

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES  
  
Of the  
  
COMMITTEE ON SMALL BUSINESS

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May 4, 2016  
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HELD AT: 250 Broadway - Committee Rm,  
16th Fl.

B E F O R E:  
  
ROBERT E. CORNEGY, JR.  
Chairperson

COUNCIL MEMBERS:  
  
Inez E. Dickens  
Mathieu Eugene  
Peter A. Koo  
Karen Koslowitz  
Ruben Wills  
Carlos Menchaca  
Paul A. Vallone  
Eric A. Ulrich

## A P P E A R A N C E S (CONTINUED)

Rachel Von Tosh  
Deputy Commissioner  
New York City Department of Small  
Business Services

Nancy Schindler  
Associate Commissioner  
Legal Division  
New York City Department of Consumer  
Affairs

Nick Smithberg  
Executive Director  
Paid Sick Leave Division  
New York City Department of Consumer  
Affairs

Joe Morrisroe  
Executive Director  
NYC 311

Richard Roche  
Supervising Fire Inspector  
NYC Fire Department

John Curry  
Assistant Commissioner  
Business Integrity Commission

Gerry Kelpin  
Director  
New York City Department of Environmental  
Protection

## A P P E A R A N C E S (CONTINUED)

Melissa Chapman  
Representative  
Brooklyn Chamber of Commerce

[gavel]

CHAIRPERSON CORNEGY: Good afternoon. My name is Robert Cornegy; I'm the Chair of the Committee on Small Business.

I wanna welcome everybody here today for this hearing on Int. 0891, a bill that will help businesses be better neighbors by providing them with timely notifications about complaints lodged against them through the 311 information system. This bill will require DoITT to allow business owners to register to receive alerts via e-mail, text and voicemail within 72 hours of someone calling a complaint into 311 so they can address problems as they arise.

Our small businesses are the bedrock of our economy; they give our neighborhoods their unique character and bring vitality to our communities. It is in the interest of every small business to be courteous and to be a good citizen to avoid disrupting the lives of the residents and visitors in the neighborhoods where they operate; however, from time to time a business may make too much noise or have a ventilation problem that affects other occupants of a building, or have customers who block

1 the sidewalks. When the neighbors call 311 to  
2 complain about these and other issues, there are many  
3 situations in which the complaint is addressed and  
4 the business is notified; the police might check on a  
5 noise complaint, the Department of Consumer Affairs  
6 might follow up on a complaint about unlawful  
7 operation of a business; the Department of Health  
8 might follow up on a complaint of food poisoning; in  
9 such situations the business owner may or may not be  
10 fined, but at a minimum he or she will know that  
11 there is an issue that they can then attempt to cure.  
12 However, many complaints flow into the 311 system and  
13 never make their way to the responsible business  
14 owners; this is particularly common in the  
15 hospitality industry.

17 We all know the stereotype of the  
18 restaurant or bar that is constantly fielding  
19 complaints from neighbors, but there are also bars  
20 and restaurants that operate without incident for  
21 years until they need to apply for a renewed liquor  
22 license. As part of the application process, the  
23 local community board makes a recommendation to the  
24 State Liquor Authority; often applicants appear at  
25 community board hearings to obtain what they hope

1  
2 will be a pro forma recommendation only to be  
3 confronted by a record of complaints received by 311  
4 but about which they have never been informed. These  
5 are people's livelihoods we're talking about; if we  
6 have a way to help small business owners stay in  
7 business and be better neighbors, we should implement  
8 it; this bill is one such way. This bill is also  
9 consistent with legislation the Council has passed in  
10 recent years to ease the burden of excessive fines by  
11 encouraging agencies to issue warnings and  
12 opportunities to cure on first violations.

13           While not every complaint called into 311  
14 may warrant an agency visit, the mere existence of  
15 complaints may warn a business owner that there is a  
16 condition that needs to be cured before the next  
17 inspection. I appreciate that there may be dangerous  
18 situations where confidentiality is essential to  
19 resolving a complaint, but that should not stop us  
20 from finding a way to provide business more useful  
21 information about how to be better citizens. I look  
22 forward to working with the administration to make  
23 this the best legislation it can be.

24           I want to acknowledge the presence of my  
25 colleagues on the committee who are here -- Council

1  
2 Member Eugene, Council Member Koo, Council Member  
3 Vallone, Council Member Menchaca, Council Member  
4 Ulrich -- who else do we have down there --  
5 [background comments] and Council Member Koslowitz.

6 I wanna thank my Chief of Staff,  
7 Stephanie Zimmerman; the Council's Policy Analyst,  
8 Michael Kurtz; the committee's Finance Analyst,  
9 William Kyeremateng, and the committee's Counsel,  
10 Jeff Campagna for their work on this hearing.

11 So we have our first panel up... [pause] so  
12 we only have two forms, but we have four members on  
13 the panel, so someone didn't fill out a white form,  
14 which is essential to continuing. [pause] The  
15 moment that's done we'll do our affirmation and we'll  
16 begin with testimony. [background comments]

17 So if I can just ask you to raise your  
18 right hand for the affirmation. Do you affirm that  
19 you will tell the truth, the whole truth and nothing  
20 but the truth in your testimony before this committee  
21 and answer to all questions posed by members of the  
22 committee?

23 NICK SMITHBERG: I do.

24 CHAIRPERSON CORNEGY: Thank you. So if  
25 you can just identify yourself before you begin the

1  
2 testimony and in most of these proceedings we say  
3 that chivalry is not dead, so I'll ask the female  
4 members of the panel to begin first.

5 RACHEL VAN TOSH: Rachel Van Tosh, Deputy  
6 Commissioner at the New York City Department of Small  
7 Business Services.

8 NANCY SCHINDLER: Nancy Schindler,  
9 Associate Commissioner, Legal Division, Department of  
10 Consumer Affairs.

11 NICK SMITHBERG: Nick Smithberg,  
12 Executive Director of the Paid Sick Leave Division of  
13 the Department of Consumer Affairs.

14 JOE MORRISROE: And Joe Morrisroe,  
15 Executive Director, NYC 311.

16 CHAIRPERSON CORNEGY: So you can begin  
17 with your testimony as you see fit.

18 JOE MORRISROE: Alright, thank you.

19 Good afternoon Chair Cornegy and members  
20 of the City Council Committee on Small Business.

21 My name is Joe Morrisroe, as I mentioned;  
22 I am the Executive Director of NYC 311. Thank you  
23 for the opportunity to testify today. With me today  
24 are the partners from other City agencies mentioned  
25 here and others as well.



1  
2 By way of background, I began serving as  
3 executive director of 311 in 2008 and I'm honored to  
4 represent the women and men of the 311 team. Since  
5 2010, 311 has reported directly to the Mayor's Office  
6 of Operations, an alignment that underscores the  
7 importance of this operation and service to the city.  
8 Prior to that, 311 reported to the Department of  
9 Information Technology and Telecommunications  
10 (DoITT); DoITT continues to provide technology  
11 services and general services and administrative  
12 support for the 311 organization and works  
13 collaboratively with 311 and the Mayor's office on  
14 the continual evolution and enhancements to the  
15 service delivery and customer experience of 311.

16 The 311 process relies on partnerships  
17 with City agencies to ensure a customer has access to  
18 information, assistance and services through a  
19 variety of channels, including the Call Center, 311  
20 Online, the 311 Mobile App, and 311-692 Text.

21 In 2015, 311 handled over 34 million  
22 customer contacts. To understand 311 data collection  
23 and performance reporting, it is helpful to  
24 understand the flow of 311 service delivery.  
25

1  
2 With few exceptions, public interactions  
3 with 311 fall into three categories; it's either one,  
4 a public information request; someone wants to know  
5 what alternate site parking is in effect or what my  
6 recycle schedule may be; a referral to an outside  
7 entity, a City agency on something that's handled  
8 other than a city agency, such as the MTA, or a  
9 service request, where the customer wants the City to  
10 do something for them.

11 The data collection process is consistent  
12 across these outcomes and across the multiple  
13 customer service channels. The 311 system captures  
14 the relevant information for these request types,  
15 creates and stores activity records and then feeds  
16 that information to a business intelligence tool --  
17 oh sorry, copies, sorry -- Now I have to be even more  
18 cautious when I read. Sorry about that. So we talk  
19 about information for the request types -- create and  
20 store activity records and then feed that information  
21 to a business intelligence tool that's supported and  
22 managed by DoITT; it's for compilation processing and  
23 presentation of the data. Some of that data is  
24 collected and automatically fed to the City's public  
25

1 reporting tools; notably, the NYC Open Data Portal,  
2 which I'll talk about in further detail.

3  
4 The activity record itself can include  
5 the date and time of the call, the topic or subject,  
6 the agency responsible for providing the information  
7 or the response -- and I'm sorry; I'm on Page...  
8 probably on Page Two of your document at this point,  
9 after the three bullet items; I'll give you all a  
10 moment to find the location. Good? Okay.

11 So I'm talking about the activity record  
12 that gets generated from a 311 complaint. As I  
13 mentioned, it can include the date and time of the  
14 call, the topic or the subject, the agency  
15 responsible, and the confirmation tracking number  
16 that's used by both the customer and the agency and  
17 in the case of most service requests, geographic  
18 information; for example, a street address, of the  
19 incident being reported.

20 For activity records posted to the Open  
21 Data Portal, the agency responsible for taking action  
22 on the request updates the record with a status  
23 indicator and a resolution description.

24 For some more context; since 311 was  
25 launched in March 2003, it has received over 215

1 million calls; originally launched as a call center,  
2 NYC 311 has evolved into the most comprehensive  
3 municipal government customer service platform in the  
4 nation; it's available 24/7 in 180 languages and  
5 multiple channels; 311 interacts with over 100,000  
6 customers on a typical business day. In an average  
7 month, 311 receives 1.6 million calls, 1 million  
8 visits to the companion 311 online website, 100,000  
9 mobile app interactions, 10,000 text interactions,  
10 over 4,000 online chats, and publishes information  
11 for over 240,000 social media followers. The 311  
12 mission is aligned with the administration's goals  
13 and vision and most notably focuses on providing the  
14 public with equitable service delivery through quick,  
15 easy access to all New York City government services  
16 and information while maintaining the highest  
17 possible level of customer service.

18  
19 Over the last five years, in annual  
20 Customer Satisfaction Surveys conducted by the CFI  
21 Group, 311 ranked equal to or better than the best  
22 contact centers in private sector and far surpassed  
23 the best in government centers in delivering customer  
24 service.

1  
2 311 data and performance results focus on  
3 ensuring transparency in city government by making  
4 information that might be helpful and relevant to the  
5 public accessible and understandable. This effort  
6 includes organizing the 311 resources and  
7 organization structure to ensure proper collection  
8 and cataloging of the information received, as well  
9 as the data input to the system and DoITT's work in  
10 building and maintaining the technology and tools  
11 that make the data available.

12 Whether an interaction is performed with  
13 the assistance of a 311 representative or the  
14 customer self-serves by a 311 online or the 311  
15 mobile app, the same data elements are captured and  
16 fed to the business intelligence platform. This is a  
17 critical and deliberate consideration that ensures  
18 consistency in data fields and lists of values and  
19 standardization in structure and formatting necessary  
20 for users to access and utilize data sets and  
21 reports.

22 311 works with City agencies to ensure  
23 the most up-to-date information is available and  
24 disseminated across the various customer channels;  
25 the agency information presented to the customer and

1  
2 the representative follows a plain language standard  
3 to promote understanding and clarity. The  
4 information captured by the system and fed to both  
5 the agencies and the centralized business  
6 intelligence tool is formatted in standards that  
7 allow for the cataloging, compilation and  
8 publication.

9           The 311 Content Management Team  
10 structures the information for every city service,  
11 over 5,000 unique pieces of information, in a way  
12 that makes it unique and accessible to users in the  
13 call center or with the mobile app and by the  
14 business intelligence system. This careful design  
15 and regular curating of the content ensures the  
16 information provided to the public is correct and the  
17 resultant data is useful, accessible and  
18 understandable for our customers.

19           The 311 Quality Assurance Department  
20 further ensures the accuracy and credibility of data  
21 by inspecting and measuring the intake process with  
22 customers and the data entry process performed by  
23 representatives or by customers. This quality  
24 control step is vital to subsequent use of  
25 performance results and data.

1  
2 Consumers of 311 data include members of  
3 the public, such as residents, business owners and  
4 visitors, as well as City agencies and elected  
5 officials.

6 311 data is accessible through a variety  
7 of options; these include a suite of offerings known  
8 as Citywide Performance Reporting, which is managed  
9 by DoITT and available and summarized on the Mayor's  
10 Office of Operations' website on NYC.gov. A sampling  
11 of these offerings shows the scope of data sharing  
12 and multiple uses of the source data; examples  
13 include 311 reporting, which provides statistics on  
14 the type and frequency of information and service  
15 requests to 311; it's available on a monthly or  
16 annual basis by type of request and at the borough  
17 and community board level. There's a 311 service  
18 request map; it's a visual representation of the  
19 location, frequency and concentration of service  
20 requests filed through the 311 system at a street or  
21 intersection level as well as by ZIP code, community  
22 board and City Council District level.

23 NYC Open Data that I referred to earlier  
24 is a tool managed by DoITT and it increases the  
25 accessibility of public data generated by 311 and

1  
2 various New York City agencies. As part of an  
3 initiative to improve accessibility, accountability  
4 and transparency of City government, this catalog  
5 supplies access to a repository of government-  
6 produced machine-readable data sets. The data sets  
7 do not include personally identifiable information  
8 and over the past 365 days there have been over 2.8  
9 million page views of this data set.

10 311 service request data went live on the  
11 Open Data platform in late 2011; the current 311 data  
12 set is updated daily and includes SRs from 2010 to  
13 the present. There are also historical data sets  
14 broken down by year that include SRs, or service  
15 requests, I should say, dating back to 2004. The 311  
16 content API can also be accessed via the NYC  
17 Developer Portal, which is hosted by DoITT, and there  
18 is a view called Data Lens, which allows for a more  
19 user-friendly data filtering and querying experience.

20 Over the past few years DoITT has done  
21 open data demonstrations, both internal and external,  
22 around the usage of open data and 311 is normally the  
23 data set that is used as an example. By way of note,  
24 there were 212 unique complaint types in this data  
25 set in 2015.



1  
2           Regarding Int. 0891, while it is not  
3 311's place to speak for the specific agencies, some  
4 of the impacted agencies are here today for further  
5 questions and can speak to concerns the bill raises  
6 related to the critical information activity, from  
7 consumer protection, public safety and public health  
8 perspectives. Indeed, technology can empower and  
9 help small business and that's why SBS and DoITT  
10 worked to create Small Business First.

11           I will now turn it over to the  
12 representatives who are here today from SBS, but  
13 first, on behalf of my colleagues, I want to thank  
14 the City Council Committee on Small Business and  
15 Chair Cornegy for your time and consideration and the  
16 opportunity to testify.

17           RACHEL VAN TOSH: Good afternoon Chairman  
18 Cornegy and members of the Committee on Small  
19 Business. As I mentioned earlier, my name is Rachel  
20 Van Tosh and I am the Deputy Commissioner at the New  
21 York City Department of Small Business Services.  
22 Thank you for the opportunity to testify today on  
23 Int. 0891.

24           At SBS, part of our core mission is to  
25 help create stronger businesses and grow the number

1 of jobs available to New Yorkers. We are providing  
2 access to the information businesses need to operate  
3 and stay compliant through proactive education and  
4 outreach. We appreciate the Council's partnership in  
5 these efforts and would like to take this opportunity  
6 to tell you more about how we help small businesses  
7 navigate government and contribute to their  
8 communities.  
9

10 One of the ways SBS is currently  
11 accomplishing this is through the implementation of  
12 Small Business First. Under the leadership of Mayor  
13 de Blasio, SBS, in partnership with the Mayor's  
14 Office of Operations and 15 City agencies, launched  
15 Small Business First in February 2015. The goal of  
16 Small Business First is to reduce the regulatory  
17 burden on small businesses. Since the implementation  
18 of the initiative, the City has made it easier for  
19 small businesses to resolve City-issued violations  
20 online and by phone and e-mail, which allows  
21 businesses to focus their time on running their  
22 company. More than 600 City-issued violations have  
23 been resolved since February through SB1.

24 SBS has also begun deploying compliance  
25 advisors, a new type of city employee who has a range

1  
2 of technical expertise across several regulatory  
3 agencies. Compliance advisors visit small businesses  
4 in person and provide guidance on how to fix or  
5 prevent common issues.

6 SBS is also working with the Mayor's  
7 Office of Data Analytics to compile and analyze  
8 information, including data on the types of  
9 violations issued by the City to conduct proactive  
10 outreach in the areas of the city where businesses  
11 need the most help. This localized support will  
12 include direct one-on-one engagement with business  
13 owners by City staff with expertise in compliance,  
14 the scheduling of informational events in business  
15 owners' neighborhoods so they can speak directly with  
16 City staff and the creation of plain language  
17 informational guides, all with the goal of helping  
18 small businesses better understand City regulations.

19 With the Council's support; under the  
20 leadership of Chair Cornegy, SBS is working with  
21 Chambers of Commerce in all five boroughs to develop  
22 Chamber on the Go. Through this initiative, teams  
23 from SBS and the chambers make door-to-door visits to  
24 businesses to speak about SBS services, including  
25 legal, financial and MWBE certification assistance.

1  
2 To date we've reached over 1300 businesses to tell  
3 them about the resources available to them.

4 SBS' network of 15 Business Solution  
5 Centers and industrial business service providers  
6 also offer a wide range of free high-quality services  
7 and courses to help strengthen businesses. And to  
8 better serve immigrant entrepreneurs through our  
9 program, SBS has increased the number of non-English  
10 business courses offered at our centers by providing  
11 instruction in eight languages.

12 Through our Immigrant Business  
13 Initiative, SBS works to better serve these small  
14 businesses by partnering with community-based  
15 organizations to develop on-the-ground solutions to  
16 their issues. Last year this initiative served  
17 nearly 1500 small business owners and entrepreneurs,  
18 90 percent of which came from low- to moderate-income  
19 communities.

20 Int. 0891's proposal to enable businesses  
21 to register to receive notifications each time the  
22 name or address of their business is provided as part  
23 of a 311 complaint raises a set of questions and  
24 challenges for a range of agencies to further  
25 examine.

1  
2 As mentioned, some of the impacted  
3 agencies are here today for further questions and can  
4 speak to concerns mentioned by numerous agencies  
5 around issues related to privacy, timing of  
6 notifications, safety and discretion.

7 As will be further discussed, some of the  
8 concerns center on protecting the person making a  
9 complaint, whether a process for a 72-hour  
10 notification of a complaint to a particular business  
11 would deter individuals from making a complaint. In  
12 addition, there are concerns that the bill's  
13 notification process would impede inspections and  
14 investigations. Numerous agencies and the City  
15 Council would benefit from additional discussions to  
16 further understand the issues raised by this bill.

17 SBS is committed to providing businesses  
18 with the information and tools they need to be  
19 compliant, be good neighbors and to grow and thrive  
20 in New York City. Thank you and I will be happy to  
21 take any questions.

22 NICK SMITHBERG: The Department of  
23 Consumer Affairs has no statement to read in the  
24 record, but we are here to answer any questions you  
25 might have.

1  
2 CHAIRPERSON CORNEGY: So before I get  
3 into the line of questioning, there are... I just wanna  
4 beg your indulgence as an administration; there are  
5 several hearings going on, so people are bouncing in  
6 and out, so please don't get too distracted; I know  
7 that my colleagues are very interested in this  
8 particular topic and this particular piece of  
9 legislation, so people will be bouncing in and out.

10 And I'd just like to do something a  
11 little unconventional by saying... giving context to  
12 the hearing up front, so if it wasn't evident in my  
13 opening statement, basically what this seeks to do is  
14 to give small businesses an opportunity to get ahead  
15 of the curve, because what's happening in my district  
16 and other districts around the city is that when a  
17 small business who's... let's just say who's been a  
18 decent neighbor is going to renew their liquor  
19 licenses, they're finding that they've had this  
20 series of complaints which they could have rectified  
21 if they were addressed in a timely fashion. I've  
22 witnessed a small business being turned down or not  
23 given a recommendation from the community board based  
24 on the 311 complaints and that's really no way to be  
25 supportive as a city of small businesses who are the

1 backbone of the city, so basically that's the context  
2 for this hearing. Now we understand that there will  
3 be challenges presented by various agencies, but this  
4 is an opportunity for us to tease through them and  
5 try to come up with a plan that is in the best  
6 interest of small businesses. So having said that,  
7 my first question is a very basic and simple  
8 question; does the administration support this bill?  
9

10 Don't everybody answer at once.

11 JOE MORRISROE: I speak on behalf of 311  
12 and I think we support the intent of the bill; we  
13 support the idea of transparency.

14 CHAIRPERSON CORNEGY: SBS?

15 RACHEL VAN TOSH: I would agree and also,  
16 think we could accomplish many of the goals and sort  
17 of further the intent of the bill by doing focused  
18 and proactive outreach around this issue.

19 NICK SMITHBERG: From the vantage point  
20 of the Paid Sick Leave Division, which I think is  
21 probably a pretty narrow subset of the world that  
22 we're dealing with here, we have some concerns about  
23 the impact it might have on privacy of our  
24 complainants and also, in the context of how we work  
25 our cases and our investigations, we feel that the

1  
2 affected business owners will in every instance get a  
3 heads up from, at least my division, before anything  
4 adverse would happen to them, so there's no sort of  
5 gotcha, you know when we work a case, the first thing  
6 we do is get in touch with the employee, the  
7 employer, anyone else who might know what's going on,  
8 so there's no element of surprise I think in our  
9 enforcement work.

10 CHAIRPERSON CORNEGY: So it's funny that  
11 you use the term gotcha, because I was intent on  
12 never using that term during this hearing, but since  
13 you brought it up, it does have an underlying tone,  
14 the way that it's being operated now of gotcha,  
15 alright, so it's funny that you mention the very  
16 thing that small businesses have complained about in  
17 dealing with the City around complaints. So that's a  
18 little ironic.

19 So for me, I've witnessed firsthand,  
20 working with the former commissioner and the current  
21 commissioner of SBS, the intent of SBS and the City  
22 in general to do what's in the best interest of small  
23 business, to reduce fines and fees; you know, that  
24 was a painstaking look into what the City was doing  
25 and really changing the direction or attempting to



1  
2 change the direction in getting revenue based on  
3 fines and fees on the backs of small businesses. You  
4 guys demonstrate a tremendous commitment to go in a  
5 different direction; it feels to me like this is one  
6 way to continue... like this is a continuation of the  
7 commitment that you've already demonstrated, so I'm a  
8 little concerned about you know how we appear to be  
9 going in a different direction when we've had such,  
10 over my short tenure, such progress made on behalf of  
11 small businesses in reductions of fines and fees and  
12 the gotcha mentality that existed in prior  
13 administrations.

14           So the question is; the City has made  
15 great efforts to increase the opportunities for  
16 business owners to receive warnings about violations  
17 and for them to cure those violations before  
18 imposition of a fine; what distinction if any do you  
19 draw between the warnings this bill will provide to  
20 business owners via text and e-mail and the warnings  
21 provided by inspectors? 'Cause you mentioned earlier  
22 that there's a warning period and there's no gotcha  
23 in this; we're in a technology era, so it seems to..  
24 you know, it seems to reason that, you know, you  
25 would be able to get those warnings and those heads

1  
2 up in this fashion; that's how we do business as a  
3 society.

4           NICK SMITHBERG: Well the distinction I  
5 would draw, and again, I'm just speaking in the  
6 narrow paid sick leave context, is that under our law  
7 that we enforce we have an obligation to keep the  
8 identity of the complainant confidential as long as  
9 we can while we're still able to work the case and we  
10 will let the business owner know when we've looked  
11 into the facts, concluded we have jurisdiction and  
12 we're gonna, you know, open up an investigation; we  
13 do let them know that, but we try and do so in a way  
14 that it doesn't divulge the identity of the  
15 complainant, because we usually don't and I think  
16 that that... the concern that we have is really from a  
17 very practical consideration, particularly with  
18 smaller employers, that if they get an automatic  
19 e-mail that someone filed a paid sick leave  
20 complaint, even if it doesn't say what the name of  
21 the complainant is, in practical terms we find that  
22 they can figure it out. So that's what drives our  
23 concern.

24           NANCY SCHINDLER: From the perspective of  
25 the Department of Consumer Affairs, I will say that

1  
2 the difference between being issued an official  
3 warning by the agency versus a sort of more  
4 information heads up that might come based on a 311  
5 complaint is that our inspector will actually go to  
6 the business, explain exactly what the problem is and  
7 how it can be cured and so the business can be more  
8 sure that they're going to correct it in a way that  
9 will prevent a future violation. The business  
10 doesn't have that same ability when they change what  
11 they think they've done wrong based on a 311  
12 complaint rather than what in fact they have done  
13 that is not compliant with the law, which DCA's  
14 inspector will be able to provide, unlike a 311  
15 complaint.

16 CHAIRPERSON CORNEGY: So like I said, we  
17 have members of the committee that have to go in and  
18 out and in lieu of that, I'd like to waive the  
19 opportunity for me to ask anymore questions and allow  
20 my colleagues to jump right in with some questions,  
21 but before -- Council Member Vallone is up first, but  
22 before he speaks, I do want to ask you; is there an  
23 issue with the time, the 72-hour time that we're  
24 asking, 'cause I had heard that some agencies have  
25 kind of zeroed in on that part of the legislation as

1  
2 a problem; would anybody like to address the 72-hour  
3 request to have that information available?

4 NICK SMITHBERG: Well from the paid sick  
5 leave vantage point, I would have some concern with  
6 that, simply because one of the first things we do  
7 when we get notice of a potential violation is to  
8 look to ensure that we have jurisdiction; there are  
9 certain exceptions in our statute where certain kind  
10 of employers are not covered or there might be a  
11 collective bargaining agreement in place, so to have  
12 the notice go to the employer before we've even made  
13 the basic determination that there's a potential  
14 violation there could be problematic, from our  
15 perspective.

16 CHAIRPERSON CORNEGY: So while I respect  
17 and appreciate your vantage point, there are several  
18 other vantage points that I'm going to address after  
19 Council Member Vallone -- and I'd like to know, if  
20 you can or this panel and also for the people who are  
21 here, determine who would feel that, so if it's a  
22 noise complaint; if it's a food-related complaint,  
23 which agency would responsible for that, so I'd  
24 appreciate that. Council Member Vallone.

1  
2 COUNCIL MEMBER VALLONE: Thank you, Chair  
3 Cornegy and thank you for your testimony; Rachel, as  
4 always, good to see you and as a fellow small  
5 businessman myself, it's always good to hear what the  
6 City's planning.

7 I think the bill itself, when you get the  
8 right or the notice of any potential violation or  
9 complaint, it is a basic right that everyone should  
10 have and I don't think in today's world that  
11 emboldens the cowardly to hide behind Mr. and  
12 Mrs. Anonymous online; it drives all of us insane,  
13 really insane; that to step from the shadows and put  
14 your name on something that I am alleging a  
15 complaint, a violation, whether you're a homeowner or  
16 a small business, must now be essential, 'cause I  
17 can't tell you the amount of complaints, issues of  
18 those [sic] that just wanna drive people crazy or  
19 have a valid complaint. I as a lawyer, when I'm  
20 gonna start a lawsuit on behalf of a client, I have  
21 to provide that information on who is on the summons  
22 or complaint, who the accuser is; it's a  
23 constitutional right, so I don't think concerns about  
24 someone's name should not be on this as an objection;  
25 I believe that that should be part of it and I think

1  
2 there's a world of frustration now that we are facing  
3 in every aspect of life; that people are frustrated  
4 or being attacked by they don't know who, so if  
5 someone wants to step up to lodge a complaint in any  
6 aspect, I believe their name should be on it;  
7 otherwise to me, I dismiss it, because if you're not  
8 going to step up and put your face to the complaint,  
9 then who am I as someone to judge the situation  
10 **[inaudible]**, so I think that's why I support this and  
11 I applaud the chairman on putting that, but that  
12 being aside, I get the same calls from the small  
13 business owners -- I think just knowing of it is one  
14 step, but the second step is, a very large problem in  
15 my district is language, so I have a very, very high  
16 percentage of Korean and Chinese business owners  
17 striving to live the American dream in northeast  
18 Queens and the number one complaint we get when  
19 there's any type of violation or concern is the  
20 language; that the inspector that comes, the person  
21 that calls to try to accommodate or alleviate the  
22 situation and does not speak Korean; does not speak  
23 Chinese; does not speak Mandarin and it's a useless  
24 attempt and having someone who can translate via  
25 phone is not an answer, because the person who is

1 explaining the problem has to understand the  
2 language. So I'd like any type of update on the  
3 hiring of additional inspectors or staff, especially  
4 within the Asian community, since I think with the  
5 Police Department; Fire Department, it's all the  
6 same, you know when someone comes and tries to help a  
7 community, they can't speak the language; it's the  
8 same problem. I want your views on expanding staff  
9 that have the proper language capability.  
10

11 RACHEL VAN TOSH: So I'll speak from the  
12 SBS perspective on that. We of course feel it is  
13 very important to offer these services in multiple  
14 languages and there are others here who can speak to  
15 inspector staff, but for the individuals who are  
16 doing outreach on behalf of SBS we have people on  
17 staff who speak Korean and Chinese, both Mandarin and  
18 Cantonese, and other languages who will be going out  
19 to work with business owners in neighborhoods where  
20 there are a high concentration of businesses with  
21 that language as their first language. So it's  
22 definitely something that we're thinking about when  
23 we think about proactive outreach around compliance  
24 issues, noise code violations, et cetera.  
25

1  
2 COUNCIL MEMBER VALLONE: But that really  
3 hasn't started yet; I mean we had the commissioner  
4 and he acknowledged the same concerns and he came to  
5 the community and said he's looking into hiring  
6 additional staff, but **[inaudible]**... [crosstalk]

7 RACHEL VAN TOSH: We have hired them; we  
8 have staff on staff who can come out.

9 COUNCIL MEMBER VALLONE: That's good  
10 news...

11 RACHEL VAN TOSH: Yeah.

12 COUNCIL MEMBER VALLONE: but we'd like to  
13 see them start getting proactive in the community..  
14 [interpose]

15 RACHEL VAN TOSH: We would...

16 COUNCIL MEMBER VALLONE: and I know Chair  
17 Cornegy and I, it's one of the top complaints  
18 **[inaudible]**; unless the actual employee speaks the  
19 language of the small business owner, all of this  
20 data doesn't even matter [sic].

21 RACHEL VAN TOSH: Again, we have staff at  
22 SBS who can do that and I would be happy to talk to  
23 you afterwards about setting up some time where they  
24 can come out to speak to small business owners in  
25 your district; I can't comment on the inspectors and



1  
2 staff in other agencies, but there are some here who  
3 can do that.

4 RICHARD ROCHE: Mr. Chairman, if I could,  
5 I'd like to just address a... [interpose]

6 CHAIRPERSON CORNEGY: I'm sorry; would  
7 you just do me a favor and identify yourself for the  
8 record...? [crosstalk]

9 RICHARD ROCHE: I'm sorry; I'm  
10 Supervising Fire Inspector Richard Roche with the New  
11 York City Fire Department... [interpose]

12 CHAIRPERSON CORNEGY: And they're telling  
13 me that I have to affirm you as well. Just give me  
14 one second till I find my little affirmation.

15 RICHARD ROCHE: Absolutely.

16 CHAIRPERSON CORNEGY: Oh here we go. Do  
17 you affirm that you will tell the truth, the whole  
18 truth and nothing but the truth in your testimony  
19 before this committee and to answer all questions  
20 posed by members of this committee?

21 RICHARD ROCHE: I do.

22 CHAIRPERSON CORNEGY: Thank you.

23 RICHARD ROCHE: I just wanna comment;  
24 Council Member Vallone brought up something that of  
25 course I think everybody is concerned about,

1  
2 anonymity, but I did just wanna mention that from a  
3 public safety standpoint, a great amount of the  
4 callers that we receive at Fire Department  
5 headquarters that call in legitimate complaints  
6 against their employers want to, for obvious reasons,  
7 remain anonymous and I think that again, from a  
8 public safety perspective, if we eliminate that  
9 aspect of them calling in anonymously or if this bill  
10 is passed; once the word gets out, it is actually  
11 gonna be a deterrent to people calling in with  
12 legitimate fire safety issues, which the Fire  
13 Department addresses within a 24-hour period of time.  
14 So with that being said, I think we do have some  
15 concerns about how this bill may affect public safety  
16 that we should all try to figure out how we can come  
17 up with a workable solution to.

18 COUNCIL MEMBER VALLONE: Well but in all  
19 due respect, employer and employee relationships are  
20 very different from proprietary relationships and a  
21 very important step, what you just mentioned, is not  
22 at all what we wanna hinder; somebody calling in as  
23 an employee or somebody calling in on a criminal  
24 situation that's afraid for their own lives and wants  
25 to file for a protective order; somebody who's

1  
2 calling in about an unsafe condition on a property,  
3 those are very different from somebody who owns a  
4 piece of property or owns a business and someone now  
5 is going to possibly hinder that ability to live on  
6 that property or to run a business are two different  
7 worlds, and I think we can draw that on this type of  
8 bill is not taking aim to the consideration of that,  
9 so I agree with you; the last thing we wanna do is to  
10 make the city unsafe or take away that ability to  
11 have that; we have to do that, we have a city of  
12 eight million people; we have to make a safe city for  
13 everyone, but when it comes to small business and for  
14 property owners, I think that's where those rights  
15 are a little bit different and I think when someone's  
16 going to hinder my ability to live in my apartment,  
17 my co-op, my condo, my home or run my business; I  
18 have the right to know who's accusing; that was what  
19 my point was. [sic]

20 CHAIRPERSON CORNEGY: So you know, it's  
21 funny because part of what Council Member Vallone is  
22 speaking about is what we've discussed, which is  
23 accountability, so I believe that there are agencies;  
24 it might be NYPD or the Fire Department, that if you  
25 make erroneous complaints and several of them, you

1  
2 can be in trouble as well, so there's an  
3 accountability factor there, so if you have someone...  
4 'cause we've seen it with small business where  
5 somebody just doesn't like the business owner, so  
6 they call regularly and make complaints that  
7 ultimately impact on the business being able to do  
8 business; not necessarily because there's something  
9 going on wrong, but because maybe the sound is... they  
10 don't like the music that's playing, it's too close  
11 to their home, they bought a house right next to the  
12 bar and now they're complain... whatever the case may  
13 be, but there's a certain level of accountability  
14 necessary to even have complaints taken seriously  
15 currently; is that not true?

16 RICHARD ROCHE: Well I speak only for the  
17 Fire Department; we take those issues into great  
18 consideration and we do try to filter... I'll use the  
19 phrase "a chronic complainant" about a certain  
20 address; there does become a point where that person  
21 becomes a atonable for what they're alleging, and  
22 speaking from somebody who's been involved in that  
23 process for over six years, there is no one set  
24 criteria for how we accomplish that, but yes, there  
25 is a certain atonement at a certain point; you can't

1  
2 just pick up the phone every day and call and  
3 complain about the XYZ deli down on the corner and  
4 expect that the Fire Department is going to continue  
5 to allow that to happen, but it's taken by a case by  
6 case basis and records, excellent records are kept  
7 and then when it's an appropriate time, we sort of  
8 call that person out.

9           CHAIRPERSON CORNEGY: But so is that  
10 component of the bill that we also considered in  
11 terms of helping to manage the City's resources,  
12 right, so having officers who -- whether it's NYPD  
13 or FDNY, who are responding to these erroneous calls,  
14 we believe we could minimize that to some degree by  
15 having a level of accountability, which is somebody  
16 who's now... there's a face of that complaint; we felt  
17 like people are less likely to continue to make  
18 erroneous complaints if there's an accountability  
19 force. So that's something we can discuss at a later  
20 time, but I wanted you to know that we thought it  
21 through to the level of even accountability and the  
22 strain on the City's resources, whether it be FDNY or  
23 NYPD, as it relates to erroneous complaints and this  
24 was one way to inadvertently get at that and kinda  
25 reduce the amount of time spent on erroneous

1 complaints if there was a level of accountability.

2 So I just wanted to make that point. Do you have  
3 something else?  
4

5 COUNCIL MEMBER VALLONE: The last point  
6 was, I guess -- you just mentioned in your testimony  
7 that more than 600 City-issued violations have been  
8 resolved since February, so do you know how they've  
9 been resolved; was that through non... how were they  
10 resolved; was that waive of payment or [sic]...

11 [crosstalk]

12 RACHEL VAN TOSH: Sure. It means that  
13 they are able to resolve them by phone or e-mail or  
14 alternative adjudication sources rather than come in  
15 in person to resolve them.

16 COUNCIL MEMBER VALLONE: And how have you  
17 found the feedback from that, 'cause you said that  
18 you've been speaking to the **[inaudible]**... [crosstalk]

19 RACHEL VAN TOSH: It's been... People have  
20 been very positive about that; I mean you can call  
21 in, you can Skype and you don't necessarily have to  
22 leave your business to come down and make your case,  
23 which saves a lot of time, so we've gotten good  
24 feedback about that and we're gonna continue to

1  
2 expand the number of violations that you can  
3 alternatively adjudicate in that way.

4 COUNCIL MEMBER VALLONE: Thank you  
5 Commissioner; thank you, Chair.

6 NANCY SCHINDLER: I just want to... With  
7 respect to the Department of Consumer Affairs, I just  
8 want to clarify a couple of things; one is, I'm not  
9 sure that it's accurate to say that an anonymous  
10 complaint is necessarily erroneous; I think we'd all  
11 agree that that's not necessarily the case.

12 CHAIRPERSON CORNEGY: So it's funny that  
13 you say that; I've been given reprimands on the use  
14 of the word "erroneous" over this week on several  
15 occasions, so if the person who... [crosstalk]

16 NANCY SCHINDLER: Wasn't reprimanding.  
17 [laughter]

18 CHAIRPERSON CORNEGY: reprimanded me on  
19 that earlier is watching, I'm sure they'd appreciate  
20 that you did the same thing. [laugh] So I'd like to  
21 strike the word "erroneous" from the record.

22 NANCY SCHINDLER: Okay, 'cause obviously  
23 people would have... there are many reasons somebody  
24 would not want to identify him or herself when filing  
25 a complaint; we are City government and there are

1  
2 certainly people out there that are undocumented,  
3 among other reasons that somebody might not, but  
4 those complaints are very, very important to DCA. We  
5 will mediate a complaint once we determine that it's  
6 valid and just to clarify, we will not look at a 311  
7 complaint where we make a determination with respect  
8 to that business' fitness; we won't issue a violation  
9 based on a 311 complaint; we may go out and do an  
10 inspection, but there are certainly many instances  
11 where we go out and do an inspection based on a 311  
12 complaint and find no violation and we certainly  
13 won't issue a violation if we don't find any. So I  
14 just wanna be clear that we at the Department of  
15 Consumer Affairs feel similarly to the Fire  
16 Department that anything that might deter somebody  
17 from filing a complaint is really problematic for us,  
18 because oftentimes the only way we'll really know  
19 that an unscrupulous business, and we know that a  
20 majority are not unscrupulous, but an unscrupulous  
21 business, sometimes the only way we know what's  
22 happening in that business is through a complaint, so  
23 it's a very important source of information for us.  
24 We can go there and do an inspection and find no  
25 violations that are visible to an inspector, but what



1  
2 the business is actually doing is something that's  
3 very harmful to consumers that we can't see through a  
4 visual inspection and we very much rely on our  
5 complaints, as do federal and state agencies, to  
6 determine when there's a problem with a business; the  
7 FDC, the State Attorney General all look to  
8 complaints when we're determining what may be going  
9 on in a particular business, so the deterrent aspect  
10 here is actually very important to the Department of  
11 Consumer Affairs, of great concern, and of course we  
12 understand the importance of this bill, but the  
13 deterrent aspect is very important to us, of great  
14 concern to us.

15 CHAIRPERSON CORNEGY: So I respect that  
16 and at this point I just kinda wanna move to a little  
17 bit more pointed and serious questions, but I do  
18 wanna say that small businesses across the city feel  
19 as though -- you know we get back to this gotcha  
20 situation that if a complaint -- so an inspector  
21 shows up based on a complaint that was made in 311;  
22 there have been times that the inspector didn't focus  
23 his attention on that complaint; that he got there  
24 and saw something else that may be -- and it started  
25 this whole spiral. So you know, SBS in particular

1  
2 has done a great job, and DCA to some degree, with  
3 billing itself as something more helpful as it  
4 relates to small businesses; now DCA is a regulator  
5 agency, I understand why that -- but has done a great  
6 job at trying to even rebrand itself as being more  
7 helpful, but when you have inspectors showing up for  
8 one thing and then finding for something else and  
9 then kind of running ripshod [sic] through a business  
10 when they get there on a complaint, makes businesses  
11 feel uncomfortable and we've done so much in the last  
12 couple of years as a city to move away from the  
13 mentality and businesses are now beginning to rely on  
14 SBS and DCA to help them as opposed to hurt them. So  
15 I just wanna... we're moving in a direction that very  
16 quickly could dangerously go back to a city of the  
17 past which really had this mentality of gotcha and  
18 DCA only... DCA has done a tremendous job over the last  
19 couple of years, again, to rebrand itself and to be  
20 of assistance to small business, as SBS has done as  
21 well; I don't wanna go back to even remotely the way  
22 that the City did business with businesses through  
23 DCA.

24 NANCY SCHINDLER: Neither do we.

25

1  
2 CHAIRPERSON CORNEGY: Alright. So what  
3 specific categories of complaints, if any, must  
4 remain confidential longer than 72 hours and what  
5 categories of complaints must remain confidential  
6 permanently? So kind of keeping with that theme,  
7 these are questions that we have as it relates to  
8 confidentiality, we were on that topic, so do you  
9 know or does anybody know what those are?

10 NANCY SCHINDLER: I'm not sure I'm  
11 totally following that question.

12 CHAIRPERSON CORNEGY: So there is.. we  
13 mentioned the confidentiality issues around reporting  
14 if you are reporting on a fire safety issue and how  
15 it remains confidential; are there other incidences  
16 of that that you can evidence today that would make  
17 it so that this confidentiality issue within 72 hours  
18 is a priority?

19 NANCY SCHINDLER: In terms of non-safety-  
20 related complaints?

21 CHAIRPERSON CORNEGY: Well across the  
22 board, but certainly we could start with safety.

23 RICHARD ROCHE: I'll agree that I'm not  
24 sure I'm a 100 percent following the question, but  
25 what I will say is this; just for the record, the

1  
2 Fire Department obviously is probably in a little bit  
3 different position because of it being public safety  
4 that we're focused on. Our complaints are required  
5 to be investigated with 24 hours of the time that my  
6 office receives the complaint, so the 72-hour  
7 component of this, though it certainly sounds  
8 reasonable for other agencies, the Fire Department's  
9 already gonna have been there and investigated the  
10 complaint and taken educational action or corrective  
11 action before, potentially before the business is  
12 actually even notified by whomever they determine is  
13 supposed to make the notification.

14           Also I just wanna add that the word  
15 "complaint," although certainly an accurate word to  
16 use, at least the way that my office views the word  
17 "complaint," that generates a response from the Fire  
18 Department to that location within 24 hours, but I  
19 think it's very important that not only my brother  
20 and sister agencies but also the Council understands  
21 that we certainly don't approach that address within  
22 24 hours with a got you mentality as opposed to more  
23 of an educational mentality. And let me just give  
24 you a case scenario since we talk about small  
25 businesses. If we see that the stock is too high on

1  
2 the shelves and thus would inhibit the water flow  
3 from the fire sprinkler system, we're simply gonna  
4 ask the people to lower the stock and at the same  
5 time educate them as to why that is so critical to  
6 do. So I think it's really important that it's  
7 understood that not every time that a complaint comes  
8 into the New York City Fire Department does it result  
9 in a business owner feeling that they've somehow been  
10 threatened or somehow compromised in their ability to  
11 do business. We look at it as a way to educate the  
12 public, the small business owner in to how to  
13 actually preserve their investment. Now certainly  
14 there are cases where a violation is gonna come  
15 about; perhaps a locked egress door, you know, or  
16 something of that nature. But nine times out of ten  
17 we're gonna educate and we're gonna take that  
18 opportunity to educate, which is kinda why I don't  
19 really like the work "complaint," because complaint  
20 seems to have this stigma that that means, oh, we're  
21 gonna go take action against something and in essence  
22 we're actually implementing an opportunity to educate  
23 the public in how to protect their investment; again,  
24 you know public safety first and foremost; not the  
25 ability to get out a violation book and write

1  
2 somebody a violation; we want them to understand why  
3 this is unsafe and nine times out of ten, once people  
4 understand why something is unsafe they wanna correct  
5 it on their own because we explain to them, this is  
6 your investment; we're trying to help you protect  
7 your investment.

8 CHAIRPERSON CORNEGY: Thank you. So  
9 agencies have expressed concern about everything from  
10 -- well one of the things that they've expressed  
11 concern about is that this information is already  
12 present somewhere; I wanna know what the barriers to  
13 sharing in an e-mail or a text alert as you see it;  
14 what are the barriers from sharing with a small  
15 business when a complaint has been made against their  
16 business, 'cause I think we're kind of going around a  
17 little bit, but that's really the crux of this; what  
18 do you feel the barriers to reporting within 72  
19 hours, and anybody can answer this, a complaint  
20 that's been lodged on behalf of a citizen or whoever  
21 against a business? And I'm just gonna need you to  
22 identify yourself please.

23 JOHN CURRY: Yes and I get sworn in.  
24 Chair, I'm John Curry; I'm an Assistant Commissioner  
25 with the Business Integrity Commission.

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2 CHAIRPERSON CORNEGY: So do you affirm  
3 that you will tell the truth, the whole truth;  
4 nothing but the truth in your testimony before this  
5 committee and to answer all questions posed by the  
6 committee?

7 JOHN CURRY: Yes I do.

8 CHAIRPERSON CORNEGY: Thank you.

9 JOHN CURRY: Okay. Briefly, I wanted to  
10 go... I guess... We obviously get a lot of 311 complaints  
11 and one of the concerns, and I do understand your  
12 question was to try to say the 72 hours and there's a  
13 timeline; what's a reasonable timeframe, which is  
14 always very difficult when the 311 complaints that  
15 come in, they run the gamut, especially an agency  
16 such as BIC; we're comprised of Small Business  
17 Services, Consumer Affairs, Sanitation, NYPD; DOI, so  
18 somebody may have my card and maybe the 311 complaint  
19 says, I was fired, I was terminated for this wrong  
20 thing, now comes to us, 'cause it's one of the  
21 companies we regulate, but it's a labor thing, it's  
22 not something that we would **[inaudible]**, so we would  
23 steer that to the agency; now it could be back to  
24 Sanitation, Small Business, DOI; there's different  
25 people and for us, when we get it, an investigation

1  
2 could also be or a 311 complaint could start an  
3 investigation, and I'll just picked randomly  
4 something we've seen, and there'll be say a worker at  
5 an old-age home says, "Listen, I don't wanna get  
6 fired but I'm letting you know that they're putting  
7 out the red bag material, the sharps and the blood-  
8 stained material with the regular garbage and I don't  
9 wanna get involved," but something like that, if you  
10 put them on notice, that's the end; at that point  
11 they'll probably figure out the person who possibly  
12 made the complaint and that's not what we want; we  
13 wanna basically notify the correct people, whether  
14 it's BIC or not, and that's part of the problem here  
15 is, we're trying to compartmentalize, like to protect  
16 small businesses, which my father owned a bar for 35  
17 years, so I can appreciate it; I'm a retired sergeant  
18 from NYPD, so I also know how complaints come to the  
19 desk at a precinct and the point is; each one, it is;  
20 I hate to say, 'cause you don't wanna say  
21 everything's a case by case basis, but the complaint  
22 is; we could get one that's very -- oh, this person  
23 is putting out their trash early, and that's a very  
24 minor thing, whether it's 72 hours and doing -- under  
25 this bill it would not be a problem and then there



1  
2 could be a simple 311 complaint that's very detailed,  
3 very complex; some of them come in and the knowledge  
4 or the specificity of that 311 complaint, there is  
5 not anonymity; by notifying the owner, they're gonna  
6 say, I know exactly who that person, I don't care how  
7 it's summarized, how it's redacted, the person will  
8 say that's driver X and that guy will be gone or that  
9 young woman will be gone by Monday. So that's our  
10 fear and again, I do understand the bill and we're  
11 trying to say, I think the good news is, I think  
12 everyone here wants this; nobody wants to put small  
13 businesses out; we have small trucking companies, we  
14 have large trucking companies; we wanna help them,  
15 but the point is, the bill itself could sort of force  
16 us to sort of -- in hoping to get rid of the, say the  
17 noise complaint, the minor complaint, we could also  
18 lose long-term investigations which have turned into,  
19 you know the home heating oil investigations, some  
20 labor cases, some double-breasting operations; all of  
21 those bad things that cannot be solved in 72 hours  
22 and if you notify that person, that's the end of that  
23 investigation.

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CHAIRPERSON CORNEGY: So unfortunately in my community we have an old adage that says we don't throw out the baby with the bath water...

JOHN CURRY: Correct.

CHAIRPERSON CORNEGY: so and apparently in your community as well. So let me just ask you specifically, 'cause I'm glad you actually made your way to the mic, with your level of expertise; what would be the problem with having 72 hours notification to a business about a noise complaint? I'm gonna go through this one by one, 'cause apparently this is the only way we're gonna get to the bottom of this. There's a noise complaint that is lodged in 311 about a small business; what would be the problem within 72 hours saying hey, you guys got a noise complaint lodged against you?

JOHN CURRY: Well I don't wanna speak on behalf of 311; I think you have the expert here, but I could kind of... furthering that idea, the 311 noise complaint that comes in, and again, I'm gonna put back on my NYPD hat; that will make its way to that precinct and they're gonna go out, whether it's a special ops lieutenant or somebody will visit that location to find out what it is; eventually could

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2 translate into somebody hopefully going out with a  
3 sound meter and deciding, is it sort of, like you  
4 say, the squeaky wheel, the maybe -- I hate to  
5 generalize, but the older individual or person or  
6 couple that may be near a bar and says it's always  
7 too loud, but the point is, you know for a noise  
8 complaint, that's a very specific thing and I think  
9 it'll be handled; 311 handles it a certain way;  
10 hopefully NYPD or whoever would hand it a certain  
11 way, but the bill itself doesn't just say noise  
12 complaint; it's 311 complaints, which that's why they  
13 run the gamut, they're not all noise complaints; some  
14 of them are very specific and are criminal.

15 CHAIRPERSON CORNEGY: So in your  
16 expertise -- I know; I'm gonna come to you -- but in  
17 your expertise, do you handle these... does every noise  
18 complaint get a visit by NYPD or is it handled on a  
19 precinct by precinct by basis, like...

20 JOHN CURRY: I would imagine; I don't  
21 wanna speak for the... [crosstalk]

22 CHAIRPERSON CORNEGY: Yeah.

23 JOHN CURRY: NYPD; I know they're over at  
24 City Hall on a different meeting and the point is,  
25 yes, I think that once... if there is somebody... and

1  
2 we've all... I think we use the term like the chronic  
3 caller; a lot of times a call would come over,  
4 basically 911; if they get a call like that with  
5 these noise complaints, 'cause 311 is where you want  
6 that noise complaint; 911's not, but every once in a  
7 while somebody will call 911 with either modifying  
8 it, not making a noise complaint, a crowd, a gang;  
9 someone with a firearm and they think it'll get  
10 people there, but the point is, it's just a noise  
11 complaint; if you do enough of them, it does  
12 generate; it does show up on the precincts and  
13 precinct commanders, precinct lieutenants, special  
14 ops, sergeants, they do have to go out to these  
15 locations and that will get a visit, and again, I  
16 think, as somebody said on the panel earlier, if you  
17 go out there and it's not there, no one's gonna write  
18 them, like no one's gonna give a violation for  
19 something that's not there, especially for a noise  
20 complaint that's very specific and without a sound  
21 meter, it's usually not gonna be sustained as a  
22 violation... [crosstalk]

23 CHAIRPERSON CORNEGY: Yeah, but so part...  
24 not to cut you off, but part of this is about  
25 avoiding fines and fees, but part of it is about

1  
2 helping small businesses be good citizens where they  
3 operate, right and sometimes just a heads up gives a  
4 small business an opportunity and what I wanna do is  
5 move away from the idea that there is a thorough  
6 investigation and it's done and the ultimate end is  
7 something punitive happening. If you'd like to  
8 identify yourself for me and then you know...

9 GERRY KELPIN: Gerry Kelpin, New York  
10 City Department of Environmental Protection.

11 CHAIRPERSON CORNEGY: Yes. So my  
12 affirmation is; do you affirm that you will tell the  
13 truth, the whole truth; nothing but the truth in your  
14 testimony before this committee and to answer all the  
15 questions posed by members of this committee who are  
16 still here? Hey, Carlos.

17 GERRY KELPIN: I do.

18 CHAIRPERSON CORNEGY: Thank you.

19 GERRY KELPIN: I oversee the air and  
20 noise enforcement group for the Department of  
21 Environmental Protection. It's sort of a process in  
22 relationship to noise complaints about music that  
23 first go to PD and then **[inaudible]** and additional  
24 provision in the code where the music may be loud in  
25 someone's apartment; DEP responds to those by

1  
2 contacting the complainant and setting up an  
3 appointment, you know, probably the following week,  
4 'cause a lot of the music complaints are on the  
5 weekends, so they call on the weekend and we schedule  
6 it for the next... [interpose]

7 CHAIRPERSON CORNEGY: Wait, wait, help me  
8 out; a call comes in to 311 about noise, about music...  
9 [crosstalk]

10 GERRY KELPIN: About music.

11 CHAIRPERSON CORNEGY: about music, I'm  
12 sorry, about music; what happens next?

13 GERRY KELPIN: That is routed to the  
14 precinct first...

15 CHAIRPERSON CORNEGY: Okay.

16 GERRY KELPIN: and the precinct... and I  
17 can't speak for them, but most of the time we see  
18 that the precinct visits the location to tell the...  
19 say that the music is loud; basically hearsay; they  
20 turn it down for a couple hours and then they turn it  
21 back up. That being said, you know, music changes;  
22 you have different DJs, you have different equipment  
23 in the place, so every day it can be different. We  
24 offer the opportunity to a complainant to have us  
25 come to their apartment if that's the problem; it can

1  
2 be... sometimes the complaints... there's basically two  
3 types of complaints -- I hear the music on the street  
4 or I don't want you in my apartment; is it a  
5 violation from the street, or I hear this every day,  
6 every weekend you know until four in the morning; can  
7 you please come to the apartment and measure if  
8 there's, you know, a music issue, if there's a  
9 loudness issue from the music... [interpose]

10 CHAIRPERSON CORNEGY: Well so is every  
11 call measured as an isolated incident?

12 GERRY KELPIN: We don't... You would have  
13 to ask PD about every call; we only see a subset of  
14 the music complaints that come in; for DEP to get  
15 that information... [interpose]

16 CHAIRPERSON CORNEGY: Wait; where did 311  
17 go? Okay, so I'm gonna ask you that question as soon  
18 as she's done.

19 GERRY KELPIN: So for us to see the music  
20 complaints, it has to be put in as commercial music,  
21 bar/restaurant or something else... [crosstalk]

22 CHAIRPERSON CORNEGY: So... wait, wait. So  
23 let me go back further...

24 GERRY KELPIN: Sorry.

1  
2 CHAIRPERSON CORNEGY: it comes into 311;  
3 it gets referred to the Police Department, who then  
4 refers it to you?

5 GERRY KELPIN: We're able to search... we  
6 have a reporting structure that allows us to pick up  
7 certain types of complaints... [crosstalk]

8 CHAIRPERSON CORNEGY: How often... How  
9 often does your office do that... [crosstalk]

10 GERRY KELPIN: For the music we...

11 CHAIRPERSON CORNEGY: it does a general  
12 sweep... I'm assuming, a general sweep... [crosstalk]

13 GERRY KELPIN: We do it like once a week;  
14 sometimes we do it two or three times a week; it  
15 depends on the volume of complaints that come in.  
16 For us it's a... so the 72 hours for responding to a  
17 music complaint doesn't affect us because we're going  
18 to be... for us, 9 times out of 10 the business, who is  
19 a bar or restaurant will, even though they're aware  
20 of it from other visits probably by the Police  
21 Department before us, it is likely that at some point  
22 in the evening, last song, last hour, they will raise  
23 the volume of the music and we will determine whether  
24 it's in violation of the noise code.



1  
2 CHAIRPERSON CORNEGY: Right. So  
3 actually, this rarely happens, but I'm actually more  
4 confused than when I started and.. [crosstalk]

5 GERRY KELPIN: I do that to people..

6 CHAIRPERSON CORNEGY: and.. no, not you  
7 personally, but the amount of.. for a noise complaint,  
8 the amount of things that this has to run through  
9 before a visit.. like so you can understand why a  
10 business would be frustrated; you've done all of..  
11 [crosstalk]

12 GERRY KELPIN: **[inaudible]**

13 CHAIRPERSON CORNEGY: you've done all of  
14 this.. you can't understand why?

15 GERRY KELPIN: Go ahead.. [crosstalk]

16 CHAIRPERSON CORNEGY: Okay. Well you've  
17 done all of this and the business still hasn't been  
18 notified that they.. [interpose]

19 GERRY KELPIN: No, I think they have. I  
20 think that.. for the music complaint, I believe that  
21 the.. [crosstalk]

22 CHAIRPERSON CORNEGY: The PD went out.  
23 Okay.

24 GERRY KELPIN: PD has gone out and so  
25 they're aware of it. Now we get lots of calls about

1  
2 the same business, so PD may not respond to every one  
3 of them, but they have gone out and said to them,  
4 you're music is too loud or we got a complaint about  
5 loud music... [crosstalk]

6 CHAIRPERSON CORNEGY: So since we're on  
7 music though, what would be the problem, and I still  
8 don't understand this; what would be the problem in  
9 every time that happens... because what happens is;  
10 when PD goes out and tells them to turn the music  
11 down, that's not filed as a complaint, it's a  
12 complaint in the 311 system; it's a warning from NYPD  
13 and that's a warning to the manager; owner never  
14 knows about this, you know, the owner doesn't know  
15 about this, that interaction... [crosstalk]

16 GERRY KELPIN: Right.

17 CHAIRPERSON CORNEGY: until he goes to  
18 the community board and there's 15 of those, so I'm  
19 saying and what we're posing here is that the bill  
20 requires that every time that happens the owner is  
21 notified that a complaint was lodged. Now you're  
22 remedying this on a daily basis; you're sending PD  
23 out and they're saying turn the music down; that's  
24 not registered as a complaint to the business; that's  
25 registered as a notification that your music is too

1  
2 loud; that doesn't register as a complaint; that's PD  
3 doing what PD does, they come out and go, hey, you've  
4 gotta turn your music down and they turn it down,  
5 hopefully.. [interpose]

6 GERRY KELPIN: No, but it's in  
7 relationship to a complaint being filed, so maybe I'm  
8 missing your point, sorry.

9 CHAIRPERSON CORNEGY: Yeah. No my point  
10 is that you've notified the manager on duty, whoever  
11 is in charge.. [crosstalk]

12 GERRY KELPIN: Very often the owner is  
13 there though.

14 CHAIRPERSON CORNEGY: The owner's there  
15 not every night. So listen... and then the manager  
16 who's managing doesn't get on the phone immediately  
17 and say hey, you know PD came out. So I'm saying at  
18 the end of that exchange and within 72 hours, if  
19 there was a notification generated to the owner that  
20 says hey, this happened tonight; the owner sees three  
21 of those is gonna come in and go hey, what are you  
22 guys doing that you're causing this and he's gonna  
23 remedy this and if he's smart, he's gonna call NYPD  
24 in and say hey, we had no knowledge of this; I'm  
25 sorry; he's gonna call his neighbors, he's gonna do

1  
2 whatever he has to do to be a good neighbor. I'm  
3 saying we are stripping the owner the opportunity of  
4 remedying this without giving a notification; that's  
5 all I'm saying. So I've been told that 311 or I'm  
6 sorry, it's in SBS' system that this exists, that the  
7 owner could now go on and know that it's there; I  
8 assert that a small business, a micro business  
9 doesn't have the latitude to troll the internet to  
10 find out how many times they've.. just an alert, we  
11 get alerts, I get alerts on my.. since sitting here  
12 this hour, I've gotten 65 alerts and push  
13 notifications, which is what they call it for all you  
14 techies; I've gotten push notifications about  
15 everything from new shoes to my kids' Lacrosse game  
16 since I've been sitting here; that's the society we  
17 live in; why wouldn't we do that for small business  
18 that we're trying to bolster and create an  
19 environment where they can succeed; that's all I'm  
20 saying and I can't seem to get the answer to that;  
21 what is the barrier between providing businesses with  
22 a notification within 72 hours that PD came out  
23 because they had a noise complaint? I'm telling you  
24 that it's gotcha because they don't realize this  
25 until they go to renew their liquor license; this is

1  
2 evidenced time and time again. This is not an  
3 indictment of you, so please respond to that.

4 GERRY KELPIN: Can I ask you sort of in  
5 the reverse?

6 CHAIRPERSON CORNEGY: You have the  
7 microphone; you can ask whatever you'd like.

8 GERRY KELPIN: Is there a potential for  
9 someone to come back and say well we got visited by  
10 PD and we didn't get notified within 72 hours or, you  
11 know, PD went out in 24; we got it in 72 and then  
12 it's like you're... and something happened in the 24...  
13 you know on the first visit there was an issue; are  
14 the small businesses going to rely on the fact that  
15 they have this opportunity to be notified to prevent  
16 us from acting within 72 hours?

17 CHAIRPERSON CORNEGY: I just think they  
18 want a heads up that there is a... [crosstalk]

19 GERRY KELPIN: Okay. I mean as long as  
20 **[inaudible]**... [crosstalk]

21 CHAIRPERSON CORNEGY: Because I think the  
22 language used... [crosstalk]

23 GERRY KELPIN: So...

24 CHAIRPERSON CORNEGY: over time is that  
25 it's a long, pervasive issue.

1  
2 GERRY KELPIN: Right. So I think the  
3 other issue that is out there, perhaps the music is  
4 less of a problem, but there are other complaints  
5 that come in that potentially need to be essentially  
6 resolved..

7 CHAIRPERSON CORNEGY: So the bill doesn't  
8 require agencies to take any action, like the bill..  
9 [crosstalk]

10 GERRY KELPIN: No, I understand..

11 CHAIRPERSON CORNEGY: is not putting the  
12 onus on the agency, it's just.. [crosstalk]

13 GERRY KELPIN: Right. But let me..

14 CHAIRPERSON CORNEGY: it's just asking  
15 for a notification, so all of the.. [crosstalk]

16 GERRY KELPIN: Right. But let me.. let me  
17 try a different one.

18 CHAIRPERSON CORNEGY: Uhm-hm.

19 GERRY KELPIN: How 'bout noise from a  
20 circulation device, kitchen exhaust fan, air  
21 conditioning fan..

22 CHAIRPERSON CORNEGY: You're getting very  
23 specific; that's.. [crosstalk]

24 GERRY KELPIN: but those are the  
25 provisions that we see people complain about

1  
2 businesses. One of my concerns is that when type of  
3 complaint comes in I have to schedule that with a  
4 person... and it will probably take four or five days  
5 because they need to be available because it's an  
6 impact in their apartment; the business owner gets  
7 notified and simply shuts the equipment off so that I  
8 don't have the opportunity to determine if it's in  
9 violation or not. The provision that we're taking  
10 about does have the potential to mitigate down to a  
11 zero penalty, but until I can issue that violation,  
12 there's no incentive for the business to correct.

13 CHAIRPERSON CORNEGY: So you believe or  
14 your concern is that if a business was given a heads  
15 up it would try to shortcut or try to have that...  
16 [crosstalk]

17 GERRY KELPIN: **[inaudible]**, yes.

18 CHAIRPERSON CORNEGY: present...

19 GERRY KELPIN: So one possibility would  
20 be to narrow the notification class of complaints  
21 that go out to businesses...

22 CHAIRPERSON CORNEGY: No, she makes a  
23 point. So one of the questions was, don't you do  
24 surprise inspections [sic]... I know that you make  
25 appointments in **[inaudible]**... [crosstalk]

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COMMITTEE ON SMALL BUSINESS

GERRY KELPIN: Well to that particular section of the noise code, it requires us to be in... [crosstalk]

CHAIRPERSON CORNEGY: Yeah.

GERRY KELPIN: the complainant's apartment; it has to be in a dwelling... [crosstalk]

CHAIRPERSON CORNEGY: Well...

GERRY KELPIN: you know for that piece of equipment. It's a very specific vision [inaudible]... [crosstalk]

CHAIRPERSON CORNEGY: For now we're keeping the focus... if you don't mind, for this hearing it's on small businesses, so I understand... [crosstalk]

GERRY KELPIN: Right.

CHAIRPERSON CORNEGY: there's another issue with making... [crosstalk]

GERRY KELPIN: No, these are from...

CHAIRPERSON CORNEGY: premises available to... [interpose]

GERRY KELPIN: No, no, no, but the source of the noise is the small business [inaudible]... [crosstalk]



1  
2 CHAIRPERSON CORNEGY: Oh I see, but you  
3 have to be in the other person's residence...

4 GERRY KELPIN: Right, because  
5 **[inaudible]**... [crosstalk]

6 CHAIRPERSON CORNEGY: So... So you're... what  
7 you're saying to me is that the 72 hours for your  
8 agency is unrealistic because you have to schedule  
9 appointments and it could be outside of 72 hours that  
10 you have to do it... [crosstalk]

11 GERRY KELPIN: Yes.

12 CHAIRPERSON CORNEGY: That's fair.  
13 That's where we get to where we were going [sic] and  
14 that makes sense. So unfortunately, in a huge city  
15 like New York City there are so many agencies and  
16 it's very difficult to paint all of them with a broad  
17 brush, but something has to be done and we believe  
18 that this legislation gets to that and we'd like to  
19 work around what's necessary to make... there's no way  
20 around it, very rarely does one size fit all in New  
21 York City, but there has to be some standards set  
22 that places businesses in an advantageous position  
23 and we believe the bill does that. I know agency by  
24 agency, which you've just illustrated to me, why  
25 something like 72 hours wouldn't make sense because...

1  
2 and I know that for a fact because I've had dealings  
3 with **[inaudible]** around noise where we had,  
4 personally we had a big building very close to my  
5 home that has an air conditioner that should be on  
6 the roof, but it's in-between the two buildings and  
7 it sounds like a jet plane every time it came on;  
8 their first remedy was, when you came out, to turn it  
9 off; however, it was an air conditioning unit and  
10 when you did that, everybody in the building  
11 complained that it was hot, so it wound up working in  
12 our favor, but I understand what you're saying. Yes,  
13 311.

14 JOE MORRISROE: Chair -- I think I've  
15 already been deposed [sic]; right?

16 CHAIRPERSON CORNEGY: Yeah, yeah.

17 JOE MORRISROE: So Chair, picking up on  
18 what you shared there as far as not a one size fits  
19 all and having something out there, what I mentioned  
20 early on in my summary there, I'll be a little bit  
21 more specific. The NYC Open Data Portal does have  
22 the majority of 311 complaints that have been filed  
23 through 311, through any channel of 311 available to  
24 anyone in the public with internet access within 24  
25 hours of that complaint being filed, basically

1  
2 overnight, **[inaudible]** a batched process overnight,  
3 so those complaints are readily available in advance  
4 of any 72-hour window; in advance of any action an  
5 agency may take; I can't speak on behalf of the  
6 agencies concerns and their operations, but from a  
7 data point of what's put out there through 311, a  
8 majority of those service requests, those complaints  
9 are available within 24 hours... [crosstalk]

10 CHAIRPERSON CORNEGY: Alright, so see,  
11 let me be clear, you're saying to me that within 24  
12 hours -- and I'm kinda just repeating what you said  
13 -- that in 24 hours a complaint lodged on the 311  
14 system is available to anyone with internet access?

15 JOE MORRISROE: Through that NYC.gov Open  
16 Data Portal, yes.

17 CHAIRPERSON CORNEGY: Right. So my  
18 question is, if that's already available, it's  
19 aggregated somewhere; why wouldn't there be a push  
20 notification as a courtesy to small businesses, just  
21 to send out an e-mail alert that this has been  
22 lodged? So you already have it, so it's not like  
23 it's actually a secret or confidentiality is an  
24 issue, because it's not, it was already somewhere  
25 aggregated in the Open Data Portal; then everybody

1  
2 has access to it already. I'm asking to go one step  
3 further and just send out an alert to the business,  
4 because small businesses, which in this state are 100  
5 and under [sic], but for my purposes I'm gonna say  
6 micro businesses, which are five businesses and  
7 under, which is really what we deal with in the city  
8 primarily, don't have the luxury or latitude to make  
9 those... you know, to go on the internet regularly to  
10 look to see if there's any violations; if you took it  
11 one step further, which is one more button -- I'm  
12 simplifying it, 'cause I know it's not really, but  
13 it's almost one more button that would just send a  
14 push notification to say that this has been  
15 registered and that happens within 24 hours, so  
16 certainly in 72 a push notification could be sent to  
17 the registrant on file, generally the owner in this  
18 instance, to alert them that a complaint had been  
19 filed. Whatever it may be, whether it's an FDNY,  
20 whether... 'cause what types -- I'm sorry, I should ask  
21 you; what types are filed in the Open Data Portal  
22 system in 311?

23 JOE MORRISROE: Basically there are  
24 complaint types that span all the agencies, all...  
25 various different complaint types, but I think the

1  
2 key differentiator here; what I was referring to;  
3 what you described, is that that level of detail is  
4 not available in the complaint; I'm talking about the  
5 complaint gets filed, is available on the portal, it  
6 has basic information -- address, location, et cetera  
7 -- there's no connection to... there's no linkage to  
8 who a business owner would be or who would be the  
9 property owner, et cetera, it's basically just data.  
10 As far as your question with respect to what would it  
11 take; that I can't address, 'cause I don't speak on  
12 behalf of the agencies and if they have concerns,  
13 they would have those concerns to prevent that. What  
14 I share is that that's something that the City, the  
15 DoITTs that 311 has made available to the public as a  
16 step where someone could go proactively take a look  
17 at that.

18 CHAIRPERSON CORNEGY: So but again for  
19 me, it then negates all of the concerns that the  
20 agencies have is already there.

21 JOE MORRISROE: It's already there, but  
22 not to the level of detail perhaps that an inspector  
23 would get when they go out there. Again, it's a  
24 **[inaudible]**... [crosstalk]

25

1  
2 CHAIRPERSON CORNEGY: Right and the alert  
3 is not to take away the opportunity for an inspector  
4 to do his job; we're just saying give the... So the  
5 alert is not in lieu of an inspector coming out, so  
6 it's not like you get the alert and then there's no  
7 inspector because you have a chance to remedy; the  
8 inspector still comes out based on being launched by  
9 the agency that it's assigned to; we're just saying,  
10 when the complaint is lodged, within 72 hours of it  
11 being lodged -- now you've already detailed, in  
12 FDNY's perspective, they're gonna be out in 24 hours,  
13 so... [crosstalk]

14 RICHARD ROCHE: Right.

15 CHAIRPERSON CORNEGY: So... Right, so I  
16 understand that.

17 RICHARD ROCHE: But... let me throw a  
18 wrench in that con... [crosstalk]

19 CHAIRPERSON CORNEGY: One more wrench?

20 RICHARD ROCHE: that conversation. My  
21 colleague down here; I'll defer to him, but what was  
22 just stated is not completely accurate. Fire  
23 Department complaints, to our knowledge; correct me  
24 if I'm wrong, but we spent some time trying to find  
25 this; the roughly 160 some complaints that come into

1  
2 the Fire Department every month are not in the 311  
3 data portal for viewing by the public...

4 CHAIRPERSON CORNEGY: Period; not at any  
5 given time... [crosstalk]

6 RICHARD ROCHE: Well there are exceptions  
7 to that; the 311 data portal seems to post  
8 inspections. We have two units within the Fire  
9 Department that -- not to belabor this, 'cause it has  
10 nothing to do with this, but there's two units in the  
11 Fire Department that establish the relationship with  
12 311 where you can call and request a certain type of  
13 inspection yourself as an owner of a business or a  
14 dwelling in the city; those complaints are in the 311  
15 data portal, but if you call in as an employee of ABC  
16 Corporation on Avenue A, those complaints are not in  
17 the 311 data portal, so... [interpose]

18 CHAIRPERSON CORNEGY: So there may be  
19 some confidentiality issue... [interpose]

20 RICHARD ROCHE: Well...

21 CHAIRPERSON CORNEGY: issue with that and  
22 I could understand that.

23 RICHARD ROCHE: I'll defer to my  
24 colleague on why that is, because you know we don't  
25 quite know the answer to that ourselves at this

1  
2 point; we just uncovered this in some preparatory  
3 meetings for this hearing.

4 CHAIRPERSON CORNEGY: So actually, that's  
5 another hearing; what I wanna do today is say that  
6 the information that's already available in the Open  
7 Data Portal, we're gonna do push notifications and  
8 get it to the owners; I don't even wanna... in this...  
9 for the intent of this bill, I don't even wanna  
10 create more data to add into the Open Data Portal; I  
11 want to take the information that's already readily  
12 available, as you've indicated, within 24 hours and  
13 send a push notification to the principals of  
14 businesses across the city so that they can have a  
15 heads up.

16 JOE MORRISROE: If I man... [crosstalk]

17 CHAIRPERSON CORNEGY: Please.

18 JOE MORRISROE: inflict two things; one,  
19 just provide a clarification. I did say that most or  
20 many of the complaints are in; there are some that  
21 are not and it does vary by agency and the  
22 determination of whether it should or shouldn't be  
23 included in the Open Data Portal is made by the  
24 agency, so it's not all encompassing.



1  
2 But to the second part to your statement,  
3 the Open Data Portal has, as I said, information  
4 that's available about the incident, the complaint  
5 and the incident; it does not have as currently  
6 constituted and would not have the ability to pull in  
7 the necessary information you just described, as far  
8 as who is the business owner or who the -- I think  
9 you used the business owner term; that's not included  
10 in the information.

11 CHAIRPERSON CORNEGY: This is just the  
12 address?

13 JOE MORRISROE: Just the incident  
14 address, the reported address.

15 CHAIRPERSON CORNEGY: Okay. So then I  
16 would like to modify my statement and say that that  
17 information, certainly we would like to run it  
18 together so that the push notification could be sent  
19 to the person on file, primarily the principal or the  
20 owner. So at least one commercial service already  
21 exists to notify property owners whenever complaints  
22 against their properties are registered with the  
23 Housing Preservation and Department of Buildings or  
24 the Environmental Control Board, but that's a paid  
25 service; we don't believe that in addition to

1  
2 everything else that small business owners pay for to  
3 operate, which is sometimes considered excessive in  
4 the city that another fee should be... so there's a  
5 structure out there that already could provide this;  
6 we don't believe that they should pay for; we believe  
7 the City should provide that and we believe that this  
8 legislation puts forward the idea that the  
9 information that's already readily accessible should  
10 be sent; not searched for by businesses and that's  
11 really the crux of what this legislation is.

12 Oh I'm sorry; are you familiar with the  
13 business that I just mentioned that provides that  
14 service for a fee to small business... are you...  
15 [background comments] Oh, 311 Alert. [background  
16 comments] Yeah, so we don't... Oh yeah.

17 RACHEL VAN TOSH: I will just add;  
18 there's also a private company that does push  
19 notifications to small businesses based on 311 Open  
20 Data that you can sign up for for free if you're a  
21 business owner.

22 CHAIRPERSON CORNEGY: Well that... we  
23 should be embarrassed by that; we should be... that  
24 makes it even worse, in all honesty, because we  
25 believe that that's, you know... [interpose]

1  
2 RACHEL VAN TOSH: It's not by... it's not  
3 to the specific business though; it's to the general  
4 area. So if you sign up, there's something that will  
5 notify you and say, you know there was a noise  
6 complaint in your neighborhood; learn now to avoid  
7 it... [crosstalk]

8 CHAIRPERSON CORNEGY: Right, that's for  
9 advocates, actually, I'm sure. Council Member  
10 Dickens; do you have any questions? [background  
11 comments] So we actually gave everybody the heads up  
12 that there's several hearings going on, so there was  
13 no necessity for you to apologize, even though I  
14 appreciate. Thank you, Council Member Dickens, who  
15 is always a tremendous advocate on behalf of small  
16 businesses across the city, so she's a tremendous  
17 asset to this committee. Oh, more questions.

18 So we've already determined, in working  
19 with DCA and with SBS, that the fining of businesses  
20 and all of these excessive fees merely to raise  
21 revenue was bad, but what we'd like to see is that it  
22 be implemented, you know, rather to help modify  
23 certain behavior, so why do you believe it's better  
24 for an agency representative to fine a business owner  
25 for committing a violation than it is for a business

1  
2 owner to correct their conduct based on a complaint  
3 received by 311? So what we feel is happening is  
4 that this... what's generated after the initial 311  
5 complaint is an inspector, and usually 7 times out of  
6 10 it results in a fine, where we believe that a  
7 heads up could've, when it's not public safety issue,  
8 it could have resulted in it being remedied by the  
9 business owners, which usually, you know, most  
10 business owners wanna do the right thing and they  
11 wanna be good citizens and they wanna do what's in  
12 the best interest of the constituency that they serve  
13 for their customers, but it doesn't end up that way.  
14 So you were gonna respond.

15 RACHEL VAN TOSH: Well I was just gonna  
16 say that one of the goals that we lay out in the  
17 report for Small Business First is to conduct data-  
18 generated or data sort of supported outreach  
19 specifically to areas where are complaints or higher  
20 level of violations to address that, to try to get  
21 out in front of things so business owners know, hey,  
22 this is something that's been an issue for many  
23 businesses in your area; let us explain what the  
24 problem is, what people are getting fined for and so  
25 that you can correct it before something comes to

1  
2 your business. And now that we have this compliance  
3 advisor team, that's a team that's actually cross-  
4 trained by DCA, by Health; I think you're familiar  
5 with it, so there is an additional level of  
6 expertise; they can go out and really talk to  
7 businesses, walk through their areas and explain to  
8 them what some of the most common violations are and  
9 what we're seeing as a trend in their neighborhood  
10 and have businesses correct that before an inspector  
11 comes out.

12 CHAIRPERSON CORNEGY: So SBS, including  
13 but not limited to Small Business First, has made --  
14 I've already mentioned, made a concerted effort...

15 RACHEL VAN TOSH: And I thank you.

16 CHAIRPERSON CORNEGY: to do what's in the  
17 best interest. Do you believe though that this piece  
18 of legislation and what we're asking for here somehow  
19 supplants the work that you've already done or  
20 impedes on the work that you've already done? I  
21 believe, with intimate knowledge of what SBS is doing  
22 and Small Business First and all those kinds of  
23 things, that it actually enhances it; are we at a  
24 difference of opinion on what this legislation will  
25 do to the work that you're already, you know the

1 great work that you're already invested in doing?

2 The same question for DCA.

3  
4 RACHEL VAN TOSH: I think for us we feel  
5 that through the proactive outreach that we're doing  
6 we're achieving a lot of the goal of the legislation  
7 already.

8 NANCY SCHINDLER: Just to the question  
9 you raised about a violation versus correcting the  
10 action, and I think one of the things we've discussed  
11 at DCA is the issue of whether the business will  
12 simply do something to resolve the complaint with  
13 that consumer rather than fixing what may be a larger  
14 issue that affects more consumers. So just as an  
15 example, is a refund policy; if somebody complains  
16 that the business refused to provide a refund and the  
17 business says, okay, here's your refund; the problem  
18 may actually be that the business has not posted a  
19 refund policy, which is something that affects many  
20 more consumers and so their fix may be to provide the  
21 refund; when in fact the fix is to post a refund  
22 policy and the business hasn't done that and so our  
23 inspector going out there and looking will solve the  
24 bigger issue rather than just sort of a **[inaudible]**  
25 approach.

1  
2 CHAIRPERSON CORNEGY: So quite honestly,  
3 I thought about this painstakingly and whether or not  
4 this legislation would in some way; in particular  
5 DCA, usurp the authority for DCA to do what it  
6 normally does, in terms of being a regulatory agency  
7 and we went over this a hundred times 'cause it's  
8 never my intention to do that; I appreciate, and I'll  
9 probably get screamed at [sic] this later, but I  
10 appreciate the work that DCA does as a regulatory  
11 agency; I think that you've probably in some  
12 instances impacted on lives across the City of New  
13 York by what you do and the diligence by which you do  
14 it; I don't believe, having looked through the vast  
15 array of services that you provide and the regulatory  
16 work that you do, that this legislation in any way  
17 impedes or usurps the authority for DCA to do, and  
18 other agencies to do what's in their plan to do, and  
19 if I did think that, I would've never introduced the  
20 legislation because of the relationship I have with  
21 DCA and SBS and most of the agencies. So the intent  
22 of this legislation is to enhance what's already out  
23 there and make it easier for businesses to comply  
24 with what the requirements of the City are and to

1  
2 demonstrate what most of them wanna do, which is to  
3 be good corporate citizens in this city.

4 NANCY SCHINDLER: So I think DCA has just  
5 raised certain concerns with the bill.

6 CHAIRPERSON CORNEGY: No, and I respect  
7 that. But could you articulate them again for me?

8 NANCY SCHINDLER: One is the deterrence,  
9 which is sort of an ongoing; we raised it with  
10 respect to paid sick leave; deterrence in terms of if  
11 a consumer knows that a business is going to be able  
12 to identify him or her, the person may not be as  
13 willing to file a complaint and it's important for  
14 us, both with respect to that individual consumer and  
15 other consumers who may be having a similar issue,  
16 that we are aware of... that we receive complaints from  
17 people. That's the main one and the other one is the  
18 sort of... I guess it's related, is making sure that we  
19 are... I guess the refund policy example that I gave  
20 you, which is that businesses don't simply resolve an  
21 issue with one consumer rather than resolving what is  
22 a larger issue.

23 CHAIRPERSON CORNEGY: So is there anybody  
24 else that's representing any other agencies that is  
25 at the table would like to articulate at this time



1  
2 any opposition that you have to the bill or any  
3 concern... I'm sorry, not opposition -- I promised that  
4 I wasn't gonna use the word opposition today -- any  
5 concerns that you have with the contents of the bill?

6 RICHARD ROCHE: Speaking for the Fire  
7 Department and again, I think... as long as there are  
8 filters kept in place that keep certain complaints  
9 from being a part of this notification, I think that  
10 you know the Fire Department is okay with that, but  
11 again, from a public safety perspective, if our  
12 roughly 160 some complaints a month that are  
13 currently not in the data portal are somehow forced  
14 into the data portal, it's gonna create an issue for  
15 us to be able to provide the public safety level that  
16 city residents and businesses have expected from us.

17 CHAIRPERSON CORNEGY: Duly noted. Thank  
18 you. So if there are no more comments, I wanna thank  
19 you for your testimony today; it was very important  
20 for me to hear from the agencies your concerns.  
21 Thank you.

22 And we'll be joined by Melissa Chapman  
23 from the Brooklyn Chamber of Commerce to bring  
24 testimony on behalf of the Chamber. I would ask,  
25 because we don't have a whole bunch of panels, and

1  
2 this is actually the last panel, if the  
3 administration wouldn't mind just staying to hear  
4 this particular testimony; I would appreciate it.

5 MELISSA CHAPMAN: Good afternoon, Chair  
6 Cornegy and other members of the committee. I'm  
7 Melissa Chapman and I'm here to support the proposal  
8 that we're discussing today. I bring this testimony  
9 on behalf of our President and CEO Carlo Scissura.

10 The Brooklyn Chamber of Commerce is a  
11 membership-based... [interpose]

12 CHAIRPERSON CORNEGY: I sorry, Miss  
13 Chapman, wait one second; I have to affirm..  
14 [crosstalk]

15 MELISSA CHAPMAN: Oh I'm so sorry.

16 CHAIRPERSON CORNEGY: I've gotta affirm  
17 you. Do you affirm to tell the truth, the whole  
18 truth and nothing but the truth in your testimony  
19 before this committee and answer all the questions  
20 posed by members of the community?

21 MELISSA CHAPMAN: Yes.

22 CHAIRPERSON CORNEGY: I mean the  
23 committee. Alright.

24 MELISSA CHAPMAN: In continuing, the  
25 Brooklyn Chamber of Commerce is a membership-based

1  
2 business assistance organization that represents the  
3 interests of over 2200 member business as well as  
4 other businesses across the borough of Brooklyn. The  
5 Brooklyn Alliance is the not-for-profit economic  
6 entity of the Brooklyn Chamber of Commerce that works  
7 to address the needs of businesses through direct  
8 business assistance programs.

9 As the voice of the Brooklyn business  
10 community, we strongly support the legislation being  
11 proposed today, because it will enhance transparency  
12 and in so doing, provide businesses with  
13 opportunities to cure issues instead of being  
14 subjected to ongoing fines and fees. This proposal  
15 will be very helpful to small businesses especially,  
16 which are the backbone of a healthy economy.

17 As it stands, business owners are being  
18 inundated with fines and fees from various City  
19 agencies and when combined, these hurdles can really  
20 take away from valuable resources needed to operate a  
21 business.

22 Int. 0891 will empower business owners to  
23 effectively manage their establishments by being able  
24 to register online to receive notifications and they  
25 think their preference of having the complaint

1  
2 communicated to them 72 hours after which it is  
3 received via the 311 system.

4 As an enhancement, it may also be helpful  
5 for the business owner to be able to choose the  
6 language in which they can receive notifications,  
7 given New York's diverse population. In addition,  
8 part of the initial correspondence may also want to  
9 include steps that the business owner can take to  
10 cure any violations related to the complaint.

11 On that note, the Chamber supports the  
12 recommendation in Comptroller Scott Stringer's 2016  
13 Red Tape Report titled "60 Ways to Cut Red Tape and  
14 Help Small Businesses Grow," where it suggests that  
15 the City should establish a team of small business  
16 liaisons within the 311 system. Ideally, this group  
17 of individuals would support businesses by reaching  
18 out to owners who have had complaints lodged against  
19 them and directly working with owners to correct  
20 issues by connecting them to the appropriate  
21 officials within the various City agencies.

22 We applaud the Council for holding this  
23 hearing today and for giving us the opportunity with  
24 which to comment. Thank you.

1  
2 CHAIRPERSON CORNEGY: So thank you. In  
3 your dealings at the Chamber, have you heard from  
4 small businesses who've complained about the  
5 inability or how long it takes to find out that there  
6 are complaints logged against them?

7 MELISSA CHAPMAN: They do it by way of an  
8 annual member-issued survey that we do, where we ask  
9 members things that are preventing them from being  
10 successful as a business owner and to the best of my  
11 knowledge, the red tape regulation length of time of  
12 getting things done ranks at least a top 10 obstacle  
13 to doing business in New York City.

14 CHAIRPERSON CORNEGY: So you actually  
15 added enhancements to the bill, in terms of including  
16 the liaison, just so I know; what would that look  
17 like?

18 MELISSA CHAPMAN: Well within the 311  
19 system -- as a business advocate agency we always  
20 recommend business liaisons across agencies, because  
21 we feel like they have a good perspective and can  
22 work with businesses directly to expedite matters and  
23 be helpful and supportive to them. So I'm not sure  
24 if it's already being done; I think it was alluded to  
25 a little bit earlier in some of the statements that

1  
2 we heard earlier, but it would basically be a  
3 business support person being there when the  
4 complaint is lodged to work with them directly in  
5 terms of helping to rectify the issue before it gets  
6 to the point of having them penalized.

7 CHAIRPERSON CORNEGY: Thank you; I think...  
8 for the record, I think one of the things that Small  
9 Business First is attempting to provide is something  
10 very similar...

11 MELISSA CHAPMAN: Right.

12 CHAIRPERSON CORNEGY: to that, if not the  
13 exact thing, so we've just gotta make sure that once  
14 everything is up and running -- the Chamber's been a  
15 great partner in getting out information to small  
16 businesses across Brooklyn and the city...

17 MELISSA CHAPMAN: Thank you.

18 CHAIRPERSON CORNEGY: as it relates to  
19 new initiatives and things of that nature, so we've  
20 just gotta make sure we circle the wagons so that  
21 small businesses are aware that that to some degree  
22 exists already.

23 MELISSA CHAPMAN: And thanks for all that  
24 you do to support businesses across New York City.

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CHAIRPERSON CORNEGY: Thank you and tell  
Carlo I said hi.

MELISSA CHAPMAN: I will. Thank you.

CHAIRPERSON CORNEGY: Oh, in a twist of  
fate we are actually adjourned. Thank you.

[laughter]

[gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 27, 2016