

Department of Records & Information Services

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Records & Information Services is proposing to update rules for access to Municipal Archives, Library materials in general, and guidelines for access to special collections. It intends to update the fee schedule for reproduction services to account for the production and delivery of requested products using digital technology.

When and where is the hearing? The Department of Records & Information Services will hold a public hearing on the proposed rule. The public hearing will take place by videoconference at 11 a.m. on Friday, October 23, 2020 and is accessible by:

- **Internet Video and Audio.** To participate in the public hearing, enter the Webex URL:
<https://nycdoris.webex.com/nycdoris/j.php?MTID=mefc0048fb1822df1ceebde1881eb07be>.
If prompted to provide a password or number, please enter the following:
Meeting Number: 173 225 7395. Password: kjEZGpCu746
- **Telephone.** To access the hearing by telephone, dial +1-646-992-2010 United States Toll (New York City) or 1-408-418-9388 United States Toll.
- **Access code:** 173 225 7395

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Records & Information Services through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to DORISrules@records.nyc.gov.
- **Mail.** You can mail comments to Assistant Commissioner Kenneth R. Cobb, Department of Records & Information Services, 31 Chambers Street, Suite 305, New York, N.Y. 10007.
- **Fax.** You can fax comments to Department of Records & Information Services, 212 788-8625.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the

public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that anyone who wants to comment sign up prior to the hearing by emailing Gerald Rosero at grosero@records.nyc.gov.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before October 23, 2020

What if I need assistance to participate in the hearing? You must tell DORIS if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 788-8610. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 16, 2020.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at Department of Records & Information Services, 31 Chambers Street, Room 111, New York, NY 10007.

What authorizes the Department of Records & Information Services to make this rule? Section 1043 and Chapter 72, Section 3008 of the City Charter authorize the Department of Records & Information Services to make this proposed rule.

Where can I find the Department of Records & Information Services rules? The Department of Records & Information Services rules are in title 49 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Records & Information Services must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Records & Information Services recognizes its responsibility to facilitate access to Municipal Archives and Library materials that may contain confidential information. The proposed new rules and amendments will enable public access to these materials while protecting the privacy rights of individuals who may be named in such records. The amendments to the fee schedule are proposed to account for the use of digital technologies in completing reproduction requests.

The Department of Records and Information Services' authority for these rules is found in sections 1043(a) and 3008 of the New York City Charter.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Sections 2-01 and 2-06 of chapter 2 of Title 49 of the Rules of the City of New York, section 2-06 as renumbered by this rule, are amended to read as follows:

§ 2-01 Vital Records.

[\$15.00]	[Certified copy of a vital record, purchased over-the-counter.]
[\$15.00] \$18.00*	[Search] <u>Certified copy of a vital record or transcript of a birth, death, or marriage record, when certificate number is provided, or search of a birth, death, or marriage record in one year and one City/Borough for one name, and issuance of results, i.e. one certified copy of the record, or a “not found” statement.</u>
\$2.00	Per additional year to be searched in one City/ Borough for the same name.
\$2.00	Per additional City/Borough to be searched in one year for the same name.
\$10.00	Per additional certified copy of birth, death or marriage record.
[\$6.00]	[Certified copy or transcript of birth, death, or marriage record, requested over-the-counter at 31 Chambers Street, when certificate number is provided.]

[\$5.00]	[Use of microfilm reader machine, per day, or part thereof, for consultation of birth, death or marriage records or indexes
[\$15.00] \$18.00*	<u>Copy of a vital record when certificate number is provided, or search of a birth, death, or marriage record in one year and one City/Borough for one name, and issuance of results, i.e., copy of the record, or a "not found"</u>
\$2.00	<u>Per additional year to be searched in one City/Borough for the same name.</u>
\$2.00	<u>Per additional City/Borough to be searched in one year for the same name.</u>
\$5.00	Exemplification of a birth, death, or marriage record.

*Additional handling charges will apply for services requested via epayments.

 **§ [2-07] 2-06 Other Fees.**

\$15.00 and up	Publication or license fee[, per item] <u>for any use of a reproduction of a still image, document, or other archival item (except moving images) [reproduced. Publication or license fees will range from \$15.00 for editorial use in a scholarly publication, up to \$75.00, or more, for any use of a reproduction of a still image, document, or other archival item] in any type of product or media including post-card, poster, book, magazine, newspaper, newsletter, film, video, television, or web-site, per item, based on the type of [proposed] use. The publication or license fee start at \$15.00 for educational, scholarly or non-profit products or media, and increase for commercial products or media.</u>
\$40.00	<u>Commercial use of moving images, per second.</u>
\$10.00	<u>Educational, scholarly or non-profit use of moving images, per second.</u>
\$1.00	<u>Certification of record other than birth, death or marriage record, or property card, per item.</u>
<u>As for quote</u>	<u>Duplication or digitization of microform product.</u>
[\$200.00]	[Exhibition loan fee, per item.]
\$75.00	[Per hour, for] <u>Conservation services requested by patrons, per hour, not including materials.]</u>
\$50.00	<u>Conducting original research for patrons, per hour, not including copies.</u>
\$125.00	<u>Conservation services and exhibition loan preparation requested by institutions, per hour, not including materials.</u>

§ 2. Sections 2-02, 2-03, 2-04, 2-05 and 2-06 of chapter 2 of Title 49 of the Rules of the City of New York, relating to charges for reproduction of certain Municipal

Archive records, are REPEALED, and new sections 2-02, 2-03, 2-04 and 2-05 are added, to read as follows:

§ 2-02 Property Cards.

<u>[\$15.00]</u> <u>\$18.00</u>	<u>Paper or digital copy of property cards relating to one block and lot.</u>
<u>\$5.00</u>	<u>Certification of property cards relating to one block and lot.</u>

§ 2-03 Reproductions— still images (for personal use only; licensing fees will apply for other uses, see §2-07).

<u>No Charge</u>	<u>Low-resolution digital copy of any single item previously digitized.</u>
<u>\$45.00</u>	<u>High-resolution, non-watermarked digital copy of any two-dimensional item no larger than 28" x 36".</u>
<u>\$65.00</u>	<u>High-resolution, non-watermarked digital copy of oversize flat item larger than 28" x 36".</u>
<u>\$65.00</u>	<u>High-resolution, non-watermarked digital copy of one book or the contents of one folder, up to 100 pages or paper documents;</u>
<u>\$40.00</u>	<u>Per additional 100 pages or documents ordered at the same time.</u>
<u>\$45.00*</u>	<u>Hard Copy print 8" x 10"</u>
<u>\$60.00*</u>	<u>Hard copy print 11" x 14"</u>
<u>\$120.00*</u>	<u>Hard copy print 16" x 20". Not available for "tax" photographs.</u>

*Additional shipping and handling charges for mailed products

§ 2-04 Reproductions— moving images (for personal use only; licensing fees will apply for other use, see §2-07).

<u>No Charge</u>	<u>Low-resolution digital copy of any moving image tape or film previously digitized, per title.</u>
<u>\$100.00</u>	<u>High-resolution non-watermarked digital copy of moving image tape or film, per title.</u>
<u>Ask for Quote</u>	<u>Digitization of motion picture film, audio recording or other analog format when in-house reformatting is unavailable.</u>

Additional shipping and handling charges for mailed products.

§ 2-05 Photocopying-Self-Service (not available for vital records).

<u>No charge</u>	<u>Use of personal camera or iPad.</u>
<u>\$.25</u>	<u>Paper print from public access computers, per copy.</u>
<u>\$.25</u>	<u>Paper print using photocopier (permission required), per copy.</u>
<u>\$.50</u>	<u>Print-out from microfilm, per copy.</u>
<u>\$.50*</u>	<u>Paper print using photocopier, per copy.</u>

§ 3. Sections 3-01, 3-02 and 3-03 of chapter 3 of Title 49 of the Rules of the City of New York are amended, and new sections 3-04 and 3-05 are added, to read as follows:

3-01 Municipal Archives and Library Regulations Governing Use of [Archival Material] Archives and Library Materials.

The New York City Municipal Archives and Municipal Library, [a division] divisions of the Department of Records and Information Services, [is] are open to [all qualified persons] the public subject to the following regulations:

A. ACCESS TO MATERIALS.

(1) [Researchers must provide acceptable identification upon request] All persons using Archives or Library materials must agree to follow posted rules.

(2) [All researchers must sign the register daily.]

(3) Researchers [using collections other than vital records] requesting Archives or Library materials must fill out [and sign] a registration form [(MA-18)] indicating name, contact information, affiliation, if any, and specifying the research subject and purpose [of the research]. Researchers must provide acceptable identification upon request.

[(4)] (3) [Archival material] Archives and Library materials may not be removed from the [Municipal Archives without written permission from the Director] premises.

[(5)] (4) [Special access restrictions and procedures apply to New York County District Attorney closed case files, and Board of Education "anti-Communist" case files] The physical condition of an item may prohibit access.

(5) In accordance with laws and regulations related to personal privacy, health information, and minors, as well as attorney-client privilege, certain records may be subject to redaction or other measures that restrict access.

(6) Special access restrictions and procedures apply to District Attorney case files, Board of Education "Anti-Communist" case files, World Trade Center materials, and Police Department surveillance records and photographs. Researchers must sign a

non-disclosure agreement (MA-101B) and appointments are necessary for access to these materials. Self-service photocopying or digital photography is not permitted. Researcher requests for copies of materials will be fulfilled by Municipal Archives staff according to the fee schedule 49 RCNY § 2 and may be subject to redaction or other restriction.

B. [REFERENCE ROOM RULES] REPRODUCTION AND PUBLICATION OF MATERIALS.

The Department of Records and Information Services is responsible for facilitating access to Archives and Library materials by permitting their reproduction, reprinting, publishing, or other use, subject to the following conditions:

(1) [Researchers may bring only those materials needed for research to the document research area] The physical condition of an item may prohibit reproduction.

(2) [Coats, bags, briefcases, and other personal articles are not permitted in the document research area] Reproductions are provided for the researcher's personal use only. Reproductions may not be reduplicated, published, or transferred to another individual or institution.

(3) [Archives staff reserve the right to inspect all research materials, briefcases, bags and other personal articles before a researcher leaves the Reference Room] Permission to publish, reprint, broadcast, re-duplicate, or make other use of Archives or Library materials may be granted subject to fees and the conditions stated in the Publish/Use Contract form (MA-45). The prospective user has the sole responsibility for observing literary property rights, personal property rights, libel, unwarranted invasions of privacy and any infringement of the U.S. Copyright Code.

[(4) Food and beverages are not permitted in the Reference Room.

(5) All notes must be taken with pencil, typewriter, word processor, or tape recorder. Ink pens may not be used.

(6) Researchers may not photograph or scan archival material.

(7) Archival material is fragile. Researchers may not write upon, lean upon, mark or otherwise mishandle material. Researchers should report any damaged material to staff immediately.

(8) Researchers must preserve the existing order of material and notify staff if any material is discovered to be not in order.]

Any violation of these rules may be sufficient cause for denial of future access to the Municipal Library and Archives.

[C. REPRODUCTION AND PUBLICATION OF MATERIALS.

The Municipal Archives recognizes its responsibility to facilitate access to its collections by permitting the reproduction, reprinting, publishing, or other use of archival material, subject to the following conditions:

(1) The physical condition of an item may prohibit reproduction.

(2) Reproductions are provided for the researcher's personal use. They may not be reduplicated or transferred to another individual or institution.

(3) Researchers may use the self-service photocopy machines available in the Reference Room.

(4) Researchers must ask for staff assistance when copying fragile or oversize material.

(5) Permission to publish, reprint, broadcast, re-duplicate, or make other use of archival material may be granted subject to the conditions indicated in the Publish/Use Contract form (MA-45), and may be subject to licensing or use fees. The Director shall decide when and to what degree these restrictions shall apply.

D. CITATION.

(1) Proper acknowledgment or credit must be given to the Municipal Archives for all material used.

(2) The citation should be written as follows (after identification of the item and title of the collection): NYC Department of Records/Municipal Archives.

(3) The Municipal Archives would appreciate receiving copies of any research results. Any violation of these rules governing the use of Municipal Archives material may be considered sufficient cause for denial of future access.]

§ 3-02 Municipal Archives Guidelines for Archival Use of Board of Education "Anti-Communist" Case Files.

A. The Municipal Archives preserves and makes available for research historical records of the New York City Board of Education ("the Board"). This collection includes several records series (nos. 590, 591, 593, 594, 595, 596 and 597) that pertain to the "anti-Communist" activities of the Board from the 1930s through the 1960s. They contain personal and confidential information relating to teachers and other school personnel investigated and/or questioned by the Board for alleged support of or association with the Communist Party. The individuals who are the subject of these files have a privacy right regarding information of a personal nature contained in them; this includes a privacy right regarding the fact that the subject case file exists.

B. The regulations governing public access to all archival material are set forth in 49 RCNY § 3-01 [of this chapter]. In addition to those regulations, public access to the "anti-Communist" case file series is governed by the following additional regulations and/or procedures:

(1) Researchers who request access to a specific file for the purpose of researching the views or activities of the individual who is the subject of that file or of another individual named in that file must obtain permission for such access from the subject individual and from the named individual, as applicable. If the subject or named individual is deceased or unable to give or deny permission, such permission must be obtained from the individual's legal heirs or custodians, as specified in [forms] form MA-101A[, MA-101B, and MA-101C].

(2) Researchers engaged in more general research not limited to a particular individual or individuals may access files in the restricted series upon certifying that they will neither record nor use any names or personally identifiable material obtained from such files, form MA-101B [(MA-101D)].

(3) When a researcher accesses a file with permission from the individual who is the subject of that file, the Archives will redact the names of other individuals in the file whose permission has not been obtained.

(4) [Self-service photocopying is not available for anti-Communist case file documents. All photocopies will be redacted to remove information identifying any individual whose permission has not been obtained.

(5) Published materials and materials created for general distribution, such as newspaper clippings and press releases, are not subject to the restrictions set forth in this section.

§ 3-03 Municipal Archives Guidelines for Archival Use of District Attorney Records.

A. The Municipal Archives preserves and makes available for research the closed case files of the five New York [County] District [Attorney ("DANY")] Attorneys. The case files date back to 1896 [and constitute one of the most important series in the Archives' extensive collection of records pertaining to the administration of criminal justice]. In accordance with the duly promulgated record retention schedule for this series, the closed case files are transferred to the Municipal Archives for permanent preservation twenty-five years after the date (year) of indictment.

B. The regulations governing public access to all archival material are set forth in 49 RCNY § 3-01 [of this chapter]. In addition to those regulations, public access to District Attorney case files that are less than fifty years old (from the year of indictment) are governed by the following [additional] regulations and/or procedures:

(1) For requests to examine records in case files that are less than fifty years old (from the year of indictment), the Municipal Archives Director, or an authorized staff member, will submit to [DANY] the office of the District Attorney which created or compiled the records ("DA") the following information: name of researcher and affiliation, if any, subject and purpose of research, case file number(s) and name(s) of defendant(s). The Municipal Archives Director or authorized staff member will submit this information to [DANY] the DA prior to granting the researcher access to the requested records. [DANY] The DA will be permitted to examine the material in the requested file(s) and separate any items as to which (a) public disclosure is prohibited by statute or court order (e.g. minutes of Grand Jury proceedings); or (b) disclosure would threaten the life or safety of any person, such as information about confidential informants or undercover law enforcement personnel. The Municipal Archives will not permit access to any items separated by [DANY] the DA from other items in the file. [DANY] The DA will have five business days (from the date of notification that the case file is available) in which to conduct a case file review. If the DA declines to conduct a review, the requested case file materials will be made available to the researcher in accordance with regulations governing public access to all archival material set forth in 49 RCNY § 3-01.

(2) For all case files regardless of age, the Municipal Archives will not permit access to minutes of Grand Jury proceedings or any other records as to which disclosure is prohibited by statute or court order. The Municipal Archives will also consider requests by [DANY] the DA to maintain the confidentiality of records whose age is greater than 50 years when exceptional circumstances warrant granting such request.

§ 3-04 Municipal Archives Guidelines for Archival Use of World Trade Center-Related Materials

Several series of historical records related to the September 11, 2001 attack on the World Trade Center and subsequent recovery and rebuilding efforts are preserved and available for research at the Municipal Archives. Some of the series comprise materials that are fragile and/or contain personal and confidential information relating to the victims of the attack and their families. The Archives will evaluate requests for access to these materials considering its paramount responsibility to protect and preserve them. Consequently, the Archives may choose to limit or forbid handling, duplication, or casual inspection of materials deemed highly sensitive, or fragile. Permission to publish, reproduce or otherwise use World Trade Center-related materials may be denied in instances where the item contains personal information related to the victims of the attack or their families.

§ 3-05 Municipal Archives Guidelines for Archival Use of New York City Police Department Crime Scene Photographs and Surveillance Records.

The Municipal Archives preserves and makes available for research historical records of the New York City Police Department Inspectional Services Bureau (" ISB") and more than 100,000 historical crime scene photographs. The ISB collection comprises records in several formats including paper, audio, film, and photographs of police surveillance conducted on individuals and organizations, as well as other investigations conducted from 1955 to 1973. The ISB and crime scene collections contain records that relate to minors, crime victims, under-cover police officers, and/or informants that may have personal privacy concerns. The Municipal Archives will make these materials available for research, but may restrict reproduction or publication of personally-identifiable information in the research product.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Municipal Archives and Municipal Reference Library

REFERENCE NUMBER: 2019 RG 075

RULEMAKING AGENCY: Department of Records and Information Services

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

Date: September 8, 2020

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS PURSUANT
TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Relating to Municipal Archives and Municipal Reference Library

REFERENCE NUMBER: DORIS-2

RULEMAKING AGENCY: Department of Records and Information Services

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 9, 2020
Date