

**HEARING BEFORE THE CITY COUNCIL COMMITTEE
ON GOVERNMENTAL OPERATIONS
Wednesday, February 12, 2020, 1:00 pm**

TESTIMONY OF STEPHEN LOUIS

Introduction

Good afternoon, Chair Cabrera and members of the Committee on Governmental Operations. My name is Stephen Louis, and I am the Executive Assistant Corporation Counsel for Legal Counsel at the NYC Law Department. I am joined today by Ken Cobb of the Department of Records and Information Services, Janae Ferreira from the Department of Citywide Administrative Services (DCAS), and Eric Cecil Henry, General Counsel of the Office of City Legislative Affairs. I would like to thank the Chair and members of this Committee for inviting me here to speak about several bills relating to the City's legislative and rulemaking processes.

The Charter establishes the Law Department with the Corporation Counsel as its head. The Charter provides that the Corporation Counsel "shall be attorney and counsel for the city." Relevant to this agency's work is providing the public with access to complete and up-to-date versions of local laws and rules. In furtherance of this function, the Administrative Code requires the Law Department to post online a complete compilation of the Charter, the Administrative Code and the Rules of the City of New York. As a result, everyone may access and view the provisions of law pertaining to the administration of City government. In addition, the Administrative Code requires that all Mayoral Executive Orders be posted online.

The bills before the Committee today have several admirable goals. Some of them would enhance the availability of the City's laws and rules. Others seek to codify practices intended to ensure effective administration of such laws and rules. We share these goals, and that's why the Administration supports the intent of these bills, with certain modifications.

Online Publication of Unconsolidated Local Laws and Executive Orders

I will first discuss two proposals, one regarding the publication of unconsolidated local laws (Intro 1872), and the other addressing the online publication of Mayoral Executive Orders (Intro 1091). By way of background, an “unconsolidated local law” is one that has been enacted but is not part of the New York City Charter or the Administrative Code of the City of New York. Frequently, these local laws are of limited duration. Another common practice is to use unconsolidated laws to name City streets. What they have in common is that they are not encompassed in the Charter or Administrative Code, and thus not easily accessible to the public.

Intro 1872 would require that unconsolidated local laws enacted after January 1, 1985 be made part of the compilation of local laws and rules that is required to be published online. The bill would further require that, for local laws that are partly consolidated and partly unconsolidated, the unconsolidated portions appear in such compilation as annotations to the consolidated portions. Intro 1091 would require the online publication of Mayoral Executive Orders from 1974 to the present, in the same format as the existing compilation of the Charter, Administrative Code and Rules.

The Administration supports the laudable goals of both bills designed to increase the availability of and accessibility to the City’s local laws, rules and Executive Orders. However, these bills present significant operational challenges, particularly as to the required publication of unconsolidated laws and Executive Orders dating back many years. We believe the best way to accomplish this is to craft the bills in the following way: first, we should prioritize the publication of newly enacted unconsolidated laws and newly issued Executive Orders. Next, the City should be given a longer period of time to publish past unconsolidated laws and Executive Orders in the required format.

There is precedent for this approach. Local Law 40 of 2011 added Section 3-113 to the Administrative Code and requires the posting online of Executive Orders and memoranda of understanding. Local Law 40 set forth a phased-in implementation of the online posting schedule, both in the law itself and in its effective date. And, speaking of Section 3-113, we believe that it is the more appropriate provision to amend in the way sought by Intro 1091, rather than create an entirely new section in Title 7 of the Administrative Code.

Separability of Unconsolidated Local Laws (Intro 1871)

We also support the apparent goal of Intro 1871, which provides for the separability of unconsolidated local laws. A “separability clause” provides that if any provision of a statute is judged to be invalid or ineffective, this would not affect the validity of any other provision of such statute. This type of separability clause already exists in Charter section 1153 and Administrative Code section 1-105 with respect to consolidated laws. We support this concept with respect to unconsolidated laws, but believe it can be better achieved by amending these existing Charter and Administrative Code provisions.

City Record On-Line Notifications (Intro 1874)

Intro 1874 would require that notifications for updates to the City Record be available by email and text message to anyone interested in receiving such notifications. The Administration supports this proposal, which would be implemented by DCAS. They are available to answer any questions you may have.

Designations of Offices or Agencies (Intro 1879) and the City Administrative Procedure Act (Intro 1878)

Finally, we support the goals of the remaining two bills.

Intro 1879 would require that, with respect to any designation by the Mayor of a particular office or agency to administer or enforce the provisions of a local law, such designation be made in writing, published online and submitted to the Council. We believe that this would help clarify lines of responsibility within the Administration, promote transparency and accountability, and minimize administrative confusion.

Intro 1878 would amend the City Administrative Procedure Act, known as "CAPA", which sets forth the rulemaking procedures applicable City agencies. We believe that this bill is an attempt to codify existing law that governs rulemaking to implement provisions of local law. There is no question that a City agency charged with implementing a local law may begin rulemaking to implement that local law even prior to such local law taking effect. However, there is also no doubt that an agency rule implementing a local law cannot take effect prior to the local law taking effect. We would welcome the chance to work with Council staff on the wording that clearly communicates these concepts.

Thank you for the opportunity to share our views today. I am happy to answer questions from the Committee.

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THE CITY OF NEW YORK**

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Name: ERIC HENRY

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I represent: MAYORS OFFICE

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I represent: _____

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