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## THE CITY COUNCIL

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

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**COMMITTEE ON GOVERNMENTAL OPERATIONS**

*Hon. Fernando Cabrera, Chair*

#### July 27, 2020

**Proposed Int. No. 1872-A:** By Council Members Fernando Cabrera, Ben Kallos and Kalman Yeger

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to the online publication of unconsolidated local laws

**Administrative Code:** Amends Section 7-111

**Proposed Int. No. 1879-A:** By Council Members Keith Powers and Ben Kallos

**Title:** A Local Law to amend the New York city charter, in relation to the designation of administering offices or agencies

**Charter:** Amends Chapter 1, Adds Section 11-a

**Proposed Int. No. 1091-A:** By Council Members Peter A. Koo, Kalman Yeger and Ben Kallos

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to the posting of machine readable executive orders

**Administrative Code:** Amends Section 3-113, Renumbered as Section 3-113.1

**Preconsidered Res. No. 1371:** By Council Member Laurie A. Cumbo

**Title:** Resolution calling upon Congress to pass, and the President to sign, the Voting Rights Advancement Act of 2019 (H.R. 4.), which would revise and modernize portions of the Voting Rights Act of 1965 struck down in the Supreme Court decision *Shelby County v. Holder.*

# **Introduction**

On July 27, 2020, the Committee on Governmental Operations, chaired by Council Member Fernando Cabrera, will hold a second hearing and a vote on: Proposed Int. No. 1872-A, sponsored by Council Member Fernando Cabrera, in relation to the online publication of unconsolidated local laws; Proposed Int. No. 1879-A, sponsored by Council Member Keith Powers, in relation to the designation of administering offices or agencies; Proposed Int. No. 1091-A, sponsored by Council Member Peter A. Koo, in relation to the posting of machine readable executive orders; and Preconsidered Res. No. \_\_\_, sponsored by Council Member Laurie A. Cumbo, a resolution calling for passage of the Voting Rights Advancement Act of 2019 (H.R. 4).

# **Legislative Analysis for Proposed Int. No. 1872-A**

 Proposed Int. No. 1872-A would require publication of unconsolidated laws enacted by the Council. Unlike consolidated provisions of local law, unconsolidated provisions are not codified in either the Administrative Code or Charter.[[1]](#footnote-1) Unconsolidated provisions nevertheless carry the force of law.[[2]](#footnote-2) Unconsolidated laws are commonly used where the law is meant to apply for a limited duration, for example, a local law requiring a report, plan, pilot program, task force or advisory board, that will meet for a finite period and then dissolve.[[3]](#footnote-3)

Local laws passed by the Council may also include both consolidated and unconsolidated sections. Such unconsolidated sections may, for example, outline legislative intent,[[4]](#footnote-4) define a local law’s applicability,[[5]](#footnote-5) direct City agencies to take certain actions to implement a local law or report on its implementation,[[6]](#footnote-6) or be severability clauses.[[7]](#footnote-7)

Advocates have expressed confusion in the past when trying to find unconsolidated laws. Unconsolidated portions of enacted local laws are included as annotations to the Administrative Code and Charter as published by subscription-based databases such as Westlaw. However, members of the public without access to such resources may not be able to find these unconsolidated provisions.

Proposed Int. No. 1872-A would require the Corporation Counsel to make available through the City’s website a true and complete compilation of unconsolidated local laws enacted after January 1, 1985 that remain in effect, except such compilation shall not include any unconsolidated provision of local law that relates solely to the effective date of such local law or that solely establishes as severable any part or provision of such local law. Unconsolidated portions of local laws enacted after January 1, 1985 must be presented as annotations to the relevant amended sections of the Charter or Administrative Code.

Proposed Int. No. 1872-A would take effect two years after the expiration or termination of the state disaster emergency declared by the governor of the state of New York in executive order number 202, dated March 7, 2020, as extended.

#  **Legislative Analysis for Proposed Int. No. 1879-A**

Proposed Int. No. 1879-A requires the Mayor to take certain steps when designating an agency to administer provisions of law. Local laws passed by the Council often give the Mayor discretion in designating an agency responsible for administering the requirements of the law. However, the Mayoral administration is not uniformly required to notify the public or the Council when an agency designation is made. Instead, that information might only be disclosed when Council members or staff specifically ask, which can lead to regulatory uncertainty for members of the public.

Proposed Int. No. 1879-A would standardize the process by which the Mayor designates administering office and agencies. It would require that the Mayor publish online, and notify the Speaker, of every designation of an administering office or agency within 10 days. The Mayor would also be required to publish past designations online and submit them to the Speaker.

Proposed Int. No. 1879-A would take effect immediately upon enactment, except that in the case of laws that (i) took effect before the effective date of Proposed Int. No. 1879-A, (ii) remain in effect and (iii) require or authorize the mayor to designate one or more offices or agencies to administer or enforce any provision of the charter or administrative code; the mayor would make such designation in writing and publish and submit a copy of such designation as prescribed in Proposed Int. No. 1879-A, no later than July 1, 2021.

# **Legislative Analysis for Proposed Int. No. 1091-A**

 Proposed Int. No. 1091-A would require the creation of a compilation of executive orders issued by New York City mayors. As the City’s chief executive officer, the Mayor has the authority to issue orders to executive branch agencies, offices, divisions and bureaus.[[8]](#footnote-8) Generally, executive orders concern the implementation of laws and mayoral policies.[[9]](#footnote-9) Executive orders may be amended, modified or repealed by subsequent executive orders.[[10]](#footnote-10)

Currently, the City makes executive orders available online in two places. First, DORIS maintains a website with all executive orders from 1974 to 2013, separated into pages for Mayors Abraham D. Beame (1974 - 1977), Edward I. Koch (1978 - 1989), David N. Dinkins (1990 - 1993), Rudolph W. Giuliani (1994 - 2001) and Michael R. Bloomberg (2002 - 2013).[[11]](#footnote-11) Separately, executive orders issued by current Mayor Bill de Blasio are posted to the “News” page of the Office of the Mayor.[[12]](#footnote-12) To find executive orders, one must filter by type to separate them from press releases, statements, public schedules and other media hosted on the website.

Executive orders on both DORIS’ and Mayor de Blasio’s websites are posted in portable document format (“PDF”). Not every PDF enables readers to search within the executive order, but instead may present the document as a fixed image. Some executive orders include handwritten notes, such as DORIS’ publication of Executive Order No. 40 (1975), upon which is a handwritten annotation that it was amended by a subsequent executive order.[[13]](#footnote-13) Neither DORIS’ nor Mayor de Blasio’s websites allow one to search the text of multiple executive orders at once.

Proposed Int. No. 1091-A would require the Corporation Counsel, head of the Law Department, to make available on a single page on the City’s website a compilation of all executive orders issued by mayors from 1974 to the present. Such compilation shall be published in a searchable, machine-readable format, or formats that are capable of being downloaded in bulk. This compilation must indicate any executive order that has been explicitly superseded or amended by a later executive order with an annotation to the superseded or amended executive order.

Proposed Int. No. 1091-A would take effect two years after the expiration or termination of the state disaster emergency declared by the governor of the state of New York in executive order number 202, dated March 7, 2020, as extended.

# **Legislative Analysis for Preconsidered Resolution No. \_\_\_\_**

Preconsidered Res. No. \_\_\_ calls upon Congress to pass, and the President to sign, the Voting Rights Advancement Act of 2019 (H.R. 4.), which would revise and modernize portions of the Voting Rights Act of 1965 struck down in the Supreme Court decision *Shelby County v. Holder*.

In the June 2013 decision in *Shelby County v. Holder*, the U.S. Supreme Court invalidated crucial portions of the Voting Rights Act of 1965 (“VRA”), which had been a cornerstone and major victory in the Civil Rights Movement.[[14]](#footnote-14) The VRA established criteria to determine whether states or other jurisdictions had a history of discriminatory voting practices and disparately low voter turnout, and if so, required them to obtain clearance by the U.S. Department of Justice or a federal judge before enacting voting changes, a system known as “preclearance.”[[15]](#footnote-15) In *Shelby County,* the Court struck down section 4(b) of the VRA, which outlined the criteria used to determine whether jurisdictions required federal preclearance to enact changes to voting procedures, thereby abolishing the preclearance requirement.[[16]](#footnote-16)

This ruling severely fractured the Voting Rights Act, at a time when attempts to suppress minority voting were and are still prevalent. Since *Shelby County*, at least 23 states have enacted newly restrictive statewide voter laws, implementing changes like strict voter ID requirements, proof of citizenship, purging voter rolls, reducing polling locations and decreasing options for early voting.[[17]](#footnote-17)

In February 2019, Representative Terri Sewell (AL – 07) introduced H.R. 4, termed the “Voting Rights Advancement Act of 2019 (VRAA),” to revise and modernize the preclearance criteria struck down in *Shelby County*.[[18]](#footnote-18) Among other things, the VRAA would establish new criteria for invoking preclearance requirements based on a finding of repeated voting rights violations over the past 25 years, specify practices that have historically been used to discriminate against voters that would require preclearance, and increase transparency by requiring reasonable notice of any jurisdiction’s changes to voting procedures, regardless of whether they required preclearance.[[19]](#footnote-19) In addition, it would expand the circumstances under which the Department of Justice may assign election observers and revise the preliminary injunction standard for voting rights actions, to recognize cases where there is a need for immediate preliminary relief.[[20]](#footnote-20) The VRAA passed the House in December 2019.[[21]](#footnote-21)

Congressman John Lewis, a bastion of the Civil Rights Movement who repeatedly risked life and limb in his nonviolent fight for voting rights, passed away on July 17, 2020. He was a proud co-sponsor and strident supporter of the VRAA.[[22]](#footnote-22) Its passage would honor his legacy and ensure voting rights are protected for all Americans in the upcoming presidential election and beyond.

Proposed Int. No. 1872-A

Council Members Cabrera, Kallos and Yeger

A Local Law to amend the administrative code of the city of New York, in relation to the online publication of unconsolidated local laws

Be it enacted by the Council as follows:

                     Section 1. Section 7-111 of the administrative code of the city of New York, as added by local law number 37 for the year 2014, is amended to read as follows:

§ 7-111 Online publication of city laws and rules. a. The corporation counsel shall make available through the city’s website a true and complete compilation of:

1. The charter, the administrative code, and the rules of the city of [new york] New York; and

2. Unconsolidated local laws enacted after January 1, 1985 that remain in effect, except such compilation shall not include any unconsolidated provision of local law that relates solely to the effective date of such local law or that solely establishes as severable any part or provision of such local law.

b. Such compilation shall include as annotations to relevant sections of the charter and administrative code any unconsolidated portions of local laws enacted after January 1, 1985 that amended such sections.

c. Such compilation shall be published in a searchable, machine-readable format or formats that are capable of being downloaded in bulk, and which are chosen for the purpose of making such compilations available to the greatest number of users and for the greatest number of applications. Such compilation shall be updated to reflect changes to such compilation no later than four weeks after such changes are made.

§ 2. This local law takes effect 2 years after the expiration or termination of the state disaster emergency declared by the governor of the state of New York in executive order number 202, dated March 7, 2020, as extended.

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Proposed Int. No. 1879-A

By Council Members Powers and Kallos

A Local Law to amend the New York city charter, in relation to the designation of administering offices or agencies

Be it enacted by the Council as follows:

                     Section 1. Chapter 1 of the New York city charter is amended by adding a new section 11-a to read as follows:

§ 11-a. Designation of administering offices or agencies. Any designation by the mayor of one or more offices or agencies to administer or enforce any provision of the charter or administrative code made pursuant to a law that requires or authorizes the mayor to make such a designation, and any change to any such designation, shall be made in writing. Within 10 days of such designation or change, a copy of such writing shall be published on the city’s website and on the website of any office or agency that is the subject of such designation or change, and shall be electronically submitted to the speaker of the council.

§ 2. This local law takes effect immediately, except that with respect to any law that (i) took effect before the effective date of this local law, (ii) remains in effect and (iii) requires or authorizes the mayor to designate one or more offices or agencies to administer or enforce any provision of the charter or administrative code, the mayor shall make such designation in writing and publish and submit a copy of such designation, as described in section 1 of this local law, by no later than July 1, 2021.

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Proposed Int. No. 1091-A

By Council Members Koo, Yeger and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to the posting of machine readable executive orders

Be it enacted by the Council as follows:

                     Section 1. Section 3-113 of the administrative code of the city of New York, as added by local law number 40 for the year 2011, is renumbered section 3-113.1 and subdivisions a and c of such section are amended to read as follows:

a. (1) [All mayoral executive orders issued on or after January 1, 1974 shall be posted on the city's website] The corporation counsel shall make available on a single page on the city's website a true and complete compilation of all mayoral executive orders issued on or after January 1, 1974. Such compilation shall be published in a searchable, machine-readable format or formats that are capable of being downloaded in bulk, and which are chosen for the purpose of making such compilation available to the greatest number of users and for the greatest number of applications. Such compilation shall indicate any mayoral executive order that has been explicitly superseded or amended by a later mayoral executive order with an annotation to the superseded or amended executive order.

(2) All mayoral executive orders issued on or after July 1, 2011 shall be provided to the council and [posted] made available on the city's website in accordance with paragraph (1) of this subdivision within five business days from the date of execution.

                     c. Where the length of a memorandum of understanding or similar agreement is excessive, an agency may comply with [this] subdivision b by posting an excerpt and a brief summary of such memorandum or agreement on the city's website, provided that the full version of such memorandum of understanding or similar agreement shall be made available upon request at no charge.

§ 2. This local law takes effect 2 years after the expiration or termination of the state disaster emergency declared by the governor of the state of New York in executive order number 202, dated March 7, 2020, as extended.

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Res. No. \_\_\_\_

Resolution calling upon Congress to pass, and the President to sign, the Voting Rights Advancement Act of 2019 (H.R. 4.), which would revise and modernize portions of the Voting Rights Act of 1965 struck down in the Supreme Court decision *Shelby County v. Holder.*

By Council Member Cumbo

Whereas, The right to vote is the bedrock of democracy; and

Whereas, The right to vote was historically denied to Black Americans through various discriminatory laws and practices, intimidation, and violence, even after passage of the Fifteenth Amendment of the Constitution; and

Whereas, One of the most significant legislative achievements of the Civil Rights Movement was the passage of the Voting Rights Act of 1965 (VRA), which protected Americans from racial and ethnic discrimination in voting; and

Whereas, The VRA established criteria to determine whether states or other jurisdictions had a history of discriminatory voting practices and disparately low voter turnout, and if so, required them to obtain clearance by the U.S. Department of Justice or a federal judge before enacting voting changes, a system known as “preclearance;” and

Whereas, According to a 1968 report by the U.S. Civil Rights Commission, after the passage of the VRA, Black voter registration rates rose dramatically in Southern states, increasing to over 50 percent of the voting age Black population in 11 former Confederate states, and increasing the pre-VRA Black registration rate in Mississippi by over 800 percent; and

Whereas, Congress reauthorized the VRA four times between 1970 and 2006 with large bipartisan support, including a unanimous Senate vote in 2006; and

Whereas, Bronx, Kings, and New York Counties were all subject to preclearance under the VRA, beginning in 1968; and

Whereas, According to a 2014 report by the Leadership Conference on Civil and Human Rights, between 2000 and 2013, 148 separate violations of the VRA were documented nationwide, including eight in New York State, with some instances impacting hundreds of thousands of voters; and

 Whereas, In June of 2013, in the decision *Shelby County v. Holder,* the U.S. Supreme Court invalidated important portions of the VRA, striking down the section outlining the criteria used to determine which jurisdictions required federal preclearance to enact changes to voting procedures and thereby abolishing the preclearance requirement; and

Whereas, According to a 2018 report by the U.S. Civil Rights Commission, an independent bipartisan federal agency, since the *Shelby County v. Holder* decision, at least 23 states have enacted newly restrictive statewide voter laws; and

Whereas, According to the same report, recently enacted voting procedure changes that likely would not have received federal preclearance approval include strict voter ID requirements, purged voter rolls, reduced polling locations, required documentary proof of citizenship to register to vote, and cuts to early voting, all of which, based on the specific facts in those states, operated to suppress minority voting access in ways that likely would have violated the pre-*Shelby County* VRA; and

Whereas, In February 2019, Representative Terri Sewell (AL – 07) introduced the Voting Rights Advancement Act of 2019 (VRAA), to revise and modernize the preclearance criteria struck down in *Shelby County v. Holder*; and

Whereas, The VRAA would establish new criteria for determining which states and jurisdictions require federal preclearance before making voting changes based on a finding of repeated voting rights violations over the past 25 years; and

Whereas, The VRAA would specify practices that have historically been used to discriminate against voters that would require preclearance; and

Whereas, The VRAA would increase transparency by requiring any state or other jurisdiction to notify the public of changes to voting procedures that affect a federal office, regardless of whether they require preclearance; and

Whereas, The VRAA would expand the circumstances under which the Department of Justice may assign election observers; and

Whereas, The VRAA would revise the preliminary injunction standard for voting rights actions to recognize cases where there is a need for immediate preliminary relief; and

Whereas, On December 6, 2019, the House of Representatives passed the VRAA 228 – 187; and

Whereas, Congressman John Lewis, a bastion of the Civil Right Movement who repeatedly risked life and limb in his nonviolent fight for voting rights, passed away on July 17, 2020; and

Whereas, John Lewis proudly co-sponsored the VRAA, saying in a press release, “We must repair what the Supreme Court damaged. We must pass this bill to ensure that every American has equal freedom to participate in our democracy;” and

Whereas, Passing the VRAA would honor John Lewis’ legacy and ensure that the voting rights of all Americans are protected in the upcoming presidential election and beyond; now, therefore, be it

Resolved, That the Council of the City of New York calls upon Congress to pass, and the President to sign, the Voting Rights Advancement Act of 2019 (H.R. 4.), which would revise and modernize portions of the Voting Rights Act of 1965 struck down in the Supreme Court decision *Shelby County v. Holder.*

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1. *See* New York City Bill Drafting Manual, Second Edition (2018) at 1.3.1, *available at* <https://council.nyc.gov/legislation/wp-content/uploads/sites/55/2018/04/BDM-Final-2018-Version.pdf> (describing unconsolidated laws); *see also* N.Y.C. Admin. Code § 7-111 (requiring publication of the Administrative Code and Charter). [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. *See e.g.* N.Y.C. Admin. Code § 3-703 / Local Laws 21 of 2001, 12 of 2003 and, 58-60 of 2004. [↑](#footnote-ref-4)
5. *See e.g.* N.Y.C. Admin. Code § 3-1101 / Local Law 48 of 2019 § 2 (explaining the local law applies to legal defense trusts established after the local law’s effective date); N.Y.C. Admin. Code § 23-503 / Local Law 109 of 2015 § 2 (instructions for requests for particular datasets received prior to enactment). [↑](#footnote-ref-5)
6. *See e.g.* N.Y.C. Admin. Code § 3-702 / Local Law 34 of 2007 §§ 36 and 38 (directing agency support in creation of the City’s Doing Business Database and requiring the Campaign Finance Board to report on the status of the database as part of its 2009 post-election report); N.Y.C. Admin. Code § 23-1101 / Local Law 30 of 2017 § 6 (requiring the office of language services coordination make a preliminary assessment of the ten languages likely to be designated citywide languages); N.Y.C. Admin. Code § 23-505 / Local Law 108 of 2015 § 2 (requiring the creation of a working group). [↑](#footnote-ref-6)
7. *See e.g.* N.Y.C. Admin. Code § 3-702 / Local Law 17 of 2006 § 2; N.Y.C. Admin. Code § 3-703 / Local Law 58 of 2004 § 20. [↑](#footnote-ref-7)
8. *See* N.Y.C. Charter § 8 (providing that the mayor may by executive order create positions within his or her executive office and delegate to or withdraw from any member of such office specified functions, powers and duties); N.Y.C. Dep’t of Rec. and Info. Serv., Executive Orders, <https://www1.nyc.gov/site/records/historical-records/executive-orders.page> (last visited Jan. 29, 2020). [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. *Id.; See e.g.* Exec. Order No. 1 (Jan. 1, 2014), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2014/eo_1.pdf> (Mayor de Blasio executive order providing that executive orders in effect on Dec. 31, 2013 are continued unless specifically revoked, revised or superseded by a subsequently-issued executive order). [↑](#footnote-ref-10)
11. Executive Orders, *supra* note 8. [↑](#footnote-ref-11)
12. Off. of the Mayor (N.Y.C), News, <https://www1.nyc.gov/office-of-the-mayor/news.page> (last visited Jan. 29, 2020). [↑](#footnote-ref-12)
13. Exec. Order No. 40 (Sept. 25, 1975), *available at* <https://www1.nyc.gov/assets/records/pdf/executive_orders/1975EO040.PDF>. [↑](#footnote-ref-13)
14. *Shelby County, Alabama v. Holder, Attorney General, et al.*, 570 U.S. \_\_ (2013) [↑](#footnote-ref-14)
15. *See id.* [↑](#footnote-ref-15)
16. *See id.* [↑](#footnote-ref-16)
17. United States Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States, September 2018, *available at* <https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf> [↑](#footnote-ref-17)
18. H.R.4 – Voting Rights Advancement Act of 2019, *available at* <https://www.congress.gov/bill/116th-congress/house-bill/4> [↑](#footnote-ref-18)
19. *See id.* [↑](#footnote-ref-19)
20. *See id.* [↑](#footnote-ref-20)
21. *See id.* [↑](#footnote-ref-21)
22. *See id.* [↑](#footnote-ref-22)