

**DRAFT COPY TO BE INTRODUCED ON 3/25/02**

**Intro No. \_\_\_\_\_**

**By Council Member Perkins.**

**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 and accessibility of these records are cornerstones of a free society. The city's department of records and information services ("DORIS") is responsible for the professional administration and permanent preservation of historically valuable, public records of the city of New York. Through its municipal archives, DORIS 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 the custody and control of public records made or received in the course of conducting official business. It is also important to define and

prohibit arrangements that may compromise or appear to compromise the professional and unbiased archiving of documents.

The Council was prompted to draft 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testimony from expert historians, archivists, and good government advocates regarding the proper handling of important historical documents so as to maintain their integrity and avoid any biased tampering or selective blocking of records access, or any appearance thereof.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The following legislation institutes measures that will better preserve the integrity of the City's historical documents as well as better ensure their equal access to all members of the public. The legislation also intends to prevent impropriety, or any appearance of impropriety, that occurs when a city-elected officer plans to manage and control the archiving of his or her own documents. In so doing, the Council expects to facilitate DORIS'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. Section 3003 of the New York city charter is amended by modifying subdivision four, and adding subdivision 5, to read as follows:

§ 3003. **Powers and duties.** The commissioner:

\* \* \* \* \*

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. Upon the expiration of any city elected officer's last term of office, or upon any earlier date agreed upon by the commissioner, the commissioner shall ensure that all records made or received by such officer or his or her staff and appointees in discharge of official duties shall be delivered directly to the department's municipal archives or, where the commissioner has certified in writing as to its necessity, other archival establishments that meets the requirements specified in paragraph b of this section, provided that under no circumstances may the commissioner enter into an agreement with any entity that has been established or is otherwise controlled by the officer whose administration is the subject of such records, or by such officer's former staff or appointees, spouse, domestic partner or child, to receive the only set of records made or received by such officer or his or her staff.

b. If the commissioner enters into an agreement with another archival establishment outside the department's municipal archives, such establishment must exist under public auspices. The commissioner shall further ensure city control by including within the agreement a plan for monitoring the status and progress of the archiving operations, and a schedule, where necessary, for the municipal archives to receive the original set of records as their processing is completed. The commissioner shall devise such plan in accordance with his or her professional judgment, but in all instances such plan shall include at least the following: (i) a list of the tasks to be conducted and a timetable for the completion of each; (ii) a description of the resources, staffing and training dedicated by the archival establishment to

carrying out such tasks; and (iii) an agreement by the archival establishment to issue, at minimum, quarterly reports of its activities to the commissioner. Such plan shall be open for public inspection. Any such agreement and plan must be approved by the law department for compliance with this paragraph.

c. 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.

§ 3. Subdivision two of section 3011 of the New York city charter is amended to read as follows:

§ 3011. **Definitions.** As used in this chapter:

\* \* \* \* \*

2. "Records" means any documents, books, papers, photographs, sound recordings, machine readable materials or any other materials, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official city business. Such records may be in a variety of media, including, but not limited to paper, audio, audiovisual, or other electronic or mechanical recordations. Library and museum materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications are not included within the definition of records as used in this chapter;

§4. Subdivision b of section 1133 of the New York city charter is amended to read as follows:

**§ 1133 Transmission of reports; disposal of records; destruction of other materials.**

\* \* \* \*

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 pursuant to an approved records transfer schedule. The city of New York shall reserve and retain complete ownership, possession, and control of all records to be retained for historical or research purposes, and such records shall be administered in accordance with the provisions of this chapter and chapter seventy-two of the city charter.

§ 5. This law shall be effective as of January 1, 2001.