Governmental Operations Committee Staff

Christopher Murray, *Legislative Counsel*

Emily Forgione, *Senior Legislative Policy Analyst*

Elizabeth Kronk, *Senior Legislative Policy Analyst*

Sebastian Bacchi, *Finance Analyst*



## THE COUNCIL

# **COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS Division**

*Jeffrey Baker, Legislative Director*

*Rachel Cordero, Deputy Director, Governmental Affairs*

**COMMITTEE ON GOVERNMENTAL OPERATIONS**

*Hon. Fernando Cabrera, Chair*

#### June 17, 2021

**Proposed Int. No. 2313-A:** By Council Members Rodriguez, the Speaker (Council Member Johnson), Feliz, Kallos, Lander and Chin (in conjunction with the Brooklyn Borough President)

**Title:** A Local Law to amend the city charter, in relation to the establishment of an office of ethnic and community media and requirements regarding agency spending on advertising

**City Charter**: Adds a new Chapter 77

**Int. No. 2257:** By Council Members Cabrera, Kallos and Rosenthal

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to the recording of certain orders, requirements, decisions, determinations, resolutions and restrictive declarations issued by the board of standards and appeals

**Admin. Code**: Adds a new § 25-210

# **Introduction**

On June 17, 2021, the Committee on Governmental Operations, chaired by Council Member Fernando Cabrera, will hold a second hearing and vote on the following legislation: Proposed Int. No. 2313-A, sponsored by Council Member Ydanis Rodriguez, in relation to the establishment of an office of ethnic and community media and requirements regarding agency spending on advertising; and Int. No. 2257, sponsored by Council Member Fernando Cabrera, in relation to the recording of certain orders, requirements, decisions, determinations, resolutions and restrictive declarations issued by the Board of Standards and Appeals (“BSA”).

# **Background**

1. ***Ethnic and Community Media in New York City***

New York City is known as a “melting pot” of the world, home to communities of nearly every race, ethnicity, religion and national origin. Over 200 languages are spoken across the five boroughs while 22 percent of all New Yorkers have limited English proficiency.[[1]](#footnote-1) According to 2019 census data, 36.7 percent of the City’s population is foreign-born.[[2]](#footnote-2) The City is also comprised of a great number of neighborhoods and other identity-based communities that make an 8.3 million-person metropolis[[3]](#footnote-3) easier to navigate and feel like home.

The City has a vast network of ethnic and community-based media outlets that serve as a voice and source of information for communities across the five boroughs. According to the Center for Community Media (“CCM”) at City University of New York’s (“CUNY”) Craig Newmark Graduate School of Journalism, there are upwards of 300 ethnic and community-based media outlets in the New York metro area, publishing in 39 different languages.[[4]](#footnote-4) The Mayor’s Office maintains a list of over 280 outlets operating in the City.[[5]](#footnote-5) These community media outlets serve as a vital and trusted source of news and information for their communities, many of whom do not speak English and face challenges accessing City services and information.

1. *Center for Community Media’s 2013 Study*

In 2013, CCM conducted a study on the City’s advertising spending in ethnic and community media. City advertising includes public messaging by City agencies related to topics such as health, education, transportation, economic development and job opportunities. CCM found that in Fiscal Year 2012, the City spent $18 million on advertising, and only 18 percent of that spending went toward ad placements in ethnic and community media outlets.[[6]](#footnote-6) The rest went to ads in mainstream English-language publications like *The New York Times,* the *New York Post,* the *New York Daily News, amNY,* and *MetroNY.[[7]](#footnote-7)* This breakdown in the advertising budget appeared insufficient to meet the City’s responsibility to reach diverse communities of New Yorkers to convey important messages. The report noted that at the time, the combined circulation of the more than 270 community publications it identified was about 4.5 million, or 55 percent of the City’s population.[[8]](#footnote-8) In one thirteen-month period, Spanish language outlets received less than four percent of the City’s total advertising spending, despite Hispanics making up over 28 percent of the City’s population.[[9]](#footnote-9)

 The report also noted that the City had two long-standing contractual relationships with two ad placement firms – Miller Advertising Agency and Creative Media Agency – that City agencies were required to use to place their ads.[[10]](#footnote-10) While City agencies did have the authority to direct these firms on where to place their ads, agencies often did not have the marketing expertise or knowledge to direct their ads toward specific community outlets, and deferred to the ad placement firms to make those decisions on their behalf.[[11]](#footnote-11) The vast majority of these firms’ ad placement spending went to mainstream media outlets and disproportionately little went to community media outlets.[[12]](#footnote-12)

 CCM’s report highlighted the City’s insufficient use of ethnic and community-based media to disseminate vital public messaging to diverse communities and called for the City to improve. Since 2013, the de Blasio Administration has made efforts to increase the City’s advertising spending for ethnic and community outlets. In 2014, his Administration created a new role – the Mayor’s Director of Community and Ethnic Media.[[13]](#footnote-13) In 2015, the Administration relied heavily on ethnic and community media to advertise IDNYC, the new municipal identification program. The City spent $340,000 on ethnic and community media ad buys, which represented 64 percent of the campaign’s total print advertising spending.[[14]](#footnote-14) In 2018, the Department of Consumer Affairs spent 27 percent of its Paid Sick Leave campaign ad money on ethnic and community media.[[15]](#footnote-15) In its 2019 annual report, the Mayor’s Office of Immigrant Affairs (“MOIA”) reported that, “since the Mayor took office in 2013, the City … increased its ad spending with ethnic and community media outlets by over 220 percent from $850,000 in FY2013 to $2.74 million in FY18.”[[16]](#footnote-16) The Administration said it continued to advertise in ethnic and community media to inform the public about various City initiatives and services, including IDNYC, NYC Care, Pre-K for All, and Thrive NYC.[[17]](#footnote-17)

 In January 2016, the Council’s Committee on Immigration held an oversight hearing on how the City could support ethnic media to ensure that immigrant New Yorkers received information on local matters. On the day of the hearing, the Mayor’s Office, in partnership with the City Council and the CUNY School of Journalism, announced the creation of an online directory of ethnic and community media to assist the City in placing ads in non-mainstream outlets.[[18]](#footnote-18) The Administration also said that it would require internal reporting from agencies to MOIA on their community media advertising to help the City improve its record and hold itself accountable.[[19]](#footnote-19) These measures came at a time when many critics said that the City was not doing enough to disseminate its messaging through ethnic and community outlets.[[20]](#footnote-20)

1. *Executive Order 47 of 2019*

In May 2019, Mayor de Blasio issued Executive Order 47 of 2019 (“EO 47”), a directive intended to ensure that City agencies devoted a significant share of their advertising resources toward ethnic and community media. EO 47 directed all Mayoral City agencies to ensure that by the end of Fiscal Year 2020 and every year after that, at least 50 percent of their annual print and digital publication advertising spending go towards community and ethnic media outlets, defined as:

any print or digital publication that is created for communities of people based on native language, race, color, gender, national origin, ethnicity, religion, sexual orientation, disability or immigrant status; targets a discrete neighborhood, or a geographic region, or a population that may or may not typically receive information from mainstream publications because of their exclusive use of a foreign language; or falls within specifically tailored subject matter as determined by the New York City Mayor’s Office.[[21]](#footnote-21)

The EO also provided that the Mayor’s Office of Operations would work with several entities not under direct Mayoral control—specifically, the City’s Department of Education (“DOE”), the New York City Health + Hospitals Corporation (“H+H”), and the New York City Housing Authority (“NYCHA”)—to implement the provisions of the EO.[[22]](#footnote-22) To ensure agencies had ready access to a list of vetted community outlets, the EO directed the Mayor’s Director of Community and Ethnic Media to develop and maintain a list of approved community and ethnic media outlets that agencies could use at their discretion.[[23]](#footnote-23) Finally, the EO provided that agency staff who work on advertising are required to participate in regular trainings by the Mayor’s Office, and agencies are required to submit an annual data report on print and digital ad spending to the Mayor’s Office, including the total amount spent on advertising and total amount spent on community and ethnic media advertising.[[24]](#footnote-24)

1. *CCM’s Advertising Boost Initiative*

In January 2020, CCM launched the Advertising Boost Initiative (“ABI”) to serve as a resource and bridge between ethnic and community media outlets and City agencies and advertising agencies.[[25]](#footnote-25) Acting as a liaison between media outlets and City agencies, the program connected community media outlets with City agency marketing directors, offered trainings and guides, kept community media apprised of upcoming City advertising campaigns, as well as familiarized City agency marketing staff with community outlets.[[26]](#footnote-26) ABI reports that since its inception, it connected a group of 110 community media outlets in all five boroughs with 51 City agencies, establishing what they termed “a new symbiotic public information and civic engagement ecosystem.”[[27]](#footnote-27) CCM maintains its own directory of over 300 ethnic and community media outlets, and they report that they are working closely with the Mayor’s Office to consolidate their directory with the EO 47 list the Mayor’s Office maintains.[[28]](#footnote-28)

1. *Ethnic and Community-Based Media during the 2020 Census and COVID-19*

The year 2020 was extremely challenging for New York City, the country, and the world. Two events in particular required unprecedented engagement of ethnic and community media to disseminate important and life-saving public information: the 2020 U.S Census and the COVID-19 pandemic. The 2020 U.S Census was a once-in-a-decade population count used to determine representation in Congress and allocate billions of dollars in federal funding. The City invested an unprecedented $40 million into census outreach to ensure that all New Yorkers were aware of the census and were fully counted.[[29]](#footnote-29) As trusted and accessible information sources for diverse communities, ethnic and community media outlets were an important part of the City’s outreach strategy, and the Mayor’s NYC Census 2020 office prioritized them in its census campaign plan.[[30]](#footnote-30) In Fiscal Year 2020, NYC Census 2020 spent nearly $1.9 million on paid advertising in ethnic and community media, or nearly 100 percent of its total paid media spending.[[31]](#footnote-31)

Beginning in March 2020, the COVID-19 pandemic devastated New York City, killing tens of thousands of people. As the City went into lockdown and City agencies altered services in response to the crisis, it was imperative that all New Yorkers be kept abreast of rapidly changing public health guidance. MOIA reported that it increased its regular communication with ethnic and community media outlets by compiling digests of key updates from the Mayor’s Office and City agencies, including programmatic updates and policy changes, health guidance, upcoming deadlines to apply for resources and assistance, and more.[[32]](#footnote-32) MOIA also worked with City agencies to produce and translate columns for ethnic and community media that provided information about COVID-19.[[33]](#footnote-33) Starting in April 2020, MOIA began hosting ethnic and community media virtual roundtables to provide an opportunity for the City to clarify and drive reporting on COVID-19 guidance and resources from trusted messengers to their communities.[[34]](#footnote-34) In 2020, the Department of Health and Mental Hygiene (“DOHMH”) spent the most of any City agency on paid advertising, with approximately $3.8 million, or 90 percent, of its paid advertising going to ethnic and community media outlets.[[35]](#footnote-35) The H+H system had the third highest ad spending (after NYC Census 2020), and 71 percent of that spending went to ethnic and community media outlets.[[36]](#footnote-36)

1. *Progress Since EO 47*

Overall, EO 47 has been a success, and City spending on ethnic and community media ad buys as a share of total ad spending has increased dramatically since 2013. According to data provided by the Mayor’s Office, in Fiscal Year 2020, City agencies spent a total of $9.9 million on paid advertising in ethnic and community media, representing 84 percent of their total paid advertising budgets.[[37]](#footnote-37) This is a far cry from the 18 percent of total ad spending on ethnic and community media in 2013. Out of the 40 agencies that spent money on advertising in FY20, 35 of them achieved the 50 percent threshold for spending on community media, pursuant to EO47.[[38]](#footnote-38) This is compared to only four agencies that met that threshold in 2013.[[39]](#footnote-39) As noted previously, DOHMH, NYC Census 2020, and H+H were the top three agency spenders, and the top ten spenders all spent 100 percent of their ad spending on ethnic and community media.[[40]](#footnote-40)

According to a December 2020 analysis of this data by CCM, City advertising money went to more than 220 community media outlets in all neighborhoods and all five boroughs, in 36 non-English languages.[[41]](#footnote-41) Over 185 outlets saw dramatic increases in revenues from City ads, revenue that in many cases kept the publications solvent after having lost local business advertising during the COVID-19 shutdown.[[42]](#footnote-42)

In light of the success of EO 47, publishers of over 230 community media publications wrote an open letter to City and State leaders on November 17, 2020, calling for a continued commitment to spending at least 50 percent of government advertising budgets on community media outlets and the codification of EO 47.[[43]](#footnote-43)

1. ***The Board of Standards and Appeals***

The BSA was originally established as an “independent board to grant ‘relief’ from the zoning code.”[[44]](#footnote-44) In 1916, New York City adopted its first comprehensive zoning resolution (“Zoning Resolution”). The first citywide zoning code in the United States,[[45]](#footnote-45) it created a regulatory framework for developing large swaths of the City.[[46]](#footnote-46) Recognizing that there would be instances where individual parcels of land might be unduly restricted by the regulations, the 1916 resolution created a Board of Appeals with the power to vary the application of the new zoning resolution on individual properties, subject to certain criteria.[[47]](#footnote-47) By creating a mechanism for relief, the City could avoid claims that it had unconstitutionally taken private property, while maintaining its ability to regulate the use and development of private property through its overall zoning code.[[48]](#footnote-48)

1. *Composition*

The BSA is comprised of five commissioners, each appointed by the Mayor for a term of six years.[[49]](#footnote-49) Of these five members, one must be a professional planner, one a registered architect, and one a professional engineer, each with ten years of professional experience.[[50]](#footnote-50) Both the chair and vice-chair of the BSA are designated by the Mayor, but must satisfy the requisite experience to serve as the planner, the architect, or the engineer.[[51]](#footnote-51) No more than two of the BSA’s commissioners may reside in any one borough.[[52]](#footnote-52)

1. *Powers of the BSA*

Today, the BSA is empowered by the City Charter to interpret the meaning or applicability of the Zoning Resolution, Building Code, Fire Code, Multiple Dwelling Law, and Labor Law, with respect to the usage of private property.[[53]](#footnote-53) As discussed above, this includes the ability to “vary” the provisions of these regulations in certain instances.[[54]](#footnote-54) The ability for the government to grant such relief on an individual basis is necessary to satisfy the takings clause of the Fifth Amendment to the United States Constitution.[[55]](#footnote-55) In that role, the BSA can act “as a safety valve by releasing restrictions in certain instances from their possible confiscatory effect in depriving a property owner of a proper use of his property while at the same time requiring him to pay taxes thereupon.”[[56]](#footnote-56)

Specifically, when the application of a provision of the Zoning Resolution to an individual parcel of property results in “practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the provisions of [the Zoning Resolution],” the BSA may “vary or modify the provision so that the spirit of the law shall be observed, public safety secured and substantial justice done.”[[57]](#footnote-57) In order to grant such a variance, however, the BSA must make five specific findings:

1. “that there are unique physical conditions . . . peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;[[58]](#footnote-58)
2. “that because of such physical conditions there is no reasonable possibility that a development, enlargement, extension, alteration or change of use on the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization;[[59]](#footnote-59)
3. “that the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;[[60]](#footnote-60)
4. “that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and[[61]](#footnote-61)
5. “that within the intent and purposes of this Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.”[[62]](#footnote-62)

If all of the above findings are made, the BSA may grant a variance. However, all determinations approving a variance must set forth each of the required findings, while all determinations disapproving a variance must disclose which of the findings were not satisfied, and each finding must be “supported by substantial evidence or other data considered by the Board in reaching its decision.”[[63]](#footnote-63)

The BSA is also empowered to grant “special permits” for specified uses, or for the modification of use and bulk regulations in appropriate cases.[[64]](#footnote-64) Special permits that affect use regulations are granted to permit a certain use in a district where that use might not otherwise be allowed, such as an auto service station in designated commercial districts,[[65]](#footnote-65) or an electric or gas utility substation in a residence district.[[66]](#footnote-66) The uses that may be permitted, and the conditions under which they may be permitted, are enumerated within the Zoning Resolution.[[67]](#footnote-67) Special permits that affect bulk regulations include the enlargement of single- and two-family residences in designated areas of Brooklyn, enlargement of non-residential buildings, and modification of community facility uses.[[68]](#footnote-68)

Although granting variances and special permits are among the most common of the powers exercised by the BSA, and discussed by the public, the BSA exercises other powers as well. For example, the BSA can renew, or “vest,” building permits that have lapsed due to zoning changes or common law doctrine, if the work is determined to have commenced under validly-issued permits, tangible change occurred, and economic loss would result due to significant expenditure or irrevocable financial commitment.[[69]](#footnote-69) The BSA can also extend the term of previously-approved variances and special permits, or modify previous approvals.[[70]](#footnote-70) The BSA may grant waivers of certain provisions of the New York State General City Law, such as of the prohibition of building in the bed of any street identified on an official map,[[71]](#footnote-71) or to grant certificate of occupancy for buildings that do not front on a mapped street.[[72]](#footnote-72) Finally, one of the more often used powers of the BSA is to hear and decide appeals to decisions rendered by the Department of Buildings, or any City agency that has jurisdiction over the use of land or use or bulks of buildings, for which the BSA may reverse, affirm or modify such decisions.[[73]](#footnote-73)

A mechanism for public input is required for the exercising of certain powers of the BSA. For example, prior to the consideration of applications for variances or special permits, Community Boards (“CB”) and Borough Boards are to review such applications under a process codified in the City Charter.[[74]](#footnote-74) This process begins with the BSA forwarding a copy of the application to the affected CB, and to the Borough Board if the application involves land in multiple districts in a borough, which then must either conduct a public hearing, submit a recommendation to the BSA, or waive the right to do so.[[75]](#footnote-75) The CB and Borough Board, among others, are also required to be afforded a right to appear before the BSA for the purpose of proposing arguments or submitting evidence in support of or in opposition to the application.[[76]](#footnote-76) While all such arguments are ultimately advisory, following 2017 reforms described below, the BSA must respond to them in its final written decisions.[[77]](#footnote-77) These written decisions are filed with the City Planning Commission and with the affected CB or Borough Board, and are made available on the BSA’s website.[[78]](#footnote-78) The City Planning Commission has standing to challenge final determinations by the BSA via a proceeding brought pursuant to Article 78 of the New York State Civil Practice Law and Rules, or in any similar proceeding[[79]](#footnote-79)

1. *Recent reforms*

In 2017, the Council passed a package of nine local laws in relation to the BSA.[[80]](#footnote-80) Local Law 82 of 2017 requires the BSA, in its final written decisions, to refer to relevant arguments and evidence submitted to the BSA by a CB or Borough Board, or others, and to describe the extent to which the BSA considered such arguments or evidence in reaching its final determination.[[81]](#footnote-81) Local Law 83 of 2017 further requires the BSA to provide a response when it makes a determination contrary to that of a CB or Borough board.[[82]](#footnote-82)

Local Law 84 of 2017 requires the BSA to provide a notification to the owner of record when a variance issued after December 31, 2013 is about to expire.[[83]](#footnote-83) Such notification must go out six months prior to the expiration.[[84]](#footnote-84) Use of such property after the expiration of the variance may be a violation of the certificate of occupancy, and the BSA’s notification must inform the owner that the BSA may not extend the term of the variance until any penalties for such a violation are paid.[[85]](#footnote-85)

Local Law 93 of 2017 requires that certain copies of an application or application material that are required to be mailed to a Council Member, Borough President, CB, or City agency be sent using a method that provides proof of delivery, and that such proof be provided to the BSA, which in turn must note on its website when such proof of delivery has been received.[[86]](#footnote-86)

Local Law 101 of 2017 requires the Department of City Planning to publicly post the name and contact information of the employee acting as a coordinator with the BSA, and to post a record of each application for a variance or a special permit for which the Department provided testimony, as well as a copy of such testimony.[[87]](#footnote-87) The BSA must also post a link to such testimony on its website.[[88]](#footnote-88)

Local Law 102 of 2017 requires that the BSA have access to the advice of a State certified general real estate appraiser with no less than five years’ experience in analyzing and auditing real estate investments.[[89]](#footnote-89)

Local Law 103 of 2017 imposes certain standards regarding the BSA application process, as well as establishes a civil penalty of not more than $15,000 for making false statements to the BSA.[[90]](#footnote-90) Certain materials must be included with applications, including a notarized certification that the statements in the materials are correct, a neighborhood character study if a claim of uniqueness of physical conditions is being made, and a financial analysis by a qualified real estate professional.[[91]](#footnote-91) Such financial analysis must contain market-based acquisition costs, any appraisals of the property provided by the applicant as part of an application to a government entity within the five years prior, hard and soft costs, and proof of attempts to obtain financing where relevant.[[92]](#footnote-92) Any materials presented by an applicant at a CB or Borough Board public hearing must also be supplied to the BSA.[[93]](#footnote-93) Testimony delivered by an applicant at a public hearing held by the BSA on the application must be sworn or affirmed under oath.[[94]](#footnote-94) The BSA must report to the Department of Investigation any information concerning a written instrument that contains a false statement that was presented to the BSA with the knowledge or belief that it would be part of the BSA’s records.[[95]](#footnote-95) Any person who notifies the BSA of a false statement violation, prior to receiving notice of the potential violation, shall not be subject to civil penalty.[[96]](#footnote-96)

Local Law 104 of 2017 requires the BSA to report information about applications for variances and special permits, and appeals of decisions regarding variances and special permits, to the Council twice per year.[[97]](#footnote-97)

Local Law 105 of 2017 further requires the BSA to compile data on the location of variances and special permit applications since January 1, 1998 into a publically-available data set.[[98]](#footnote-98) The data set is provided to the City’s Department of Information Technology and Telecommunications for inclusion on an interactive map that will allow uses to filter the view of such data by variance, type of special permit, year of filing of variances and special permits, and year of decision by BSA on variances and special permits.[[99]](#footnote-99)

Finally, Local Law 11 of 2020 requires the BSA to send a notice of expiration of a special permit to the owner of record of the subject property no later than six months prior to the date of expiration.[[100]](#footnote-100) The Law additionally requires that expiration notices for both special permits and variances be additionally forward to the CB of the community district in which the subject property is located.[[101]](#footnote-101)

# **Legislative Analysis**

**Proposed Int. No. 2313-A**

Proposed Int. 2123-A (Rodriguez) would codify and expand upon EO 47. Specifically, the bill would require each mayoral agency to seek to direct at least 50 percent of its total spending on advertising to ethnic and community media outlets, provided that the agency may apply to the Executive Director of Ethnic and Community Media for an annual waiver of this goal. This requirement would not apply to the extent it conflicts with any other law requiring the mayoral agency to publish or distribute notices in media outlets. For the purpose of this bill, the term “ethnic and community media outlet” would include any print or digital publication or television or radio outlet that: (1) serves particular communities of people based on native language, race, color, gender, national origin, ethnicity, religion, sexual orientation, disability or immigrant status; (2) targets a discrete neighborhood, geographic region, or population within the City rather than the City as a whole; or (3) falls within a specifically tailored subject matter, as determined by the Executive Director of Ethnic and Community Media.

Proposed Int. No. 2313-A would also establish an Office of Ethnic and Community Media headed by an Executive Director. The Executive Director would be permitted to appoint deputies and staff within available appropriations, one of which would have to be a citywide marketing manager. Under the bill, the Executive Director of Ethnic and Community Media would be responsible for: advising and assisting the Mayor in coordinating the communication of government-related information to the public; facilitating communication between mayoral agencies to assist them in delivering consistent information to the public via ethnic and community media outlets; monitoring mayoral agencies’ distribution of advertising resources in accordance with the requirements of this bill; assisting public entities other than mayoral agencies in their discretionary efforts to comply with the requirements of this bill; developing and maintaining a list of ethnic and community media outlets for mayoral agencies to use at their discretion; creating forms for requests for waivers from the requirements of this bill; and holding at least one annual training for city officers and employees responsible for purchasing advertising.

Each year, the Executive Director of Ethnic and Community Media would be required to report, for each mayoral agency as well as the Department of Education, the New York City Health and Hospitals Corporation, and the New York City Housing Authority: (i) the total amount such entity paid to any media outlets (including but not limited to ethnic and community media outlets) over the past year; and (ii) the total amount such entity paid to ethnic and community media outlets over the past year.

Proposed Int. No. 2313-A would take effect 45 days after it becomes law.

**Int. No. 2257**

 Int. No. 2257 (Cabrera) would require the BSA, upon issuing a decision affecting the use of a parcel of land, to cause a copy of the decision to be recorded in the county in which the property is located. This would ensure that BSA decisions affecting property in Manhattan, Brooklyn, Queens, and the Bronx would be available in the Automatic City Register Information System (“ACRIS”), and BSA decisions affecting property in Staten Island would be available in the electronic recording system maintained by the Richmond County Clerk. Each recorded notice would be required to include the borough, block, and lot number of the affected property as set forth on the tax map.

Int. No. 2257 would also give the BSA authority, where it determines it to be in the public interest, to record decisions rendered prior to the effective date of the bill in a manner and timeframe at its discretion.

This local law would take effect immediately.

Proposed Int. No. 2313-A

By Council Members Rodriguez, the Speaker (Council Member Johnson), Feliz, Kallos, Lander and Chin (in conjunction with the Brooklyn Borough President)

..Title

A Local Law to amend the New York city charter, in relation to the establishment of an office of ethnic and community media and requirements regarding agency spending on advertising

..Body

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new chapter 77 to read as follows:

CHAPTER 77

OFFICE OF ETHNIC AND COMMUNITY MEDIA

§ 3300. Office of ethnic and community media; executive director. There shall be an office of ethnic and community media. Such office may, but need not, be established in the executive office of the mayor and may be established as a separate office, within any other office of the mayor or within any department, the head of which is appointed by the mayor. Such office shall be headed by an executive director of ethnic and community media who shall be appointed by the mayor or, if the office is established within a department, designated by the head of such department.

§ 3301. Definitions. As used in this chapter, the following terms have the following meanings:

Ethnic and community media outlet. The term “ethnic and community media outlet” means any media outlet that:

(1) serves particular communities of people based on native language, race, color, gender, national origin, ethnicity, religion, sexual orientation, disability or immigrant status;

(2) targets a discrete neighborhood, geographic region or population within the city rather than the city as a whole; or

(3) falls within a specifically tailored subject matter, as determined by the executive director.

Executive director. The term “executive director” means the executive director of ethnic and community media.

Mayoral agency. The term “mayoral agency” means (i) any agency the head of which is appointed by the mayor, (ii) any agency headed by a board, commission or other multi-member body, the majority of the membership of which is appointed by the mayor and (iii) the office of the mayor.

Media outlet. The term “media outlet” means a publication that provides news or other media content through print or digital means, and any television or radio outlet.

§ 3302. Powers and duties. The executive director shall have the power and duty to perform the following functions related to ethnic and community media:

a. Advise and assist the mayor in coordinating the communication of government-related information to the public.

b. Facilitate communication between mayoral agencies to assist such agencies in delivering consistent information via community and ethnic media outlets to the public.

c. Monitor mayoral agencies’ distribution of advertising resources in accordance with section 3303.

d. Assist public entities, including but not limited to the department of education, the New York city health and hospitals corporation and the New York city housing authority in their discretionary efforts to satisfy the requirements set forth in section 3303.

e. Develop and maintain a list of ethnic and community media outlets for mayoral agencies to use at their discretion. The executive director shall publish guidelines setting forth a process for the development of this list.

f. Create forms for requests for waivers pursuant to section 3303.

g. During the calendar year beginning January 1, 2022 and at least once each year thereafter, prepare and submit to the mayor and the speaker of the council a report on the annual advertising for the preceding fiscal year of each mayoral agency, the department of education, the New York city health and hospitals corporation and the New York city housing authority, and with respect to each such entity, such report shall include, but need not be limited to, the total amount paid by each entity to media outlets for advertising and the total amount each entity paid to ethnic and community media outlets for advertising. With respect to mayoral agencies, such report shall include any waivers issued pursuant to section 3303. The department of education and mayoral agencies shall provide appropriate data to the office of ethnic and community media to complete such report. In developing such report, the department shall seek the cooperation and assistance of the New York city housing authority and the New York city health and hospitals corporation.

h. Hold at least one annual training for city officers and employees responsible for purchasing advertising.

i. Delegate these powers and duties to any individuals designated in writing as deputies of the executive director.

§ 3303. Advertising on ethnic and community media. a. Each mayoral agency shall seek to direct at least 50 percent of its total spending on advertising to ethnic and community media outlets, provided that a mayoral agency may apply to the executive director for an annual waiver of this goal. Any such application shall provide a particularized explanation regarding the public purpose that would be served by the issuance of a waiver. If a waiver is granted by the executive director, it shall be posted on a website managed or operated by the city together with the explanation for the waiver.

b. To the extent subdivision a of this section conflicts with a mayoral agency’s obligation to issue notices required by law to be posted or distributed in media outlets, the terms of subdivision a of this section shall not apply. In implementing the requirements of subdivision a of this section, a mayoral agency shall omit the publication cost of such legally required notices from its total advertising budget before calculating its required ethnic and community media outlet spending pursuant to subdivision a.

§ 3304. Deputies. The executive director may appoint deputies and staff within available appropriations. One of these positions shall be a citywide marketing director, who shall report to the executive director.

§ 2. This local law takes effect 45 days after it becomes law.

SG/cjm

LS #17580

06/09/2021\_10:58pm

Int. No. 2257

By Council Members Cabrera, Kallos and Rosenthal

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the recording of certain orders, requirements, decisions, determinations, resolutions and restrictive declarations issued by the board of standards and appeals

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 25 of the administrative code of the city of New York is amended by adding a new section 25-210 to read as follows:

§ 25-210 Notice of board decisions. a. Upon issuance of any order, requirement, decision, determination, resolution or restrictive declaration affecting real property, the board shall timely record in the office of the register of the city of New York in the county in which the subject property lies, or in the case of property within the county of Richmond, in the office of the clerk of such county, notice of such order, requirement, decision, determination, resolution or restrictive declaration.

b. The board may, where it determines it to be in the public interest, record notices of orders, requirements, decisions, determinations, resolutions and restrictive declarations affecting real property rendered prior to the effective date of the local law that added this section in a manner and within a period of time to be determined by the board.

c. Each notice recorded pursuant to this section shall include the borough, block and lot number of the affected property as set forth on the tax map.

d. Failure to record notice of an order, requirement, decision, determination, resolution or restrictive declaration of the board affecting real property in the office of the register of the city of New York in the county in which a subject property lies, or in the case of property within the county of Richmond, in the office of the clerk of such county, shall not affect the validity of such order, requirement, decision, determination, resolution or restrictive declaration.

§ 2. This local law takes effect immediately.

CJM

LS #17382

04/16/2021

1. NYC Mayor’s Office of Immigrant Affairs (MOIA), *State of Our Immigrant City, Annual Report for Calendar Year 2020* (2020), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2020.pdf> at 20-21. [↑](#footnote-ref-1)
2. *Id.* at 14. [↑](#footnote-ref-2)
3. QuickFacts, New York City, New York, United States Census Bureau, <https://www.census.gov/quickfacts/newyorkcitynewyork> (last visited June 2, 2021). [↑](#footnote-ref-3)
4. Many Voices, One City, The Guide to the Community Media of Metropolitan New York, CUNY Craig Newmark Graduate School of Journalism, <http://directory.ccm.journalism.cuny.edu/> (last visited June 2, 2021). [↑](#footnote-ref-4)
5. *See* Community and Ethnic Media Outlet Directory 2021, NYC Mayor’s Office of Media and Entertainment (MOME), <https://docs.google.com/spreadsheets/d/12EC4nsZwjPilffT34xVyYAZeC89rRO9GHC5urB--A5M/edit#gid=1934481737> (last visited June 15, 2021); *see also* Community and Ethnic Media Print and Digital Outlet Directory, NYC Open Data, <https://data.cityofnewyork.us/City-Government/Community-and-Ethnic-Media-Print-and-Digital-Outle/gc4z-q69i> (last visited June 2, 2021). [↑](#footnote-ref-5)
6. Center for Community and Ethnic Media, *Getting the Word Out (Or Not): How and Where New York City Advertises* (March 2013), <http://cdn.journalism.cuny.edu/blogs.dir/601/files/2013/03/CCEMAdvertisingReport.pdf> at 2. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* at 6. [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* at 7. [↑](#footnote-ref-12)
13. Center for Community Media, *NYC Ads Boost Community News Outlets* (Dec. 2020), <https://cdn.nycitynewsservice.com/blogs.dir/1067/files/2020/12/ABIReport2020.pdf> at 8. [↑](#footnote-ref-13)
14. Samar Khurshid, *Just Ahead of Oversight Hearing, City Announces Ethnic Media Plan,* Gotham Gazette (Jan. 28, 2016), <https://www.gothamgazette.com/topics-newestopinions/6120-just-ahead-of-oversight-hearing-city-announces-ethnic-media-plan> [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. NYC Mayor’s Office of Immigrant Affairs (MOIA), *State of Our Immigrant City, Annual Report for Calendar Year 2019* (2019), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2019.pdf> at 75. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. Khurshid, *supra* note 13. [↑](#footnote-ref-18)
19. MOIA Commissioner Nisha Agarwal, *Testimony* (Jan. 27, 2016), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=4228801&GUID=19C0C79E-AD8C-45DB-A90C-5CC30EADCFC6>. [↑](#footnote-ref-19)
20. Kurshid, *supra* note 13. *See also* testimony before the Committee on Immigration, Jan. 27, 2016, <https://legistar.council.nyc.gov/View.ashx?M=F&ID=4228801&GUID=19C0C79E-AD8C-45DB-A90C-5CC30EADCFC6>. [↑](#footnote-ref-20)
21. N.Y.C. Mayor. Exec. Order No. 47, *available at* <https://www1.nyc.gov/assets/mome/pdf/mayor-executive-order-47.pdf>. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *Id.* This list is available at: <https://docs.google.com/spreadsheets/d/12EC4nsZwjPilffT34xVyYAZeC89rRO9GHC5urB--A5M/> [↑](#footnote-ref-23)
24. *Id.* This report is available at: <https://www1.nyc.gov/assets/operations/downloads/pdf/reporting/Community-and-Ethnic-Media-FY-2020-Agency-Compliance-Report.pdf>,; Underlying data set is available here: <https://data.cityofnewyork.us/City-Government/Executive-Order-47-Community-and-Ethnic-Media-Agen/9tn4-3mgm> [↑](#footnote-ref-24)
25. Advertising Boost Initiative, Center for Community Media, <https://www.journalism.cuny.edu/centers/center-community-media/advertising-boost-initiative/> (last visited June 2, 2021). [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. Center for Community Media, *supra* note 13 at 3. [↑](#footnote-ref-27)
28. *Id.* at 10. [↑](#footnote-ref-28)
29. NYC Mayor, “Mayor de Blasio, Speaker Johnson, City University of New York Announce the New York City Complete Count Fund, a $19 Million Investment to Support Community-Based Census Education and Organizing” [Press Release], Sept. 24, 2019, <https://www1.nyc.gov/office-of-the-mayor/news/440-19/mayor-de-blasio-speaker-johnson-city-university-new-york-the-new-york-city-complete>. [↑](#footnote-ref-29)
30. *See* NYC Census 2020, *NYC Census 2020: Our Plan to Ensure a Complete Count* (Jan. 2020), <https://www1.nyc.gov/assets/census/downloads/Our-Plan-to-Ensure-a-Complete-Count.pdf>. [↑](#footnote-ref-30)
31. Executive Order 47 - Community and Ethnic Media Agency Ad Spend, NYC Open Data, <https://data.cityofnewyork.us/City-Government/Executive-Order-47-Community-and-Ethnic-Media-Agen/9tn4-3mgm/data> (last visited June 3, 2021). [↑](#footnote-ref-31)
32. MOIA, *supra* note 1 at 52. [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. Executive Order 47 - Community and Ethnic Media Agency Ad Spend, *supra* note 31. [↑](#footnote-ref-35)
36. *Id.* [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. *Id.* [↑](#footnote-ref-38)
39. Center for Community Media, *supra* note 13 at 13. [↑](#footnote-ref-39)
40. Executive Order 47 - Community and Ethnic Media Agency Ad Spend, *supra* note 31. [↑](#footnote-ref-40)
41. Center for Community Media, *supra* note 13 at 1. [↑](#footnote-ref-41)
42. *Id* at 3. [↑](#footnote-ref-42)
43. “An Open Letter to NY City and State Leaders,” *available at* <https://docs.google.com/document/d/187hFPbZyfg8B2vx_f9cyKDEnyrvlYRJv1VVdYHVGd4o/edit>*;* *See also* Sarah Bartlett and Julie Sandorf, *How New York City is Saving Its Local News Outlets,* New York Times (May 20, 2021), <https://www.nytimes.com/2021/05/20/opinion/newspapers-New-York-City.html> [↑](#footnote-ref-43)
44. About BSA, Board of Standards and Appeals, <https://www1.nyc.gov/site/bsa/about/about.page> (last visited Jun. 1, 2021). [↑](#footnote-ref-44)
45. About Zoning, NYC Planning, <https://www1.nyc.gov/site/planning/zoning/background.page> (last visited Jun. 7, 2021). [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. City of New York, Building Zone Resolution, adopted July 25, 1916, Art. 5 §20, *available at* <https://www1.nyc.gov/assets/planning/download/pdf/about/city-planning-history/zr1916.pdf>. [↑](#footnote-ref-47)
48. About BSA, *supra* note 44. [↑](#footnote-ref-48)
49. NYC Charter § 659(a). [↑](#footnote-ref-49)
50. NYC Charter § 659(b). [↑](#footnote-ref-50)
51. *Id.* [↑](#footnote-ref-51)
52. *Id.* [↑](#footnote-ref-52)
53. NYC Charter §666; About BSA, *supra* note 44. [↑](#footnote-ref-53)
54. *See* NYC Charter §666. [↑](#footnote-ref-54)
55. *See* About BSA, *supra* note 44. The takings clause prohibits the taking of private property for public use without just compensation. U.S. Const. amend. V. For this purpose, a government regulation that limits the use of private property to such a degree that the landowner is effectively deprived of all economically reasonable use or value of their property constitutes a taking. *See Penn Central Transportation Co. v. New York City,* 438 U.S. 104 (1978). [↑](#footnote-ref-55)
56. *New York City Hous. Auth. v. Foley*, 32 Misc. 2d 41, 47 (Sup. Ct. Kings Co. 1961). [↑](#footnote-ref-56)
57. NYC Zoning Resolution § 72-21 (“Findings Required for Variances”), *available at* <https://zr.planning.nyc.gov>. [↑](#footnote-ref-57)
58. NYC Zoning Resolution § 72-21(a). [↑](#footnote-ref-58)
59. NYC Zoning Resolution § 72-21(b). [↑](#footnote-ref-59)
60. NYC Zoning Resolution § 72-21(c). [↑](#footnote-ref-60)
61. NYC Zoning Resolution § 72-21(d). [↑](#footnote-ref-61)
62. NYC Zoning Resolution § 72-21(e). [↑](#footnote-ref-62)
63. NYC Zoning Resolution § 72-21. [↑](#footnote-ref-63)
64. NYC. Charter § 666(10). [↑](#footnote-ref-64)
65. NYC Zoning Resolution § 73-211. [↑](#footnote-ref-65)
66. NYC Zoning Resolution § 73-14. [↑](#footnote-ref-66)
67. *See* NYC Zoning Resolution § 73-01, *et seq*. [↑](#footnote-ref-67)
68. *See* NYC Zoning Resolution § 73-60, *et seq*. [↑](#footnote-ref-68)
69. *See* NYC Zoning Resolution § 11-30, *et seq*. *See also* BZY and Common Law Cases, Frequently Asked Questions, Board of Standards and Appeals, <https://www1.nyc.gov/site/bsa/about/frequently-asked-questions.page> (last visited Feb. 13, 2019). [↑](#footnote-ref-69)
70. *See* NYC Zoning Resolution § 11-40, *et seq*. [↑](#footnote-ref-70)
71. N.Y. Gen. City Law § 35. [↑](#footnote-ref-71)
72. N.Y. Gen. City Law § 36(2). [↑](#footnote-ref-72)
73. NYC Zoning Resolution § 72-11. [↑](#footnote-ref-73)
74. NYC Charter § 668(c). [↑](#footnote-ref-74)
75. *Id*. [↑](#footnote-ref-75)
76. NYC Charter § 666(9). [↑](#footnote-ref-76)
77. *See id.* [↑](#footnote-ref-77)
78. NYC Charter § 668(e); BSA Decisions, Board of Standards and Appeals, <https://www1.nyc.gov/site/bsa/applications/bsa-decisions.page> (last visited Feb. 13, 2019). [↑](#footnote-ref-78)
79. NYC Charter § 668(h). [↑](#footnote-ref-79)
80. *See generally* Rey Mashayekhi, *City Council Seeks to Reform the ‘Most Powerful Agency That No One Has Heard of,’* Commercial Observer (Oct. 11, 2017), <https://commercialobserver.com/2017/10/battle-over-nyc-board-of-standards-and-appeals>. [↑](#footnote-ref-80)
81. NYC Charter § 666(9). [↑](#footnote-ref-81)
82. NYC Charter § 668(d). [↑](#footnote-ref-82)
83. NYC Admin. Code § 25-209. [↑](#footnote-ref-83)
84. *Id*. [↑](#footnote-ref-84)
85. *Id*. [↑](#footnote-ref-85)
86. NYC Charter § 668(i) [↑](#footnote-ref-86)
87. NYC Charter § 191(b)(9). [↑](#footnote-ref-87)
88. NYC Charter § 668(j). [↑](#footnote-ref-88)
89. NYC Charter § 668(a). [↑](#footnote-ref-89)
90. *See* NYC Charter §§ 668 and 670. [↑](#footnote-ref-90)
91. NYC Charter § 668(a)-(b). [↑](#footnote-ref-91)
92. NYC Charter § 668(b)(2). [↑](#footnote-ref-92)
93. NYC Charter § 668(c)(2). [↑](#footnote-ref-93)
94. NYC Charter § 668(d). [↑](#footnote-ref-94)
95. NYC Charter § 668(g). [↑](#footnote-ref-95)
96. NYC Charter § 670(d). [↑](#footnote-ref-96)
97. NYC Admin. Code § 25-208. [↑](#footnote-ref-97)
98. NYC Charter § 668(k). [↑](#footnote-ref-98)
99. *Id*. [↑](#footnote-ref-99)
100. NYC Admin. Code §25-209. Local Law 84 of 2017 required the BSA to provide a notice of expiration of a variance, but not a special permit. [↑](#footnote-ref-100)
101. *Id.* [↑](#footnote-ref-101)