orders/1975EO040.PDF>. [↑](#footnote-ref-6)
7. *See* N.Y.C. Admin. Code § 7-111 (requiring publication of the Administrative Code and Charter); New York City Bill Drafting Manual, Second Edition (2018) at 1.3.1, *available at* <https://council.nyc.gov/legislation/wp-content/uploads/sites/55/2018/04/BDM-Final-2018-Version.pdf> (describing unconsolidated laws). [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *See e.g.* N.Y.C. Admin. Code § 3-703 / Local Laws 21 of 2001, 12 of 2003 and, 58-60 of 2004. [↑](#footnote-ref-10)
11. *See e.g.* N.Y.C. Admin. Code § 3-1101 / Local Law 48 of 2019 § 2 (explaining the local law applies to legal defense trusts established after the local law’s effective date); N.Y.C. Admin. Code § 23-503 / Local Law 109 of 2015 § 2 (instructions for requests for particular datasets received prior to enactment). [↑](#footnote-ref-11)
12. *See e.g.* N.Y.C. Admin. Code § 3-702 / Local Law 34 of 2007 §§ 36 and 38 (directing agency support in creation of the City’s Doing Business Database and requiring the Campaign Finance Board to report on the status of the database as part of its 2009 post-election report); N.Y.C. Admin. Code § 23-1101 / Local Law 30 of 2017 § 6 (requiring the office of language services coordination make a preliminary assessment of the ten languages likely to be designated citywide languages); N.Y.C. Admin. Code § 23-505 / Local Law 108 of 2015 § 2 (requiring the creation of a working group). [↑](#footnote-ref-12)
13. *See e.g.* N.Y.C. Admin. Code § 3-702 / Local Law 17 of 2006 § 2; N.Y.C. Admin. Code § 3-703 / Local Law 58 of 2004 § 20. [↑](#footnote-ref-13)
14. *See* Bill Drafting Manual (2018), *supra* note 7 at 7.4 (describing severability clauses). [↑](#footnote-ref-14)
15. *See* N.Y.C. Charter § 1066 (requiring publication); N.Y.C. Dep’t of City Admin. Serv., The City Record Online, <https://a856-cityrecord.nyc.gov> (last visited Jan. 30, 2020). [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *See* N.Y.C. Charter §§ 1041-1047. [↑](#footnote-ref-17)