

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENT OPERATIONS

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February 12, 2020

Start: 1:08 p.m.

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HELD AT: 250 Broadway - Committee Room
14th Floor

B E F O R E: Fernando Cabrera
Chairperson

COUNCIL MEMBERS: Fernando Cabrera
Ben Kallos
Alan N. Maisel
Bill Perkins
Keith Powers
Ydanis Rodriguez
Kalman Yeger
Peter A. Koo

A P P E A R A N C E S (CONTINUED)

Steven Lewis
Executive Assistant Corporation Counsel
for Legal Counsel at the New York City
Law Department

Kenneth Cobb
Associate Commissioner
Department of Records and Information
Services

Andrea Burger

Eric Cecil Henry
General Counsel of the Office of City
Legislative Affairs

Janae Ferreira
DCAS City Records

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1 COMMITTEE ON GOVERNMENTAL
OPERATIONS

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2 STEVEN SIDOWSKI: This is a microphone
3 check. Today's date is February 12, 2020, on the
4 Committee of Gov Ops, recorded by Steven Sidowski.

5 CHAIRPERSON CABRERA: [gavel] Good
6 afternoon. I'm the chair of the Committee on
7 Governmental Operations, Council Member Fernando
8 Cabrera. I'm pleased to be joined today by my
9 colleagues, Council Member Powers, Yeger, Koo, and
10 Ben Kallos. Today the committee will hear six bills
11 that are principally concerned with increasing the
12 public's access to laws and regulations that govern
13 the City of New York. Intro number 1091, sponsored
14 by Council Member Koo, which we're going to be
15 hearing from him shortly, will require the New York
16 City Department of Records and Information Services,
17 excuse me, and the Law Department to make available
18 to the public a searchable compilation of all
19 executive orders issued by mayors from 1974 to the
20 present. This [inaudible] any executive orders that
21 have been explicitly ~~supereeded~~superseded and amended
22 by a later executive order by annotating the
23 ~~supereeded~~superseded or amended executive order.
24 Intro number 1872, sponsored by myself, will require
25 publication of unconsolidated laws enacted by the

2 council. Unlike consolidated provisions of local
3 law, unconsolidated provisions are not codified in
4 either the advertisement code or charter, but they
5 still carry the force of law. This bill will require
6 the Law Department to publish all unconsolidated
7 local laws enacted after January 1,1985.

8 Unconsolidated portions of local law enacted after
9 that date must be presented as annotations to
10 relevant amended sections of the charter or

11 ~~administrative code~~Administrative Code. Intro number

12 1871, also sponsored by myself, would require a

13 default severability clause for unconsolidated local

14 laws. The severability clause provides that the

15 legislature intends to preserve portions of enacted

16 unconsolidated law even if a court strikes down other

17 provisions to the charter and ~~administrative~~

18 ~~code~~Administrative Code already includes severability

19 clauses that for those bodies of law, however, they

20 do not apply to unconsolidated laws. Intro number

21 1874, sponsored by Council Member Chin, would expand

22 on existing notifications available from Ceity

23 Records Oonline by permitting individuals to sign up

24 to receive notifications by either email or text

25 message, or both. Individuals will be permitted to

2 limit their receipt of notification by relevant
3 agency or affected community board district, as well
4 as by category, such as public hearings, agency
5 rules, or procurement notices. The ~~city record~~
6 onlineCity Record Online would automatically sign up
7 council members and community board for such
8 notification, although they would be permitted to opt
9 out. Intro number 1878, sponsored by Council Member
10 Powers, will amend the City Procedure Act, which
11 governs rule-making process for city agencies to
12 grant express authority to all agencies to promulgate
13 rules before local law effective date. This will
14 eliminate the need to include a pre-effective date
15 rule-making authority clause in every local law
16 passed by the council, and we're going to be hearing
17 from him in a bit as well. Finally, Intro 1879, also
18 sponsored by Council Member Powers, will standardize
19 the process by which the mayors designate
20 administrating agencies. It will require that for
21 every law or rule that requires the mayor to
22 designate an agency to administer or enforce the law
23 or rule the mayor must make the agency designation in
24 writing. Within 10 days of a designation a copy of
25 the document shall be published on the city's website

2 and on the website of other agencies and should be
3 electronically submitted to the speaker of the
4 council. The mayor will also be required to publish
5 past designations online and submit them to the
6 speaker. I want to thank our committee staff, Daniel
7 Collins, Emily Forgione, Elizabeth Cronk, Sebastian
8 Bacchi, as well as my legislative director, Claire
9 McIlvene, for making this hearing possible. They
10 always do a tremendous, awesome job. Was that I want
11 to hand it over to my colleagues for opening
12 statement, and I believe Council Member Koo has
13 another, ah, meeting so we're gonna start with him.

14 COUNCIL MEMBER KOO: Thank you. Thank
15 you, Chair Cabrera. And thank you, Mr. Lewis, from
16 the City Department of Law Department. I'm Council
17 Member Peter Koo. I represent Queens and today I'm
18 introducing Intro 1091, which is a bill to give the
19 public access to the New York City executive orders.
20 There's currently no means to search comprehensively
21 for executive orders online, dating back the 1974.
22 To be honest, I'm actually surprised that this even
23 needs to be a bill and that this is not already
24 something that has been adopted voluntarily. In this
25 age of transparency and public accessible

2 information, allowing the public to search in real
3 executive orders online. It's really the bare
4 minimum we can be doing. It should be no different
5 than what is already available via [inaudible] on the
6 New York City Council's website, where anyone can
7 view a bill as it moves through the legislative
8 process, amendments and all. If the public can view
9 City Council legislative documents we should be able
10 to view executive orders just the same. Executive
11 orders are enormously important to government
12 operations as they show that, as they show what
13 unilateral decisions are made by the mayoralty. This
14 information is key to understanding the policies and
15 politics of our great city and by compiling this
16 information into machinable, readable formats online
17 it will help to hold our government accountable.

18 Thank you, Mr. Chair, and thank you, Mr. Lewis.

19 CHAIRPERSON CABRERA: Thank you so much
20 for that, Council Member. Council Member Powers.

21 COUNCIL MEMBER POWERS: Great, thank you,
22 and I'll try to be quick and get to the point. But I
23 want to thank the chair for the opportunity to speak
24 about two bills that we're hearing today that I've
25 introduced. The first would amend the City

2 Administrative Procedure Act, formally known,
3 normally known as CAPA, to grant New York City
4 agencies the express authority to promulgate rules
5 before a law's effective date. Often when we pass
6 local laws that are drafted by the council they
7 specifically do grant that administrating agency's
8 authority to do rule-making prior to the date of a
9 local law going into effect. This bill eliminates
10 the need to do that for future bills by providing us
11 a default, the authority to promulgate rules before
12 an effective date, so we ensure that agencies are
13 able to implement bills in a timely fashion.
14 Practically speaking, we pass a law, we put an
15 implementation date into effect. We certainly
16 believe the agency can begin the rule-making process
17 concurrently and are giving them express authority to
18 do that. Second is to standardize the process by
19 which the mayor designates an administrating agency
20 for new laws. The council often gives the
21 administration flexibility in designating the agency
22 that's responsible for administrating the
23 requirements of the local law. How often we don't
24 always know when that happens or which agency has
25 been designated. It's always a matter of

2 transparency. Members of the public may not be able
3 to easily figure out what agency will be responsible
4 for enforcement of local laws and I can even think of
5 hearings recently where different agencies showed up
6 and there was a need to clarify who would be the
7 enforcement action. I even have a bill where that
8 happened. So this bill requires that for every law a
9 rule that requires the mayor to designate an agency
10 or office to administer it. The mayor must make a
11 designation in writing and a copy of that designation
12 will be published on the city's website and the
13 agency's website, as well as submitted to the City
14 Council. The mayor will also be required to reviewed
15 past designations and publish them online. These
16 small changes will do a lot to streamline the process
17 by which bills we pass are actually implemented and
18 ensure the public is able to hold government
19 accountable and to have a clear picture into the
20 functions of government. Alongside the other bills,
21 I think this is a good package to help make our
22 government work better and I thank the chair for
23 hearing these bills today. Thank you.

24

25

2 CHAIRPERSON CABRERA: Thank you so much
3 to both of you. And with that we're gonna have our
4 counsel swearing in the administration.

5 COMMITTEE COUNSEL: Do you swear that the
6 testimony you will provide this committee is truthful
7 to the best of your knowledge, information, and
8 belief, and that you will respond honestly to council
9 member questions?

10 CHAIRPERSON CABRERA: Thank you so much.
11 You may begin.

12 STEVEN LEWIS: Yes. Good afternoon,
13 Chair Cabrera, Council Member Koo, Council Member
14 Powers, and other members of the Committee on
15 Governmental Operations. My name is Steven Lewis.
16 I'm the executive assistant corporation counsel for
17 legal counsel at the New York City Law Department.
18 I'm joined today in the audience right now by Ken
19 Cobb of the Department of Records and Information
20 Services and Janae Ferreira from DCAS, alongside me
21 Eric Cecil Henry, General Counsel of the Office of
22 City Legislative Affairs. I'd like to thank the
23 chair and members of the committee for inviting me
24 here to speak about several bills relating to the
25 city's legislative and rule-making processes. The

2 charter establishes the law department with the
3 corporation counsel as its head. The charter
4 provides that the corporation counsel shall be
5 attorney and counsel to the city. Relative to this
6 agency's work is providing the public with account to
7 complete and up-to-date versions of local laws and
8 rules. In furtherance of this function the
9 Administrative Code, and the rules of the City of New
10 York. As a result, everyone may access and view the
11 provisions of law pertaining to the administration of
12 city government. In addition, separately the
13 Administrative Code requires that all mayoral
14 executive orders be posted online. The bills before
15 the committee today have several admirable goals.
16 Some of them would enhance the availability of the
17 city's laws and rules. Others seek to codify
18 practices intended to ensure effective administration
19 of such laws and rules. We share these goals and
20 that's why the administration supports the, ah, the
21 intent of these bills with certain minor
22 modifications. I will first discuss two proposals,
23 one regarding the publication of unconsolidated local
24 laws and the other addressing the online publication
25 of mayoral executive orders. By way of background,

2 with respect to the first bill, ah, for those who may
3 not be familiar with this, an unconsolidated local
4 law is one that has been enacted, ah, by the City
5 Council but is not part of the New York City Charter
6 or the Administrative Code. Frequently these local
7 laws are of limited duration. Another common
8 practice is to use unconsolidated laws to name city
9 streets. What they have in common is that they are
10 not encompassed in the charter or Administrative Code
11 and thus not easily accountable to the public. Intro
12 1872 would require that unconsolidated local laws
13 enacted after January 1, 1985, be made part of the
14 compilation of local laws and rules that is required
15 to be published online. The bill would further
16 require that for local laws that are partly
17 consolidated and partly unconsolidated the
18 unconsolidated portions appear in such compilation as
19 annotations to the consolidated portions. 1091, ah,
20 would require the online publication of mayoral
21 executive orders from 1974 to the present in the same
22 format as the existing compilation of the charter,
23 Administrative Code, and rules. The administer
24 supports the laudable goal of both bills, designed to
25 increase the availability of and accountability to

2 the city's local laws, rules, and executive orders.

3 There are some significant operational challenges,

4 particularly as to the required publication of

5 unconsolidated laws and executive orders dating back

6 many years, ah, with annotations. We believe the

7 best way to move forward on these bills is to craft

8 the bills in the following way. First, we should

9 prioritize the publication of newly enacted

10 unconsolidated laws and newly issued executive

11 orders. Next, the city should be given a somewhat

12 longer period of time to publish past unconsolidated

13 laws and executive orders in the required format.

14 There is precedent for this approach. Local Law 40

15 of 2011, which added Section 3-113 to the

16 Administrative Code, requiring the posting online of

17 executive orders and memoranda of understanding. Ah,

18 Local Law 40 set forth a phased-in implementation of

19 the online posting schedule, both in the law itself

20 and in the effective date. Ah, and speaking of that

21 section, Section 3-113, we think it may be the more

22 appropriate provision to amend in the way sought by

23 Intro 1091 rather than create an entirely new

24 section, ah, in Title 7. Ah, we also support the

25 goal of Intro 1871, which provides for the

2 separability of unconsolidated local laws. A
3 separability clause provides that if any provision of
4 a statute is judged to be invalid or ineffective this
5 would not affect the validity of any other provision
6 of such statute. This type of separability clause
7 already exists in Charter Section 1153 and
8 Administrative Code Section 1-105, with respect to
9 consolidated laws. We support this concept with
10 respect to unconsolidated laws. Ah, we believe as a
11 drafting matter, as a drafting matter it may be
12 better achieved by amending these existing charter
13 and code provisions. Intro, ah, 1874, requiring the
14 notifications for updates for the city record, ah, be
15 available by email and text message, ah, to any
16 interested in receiving such notifications, the
17 administration supports this proposal, which would be
18 implemented by DCAS. The law department has no
19 particular, ah, recommendations with regard to this
20 bill, but DCAS representatives are available to
21 answer any questions you may have on that matter.
22 Finally, we support the goals of the remaining two
23 bills. Intro 1879 would require that with respect to
24 any designation by the mayor of a particular office
25 or agency to administer or enforce the provision of a

2 local law such designation be made in writing,
3 published online, and submitted to the council. We
4 believe this would help clarify lines of
5 responsibility within the administration, promote
6 transparency and accountability, and minimize
7 administrative confusion. Intro 1879 would amend
8 CAPA, which sets forth the rule-making procedures
9 applicable to city agencies. We believe that this
10 bill is an attempt to codify existing law that
11 governs rule-making to implement provisions of local
12 law. There's no question a city agency charged with
13 implementing a local law, ah, may begin rule-making
14 to implement that local law. However, there's also
15 no doubt that an agency, ah, rule implementing a
16 local law cannot take effect prior to the local law
17 taking effect. Ah, we'd welcome the chance to work
18 with council staff on the wording just to very
19 clearly communicate the goals that, that we support.
20 Ah, thank you for the opportunity to share our views
21 today. Happy to answer any questions from the
22 committee.

23 CHAIRPERSON CABRERA: Thank you so much.

24 I normally start with questions, but I'm going to
25 pass it off to Council Member Powers.

2 COUNCIL MEMBER POWERS: Thank you. It's
3 a very, very, very kind chair that we have here, I
4 must say. Um, I just, on the last bill, the one you
5 mentioned related to granting, um, authority to
6 promulgate rules prior to the effective date. It's a
7 bill I introduced. Do you see any downsides to doing
8 it and if so can you tell us why?

9 STEVEN LEWIS: No, I think, no, I don't
10 see any downsides. We, we would like to work with
11 the, ah, with the council in terms of just some
12 questions of the wording, but essentially we are, we
13 are in agreement with that.

14 COUNCIL MEMBER POWERS: OK, in what, just
15 so I, I get [inaudible] wording?

16 STEVEN LEWIS: I'm sorry, I think there
17 was just a potential confusion as to whether it
18 meant, ah, that the rule-making could start even
19 before the bill was enacted. I understand there's a
20 difference between enactment and effective date.
21 Just wanted to clarify that a little bit, ah, maybe
22 over, over-cautionness, just wanted to review with
23 the council...

24 COUNCIL MEMBER POWERS: Got it.
25

2 STEVEN LEWIS: ...the language to make
3 sure we're all on board.

4 COUNCIL MEMBER POWERS: Sure.

5 STEVEN LEWIS: But certainly conceptually
6 we're [inaudible].

7 COUNCIL MEMBER POWERS: Got it. OK,
8 great, makes sense. And one last question. We were
9 at the State of the City last week. The mayor signs
10 executive orders, we're talking about a bill here
11 from Council Member Koo, to jump, ah, he left, um,
12 what happens to that? And somebody actually in fact
13 tweeted out, ah, he might have been my predecessor,
14 in fact, tweeted out asking for the executive order,
15 where could he find the language of that executive
16 order once it was signed. So what is the answer to
17 that question?

18 STEVEN LEWIS: Well, two things. Ah,
19 first under the charter the mayor is required to file
20 the executive order with the City Clerk, has that on,
21 on file. But in terms of, ah, posting online, two
22 things happens. It's posted virtually immediately, I
23 would say. I can't say the exact time period, but
24 very quickly it's posted on the mayor's own web page
25 and, and the Department of Records also receives it

2 and posts it on its web page, which includes
3 executive orders going back several, several
4 administrations.

5 COUNCIL MEMBER POWERS: But is there, is
6 there a requirement that they have to be posted
7 online? Like certainly it doesn't have to be posted
8 on the mayor's news page?

9 STEVEN LEWIS: Ah, the current law
10 doesn't say exactly where it has to be posted. It
11 does have to be posted online. It is posted online
12 and in this case it's actually posted in two
13 different locations...

14 COUNCIL MEMBER POWERS: The mayor's page
15 and...

16 STEVEN LEWIS: The mayor's page and the
17 Department of Records.

18 COUNCIL MEMBER POWERS: OK, got it. I,
19 I, I noted that I actually looked for the executive
20 order after he asked the question and I did find the
21 records page, but it seemed to be the archives of all
22 the mayor's and was kind of hard to find and
23 navigate, and an executive order has a lot of
24 importance to the city, especially when you sign one
25 and, ah, in a public, in a big public setting like

2 that. So I, I certainly, it sounds like you guys are
3 supportive, too. But I think that does, is one of
4 the mayor's powers here that it feels like we need,
5 we could, it should be at least easier to find and,
6 and track. So I do appreciate that. Is there, um,
7 is there like, what are the labor and cost impacts of
8 doing that bill?

9 STEVEN LEWIS: Ah, in terms of the
10 executive order bill?

11 COUNCIL MEMBER POWERS: Yeah.

12 STEVEN LEWIS: Ah, I think we'll have to
13 work a little bit with City Hall and the budget, ah,
14 Office of Management and Budget in determining cost.
15 I would say with respect to both that bill and the
16 one regarding unconsolidated revisions of law the
17 main cost factor, if you will, is the fact that they
18 are both labor-intensive going back in time, not so
19 much going forward. Going back in time, someone will
20 be looking at hundreds of executive orders and
21 literally thousands of local laws during that time
22 period to spot, well, in the case of the local laws
23 to spot the unconsolidated provisions, see what
24 their, figure out what their current status is, place
25 them appropriately within the consolidated revisions

2 of law, and then with respect to the executive orders
3 making sure they are properly annotated with respect
4 to their current validity or not. So it's more of a,
5 I think most of the cost is a, is the fact that it's
6 a bit labor-intensive, ah, to get the job done going
7 back several decades.

8 COUNCIL MEMBER POWERS: You've got to go
9 retroactive [inaudible]. We're talking about
10 executive orders. But what is the difference between
11 a mayoral directive and an executive order?

12 STEVEN LEWIS: Ah, it could be a fine
13 line. I think executive orders, in our view, tend to
14 be, ah, of greater import to the public. Ah, mayoral
15 directives tend to be more, ah, direct to agencies
16 for their own internal processes, so it wouldn't have
17 as much of an impact on the public at large, more
18 about how you were doing things internally. So I
19 think that's the basic difference. Executive orders,
20 um, tend to be documents that are of greater public
21 interest and import.

22 COUNCIL MEMBER POWERS: And I, I'm sorry,
23 to ask one more follow-up. Does, if a new mayor
24 comes in and the mayor's prior executive, prior mayor
25 has an executive order, if that new mayor, a

2 directive it sounds like they can kind of redirect
3 their staff and agencies as they need be. But an
4 executive order, they would actually need to do a new
5 executive order to repeat, is that, or a law would
6 have to change?

7 STEVEN LEWIS: Yeah, traditionally,
8 traditionally, going back several administrations at
9 least, ah, the first mayor, when a mayor comes into
10 office the first executive order is to in fact re-up
11 all prior executive orders until the mayor...

12 COUNCIL MEMBER POWERS: So they do need
13 the authorization then?

14 STEVEN LEWIS: Yes, yes, so just to make
15 sure, just to be sure that those old executive orders
16 don't just vanish by virtue of an action, so the
17 first step renew them all, then the new mayor gets a
18 chance to, ah, review them and see I like this one, I
19 don't like that one, I want to change this one or
20 leave that one alone.

21 COUNCIL MEMBER POWERS: Do you know which
22 executive orders between Mayor de Blasio and his
23 predecessor were not carried over? Upheld, if you
24 [inaudible]?

2 STEVEN LEWIS: I, I don't know. I mean,
3 again, I know the current mayor, his first executive
4 order was in fact, I, I believe it was on
5 Inauguration Day, was to renew all the...

6 COUNCIL MEMBER POWERS: All of them, OK.

7 STEVEN LEWIS: ...all of them, and, again,
8 that's just a place holder until such time as it's
9 decided whether or not an old executive order should
10 be continued or changed or revoked.

11 COUNCIL MEMBER POWERS: OK, thank you.

12 Sorry to take up so much time. Thank you, Chair.

13 Thanks. Um, I'm going to ask more questions. But,

14 ah, um, one is, could you, just kind of maybe a

15 follow-up question, but I just ask can you give us an

16 estimate of the number of mayoral directives issued

17 by Mayor de Blasio and past mayors relative to the

18 number of executive orders?

19 STEVEN LEWIS: I know that it is a much

20 smaller number. I couldn't really tell you. We'd

21 have to go back and, and count. I know it's

22 considerably fewer.

23 COUNCIL MEMBER POWERS: Considerably

24 fewer.

25 STEVEN LEWIS: Considerably fewer.

2 COUNCIL MEMBER POWERS: OK. And is there
3 any reason why 1091, Council Member Koo's bill,
4 shouldn't include mayoral directives?

5 STEVEN LEWIS: Ah, I would say, again,
6 there are fewer of them and they tend to have less
7 import to the general public. Ah, so it may, those
8 may not be as critical, um, so we have no, you know,
9 particular advice beyond that. All I can say is they
10 tend not to be of general interest to the public.

11 COUNCIL MEMBER POWERS: OK. And is
12 there, um, am I right, does the Department of
13 Records take the existing executive, when do they
14 put, when do they put an existing mayor's executive
15 orders online? Is it after they leave office?

16 STEVEN LEWIS: Ah, I believe, and, and
17 Ken Cobb from the Department of Records is here and
18 he can correct me if I'm wrong, but the Department of
19 Records site includes the current administration
20 along with, ah, the older ones.

21 COUNCIL MEMBER POWERS: I'll tell you,
22 frankly my very quick search last week I didn't think
23 that was the case. I think I saw Mayor Bloomberg as
24 the most recent.

2 STEVEN LEWIS: OK. I would have to
3 defer...

4 UNIDENTIFIED: Yeah, we can [inaudible],
5 ah, clarify for the record.

6 KENNETH COBB: Thank you, Council Member
7 Powers. Just to clarify...

8 CHAIRPERSON CABRERA: He's going to swear
9 you in.

10 COMMITTEE COUNSEL: I just have to swear
11 you in. Do you swear that the testimony you will
12 provide to this committee is truthful to the best of
13 your knowledge, information, and belief, and that you
14 will respond honestly to Council Member questions?

15 KENNETH COBB: I will.

16 COMMITTEE COUNSEL: And if you could
17 introduce yourself.

18 KENNETH COBB: Kenneth Cobb, assistant
19 commissioner, Department of Records and Information
20 Services. Ah, just to clarify, on the Department of
21 Records website there is the government publications
22 portal, and going in I don't, if you go into the
23 publications portal, type in the search box executive
24 orders, you will see 918 executive orders, every
25 order dating back to 1954 when Mayor Wagner started

2 the, the executive order process, up through, I don't
3 think the ones that the mayor signed last week are
4 there yet. But definitely right up till that point
5 they're all there.

6 COUNCIL MEMBER POWERS: OK. I, I would
7 note that I didn't think they were easy to find when
8 I looked for them [inaudible] search.

9 KENNETH COBB: Well, it's a couple steps,
10 you have to go into the computer.

11 COUNCIL MEMBER POWERS: Why did, why they
12 start in 1954?

13 KENNETH COBB: We were asking that this
14 afternoon and, um, I don't know the answer to that.

15 COUNCIL MEMBER POWERS: OK.

16 KENNETH COBB: I will find out and let
17 you know.

18 COUNCIL MEMBER POWERS: You figure Mayor
19 Wagner figured out he could do something without the
20 legislative body or something?

21 KENNETH COBB: [inaudible].

22 COUNCIL MEMBER POWERS: Expanded power,
23 OK. Um, and, um, do you track executive orders?
24 Does the law department and city agencies track the

2 executive orders and then how do you know which ones
3 are superseded in whole or in part?

4 STEVEN LEWIS: Ah, we, well, obviously
5 this new proposed local law would help in that, ah,
6 process. Ah, right now we might mark our own copies
7 just to try to keep track for ourselves. Ah, but
8 right, there's no formal, ah, annotation, if you
9 will, ah, to keep track of that at the current time.

10 COUNCIL MEMBER POWERS: And what gives
11 him, what gives the mayor, ah, this is not a trick
12 question, I'm just asking, what gives the mayor the
13 ability to do an executive order?

14 STEVEN LEWIS: It's in the charter.

15 COUNCIL MEMBER POWERS: In the charter,
16 OK.

17 STEVEN LEWIS: Ah, I forget the section,
18 maybe Section 8. But there's a specific reference to
19 executive orders, ah, regarding his, his
20 administration.

21 COUNCIL MEMBER POWERS: OK. Ah, I think
22 that's all my questions, so thank you.

23 CHAIRPERSON CABRERA: Thank you so much.
24 Ah, any of my colleagues have questions? Council
25

2 Member Yeger, before we get to mine. Let me just say
3 we've been joined by Council Member Maisel.

4 COUNCIL MEMBER YEGER: The wise Council
5 Member Maisel, my mentor. Um, thank you very much,
6 Mr. Chairman. I just have a couple quick questions
7 regarding, ah, Intro 1091, Councilman Koo's bill,
8 and, ah, Intro 1872, Councilman Cabrera's bill. In
9 your testimony, sir, you said the city should be
10 given a longer period of time to publish past
11 unconsolidated laws and executive orders in the
12 required format. How long?

13 STEVEN LEWIS: Ah, we do not have a very
14 specific deadline right now. We'd like to figure
15 that out very shortly and work with, with the council
16 staff in coming up with the appropriate number. It
17 is, as I said, labor-intensive because we will have
18 to literally look at thousands of laws to figure out
19 what is appropriate or not, and that's why I
20 suggested we could in fact expedite some aspects of
21 this. In terms of going forward we can do this very
22 easily. It's really the retroactive look, ah...

23 COUNCIL MEMBER YEGER: It's gonna get to
24 that.

2 STEVEN LEWIS: And we think that, ah, we
3 need more time, but we'll...

4 COUNCIL MEMBER YEGER: More time than 120
5 days, though?

6 STEVEN LEWIS: We, we may need more time
7 than...

8 COUNCIL MEMBER YEGER: OK, fair enough,
9 and I agree, it's, ah, goes back a long time, you may
10 need more time. I want to go to the sentence before
11 that in the, ah, in your testimony. First we should
12 prioritize the publication of newly enacted
13 unconsolidated laws and newly issued executive
14 orders. OK, and you just alluded to that in what
15 you, ah,

16 STEVEN LEWIS: Yeah.

17 COUNCIL MEMBER YEGER: ...in your answer
18 to my previous question. And so you agree with the
19 goal, ah, they're laudable, in your words, um, did
20 you already start this?

21 STEVEN LEWIS: Ah, we have not yet
22 started this.

23 COUNCIL MEMBER YEGER: OK.

24 STEVEN LEWIS: We, ah, have seen these
25 bills and, and we think these are good ideas and, and

2 look forward to supplementing them, ah, if we go
3 forward.

4 COUNCIL MEMBER YEGER: Intro, ah, 1872,
5 ah, was introduced yesterday, um, so I understand
6 with respect to that that perhaps you haven't yet had
7 the ability to weigh, um, or to begin the process of,
8 ah, of beginning the publication. But Council Member
9 Koo's bill, um, to require the publication of, ah,
10 mayoral executive orders, Intro 1091, was introduced
11 last, two summers ago, August of 2018. So from
12 August of 2018 until today the law department's
13 position has been, I assume, something along the
14 lines of you should prioritize the publication of
15 newly issued executive orders, excising the words
16 unconsolidated laws. If the department's position is
17 that it ought to be done and it's a good idea and
18 it's now a year and a half since the bill was
19 introduced, I'm just curious how many of these
20 executive orders have already been published online
21 by the law department?

22 STEVEN LEWIS: Well, I should, ah, thank
23 you for your question. I think the, what I was
24 trying to get across, ah, is that of course executive
25 orders are already published, ah, online. We have

2 two different aspects here. One is changing, ah, the
3 underlying, ah, system under which it's published. I
4 was referring more to the, ah, annotations. Of
5 course, the annotations, most of that work is in fact
6 going back in time. The, the more recent executive
7 orders, ah, that have been around for the last year
8 or so, have not in fact been amended or changed. The
9 work, the main work of those annotations, those will
10 be the going back in time executive orders, and I
11 think that's where the work is [inaudible].

12 COUNCIL MEMBER YEGER: I may be
13 completely wrong, so if I am please correct. But,
14 um, from any time that I recall ever having to
15 research an executive order I think I found it simply
16 on the mayor's website, on the mayor's office website
17 as a press release and it's been a scanned document.
18 Is that wrong?

19 STEVEN LEWIS: Ah, the, the mayor's
20 office...

21 COUNCIL MEMBER YEGER: Well, let me ask
22 it a different way, I'm sorry, let me ask it a
23 different way. Where are they published on, if the
24 mayor issued an executive order six weeks ago, if he
25 did, where would that be published?

2 STEVEN LEWIS: Ah, that executive order
3 is found in two locations. It is found on the
4 mayor's own web page, as you say, a PDF essentially
5 scanned document, ah, and, ah, as Mr. Cobb referred
6 to, on the Department of Records website or portal,
7 ah, that has government publications, including
8 executive orders going back to the Wagner
9 administration.

10 COUNCIL MEMBER YEGER: As a PDF scanned
11 document?

12 STEVEN LEWIS: Ah, I would defer to Mr.
13 Cobb on, on that.

14 KENNETH COBB: I don't think it's
15 literally a PDF, but it's, it's...

16 COUNCIL MEMBER POWERS: It's a picture,
17 it's not a, it's not a machine searchable, it's not
18 [inaudible]?

19 KENNETH COBB: Correct, it's not, yes.

20 COUNCIL MEMBER YEGER: Somebody, somebody
21 across the street is, has this document on their
22 computer. They print it out. They shove it in front
23 of the guy. He signs it. How difficult is it to
24 have that Word document sent over to somebody to
25 publish it online? I mean, I'm not even trying to

2 facetious. I really just don't understand. They
3 have this document, somebody gets it in email, they
4 said, they tell the guy, hey, can you print this up,
5 give it to the mayor, he's gonna sign it tomorrow.
6 He signs it. In the meantime, there's a Word
7 document. It's in your department, it's at the
8 executive chamber, it's at the executive office of
9 the mayor. There's a Word document. Why are these
10 only being put out, right now, I'm not talking about
11 the elderly ones, you know, Ed Koch's executive
12 orders. I'm talking about the ones that Bill de
13 Blasio has signed. Why aren't those Word documents
14 just being uploaded contemporaneously with their
15 execution? And you may not know the answer, I'm just
16 asking the law department because I, because you're
17 here.

18 STEVEN LEWIS: Right. I...

19 COUNCIL MEMBER YEGER: I assume, I assume
20 it's them across the street that are not doing it.

21 STEVEN LEWIS: I, would say simply that
22 this is a good idea and it's come to our attention
23 and we are supportive of the idea and we're looking
24 forward to implementing the idea as soon as...

2 COUNCIL MEMBER YEGER: So who can we talk
3 to, who can we talk to tomorrow, um, ah, who can
4 Council Member Koo talk to tomorrow to ask, ah, that
5 they take all these Word documents that have been
6 floating around, I assume the mayor has issued a
7 number of executive orders over the last six years,
8 who can he talk to to ask them to, hey, can you just,
9 you, push send and have them put up somewhere on the
10 website?

11 CHAIRPERSON CABRERA: Council Member, I
12 think one of the staff may have the answer.

13 COUNCIL MEMBER YEGER: Fabulous.

14 CHAIRPERSON CABRERA: I'm good with
15 nonverbals, so I think the, you know, appreciate
16 that. It's good to get the answer.

17 ANDREA BURGER: Hope you don't mind. I'm
18 Andrea Burger.

19 CHAIRPERSON CABRERA: We're going to have
20 to swear you in first.

21 ANDREA BURGER: My hand is up.

22 CHAIRPERSON CABRERA: Great. I'll tell
23 the truth.

24 UNIDENTIFIED: Can you swear [inaudible]?
25

2 COUNCIL MEMBER YEGER: I think you're
3 telling the truth.

4 ANDREA BURGER: I promise.

5 COUNCIL MEMBER YEGER: But they do this
6 because they have to.

7 COMMITTEE COUNSEL: Do you swear that the
8 testimony you will provide to this committee is
9 truthful to the best of your knowledge, information,
10 and belief, and that you will respond honestly to
11 Council Member questions?

12 ANDREA BURGER: I do.

13 COMMITTEE COUNSEL: And if you could
14 introduce yourself.

15 ANDREA BURGER: So the difference
16 between, um, using a PDF scanned document and using a
17 Word document is that Word documents can be altered
18 if they are presented as a word document, as opposed
19 to a PDF, which is a scanned version, and somebody
20 else can't go and change it with a PDF. So that's a
21 very critical difference here...

22 COUNCIL MEMBER YEGER: OK.

23 ANDREA BURGER: And, that's also, I
24 should say, the protocol whenever entities are
25 entering into various contractual arrangements,

2 leases, um, all kinds of legal documents that we
3 don't want mischief done after something is signed,
4 that somebody can go into a Word doc, I know this a
5 little technological, but if you go into a Word doc
6 you can change the actual words.

7 COUNCIL MEMBER YEGER: Yes.

8 ANDREA BURGER: And that's why we would
9 never do that.

10 COUNCIL MEMBER YEGER: We don't want to
11 do that, no, nobody, we don't want to change any Word
12 docs. Let me make an observation, if I might. Here
13 in the City Council we're no geniuses by any means,
14 um, and, but we have a website as well and on our
15 website when one of my wise colleagues proposes a
16 piece of legislation and it gets introduced on the
17 floor of the council you can see it on the website,
18 you can download a Word document, but the text of it
19 is also appearing on the page of the website. I've
20 been doing it for the last half hour while you've
21 been talking, reading bills that were introduced
22 yesterday. So I'm not sure that I understand the, I
23 do understand what you've said, I'm not sure why
24 that's at all relevant to my question.
25

2 ANDREA BURGER: I think the distinction
3 is, if I may, I think the distinction is to, ah,
4 while the legislative process is underway, such as
5 when you see a bill that's being posted, right? And
6 we use it all the time also. We think the council
7 has a great website. Um, that process would not
8 necessarily be subject a need for anybody to change
9 the document for some purpose. When you're talking
10 about a final executive order you, that's all, all
11 the work has been done on it, all the negotiating,
12 it's the final document. It's at that point that
13 there ought to be one final...

14 COUNCIL MEMBER YEGER: Right, but I'm
15 not, and not to quibble over this, but I'm not
16 suggesting that you put a Word document on a website.
17 I'm suggesting that the text of this PDF is existing
18 in a very easily copy and paste it into computer code
19 and put it on a web page. I'm not, I'm not a
20 computer guy at all. I don't know much about this
21 stuff. But every time you put a word on a website
22 it's copied from a Word document, it's written
23 somewhere and typed in and then pasted. The, the, if
24 I go to research, ah, a section of the Administrative
25 Code I don't open a Word document. I see the text on

2 my screen. If I wish to copy it and put it into a
3 document I select it, copy, you know, control B,
4 etcetera, all that stuff, and put it into a Word
5 document. I'm not, I don't, I'm not saying that what
6 you're saying is wrong. I'm just saying that I, you
7 know, that's, that's third grade tech stuff. That we
8 understand. I'm saying why can't we get the words
9 from the Word doc onto a page, how complicated is
10 that?

11 ERIC CECIL HENRY: So, ah, Council
12 Member, um, thank you for highlighting this. I think
13 that, um, traditionally the role of, ah, the city
14 agencies that, ah, come before us today, ah, to
15 testify on the bills, they've been, ah, that their
16 mandate has traditionally been to act as repositories
17 for local laws, local, ah, regulations, executive
18 orders, ah, for posterity, kind of aggregating and
19 amassing this information, ah, internally. If
20 there's anything that we've realized from, ah,
21 reviewing these bills is that, ah, we need to do a
22 better job of promoting transparency and
23 accessibility for the general public. So just to re-
24 emphasize, we do support, ah, the goals of these
25 bills and we look forward to talking with the

2 council, talking with our, our sister agencies,
3 talking with City Hall, talking about how we can
4 operationalize and really fulfill the goals of these
5 bills in a really smart and thoughtful and strategic
6 way.

7 COUNCIL MEMBER YEGER: OK. Thank you,
8 Mr. Chairman.

9 CHAIRPERSON CABRERA: Thank you. As a
10 matter of fact, there is a way, ah, I believe in
11 Word, ah, that someone could put the text and block
12 editing, and so you could block editing. And I think
13 also in PDF there's a way to format it in a way that
14 is searchable, because I think that's, that's the big
15 issue here, so, um, if you could talk to the people I
16 guess in, ah, ah, who does your...

17 ERIC CECIL HENRY: Yeah, we're, we're
18 talking with our sister agency [inaudible] to how we
19 can we really approach this, ah, from a smart lens,
20 ah, using the software, the hardware, ah, appropriate
21 to fulfill the aims.

22 CHAIRPERSON CABRERA: Beautiful. I want
23 to recognize we've been joined by Council Member
24 Rodriguez. So I'm gonna, ah, bring in the tail end
25 of, ah, some of the questions here that we definitely

2 need some information. So regarding Intro 1871, ah,
3 my bill, to your knowledge has an unconsolidated
4 local law or a consolidated portion of a local law
5 been the subject of a legal challenge in court or
6 even struck down in court?

7 STEVEN LEWIS: Ah, thank you. I don't
8 recall such an instance, but seeing this legislation
9 we think it is very useful because it certainly is
10 something that could come up. So we'd rather act
11 proactively than wait for that problem to occur.

12 CHAIRPERSON CABRERA: That's good, that's
13 good, ah, for us to be proactive. Ah, jumping to
14 Intro 1872, can the law department rely on resources
15 like West Law to minimize the labor involved in
16 annotating the Administrative Code and Charter with
17 unconsolidated provisions.

18 STEVEN LEWIS: Ah, thank you for that
19 question. We are going to be discussing this with
20 American Legal Publishing, it's one of the leading
21 companies of online, ah, publications of municipal
22 and other government codes. So we have a current
23 contract with them. They are the ones who provide
24 the current online service, ah, so we've already
25 started talking to them about how to implement this

2 in a smooth and efficient and cost-efficient way as
3 possible.

4 CHAIRPERSON CABRERA: Fantastic. Ah,
5 beyond effective date should any other unconsolidated
6 provisions be excluded from the requirement that the
7 Administrative Code and Charter be annotated?

8 STEVEN LEWIS: Thank you. I think the,
9 ah, bill as currently drafted draws the proper line.
10 Sometimes there are unconsolidated provisions of law
11 that combine effective date with other provisions,
12 ah, so we will have to look at those closely and
13 determine what the best way of annotating the
14 administrative code or other laws to, to reflect that
15 circumstance.

16 CHAIRPERSON CABRERA: Let me jump to, ah,
17 some questions related to Council Member Chin's Intro
18 1874. The City Record Online already allows people
19 to sign up for email notification. Does additional
20 allowing them to sign up for the text message
21 notification present any technical or cost concerns?

22 ERIC CECIL HENRY: So, ah, we'd like to
23 bring up Janae Ferreira from DCAS City Record to
24 answer that question.

2 CHAIRPERSON CABRERA: OK. Janae, we're
3 going to have to swear you in as well.

4 COMMITTEE COUNSEL: Do you swear to tell
5 the truth, the whole truth, and nothing but the truth
6 before this committee and answer all questions to the
7 best of your ability?

8 JANAE FERREIRA: I will.

9 COMMITTEE COUNSEL: OK, go ahead.

10 JANAE FERREIRA: Um, so, as you stated,
11 we do, um, currently offer email notifications for
12 the City Record Online. Um, in terms of text
13 notifications we are currently discussing the steps
14 that we would have to take to implement this. Ah,
15 right now we do feel that, ah, we would be, we would
16 need to have some implementation for SMS
17 notifications, but in terms of resources we're still
18 in, we're still in the development stage of trying to
19 figure out how we can implement that.

20 CHAIRPERSON CABRERA: OK. Do you know,
21 this might be a premature question since you're
22 searching, but would there be any cost associated to
23 it?

24 JANAE FERREIRA: We're not sure about
25 that yet.

2 CHAIRPERSON CABRERA: OK. Thank you.

3 JANAE FERREIRA: But we'll definitely let
4 you know.

5 CHAIRPERSON CABRERA: OK. The City
6 Record Online already allows people to select to
7 receive email notifications by specific agency.
8 Would allowing people to select notifications only
9 for certain types of documents from selected
10 agencies, for example only proposed rules, introduced
11 technical or cost concerns?

12 JANAE FERREIRA: Um, that is something
13 that we would have to sit down and discuss.

14 CHAIRPERSON CABRERA: OK. Ah, how many
15 unique profiles are already subscribed to CRO?

16 JANAE FERREIRA: So we have just over
17 37,000 unique users that are logged in through the
18 nyc.id, ah, application, where they can log in to
19 other applications and use the same login
20 information. Um, and there are just over 13,000 that
21 are subscribed for email notifications currently.

22 CHAIRPERSON CABRERA: OK, that was
23 helpful. Ah, we noticed CRO does not allow city
24 employees email address to create profiles. Why is
25 that? I've been very curious, and [inaudible] City

2 Council members, let me just ask these, if they are
3 related, the City Council members and the staff and
4 community board employees use their personal email to
5 receive notification and how do you intended to
6 automatically council members and community board
7 district managers, ah, which is required by the bill,
8 without being able to use their NYC employee email
9 address?

10 JANAE FERREIRA: So thank you very much
11 for that very important question. So actually you
12 can, ah, sign up for notifications with your, ah,
13 government or your city employee email address. So
14 the issue is that the city employee is trying to log
15 in, they're trying to sign up, so they go in to sign
16 up and then they want to select the notifications.
17 But what they actually have to do is the city
18 employees are already technically signed up through
19 the nyc.id program. So they have to actually log in
20 and then opt into the notification. So they
21 technically are already subscribed. So we are
22 currently working with the CRO IT team to figure out
23 how we can better implement the instructions so that
24 the employees know, um, exactly how to go in to log
25 in.

2 CHAIRPERSON CABRERA: That's great,
3 that's great. Yeah, the information I think will be
4 very helpful, 'cause I noticed our staff had
5 difficulty, ah, doing so. And I believe I have one
6 last question. I think this is going to be a record
7 hearing. Ah, and that is related to Council Member
8 Powers, I know he had to step out, there's other
9 hearings going on. But he wanted me to ask what
10 labor, and this is related to Intro 1879, what labor
11 and cost will be involved in reviewing past agency
12 designations and reporting them to the council?

13 ERIC CECIL HENRY: So, ah, in regards to,
14 ah, 1879, ah, again, I want to, ah, reaffirm that we
15 are supportive of what the bill aims to do. I think
16 with any change or increase in, ah, agency mandates
17 we have to take a hard look at what the, what
18 resources, technical, operational, fiscal might be
19 required to fulfill the goals of that mandate. Ah,
20 so we've already begun those internal conversations,
21 ah, as the course of the bill negotiations progress
22 we should be able to, ah, have a dialogue with
23 Council as to what would be needed.

24 CHAIRPERSON CABRERA: OK. Well, I want
25 to thank you, ah, for that discussion, the discussion

2 that already has taken place, and we'll continue to
3 move forward. I know these are not often known as
4 very exciting bills to the public but they are very
5 important in order to achieve the end, ah, which you
6 mentioned earlier, which is the end of this is all
7 about transparency and being able to gain
8 accountability with the least amount of clicks as
9 possible or even to make it possible. So, ah, with
10 that, I want to thank, ah, the council staff for the
11 great job, and always Council Member Yeger, who stays
12 to the very, very end, faithful and true. You're a
13 true trouper. Thank you so much.

14 ERIC CECIL HENRY: Thank you, Mr. Chair.
15 Thank you, Council Member Yeger.

16 CHAIRPERSON CABRERA: Thank you. [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date February 23, 2020