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###### **THE NEW YORK CITY COUNCIL**

**LATONIA MCKINNEY, DIRECTOR, FINANCE DIVISION**

##### COMMITTEE ON FINANCE

##### HON. DANIEL DROMM, CHAIR

##### February 11, 2020

**PROPOSED INT. NO. 113-A:** By Council Members Lander, Brannan, Rosenthal, Gibson, Kallos, Reynoso, Powers, Van Bramer, Ayala, Menchaca, Rose, Perkins, Rivera, Richards, Levin, the Public Advocate (Mr. Williams), Ampry-Samuel, Holden, Chin, Levine, Constantinides, Adams, Cumbo, Koo, Moya, Treyger, Grodenchik, Yeger, Deutsch, Cohen, Cabrera, Barron, Espinal, Maisel and Ulrich

**TITLE:** A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the creation of a database to track capital projects citywide, and to repeal section 18-145 of such administrative code

**CHARTER:** Amends §219(d) of the City Charter

**ADMINISTRATIVE CODE:** Adds §5-108 of the Administrative Code

Repeals §18-145 of Administrative Code

**UNCONSOLIDATED LAW:** Adds unconsolidated provisions

1. **Introduction**

On February 11, 2020, the Committee on Finance (Committee), chaired by Council Member Daniel Dromm, will hold a second hearing on Proposed Introduction (Int.) Number (No.) 113-A, introduced by Council Member Lander, titled *a Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the creation of a database to track capital projects citywide, and to repeal section 18-145 of such administrative code*. This is the second hearing on this bill, which was amended after introduction. At the first hearing on the bill, which was jointly held with the Subcommittee of Capital Budget, chaired by Council Member Vanessa Gibson, the Committee heard testimony from representatives from the Mayor’s Office of Operations and the Department of Design and Construction, and members of the public.

1. **Background**

Over the past decade, the City’s spending on capital projects has averaged about $9 billion in annual commitments.[[1]](#footnote-1) The Capital Budget covers large long‑term investments in facilities and infrastructure, or capital projects, which involve “the construction, reconstruction, acquisition or installation of a physical public betterment or improvement” with a value of $35,000 or more, and a “useful life” of at least five years.[[2]](#footnote-2) Physical public improvements consist of, but are not limited to, streets, parks, bridges, tunnels, sewers, housing, etc.[[3]](#footnote-3)

In November of every even-numbered year, the Mayor’s Office of Management and Budget (“OMB”) and the Department of City Planning (“DCP”) are required to jointly prepare a draft Ten-Year Capital Strategy (“Capital Strategy”) which provides the long-range goals and guiding principles for the management of the City’s capital assets for the next ten years.[[4]](#footnote-4) The document must include the anticipated sources of financing for identified projects, and outline the implications of the strategy, including any possible economic, social, and environmental effects.[[5]](#footnote-5) After a public hearing is held and a report by the City Planning Commission is provided, the final version of the Capital Strategy must be released with the Executive Budget in odd-numbered years.[[6]](#footnote-6)

By January 16 of each year, the Mayor must submit a Preliminary Capital Budget to the Council, and by April 26 of each year an Executive Capital Budget.[[7]](#footnote-7) The Capital Budget proposes funding for capital projects for the upcoming fiscal year, and estimates the amounts needed in each of the three succeeding fiscal years in such categories.[[8]](#footnote-8) The final Capital Budget is adopted by the Council.[[9]](#footnote-9) Spending for individual capital projects may not exceed the amount appropriated in the Adopted Capital Budget, and funds that are not allocated in the fiscal year in which they are appropriated are usually re-appropriated in the subsequent Capital Budget.

In addition to the Capital Budget, the Capital Commitment Plan (“Commitment Plan”), is issued three times each fiscal year.[[10]](#footnote-10) The Commitment Plan lays out the anticipated implementation schedule for the current fiscal year and for the subsequent three years.[[11]](#footnote-11) The first Commitment Plan is published within 90 days of the adoption of the Capital Budget.[[12]](#footnote-12) Updated Commitment Plans are issued with the Preliminary and Executive budget proposals, in January and April thereafter.[[13]](#footnote-13) The Commitment Plans are intended, in part, to provide a report of the progress of the City’s capital projects, including schedules and clear explanations of any delays for particular prospects and summary information on each agency's record on such matters.[[14]](#footnote-14)

1. **Mechanisms for Tracking Capital Projects**
	1. **Existing Report and Online Tracking Tools**

The New York City Charter (“City Charter”) requires the Administration to provide to the Council certain information on capital projects enabling the Council to assess the appropriateness of proposed projects, evaluate the projects in comparison to other similar projects, and monitor their progress. The SCA, for instance, is required to provide quarterly reports on all school capital projects in-progress.[[15]](#footnote-15) The report includes, for each project, the managing agency, planned and actual start and end times of each phase (scope; design; construction; and construction management, furniture, and equipment), and the budget and actual spending for each phase of the project. The report also provides explanations for projects in which the final cost estimate exceeds the project budget by ten percent or more, and provides an explanation for those projects in which the current phase completion date exceeds the planned completion date by 60 days or more. The report identifies the organization responsible for managing the project, and provides the relevant data points for that project.

In 2013, the City launched the NYC Capital Projects Dashboard (“Dashboard”), which provides a snapshot view of the City’s public building, infrastructure and information technology projects with budgets of $25 million or more.[[16]](#footnote-16) The Dashboard, which is maintained by the Mayor’s Office of Operations, was established with the intent of centralizing reporting of capital projects across city agencies, using standardized metrics, and facilitating project management transparency and accountability.[[17]](#footnote-17) The Dashboard provides various different data points on active capital projects, which includes: the lead/managing agency; the client agency; the phase of the project for the reporting period (phases are defined as the “design” phase, the “construction procurement” phase, and the “construction” phase); the project’s budget forecast; and the start and completion date of the project.[[18]](#footnote-18) The Dashboard also provides the history of capital projects, which includes budget changes, defined as the number of dollars the project is over or under budget since the last reporting period, and schedule changes, defined as the number of months the project is ahead or behind schedule since the last reporting period.[[19]](#footnote-19)

In addition to the Dashboard, the City has other resources it uses to track capital projects. The NYC Parks Capital Projects Dashboard, for instance, is a dashboard maintained by the New York City Department of Parks and Recreation (“DPR”), which tracks all active capital projects throughout the city, ranging from improvements to parks, playgrounds, and greenways, to renovations of ball fields and recreational facilities, to resiliency efforts for beaches and boardwalks.[[20]](#footnote-20) Aside from providing the status of all active DPR capital projects, the tracker also provides a listing of proposed project sites, partner projects and completed projects by borough and citywide.

Another resource made publicly available by the City on capital assets is the NYC Facilities Explorer, which is an interactive dataset maintained by the New York City Department of City Planning (“DCP”), of existing public and private facilities and program sites throughout the City.[[21]](#footnote-21) The database aggregates information on facilities and program sites by neighborhood, and that are owned, operated, funded, licensed, or certified by a City, State, or Federal agency.[[22]](#footnote-22) These facilities and programs are divided into seven domains, which include: Health and Human Services; Education, Child Welfare, and Youth; Parks, Gardens, and Historical Sites; Libraries and Cultural Programs; Public Safety, Emergency Services, and Administration of Justice; Core Infrastructure and Transportation; and Administration of Government.[[23]](#footnote-23) Within each of these domains, each record is further categorized into a set of facility groups, subgroups, and types.[[24]](#footnote-24)

According to DCP, this database and its interactive map builds on its Selected Facilities and Program Sites Database, and includes various product improvements, such as more facility types, improved data quality, and a restructured the database for easier use.[[25]](#footnote-25)

Other mechanisms used to report on capital projects related to certain initiatives, or particular agencies, such as the aforementioned SCA Quarterly Report and Parks Capital Project Tracker, include: the New York City’s Police Department’s Quarterly Report on Capital Projects, which tracks projects funded by the City Council; the Sandy Funding Tracker, a database that tracks the expenditures of funds, including on capital projects, provided in connection with the recovery efforts of Hurricane Sandy;[[26]](#footnote-26) and the Zoning Commitments Tracker, which lists written commitments made by the Mayor to the Council or a Council member in connection with applications submitted through the Uniform Land Use Review Procedure, including capital projects[[27]](#footnote-27).

* 1. **Notification Requirements**

Although the City Charter mandates the Mayor to require each agency to prepare and submit periodic reports regarding the progress of its capital projects, there is currently no mechanism for City agencies to provide electronic notification of capital project cost changes and delays.

Few agencies are required to provide notice on changes to capital projects they manage. As mentioned above, the SCA is required to provide notice on school capital projects under the jurisdiction of all City agencies.[[28]](#footnote-28) DPR is also required to provide notice on its capital projects as well by notifying Council Members (who allocated funding to a capital project) within 30 days whenever a change order is implemented that has a value greater than 10 percent of an original contract value greater than $500,000.[[29]](#footnote-29)

Lastly, the Mayor’s Office of Contracts Services, on behalf of the Mayor, is required to track certain cost increases in construction and service contracts with a value of $10 million or more that are associated with projects in the capital budget, and notify the Council on such contracts on a quarterly basis.[[30]](#footnote-30)

1. **Inefficiencies of the Current Tracking Mechanisms**

Although the Dashboard and other tracking mechanisms were designed to capture capital projects, a more comprehensive, centralized tracking system is still needed. The Dashboard is limited in that it only captures certain information on capital projects with a budget of above $25 million. Currently, there are approximately 287 active capital projects listed on the Dashboard.[[31]](#footnote-31) This represents only a subset of the tens of thousands of funded capital projects citywide. Additionally, the interactive map provided on the NYC Facilities Explorer needs to be enhanced to address integrity issues with the data source, and account for missing and/or duplicate records for facilities and inconsistencies of facility site locations.[[32]](#footnote-32)

It is because of the above-mentioned reasons in which a centralized tracking system is needed to capture the full universe of capital projects, with data and records from all city agencies with qualifying capital projects, irrelevant of contract value, while providing an interactive map that accurately depicts capital projects citywide.

1. **Creating Effective and Efficient Management Tools for Capital Projects**

The Council is aware that city agencies utilize a system known as the Financial Management System (“FMS”) to control spending and track what is owed. The system is capable, among other things, of providing certain information on capital projects, such as the total forecast and plan amount for the years of the commitment plan; actual commitments and liquidations with dates and amounts; and project start and end date, duration, location, and description. The Council is also aware that the City creates a detailed, multi-volume report, known as the Capital Project Detail Data report, to track capital project status and present information on cost, budget, scope, and milestones, and, where applicable, the community board in which the project was located.[[33]](#footnote-33) These are some of the existing resources that can be used to create a centralized tracking system for all capital projects citywide.

Proposed Int. No. 113-A would take a step towards improving the current capital project process, and utilizing existing City resources in providing an efficient, centralized system that tracks all pending capital projects citywide. The database and interactive map would allow residents to view pending projects occurring in their neighborhoods, and potentially hold managing agencies accountable to pre-established projects schedules and subsequent delays. The legislation would also allow for increased construction-related data analyses for revealing gaps in the process, and innovating change in the current policies and practices on both an agency and citywide level.

1. **Analysis of Proposed Int. No. 113-A**

Section 1 of Proposed Int. No. 113-A would amend the reporting requirements of each City agency in regard to the progress of its capital projects. Such reports would be required to be published at least three times each year: no later than 120 days after the adoption of the capital budget; no later than 30 days after submission of the preliminary capital budget; and no later than 30 days after submission of the executive capital budget. Copies of such reports must be transmitted by the City Council, the City Planning Commission, the Community Boards, the Borough Boards and Borough Presidents, and posted online on the website of the Office of Management and Budget in a machine-readable format.

Section 2 of Proposed Int. No. 113-A would require the establishment of an interagency task force to create and implement a public online capital projects database. Such task force would consist of representatives from the Office of Management and Budget, the Mayor’s Office of Operations, the Department of Parks and Recreation, the Department of Environmental Protection, the Department of Transportation, the Department of Design and Construction, the Department of Information Technology and Telecommunications, and any other agencies or offices deemed appropriate.

This section would also require the establishment of an advisory board, consisting of representatives from the Mayor’s office, the Council, and the Comptroller, that would advise the task force on the development of the public online capital projects database.

The task force would also be required to do the following:

* develop a data dictionary for the public online capital projects database that includes, but is not limited to, standardized terms, data elements, labels and fields, and phase of the capital construction process;
* review and assess existing capital management systems and databases at all agencies that manage capital projects, including the useful lifespan of any tangible or intangible assets supporting such systems and databases;
* develop and implement a plan to review the accuracy of data included in existing capital management systems and databases, and enter such data as the task force deems to be accurate and appropriate into the public online capital projects database, provided that such data shall include, but not be limited to, information that the task force deems relevant and appropriate contained in the reports required pursuant to subdivision d of section 219 of the New York city charter;
* make recommendations for new or improved integrated capital management systems and databases;
* establish mechanisms to merge and transfer data, including but not limited to, data contained in existing capital management systems and databases, into the public online capital project database; and
* take other steps deemed necessary by the task force to create and implement the public online capital projects database.

To the extent deemed practicable by the task force, the database would include information for each capital project, including:

* the name of the capital project and the borough in which such project will be located;
* the agency implementing the capital project and any agencies contributing capital funds for such capital project;
* the current phase of the capital project;
* information regarding the capital project’s schedule, such as the baseline project schedule and, if applicable, the actual schedule variance and the schedule variance as a percentage of the planned duration of the project; and
* information regarding the capital project’s cost, such as the current dollar amount spent to date and, if applicable, the actual cost variance and the cost variance as a percentage of the baseline cost.

The task force and advisory board would cease to exist upon the publication of the public online capital projects database.

Section 3 of Proposed Int. No. 113-A would add new § 5-108 of the administrative code of the City of New York (“Administrative Code”) to require that upon the publication of the public online capital projects database, an agency or office would be required to maintain such database on the City website, and update the information contained in such database on a triannual basis. Any agency implementing a capital project for which information or data is published in the public online capital projects database would be required to include a link to the public online capital projects database on that agency’s website.

 Section 4 of Proposed Int. No. 113-A would repeal § 18-145 of the Administrative Code, which relates to reporting on capital project expenditures in parks under DPR’s jurisdiction.

Section 5 of Proposed Int. No. 113-A would require that such local law take effect immediately, except, section two requiring the creation and implementation of the public online capital projects database would be repealed after the database is published and section four, which relates to the annual report on park maintenance and capital expenditures in DPR’s jurisdiction that is published on the agency’s website, would be repealed provided that the public online capital projects database contains information and data regarding the DPR’s capital projects.

Proposed Int. No. 113-A

By Council Members Lander, Brannan, Rosenthal, Gibson, Kallos, Reynoso, Powers, Van Bramer, Ayala, Menchaca, Rose, Perkins, Rivera, Richards, Levin, the Public Advocate (Mr. Williams), Ampry-Samuel, Holden, Chin, Levine, Constantinides, Adams, Cumbo, Koo, Moya, Treyger, Grodenchik, Yeger, Deutsch, Cohen, Cabrera, Barron, Espinal, Maisel and Ulrich

..Title

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the creation of a database to track capital projects citywide, and to repeal section 18-145 of such administrative code

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision d of section 219 of the New York city charter, as amended by a vote of the electors on November 7, 1989, is amended to read as follows:

d. The mayor shall require each agency to prepare and submit periodic reports in regard to the progress of its capital projects, including schedules and clear explanations of any delays for particular projects and summary information on each agency's record on such matters. Such reports shall be published at least three times each year: [within ninety] no later than 120 days [of] after the adoption of the capital budget; [with] no later than 30 days after submission of the preliminary capital budget; and [with] no later than 30 days after submission of the executive capital budget. Copies of such reports shall be transmitted by the mayor to the council, the city planning commission, [and] the community boards, the borough boards and borough presidents, and posted online on the website of the office of management and budget in a machine-readable format. Such reports shall include, for each project, the dates set in the adopted capital budget for the completion of scope, design, and construction and any changes in such dates.

§ 2. a. Definition. For purposes of this section, the term “public online capital projects database” means a public online searchable and interactive database that contains information relating to capital projects undertaken by the city and located within the boundaries of the city and that is located on a website maintained and operated by a city agency selected by the mayor.

b. There shall be an interagency task force consisting of representatives from the office of management and budget, the mayor’s office of operations, the department of parks and recreation, the department of environmental protection, the department of transportation, the department of design and construction, the department of information technology and telecommunications, and any other agencies or offices that the mayor deems appropriate. Such task force shall create and implement a public online capital projects database.

c. There shall be a public online capital projects database advisory board that shall advise the task force provided for in subdivision b of this section on the development of the public online capital projects database. The advisory board shall meet biannually, or as the advisory board deems appropriate, to receive any updates from the task force regarding its progress in developing the public online capital projects database and to provide feedback and recommendations to the task force, as appropriate. The advisory board shall have seven members who shall be:

1. one member appointed by the mayor;

2. the director of management and budget, or his or her designee;

3. the director of the office of operations, or his or her designee;

4. the commissioner of design and construction, or his or her designee;

5. the comptroller, or his or her designee; and

6. two council members appointed by the speaker of the council, or their designees.

d. The task force shall initiate coordination of development of the public online capital projects database no later than 60 days after the local law that added this section takes effect.

e. The task force provided for in subdivision b shall:

1. develop a data dictionary for the public online capital projects database that includes, but is not limited to, standardized terms, data elements, labels and fields, and phase of the capital construction process;

2. review and assess existing capital management systems and databases at all agencies that manage capital projects, including the useful lifespan of any tangible or intangible assets supporting such systems and databases;

3. develop and implement a plan to review the accuracy of data included in existing capital management systems and databases, and enter such data as the task force deems to be accurate and appropriate into the public online capital projects database, provided that such data shall include, but not be limited to, information that the task force deems relevant and appropriate contained in the reports required pursuant to subdivision d of section 219 of the New York city charter;

4. make recommendations for new or improved integrated capital management systems and databases;

5. establish mechanisms to merge and transfer data, including but not limited to, data contained in existing capital management systems and databases, into the public online capital project database; and

6. take other steps deemed necessary by the task force to create and implement the public online capital projects database.

f. To the extent deemed practicable by the task force, the public online capital project database developed by the taskforce with advice and recommendations from the advisory board, as appropriate, shall include for each pending capital project undertaken by the city and located within the boundaries of the city:

1. the name of the capital project and the borough in which such project will be located;

2. the agency implementing the capital project and any agencies contributing capital funds for such capital project;

3. the current phase of the capital project;

4. information regarding the capital project’s schedule, such as the baseline project schedule and, if applicable, the actual schedule variance and the schedule variance as a percentage of the planned duration of the project; and

5. information regarding the capital project’s cost, such as the current dollar amount spent to date and, if applicable, the actual cost variance and the cost variance as a percentage of the baseline cost.

§ 3. Chapter 1 of title 5 of the administrative code of the city of New York is amended by adding a new section 5-108 to read as follows:

§ 5-108. Public online capital project database. Upon the publication of the public online capital projects database created by the taskforce established by section two of the local law that added this section, an agency or office designated by the mayor shall maintain such public online capital projects database on the city website, and update the information contained in such database on a triannual basis pursuant to a schedule determined by such agency or office, and may otherwise modify the database as deemed appropriate by such agency or office consistent with the substantial continuation of the content of the database. Any agency implementing a capital project for which information or data is published in the public online capital projects database shall include a link to the website containing the public online capital projects database on such agency’s website.

§ 4. Section 18-145 of the administrative code of the city of New York is REPEALED.

§ 5. This local law takes effect immediately, except that section two of this local law expires and is deemed repealed after the publication of the public online capital projects database developed pursuant to such section and section four takes effect upon such publication, provided that such database contains information and data, consistent with the content and format of such database, regarding the capital projects within the jurisdiction of the department of parks and recreation. Upon publication of the public online capital projects database, including such information and data in relation to the department of parks and recreation, the mayor’s office of operations shall notify the corporation counsel, who shall notify the New York state legislative bill drafting commission, so that the commission may maintain an accurate and timely effective database of the official text of the administrative code of the city of New York in furtherance of effectuating the provisions of section 70-b of the public officers law, and relevant publishers in furtherance of effectuating the provisions of section 7-111 of such code. The failure to provide the notifications described in this section shall not affect the effective date of any section of this local law.

ENB/RKC/SR

LS#349

LS #6069/Int. No. 1654-2017

02/03/2020

1. *See* Report, New York City Independent Budget Office, *A Guide to the Capital Budget* (July 2018), available at <https://ibo.nyc.ny.us/iboreports/capital-budget-guide-2018.pdf> (last accessed on February 7, 2019). [↑](#footnote-ref-1)
2. *See* generally N.Y.C. Charter § 210 [↑](#footnote-ref-2)
3. *See id.* [↑](#footnote-ref-3)
4. *See* N.Y.C. Charter § 228. [↑](#footnote-ref-4)
5. *See* N.Y.C. Charter § 215(b)(1). [↑](#footnote-ref-5)
6. *See* N.Y.C. Charter § 234*.* [↑](#footnote-ref-6)
7. *See* generally N.Y.C. Charter §§ 236 and 249. [↑](#footnote-ref-7)
8. *See* N.Y.C. Charter § 214(a) and (b). [↑](#footnote-ref-8)
9. *See* N.Y.C. Charter § 254. [↑](#footnote-ref-9)
10. *See* generally N.Y.C. Charter § 219. [↑](#footnote-ref-10)
11. *See id.* [↑](#footnote-ref-11)
12. *See id.* [↑](#footnote-ref-12)
13. *See id.* [↑](#footnote-ref-13)
14. *See id.* [↑](#footnote-ref-14)
15. *See* generally N.Y.C. Charter § 521(e)(f) and (g). [↑](#footnote-ref-15)
16. *See* Report,The New York City Bar Association, the Construction Law Committee, *Improving New York City’s Design and Construction Processes and Practices*, available at <https://s3.amazonaws.com/documents.nycbar.org/files/2017149-NYCdesignPractices_FINAL_11.16.17.pdf> (last accessed on February 5, 2019). [↑](#footnote-ref-16)
17. *See id.* [↑](#footnote-ref-17)
18. Mayor’s Office of Operations, NYC Capital Projects Dashboard, available at <https://www1.nyc.gov/site/capitalprojects/index.page> (last accessed on February 5, 2019). [↑](#footnote-ref-18)
19. *See id.* [↑](#footnote-ref-19)
20. New York City Department of Parks and Recreation, Capital Project Tracker, available at <https://www.nycgovparks.org/planning-and-building/capital-project-tracker> (last accessed on February 5, 2019). [↑](#footnote-ref-20)
21. New York City Department of City Planning, NYC Facilities Explorer, available at <https://capitalplanning.nyc.gov/facilities> (last accessed on February 5, 2019). [↑](#footnote-ref-21)
22. *See id.* [↑](#footnote-ref-22)
23. *See id.* [↑](#footnote-ref-23)
24. *See id* [↑](#footnote-ref-24)
25. *See id.* [↑](#footnote-ref-25)
26. L.L. 140/2013. [↑](#footnote-ref-26)
27. L.L.175/2016 [↑](#footnote-ref-27)
28. *See* L.L. 23/2003 [↑](#footnote-ref-28)
29. *See* N.Y.C. Admin. Code § 18-153. [↑](#footnote-ref-29)
30. *See* L.L. 18/2012 [↑](#footnote-ref-30)
31. *See* NYC Capital Projects Dashboard, *supra* note 10; *note* that the data contained under the category “All Capital Projects” was current through August 2018 (last accessed on February 5, 2019). [↑](#footnote-ref-31)
32. *See* NYC Facilities Explorer, supra note 13. [↑](#footnote-ref-32)
33. *See* A Guide to the Capital Budget, *supra* note 1. [↑](#footnote-ref-33)