

INT. 2020-2020
DRAFT TESTIMONY OF RONALD WOODEN, ASL DIRECT SUPERVISOR,
MOPD

Good morning Chair Eugene and members of the Committee on Civil and Human Rights. My name is Ronald Wooden Jr. and I am the ASL Direct Supervisor for the New York City Mayor's Office for People with Disabilities (MOPD). It is my pleasure to join you today in support of Introduction Number 2020-2020, which would require movie theaters to present movies with open (on screen) captions.

MOPD supports Introduction Number 2020-2020, which would require movie theaters to present a certain percentage of movies with open (on screen) captions.

There are more than 175,000 Deaf and hard of hearing people who reside here in NYC. This bill would be a game-changer for our movie-going experience.

Currently, only closed captioning is provided at most movie theaters. With closed captioning, Deaf and hard of hearing patrons must follow what is being said on devices provided by the theater such as captioning glasses or a small screen that is attached to our seats. These

devices do not provide Deaf and hard of hearing patrons with full and equal enjoyment of the movies.

Much of the time those devices do not work. As a Deaf person, I have often had to get up during the movie and see the front desk to get another device. At this point, I have already missed 15 minutes or more of the movie and there is no guarantee that another device, if it is available, will work either. Many times, Deaf consumers will end up leaving the movie theater and would rather wait until the movie comes out on television. This does not allow a Deaf person like me to join hearing friends or family at the movies and have an enjoyable experience.

Moreover, even when they work, these devices can be uncomfortable. For example, captioning glasses can cause a variety of issues such as headaches, swelling around the eyes/nose area and dizziness. And the devices have been handled by multiple people, so we can only hope that they have been disinfected by staff.

Open captioning is far superior:

- With open captioning, eyes stay on the screen at all times, allowing Deaf and Hard of Hearing people to enjoy the movie the same way that hearing people do.
- Open Captioning works 100% of the time
- There's no sharing of equipment/devices.
- The number of Deaf and hard of hearing people who can attend a showing of a movie is not limited by the number of devices the theater has.

Finally, Open Captioning not only benefits the Deaf/deaf and Hard of Hearing community: it can help kids learn to read and can also help people learn English. And we understand that open captioning is growing in popularity, particularly among young people.

On behalf of MOPD and Deaf and hard of hearing New Yorkers, I urge you to vote for passage of this bill, which will help make New York City

fairer and more inclusive by helping to ensure that ***everyone*** going to the movies has equal access and an enjoyable experience.

Thank you for the opportunity to speak today. We look forward to further discussions with Council on this legislation and further protections for the Deaf/deaf and Hard of Hearing community.

Testimony

Michelle A. Othon

*Hearing Loss Association of America
NY State Association, Professional Advisory Committee Member*

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Open Captioning for the Deaf / Hard of Hearing in Cinemas

New York City Council
Committee on Civil and Human Rights

December 2, 2021

New York

Thank you for holding a hearing regarding Open Captioning (OC) in cinemas. This is an accessibility issue for thousands of people with various types of hearing loss.

I was diagnosed with Meniere's disease over 9 years ago (causing hearing loss), which has recently ended my career as a research scientist for GE. Since losing my hearing, I've had the following experiences with hearing assistive devices in the theater:

The caption glasses failed mid-movie:

This caused missed dialogue and lost ~20 minutes of time to obtain a working replacement. A single voucher to see another movie did not compensate for our ruined experience.

Caption glasses are heavy and are poorly fitted:

Many people experience headaches from the weight of these glasses. They are also "one-size-fits-all", which do not accommodate adults with smaller faces, children, or various other facial morphologies *particularly for certain ethnic groups*.

The "cup mount" captioning device wouldn't stay upright:

The gooseneck device wasn't strong enough to hold the caption screen which caused it to tilt sideways. In order to be functional, it had to be painfully held up manually for the duration of the show.

Caption glasses and cup mounts can make people dizzy:

The eye's focal point changes rapidly and constantly when using this type of captioning which can have a dizzying effect, particularly for people with compromised vestibular systems. Many people with hearing loss experience this effect, but do not with open captions.

Directors want movies seen as intended:

Cinema is largely an artistic experience, and the artists want it to be seen in entirety - not piecemeal by looking back and forth from captions to screen to read what's being said. OC provides access to the *entire* screen without missing details.

In summary, CC devices often fail, can cause medical distress (headaches, pain, dizziness), are unhygienic, forces users to provide personal and financial information when obtaining these devices, requires staff maintenance and training, and often ruins the experience for our hearing family and friends, as well.

In contrast, Open Captions are less prone to failure, less likely to cause medical distress, doesn't require personal or financial information, allows users to be essentially invisible to maintain our dignity, less staff maintenance, and is a more enjoyable experience for our family and friends.

The current model is only marginally accessible. Please consider OC in cinema as an equal access issue.

Thank you,

Michelle A. Othon



Downstate New York ADAPT

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Image description:
"Downstate NY ADAPT" text over & under
image of PWD in wheelchair with arms
raised, breaking handcuffs' chain overhead,
under arching text "Free Our People"



December 2, 2021

New York City Council Committee On Governmental Operations
Email: testimony@council.nyc.gov

Re: Int. 1901-2021, Int. 2429-2021, Int. 2453-2021 and
Int. 2438-2021

Dear Chair Cabrera:

The Greater New York Council of the Blind, Disabled In Action of Metropolitan New York Inc., the Vanguard Chapter of the National Federation of the Blind, Bronx Independent Living Services and Downstate New York ADAPT submit these comments in response

to the New York City Council's Committee on Governmental Operations' public hearing held at 10:00 a.m. on Monday, November 29, 2021.

The Greater New York Council of the Blind ("GNYCB") is a chapter of the American Council of the Blind of New York State ("ACBNY") which is a nationwide member - driven advocacy organization that strives to increase the security, independence, economic opportunity, and quality of life for people who are blind and experiencing vision loss.

Disabled In Action of Metropolitan New York, Inc. ("DIA") is a fifty-one (51) year old, 501(c) (3), grassroots, civil rights organization run by and for people with disabilities. DIA's mission is to eliminate discrimination for people with all kinds of disabilities.

The Vanguard Chapter of the National Federation of the Blind believes in the full capacity of blind people and believes that blind people have the power, influence, diversity, and determination to help transform dreams into reality.

Bronx Independent Living Services is a non-profit, community-based organization dedicated to empowering all people with disabilities to live fully in the community.

Downstate New York ADAPT ("DNY ADAPT") is a grass roots, non-hierarchical community of people with all types of disabilities advocating for the civil rights of people with disabilities, including, but not limited to, the right to live and fully participate in the larger community. Downstate New York ADAPT covers the five counties in New York City, the two counties on Long Island as well as Westchester, Dutchess, Orange, Rockland, Putnam, Ulster and Sullivan counties in New York State.

We support bill Int. 1901-2021 which would require independent spenders working to influence the results of a municipal ballot initiative to disclose the spender's donors to the New York City Campaign Finance Board and in certain circumstances, set forth this fact in their advertisements since the enactment of this bill would provide the public with greater knowledge concerning the people and organizations financing such advertisements.

We strongly oppose the enactment of bill Int. 2429-2021, a bill that would change the budget process for the New York City Campaign Finance Board which currently requires the Campaign Finance Board to provide itemized estimates of its financial needs to the Mayor and which requires the Mayor to include such estimates in the executive budget without revision. We strongly object to this bill because it could lead to there being sometime in the future a Campaign Finance Board without any funds and thus, without any ability to educate the public on voting and elections in a non-partisan manner.

Further, this bill if enacted would allow the Mayor's executive budget to include appropriations for the Campaign Finance Board that differ from the Campaign Finance Board's unrevised cost estimates and thus allow the Mayor to have undue influence over the Campaign Finance Board's budget and, in turn, its operations. There is already in existence an adequate fiscal check on the CFB since the City Council has the authority to increase or decrease the Campaign Finance Board's final budget, and the Mayor can recommend changes to the Campaign Finance Board's budget. This provision, which is still in place today, provides an adequate fiscal check on the Campaign Finance Board.

We refer the Committee to the Memorandum of Opposition which the Greater New York Council of the Blind and Downstate New York ADAPT signed concerning this bill as well as the submission from other non-partisan good government organizations in opposition to the enactment of this bill.

With respect to Int. 2453-2021, we support this bill but believe that it needs to be revised. This bill which would offer expenditure limit relief to candidates participating in the City's Campaign Finance Board's program when they face high spending independent candidates is a good start. However, we believe that the lower expenditure limit that would allow the expenditure limit for all candidates in an election to be increased by 50% when an independent candidate's expenditures equal 50% of the expenditure limit of other candidates in a particular election needs to be changed since under this scenario too many times candidates would not be subject to expenditure limits. In most instances, we believe that expenditure limits are beneficial because expenditure limits promote candidates reaching out to all their potential constituents and not just those with monetary power. Further, we agree that when the independent expenditures equal 300% of the expenditure limit in a particular election the expenditure limit for all candidates in that election should be lifted. We urge the Committee to further study the data available and to consult with the City's Campaign Finance Board as well as non-partisan good government organizations before enacting an amended final version of this bill.

We believe that Int. 2438-2021, a bill that would require the New York City Campaign Finance Board to publish video voters guides in English, American Sign Language and the top six limited English proficiency languages spoken by the population of New York City including captions for each language for each candidate for local elections, is a wonderful bill. However, it would be even better after a few revisions are made.

We strongly support the requirement in the proposed bill that the video voter guides should not only be provided in English and American Sign Language but also, in the top six limited English proficiency languages spoken by the population of New York City and that they should include captions for each such language for each candidate for local elections. We respectfully submit that it would be even better if the bill stated that the video and print voter guides be translated into the designated City-wide languages set forth in Local Law 30 (2017) ("Designated Languages") with closed captioning in all those languages as well as in English and that it should be clearly stated that this applies to all voter guides for all elections, not only municipal elections.

We support the fact that the voter guide should be a nonpartisan, impartial guide that is available in two media formats, including, but not limited to, printed voter guides and video voter guides published online. We strongly recommend that a voter be able to access an audio version of the voter guide, in English as well as in the Designated Languages and that a person should be able to listen to it by calling 311 and being able to some way access the voter guide in the voter's language by hitting a number on their phone or, where assistance is needed, to have an operator connect the voter to the language in which they wish to hear the voter guide.

Further, we applaud the bill's sponsor, Councilwoman Rosenthal's proposal to require that online video voter guides and print voter guides be created for not solely candidates in contested elections held in the City of New York for municipal offices but also, for contested elections for county, state and federal office as well as ballot proposals and referenda. We strongly urge that an audio version be available in English and in the other Designated Languages so that a person can access it by merely calling 311 and pushing a number or by requesting an operator connect them

to the Guide in English or one of the Designated Languages that they prefer to hear it in. This would be helpful to many voters.

Of course, a Braille version and large print version of the printed voter guide needs to be available on request, in English as well as in the Designated Languages. New York City voters should be able to not only opt out of receiving a print version of the voter guide, but also should be able to be placed on a permanent list maintained by the New York City Campaign Finance Board to receive the printed voter guide in braille or large print, in English or in a particular Designated Language, or in print in a particular Designated Language every time a print version is mailed to voters. This would save money and be more efficient because printed voter guides in English would not have to be sent to those voters who cannot use the printed voter guide printed in English and voters would receive a voter guide that they could read.

It should be noted that there is no universal sign language, that sign language does not represent spoken language, and that there are many different sign languages used around the world. They vary from nation to nation and even in countries where the same language is spoken, sign language can have many different regional accents that bring subtle variations to people's use and understanding of signs. For example, British Sign Language ("BSL") is a different language from American Sign Language ("ASL"), and Americans who know ASL may not understand BSL. Thus, the Committee needs to speak to New York City voters with hearing loss and who are deaf to determine their needs. Thus, we strongly recommend you confer with such organizations as the New York City Chapter of the Hearing Loss Association of America and others.

With respect to Section 1053 of the New York city charter, as amended by local law number 88 for the year 2017, Subsection 5. e. we respectfully submit that it should be amended to allow each candidate to give an audio description instead of a concise description of their "physical attributes". An additional fifteen to thirty seconds should be given for a candidate to give the audio description. If a candidate is hesitant to give such an audio description, it can be explained to the candidate that such an audio description just places those who may not be able to see the candidate on the same level as those voters who can see the candidate.

Additionally, we strongly request that the last sentence of Subsection 5. e. and 5. f. of Section 1053 be expanded so that the Campaign Finance Board may consult with others besides the Mayor's Office For People With Disabilities with respect to what may be the best practices for determining whether candidates are fulfilling the requirements of these two subdivisions since the Mayor's Office For People With Disabilities is part of the executive branch and may in the future be partisan as well as subject to undue influence by the Mayor. By allowing the Campaign Finance Board to reach out to organizations representing and run by people with disabilities this would reduce the possibility of just one viewpoint being heard with respect to accessibility of the printed versions of the voter guide and the video versions of the voter guide. So too, an additional sentence should be added here that states that the printed and video voter guides must at a minimum comply with federal, state and city statutes, regulations and guidelines for accessibility as well as meet best practices concerning accessibility for all voters with disabilities. This sentence is necessary to ensure that future staff at the CFB are aware of the need to provide effective communication of this important information to all New York City voters. Such accessible communication today includes, but is not limited to Word documents, pdf-a documents, closed captioning, American

Sign Language and other Sign Language interpreters, large print, and braille. However, since we do not know today what wonderful ways to effectively communicate future technology will bestow on us, we recommend that the drafters of this bill include both the law and best practices language here to provide for such advances in communication technology.

As part of the New York City Campaign Finance Board's mandate to reach out to, educate and effectively communicate with all New York City voters, the Campaign Finance Board should be required confer with organizations representing and run by people with disabilities and other civic minded organizations representing a cross section of the City's population on the best practices for the printed and video versions of the voter guide so that the information voters need to make informed decisions concerning voting are effectively communicated to all New York City voters.

Finally, these recommended revisions to the bill should be applicable to all the voter guides in English and the Designated Languages, printed and video, and to all offices, ballot proposals and referenda and not only on the City level.

Thank you for the opportunity to submit comments concerning these four bills on voting presently before the New York City Council's Governmental Operations Committee and discussed at the public hearing held at 10:00 a.m. on Monday, November 29,

-CONTINUED ON NEXT PAGE-

December 2, 2021

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2021. If you have any questions please contact us at our respective email addresses listed below.

Very truly yours,

Michael Ring, Anne-Elizabeth Straub, Marilyn Tucci,
Terence B. Page and Kathleen Collins,
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From: Downstate NY ADAPT <dnyadapt@gmail.com>
Sent: Sunday, December 5, 2021 2:29 PM
To: Testimony
Subject: [EXTERNAL] Downstate New York ADAPT's Written Comments on Int. 2020-2020, A Local Law to Amend the Administrative Code of the City of New York, in Relation to Open Captioning at Motion Picture Theaters
Attachments: 12-5-2021 Final D NY ADAPT Written Testimony On Open Captioning With Copy of DIA Submission.pdf

Annexed are the comments submitted by Downstate New York ADAPT in response to the New York City Council's Committee on Civil and Human Rights' public hearing held at 10:00 a.m. on Thursday, December 2, 2021. These comments concern Int. 2020-2020. Thank you.

Very truly yours,

Kathleen Collins,
Co-Coordinator,
Voter Engagement Working Group,
Downstate New York ADAPT
Email address: dnyadapt@gmail.com

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From your Downstate NY ADAPT Co-coordinators
Free Our People!
www.DNYADAPT.com



Downstate New York ADAPT

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Image description:
"Downstate NY ADAPT" text over & under
image of PWD in wheelchair with arms
raised, breaking handcuffs' chain overhead,
under arching text "Free Our People"

December 5, 2021

Sent by Email: testimony@council.nyc.gov

Re: New York City Council Committee On Civil and Human Rights,
Bill Int. 2020-2020

Dear Chair Eugene:

In response to the New York City Council's Committee on Civil and Human Rights' public hearing held at 10:00 a.m. on Thursday, December 2, 2021, Downstate New York ADAPT submit these comments with respect to proposed bill, Int. 2020-2020, to require open captioning at motion picture theaters. Downstate New York ADAPT ("DNY ADAPT") is a grass roots, non-hierarchical community of people with all types of disabilities advocating for the civil rights of people with disabilities, including, but not limited to, the right to live and fully participate in the larger community. Downstate New York ADAPT covers the five counties in New York City, the two counties on Long Island as well as Westchester, Dutchess, Orange, Rockland, Putnam, Ulster and Sullivan counties in New York State.

First, Downstate New York ADAPT adopts and incorporates by reference the comments submitted by Disabled In Action of Metropolitan New York, Inc. ("DIA"), annexed hereto, with respect to Int. 2020-2021. As Jean Ryan, President of Disabled In Action, eloquently stated "By limiting open captioning requirements to 50% of movies being shown or any other number less than 100%, people who need open captioning are relegated to attending movies that may be held at inconvenient and limiting times or missing movies altogether."

Second, we have heard the same arguments before when we were fighting to have accessible bathrooms and entrances that the motion picture theater operators wanted to be "inclusive", that they would work with us, that they were concerned about the costs, that it would be a lot of work, that other patrons would be inconvenienced and would be unhappy.

When did the motion picture theaters decide to provide access to people with mobility impairments? In the 1960s? In the 1970s? In the 1980s? In the 1990s? The answer is that it was not until the Americans With Disabilities Act was enacted in July 1990 and regulations promulgated that required motion picture theaters to have accessible restrooms and seating that they began to do this.

Significantly, even, after this Act and regulations were enacted the United States Justice Department was forced to sue certain operators of the nation's largest chains of movie theaters, for not providing stadium style seating to individuals who use wheelchairs.

More recently, these same theater owners that are telling this Committee that they want to work with people with disabilities continue to not comply with anti-discrimination laws, such as the ADA and 21st Century Video Accessibility Act with respect to audio descriptions. (See, ***Blanks v AMC Entertainment***, 4:16 CV 00765 (N.D. Ca. 2016), an action instituted in the United States District Court for the Northern District of California which was later settled.) Thus, we respectfully submit that the history of the motion picture theater operators' actions tells a tale very different from what they have testified here at this public hearing.

As noted by several witnesses during the hearing, closed captioning devices are broken, do not operate, are uncomfortable, unsanitary and especially for moviegoers with multiple disabilities impossible to use which results in a total denial of access to what is happening at the movie.

Thus, we respectfully submit that the City Council needs to enact this bill now and in fact, that it needs to amend this bill to allow people with hearing loss and who are deaf the ability to enjoy all movies on any day and at any time that all their fellow citizens get to enjoy movies. To do anything less is unconscionable since it is our civil rights to have effective communications and to enjoy all facets of our great City, an entertainment capital. It is time for New York City to be a leader in abolishing discrimination against all New Yorkers with disabilities.

December 4, 2021

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Thank you for the opportunity to submit comments concerning this bill, Int. 2020-2020, presently before the New York City Council's Committee on Civil and Human Rights and discussed at the public hearing held at 10:00 a.m. on Thursday, December 2, 2021. If you have any questions please contact us at dnyadapt@gmail.com.

Very truly yours,

Brandon Heinrich, Michael Ring, Anne-Elizabeth Straub,
Marisol Getchius, Marilyn Tucci, and Kathleen Collins,
Co-Coordinator,
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www.CIDNY.org

Center for Independence of the Disabled, NY

December 2, 2021

Re: Open captioning at motion picture theatres

Committee on Civil and Human Rights

Monica Bartley
Community Outreach Organizer

**MEMORANDUM IN SUPPORT
Intro 2020**

The Center for Independence of the Disabled, NY (CIDNY) is a leading advocate for New Yorkers of all ages and with all types of disabilities. CIDNY's goal is to ensure full integration, independence, and equal opportunity for all people with disabilities by removing barriers to the social, economic, cultural, and civic life of the community.

Participating in leisure activities is a significant part of daily living as it contributes to psychological and cognitive wellbeing, physical health, and quality of life. For years, Deaf and Hard of Hearing people have experienced limited participation in some activities, one such being watching a movie in theaters. If Deaf or hard-of-hearing audiences need to see a movie with open captions they're either forced to rely on unreliable theater equipment, work their schedule around a screening, or wait until streaming or physical media release. They have to rely on devices for closed captioning. These devices have been criticized for malfunctioning or not being charged by theater staff before use. To get the equipment functioning requires trips to the box office that causes them to miss portions of the movie. It is also very inconvenient to use these devices as it is uncomfortable having to be looking up and down from the device to the screen for the duration of the movie.

CIDNY sees Intro 2020 as a move in the right direction. Recently AMC Entertainment, one of the largest movie theater chains in the world, announced that it will expand on-screen captioning at 240 locations in the United States. This bill calls for motion picture theaters that have more than two screens and provide more than ten showings per week to provide open captioning for at least half of the showings of each movie per week. While we support this for large movie theaters, we

Re:

recognize that this may cause a burden for some small movie theaters. Because of this, we think they can be phased in, later.

The pandemic has opened up new ways of functioning that we did not see possible. There is so much more awareness to open captioning in various areas, which has benefited many people.

CIDNY supports the Law to amend the New York City charter and the administrative code concerning open captioning at motion picture theatres. CIDNY seeks that the New York City Council sign Intro 2020-2020 into Law.

**Annexed Is A Copy of Disabled In Action of
Metropolitan New York
Testimony to the NYC City Council
on Intro. 2020 for Open Captioning in Movie Theaters
Electronically submitted 12-4-2021 for
the hearing on 12-2-2021**

Please note that this copy contains the entire testimony
but is not an exact duplicate.



DISABLED IN ACTION OF METROPOLITAN NEW YORK
POST OFFICE BOX 1550
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www.disabledinaction.org

Testimony to the NYC City Council on Intro. 2020 for Open Captioning in Movie Theaters Electronically submitted 12-4-2021 for the hearing on 12-2-2021

Disabled In Action of Metropolitan NY is in favor of Intro. 2020 for open captioning in movie theaters with modifications and quick expansion to 100% of all movies.

By limiting open captioning requirements to 50% of movies being shown or any other number less than 100%, people who need open captioning are relegated to attending movies that may be held at inconvenient and limiting times or missing movies altogether. People pick movies based on many factors and limiting opening captioning to movies at certain times is adding one more. We go with friends, so everyone has to be available. Some people like to go early in the day, maybe at 11 or in the afternoon, or late at night, and they have to go on the day they are free. Also, if they have a certain movie in mind, it might not have open captioning at that time or it might be sold out.

What it amounts to is rationing for people with hearing disabilities.

Most people lose their hearing in adulthood, but some lose their hearing as children. Once a child who is Deaf or who has hearing loss is able to read well, they could enjoy children's movies in a theater if it had open captioning. Most of us remember going to movies with our parents and how much fun it was.

Many accommodations for people with disabilities have been fought over and refused over the years. DIA worked on wheelchair access in movie theaters 15 to 20 years ago and it is

still an ongoing issue in some theaters, especially ones with stadium seating. What if we cannot see from the back of the theater? What if the very front is too close? We are relegated to sitting in certain areas or spaces. Wheelchair users can have hearing loss, too! The closed captioning devices are impossible to use for some wheelchair users, but everyone can use open captioning. It is impossible for many people to use closed captioning devices in movie theaters and follow the dialogue as well as the visuals. You miss too much.

The public is all for captioning, at least the majority is. Now, so many people prefer to use captioning on their tv's and computers when they watch movies or attend Zoom meetings. It enhances understanding if you can't hear at all, have the sound turned off so as not to bother someone, if there are distracting sounds, or if you cannot catch all the dialogue.

Many times in a movie theater the music and sound effects compete with dialogue and open captioning will help everyone understand what is being said. In some theaters, especially at weekend evening and night showings, the audience is noisy. Again, open captioning would help.

Closed captioning for movie theaters is archaic and not practical for all who need it. Some people do not want to out themselves as having hearing loss, but they could be helped by having open captioning.

Lastly, if we think of other things that could be rationed, we all know it is ridiculous and unfair. Should we also ration pedestrian ramps at intersections because building owners or the City object? Should we ration accessible polling places because it is easier and most people do not need it? Should we ration access to some NYC Ferries because most people do not notice or care? Of course not!

Open captioning is the right thing to do to accommodate anyone who wants to watch a movie.

I heard one reason to ration open captioning is because theater owners do not want it. I heard another reason is because some movie goers do not want it. Disabled In Action has been fighting these kinds of objections for 51 years for many kinds of accommodations. But once the law or a court decision or settlement says it has to be done, people without disabilities find the usefulness in accommodations that we fought hard for. Take pedestrian ramps that are now used by everyone whether or not they have a disability and they are popular with people with suitcases and with dollies as well as with skateboarders, children on scooters, and caregivers with children in strollers.

There will always be naysayers to something new. But making accommodations mean that movie theaters will have more customers and the changes will be embraced by the public.

Disabled In Action is wholeheartedly in favor of amending Intro 2020 to say that 100% of movie times will have open captioning. If that is not possible when the bill goes into effect, the Council could set up a timeline for phasing it in over a few years.

Respectfully submitted,

Jean Ryan, President, Disabled In Action of Metropolitan New York (DIA)

jryan@disabledinaction.org

917-658-0760

December 4, 2021

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NEW YORK CITY COUNCIL: HEARING OF THE COMMITTEE ON CIVIL & HUMAN RIGHTS

Testimony for Int 2020: Local Law to amend open captioning at motion picture theaters

December 02, 2021

Thank you to the New York City Council for the opportunity to testify as part of the December 2nd hearing of the Committee on Civil & Human Rights. Below is written testimony on behalf of BAM (Brooklyn Academy of Music) as it relates to the passage of Int. 2020. As both a member of the CIG and the nation's oldest performing arts institution, BAM is deeply committed to providing accessibility measures for our audiences of over 700,000 annually. These efforts extend to the BAM Rose Cinemas (BRC), which showcase first-run and repertory films to local audiences for one of the lowest ticket prices in New York City.

While BAM is in strong support of equitable access to film screenings, we find the provisions within this bill create insurmountable operational challenges for art house cinemas. The scheduling provisions have at heart commercial multiplex operations, where additional screens give more flexibility to offer both open captioned and uncaptioned options during peak times for new releases. We'd like to share some of the operational challenges facing an independent operation such as the BAM Rose Cinemas. The BRC is a four-screen cinema, with one screen serving a specialty program of curated series and festivals, and the other three first run screens playing one film each for a week. We currently have accessibility devices available for all screenings that offer accessibility options (both audio description headset and caption glasses) and plans in place to upgrade that equipment further in the next year. BAM has always been able to accommodate every attendee that has requested one of those devices. BAM is also happy to include regular open caption screenings in the schedule.

Unfortunately, as it currently stands the bill's language around overlapping screenings is not feasible for our operations. BAM's default schedule screens a film 24 times per week. Per the proposed legislation, BAM would need to screen with open captions 6 times during the 7 shows that occur during the peak weekend time frame as defined in the bill. With three screens running new releases, our open caption screenings would overlap at almost all times with other open caption shows. The provision about screenings during the week is also not possible, 6 open caption screenings are required in a window where we can only fit 4 shows. Additionally, many of our smaller new releases and all our curated repertory program are films not distributed with open captioning, potentially leading to additional confusion and frustration between the types of programs and when we have open captions on offer as it might be only a small portion of our films.

The film exhibition industry is under serious threat after the prolonged pandemic and slow return of audiences to theaters, and we are concerned that these requirements could have outsized effect on smaller, art focused cinemas like BAM. Thank you for your attention and for your ongoing leadership and support.

Elizabeth Moreau
Co-Interim President, Associate VP and Senior Producer
emoreau@BAM.org

Jesse Trussell
Senior Programmer, Film
jtrussell@BAM.org

Jesse Green
Director of Cinema Operations, Film
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**EMPIRE STATE ASSOCIATION OF THE DEAF
INC.**

**AN ORGANIZATION FOR THE PROTECTION OF THE
INTERESTS OF THE DEAF**

Info@ESAD.org
(www.ESAD.org)



December 2, 2021

Dear New York City Councilmembers,

ESAD is a statewide organization that protects the interests of Deaf New Yorkers concerning accessibility and equity issues. We are advocating for the passage of the New York City Council bill “Int 2020” regarding movie theater captioning. The metro New York City area along with the rest of New York state constitute one of the largest Deaf and Hard of Hearing communities per capita in the country. Therefore, it is imperative that New York City take the lead in requiring movie theaters to provide on-screen captioning accessibility.

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NATO has proven over and over that their promises and excuses have literally fallen on “deaf ears” in dictating when and where captioned movie technology should be shown based on their perception of movie going audiences. This is clearly an ill-informed practice that has proven to be problematic for many Deaf and Hard of Hearing patrons.

The current closed captioning (CC) technology in New York City movie theaters often fail, are embarrassing to some to request, inconvenient to have to return, give some people headaches having to move their heads up and down from screen to device, and pose viral and germ transmission issues. These caption boxes or glasses either break down in the middle of a movie or the battery dies, necessitating Deaf movie patrons having to leave the theater and missing part of the movie to get a replacement. This is not acceptable.

Open Captions (OCs), in contrast, are better suited to movie enjoyment, less prone to failure and enable us to remain invisible and maintain our dignity, while also benefitting a wider segment of the public (seniors, the Deaf, those leading ESL, etc.). With COVID restrictions and concerns still in place, there is much less risk in not having to touch captioning equipment.

Please feel free to contact ESAD at your convenience should you have any questions or concerns. We look forward to a positive outcome with the passage of this all-important open captioning bill, “Int 2020” for New York City.

Sincerely,
ESAD Board of Directors

Dear Esteemed Council Members,

Thank you for scheduling this meeting.

Providing additional testimony regarding the requesting process.

My name is Deborah Dolgin Wolfe, Open Caption Coordinator for the Deaf Entertainment Access Foundation. This is a non-profit organization that was formed in January of 2013, with providing open caption accessibility at movie theaters.

D.E.A.F. has advocated on behalf of the Deaf/HOH community members by communicating with general managers and corporate theater chains to set up open caption screenings.

Prior to April 2018, our open caption requests were decided by general managers at theaters. Unfortunately, that responsibility was taken away from the general managers. All requests from that point on were to be submitted to corporate for approval and we were informed to submit requests to allow the corporate office a lead time of 5-7 days for scheduling purposes.

Formal letters were sent to theater chains in hopes of making the requesting process easier. Our requests went unanswered. Instead our organization received an automated email response to our requests to use their closed captioning equipment. The requesting process is unfair and the theater chains ignored our letters. That is their way of audism.

The requesting process is a failure and that the OC ordinance is needed as accessible access for Deaf/HOH movie patrons. We should not have to go through a requesting process. Movie theaters need to provide OC movies with the same access as hearing movie patrons.

80% of the organizations requested movies since 2017 were approved three days or less and 10% unanswered. We have scheduled over 600 movies.

The movie industry should have open captioned movies available across the board and that we be treated as equal.

D.E.A.F. hope that with today's testimony will guide the Council members of NYC, pass an ordinance to put an end of theater chains dictate what type of access Deaf/HOH community members should have and when. If this bill passes it will encourage lawmakers in other states nationwide to adopt similar requirements.

Thank you,
Deborah Dolgin Wolfe
Open Caption Coordinator
Deaf Entertainment Access Foundation

Dear Esteemed Council Members,

Thank you for scheduling this meeting.

My name is Fred Korman, President and Founder of Deaf Entertainment Access Foundation. This organization is a non-profit that was formed in January of 2013, with the premise of providing open caption accessibility at movie theaters.

D.E.A.F. has advocated on behalf of our Deaf/HOH community members by communicating with general managers and corporate theater chains to set up open caption screenings.

Before April 2018, our open caption requests were decided by general managers at theaters. Unfortunately, that responsibility was taken away from the general managers. All requests from that point on were to be submitted to corporate for approval.

Formal letters were sent to theater chains in hopes of making the requesting process easier. Our requests went unanswered. Instead our organization received an automated email response to our requests to use their closed captioning equipment.

This process made it frustrating, tiresome and extremely difficult to wait for approvals. Many organizations were at the mercy of this corporate process. Some approvals were approved a week before the movie, others a day before or on the day of the movie.

The ADA law states that movie theater chains are to provide working accessible closed captioning equipment that works properly. Theater chains have repeatedly violated our ADA rights, when equipment has failed and no other alternative means of accessibility are offered. Ticket vouchers are a pointless means of restitution, with the movie going experience already ruined.

Open captions provide the best technological advantage and the best viable option for the Deaf/HOH community and the general public. Due to COVID-19 closed captioning equipment became an issue due to infectious disease protocol.

Displaying open captions access cost the theater chains absolutely nothing, as they have Digital tracks that can be displayed on movies at the push of a button. But theater chains are more interested in profits than accessibility. They insult our Deaf/HOH communities by devaluing us as potential ticket buyers and our right to equal access to movie enjoyment under the ADA. We're clearly not important to the theater chains. Deaf/HOH community members are tired of being treated as second class citizens.

As of September 2021, major theater chains have started to show SOME new movie releases with open captions -- at last at SOME times of day and days of the week and sometimes for just the first two weeks of release. They also are arbitrarily choosing the cinemas showing movies with open captions.

Why only at selected theaters? Open captioned movies are still not widely accessible for the Deaf/HOH community, as they decide which new release movies should have open captioning. Many genres of movies that are still not being shown with open captions.

This is why Bill Int-2020 needs to be passed by the NYC Council, so that movie theaters in NYC provide access to all movies every day.

D.E.A.F. hope today's testimony will help the Council members of NYC, pass an ordinance to put an end of theater chains dictating what kind of access Deaf/HOH community members should have and when. If this bill passes it will encourage lawmakers in other cities and states nationwide to adopt similar requirements.

Lastly, three former board members of our group have passed away. D.E.A.F. made a promise to the parents of one board member, who was a fierce supporter and advocate of open caption access and that the organization will try its best to get a bill passed to honor her. Her name was Katrina White.

Thank you,
Fred Korman
President/Founder
Deaf Entertainment Access Foundation



DISABLED IN ACTION OF METROPOLITAN NEW YORK
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NEW YORK, NY 10159 TEL 646-504-4342
www.disabledinaction.org

**Testimony to the NYC City Council on Intro. 2020 for Open Captioning in Movie Theaters
Electronically submitted 12-4-2021 for the hearing on 12-2-2021**

Disabled In Action of Metropolitan NY is in favor of Intro. 2020 for open captioning in movie theaters with modifications and quick expansion to 100% of all movies.

By limiting open captioning requirements to 50% of movies being shown or any other number less than 100%, people who need open captioning are relegated to attending movies that may be held at inconvenient and limiting times or missing movies altogether. People pick movies based on many factors and limiting opening captioning to movies at certain times is adding one more. We go with friends, so everyone has to be available. Some people like to go early in the day, maybe at 11 or in the afternoon, or late at night, and they have to go on the day they are free. Also, if they have a certain movie in mind, it might not have open captioning at that time or it might be sold out.

What it amounts to is rationing for people with hearing disabilities.

Most people lose their hearing in adulthood, but some lose their hearing as children. Once a child who is Deaf or who has hearing loss is able to read well, they could enjoy children's movies in a theater if it had open captioning. Most of us remember going to movies with our parents and how much fun it was.

Many accommodations for people with disabilities have been fought over and refused over the years. DIA worked on wheelchair access in movie theaters 15 to 20 years ago and it is still an ongoing issue in some theaters, especially ones with stadium seating. What if we cannot see from the back of the theater? What if the very front is too close? We are relegated to sitting in certain areas or spaces. Wheelchair users can have hearing loss, too! The closed captioning devices are impossible to use for some wheelchair users, but everyone can use open captioning. It is impossible for many people to use closed captioning devices in movie theaters and follow the dialogue as well as the visuals. You miss too much.

The public is all for captioning, at least the majority is. Now, so many people prefer to use captioning on their tv's and computers when they watch movies or attend Zoom meetings. It enhances understanding if you can't hear at all, have the sound turned off so as not to bother someone, if there are distracting sounds, or if you cannot catch all the dialogue.

Many times in a movie theater the music and sound effects compete with dialogue and open captioning will help everyone understand what is being said. In some theaters, especially at weekend evening and night showings, the audience is noisy. Again, open captioning would help.

Closed captioning for movie theaters is archaic and not practical for all who need it. Some people do not want to out themselves as having hearing loss, but they could be helped by having open captioning.

Lastly, if we think of other things that could be rationed, we all know it is ridiculous and unfair. Should we also ration pedestrian ramps at intersections because building owners or the City object? Should we ration accessible polling places because it is easier and most people do not need it? Should we ration access to some NYC Ferries because most people do not notice or care? Of course not!

Open captioning is the right thing to do to accommodate anyone who wants to watch a movie.

I heard one reason to ration open captioning is because theater owners do not want it. I heard another reason is because some movie goers do not want it. Disabled In Action has been fighting these kinds of objections for 51 years for many kinds of accommodations. But once the law or a court decision or settlement says it has to be done, people without disabilities find the usefulness in accommodations that we fought hard for. Take pedestrian ramps that are now used by everyone whether or not they have a disability and they are popular with people with suitcases and with dollies as well as with skateboarders, children on scooters, and caregivers with children in strollers.

There will always be naysayers to something new. But making accommodations mean that movie theaters will have more customers and the changes will be embraced by the public.

Disabled In Action is wholeheartedly in favor of amending Intro 2020 to say that 100% of movie times will have open captioning. If that is not possible when the bill goes into effect, the Council could set up a timeline for phasing it in over a few years.

Respectfully submitted,

Jean Ryan, President, Disabled In Action of Metropolitan New York (DIA)

ryan@disabledinaction.org

917-658-0760

December 4, 2021

FILM FORUM

209 W. Houston St., New York, NY 10014

December 2, 2021

TO: NYC Council Committee on Civil and Human Rights
RE: Open captioning at motion picture theaters

I am submitting testimony today on behalf of Film Forum, a 4-screen nonprofit cinema in lower Manhattan. Film Forum has been a vital part of New York's cultural sector since our founding in 1970. Our mission is to exhibit the best in new independent films from around the world, and to present classic films from cinema history. Over our 51-year history, New Yorkers have been coming to our theater to see movies of social, cultural, and aesthetic value projected on screen with the best possible image and sound.

Film Forum has long been committed to making our movies accessible to people with hearing and visual impairments:

- Every screening offers infrared assistive listening devices.
- Neck loops are available for individuals to use their personal hearing devices with our enhanced audio system.
- Personal closed captioning devices are available for all screenings of films equipped with closed captioning.
- Audio description devices are available for all screenings equipped with audio description.

We recognize and support the spirit of the proposed legislation and are committed to increasing accessibility to movie-going for all. However, for a small-scale, independent, nonprofit cinema like Film Forum and likely other NYC art house cinemas, all of whom provide the city with cultural & educational value that stands apart from commercial blockbuster fare, the legislation as currently written presents both aesthetic and financial difficulties:

1. Open captioning is not produced with the same eye for visual integration as subtitles for foreign films. It appears as a block scroll at the bottom of the screen.
2. For viewers not in need of captions, open captioning competes with and distracts from the image. Watching a film with this system is not unlike looking at a painting whose lower 20% or so is marked with text explaining the art work.
3. Many moviegoers will find their aesthetic and immersive experience significantly compromised. Inevitably we will lose patrons at a time when we have just begun to draw audiences back to the theater, away from their at-home streaming services, after our 13-month closure during COVID.

We suggest:

1. Focus the new regulations on larger theaters with more than 6 screens whose films are strictly entertainment, and typically projected onto gigantic screens.
2. If the regulations are to cover smaller movie theaters, significantly reduce the percentage of open captioned screenings.
3. Exempt movies that don't run a full schedule over the course of a week. Cinemas such as ours often show movies for one, two or three days only.

Film Forum, like all theaters in New York, is just beginning to recover financially and stabilize. Your legislation could create a death blow to the cultural sector that specializes in cinema.

Sincerely,
Chad Bolton
General Manager

From: Jonathan Taylor <jontaylor5819@gmail.com>
Sent: Thursday, December 2, 2021 3:21 PM
To: Testimony; helen@helenrosenthal.com; Jerry A. BERGMAN; John Waldo
Subject: [EXTERNAL] Open captioned movies

The hearing was adjourned before I had the opportunity to make two additional comments:

1. We have been hearing for weeks about the many theaters in which AMC offers open captioned movies. During the hearing, I took a quick look at the Lincoln Square 13, my neighborhood theater, which I assume is one of the ones AMC is counting. Of the 59 showings today, one is open captioned, the 3:30 showing of House of Gucci.
2. The industry keeps touting voluntary compliance. We have seen that it has not worked with closed captioning. Theaters simply do not maintain and check equipment adequately.

Jon Taylor, President
NYC Chapter
Hearing Loss Association of America

From: Jonathan Taylor <jontaylor5819@gmail.com>
Sent: Friday, December 3, 2021 6:31 PM
To: Testimony; Jerry A. BERGMAN; helen@helenrosenthal.com; John Waldo
Subject: [EXTERNAL] Mr. Smith's comments

Yesterday, Mr. Smith said that if we want open captioning for a show, we can just call the theater and request it. I was very skeptical of that claim and decided to put it to the test. I called AMC Lincoln Square 13 today and asked to see Belfast on Monday, December 6 at 2:15, explaining that I have a profound hearing loss and requested OC. I was told that they have no OC showings of Belfast scheduled, that they wouldn't do it for me, and offered a CC device, which I declined, citing past experience.

Jon Taylor, President
NYC Chapter
Hearing Loss Association of America



**Statement of Position
National Association of Theatre Owners**

In Opposition to INT. 2020

**Before the Committee on Civil and Human Rights
New York City Council**

December 2, 2021

On behalf of the National Association of Theatre Owners (NATO), an association representing movie theaters throughout the United States, including in theatres in New York City, we respectfully submit these written comments in opposition of INT. 2020.

Movie theatres have been deeply impacted by the COVID-19 pandemic. In New York City, theatres were required to close for fifty weeks, and when allowed to reopen faced capacity restrictions that made breaking even, let alone turning a profit, nearly impossible.

With theatres closed or operating at reduced capacity, major studios delayed releasing new films or moved them to streaming services, which prolonged the economic impact of the shutdown since theatres had no new product to play when they welcomed back moviegoers.

Despite zero income during this period, theatres continued to face mounting fixed costs, such as taxes, rent, and City inspection fees. For instance, while the City theatres were still closed as per then Governor Cuomo's Executive Order, one company still had to pay for elevator and escalator inspections, despite having no patrons, at the cost of \$92,000. At the same time, the majority of New York City theatres received no financial assistance from federal, state, or municipal governments.

It will be a long road to recovery for the exhibition industry. As Hollywood begins to release new films, audiences are slowly coming back to see blockbusters on the big screen. But the industry is far from the record-breaking years it enjoyed pre-pandemic. For instance, this past Thanksgiving weekend, box office was down 46 percent compared to the same time frame in 2019.

Further, new research shows that 49 percent of consumers who attended movies pre-pandemic are no longer doing so. While theatres remain confident that most of these consumers will return to their auditoriums, it will continue to take time.

Simply put, the exhibition industry is still facing an existential crisis that threatens the job security of theatre employees and the businesses that rely on robust moviegoing to remain profitable. Any mandate that will further dampen customers' enthusiasm for the theatrical experience could force theatres in New York City to close permanently. We believe the requirements of this bill will exacerbate the difficult economic conditions facing theatres by subjecting them to further financial losses.

And this issue is not only about movie theatres. According to an Ernst and Young study commissioned by NATO, movie-night spending on other businesses in the U.S. amounted to \$5 billion in 2019 before the pandemic hit. New York City restaurants, retail stores, and other businesses will continue to suffer without the customers attracted by movie theatres.

As an industry, we remain committed to expanding access to all moviegoers. The industry has committed to ensuring access to every movie at any time through the use of captioning devices. Additionally, many companies are currently working on expanding their open captioning programs on a voluntary basis based on the needs of the markets they serve.

We look forward to further discussions with the advocates and members of the deaf and hard of hearing community develop a solution that works for theatres and moviegoers alike.

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Written Testimony of Raymond Smith in Opposition of INT-2020 Open Captioning
at Motion Picture Theatres Before the New York City Council Committee on Civil
and Human Rights Dec. 2, 2021

I wish to thank the Chairman and members of the Committee on Civil and Human Rights for providing me this opportunity to testify on behalf of the National Association of Theatre Owners (NATO).

Often legislation is necessary to ensure individuals or entities conduct themselves in a manner representative of societies expectations. In this instance, the proposed legislation is both unnecessary and unlikely to create a positive impact on the ultimate consumers or the impacted business community. The movie theatre industry has historically worked directly with the deaf and hard of hearing community to ensure access to our goods and services. In the 1990s, NATO met with consumers and advocates from the deaf and hard of hearing community who expressed a desire for more open captioned film product since no personal closed captioning devices existed at the time. As a result of these collaborations, NATO successfully lobbied the major film studios to both produce and widely distribute more open captioned films. In the early 2000s, with the emergence of new technologies, NATO once again met with consumers and advocates to discuss the development of personal captioning technology to provide access to every show at any time. As a result of this collaboration, the deaf and hard of hearing advocates made it clear that they preferred personal captioning systems to enable them access to any show at any show time. Consequently, NATO sought out and encouraged technology companies to develop personal closed captioning devices. Once multiple devices were developed, the industry invited advocates and end users to test them and provide direct feedback to the manufacturers so that the products could improve and meet the expectations of the ultimate users. In conjunction with these efforts, NATO met with the major film studios and technology companies to develop both open and closed captioning standards for the developing digital projection systems. Combined, these efforts led to nationwide rollouts of personal captioning systems beginning in 2012, which was four years before the United States Department of Justice (“DOJ”) proposed closed captioning regulations.

Moreover, when the DOJ issued its proposed personal captioning system regulations, NATO once again engaged with the deaf and hard of hearing advocates to ensure that the DOJ regulations would be consistent with the expectations of the theatre industry and the deaf and hard of hearing community. Based on that collaboration, a set of recommendations were developed and codified in a Joint Accord between NATO and the National Association of the Deaf, the Hearing Loss Association of America, the Association of Late Deafened Adults, and The Alexander Graham Bell Association. These recommendations were submitted to the DOJ, which accepted the majority of same. The Joint Accord of 2014 once again illustrated the theatre industry's efforts to meet the needs and expectations of the deaf and hard of hearing community. Moreover, the Joint Accord reflected that the advocates elected personal closed captioning systems as their primary access preference. However, these discussions also led to the advocates contending that there will always be some consumers that prefer open captioned shows. NATO agreed that its members would develop their own open caption programs which included scheduled shows as well as consumers ability to request open captioned shows. Accordingly, the theatre industry spent millions of dollars to help implement these goals and all New York City theatres are fully compliant with federal standards. Personal captioning systems remain the preferred access technology for the majority of individuals that are deaf and hard of hearing and are routinely used at movie theatres across the country. Moreover, open captioned shows, both scheduled and on request, are available across the country based on market needs and consumer demands.

As an industry, we remain committed to expanding access to all moviegoers and will work hard to ensure such access, including evaluating consumer demands and greater access to open captioned programming in New York City. We are actively engaged with the advocates and remain confident that, as we have done many times in the past, we will be able to reach an accord that will mutually benefit the ultimate consumers and the theatre industry. As such, INT-2020 is unnecessary and its mandates far exceed the market or even consumer demands for open captioned programming in New York City and we oppose same.

I look forward to answering any questions you have.



Written Testimony of Doug Murdoch
in Opposition of
INT-2020 Open Captioning at Motion Picture Theatres
Before the New York City Council Committee on Civil and Human Rights
Dec. 2, 2021

On behalf of Mid-Atlantic NATO, a regional affiliate of the National Association of Theatre Owners, I respectfully submit these written comments in opposition to New York Council INT-2020.

While the financial impact of Open Captioning in Movie Theatres, and the unnecessary nature of this proposed bill will be addressed by my theatre colleagues, I would like to comment on the apparently unworkable parameters of the bill.

The bill calls for certain movie theatres to provide open captioning for at least half of showings of each movie per week. On the surface, that sounds like a simple equation. However, the bill goes further to require that at least half of these open captioned showings be provided during designated peak movie attendance hours defined as “a motion picture showing that begins after 5:59 p.m. and finishes before 11:01 p.m. on Friday; or a motion picture showing that begins after 11:59 a.m. and finishes before 11:01 p.m. on Saturday or Sunday.” Further, the bill would require that “at least half of the scheduled showings that are scheduled outside of peak movie attendance hours shall start after 5:59 p.m. and finish before 11:01 p.m. on Mondays, Tuesdays, Wednesdays or Thursdays.”

Mathematically, these parameters are impractical if not impossible for most if not all films.

Let’s look at an example of a typical 2-hour movie, with 15 minutes of previews, and a 30-minute intermission. As illustrated, the film would play five shows per day, yielding 35 shows in a week.

Friday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15
Saturday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15
Sunday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15
Monday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15
Tuesday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15
Wednesday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15
Thursday	Start	11:00	1:45	4:30	7:15	10:00
	Finish	1:15	4:00	6:45	9:30	12:15

- Based on the parameters of the bill, 18 of the film’s 35 weekly showtimes would be required to play in open captioning.
- 9 of these 18 would be required to play during the designated peak period (highlighted here in yellow), when there are only 7 showtimes.
- At least half of the remaining showtimes would be required on weekdays during the period highlighted in aqua when there are just 4 showtimes.

In the end, the requirement to play these 14 open captioned shows (40% of the total week) within just 11 time slots (31% of the total week) would be impossible. The remaining 4 showtimes (11%) would be left to play during 69% of the week.

Similar unworkable results occur whether a movie is just 90-minutes, or even 3-hours, and if played on multiple screens. While the overall number of shows would change, mathematically the results would prove challenging. Additional examples can be provided upon request.

To further complicate matters, the bill also calls to require “to the extent possible, no showing of a motion picture with open captioning shall overlap with another showing of a motion picture with open captioning, and no showing of a motion picture with open movie captioning shall overlap with another showing of the same motion picture with open movie captioning.

This “non-overlap clause” would be totally confusing and impossible when put to use in a multiple screen movie theatre complex.

While we understand the intent of the legislation is to provide additional open captioned showings, as outlined by our partners, we believe this legislation would be financially devastating to the theatres, the need is unnecessary, and the parameters outlined above would make it impossible to do so in a practical manner.

We urge you to vote “No” on INT-2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Doug Murdoch". The signature is fluid and cursive, with a large loop at the end.

Doug Murdoch, Executive Director
Mid-Atlantic NATO (National Association of Theatre Owners), Inc.
Office 410-252-5010 – Cell 443-895-1446
doug@MidAtlanticNATO.com



Open Captioning Data Summary:

Regal Cinemas – New York DMA

- 28 theatres total in New York DMA
- OC with blockbusters – a minimum of at least 1 showtime per day
- OC available upon request through website or in theatre
- 6,093 OC showtimes
- Average 6 attendees per show
- **Overall: 4.7% capacity, or 95.3% seats unsold**

Regal Cinemas – New York City

- 318 OC showtimes
- Average 8 attendees per show
- **Overall: 5.4% occupancy, or 94.6% seats unsold**



memo

from: Amanda Perez
date: November 30, 2021

Hello Chair Eugene and members of the committee. Thank you for the opportunity to testify today. My name is Amanda Perez, I am General Manager at the AMC Kips Bay 15 Movie Theater location.

As you may be aware, AMC and the movie theater industry in New York City are still in the process of recovering from one of the most challenging times in modern history. Movie theaters in New York City were closed for fifty weeks during the COVID-19 pandemic, and once our theaters were allowed to reopen, we were limited by capacity restrictions that remained in place until almost June of this year. To state the obvious, AMC's New York City theaters earned no income during this 12-month period and we are still in the beginning stages of the process of returning to pre-pandemic numbers.

Despite the challenges we still face as an industry, AMC has taken substantial steps to provide open caption showings in our Greater New York City Market. Currently, sixteen of AMC's theatres in the Greater New York City market participate in our Open Caption National Program. From October 1 to November 11 of this year, our sixteen locations had 914 open caption shows. These 914 open captions showings averaged 12 guests per show, which is approximately 5.8% of occupancy, leaving 94.8% of the seats for these showings unsold. Additionally, 122 of the 914 showtimes sold zero tickets, 266 of the 914 showtimes sold 1-5 tickets, and none of the 914 showtimes sold out.

AMC's New York City theaters look forward to continuing our work with the deaf and hard of hearing community to respond to the demand for open caption showings. However we feel that Int-2020, by creating an arbitrary 50% requirement for open caption showings, jeopardizes the recovery of the movie theater industry in one of the most important markets in the country.

Thank you again for your time and the opportunity to testify today.

I've always loved going to the movies. Sadly, I went for years without going to a movie theater because of the frustration from using closed caption devices. Then last June, a local CO HLAA member arranged an open captioned showing of "In the Heights." I was so excited to attend my first open captioned movie, and it didn't disappoint. A couple weeks later, that same Cinemark theater announced that it would start having open captioned showings of all its movies a couple times a week. I have gone every week since. Unfortunately, this has been a trial which could end at the end of the year. Please vote to make open captions required at all theaters so that everyone can enjoy the experience of watching movies on the big screen.

Ariana Combs

Testimony for NYC Bill for Open Captions Hearing for Ordinance Int 2020-2020

New York City Council and Members of the Committee on Civil and Human Rights: Thank you for letting me share my testimony today. I would like to talk about several issues I have experienced with moviegoing.

One of these issues is that the batteries for the devices may not be charged for the entire movie, and the patron will have to miss part of the movie to get a charged replacement. This involves both devices that are for closed captioning and also FM systems, that do not allow for closed captions. It has been my experience on multiple occasions that the batteries for these devices are not charged properly and/or theater employees do not check to see if the batteries are working prior to giving these devices to a patron. This does not allow the patron to have an enjoyable moviegoing experience and is very frustrating when it occurs on numerous outings to a movie theater.

Another issue that I have experienced all too often is that not all employees are fully trained on how Closed-Captioned devices operate, making it frustrating to hunt for a knowledgeable employee. A movie goer can miss anywhere from 10 to 45 minutes of the movie to get the Closed-Captioned device repaired or replaced. This is extremely frustrating when it happens on multiple occasions. I have had this happen to me at least two dozen times at a movie theater. I always call the theater ahead of time to make sure the devices are working, and then I ask again once I arrive. I have had movie theater employees tell me that they could not turn on the captions halfway through the movie. If I am paying around \$15 to \$20 to see a movie, I want the entire movie captioned. Every time this has happened, I have left the theater. There are times where I have driven 30 minutes to an hour to see a movie, called ahead, checked again when I arrived, and the device still did not work properly. I have been offered free passes to another movie in the future, but since I could not see the movie in its entirety with closed captions when I originally went to the movie, I have wasted my time and wasted gasoline going to a movie where I could not fully enjoy it. I would like to point out that this would be analogous to a situation where a person who does not have a hearing loss and would go to a movie and the sound was not on, and 10-45 minutes of the movie would be missed trying to find someone to turn on the sound, and on top of everything, this would happen on multiple occasions. This would be equally frustrating, and people would stop going to the movies. And this would be amount to much more than a 40% loss of revenue for the movie industry. My guess is that this would be closer to a 90% loss of revenue.

I also had a bad experience with an independent film theater where the movie was not captioned, and the FM device did not work. The employees at customer service did not believe me when I told them the FM device did not work. I had a friend who did not have a hearing loss show them that the device did not work, and they did not believe my friend either. I was not happy, and I reported this to the manager. I have not returned to this theater.

The movie industry says they want to work with the Deaf/deaf/hard of hearing community, but from what I have experienced, this has definitely not been the case. I am sure members of this committee would not like it if they experienced as many mishaps at a movie theater as those of us in the Deaf/deaf/hard of hearing community have. In my opinion, the movie industry thinks it is doing the Deaf/deaf/hard of hearing community a service by providing closed captioning equipment and/or FM systems. But in my experience, these never work like they should. I would like to be able to go to the movies with my friends and family. I have friends and family in the New York City area, and if I visit them and they want to go to the movies, I should be able to enjoy the same activity as they do without any issues, problems, and technical difficulties.

Going to the movies should be fun for everyone. This included the Deaf/deaf and hard of hearing. We like movies just like everyone else. However, there have been too many times where the closed captioning equipment has not worked, and I have had to leave the theater, and was denied the pleasure of going to the movies with friends and family. It is very frustrating that I cannot enjoy a night at the movies with my friends and family. This is not right and does not provide the Deaf/deaf/hard of hearing with an equal access and the opportunity to enjoy the movie going experience. We in the Deaf/deaf/hard of hearing community like to view movies just like the hearing population and should have the same access without any issues just like everyone else does. Why should we be left out just because we cannot hear and the equipment that has been provided is in constant disrepair, and most of the time does not work? Every time I go to the movies, I am on edge and hoping that the closed captioning equipment will work. This should not be the case and is a prime example of the movie industry's disregard for 20% of the population. If the movie industry is concerned about loss of revenue, the Deaf/deaf/hard of hearing should be included in the moviegoing experience instead of excluded like they are now. I would guess that instead of a 40% loss in revenue, that there would be an increase in revenue. If the movie theaters can have ramps and elevators for the motion disabled, so this part of the population is able to gain access to a movie theater, the movie industry should also provide equal access for the Deaf/deaf/hard of hearing at the movies by providing Open Captions instead of closed captioning equipment that continually does not work properly. This is not right and is not fair and shows complete disregard for 20% of the population by not including them. And this is definitely a human rights issue, because if Open Captions are not provided in movies, and the equipment for closed captions in the movies continually, the Civil and Human Rights of the Deaf/deaf/hard of hearing are not counted and ignored, and this is not right and not fair to not include 20% of the population. You have an accessibility access statement on your NYC Council Website: <https://council.nyc.gov/accessibility-statement/> If the NYC Council has an Accessibility Statement on their web page, this accessibility should be expanded to include accessibility for all in the Movie Theaters, which includes the Deaf/deaf/hard of hearing population. Thank you for reading my testimony.

Audrey Dessauer

Dear Members of the Committee on Civil and Human Rights:

My name is Debbie Mohney, I am from Boulder, CO. I am writing to you in favor of Open Captioning at Motion Picture Theatres.

I have had hearing loss since birth. I learned to read at an early age thanks to my grandmother who had been a teacher. What we didn't know was how valuable that would be to my development as I went through school with my hearing loss.

I attended movies from a young age, and like all kids, I enjoyed watching these movies with my hearing friends. I remember many movies where I had to ask my friends what was being said. Sometimes, they would say, I'll tell you later. Suffice it to say, I don't remember too many of those times where they could repeat to me what was being said in the movie.

I slowly stopped attending movies as an adult, and several years went by without going to the theater. When my son was little, we started taking him to the movies. Do you know how hard it is to lip read cartoon characters? Pretty darn near impossible.

Imagine my joy when I was finally able to attend an open captioned movie. There was a non-profit organization called Tripod that made arrangements with some of the movie studios to obtain a few limited copies of the films and burn captions directly on to the films. These films traveled around the country, and the first one of these films to make it to Colorado shown in South Denver. It was Titanic in 1997. I sat mesmerized throughout the whole movie, barely able to contain my joy.

I looked for more opportunities to attend these open captioned movies, but they did not happen very often.

In 2003, when the open captioned Pirates of the Caribbean movie came out, I was able to make arrangements for it to come to Louisville, CO and I contacted the Boulder Daily Camera. They wrote an article about the movie showing. I had seen the movie twice before the open captioned showing because we couldn't wait. When I saw the movie with captions, I was floored. I had missed the theme of "Parley" throughout the entire movie. I felt like I had made up my own plot due to not understanding the words without the captions.

About 10 years ago, there were lawsuits in Washington and California to get closed captioning in the theaters. The result was a mandate by the FCC, in which movie theaters across the country agreed to install closed captioning systems.

I was one of the people who expressed gratitude for the closed caption systems. I thanked the theaters over and over for accommodating my hearing loss. What happened is that I had to wear heavy captioned glasses, which gave me headaches. I started to avoid the theaters that had the glasses and find the ones that have the CC cup holder devices. The cup holder devices also have problems, they swivel freely from the base or the top, they are top heavy and fall over. Or I can't get them positioned in the right spot for watching the movie. I have held the cupholder device several times throughout a whole movie.

Both of these systems quickly showed their shortcomings. These devices routinely have to have their batteries charged. If left uncharged, they will stop suddenly during the movie, or not come on at all in the theater. Other times, the captions fail to transmit to the devices, sometimes due to not being turned on, or perhaps turned on in one theater but not another. Routinely, the captions skip over parts of the movie or key words.

All of this results in having to leave the theater and seek out the manager or attendant to have the device replaced. I have lost count of how many movies I've missed from 10 – 15 minutes or more. Meanwhile the other people in the movie have continued to enjoy the movie while I'm dealing with equipment failure. Every time I have to leave the theater, I pick up my belongings because I can't leave them alone in the theater. I have to disturb people when I leave the theater.

Nationally, there have been rules that govern and require the use of captions in federal workplaces or educational settings. National Parks are required to display open captions on their films.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5214590/> is a document that outlines "Video Captions Benefit Everyone" written by Morton Ann Gernsbacher.

The abstract outlines that "Video captions, also known as same-language subtitles, benefit everyone who watches videos (children, adolescents, college students, and adults). More than 100 empirical studies document that captioning a video improves comprehension of, attention to, and memory for the video. Captions are particularly beneficial for persons watching videos in their non-native language, for children and adults learning to read, and for persons who are D/deaf or hard of hearing. However, despite U.S. laws, which require captioning in most workplace and educational contexts, many video audiences and video creators are naïve about the legal mandate to caption, much less the empirical benefit of captions."

According to this abstract:

- Displaying the Captions on the screen improves reading skills, boosts written and spoken vocabulary, increases attention to lectures, enhances pronunciation in second language learners, and raises literacy rates. For all ages.
- There are more than 100 empirical studies listed in the appendix of this article. These studies report benefits to a wide variety of participants regarding content of videos.
- Eye-movement studies document that captions can be read easily, effortlessly, and integrated to the soundtrack of the film, and verbatim captions are effective.
- These studies show that captions benefit everyone who watches videos, from children to older adults. Watching videos with same-language captions leads to significantly better comprehension.
- Early 20th Century Silent Movies leveled the playing field with captions for everyone.
- Reaping the benefits of captions is impeded by erroneous attitudes, many people think that captions are intended for, and only beneficial, to people who are D/deaf.

I submit that the bill for Open Captioning at Motion Picture Theatres in New York City is beneficial to those of us who have hearing loss, but also anyone who watches movies with Open Captions. As I plan to visit New York City, I would like to have the option to attend an Open Caption Movie while I am there.

Respectfully submitted,
Debbie Mohny
Boulder, Colorado

From: Debra Cerruti <debcerruti@aol.com>
Sent: Sunday, November 28, 2021 5:42 PM
To: Testimony
Subject: [EXTERNAL] OPEN Captioning in Movie theaters

To whom this may concern:

I am unable to attend the City Council's Committee on Civil and Human Rights' virtual hearing at 10 AM on Thursday, December 2, via Zoom-Webinar, regarding Int. 2020, which would require cinemas to show movies with open captioning.

so please hear my testimony here.

I am an individual - a SAG-AFTRA-AEA actress, teacher, birth doula and art enthusiast - who has profound hearing loss. Years ago I stopped going to my SAG film viewings with cast talk backs, because I couldn't understand the film's dialogue due to my severe hearing deficit (even with hearing aids). And those particular union or studio-sponsored venues never had captions, either open or via device - available to assist. In public film houses, sometimes captioning devices are available for the films I want to see, sometimes not. Often these devices malfunction causing me to miss part of the film when trying to rectify the problem. Open Caption viewing for some film sessions would be an absolute godsend.

Thank you for seriously considering my petition for this very significant means of accessibility for the aurally handicapped.

Thank you,
Debra Cerruti

Today is a gift.
That's why we call it the present.

My name is Jamie Berke and I am the (deaf) creator of the petition for open captions at change.org/ocmoviesnow. Open captions are not a sexy topic, but this petition has managed to grow slowly but steadily since it was started in April 2019. As I write this, it is closing in on 25,000 signatures internationally.

As owner, I can download signatures and count. Right now the current breakdown is:

- Internationally: 24,325
- New York State: 1,583
- New York City: 590

This shows that demand and support for open captions exists in New York City and elsewhere.

An increasing number of the signatures are coming from young hearing people who want subtitles at movie theaters.

Open captions are like any new product; it takes time to build a customer base. AMC only promoted open captions once, when *Eternals* came out, because that movie had a deaf actress, Lauren Ridloff.

A law is needed to ensure that there is equal access to the most popular movies. Saturday is the most popular day of the week for movies. Thanksgiving weekend, Encanto was the #1 movie. Did New York City theaters offer open captioned screenings of Encanto on Saturday, November 27? No, they did not. What about Sunday, November 28? Only one NYC theater (AMC Lincoln Square) had an OC screening of Encanto.

From: Katherine Bouton <katherinebouton@gmail.com>
Sent: Wednesday, December 1, 2021 11:37 AM
To: Testimony
Subject: [EXTERNAL] INT 2020

To Whom It May Concern,

I am writing to urge the City Council to pass Int 2020, which would provide open captioning in movie theaters. I leave the details to others to work out, but as someone who has severe to profound hearing loss -- and who loves movies -- I urge open captions.

The devices now used in theaters -- cup-holder caption devices or eyeglasses -- are unreliable, uncomfortable, unhygienic, and, much of the time, unusable. Problems include maintenance issues, making sure the captions match the movie being shown, and general discomfort to the user. I have often gone back to the theater concierge desk repeatedly before giving up altogether.

At this point I no longer go to movie theaters, unless the movie being shown is a foreign film with captions. I watch all movies through apps on my laptop, where all are captioned.

Please pass this bill, or something similar, and allow the many thousands of New Yorkers with hearing loss to enjoy movies again.

Katherine Bouton

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KATHERINE BOUTON

Blog: [Smart Hearing](#)

Author: [Amazon.com](#),

[Hearing Loss Association of America, NYC Chapter](#)

-

From: Marilyn Morse Weinhouse <xweinhouse@aol.com>
Sent: Monday, November 29, 2021 2:53 AM
To: Testimony
Subject: [EXTERNAL] Open Caption Bill

Hello,

I would like to comment on the upcoming Open Caption Bill. I have a severe hearing loss and cannot enjoy TV or movies without captions. I have tried the closed captioning devices:

The Sony Glasses are so uncomfortable that by the end of the movie I have to hold them off of the bridge of my nose.

The device that fits into the cup holder has many problems. Often they don't stay in position and I have to hold it to keep it from spinning. Sometimes they don't work at all and I have to leave the movie to get another one. And of course, there is the the concern about germs on both of these devices.

I feel that Deaf and hard-of-hearing should have equal access to enjoy movies. Open Captions is the solution!

Thank you,

Marilyn Weinhouse

Marilyn Morse Weinhouse

Hearing Loss Association of America - Denver Chapter

[Like us on Facebook](#)

www.hearinglossdenver.org

Dear distinguished members of the Committee on Civil and Human Rights, Council Woman Helen K. Rosenthal and all other co-sponsors who put their names behind [INT 2020-2020](#),

Hope all is well. I am a non-immigrant-turned-immigrant-turned citizen to NYC. English is not my first language. By the time I got admitted to Columbia University Graduate School of Journalism in 2007, I had a score of 110 out of 120 for Test of English as a Foreign Language (TOEFL). That's considered a medium score for someone who spent two decades plus in China and didn't spend a lot of time to prepare for the exam due to heavy workload. Columbia Journalism School's requirement has been 114 out of 120 per <https://journalism.columbia.edu/frequently-asked-questions>. I got into Columbia anyways probably because of my other merits. For the past 14 years living in NYC, I believe my English has greatly improved since and must be able to achieve 114 by now. If somebody pays me to retake the TOEFL test for myself, I may even get 120 out of 120. But no need to re-test.

What I am trying to say though is 120 out of 120 may still not be enough to fully comprehend all the details that a movie means to show to its audience. For example, there are so many proper nouns in sci-fi movies, such as Star Wars, that build up a vast universe. There are various accents in America, not to mention the British accents that many find to be sexy. There are also tons of synonyms to words and expressions used in movie scripts that I and others may not know upon first hearing them without the aid from subtitles. We would have to resort to Wikipedia or read movie reviews afterwards to follow all the nuances. Btw, I don't like using Wikipedia which is not a reliable source. So a movie with subtitles actually make it more authoritative as a primary source of info.

To really encourage foreigners to assimilate to NYC or even the United States, we really need open captions in all movie theaters to help increase our vocabulary. Just listening without the right spelling may still impede our ability to look up the words in Merriam Webster dictionary or Urban Dictionary. All the streaming services, such as Netflix, HBOMax, Amazon Prime, etc have open captions. I just can't fathom why movie theaters are

still so old school without on-screen subtitles. Obviously, the hearing impaired audience also need open captions too. People are sick and tired of the heavy and clunky close captioning devices.

I have of course disagreements from one particular Irish American colleague who says subtitles are distractions. But even her kids have complained about English spoken with a Northern Irish accent. So what are we pretending? I bet there are things that even they as native speakers couldn't pick up on the first attempt. I say this because I am a freelance journalist who loves observing. Maybe a showing without subtitles could force people to pay more attention, but really, not all movies can attract people's attention in the same way. Not to mention distractions from our cellphones that are meant to be turned silent or off during the showtime.

Unless people simply don't care about the nuances, I can see why they don't need subtitles. I am not good at arguing logically, but I hope you will vote yes for this bill that Ms. Rosenthal diligently put together. She is term limited and won't be here in the city council next year. I can't even get the views on this matter from Ms. Julie Won who won the seat to my district. This bill may well be THE BILL that defines Ms. Rosenthal's legacy to the immigrants of this city. I love her for this final act and hope you will too. Many thanks for your time and consideration.

Max Kwok

From: miriam fisher <fisherfreund@hotmail.com>
Sent: Monday, November 29, 2021 9:46 PM
To: Testimony
Subject: [EXTERNAL] Open captions in movie theaters Int. 2020 City Council Hearing Dec 2 2021, 10 am

I am advocating for open captions on movies in public theaters in NYC, following models in other cities and countries, to fully include people with hearing impairments in participation in cultural events according to ADA guidelines. I wear two hearing aids and have used varying types technological assistance, including cell phones but with difficulties.

But cells can disturb other audience members with their illumination and require frequent checks to follow dialogue.

I have requested closed captions at public libraries and senior centers which receive public money and have heard objections from those who find it distracting though they will watch subtitles in foreign movies without protest. One facilitator at a Senior Center ran out of the room when the option for captions came on the screen and I made a request. I had to involve help from the NYC Dept of Aging, as the Center received public money. A similar situation happened at a NYC public library until I again reminded them they were receiving public money and denying reasonable accommodations to people with disabilities

Often after captions are introduced many remark at how they can more easily follow words or segments that they couldn't previously and note that song lyrics are especially hard to follow and become available captions

Captions are also an aid for other segments of the larger population, those who speak English as a foreign language, children learning to read and honing their skills.

Captions are the vector that can integrate people with the larger world of social events and media, that so many without hearing struggles take for granted.

Miriam Fisher

W21st St
NY NY 10011-3038

I support requiring more open captions at movie theaters because it makes them more accessible to Deaf/hard-of-hearing people, English language learners, and many more groups. Closed caption systems are dysfunctional and require touching during a pandemic.

Nicholas Elizabeth Faby

Due to illness, I lost my hearing recently and I am now appalled by the way our society is oblivious to the communication difficulties for people with this “invisible” disability.

The pandemic has only highlighted the need for more work to be done to provide accessibility and equity.

Closed captioning is not a solution - I have several movie patrons actually complaining of my using those devices since it is distracting for them. And of course, they often break and are not hygienic.

I would like to be able to go to the movies like everyone - open captions is a simple solution that will benefit a large population.

Rosane Volchan O'Connor

I am writing to let you know that it would be a joy beyond words if I could walk into a theatre and have all films offer open captioning! As of now, I only attend cinema theatres that provide devices that allow me to see captions. I wear two large old-fashioned hearing aids, but they work great. However, I do have a profound hearing loss and even with my wonderful hearing aids, I'm not able to hear actors speaking.

If your New York City Council could pass a law requiring all of its theatres to have captioned films, can you imagine how those of us who live in Rochester, NY, and other cities across the country could cite your city as an example? If NYC can do it; we could all say, "Let's do it in on our city, too!"

Thank you,

Susan L. Miller
Buckthorn Run
Victor, NY 14564

Hello,

I'm Svetlana Kouznetsova, a NY resident who is deaf.

I'm also an accessibility consultant:

<https://about.me/svetlanakouznetsova/>

Captioning access is one of my several specializations.

My TEDx talk explains about the importance of high quality captions for millions of deaf and hard of hearing people and how it increases ROI and audience for businesses:

<https://youtu.be/ngKp9MqUGj8>

I also did a survey a few years ago with 5,000 people - both deaf and hearing people. The overwhelming majority of them said they prefer OPEN captions on the screen at theaters:

<https://audio-accessibility.com/news/2018/04/movie-theater-captioning-access-survey-results/>

Lastly, please don't make a phone number field mandatory. Not everyone can make or receive voice calls. Many people don't like talking on the phone - regardless of their hearing status. Please make the phone number optional, but not mandatory. The article explains in detail why:

<https://www.linkedin.com/pulse/note-businesses-why-voice-phone-calls-thing-past-kouznetsova/>

Thanks,
Sveta

I am Terri Shirley. I am expressing my individual thoughts for the Int 2020-2020 bill hearing on Dec. 2, 2021.

I was born hearing and became profoundly deaf at 15 ½ years old from a fall roller skating. I am highly functioning in this hearing world with assistance from a cochlear implant and lipreading.

For almost two decades, the movie theaters have forced me to use Closed Caption(CC) glasses or cupholder devices that fail about 85% of the time for me. The failures hurt my family and me dearly. Even if CC devices are in working order, their captioning will never be in the line of sight and in sync with audio because I cannot simultaneously look at the CC device and the movie screen. CC devices are for **the convenience of the hearing population** so as not to hamper their movie experience.

For two decades, my mother-in-law refused to understand my need to have captioning on her TV to fully enjoy Christmas movies with the family. As a result, I felt hurt and left out. It was not until she lost her hearing from medications that she discovered how captions connected her to this hearing world.

Open Captions is the new technology, and it is here now. I fully support Int 2020-2020 bill now and don't wait until you or someone you love may need captions to keep them connected to this world designed for the hearing. I hope NYC will plan to increase theater locations and OC showings in consistent increments of time, so NYC is more accessible to New Yorkers and their visitors. Captions are for everyone, not just deaf and hard of hearing; people learning English, other disabilities, and hearing people too!

Thank you,
Terri Shirley

Re: NYC Int 2020-2020; Open Caption Requirement for Movie Theaters

Position: Support more open captions because closed caption equipment:

- Is faulty
- Has questionable sanitation
- Is cumbersome and gives a suboptimal movie experience (see photos at bottom)
- Can partially block the view of other movie patrons

Faulty Closed Caption Equipment

At least 25-33% of the time,

I experience faulty equipment during the movie, due to:

1. Battery dying (my photo to left, while I was waiting to exchange devices)
2. Device playing the wrong captions (set for wrong auditorium)

There is no way to verify the equipment is working properly until the feature movie begins. Captions are available for the feature movie, and rarely for the movie previews.

To exchange the non-working device, I must:

1. Leave the movie, taking deep breaths to try to subside my frustration.
2. Wait for a ticketing staff person, who then calls a manager.
3. Wait for the manager, who has access to the equipment.

Staff response:

- One particularly unsettling movie employee's response, "Try this one." Those words told me he

was not confident in their internal procedures that a second device would work any better.

- Employees will usually apologize that the equipment didn't work.
- Employees have never acknowledged that I have missed part of the movie, nor the

inconvenience of exchanging equipment.

- Written letters are ineffective. No response.

Wynne Whyman, Colorado, December 5, 2021

Which would you prefer? (examples from the web)

Open Captions Closed captions on Captiview equipment

(and only if the device works...)



November 29, 2021

Hon. Dr. Mathieu Eugene
Chairman
Committee on Civil and Human Rights
New York City Council
900 Rogers Avenue
Brooklyn, NY 11226

Re: INT-2020 – open captioning

Dear Chairman Eugene:

I hope that you and your family enjoyed the Thanksgiving holiday. I am writing on behalf of NATO, Theatre Owners of New York State, Inc., a not-for-profit trade association representing movie theatres. We want all audience members to feel safe and welcome as they return to the cinema, including and especially members of the deaf and hard of hearing community. However, we oppose INT-2020 because the bill will be damaging economically for theatres, it is unnecessary, and it is impractical. We respectfully request that INT-2020 be withdrawn from consideration from the December 2nd Committee on Civil and Human Rights agenda so that we can continue our conversations with the sponsor and advocates from the deaf and hard of hearing community to find a better approach that works for all stakeholders.

I) INT-2020 Will Financially Harm Movie Theatres in NYC

While we appreciate the noble intentions behind INT-2020, we believe that the requirements of the bill itself would exacerbate the difficult economic conditions facing theatres by subjecting them to further financial losses. Theatres are already trying to recover from being decimated by the pandemic, and data show that audiences that are not deaf and hard of hearing do not like open captioning, and either request refunds or stay home. A new study by Quorum on the state of the movie theatre industry found that about 49% of moviegoers who purchased tickets before the pandemic are no longer buying tickets, and approximately 8% of them are likely permanently lost. As our data show, audiences that are not deaf or hard of hearing will not turnout if half of the films shown are in the open caption format. We do not need another reason for patrons to stay home. This will result in a large loss in revenue, which will not be offset by deaf and hard of hearing audiences, or other audiences that might value open captioning.

As you may know, the movie theatres in New York City were closed for fifty weeks due to the pandemic. Once they reopened, there were capacity restrictions that remained in place until May 19, 2021. Despite zero income during this fourteen-month period, the theatres continued to pay their taxes, rent, and City inspection fees. At the same time, the majority of New York City theatres received no financial help from the federal, state, or municipal government.



In contrast to other food service establishments, such as restaurants or bars, the theatres could not offer outdoor dining, or food or drinks to go. Moreover, major studios frequently rescheduled or canceled release dates for major films, which caused the theatre industry around the country to also suffer because the few theatres that were open had no new product to offer. Meanwhile, once new content became available, multiple streaming platforms lured stay-at-home audiences with first run releases.

Recently, theatres in New York City began to find their footing with further certainty on release dates, and as such are hopeful for audiences to return. Several new releases like Disney's "Encanto", "The House of Gucci", "West Side Story", and "Spider-Man: No Way Home" are scheduled to open soon. Unfortunately, audiences for family films are only at 50% of what they were pre-pandemic, and character dramas for adults and superhero driven blockbusters are both around 70-75% of what they were pre-pandemic.

As you may know, Thanksgiving week is typically one of the busiest times of the year for theatres. According to Comscore data, nationwide, box office sales annually grossed over \$230 million from Thanksgiving week over the past decade. The Comscore data began in 1984.

To put this into context, about 40% of box office sales go to theatres, and the Comscore numbers are nationwide. Also, pre-pandemic, there were about 12,000 movie theatres in the United States. To give you a sense of the pandemic's impact on movie theatres, last year, box office sales nationwide were \$21.4 million during the Thanksgiving week. That is one-tenth of the normal box office sales, and is just one-quarter of the lowest ever recorded.

As stated, these are nationwide sales, and approximately 40% of those sales go to theatres. Therefore, taking last year's nationwide box office receipts, dividing them by 40%, and dividing that by the total number of theatres, it comes out to a little more than \$713 dollars per theatre as revenue before expenses.

This Thanksgiving, domestic ticket sales were still down 46% from 2019 according to Comscore. Domestic ticket sales from Wednesday, 11/24 to Sunday, 11/28 were about \$140 million, compared to \$263 million in 2019 and \$315 million in 2018, which amounts to approximately \$4,666 in revenue before expenses per theatre. To put that revenue into a New York City perspective, while the City theatres were still closed as per then Governor Cuomo's Executive Order, they still had to pay elevator and escalator inspections, at a cost of \$92,000, despite having no patrons.

The slow return of audiences, and the low box office receipts, inspired our member theatres to team up with the de Blasio Administration for the "Vax to the Movies" campaigns. These efforts resulted in over 1,700 vaccine doses being administered. Our member theatres do not want to be shut down again due to the pandemic, so we were happy to collaborate with the Administration to increase the City's vaccination rate.

Concerns about a new shutdown are not misplaced, as Governor Hochul declared a state of emergency regarding the Omicron variant, and last week said that "If the numbers don't start on a

downward trend, we're going to have to talk about tighter protocols." We were happy to help on the vaccination campaign, and we are hopeful that there will be a third installment of Vax to the Movies soon because we want all audiences to feel safe to return to theatres, including those from the deaf and hard of hearing community.

However, INT-2020 will adversely affect attendance and seriously impact already financially strapped movie theaters. One theatre circuit conducted a study in 2008 to quantify the estimated financial loss from proposed Nebraska legislation that would have mandated open caption showtimes. Based on the average sales for all show times, including weekday matinees and late evening shows, they estimated a loss of \$131 per show time. This translated into a minimum of \$15.9 million in annual lost revenue based on the average Nebraska ticket price in 2008, where attendance at open caption shows averaged 10 people.

Similarly, in Hawaii in 2017, a study from the Hawaii Department of Business, Economic Development & Tourism calculated the impact of a proposed open caption legislative mandate. They found a significant decrease in attendance at open captioned shows versus non-open captioned shows. According to this study, each theatre would see a reduction in attendance of approximately 95,000 patrons a year. With \$8.97 as the average ticket price in Hawaii in 2017, this equated to an estimated loss of \$852,150 per theatre. Obviously, if INT-2020's 50% mandate for all shows to be in open captioning becomes law, New York City theatres will suffer significant financial losses.

Furthermore, there is no demonstrable demand that is commensurate with the purported 50% statutory requirement from INT-2020, and we are deeply concerned that half of all movies will play to largely empty auditoriums. These largely empty auditoriums would result from audiences who do not like open captioning demanding refunds and/or deciding to stay home. One theatre circuit tested the impact of its open caption program and estimated that 85% who bought tickets for an open captioned show but did not need captions, complained about the captioning, and requested refunds. There is no data reflecting that patrons who requested such a refund from a weekend peak show time returned or purchased tickets for a subsequent non-open captioned weekend peak show time. Furthermore, with smaller exclusivity windows and more streaming options, theatres are justifiably concerned that turning away their existing patrons will lead to losing those patrons for good.

We do have preliminary open captioning data from two theatre circuits for both the New York Designated Market Area (DMA), (which includes New York City, New Jersey, Connecticut, and Long Island), and specifically for New York City. This data is available because these two theatre circuits are voluntarily assessing a pilot project on finding the right number of open caption showtimes, and doing so in a well-publicized and dynamic way, as opposed to a rigid and inflexible mandate as included in INT-2020.

The data collected from October to November 2021 from two major theatre circuits in the New York DMA, and just in New York City, clearly show that open caption show times have a very small turnout and that audiences prefer non-open caption showtimes.

Overall data from AMC illustrates that open caption showtimes saw a 5.8% utilization rate, which means that 94.2% seats were unsold. This data is quite consistent, as there is very little, if any variation between time of day, genre of film, or day of week with utilization.

It is also consistent across the entire DMA, within New York City itself, and between theatre circuits. Regal Cinemas saw 4.7% capacity, or 95.3% of seats unsold across the New York DMA. At the same time, specifically for New York City, Regal saw 5.4% occupancy, or 94.6% of seats unsold.

Simply put, the movie theatre business, facing a difficult path to recovery from the pandemic, and tremendous competition from at home streaming options, cannot remain profitable if they are forced to play films to mostly empty theatres.

II) INT-2020 Is Unnecessary

Since movie theatres already provide open caption showtimes voluntarily, comply with federal law on accessibility and currently run an open caption pilot project in New York City, this legislation is unnecessary. Our member theatres in New York also already provide open caption shows upon request, which continues their historic commitment to accessibility.

In addition, as you may know, theatres worked closely with national deaf and hard of hearing advocacy groups to provide several closed captioning devices and are ready to explore ways to improve upon the closed captioning experience. We also hope to continue a productive dialogue with the sponsor and advocates from the deaf and hard of hearing community towards finding a voluntary solution on open captioning that works to benefit all stakeholders.

Advocates for a greater percentage of open caption show times often claim that there is an aggregate net gain between the audiences for the same film being shown in both open captioning and non-open captioning. But the increase in open caption showtimes leads to a decrease in ticket sales because the average moviegoer that is not deaf or hard of hearing does not like open caption shows. Advocates themselves even admit that the audience for the non-open captioning is much larger, and much more frequent, as compared to open caption showtimes.

Unfortunately, there is no data showing that a legislative mandate of 50% would be appropriate or reasonable to meet consumer demand. Even the advocates themselves are not requesting such a large percentage, which is several times higher than their top request. Additionally, the estimated population of New Yorkers who are deaf or hard of hearing is approximately 2.35% of the total City population, which is about 208,000 individuals.

By contrast, the City of Rochester, NY is estimated to have a deaf or hard of hearing population that is ten times that of New York City, making it the largest deaf and hard-of-hearing per capita population among those ages 18 to 64. Even for Rochester, though, mandating 50% open caption showtimes would be well above the existing demand.

Moreover, individuals that are deaf or hard of hearing are just like all other patrons. They are not a monolithic audience, and do not have one set preference in terms of movie genres. Accordingly, simply because a film is available in an open captioning format does not mean that everyone from the deaf and hard of hearing community will turnout, regardless of the movie’s content. This is yet another reason why a rigid and excessively high legislative mandate is impractical.

If such an audience was readily available and interested in frequently attending movies in theatres, the theatres would welcome that audience with open arms because they want as many patrons as possible to return to buying tickets. Yet, the data does not show that there would be an aggregate increase in sales. Nor does any data show that increased open caption show times regularly outperform non-open caption showtimes.

Even where there is a large potential audience from the deaf and hard of hearing community, attendance at open captioned shows remains far less than that in non-open captioned shows. The enclosed data set from Rhode Island includes a concentrated population of people who are deaf or hard of hearing near participating movie theatres. In Rhode Island, the study included one large multiscreen theatre near the Rhode Island School for the Deaf, and did not see any statistically significant turnout for open caption showtimes. 92% of the time in this Rhode Island study, when given choice of same movie, at similar times, patrons chose the non-open caption show. For weekends, 98% of the time, patrons choose the non-open caption show.

A mandate set at a percentage without any basis on population or demand, and a prohibition on overlapping open caption films will further financially burden theatres through lost revenue and increased fines. The Rhode Island theatres in this study saw an 83% drop in ticket sales for open caption shows compared to a closely scheduled non open caption show.

Both the mandate and the other requirements in INT-2020 are unnecessary when existing voluntary efforts are already underway in New York City as previously described. Pursuing this legislative mandate will compound the dire financial condition of theatres, which would only exacerbate the availability of open caption showtimes for people from the deaf and hard of hearing communities, or those who seek open captioning for other reasons.

The major circuits in New York City area are already offering voluntary open captioning policies that allow theaters to react to actual demand, and they are adjusting the number of screenings and their showtimes as appropriate. By playing open-captioned shows at times of the day and week that are successful and sustainable, theaters accomplish two key goals. First, they provide open-captioned showtimes for patrons who request them. Second, the theatres mitigate possible negative impacts on ticket sales frequently experienced with open-captioned shows for patrons who do not request them. Finding this balance is crucial as the theatre industry hopes to return from pandemic related closures, and welcome back all their valued patrons.

We hope that our ongoing discussions with advocates will continue the long history of efforts to see mutually beneficial increases in audience turnout in theatres. In the 1990s, our national trade association met with advocates from the deaf and hard of hearing communities who expressed a

desire for more open captioning since no personal closed captioning devices existed at the time. At this time, the national trade association aggressively lobbied the major film studios to both produce and widely distribute more open captioned films. In the early 2000s, we engaged with the advocates again to discuss the development of personal captioning technology to provide access to every show at any time. National NATO then advocated with technology companies to develop personal closed captioning devices. Once multiple devices were developed, the industry invited advocates and end users to test them and provide direct feedback to the manufacturers so that the products could improve and meet the expectations of the ultimate users. In conjunction with these efforts, NATO members met with the major studios and technology companies to develop both open and closed captioning standards for the development of the new digital projection systems. Combined, these efforts led to a nation-wide rollouts of personal captioning systems beginning in 2012, which was four years before the United States Department of Justice (“DOJ”) proposed closed captioning regulations.

Moreover, the DOJ regulations directly adopted the majority of recommendations that were developed between National NATO and the National Association of the Deaf, the Hearing Loss Association of America, the Association of Late Deafened Adults, and The Alexander Graham Bell Association. These recommendations were reflected in the Joint Accord of 2014, which illustrated that the advocates elected personal closed captioning systems, and an option to view open captioned shows upon request, to enable full access for this important community. Accordingly, the movie theatre industry spent millions of dollars to help implement these goals. We are pleased to say that all New York City theatres are fully compliant with these federal standards.

Unfortunately, however, the infrequent use of the closed captioning equipment provides another example of the low turnout or demand exhibited by audiences who are hard of hearing. At the same time, though, the utilization of such closed captioning devices allows all audience members to attend all shows, without any disruption in ticket sales seen from open caption showtimes. However, we do understand and appreciate that advocates expressed concerns regarding these devices. They described the devices as having a “clunky” feel, or for making patrons feel “apart” or different from the rest of the audience. Some advocates also complained about the functionality of the devices and described missing key moments of films when the devices ran out of battery life.

If other advances in technology can help to improve overall audience turnout, the movie theatres would welcome it. The industry is keenly aware of technological changes, as almost all cinemas converted to digital projection, rather than utilizing reels of motion picture film, about a decade ago. The conversion to digital occurred with a huge expenditure at the time, as did the widespread roll out of closed captioning equipment. We hope to also explore different ways to improve upon the theatre going experience, which may include ways to utilize other technologies.

Perhaps further technological changes can assist with the deaf and hard of hearing audience members turning out to see movies in theatres without undertaking such a great expenditure. Some mentioned the idea of installing induction loop technology, but the additional cost to install looping

for each screen appears prohibitive, and it would only help those that are hard of hearing who have hearing aids that link to such loops. This might make deaf patrons feel excluded.

With the widespread adoption of personal cell phones, though, we would like to discuss the possibility of an app helping patrons who are deaf or hard of hearing. As you may know, Broadway productions use an app to help deaf and hard of hearing patrons follow music and dialogue through open captioning that is played directly on the personal cell phones of patrons. Provided there is a way to overcome the potential for piracy, meet fire safety standards for ingress and egress within aisles, and minimize any distracting glow from phones, an app that could provide open captioning could be a win-win for all stakeholders. Patrons who are deaf or hard of hearing would not be made to feel apart from others by having to request additional equipment that they may not enjoy wearing. They could privately log on to their own phones, conceivably even using the same app where they purchased tickets and attend any film of their choosing at any time. This would obviate the need to have any mandated set amount of open caption showtimes, and eliminate the concerns about depressed ticket sales from the large audiences that do not like open captioning. Moreover, there would likely not be any large upfront cost, like there was for new closed captioning equipment, or would be for loop technology. Also, if there is a massive audience of deaf and hard of hearing patrons waiting on the sidelines to see movies, the possible use of such an app could quantify the audience through the data provided.

III) INT-2020 is Impractical

We also oppose this legislation because the bill itself is impractical, since it far exceeds existing demand, and the 50% mandate between peak and non-peak showtimes appears mathematically impossible for theatres to meet. There are a lot of variables to consider in terms of showtimes, which include the movie, the length of time since the opening day, the number of screens, and the days of the week. Hypothetically, let's consider the AMC Lincoln Square 13 theatre, and the upcoming "Spider-Man: Now Way Home" movie, which will premiere on December 17th.

At this theatre, during the opening week, 73 showings are scheduled, with 35 during the opening weekend, and 38 during that week, which will have the largest number of showtimes. Half of 73 is 36.5, or 37 if we round up. Half of all movies must be shown during the peak period, as defined by the bill, which includes start times of 5:59 PM and finish times by 11:01 PM on Fridays, and noon-11:01 PM on weekends. Half must be shown during the off-peak period, which are start times of 5:59 PM and finish times of 11:01 PM Tuesdays through Thursdays.

The latest Spider-Man installment is a 2-and-a-half-hour movie, so any start time after 8:30 PM will not work for the times delineated in the bill. Of the 35 Friday through Sunday show times, 18 are considered peak times under the bill. Of the 38 Monday through Thursday show times, 9 are considered peak times under the bill. That is a total of 27 peak times, while half of all showings would require 37 showtimes in open captioning. Simply put, there are not enough peak times to comply with the 50% mandate that half of all show times be in open captioning.

To make things even more complicated, under Sections 2 and 3 of the bill, no two different films could be shown in open captioning at the same time, and no single film could be shown in open captioning at the same time. So, Spider-Man could not be shown in open captioning at the same time as “West Side Story” or “Matrix: Resurrections”. To comply with this 50% mandate, though, theatres would have to show 10 more open caption movies than there are peak showtimes.

Even Doctor Strange himself using the Time Stone could not figure out INT-2020’s convoluted scheme that would require more time slots than there actually is time. And, not even Doctor Strange, with a multiverse at his disposal, could figure out a way to ensure that there is no overlap between open caption showtimes between the same film, or different films, throughout the City. There simply is no way to comply with the requirements of this bill, either in terms of the 50% requirement, the actual showtimes, or the restriction on overlapping showtimes. It is completely impractical and would only compound the difficult financial position theatres are in by subjecting them to further fines for noncompliance, or even worse, mandating that films play to largely empty auditoriums.

In conclusion, we think that a voluntary open captioning program that meets consumer demand, as opposed to a rigid mandate that would be economically damaging, unnecessary, and unworkable, will benefit advocates without harming theatres. We greatly value your time and interest on this important issue and share the desire of the bill’s sponsor to see deaf and hard of hearing audiences enjoy a return to the theatres. Therefore, we respectfully request that the bill be withdrawn from consideration for the December 2nd Committee on Civil and Human Rights agenda so that we can find a collaborative approach that will work to the benefit of all stakeholders. We are happy to discuss this further and answer any questions. Thank you for your time.

Sincerely,



Robert Sunshine
Executive Director
Enclosures

CC:

Hon. Corey Johnson
Hon. Bill Perkins
Hon. Brad S. Lander
Hon. Daniel Dromm
Hon. Inez D. Barron

Open Captioning Data Summary:

AMC - Nationwide – 2021 Voluntary Open Captioning (“OC”) Pilot

- 240 theatres in 90 metropolitan areas
- Full roll out began in October, 2021, with ramp up from July
- Currently, data from over 7 weeks in 240 theatres
- 2 tier approach – standard movies and blockbusters
- Standard movies – 1 OC showtime per weekend, 1 OC weekday show each
- Blockbusters – 1 OC show per day 1st week; 2nd week: 1 OC weekend, 1 OC weekday
- Private OC theatre rentals available upon request

AMC - New York DMA (across New Jersey, Connecticut, Long Island and New York City)

- 16 theatres
- New York City OC pilot includes Lincoln Square, Kips Bay, and Empire 25
- OC also available elsewhere in NYC upon request
- 6 weeks of data since 10/1, with films such as Bond, Venom, Eternals
- 914 open caption showtimes offered – none were sold out
- 122 of 914 shows sold zero tickets
- 266 of 914 shows sold 1-5 tickets
- Average 12 people per show
- Non-open caption showtimes average 24 people per show
- No variation between time of day, nor day of week with utilization (weekend matinee is marginally better in a small subset)
- Lincoln Square - top performer with 23 people per OC show; 52 guests at non-OC shows
- **Overall: OC shows: 5.8% utilization, or 94.2% seats unsold**

Regal Cinemas – New York DMA

- 28 theatres total in New York DMA
- OC with blockbusters – a minimum of at least 1 showtime per day
- OC available upon request through website or in theatre
- 6,093 OC showtimes
- Average 6 attendees per show
- **Overall: 4.7% capacity, or 95.3% seats unsold**

Regal Cinemas – New York City

- 318 OC showtimes
- Average 8 attendees per show
- **Overall: 5.4% occupancy, or 94.6% seats unsold**

Other Markets:

Rhode Island Data, 2017-18

Theatres with 8 or more screens participated in agreement with advocates requiring:

- 3 open caption shows per week from 7/1/17-9/30/17
- 5 open caption shows per week from 10/1/17-12/31/17
- 7 open caption shows per week 1/1/18-onward
- These 3,5,7 shows are per theatre complex, not per movie
- One 16 screen movie theatre close to the RI School for the Deaf participated
- The same movies were offered in both OC and non-OC within 10 or 15 minutes apart
- 351 OC shows played, and 351 non-OC shows played
- Movies played Mondays, Wednesdays, and Saturdays from 7/1/17-9/30/17
- From 10/1/17 onward played M, W, Sat, and Sundays
- Times: M -11am, 7pm; W: 11am, 1pm, 4pm. Saturdays at 4pm. Sundays at 7pm.
- All OC shows advertised with “OC” on theatre website
- Weekends: 113 OC & 113 non-OC shows. 111 times non-OC attendance > OC
- 7/1/17-9/30/18 – 702 showtimes
- 322 non-OC showtimes attendance > 322 closely scheduled OC showtimes = **91.7%**
- 14 OC showtimes > 14 closely scheduled non-OC showtimes = **3.98%**
- 15 showtimes had same attendance as comparable 15 non-OC showtimes = **4.27%**
- 12,161 tickets sold for non-OC shows vs. 2,113 tickets to OC shows = **85%**
- **92% of the time, when given choice of same movie, patrons chose non-OC show**
- **For weekends, 98% of the time, patrons choose non-OC show**
- **Only 4% of the time did theatre see greater attendance at OC than non-OC**
- **83% drop in ticket sales for OC shows compared to closely scheduled non-OC show**

Hawaii Study, 2017

- Survey – similar times and “recaptured” patrons (refuse OC, but choose later non-OC)
- 191 screens in Hawaii participated
- 185 OC showings per week = 9,620 per year
- **Annual difference in attendance between OC and non-OC = 94,755 patrons per year**

Anonymized Theatre Manager Comments

These anonymized theatre manager comments were received in response to a survey questioning the impact of a legislative mandate that would require 50% of showtimes to be in open captioning:

“A majority of customers would avoid the open caption shows, hurting business. If no one shows up, it would be a waste of a showtime and lost income.”

“Let the local community demand be met by theaters on an individual basis without a one size fit all mandate from the government. Each theater has a different clientele and different needs to meet. A mandate has the potential to do more harm than good. Local patrons who want open caption shows should reach out to the theaters where they want them to show. Between the patron(s) and the theater owners/ managers of their local theaters, they should be able to set something up. Demand should dictate the need for more open caption shows, not generic mandates.”

“Many patrons find the captions distracting.”

“We do not schedule Open Captioned shows due to limited number of screens and demand. ... [O]pen captioning is not popular with most movie patrons, and would affect attendance since those who do not need open captioning finds the words to be distracting while watching the film-- so we decided to offer it on Sundays and advertise it as such on our website, Facebook, Instagram and Twitter accounts.... Sundays are the lightest movie nights for us and by offering open captioning on Sundays, it is the least offensive night for other movie patrons to see subtitles on the screen.”

“We do open captioning for foreign language films. Never had a request for open captioning otherwise; would try to schedule if there was request and/or demand.”

“Mutually agreeable showtimes - we cannot take off a prime show of a new movie on a weekend evening or weekend matinee unless the group is large enough to warrant using another auditorium, providing we have a movie that can be cancelled to run the show. During the week we've replaced scheduled shows with open captioned shows if we have requests for a group of 10 or more.”

“Most of our business is during weekend peak hours and on bargain Tuesdays. Turning on open captions for a show is detrimental to business - guests who don't need the captions demand refunds and learn to avoid those show times, which would be detrimental to our business during peak times.”

“Since we never have any request for open captioned films, we feel we would lose a tremendous amount of revenue if we forced these showings on customers that do not need or like open captioning. Our experience from past experience working with a major exhibitor years ago, is that most people do not like open captioning. If we had to obligate any weekend peak hours, we would

have empty auditoriums and lose revenue. That could lead to laying some staff members off due to lack of customers. This proposal could be devastating to the profitability of the theatre.”

“We have been providing closed caption devices for 7 years. They work well and the new glasses are even better. Let us continue to expand the closed caption technology and not push our guests to have to find their shows in OC. The closed captioned glasses and boxes are the best solution as it gives the guests 100% of our showtimes and does not interfere with the other guests who would avoid attending OC shows.”

“[Theatre Company] has invested considerable capital in the development & implementation of closed-captioned devices in compliance with the ADA. The VA data of closed-captioned device low usage does not support mandating entire auditoriums to an open-captioned format.”

“The restrictions and guidelines in the bill would cause direct and substantial negative impacts to our ability to generate revenue. Most directly, we know that ~80% of the seats in these shows will go unsold, even when consumer demand has been communicated. Further, we also experience regular negative consumer feedback and demands for refunds from moviegoers who were not expecting to see open-captioning throughout the movie. The requirements of the bill would also restrict our ability to schedule other shows and titles in a flexible manner to accommodate demand, further restricting our ability to generate revenue. At many locations, placing 50% of the open-captioned showtimes during peak demand hours on the weekend would cause us to under-serve guests seeking other formats.”

“Our industry is facing unprecedented headwinds relating to entertainment options (streaming, etc.) and consumer behavior (expected convenience and real-time access). It has never been more crucial for us to be flexible and nimble in the ways we deliver entertainment and respond to consumer demands. Mandating specific content at specific times without the flexibility to change and adapt would put further and undue pressure on our ability to remain and thrive as a viable entertainment option.”



July 31, 2020

Hon. Costa Constantinides
Councilman
31-09 Newtown Ave, Suite 209
Astoria, NY 11102

Re: INT-2020 – open captioning

Dear Councilman:

We are wishing you, and your family, the very best for a speedy and full recovery from this terrible virus. Thank you for your long-standing commitment to helping New York City businesses, and especially so during this pandemic. I am writing on behalf of NATO NY, the movie theatre trade association, to respectfully oppose INT-2020, and request that the bill be withdrawn. We make this request because our theatres already voluntarily comply with federal accessibility standards, and any additional mandated costs while our theatres remain closed will only further burden their ability to safely re-open.

As you may know, in early March the movie theatres closed, and to this day they remain closed under Governor Cuomo's direction. Simply put, our member theatres continue to pay taxes, rent, and fees, yet they are receiving zero income that they normally would derive from ticket sales, concessions, and advertisements. Additionally, the major studios are constantly rescheduling release dates for major films, because of the tremendous uncertainty caused by the pandemic.

As you might imagine then, the theatres were quite dismayed to see the introduction of INT-2020, which would mandate open captioning. While we appreciate the noble intentions behind this legislation, we believe that the flexibility offered by closed captioning, and our collaborative efforts to work with the federal government, make this legislation unnecessary. Additionally, we will continue to work with local advocacy groups, and welcome the opportunity to collaborate with you and your staff on additional local outreach, to improve the movie going experience for all of our patrons.

However, at this time, and given the dire uncertainty for the very future of the movie theatre industry, NATO must strongly oppose any mandate that would add additional costs. Moreover, we also oppose any mandate that would require something that the theatres are already volunteering to do by themselves. Therefore, while we understand and thoroughly appreciate the thoughtfulness behind this legislation, we respectfully ask that it be withdrawn.

I. Movie Theatres Are Committed To Access For Deaf and Hard of Hearing Patrons

For many years, NATO and its member theatres highly prioritized access for individuals who are deaf or hard of hearing. This continues to remain a major goal so that our theatres can ensure that everyone in the communities we serve can enjoy the moviegoing experience. To do so, we work closely with advocacy groups, film studios, and technology developers to ensure we could provide



access to all feature films at all times. Twenty years ago, there were no more than a handful of captioned films. Through our efforts, today practically every feature film is provided with caption files, and personal captioning systems are available at every digital theater as required by existing regulation. These achievements are a direct result of the movie theater owners engaging stakeholders to ensure interoperability of closed captioning and audio description systems, and availability of access files on all movies.

II. Movie Theatres in New York City Provide Access in a Variety of Formats

In addition to the access provided by personal captioning devices, some of our member theaters voluntarily schedule open-captioned shows as part of their weekly schedules. Theaters also are playing shows at the request of advocacy groups whenever possible. For example, AMC Theatres in New York City played 169 open captioned shows over the past 12 months, which includes their theatres being closed since early March due to the pandemic. Similarly, Regal played 85 open captioned shows in New York City over a similar time period. Both theatre chains played all major titles as open captioned shows during this time frame.

Voluntary open captioning policies allow theaters to react to demand, adjusting the number of screenings and their showtimes as appropriate. By playing open-captioned shows at times of the day and week that are successful and sustainable, theaters accomplish two key goals. First, they provide open-captioned showtimes for patrons who request them. And second, the theatres mitigate possible negative impacts on ticket sales experienced with open-captioned shows for patrons who do not request them.

III. NYC Theatres Comply With Federal Accessibility Rules That They Volunteered to Help Create With Advocacy Groups

In December 2016, the Department of Justice (“DOJ”) published a Final Rule on access for moviegoers who are blind, low vision, deaf, or hard of hearing. This rule builds on the years of progress made by our members, and requires all digital movie theaters to equip their auditoriums with closed captioning and audio description technology, and to have a certain number of personal captioning and audio description devices available. The rule was effective January 17, 2017, and all theaters were required to become fully compliant by June 2, 2018. Our New York City members continue to remain in compliance with this rule.

The parameters of the rule are based on a framework devised by NATO and leaders of four major deaf and hard of hearing advocacy groups. In 2014, when the rule was in the proposed stage, NATO, the National Association of the Deaf, the Hearing Loss Association of America, the Association of Late Deafened Adults, and The Alexander Graham Bell Association entered into a joint agreement to set reasonable standards and voluntary efforts to provide necessary accommodations for moviegoers who are deaf or hard of hearing. This agreement allows moviegoers who are deaf or hard of hearing to enjoy first-run motion pictures in our facilities. This historic agreement also enjoyed bipartisan support amongst Members of Congress, and was



submitted to the DOJ. In response, DOJ then subsequently modified their proposed regulations to adopt several of the standards of the joint agreement between NATO and the advocacy groups.

As part of the recommendations submitted to the DOJ, the parties further agreed that NATO would encourage its members to adopt voluntary policies on open captioning requests. Such policies would allow open-captioned shows to be provided if a group of individuals requested an open-captioned show, and provided sufficient advance notice to ensure availability and advertising of the show. This voluntary action was taken notwithstanding historical data reflecting low attendance at such shows and complaints from consumers who do not need or desire such accommodations. Additionally, in its guidance to the final rule, the DOJ specifically declined to require open-captioned movie show times.

The cost to comply with the rule is significant, and passage of INT-2020's open captioning proposal may produce twin detrimental effects of stifling patrons returning to theatres after being pandemic related closures, and technological advances in this field. Unfortunately, due to a perceived limited market for such products, technology companies historically displayed resistance towards investment into further open captioning technology. While there are several companies working to enhance access, a legislative mandate might also further restrict the marketplace by requiring one form of technology in favor of potentially newer and more sophisticated solutions that might be preferred by consumers.

IV. Studying If Open Captioning Mandates Have Negative Effects on Moviegoing

While we fully support the intent of the proposed legislation to expand access to individuals that are deaf or hard of hearing, we respectfully oppose the bill and its mandates concerning the number and times of open-captioned shows. Prior to the pandemic, the industry began finalizing a first-of-its-kind study on open captioning in conjunction with an open captioning pilot program in Washington, DC. In cooperation with local advocates, we also commissioned a sophisticated econometric study of the pilot program to determine what impact, if any, the captioning format of a movie has on attendance. Unfortunately, without open theatres to provide data, we will need to wait longer to be able to assess and publish this information.

This objective and data-based analysis will determine whether or not open captioning impacts the number of tickets sold. Additionally, it will provide data as to whether customers choose to attend open-captioned shows at the same rate as non-open captioned shows. Historically, theaters found that open-captioned shows scheduled according to demand, as opposed to regularly required times, can be more successful because the former are designed to meet consumer demand. Unfortunately, when open-captioned shows are played by mandate, historical data shows that theaters see a precipitous drop in attendance. Our study is designed to better understand this phenomenon.

Under the parameters of this commissioned study, economists are prepared to look at the ticket sales for all the showtimes during a six-month pilot program period, both for open-captioned shows and for non-open-captioned shows. The study then examines all the factors that distinguish one showtime from another—the day of the week; the time of day; the movie rating; the presentation



National Association of Theatre Owners • New York State

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format; the type of seats, etc.—to isolate for the captioning format and to determine whether open-captioned shows have a positive, negative, or neutral impact on box office. We believe that this study will provide important data to movie theaters and advocates alike about the true impact of open captioning.

V. Conclusion

While we appreciate the intent of this legislation, we believe the flexibility offered by closed captioning equipment and the collaborative efforts to provide open-captioned shows mitigate the need for a legislative mandate. We welcome the opportunity to continue working with local advocacy groups on improving the moviegoing experience for everyone.

Please let me know if we can arrange a Zoom meeting to discuss our position and answer any questions. Thank you for your time.

Sincerely,

A handwritten signature in blue ink that reads "Robert Sunshine".

Robert Sunshine
Executive Director

CC:

Councilman Gjonaj
Councilwoman Rosenthal