



Legislation Text

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A Local Law to amend the New York City Charter in relation to the custody and control of city records of historical, research, cultural or other important value.

Be it enacted by the Council as follows:

Section 1. Declaration of Intent and Findings. The Council finds that the professional and unbiased preservation of the City's historical records is necessary in order to capture the accurate recording of history. The professional archiving of and accessibility to these records are cornerstones of a free society. The City's Department of Records and Information Services (the "Department") is responsible for the professional administration and permanent preservation of historically valuable, public records of the City of New York. Through its municipal archives, the Department acts to preserve the City's "collective memory," and to make "possible the transmission of our democratic cultural heritage from generation to generation." See [www.NYC.gov.html.doris](http://www.NYC.gov/html.doris) (message from the commissioner). Individually and collectively, these records are priceless, unique, and are among the richest of our City's legacies.

In order to ensure that the City does not lose public control of such vital, City-owned records, it is important to clearly outline how the City may maintain the custody and control of public records produced during the administrations of city officials. The legislation defines and prohibits arrangements that may compromise or appear to compromise the professional and unbiased archiving of records. The legislation also creates a review board, which will have access to review any archiving processes with any archival entities the City contracts with, including private entities the City has contracted with in the past. The violation or appearance of violation of the integrity of these records constitutes an injury to the public, who rely on the City to maintain an accurate account of its history and operations. Such injury could occur, for example, when the custody of the original and only set of historical records is turned over to a non-public entity, and could leave the public to question its accuracy and completeness. Only those public entities that have no more than the City's interest in mind should be entrusted to handle these records.

The Council proposed this legislation after hearing testimony from expert historians, archivists, and good government advocates regarding the proper handling of important historical documents so as to maintain their integrity and avoid any selective denial of access to such records, or any appearance thereof. It is important that, when others look back at any period in history, they have, to whatever extent possible, access to the complete and accurate record of the City's public office holders and their administrations.

The measures instituted by this legislation also seek to better ensure equal access to all members of the public by keeping historical records in the custody of a public entity dedicated to the service of the City of New York. In so doing, the Council expects to facilitate the Department's Charter-mandated mission to "ensure that all significant research material pertaining to the operations of the City as well as other municipalities shall be preserved and readily available for use[.]" New York City Charter § 3003(2).

§ 2. Subdivision b of section 1133 of the New York City Charter is amended, subdivision c is renamed to subdivision d, and a new subdivision c is added, to read as follows:

b. No records shall be destroyed or otherwise disposed of by an agency, officer or employee of the city unless approval has been obtained from the commissioner of records and information services, the corporation counsel and the head of the agency which created or has jurisdiction over the records who shall base their determinations on the potential administrative, fiscal, legal, research or historical value of the record. Approval for records disposal shall be contained in an approved records disposal schedule and remain in force until the status of the records changes. The commissioner of records and information services or the head of the agency which created or has jurisdiction over the records may initiate action to eliminate records eligible for disposal. The commissioner of records and information services shall insure the destruction of disposable records within six months of the date of eligibility. [Records retained for historical or research purposes shall be transferred, upon request of the commissioner of records and information services, to the municipal archives for permanent custody.]

c. Records of historical, research, cultural or other important value shall be transferred to the municipal

archives for permanent custody pursuant to a records disposition schedule approved by the commissioner of records and information services and, if applicable, the head of the agency which created or has jurisdiction over the records. Such schedule is subject to the conditions set forth herein. The city shall reserve and retain ownership, possession, and control of all records of historical, research, cultural or other important value in accordance with the provisions of this section and subdivision five of section 3003.

[c] d. Other materials not included within the definition of records in this charter may be destroyed, if not otherwise prohibited by law, at any time by the agency in possession of such materials without the approval of the commissioner of records and information services. Such commissioner may, however, formulate procedures and interpretations to guide in the disposition of such materials.

§ 3. Subdivision four of section 3003 of the New York City Charter is hereby amended and a new subdivision five is added, to read as follows:

4. shall have the power to exercise or delegate any of the functions and duties vested in such commissioner by law, subject to the provisions of subdivision five of this section.

5. In addition to the above duties, the commissioner shall ensure the city's custody and control of city records as follows:

a. Pursuant to an approved records disposition schedule as set forth in section eleven hundred thirty-three of this charter, the commissioner shall ensure that the records of any city officer or agency that are of historical, research, cultural or other important value shall be delivered directly to the department's municipal archives. Upon delivery, the department shall begin to review such records and publish a survey of such records with appropriate specificity, and, to the extent practicable, the contents of such records. Where the commissioner has certified in writing as to its necessity, under extraordinary circumstances, such records may be transferred to an archival establishment to be organized and prepared for archival preservation, provided that such establishment meets the specific requirements specified in paragraph b of this subdivision.

b. If the commissioner decides that it is necessary to enter into an agreement or contract with another

archival establishment outside the department, to organize and prepare records for archival preservation, it may not be with a private entity as defined by this chapter, and may not be with any entity outside the city. The commissioner shall include with the agreement or contract a plan for strictly monitoring the status and progress of the archiving operations. The commissioner shall devise and publish such plan, which shall include at least the following: (i) a list of the tasks to be conducted and a timetable for the completion of each such task; (ii) a description of the resources, staffing and training dedicated by the archival establishment to carrying out such tasks; (iii) allowances for direct supervision by department archivists; and (iv) an agreement by the archival establishment to issue, at a minimum, quarterly reports of its activities to the commissioner. The commissioner shall also include with such agreement and publish a schedule, where applicable, for the municipal archives to send original records to such archival establishment and to receive such records when processing is completed. To the extent practicable, such schedule shall take into account that original records should be sent in a limited and controlled manner and that no new such original records should be sent until receipt of any previously sent under such schedule. Any such agreement, contract, plan and schedule must be approved by the law department for compliance with this subdivision. The commissioner will at all times remain responsible for the proper handling and archiving of records, notwithstanding any agreement with an archival establishment outside the department.

c. No agreement provided for in subdivision five of this section shall be entered into during the term of office of any elected official of the city with regard to whose records such agreement applies.

d. Nothing in this subdivision shall prevent officers or members of such officer's administration from donating money to the department's municipal archives or other archival establishment so long as such officers or members are not involved in the supervision, control or management of the archival processing pertaining to their respective administrations.

e. Nothing in this subdivision should be construed to limit access by the public to city records. The department shall be responsible for granting access to records in accordance with applicable provisions of law.

Additionally, agencies of the city shall have free access to such records as needed.

§4. Chapter 72 of the New York City Charter is amended by adding a new section 3005, to read as follows:

§ 3005. **Archival review board.** There shall be in the department an archival review board which shall consist of five members; two of whom shall be appointed by the speaker, two of whom shall be appointed by the mayor, and one of whom shall be the commissioner, who shall serve ex officio as chairperson of the board. At least one such appointment shall be a professional archivist and at least one other such appointment shall be a professional historian. The members of the commission, other than the chair, shall be appointed within 30 days of the effective date of this section and shall be entitled to reasonable expenses. All appointed members of the commission shall be residents of the city. Members shall serve for terms of four years from such date of appointment. Vacancies in appointed membership of the board shall be filled by appointment by whosoever was responsible for such original appointment. The board shall meet once every 90 days or upon the request of any of its members. Any member of such board shall have complete access, during work hours, to inspect and review any appraisal, organization, processing or archiving of city records in the custody of an entity with which an agreement has been entered into for the purposes specified in subdivision five of section 3003. Such board may request and receive, from the department, assistance and data as may be necessary for the proper execution of its powers and duties. Such board shall render annually to the mayor a report reviewing the archival processing of any city papers during the year for which the report has been written.

§5. Section 3011 of the New York City Charter is amended by adding a subdivision nine to read as follows:

9. “Private entity” means a for-profit or not-for-profit corporation, or non-governmental organization, but shall not include the City and State Universities of New York, public libraries, including the New York Public Library, and any college or university in the city.

§6. This law shall take effect immediately, and the responsibilities of the board created by section four

of this local law shall pertain to all papers of any city administration to date and any contracts with any entity, including private entities as defined herein, heretofore entered into for the purposes specified in subdivision five of section 3003.