

COMMITTEE ON SMALL BUSINESS JOINTLY WITH THE
COMMITTEE ON GOVERNMENTAL OPERATIONS

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CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON SMALL BUSINESS JOINTLY WITH THE
COMMITTEE ON GOVERNMENTAL OPERATIONS

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Monday, January 30, 2023

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B E F O R E: Hon. Julie Menin, Chair
Hon. Sandra Ung, Chair

COUNCIL MEMBERS:

Selvena N. Brooks-Powers
Tiffany Cabán
Shekar Krishnan
Darlene Mealy
Marjorie Velázquez
Shahana K. Hanif
Lincoln Restler
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COMMITTEE ON SMALL BUSINESS JOINTLY WITH THE
COMMITTEE ON GOVERNMENTAL OPERATIONS
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3 SERGEANT LUGO: This is a microphone check for The
4 Committee on Governmental Operations jointly with
5 Small Business. Today's date is January 30, 2023;
6 located in the Committee Room, recording done Pedro
7 Lugo.

8 SERGEANT AT ARMS: Good morning and welcome to The
9 Committees on Governmental Operations jointly with
10 Small Business.

11 At this time, we ask if you could place all
12 electronic devices to vibrate or silent mode. Thank
13 you.

14 Chairs, we are ready to begin.

15 CHAIRPERSON MENIN:

16 [GAVELING IN] [GAVEL SOUND]

17 Okay, good afternoon, everyone, I am Council
18 Member Julie Menin, Chair of The Committee on Small
19 Business, and I want to thank everyone for joining
20 today's joint hearing with the Committee on Small
21 Business and The Committee on Governmental
22 Operations.

23 I first of all want to begin by thanking my co-
24 chair for today's hearing, Council Member Sandra Ung,
25 Chair of the Committee on Governmental Operations,
for her great support in putting together this

3 important hearing. And I will acknowledge colleagues
4 as they join us.

5 Over the past three years, small business owners
6 have been significantly challenged by the pandemic in
7 New York City. Roughly 60,000 businesses had to shut
8 down their doors of normal operations, and over
9 26,000 small businesses were forced to shut down
10 permanently. Economic relief from burdensome
11 regulation has been necessary at the federal, state,
12 and local levels to protect our city's small
13 businesses. Small businesses are obviously integral
14 to our communities, they are literally the backbone
15 of our local economy and contribute to the very
16 vibrant landscape that is New York City. Support for
17 small businesses has always been a top priority, but
18 after the devastating effects of the pandemic,
19 infinitives and legislation designed to mitigate
20 these effects and to support the growth of small
21 businesses have become ever more crucial.

22 Small business owners deserve a fair and a
23 fighting chance. In 2021, the Small Business
24 Committee introduced an enacted Local Law 80, which
25 reduced penalties and provided new opportunities for
small businesses to correct first time violations

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3 without paying a fine. With the more recent
4 introduction of the Small Business Board Executive
5 Order, we have seen additional steps take to overhaul
6 some of the unnecessary and overly costly violations
7 that burden small businesses and hinder their ability
8 to grow. While it is important to celebrate the
9 steps taken to uplift small businesses in need, there
10 is still great room for improvement. And I am proud
11 that we are here today to discuss two of my bills
12 that will support small business owners and grant
13 small businesses the opportunity to assist vulnerable
14 New Yorkers.

15 My first bill, which is Intro 815, from The
16 Committee on Government Operations, addresses the
17 rules of construction for unspecified ranges of civil
18 penalties. While the Council establishes penalty
19 amounts for violations that are presented in a range,
20 it is ultimately up to the city agencies to establish
21 a penalty schedule.

22 Currently agencies may set the penalty for a
23 first time violation higher than the minimum without
24 specifying aggregating factors justifying the higher
25 amount. Intro 815 would amend this so that for all
first time violations the default amount is the

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3 lowest in the range. This reduces the element of
4 surprise when paying a penalty and creates an even
5 playing field for small business owners across the
6 City.

7 I am grateful that Mayor Adams and his
8 administration have begun to right the wrongs of
9 previous administrations on fines such as improper
10 placement of barber poles that were set at \$150.00
11 rather than \$50.00 or displaying banners without a
12 DOT permit that was set at \$450.00 instead of
13 \$150.00.

14 My second bill, Intro 491, from The Committee on
15 Small Business, similarly addresses first time
16 violations and gives businesses that serve food the
17 opportunity to correct certain first time violations
18 without paying the fine. Instead of a fine, these
19 establishments will be expected to donate their
20 excess food to food pantries and banks across New
21 York City through an agency created portal.

22 Intro 491 is particularly important as New York
23 grapples with an extreme hunger crisis. Over 1.5
24 million New Yorkers are experiencing food insecurity
25 including one in four children. These numbers were

3 only exacerbated by the pandemic as well as the need
4 to feed asylum seekers.

5 The number of New Yorkers that visited food
6 pantries and soup kitchens in 2022 was significantly
7 higher than in 2019. Redirecting edible and
8 nutritious excess food that would otherwise go to
9 waste to New Yorkers that need it the most not only
10 challenges the rising rates of food insecurity, they
11 can provide small business owners with economic
12 relief by incentivizing donations as a form of
13 violation forgiveness.

14 I look forward to hearing testimony from the
15 administration and from small business owners and
16 advocates on these two bills today.

17 I want to thank CJ Murray, Erica Cohen, Rebecca
18 Barilla, from central staff, for their work in
19 putting together this hearing, as well as my own
20 Chief of Staff, Jonathan Szott, and Legislative and
21 Budget Director Brandon Jordan for their assistance.

22 It is now my pleasure to turn it over to Council
23 Member Ung to provide her opening statement, thank
24 you.

25 CHAIRPERSON UNG: Good afternoon, I am City
Council Member Sandra Ung, Chair of the Committee on

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3 Governmental Operations. I am thrilled to be
4 conducting today's hearing jointly with the Small
5 Business Committee. And I would like to begin by
6 thanking my co-chair Council Member Julie Menin and
7 her team for their hard work in putting together this
8 hearing.

9 Small Businesses are the heart of so many of New
10 York City's neighborhoods and are a large part of
11 what makes this city unique. COVID has devastated
12 our small business community with an estimated 20
13 percent of the City's small businesses being forced
14 to close since the beginning of the pandemic. These
15 businesses need our help and now is not the time to
16 be subjecting them to unnecessary large fines
17 particularly for first time violations.

18 The New York City Charter or the Administrative
19 Code and Rules are full of requirements that come
20 with civic penalties when they are violated. And
21 when we in the City Council set ranged for these
22 penalties it is the agencies that ultimately set the
23 penalty schedule or add the necessary details when a
24 penalty schedule is already established by local law.

25 Many provisions that specify a minimal penalty
don't actually require the minimum fine to be

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3 imposed for a first time violation. Today we will be
4 discussing Chair Menin's bill that would require all
5 agencies to specify aggravating factors when they set
6 a fine for a first violation that is higher than a
7 minimum amount in the law.

8 I am hopeful that this bill, along with the other
9 bill by Chair Menin being heard today, will help
10 small business by reducing and bringing greater
11 clarity to the fines that owe to the City.

12 And, with that, I would like to thank the members
13 of the public, the representatives of The Department
14 of Sanitation, and the Department of Consumer and
15 Worker Protection. I also want to thank CJ Murray,
16 Rebecca Barilla, and Erica Cohen from the central
17 staff for their work in putting together this
18 hearing. And, finally, I would like to thank my own
19 Chief of Staff, Alexander Hart, for his assistance.

20 And, now, I would like to turn it back to my co-
21 chair, Council Member Menin.

22 CHAIRPERSON MENIN: Thank you so much, Council
23 Member. I would also like to say that we have been
24 joined remotely by Member Tiffany Cabán.

25 CJ, I will turn it over to you... For the
administration, thank you.

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3 COMMITTEE COUNSEL: Thank you, Chairs. We will
4 now hear from the administration. Before we begin, I
5 will administer the affirmation.

6 Panelists, please raise your right hand. Do you
7 affirm to tell the truth, the whole truth, and
8 nothing but the truth, before these committees, and
9 to respond honestly to council member questions?

10 [ADMINISTRATION AFFIRMS]

11 Thank you, you may begin.

12 ASSISTANT COMMISSIONER ORTIZ: Good afternoon,
13 Chair Menin and Chair Ung, and members of the
14 Committees on Small Business and Government
15 Operations. My name is Carlos Ortiz, and I am the
16 Assistant Commissioner for External Affairs at the
17 Department of Consumer and Worker Protection (DCWP).
18 I am joined by Michael Tiger, DCWP's General Counsel,
19 and my colleague Gregory Anderson, Deputy
20 Commissioner at the Department of Sanitation (DSNY).
21 Thank you for the opportunity to testify on today's
22 legislation.

23 DCWP has been steadfast in its commitment to
24 supporting small businesses in New York City. We do
25 this in a number of ways: Our dedicated outreach
26 teams share informational materials and conduct

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3 hundreds of educational events each year, partnering
4 with sister agencies such as the Department of Small
5 Business Services to bring resources to local
6 businesses. DCWP's visiting inspector program has
7 served more than 10,000 individual businesses since
8 2017, providing free, one-on-one educational
9 inspections by a senior inspector. These efforts
10 ensure that businesses have access to information
11 regarding their requirements to operate in New York
12 City, through which we hope to facilitate a culture
13 of compliance with laws and rules that the Council
14 and Administration have established. And, through our
15 equitable enforcement and progressive discipline
16 model, we prioritize our enforcement efforts against
17 recidivist non-compliant businesses to ensure that
18 the city's marketplace is free from predatory actors.

19 Moreover, DCWP regularly and meticulously
20 assesses the provisions of the Administrative Code we
21 enforce to ensure that the civil penalties we issue
22 are appropriate and not overly burdensome on our
23 city's small businesses.

24 For example, in 2021, we worked with the Council
25 to pass Local Law 80, which made business-friendly
changes to over 30 categories or areas of our

3 enforcement and substantially lowered penalties for
4 over 150 individual violations that DCWP enforces.
5 Local Law 80 also lowered civil penalties to zero
6 dollars for the first-time offense of 12 violations
7 and added the ability to cure a first-time violation
8 for dozens more.

9 Lastly, it repealed outdated or redundant
10 licensing requirements to provide relief to small
11 businesses recovering from the economic impact of the
12 pandemic.

13 In 2022, as part of Mayor Adams' Small Business
14 Forward Initiative, DCWP proposed an additional 24
15 reforms, principally to lower civil penalties to zero
16 dollars for first time violations, which are
17 projected to save businesses almost \$1 million a
18 year. The bill to implement those reforms, and
19 similar reforms proposed by many other city agencies,
20 also known as Introduction 845, is currently before
21 the Council, carried by Chair Menin.

22 The Administration looks forward to seeing it
23 advance and provide substantive relief to New York
24 City's small businesses.
25

3 Along those lines, I would like to describe for
4 the committees today how DCWP establishes public
5 penalty schedules for the laws it enforces.

6 When the Council passes legislation that involves
7 a range of penalties, DCWP will engage in rulemaking
8 to establish a specific penalty for the first
9 violation that weighs into consideration our
10 knowledge of the industry, our knowledge of the harm
11 that has been identified by the legislation, and the
12 potential for deterrence of that harm. The proposed
13 penalty is shared with the public in order for
14 elected officials, community boards, consumers,
15 workers and businesses to provide feedback. When the
16 penalty schedule is finalized, it is publicly
17 available.

18 Subsequently, whenever an OATH hearing officer
19 issues a decision against a business, they will use
20 the publicly available penalty schedule to assess a
21 penalty against the business.

22 Today there are two bills for consideration at
23 this hearing. The first, Introduction 491, would
24 require DSNY and DCWP to establish a program for food
25 service establishments to donate their excess food,

and in return see certain civil penalties waived.

3 DCWP defers to DSNY with respect to this legislation.

4 Introduction 815 relates to Administrative Code
5 provisions that have a range of penalty amounts for a
6 specific violation and would require city agencies
7 enforcing those provisions to utilize the lowest
8 amount in the range as the standard first time
9 penalty. City agencies would only be able to impose a
10 higher penalty by establishing specific aggravating
11 factors by rule for each violation in the
12 Administrative Code, which would then need to be
13 proven by the agency each time during a proceeding at
14 the Office of Administrative Trials and Hearings
15 (OATH).

16 As I described earlier, DCWP has been committed
17 to continually and intentionally reassessing
18 penalties in the Administrative Code, listening to
19 feedback from small businesses and advocates, to
20 ensure that they are appropriate and effective.

21 However, the Administration does not support this
22 legislation as drafted and has concerns with its
23 sweeping approach that could have adverse
24 consequences spanning a range of City agencies. For
25 DCWP specifically, these mandated changes will weaken

3 penalties that serve as a deterrent to some of the
4 most egregious business activity we observe, such as
5 tobacco retail dealers operating unlicensed, debt
6 collectors illegally pursuing a consumer, or
7 individuals deceiving immigrant New Yorkers with
8 false services and promises of gaining documented
9 status. The bill would also require DCWP to establish
10 aggravating factors in order to issue penalties above
11 the lowest amount in a range. Proving aggravating
12 factors would likely require DCWP to staff lawyers to
13 attend OATH proceedings, making the hearing process
14 more time consuming and elaborate for businesses.

15 Finally, as my colleague at DSNY can speak to,
16 this bill would impact significant provisions of the
17 laws they enforce and those that our other sister
18 agencies enforce to protect New Yorkers from illegal
19 activity. We recommend, as an alternative, that we
20 continue to collaborate on Introduction 845, which I
21 referenced previously, to implement significant
22 reforms to civil penalties as it relates to small
23 businesses.

24 Once again, thank you Chairs Menin and Ung for
25 the opportunity to testify today before your
committees. I welcome any questions you and members

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3 may have about today's bills and DCWP's work to
4 uplift small businesses and protect consumers and
5 workers.

6 DEPUTY COMMISSIONER ANDERSON: Good afternoon,
7 Chair Menin and Chair Ung, and members of The
8 Committee On Small Business And Government
9 Operations, I am Gregory Anderson, Deputy,
10 Commissioner For Policy And Strategic Initiatives at
11 the New York City Department of Sanitation (DSNY).

12 Thank you for the opportunity to provide a brief
13 testimony on these bills before your committees
14 today.

15 New York City household and businesses together
16 discard more than one million tons of food waste each
17 year, some of which is edible food fit for donation
18 and recovery. New York City government has long
19 support, food, donation and recovery as critical
20 parts of both our strategy to feed hungry New Yorkers
21 and our efforts to ensure a clean, sustainable city.

22 Under the leadership of The Mayor's Office of
23 Food Policy, the City released Food Forward NYC, the
24 City's first ever 10-year food policy plan. This plan
25 outlines a comprehensive policy framework to increase
food security, promote access to and consumption of

3 healthy foods, and support economic opportunity and
4 environmental sustainability in the food system.

5 DSNY plays a role in this work through our
6 donation and reuse programs. Our donation and reuse
7 directories gives New Yorkers an easy way to identify
8 nearby organizations and reuse businesses that take
9 dozens of kinds of products, including both
10 perishable and non-perishable food.

11 We also support and Network of reuse partners
12 including City Harvest and Food Bank for NYC,
13 convening dozens of similar organizations to share
14 best practices and promote collaboration in the
15 space. DSNY donation and reuse partners recovered
16 29,600 tons edible food last fiscal year for
17 redistribution to food pantries, kitchens, and New
18 Yorkers in need. And this is just a fraction of the
19 overall food donation that happens in New York City.

20 In 2019, DSNY created the Online Food Donation
21 Portal to match businesses who have surplus edible
22 food with nonprofits to distribute it to those in
23 need. In three years, the portal has successfully
24 matched hundreds of donations, totaling more than
25 540,000 pounds of food.

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3 We are also pleased to see progress at the
4 federal level to support food donation practices.
5 Earlier this month, President Biden signed the
6 bipartisan Food Donation Improvement Act, which
7 extends important Good Samaritan protections to food
8 businesses who provide food below costs or who
9 provide food directly to those in need.

10 Edible food is less than half of food waste in
11 New York City, and DSNY is also taking steps to
12 divert all food waste -- along with yard waste and
13 food soiled paper -- from landfills to improve
14 cleanliness of our neighborhoods, fight rats, and
15 reduce methane emissions in landfills. In October, we
16 rolled out curbside composting to every household in
17 Queens -- the largest curbside composting program in
18 the country. And just 12 weeks, that program diverted
19 nearly 13 million pounds of yard and food waste, the
20 most successful organic waste diversion program in
21 the City's history.

22 Intro 491, sponsored by Chair Menin, would
23 require DSNY and The Department Of Consumer And
24 Worker Protection (DCWP) to establish a food donation
25 program where businesses could have a civil penalties
for eligible violations waived, if they agree to

3 donate their excess food to a nonprofit for a certain
4 period of time. The proposed bill will apply to food
5 service establishments and would only be applicable
6 for types of violations identified in this bill by
7 the respective departments by rule. For DSNY,
8 eligible violations could include those related to
9 source, separation, and recycling of designated
10 materials or the posting of signage related to such
11 source separation and recycling. For DCWP, eligible
12 violations could include those that require the
13 display of prices, the accuracy of scanners, and the
14 postings of signage.

15 The administration agrees with the intended purpose
16 of this bill -- to offer regulatory relief to small
17 businesses and to incentivize the donation of excess
18 food to nonprofits for the purposes of feeding hungry
19 New Yorkers. However, this bill would likely create
20 an unintended burden on both participating businesses
21 and the city agencies tasked with them, planning it
22 by requiring onerous documentation, review, and
23 reporting procedures.

24 We fully agree with the intended regulatory form
25 as it applies to commercial, recycling, and organics
requirements, but we believe it will be more

3 appropriate to pursue reductions and penalties for
4 first time violations as envisioned in Intro 845 --as
5 Carlos mentioned earlier.

6 We look forward to working with the City Council
7 to implement regulatory reform for small businesses
8 and to further explore opportunities to incentivize
9 food donation and recovery.

10 In addition, while my colleagues at the DCWP are
11 addressing Intro 815 at today's hearing on behalf of
12 the administration, I do you want to amplify their
13 concerns as they specifically relate to DSNY.

14 Many of DSNY's violations of the Administrative
15 Code have fixed penalties; however, those that do
16 have ranges of penalties include important categories
17 related to environmental justice, public health, and
18 public safety, such as the transport and disposal of
19 asbestos waste, the operation of waste transfer
20 stations, and the disposal of medical and hazardous
21 waste.

22 We firmly believe that any changes to penalties
23 set forth in the Administrative Code should be made
24 specifically and deliberately on a case-by-case basis
25 rather than across-the-board.

3 Thank you for the opportunity to testify today,
4 and we are happy to answer any questions.

5 CHAIRPERSON MENIN: Great, thank you so much for
6 the testimony. I do have a number of questions, but
7 before, I just want to recognize some of our
8 colleagues who have joined: We have been joined by
9 Majority Whip Brooks-Powers; we have been joined by
10 Council Member Schulman, Council Member Hanif, and
11 now also Council Member Cabán on Zoom. And I will
12 recognize additional colleagues as they join.

13 So, I appreciate your testimony. I do have a
14 number of questions. I am going to start with DCWP
15 and talk about Intro 815.

16 So, I know you talked about concerns about how
17 this would impact violations on, let's just call them
18 bad actors -- small businesses that are causing real
19 consumer harm. So, that's not the intent of this
20 bill 815. The point of 815 is to try to alleviate
21 fines against small businesses where there is de
22 minimis consumer harm. It is along the lines of what
23 Consumer Affairs did -- what we did years ago when I
24 was commissioner, we launched a small business relief
25 package where when one word in a sign was wrong,
small businesses shouldn't be socked with thousands

3 of dollars of fine for a picayune violation when
4 clearly there is no consumer harm. So, that is the
5 intent of this bill. I am more than willing to make
6 any amendments to clarify that in the bill that makes
7 it clear that we, again, are not trying to in any way
8 get bad actors who are causing real consumer harm off
9 the hook.

10 So, my question really is that ,you know, the
11 intent of the bill, that is what the intent of the
12 bill is. So, how can we get to that issue? How can
13 we make it easier for these small businesses so that
14 when agencies are doing their rulemaking they are not
15 going beyond the power of the Council. Because that
16 is really, again, what this bill is meant to di. The
17 Council passes a bill, they say the minimum fine
18 should be x, but then via agency rule making, the
19 agencies are going beyond where the Council is. And
20 that is really what is causing some of the problem.

21 So, that is sort of the crux of the issue, and
22 very open to ,you know, additional changes, but that
23 is really what I am trying to get at here.

24 ASSISTANT COMMISSIONER ORTIZ: Thank you, Chair
25 Menin, it is certainly comforting to hear the intent
that you have outlined for the bill. I think,

3 currently as drafted though, those significant bad
4 actors would themselves, uhm, the penalties for them
5 would be lowered significantly. For example, a
6 tobacco retail dealer who is operating unlicensed,
7 their penalty would go from \$2,000.00 to \$200.00.
8 So, that is an issue in the drafting, I mean, that
9 was a major concern that we had with these bad
10 actors, so to speak. And we are happy to work with
11 you on that. Generally, I mean, we are always
12 willing to assess, to review, uh, provisions in the
13 Administrative Code that we enforce. And we have
14 done so multiple times over the past 18 months. I
15 think for that reason, because of the intentional and
16 deliberate process we partook for Intro 845, it is
17 why we are... The administration continues to
18 support that and hopes that advances through the
19 Council.

20 CHAIRPERSON MENIN: Absolutely, and I believe we
21 are scheduling, if we haven't already, a hearing on
22 845. And I completely agree, obviously as the
23 sponsor of 845, with its mission. I do believe that
24 this bill, 815, needs to be separate, because it
25 deals with a completely separate issue, which is

3 Agency rulemaking going above and beyond a Council
4 legislation and impacting the small businesses.

5 So, I just want to make clear that I do not
6 agree, respectfully, that we can roll 815 into 845,
7 because it is like comparing an apple and an orange.
8 They are completely different issues.

9 ASSISTANT COMMISSIONER ORTIZ: Yes. Well, I would
10 say certainly, uh, Council Member, when legislation
11 goes through the Council, I think for us, when it
12 comes to enforcement, clearly we feel that there is a
13 serious issue that is happening there. Right? There
14 is a harm that needs to be addressed. And when there
15 is a range, we take it as the discretion to gain
16 knowledge of the industry, understand more about the
17 harm, and understand how we can deter that harm. And
18 I think that ultimately is a question of how we might
19 utilize a range. Notwithstanding, when we issue a
20 penalty schedule, it is public, and we invite public
21 feedback to better understand the issue that is
22 taking place.

23 I think a most recent example I have had to deal
24 with perhaps is the Open Captioning Law. When we
25 were engaging in that process, that legislative
process, I remember Council Member Rosenthal being

3 very clear that it was important to stop the harm of
4 New Yorkers in our deaf community from not being able
5 to go to a movie theater and enjoy time with their
6 family. And, for us, when we looked at the range
7 that was [INAUDIBLE] of the penalty, and when we
8 rule-maked or that range, it was important to have a
9 deterring effect to ensure that that protection was a
10 real protection, and that folks in our deaf community
11 would be able to enjoy that protection.

12 So, I think, ultimately, we want to make sure
13 that all of our processes, whether that is rulemaking
14 or others, are clear, that they are public, that they
15 are available to businesses, so that we can foster
16 and facilitate that culture of compliance.

17 CHAIRPERSON MENIN: So, can you talk a little bit
18 more about -- overall, I know it goes beyond DCWP,
19 but when the administration, via agency rulemaking,
20 decides to increase the minimum and the maximum fines
21 compared to the local laws? Because I really do
22 believe this has a very negative impact particularly
23 on immigrant-owned small businesses.

24 So, can you just talk about, like, in what
25 criteria, when are agencies deciding to go beyond the

3 City Council laws when they are setting these various
4 fines?

5 ASSISTANT COMMISSIONER ORTIZ: I think it really
6 depends on a case by case basis. And for that
7 reason, that is why we issue specific penalty
8 schedules for each type of provision of the Ad Code
9 or what we are enforcing and why we want to take
10 specific feedback on that particular provision.

11 Again, I think it is important for us to hear
12 from the elected officials, from community boards,
13 from businesses themselves, the regulated
14 communities, I think that is always vital information
15 we could be receiving.

16 CHAIRPERSON MENIN: And, that... Oh, I just did
17 want to say, one other thing, I mean, the other
18 concern that I would have ,you know, and I say this
19 as a regulatory lawyer, is that people show up to
20 council hearings, they know about council hearings,
21 so when the Council is doing a law, they are going to
22 come, and they are going to come out to testify. In
23 agency rulemaking, you're just not getting the same
24 amount of community feedback. You are not getting
25 hundreds of people who are coming out to testify.
So, again, that really concerns me that the agencies

3 are kind of going beyond the power of the Council in
4 setting some of these fines, and going beyond, quite
5 frankly, the legislative intent.

6 ASSISTANT COMMISSIONER ORTIZ: Well, Council
7 Member, I can say from DCWP's perspective, we have a
8 robust outreach for our rulemaking. We have
9 thousands of business associations, worker
10 associations, consumer associations, within our
11 contact list. We make sure... (CROSS-TALK)

12 CHAIRPERSON MENIN: But, how many on average come
13 out to... I mean, I know from experience ,you know,
14 during my tenure at DCWP, hundreds of people are not
15 coming out on average for most agency rulemaking.

16 ASSISTANT COMMISSIONER ORTIZ: Perhaps in the most
17 recent years, since we have been able to refine our
18 list and create a much deeper outreach mechanism,
19 ,you know, I can think of the last two rulemakings
20 that we did automating [INAUDIBLE] tools or the
21 minimum payrate for delivery workers, we had hundreds
22 of people come out for both of those. I think it is
23 a testament to the work that we do at our agency to
24 make sure that New Yorkers are aware and that they
25 have an opportunity to provide public comment.

3 MICHAEL TIGER: And just let me add to that
4 briefly, Chair, I mean, as Mr. Ortiz referenced, I
5 mean, a couple of the more recent hearings literally
6 broke our Zoom account temporarily. That is how
7 robust the participation was by different members of
8 the regulatory community and for members of the
9 public. But even for, uh, rulemaking for our penalty
10 schedules, we do get comments, and we do take those
11 into account.

12 CHAIRPERSON MENIN: Mm-hmm.

13 ASSISTANT COMMISSIONER ORTIZ: And, let me just
14 say that we fixed our Zoom account very quickly.

15 MICHAEL TIGER: Yes, I'm sorry, I don't mean to
16 cut you off... (CROSS-TALK)

17 CHAIRPERSON MENIN: I am glad to hear you're
18 getting good attendance, I just think that might be
19 the exception, though. The general rulemaking that
20 the agency does and that most agencies do, is not
21 attended by hundreds of... I mean, it just isn't,
22 because a lot of people are just... the majority of
23 small business owners in the City are not aware when
24 the agency is doing rulemaking.

25 So, again, we don't need to belabor it, I just,
again, I think it goes to the point and the intent of

3 this piece of legislation, which is to protect small
4 business owners from onerous, burdensome fines. We
5 are not, again, trying to get bad actors off of the
6 hook, that is never the intent of what we are trying
7 to do here. So, I just really want to make sure the
8 agency understands that and works collaboratively
9 with us on this piece of legislation.

10 ASSISTANT COMMISSIONER ORTIZ: Certainly, Council
11 Member. We are always looking to working... (CROSS-
12 TALK)

13 CHAIRPERSON MENIN: Great...

14 ASSISTANT COMMISSIONER ORTIZ: collaboratively
15 with the Council. So, I appreciate that.

16 CHAIRPERSON MENIN: All right, and then, I just
17 have... Did you want to ask a question on that?

18 Okay, I am just going to move to 491, and then I
19 am going turn it over to my Chair and to other
20 council members to ask questions.

21 So, on Intro 491, a couple of questions: We have
22 had some feedback about reducing fees for permits and
23 licenses instead of reducing fines, so I don't know
24 if you have any comments to make on that -- if the
25 agency is open to that as well?

3 DEPUTY COMMISSIONER ANDERSON: I can't speak to
4 permits and licenses for small businesses
5 specifically, Sanitation doesn't generally permit of
6 license small businesses, mostly it's transfer
7 stations and sort of larger actors like that. We do
8 fully support regulatory relief for small businesses
9 particularly in the area of commercial recycling and
10 commercial organics' requirements. And ,you know, we
11 think that is a good direction to go in.

12 CHAIRPERSON MENIN: Okay, and I know that you have
13 created this food donation portal called DonateNYC,
14 so what is the process of donating through that
15 portal?

16 DEPUTY COMMISSIONER ANDERSON: So, the process is
17 pretty straight forward. Let's say you are a food
18 retailer, or a food service establishment and you
19 have three crates of... And we have actually had
20 this specific example before... You have three
21 crates of pasta, and it is a nonperishable good, you
22 go onto the portal, you say, "Here's my address, I
23 have three crates of pasta", and you put in any
24 specific requirements of, "It has to be picked up
25 during this time, or, I am available to deliver it,"
or whatever, and then we have a network of nonprofits

3 that are also registered in the portal, and it will
4 show the business the closest nonprofits who are
5 interested in that kind of product. It will also
6 send a notification to those nonprofits explaining
7 that, "This product is available in your area are you
8 interested in receiving it?" And it tries to make
9 that connection between those two.

10 CHAIRPERSON MENIN: And how many small businesses
11 right now are using this portal?

12 DEPUTY COMMISSIONER ANDERSON: It is not a
13 tremendously large number; it is around 500
14 businesses registered to donate, and around 700
15 nonprofits registered to receive food.

16 CHAIRPERSON MENIN: Okay, so that again, I think,
17 goes to the point of why we need this particular
18 bill. We have over 200,000 small businesses in the
19 City, again, at 500 out of 200,000, it's a woefully
20 low number frankly. And, so, again, I think this is
21 why we need this. I would, by the way, have no issue
22 with trying to roll the legislation into a
23 preexisting portal. We are not trying to create more
24 administrative work or burdens. That is the last
25 thing, honestly, that we are trying to do. And, so,
we are very open to conversations about trying to

3 reframe DonateNYC to make it a more robust portal
4 that small businesses are actually utilizing, and
5 then marrying that with this concept in the
6 legislation of, when small businesses are donating
7 the food, then they get relief on some of these
8 fines. So that we are really incentivizing small
9 businesses to donate this excess food so that it is
10 not going to waste, and so that we are also dealing
11 with the fact that there are over 1.5 million New
12 Yorkers who are experiencing hunger right now in the
13 City.

14 DEPUTY COMMISSIONER ANDERSON: I'm sorry, Council
15 Member, I don't think I got a question... (CROSS-
16 TALK)

17 CHAIRPERSON MENIN: It is just ,you know, again,
18 you have got this portal, it is not really being used
19 very widely. I think we can all agree on that. And,
20 so, again, I am open in the legislation to try to try
21 to see if we can carry this DonateNYC into the
22 legislation, so that we are not, again, creating a
23 new administrative burden in creating a whole new
24 portal.

25 DEPUTY COMMISSIONER ANDERSON: I think we
certainly open to conversations about how to improve

3 participation on the DonateNYC Food Donation Portal.

4 I do want to say that, one, the participation in the
5 food donation portal is in no way representative of
6 the amount of food donation happening in New York
7 City....

8 CHAIRPERSON MENIN: Mm-hmm

9 DEPUTY COMMISSIONER ANDERSON: much of which is
10 happening from businesses to nonprofits, and that is
11 the 29,600 tons number that I had mentioned in my
12 testimony. When you also include sort of
13 neighborhood level relationships between a corner
14 store or a food service establishment and their
15 church pantry down the street, that number is
16 probably much, much higher. We don't capture all of
17 the donation that is taking place in New York City.
18 So, I do think there is a lot of that happening
19 today. And we are certainly open to conversations
20 about how to capture that as part of this, uh, this
21 proposal. And, then the second piece, I do want to
22 raise is, ,you know, the best thing for businesses is
23 to not have any excess food. So, I want to make sure
24 that we are being... That we are not creating an
25 incentive for businesses to waste food that gets
26 donated. The best thing for a business to do is to

3 buy exactly what it needs to serve its customers,
4 uhm, and not throw anything away or donate anything
5 at the end of the day. So, we just want to make sure
6 that we are not creating some kind of perverse
7 incentive there.

8 CHAIRPERSON MENIN: Okay, I mean, I... I don't
9 think any small business would, to just get relief
10 from the violation, end up doing what you are saying
11 that they might do. Because that would not be worth
12 it for them. Again, they are in the business to try
13 to sell food to customers, and so I am not... I
14 don't share that concern, quite frankly. But, I
15 appreciate you raising it.

16 I also want to acknowledge that we have been
17 joined by Council Member Mealy.

18 I am now going to turn it over to my co-chair,
19 Council Member Ung, for her questions.

20 CHAIRPERSON UNG: Thank you, Council Member Menin.

21 I just have a few questions about penalties.

22 How does the agency decide how to set the penalty
23 for a first time violation -- in general?

24 ASSISTANT COMMISSIONER ORTIZ: I think, generally,
25 we are using our experiences as an enforcing agency
to identify the level that has to be at for a

3 deterrence to be effective. And ,you know, for
4 example, let's go back to the example I gave around
5 open captioning, the range there was \$100.00 to
6 \$500.00. I think that we know through our experience
7 in enforcing other provisions at a \$100.00 would be
8 too low to deter this activity. So, what we do is
9 propose a penalty schedule with the actual number
10 now, which I believe is \$325.00 So, we use that
11 number and a progressive model of building up in the
12 penalty schedule to set a deterrence factor in place.

13 I think it really... Sorry...

14 MICHAEL TIGER: And, just also, we are also very
15 much listening to the public hearing that happened
16 for the introduction of legislation -- what we hear
17 from advocates, what we hear from the members who
18 have sponsored the bill, and what the harm they
19 believe needs to be remedied and how important they
20 feel it is to set a deterrent.

21 ASSISTANT COMMISSIONER ORTIZ: And I think ,you
22 know, ultimately some provisions of the Ad Code, they
23 could be quite old -- decades old. And, at times, we
24 do reset our rulemaking for a penalty schedule,
25 adjust for inflation, identify if a certain activity
hasn't been deterred enough. I think ultimately we

3 want to... That is a testament to ensuring that we
4 always reassessing penalties -- whether that is in
5 rulemaking or whether that is in the Ad Code -- as we
6 have done over the past, uh, 18 months, as I
7 mentioned.

8 CHAIRPERSON UNG: Thank you. So, the closed (sic)
9 caption, the one you just mentioned, is an example of
10 how the first violation is higher than the minimum
11 one that is set by the legislation. Are there any
12 others you could just give some examples of?

13 ASSISTANT COMMISSIONER ORTIZ: Yes, of course.
14 So, I mentioned earlier that there are... If you are
15 operating a tobacco retail shop ,you know, selling
16 cigarettes unlicensed, that currently is \$2,000, and
17 that would go down to \$250.00. If you are an
18 immigration service provider, that... And you are
19 deceiving immigrants, currently the first time
20 violation there is \$5,000, and that would be lowered
21 to \$500.00. If you are a debt collector, currently
22 the fine there is \$1,000, but that would be lowered
23 to \$700.00. And that is for illegally pursuing a
24 consumer for collecting debt.

25 So, this is some of the egregious activity that
we have identified preliminarily on this bill. We

3 do know ,you know, as my colleagues at DSNY
4 mentioned, there are also parts of their Ad Code that
5 are implicated. We have been speaking with other
6 agencies, they see that they have been implicated as
7 well. I think for us, it is definitely comforting to
8 know that that is not the intent of the legislation
9 that is before us today. So, we are happy to
10 collaborate more on that. But, we do want to flag
11 that these particular penalties that we have do cause
12 serious concern if they are lowered.

13 CHAIRPERSON UNG: Okay, and there is one last
14 question, how often do you evaluate these penalties?

15 ASSISTANT COMMISSIONER ORTIZ: With Local Law 80
16 and with Introduction 845, we did a comprehensive
17 reviews of our Ad Code, and those both happened in
18 the past 18 months.

19 CHAIRPERSON UNG: Excellent, thank you.

20 And, then, just two last questions. So, how many
21 violations are issued annually by The Department of
22 Sanitation?

23 DEPUTY COMMISSIONER ANDERSON: How many total
24 violations?

25 CHAIRPERSON UNG: Yes.

3 DEPUTY COMMISSIONER ANDERSON: I don't have that
4 exact number here today, but it is somewhere around
5 the order of three or 400,000. And many of those
6 violations, Council Member, are for things like
7 failure to clean your sidewalk, failure to clean 18
8 inches into the street -- important violations that
9 serve to keep our city clean. So, that is the vast
10 majority of the violations that we issue.

11 CHAIRPERSON UNG: Thank you. And, how much
12 violations are issued by DCWP annually?

13 ASSISTANT COMMISSIONER ORTIZ: In 2022, we issued
14 12,000 summons.

15 CHAIRPERSON UNG: Okay, do you have an idea what
16 those generally those summons are for? Like, what
17 The Department of Sanitation was saying?

18 ASSISTANT COMMISSIONER ORTIZ: I would say about
19 ,you know, a good portion of them are from unlicensed
20 activity. I think that is the principle right there.

21 I can say, for example, on the tobacco retail
22 dealer, I know this because we just testified the
23 other week on tobacco retail dealers, but we issued
24 about 2,400 summons for unlicensed activity for
25 tobacco retail dealers in the past year. So, it is

3 certainly a category... That is one example of a
4 category where we are working actively on.

5 CHAIRPERSON UNG: Thank you. I am done with my
6 questions.

7 CHAIRPERSON MENIN: Okay, we have a number of
8 colleagues who have questions Council Member Brooks -
9 Powers?

10 MAJORITY WHIP BROOKS-POWERS: Thank you, Chairs.

11 I just have two really brief questions.

12 I am just wanting to understand the incentives
13 that Sanitation, DCWP suggest for small businesses to
14 engage and to donate excess food. But, also, how
15 could the two agencies facilitate effective
16 coordination between nonprofits and businesses to
17 administer this program?

18 DEPUTY COMMISSIONER ANDERSON: Sure, thank you for
19 that question, Council Member.

20 So, I think, as I mentioned before, a lot of this
21 donation is already happening. We may not have
22 perfect tracking of who is donating what where, uh,
23 but we don't necessarily want to introduce additional
24 government involvement in a sector that is working
25 really well. There are steps we can take to
incentivize additional food donation. I think you

3 are exactly right on that. We think through, for
4 example, our commercial waste zones program, ,you
5 know, all of the carters that are seeking to
6 participate in that program have to submit zero waste
7 plans. One of the components of that plan, is how do
8 you reduce and reuse waste before it becomes waste at
9 the curb? So, that is something that we are really
10 looking forward to working with the carters to
11 advance as we implement that program.

12 MAJORITY WHIP BROOKS-POWERS: Can you talk more
13 about the coordination, though, between the agencies
14 around this?

15 DEPUTY COMMISSIONER ANDERSON: Yes, so, Sanitation
16 is the principle agency working in donation recovery
17 generally. We work very closely with our partners at
18 The Mayor's Office Food Policy in the food donation
19 space specifically. They have relationships with
20 many of the food pantries, kitchens, and other
21 emergency service providers that are out there. They
22 are also coordinating with The Department of Social
23 Services, with HRA, and other agencies that play a
24 critical role in the emergency food space. Not all
25 emergency food is donated food, but all donated food
,you know, we want to see going to emergency food

3 programs. So, there is a lot of coordination
4 happening there. With DCWP specifically, we haven't
5 coordinated previously, but would certainly be open
6 to coordinating with them in the future.

7 ASSISTANT COMMISSIONER ORTIZ: I think certainly
8 in terms of our connections with small businesses and
9 our connections with through our outreach, we are
10 happy to collaborate with DSNY on that and offer
11 whatever assistance we can.

12 MAJORITY WHIP BROOKS-POWERS: And, do you have a
13 read on, through the existing programs, as you talk
14 about where most of the collections are coming from?

15 And, then, how is it selected in terms of where
16 it then goes?

17 DEPUTY COMMISSIONER ANDERSON: So, it is
18 incredibly varied, because the food recovery space is
19 incredibly complex. There are very large
20 organizations like City Harvest and Food Bank for New
21 York City that act primarily as recipients of food.
22 They are also purchasing food on the open market, so
23 they are sort of the intake. And, then, they
24 distribute that food to a network of hundreds of food
25 pantries and other organizations embedded in
communities to actually make sure it is getting to

3 people where they need it and what they need. So, it
4 is an incredibly complex network. I can't say
5 specifically that there is one pathway that is the
6 most productive. I think it is important that there
7 are lot of opportunities and a lot of different
8 approaches that can work here. As I said before ,you
9 know, a corner store may have a relationship with the
10 church pantry down the street, that's a great thing.
11 There are other ,you know, larger businesses like
12 distributors based out of The Hunts Point Food
13 Market, for example, that have direct relationships
14 with City Harvest. And if they have a shipment that
15 doesn't look like it's going to sell, they will call
16 up City Harvest and say, "Hey, do you need three
17 pallets of broccoli today?"

18 MAJORITY WHIP BROOKS-POWERS: So, essentially, you
19 all rely on larger entities like Food Bank and Hunts
20 Point to be this, I guess, vehicle with the programs
21 that you have established now?

22 DEPUTY COMMISSIONER ANDERSON: So, those
23 relationships are existing. What Sanitation has done
24 in our efforts is to, one, convene organizations that
25 are working in this space to share best practices, to
talk about what's working, to share their networks

3 with each other. Because in some cases, these
4 nonprofits can be a little territorial, so we try to
5 break down those walls between organizations to make
6 sure that they are all working toward [INAUDIBLE]...
(CROSS-TALK)

7 MAJORITY WHIP BROOKS-POWERS: Do you, like, pay,
8 like Food Bank or Hunts Point to, like, collect these
9 items at all?

10 DEPUTY COMMISSIONER ANDERSON: We don't currently,
11 but I know there are substantial emergency food
12 programs operated out of DSS and other agencies that
13 do compensate those organizations.

14 MAJORITY WHIP BROOKS-POWERS: And, so, do you have
15 a breakdown in terms of [TIMER CHIMES] organizations
16 that that MBE's -- minority business enterprises?

17 DEPUTY COMMISSIONER ANDERSON: I don't have that
18 breakdown today, but it is certainly something we can
19 look in to.

20 COUNCIL MEMBER BROOKS-POWERS: Thank you. Thank
21 you, Chairs.

22 CHAIRPERSON MENIN: Thank you. And, now, Council
23 Member Mealy?

24 COUNCIL MEMBER MEALY: I just have two questions.

3 How do you... How many summonses do you give to,
4 like, the vendors, the street vendors?

5 ASSISTANT COMMISSIONER ORTIZ: Unfortunately,
6 Council Member , I don't have that number with me
7 right now. I can say over the course of 2022, we
8 issued 12,000 summonses. But, I am happy to pull
9 that other number for you... (CROSS-TALK)

10 COUNCIL MEMBER MEALY: That's fine...

11 ASSISTANT COMMISSIONER ORTIZ: After this hearing.

12 COUNCIL MEMBER MEALY: Okay, good. Because I would
13 really like to... (CROSS-TALK)

14 ASSISTANT COMMISSIONER ORTIZ: Overall 12,000, I'm
15 sorry....

16 MICHAEL TIGER: Not 12,000 to vendors.

17 ASSISTANT COMMISSIONER ORTIZ: Yes, overall,
18 12,000 to all businesses... (CROSS-TALK)

19 COUNCIL MEMBER MEALY: All business? Okay.

20 Do you have any kind of database on the vets that
21 vendors licensing... Well, could you get me that
22 breakdown on vendors who are vets?

23 ASSISTANT COMMISSIONER ORTIZ: Yes, I am happy to
24 provide you a breakdown of that. But, I don't have
25 that right now with me, I'm sorry.

3 COUNCIL MEMBER MEALY: And I am just getting kind
4 of concerned with you saying that we are leaving it
5 up to the stores and their businesses to give to
6 nonprofits. So, we have no database on who is
7 getting what in each neighborhood or anything in each
8 district?

9 DEPUTY COMMISSIONER ANDERSON: So, we receive
10 information from our donation and reuse partners
11 about how much material they are taking in. We try
12 not to be too... We try not to have our reporting
13 requirements on them be too onerous, because we do
14 not want to create new forms and paperwork that they
15 otherwise would not have. But, it is something that
16 we can certainly talk to them about and try to get
17 more information.

18 COUNCIL MEMBER MEALY: No, but with food
19 insecurities going on right now, I know some food
20 pantries right now that I go, and the potatoes are
21 rotten. They didn't give it out, but they let it sit
22 there. And I am upset, because so many people could
23 have utilized those potatoes.

24 So, if no one is really knowing how much intake
25 they are getting, to distribute it, and who they are
distributing to, I think we are leaving stuff to fall

3 through the cracks. And I really feel that we should
4 start having a database.

5 Is there any way we can start a database with...
6 Let's try one. Just some... All the veterans, since
7 the City is not giving any of our veterans any more
8 licenses, and some of their licenses are being...
9 How can I say? Bullied away from them. It is almost
10 like the mob. Is there any way say City Harvest that
11 we can start tracking... That they could give the
12 food that is excess... Give it to the vendors of
13 veterans? Could we start a pilot program like that?
14 Is that in any way possible?

15 DEPUTY COMMISSIONER ANDERSON: You know, I
16 think... (CROSS-TALK)

17 COUNCIL MEMBER MEALY: Think open.

18 DEPUTY COMMISSIONER ANDERSON: Yeah, I think we
19 are certainly open to... And, I think would love to
20 have a conversation with you with The Mayor's Office
21 of Food Policy, because they have a tremendous amount
22 of data and information that they track as well.
23 And, I know they are looking at things like the EFAP
24 [Emergency Food Assistance Program] is something that
25 I know has been tremendously beneficial, especially
in the last few years for food pantries. So, I would

3 love to have a conversation with them as well about
4 how we can both make sure that the food is going to
5 the right places, and the last thing that we want
6 to see is those potatoes being wasted. Because ,you
7 know, that is food that could be feeding someone...

8 (CROSS-TALK)

9 COUNCIL MEMBER MEALY: Exactly.

10 DEPUTY COMMISSIONER ANDERSON: And we want to make
11 sure it is going to the right place.

12 COUNCIL MEMBER MEALY: And, then in the same
13 process, we could be helping our veterans who, I
14 think, are being just diminished as vets and not
15 getting a part of the big apple pie of having their
16 licenses, uh, there's a shortage right now. And now
17 some people are monopolizing all of the licenses.
18 So, I really hope I can sit down with Small Business
19 Services really soon to see how we can do that. And
20 I will make sure I follow up with you in regards to
21 that. Because, every one is not a good actor. They
22 can say that they are giving the food, since we do
23 not have a database of who, what, when, and where, we
24 really don't know. They could be reselling the food.

3 So, I have one more question. What
4 recommendations for this legislation would DCWP
5 suggest in order to address potential conflicts?

6 ASSISTANT COMMISSIONER ORTIZ: I'm sorry, Council
7 Member, did you mean Introduction 815 or 491?

8 COUNCIL MEMBER MEALY: 815.

9 ASSISTANT COMMISSIONER ORTIZ: Thank you.

10 I think from our perspective it is really a
11 question of what... What's the question we are
12 trying to answer so to speak. If it is about [TIMER
13 CHIMES] making sure that businesses have publicly
14 available information which will disclose to them
15 what their penalties are for a first time violation,
16 DCWP already does that through our penalty schedules.

17 If it is a question about lowering penalties, I
18 think what we have done over the past 18 months is
19 engage in a robust process to review our
20 administrative code -- twice-- to lower those
21 penalties.

22 So, I think from our perspective, we have
23 concerns about the manner in which this legislation
24 approaches the issue of lowering penalties in being
25 so sweeping.

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3 COUNCIL MEMBER MEALY: Do you think people.. Any
4 time you have to redo something, do you think it
5 would really get out to the businesses that the
6 violations went down -- If we pass this legislation?

7 ASSISTANT COMMISSIONER ORTIZ: Well, I could
8 certainly say with respect to Local Law 80, that
9 there was a lot of outreach there that went out to
10 informing businesses -- across every city agency I'm
11 sure.

12 If Introduction 845 were to pass, too, we would
13 do significant outreach as well to make sure that
14 people are aware of those lowered penalties.

15 I think for us, ultimately from DCWP's
16 perspective, we want to make sure that our small
17 businesses are succeeding, so that they are available
18 for our consumers, so that they employ our workers.
19 That is the ecosystem we envision for New York City.

20 COUNCIL MEMBER MEALY: How would you make sure
21 everyone knows? Do you have a budget for that --
22 outreach?

23 ASSISTANT COMMISSIONER ORTIZ: Well, we do have
24 dedicated outreach teams. We do collaborate with our
25 sister agencies that may have dedicated outreach
26 teams as well, such as Small Business Services, MOIA,

3 small business owners. I think these are all of the
4 tools that we can leverage for any type of outreach.
5 And is certainly what we do now.

6 COUNCIL MEMBER MEALY: Thank you.

7 CHAIRPERSON MENIN: Majority Whip Brooks-Powers
8 had a quick follow-up, and they we are going to go to
9 Council Member Schulman.

10 We have also been joined by Council Member
11 Krishnan.

12 MAJORITY WHIP BROOKS-POWERS: I am just adding on
13 to Council Member Mealy, as someone who represents a
14 food insecure community, in the report that she is
15 requesting, going back to my initial inquiry, I would
16 love to see included a breakdown in terms of where
17 the food is collected from, but mostly where it is
18 redistributed. Because, just from a layman's
19 perspective, I have observed that there are other
20 communities that have more access to those types of
21 resources who just get overwhelming supplies to the
22 point that, even during the pandemic, I was able, in
23 Southeast Queens to get food from these groups,
24 because they got so much. But, in Southeast Queens
25 and in Rockaway, they were not getting anything.
And, I have people in the community, through the

3 churches in, like, Rosedale and all over Southeast
4 Queens that literally go around, across the City,
5 driving their personal vehicles, to find food, to
6 bring back to their local pantries.

7 So, when you say that Food Bank or Hunts Point,
8 or City Harvest ,you know, are the groups collecting
9 these items, I think that there is a responsibility
10 to make sure, from a city perspective, if you are
11 facilitating this, there should be some onus to make
12 sure that they are getting to those food insecure
13 communities. So, there needs to be a report on that,
14 but then also beyond the report, a plan of action to
15 make sure that we... Because this could be major in
16 communities that are food insecure.

17 So, I just want to thank the chairs for the
18 opportunity again, and for these bills to be heard to
19 today, because it is really important.

20 CHAIRPERSON MENIN: Thank you so much, I really
21 appreciate that.

22 Okay, now are going to go to Council Member
23 Schulman, followed by Council Member Cabán, who is on
24 Zoom.

25 COUNCIL MEMBER SCHULMAN: Thank you.

3 So, one, I want to thank the chairs for this
4 important hearing, Chairs Ung and Menin. And these
5 are two very important bills.

6 So, the question I have is, of all the penalties
7 imposed by The Department of Consumer Worker and
8 Protection and The Department of Sanitation, what
9 percentage is actually collected?

10 DEPUTY COMMISSIONER ANDERSON: Yes, so for The
11 Department of Sanitation, I can't speak to our.. I
12 don't have the number in front of us for total
13 collections. But, I know there are a few steps in
14 the process. All of our violations are heard at
15 OATH, and then from OATH [Office of Administrative
16 Trials and Hearings], and then from OATH, there
17 actual collection happens at Department of Finance

18 COUNCIL MEMBER SCHULMAN: I mean, do you have a
19 sense of, is it 80 percent, is it 50 percent, is it
20 40 percent?

21 DEPUTY COMMISSIONER ANDERSON: So, of violations
22 that are upheld, I think the collections are on the
23 order of 70 to 80 percent.

24 COUNCIL MEMBER SCHULMAN: So, is it the same for
25 The Department of Consumer and Worker Protection?

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3 ASSISTANT COMMISSIONER ORTIZ: Well, The
4 Department of Consumer and Worker Protection, I can
5 give you the number of fines we've collected, but not
6 as... I don't have the larger delta. It is \$14
7 million in 2022. I don't have... (CROSS-TALK)

8 COUNCIL MEMBER SCHULMAN: Okay, but I mean, you
9 don't know the percentage?

10 ASSISTANT COMMISSIONER ORTIZ: No, I'm sorry.

11 COUNCIL MEMBER SCHULMAN: So, the reason I am
12 asking is because, I mean, I would think that the
13 money... The amount of money that you are not
14 collecting, which I think is probably somewhat
15 substantial, wouldn't it better, in terms of Intro
16 491, for those businesses to be incentivized to give
17 food in lieu of these fines to help with the food
18 insecurity that we have, which is a major problem
19 now?

20 ASSISTANT COMMISSIONER ORTIZ: So, I think ,you
21 know, the types of violations that we are talking
22 about under Intro 491, are a relatively small share
23 of our overall enforcement. As I mentioned before to
24 Chair Ung, our top priority is enforcing things that
25 effect cleanliness and quality of life. That is
where we have dedicated the majority of our efforts.

3 That is where Commissioner Tisch has been laser
4 focused since she was appointed last April. You
5 know, I do think that we want to pursue regulatory
6 reform in this space. I think the best way to do
7 that is to reduce first time penalties potentially to
8 zero or a very low amount. That is what is called
9 for Intro 845. That, I think, achieves exactly what
10 we are trying to achieve here. Which is for
11 businesses who may not know what the rules are, who
12 may not have done the right thing the first time,
13 give them an opportunity to learn what the rules are,
14 and then ,you know, not have to suffer a burdensome
15 penalty.

16 As far as the specifics of linking regulatory
17 reform to food donation, I just don't know if that is
18 the best way to approach this. We think that
19 regulatory reform and food donation are both
20 important causes that stand on their own, and
21 connecting them ,you know, may be unnecessarily
22 onerous.

23 COUNCIL MEMBER SCHULMAN: Well, if you are talking
24 about quality of life, and I understand that, but,
25 you still have a percentage of around 20 percent,
from what you're saying, that is not collected. So,

3 there may be a way to give back on that level.

4 Because, you're not going to get it from them anyway.

5 If they're not collected, it is going to be really
6 difficult to get it from them.

7 The second question I have, which is for The
8 Department of Consumer Worker Protection, you
9 mentioned about the illegal smoking shops that...

10 ASSISTANT COMMISSIONER ORTIZ: Tobacco retail
11 dealers?

12 COUNCIL MEMBER SCHULMAN: Tobacco, yes...

13 ASSISTANT COMMISSIONER ORTIZ: Who sell tobacco
14 products?

15 COUNCIL MEMBER SCHULMAN: So, how much of that
16 is... What percentage of that is the illegal weed
17 shops, or is that separate from that?

18 ASSISTANT COMMISSIONER ORTIZ: So, I think the two
19 business categories that we license that are most...
20 that perhaps overlap with the illegal weed shops,
21 are tobacco retail dealers that sell tobacco products
22 or electronics -- cigarette retail dealers -- that
23 sell e-cigarette devices, I think what we have done
24 with... in the City is utilize city laws, such as
25 our licensing requirements, to be able to issue

3 penalties to those weed shops that are operating
4 illegally.

5 I know we have also done that supporting the
6 Sheriff's Task Force as well, uhm, in their
7 particular operations against those illegal weed
8 shops. I mean, ultimately, I know the City has had
9 to think very creatively about how to enforce against
10 those particular types of businesses, because of the
11 gap in enforcement that has existed at the state
12 level.

13 COUNCIL MEMBER SCHULMAN: So, there are fines that
14 are incurred by these illegal businesses, correct?

15 ASSISTANT COMMISSIONER ORTIZ: It could be. I
16 mean, if they're selling, uh, it's a weed shop that
17 is selling cigarettes, you know, we could
18 theoretically go in there -- and we do -- to issue
19 violations... (CROSS-TALK)

20 COUNCIL MEMBER SCHULMAN: Let's make it easier.
21 Let's go back to the tobacco, the illegal tobacco
22 licenses. Uh, what percentage of that do you
23 actually... So, they're fined, correct? When you
24 find that they are not following the law, they get
25 fined?

ASSISTANT COMMISSIONER ORTIZ: Yes.

3 COUNCIL MEMBER SCHULMAN: Okay. How much of that
4 is really [TIMER CHIMES]... have you been able to
5 collect? I just want to finish my...

6 ASSISTANT COMMISSIONER ORTIZ: I had this number
7 the other week, if you don't mind, I can get it back
8 to you after this hearing. I don't have it...

9 (CROSS-TALK)

10 COUNCIL MEMBER SCHULMAN: Because, I would think
11 that, if they are operating illegally, it is going to
12 be really difficult to get the fines back from them.
13 So, I just want to state that for the record.

14 But, thank you very much, and that is the end of
15 my questioning, Chair, I'm done.

16 CHAIRPERSON MENIN: Great, thank you so much.

17 We are now going to go to Council Member Cabán
18 who is on Zoom.

19 SERGEANT AT ARMS: Starting time.

20 COUNCIL MEMBER CABÁN: Thank you. Thank you so
21 much on that and thank you to Chairs Menin and Ung.

22 I only have one, maybe to two questions, because
23 some of my colleagues have already answered some of
24 them. And, I know Chair Ung started talking about
25 this a little bit. But, how many violations have
26 been issued to food waste generating businesses since

3 DSNY began fully enforcing the mandatory organics?

4 Was that (DOG BARKING) [INAUDIBLE] for the commercial
5 sector (DOG BARKING) [INAUDIBLE] summer?

6 And, then, also, what is the average amount for
7 these fines? And, I apologize for my dog.

8 DEPUTY COMMISSIONER ANDERSON: Council Member,
9 could just repeat that last bit there?

10 COUNCIL MEMBER CABÁN: Uhm, the last part of it
11 was just, (DOG BARKING) what is the average
12 (INAUDIBLE) (DOG BARKING) of the fines?

13 DEPUTY COMMISSIONER ANDERSON: Uh, okay, well, I
14 got the first half of the question. So, since we
15 resumed commercial organics enforcement last summer,
16 we have issued a total of 727 violations to
17 businesses for either recycling or organics diversion
18 requirements.

19 And that is still a substantial decrease from the
20 issuance levels pre pandemic. So, in 2018, we issued
21 a total of just around 4,000. In 2019, we issued
22 almost 3,300 violations for the same types of
23 violations.

24 COUNCIL MEMBER CABÁN: Awesome, thank you.

25 DEPUTY COMMISSIONER ANDERSON Sure.

So, uh, I will repeat that. Calendar year 22'...

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3 UNKNOWN: She left.

4 DEPUTY COMMISSIONER ANDERSON: 727, looking back
5 to before the pandemic, uh, calendar year 2018, was
6 4,026; calendar year 2019 was 3,249.

7 CHAIRPERSON MENIN: Okay, thank you. And I want
8 to recognize that we have been joined by Council
9 Member Velázquez, Council Member Restler, and Council
10 Member Brewer.

11 And I am now going to turn it over to over to
12 Council Member Restler for a question.

13 COUNCIL MEMBER RESTLER: Thank you, Chairs Menin
14 and Ung.

15 Greg Anderson, it is always a pleasure to see
16 you. How are you?

17 DEPUTY COMMISSIONER ANDERSON: Always a pleasure
18 as well, Council Member.

19 COUNCIL MEMBER RESTLER: You doing all right?

20 DEPUTY COMMISSIONER ANDERSON: Excellent.

21 COUNCIL MEMBER RESTLER: Great.

22 So, I know that you are having a hearing on
23 February 22nd about commercial waste zones. And, I'm
24 sorry that I was a little late today. But, I am
25 really investing in commercial waste zones. How many

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3 years have you been working on commercial waste
4 zones?

5 DEPUTY COMMISSIONER ANDERSON: I have been working
6 on commercial waste zones since 2015, so... (CROSS-
7 TALK)

8 COUNCIL MEMBER RESTLER: So, 2015, what year is
9 it, 2023?

10 DEPUTY COMMISSIONER ANDERSON: That's correct.

11 COUNCIL MEMBER RESTLER: So, we are closing in on
12 a decade. Is 2023 the year that commercial waste
13 zones are going to be in place in New York City?

14 DEPUTY COMMISSIONER ANDERSON: You know, I
15 think... We do have a hearing coming up in three
16 weeks to talk about that. So, I want to make sure
17 that we have that conversation in the right context.

18 But, I will say that we are fully committed to
19 moving ahead with commercial waste zones. And we
20 have our foot on the gas, and we are going to get
21 this done.

22 COUNCIL MEMBER RESTLER: Any insight that you can
23 provide on the current timeline for implementation?
24 When will contracts be signed?

25 DEPUTY COMMISSIONER ANDERSON: Again, hearing
coming up in just three weeks. So, look forward to

3 talking about it there. But, what I can say is we
4 are fully committed to moving ahead. We are in the
5 middle of what is a very complicated selection
6 process for these vendors. And we are committed to
7 doing this in a way that is as fair and transparent
8 as possible and does not increase costs for our small
9 businesses. Those are the things that we are focused
10 on. And that is what we are in the middle of the
11 process on right now. We have our foot on the gas,
12 and we look forward to providing the Council with a
13 full update on the 22nd... (CROSS-TALK)

14 COUNCIL MEMBER RESTLER: I totally appreciate that
15 we are going to get more answers in a few weeks.
16 But, eight years of work to get to this point, there
17 has been an extraordinary amount of research, effort,
18 analysis, and delay. And, so, my understanding is
19 that we have dealt with three delays in just closing
20 out of the RFP in the last... since Mayor Adams took
21 office. Not COVID related delays, but it has held us
22 up a few years before that. So, we have you here
23 today, having some additional information, I think
24 that everybody who read the Streets Blog article was
25 deeply concerned about the status of the program. I
appreciate you confirming again today that you are

3 committed to its implementation and that you are
4 going to get it over the finish line after eight hard
5 years of work to get us there. And I appreciate your
6 involvement in getting us this far. Can you give us
7 any more information on when contracts will be signed
8 considering the multiple delays in the RFP?

9 DEPUTY COMMISSIONER ANDERSON: Look, Council
10 Member, what I can tell you is, one of the most
11 important things that we learned in that process of
12 designing the commercial waste program was that we
13 did not want to repeat that Los Angeles had learned.
14 Their program, at first, was an utter failure. It
15 increased costs for some customers by more than three
16 times what they were paying before it was
17 implemented. So, what we are focused on is ensuring
18 that we don't repeat those mistakes. We are doing
19 that through the procurement process. We will do
20 that... (CROSS-TALK)

21 COUNCIL MEMBER RESTLER: I know, but great...
22 (CROSS-TALK)

23 DEPUTY COMMISSIONER ANDERSON: through the
24 outreach process... (CROSS-TALK)

25 COUNCIL MEMBER RESTLER: You're so smart that you
have been... You've been helping to ensure that we

3 are avoiding those mistakes over the eight years that
4 you have been working on this. If anyone is smart
5 enough to figure out how to do this, it's you and
6 some of your colleagues at DSNY. You know how much
7 respect and appreciation I have for the work that you
8 do. We really need to see timelines for when this is
9 getting implemented. The ongoing delays are
10 unacceptable. You know, as well as I do, that people
11 are dying in the commercial carting industry. It is
12 awful for our environment. It leads to many times
13 over more trucks' miles in New York City every year
14 that are totally avoidable. This is a critical
15 environmental justice, worker justice initiative.
16 And we need to get it done.

17 So, I am a little frustrated that you are not
18 giving us anything other than, "We are committed to
19 it happening." I appreciate your commitment. I just
20 want to ask, because it is an area of such concern of
21 mine across every agency in the City of New York, how
22 many people are working full-time on this initiative
23 right now?

24 DEPUTY COMMISSIONER ANDERSON: I think the number
25 right now is around 26.

3 COUNCIL MEMBER RESTLER: Twenty-six lines that are
4 fully staffed?

5 DEPUTY COMMISSIONER ANDERSON: Yes, I don't have
6 the numbers in front of me, again, not prepared to
7 discuss this topic here today. We are here to talk
8 about small business regulatory reform.

9 COUNCIL MEMBER RESTLER: I know.

10 DEPUTY COMMISSIONER ANDERSON: But it is around
11 that number.

12 COUNCIL MEMBER RESTLER: All right.

13 My understanding from the reporting is that a
14 minority of the positions are actually filled, and
15 that across the board in this administration, many...
16 We have high concentrations of vacancies, because
17 lines are not being approved, [INAUDIBLE] are not
18 being approved, and it is delaying essential work.
19 So, I am deeply concerned about every agencies'
20 ability to hire and hire swiftly, and that it is
21 undermining our achievement of critical initiatives
22 such as this one.

23 I would imagine if this office were fully staffed
24 up and functional, we would have made a lot more
25 progress on implementation of commercial waste zones

3 today than we have made. And, that is deeply
4 disappointing.

5 So, we would... I would appreciate, it if it is
6 possible, to get this information in advance of the
7 hearing in a few weeks with how many people are
8 working on this [TIMER CHIMES] fulltime and how many
9 positions are vacant.

10 DEPUTY COMMISSIONER ANDERSON: Sure, we will be
11 happy to reach out to your office about that.

12 COUNCIL MEMBER RESTLER: Thank you very much. It
13 is always good to see you, Greg.

14 CHAIRPERSON MENIN: Okay, thank you.

15 And, now, I am going to turn it to Council Member
16 Brewer for questions.

17 COUNCIL MEMBER BREWER: Thank you, uh, relevant to
18 today's hearing, the issue of 491, and, I understand
19 the concern you have, but I certainly understand the
20 need to support people getting fed.

21 But, I have a friend in Anna Sacks -- who I think
22 Sanitation knows. She goes into the drugstores, food
23 establishments, public schools, and the list goes on,
24 every night and finds what is in their refuse bags,
25 and it's a combination of everything.

3 So, I guess I would like to know just generally
4 because the waste is mind blowing. You know, from
5 diapers to every drugstore product you can think of,
6 to the food. And, so, I was just... Is that...
7 There are two concerns I guess. One is, it is going
8 to add to the landfill, because it is not necessarily
9 going in the right refuse pile. And, then, secondly,
10 it is wasted.

11 So, I was just wondering, beyond the food, is
12 there any discussion about what you think should
13 happen... It is not an easy issue to deal with, I am
14 aware of that. But, my goodness -- what is in those
15 bags! And, so, I am just wondering if there is any
16 overall thought about how we can handle this beyond
17 the food?

18 DEPUTY COMMISSIONER ANDERSON: Yes, so, I think,
19 uh, and, thank you Council Member, for your on-topic
20 question there.

21 COUNCIL MEMBER BREWER: Your commissioner met her.
22 I made them meet you, so that was quite an
23 interesting meeting at 10:00 at night. So,
24 [INAUDIBLE]... (CROSS-TALK)
25

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3 DEPUTY COMMISSIONER ANDERSON: I have heard
4 stories of that meeting. So, I understand that it
5 was interesting.

6 You know, I fully agree with you, Council Member,
7 that it is absolutely atrocious when people waste
8 things that are perfectly good. And, one of the
9 things that Sanitation has been focused on for many,
10 many years, going back to Local Law 19 of 1989, and
11 even before that, is trying to make sure that the
12 things that we are collecting in the trash are not
13 things that could be used as perfectly good products
14 recycled into other products, what have you, uh,
15 composted into renewable energy or beneficial soil
16 additive. So, we are always trying to think about
17 how we can put incentives in place, take the right
18 kind of enforcement action to reduce the amount of
19 waste that is happening -- especially in New York
20 City businesses. You know, as I think Council Member
21 Restler would agree, we think that commercial waste
22 zones are an important step to improving recycling,
23 improving composting, improving a number of different
24 things in the commercial sector. We are moving full
25 steam ahead on that program. And, we hope to make

3 ,you know, really good progress in the coming months.

4 That is, I think the best thing that we can do.

5 You know, I think of the directions that other
6 municipalities, other states, have gone in is
7 mandating food donation. So, not just mandating
8 composting of food waste, but also mandating the
9 donation of food that is edible or usable. You know,
10 I think that is... We have to be wary of taking that
11 step, because it could increase the burden on our
12 small businesses. But, it is also a step that has
13 been taken in other places, and I think we should
14 have a real conversation about it.

15 COUNCIL MEMBER BREWER: Okay, so, commercial could
16 perhaps deal with the diapers from CVS or whatever,
17 because they do get thrown out in perfect shape.
18 Maybe that is what you are saying.

19 But, you also, I just want to let you know, the
20 public schools are equally guilty, and they are a
21 residential pickup, not a commercial pickup.

22 So, I just think in general, and there may be
23 other residential pickups that I am not aware of,
24 that have similarly... Even though it sounds
25 residential, it might be a ,you know, it might not be
a commercial pickup, et cetera. You know there, uh,

3 and sometimes there is a gray line there. A lot of
4 the nonprofits pick up residential, I don't know what
5 they throw out.

6 So, I just think in general it would be
7 interesting for me to see that... the commercial
8 waste plan will in fact deal with what you are
9 saying. Because, I thought it would be the same --
10 different schedule, less trucks, but the same pickup
11 stuff. So, maybe I am misunderstanding. I will,
12 unlike my colleague, wait until the hearing to
13 discover that. Thank you.

14 DEPUTY COMMISSIONER ANDERSON: And, Council Member
15 I will just add on -- the schools, that is something
16 that we are very focused on. You know, schools are
17 in every single, community. Not only do some of them
18 throw out stuff that could be used but, they're not
19 always the best in terms of putting things out at the
20 right time, in a neat, orderly manner. So, that is
21 something we are laser focused on. We are in
22 conversations with DOE about how to fix that problem.
23 We are also working with DOE, over the course of this
24 school year and next, to have composting at every,
25 single school citywide for the first time ever. This
year will [INAUDIBLE]... (CROSS-TALK)

3 COUNCIL MEMBER BREWER: That's not the first time
4 ever, it was done before, and then stopped. I'm
5 [TIMER CHIMES]...

6 DEPUTY COMMISSIONER ANDERSON: It was never done
7 citywide before, Council Member.

8 COUNCIL MEMBER BREWER: It was tried.

9 DEPUTY COMMISSIONER ANDERSON: This is the first
10 time ever that we are going to have the entire
11 borough of the Bronx have school composting by the
12 end of this school year. And, by the end of next
13 school year, it will be in every, single public
14 school in New York City.

15 COUNCIL MEMBER BREWER: We can debate that. It
16 was tried before, and then stopped because I was
17 there in the room, just FYI. I think this all needs
18 a lot of assistance. So, thank you very much.

19 CHAIRPERSON MENIN: Great, thank you.

20 I am now going to turn it to Council Member Mealy
21 for a follow-up question.

22 COUNCIL MEMBER MEALY: I just have two questions.

23 Do you have any data on the community gardens
24 with their compost? Some of the gardens, sometimes
25 they harvest and sometimes they don't. But, then, if

3 no one does it, where does that food that is being
4 grown go? Do you have any data on that?

5 DEPUTY COMMISSIONER ANDERSON: Yes, so, I don't
6 have data with me today on that topic, but it is
7 something that ,you know, we support a network of
8 hundreds of various community gardens, community
9 composting organizations, uh, through our New York
10 City compost project. It is something that we have
11 been long time supporters of. So, we not only teach
12 them how to do the right things, we also give them
13 tools to become assents for their community , so that
14 people can drop off their food scraps ,you know, from
15 their kitchens, at their local garden. So, it is
16 something that [INAUDIBLE]... (CROSS-TALK)

17 COUNCIL MEMBER MEALY: But, if no one is in the
18 garden, because sometimes they are open, and
19 sometimes they are not, is Sanitation... Does
20 Sanitation... may just harvest... and if people do
21 drop off their scraps, and no one is there, does
22 Sanitation come and just discard it?

23 DEPUTY COMMISSIONER ANDERSON: That's obviously
24 never the goal. So we want to try to give people as
25 much information as possible about where and when to
drop off their food scraps. You know, you may have

3 seen in the news that we have these orange bins that
4 are open 24/7, they're great, we want to keep
5 expanding that program. So, it is certainly
6 something that I think we are on the same page about
7 the intent there, and we are happy to have further
8 discussions about how to improve the operation of
9 those sites, so that, uh, that is it working for
10 everyone.

11 COUNCIL MEMBER MEALY: I hope so. Can I indulge
12 one more, Chairs?

13 CHAIRPERSON MENIN: Of course.

14 COUNCIL MEMBER MEALY: Is there any... Since we
15 are trying to make sure that, for food insecurity, if
16 an organization or a senior center does not have
17 food, do you know of any organization who would be
18 willing to feed a senior center?

19 DEPUTY COMMISSIONER ANDERSON: Uh...

20 COUNCIL MEMBER MEALY: At least we would know for
21 sure if they are giving the food...

22 DEPUTY COMMISSIONER ANDERSON: Yes, I know there
23 are dozens, maybe hundreds of organizations across
24 New York City, who are... (CROSS-TALK)

25 COUNCIL MEMBER MEALY: These are senior centers.
Government... (CROSS-TALK)

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3 DEPUTY COMMISSIONER ANDERSON: Yep.

4 COUNCIL MEMBER MEALY: who are not getting fed.

5 So, I am really asking if you have organizations that
6 we could make sure people are getting fed in these
7 senior centers?

8 DEPUTY COMMISSIONER ANDERSON: I got you...

9 (CROSS-TALK)

10 COUNCIL MEMBER MEALY: They do not have a city
11 food program.

12 DEPUTY COMMISSIONER ANDERSON: I hear you loud...

13 (CROSS-TALK)

14 COUNCIL MEMBER MEALY: That's easy.

15 DEPUTY COMMISSIONER ANDERSON: And clear, Council
16 Member. At Sanitation, our focus is on diverting
17 things from the... (CROSS-TALK)

18 COUNCIL MEMBER MEALY: [INAUDIBLE]

19 DEPUTY COMMISSIONER ANDERSON: waste to the extent
20 that we can. But, I know our partners at The Mayor's
21 Office of Food Policy... and just a quick aside
22 here, ,you know, when COVID happened ,you know, my
23 former... My former boss and commissioner was
24 appointed Food Czar for New York City, so, I do
25 happen to know a little bit about this than the
average sanitation employee. But, I know that The

3 Mayor's Office of Food Policy works very closely with
4 New York City Aging, with other social services and
5 agencies, uh, to ensure that where there are gaps
6 that those gaps are being filled. And, Council
7 Member, I hear you loud and clear, and I am happy to
8 have that conversation with

9 COUNCIL MEMBER MEALY: Thank you.

10 DEPUTY COMMISSIONER ANDERSON: those agencies and
11 send the message to them.

12 COUNCIL MEMBER MEALY: Please. I don't want to
13 put anyone on the spot right now, but you say it, but
14 people doing it is a whole different issue. So,
15 thank you, I look forward to it, thank you, Chairs.

16 CHAIRPERSON MENIN: Thank you so much.

17 Okay, we are now... I am going to turn it back
18 over CJ to hear from members of the public. So, thank
19 you to the panel.

20 ADMINISTRATIVE: Thank you.

21 COMMITTEE COUNSEL: Thank you, Chairs. Our first
22 panel will be Andrew Rigie, then Robert Bookman.

23 ANDREW RIGIE: Good afternoon, my name is Andrew
24 Rigie, Andrew Rigie, I am the Executive Director of
25 the New York City Hospitality Alliance, and I am

3 joined by our counsel, Robert Bookman. Thank you to
4 the chairs and council members.

5 Wow, that was a bit disheartening. There has
6 been so much talk in the City about reducing fines on
7 small businesses, and I know that this council -- and
8 this administration -- has been trying to do a lot,
9 but I have been in the industry my whole life, and
10 advocating on behalf of the hospitality industry for
11 almost 20 years -- Rob Bookman even longer -- and I
12 don't really recall a time that agencies ever
13 voluntarily decided to reduce fines, with maybe an
14 exception under Commissioner Menin, or former
15 Commissioner Menin.

16 What this bill does right here, 815, essentially
17 just says, reduce the fines to what the intent of the
18 City Council, the legislative body, that created
19 these violations, set the minimum at. And I do not
20 think anyone, at least we are not, advocating to
21 reduce egregious fines for egregious penalties when
22 it comes to underage smoking or violating the rights
23 of immigrants, you could simply exempt those in
24 legislation or you could go back and you could amend
25 the actual law and increase the violation to
something that you would feel is more appropriate.

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3 But, this bill simply helps reform the regulatory
4 structure that is in place, that has made the City so
5 difficult on small businesses over multiple
6 administrations. And, with this administration and
7 this council, we know you all care, and we know you
8 are all talking about reducing fines. And, you can
9 do that by certain amendments here and there --
10 making sure when you pass a new law that establishes
11 a violation that it reduces or provides a cure period
12 or a warning for a first time violation. But, in
13 addition to that, you need to change the regulatory
14 structure that allows fines to be too high. We just
15 saw this recently over the past year, where DCWP had
16 to do rulemaking for a new violation established by
17 the Council. They had a range of what I believe was
18 \$500.00 for a minimum penalty, and they came back and
19 they scheduled the first violation in their proposed
20 rules at \$1,500.00. So, \$1,000.00 more than what was
21 proposed or that was the minimum in the City
22 Council's legislation and your intent. Thankfully,
23 when we brought it up to them, they did reduce it
24 down to the minimum, but it shouldn't be incumbent on
25 us to have to identify that every, single time there
is rulemaking. And it shouldn't be up to the Council

3 to have to review it and make sure the agencies are
4 following your legislative intent.

5 So, we really think that this bill, if there
6 needs to be tweaks here or there, that Rob can speak
7 about and we can all discuss [TIMER CHIMES], we are
8 welcome to those conversations. But, the intent of
9 this bill, as you said earlier, is to change the
10 regulatory structure, help reduce fines on small
11 businesses.

12 And then finally, uh, Chair, you had mentioned in
13 the second bill, uh, 491, instead of trying to
14 encourage additional food donations, which we should
15 absolutely be doing, by reducing fines, we should
16 just focus on reducing fines, because they are too
17 high, and it is the right thing to do. And, instead
18 , let's start just reducing the fees for licenses and
19 permits, if you donate food. Because, that will also
20 have more widespread application, because not every,
21 single business may be issued fines. And, then, they
22 are not incentivized. So, they all have to get
23 licenses and permits, reduce that.

24 And I will close it off with that and turn it
25 over to my colleague Rob Bookman, and I am sure we
are happy to answer questions.

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3 ROBERT BOOKMAN: Thanks, buddy.

4 Hi, my name is Rob Bookman. Listen, I have been
5 deeply involved in New York City Administrative Law
6 now for decades from early days at The Department of
7 Consumer Affairs, where was I was counsel, where I
8 headed the Judication Division, which was the
9 Administrative Law Division that heard these
10 hearings, to decades of private practice. I have
11 representative thousands of businesses over the years
12 -- before numerous adjudicatory agencies -- doing all
13 different types of violations. And I could tell you
14 that it is extremely difficult to get a sense and an
15 understanding of the fine structures in New York
16 City. They are all over the place. You know, and it
17 is part Council's fault, and it is part the
18 administrative agencies fault.

19 Over the decades, you pass a law, a new licensing
20 law, a new requirement, and you put fines in there.
21 Sometimes... And I handed up in my packet, if you
22 have it, different examples, which if you will give
23 me a couple of extra minutes afterwards, I will give
24 you why I gave you these examples.

25 Sometimes the Council is very clear. And it says
the fine shall be no less than, let's say \$200.00 on

3 a first violation, and no more than \$500.00. In
4 those situations, there should not be any confusion,
5 and I don't believe the administrative agencies have
6 any right, under any rulemaking, to change that
7 structure -- yet they do.

8 And I have had this conversation with speakers
9 going back to Gifford Miller. The question is, who
10 is in charge of the law, the Council or the
11 administrative agencies?

12 You give them rulemaking authority, but they
13 cannot change the law. And when you give a range of
14 fines, and they change that range, they change that
15 minimum, they are changing the law. And it is time
16 that that stopped. That is an easy example.

17 More complicated; however, and they were trying
18 to give you a couple of bad actor examples to try to
19 ,you know, blow a lot of smoke at you on this, more
20 common is where the Council has passed laws over the
21 decades where it doesn't say what the minimum is, but
22 gives either a maximum or it has language like, "not
23 more than," parking garages, uhm, secondhand dealers,
24 I am using examples from our Consumer Affairs...
25 Joint Consumer Affairs history together. Pedicabs;
however, more recent one, the Council said, not less

3 than \$200.00 or more than \$500.00. Those are the
4 easy ones. The general Consumer Affairs says, "shall
5 not exceed \$500.00." In my opinion, as a lawyer who,
6 and I don't claim to be Clarence Darrow, but when it
7 comes to administrative law, it is my thing. What
8 the Council is saying when it says, "not more than or
9 not to exceed," is that the full range of penalties
10 from a zero or \$1.00 to that maximum, should be
11 available if you choose to go to an administrative
12 hearing and either challenge that violation, or more
13 often than not, say, "Yeah, I did it, but here is my
14 mitigation, and here is the reasons why I don't think
15 I should get the highest penalty." And that, they
16 are taking away over and over again, from the
17 administrative law judges, and from you, by creating
18 a minimum that does not allow [TIMER CHIMES] for "up
19 to no more than." They are creating a statutory
20 minimum which you never created. You know how to do
21 it. You did it with pedicabs, you did one of the
22 examples in my packet that I gave you, where I think
23 it is the, uh, give me a second... It is the air
24 code, where the Council's specifically says what the
25 maximum and the minimum is for every violation. And
DEP comports with that for the most part, in my

3 limited experience. So, you know how to do that when
4 you want to do it. The clear legislative
5 interpretation of when you say, "no more than" is
6 that you are providing a full range of penalties.
7 And what this legislation needs to do, uh, and it
8 could be tweaked, ,you know, I am not saying it is
9 perfect, it is always make that full range available
10 to the administrative law judge. Even in that first
11 violation bad actor example that they gave: sale
12 tobacco to a minor, nobody wants tobacco to be sold
13 to a minor. Let's start off with that. It is a bad
14 violation. But I have represented immigrant
15 businesses owners, uh, Indian, you know, Pakistani,
16 it is their first business, it is the first time they
17 got a violation, they're outraged by it -- it was an
18 employee who did it -- they fired the employee who
19 did it. They go to a hearing and Consumer Affairs
20 has instructed OATH that the maximum set by law, a
21 \$1,000.00, is the only penalty available... (CROSS-

22 TALK)
23 CHAIRPERSON MENIN: Okay. Thank you... (CROSS-

24 TALK)
25 ROBERT BOOKMAN: That's wrong. And that is what
we have to address. We have to allow that full range

3 of penalties, that you've set by law, to be in
4 practice.

5 CHAIRPERSON MENIN: Thank you, okay. Thank you
6 very much, both of you, for your testimony. I do
7 have a couple of questions.

8 So, on the bad actor issue, it seems to me that
9 the easiest way to address to that in the
10 legislation, is to make a tweak to the legislation to
11 clearly say when there is "no consumer harm".

12 Because that is what we did at Consumer Affairs in my
13 tenure with the Small Business Relief Package, it was
14 to go after the picayune violations. It was not to
15 go after safety violations where there is, like, real
16 consumer harm. So, it seems that there is a very
17 easy fix to that.

18 ROBERT BOOKMAN: You certainly could go that way.
19 And it would be easier for them to give you a list --
20 and it multiple agencies, it's Sanitation, it's DEP,
21 it's Buildings Department, it's Consumer Affairs,
22 it's Health Department -- it is easier for them to
23 give you a list of which ones they would want
24 excluded from the legislation than for you to figure
25 it out.

3 One of the ones I just gave you is the air code
4 penalty. And I didn't even give you all of the pages
5 of it. I gave you the first three pages of the
6 various ,you know, penalties just in that one code
7 ,you know, on the DEP. So, yes, but I would argue
8 from a due process purist, that even that bad sale to
9 minor, even when there is consumer harm, the range of
10 penalties for mitigation should still be available to
11 that business owner when they got to the hearing.
12 Otherwise, why bother going to the hearing?

13 CHAIRPERSON MENIN: Right, right, right, right.
14 Well, I really want to thank... I am going to turn
15 it over to my colleagues to see if they have
16 questions. I really want to thank both of you for
17 your incredibly thoughtful testimony. This is an
18 important issue, you all have been on the forefront
19 of trying to advocate for small businesses and
20 reducing fines. And I also was very surprised at the
21 testimony today, because ,you know, we are trying to
22 help these small businesses who are being socked with
23 thousands of dollars of fines. These two bills are
24 two straightforward ways to do it and to accomplish
25 other policy issues to deal with issues around
hunger, food waste. So, they are very

3 straightforward, so it was surprising, I am not going
4 to lie, the testimony today was disheartening, I
5 think is a perfect word to describe it. But, I want
6 to thank you both for your testimony.

7 ROBERT BOOKMAN: And we want to thank you for
8 actually putting this idea, which has, again, been
9 discussed for decades, to pen and paper, yeah, we
10 could work on the language a little bit, uh, we
11 always can, we always willing to compromise, that's
12 not a concern. To give an example, one quick
13 conclusion, one of the, uhm, submissions I gave you,
14 it shows that the default penalty is double or triple
15 than if you go to the hearing. Which makes no sense
16 for anybody. If you feel that you are guilty and you
17 don't want to spend a half a day to go to the
18 hearing, default penalties should be the minimum not
19 three times the minimum.

20 CHAIRPERSON MENIN: Exactly.

21 ROBERT BOOKMAN: So, they are actually encouraging
22 people who are guilty, in that particular example, to
23 go down there, because that is the only way to get
24 the minimum fine that you set by statute. It makes
25 no sense.

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3 CHAIRPERSON MENIN: Exactly. Chair do you...

4 Okay, any other council members have questions?

5 Okay, great thank you both so much.

6 ROBERT BOOKMAN: Thank you again.

7 CHAIRPERSON MENIN: Thank you.

8 COMMITTEE COUNSEL: We will now be turning to Zoom
9 panelists. Our first panelist will be Anna Sacks,
10 after that, we will be hearing from Justin Wood.

11 Anna Sacks, you may begin upon the sergeant's
12 announcement.

13 SERGEANT AT ARMS: Starting time.

14 ANNA SACKS: Hi, everyone, thank you for this
15 hearing. Thank you, Council Member Brewer for the
16 shoutout.

17 My name is Anna Sacks; I am a waste expert in New
18 York City. I wanted to say that I think this bill
19 specifically linking through donations and
20 [BACKGROUND NOISE] [INAUDIBLE] recycling and
21 composting is well intentioned but misguided. I
22 don't believe these issues should be paired. I think
23 ,you know...

24 COUNCIL MEMBER BREWER: Anna, talk more slowly,
25 you are talking too fast.

ANNA SACKS: Okay, sorry, I want to get a lot in.

3 But, I think that bundling together cardboard and
4 bailing it, then selling it on the secondary market
5 is a different issue than taking excess out of edible
6 food and giving it to people who are hungry. So, I
7 think that we shouldn't be pairing these two issues;
8 we should be looking at them separately.

9 Very few of the businesses that I look at -- I go
10 through their waste [INAUDIBLE] actually recycle and
11 compost, I want to call out Fairway, Citarella,
12 Cristina's (sp?), and D'Agostino, none of them are
13 composting despite the fact that for five years now,
14 they have been required to. So, either the issue is
15 that fines are too insufficient or not sufficiently
16 applied. And, I mean, I think that is the issue.
17 That they actually don't care or they're not
18 receiving the fines. So, they should be following
19 the law, and very few of them actually recycle other
20 than cardboard.

21 If we want to actually have more food donations,
22 I think there are other things that we can be doing.
23 One, is we could be requiring that places like CVS,
24 and Duane Reade, and Walgreens, those are places that
25 actually donate their excess food. They oftentimes
don't have those food donation relationships setup.

3 Another is, uh, we could do waste audits of the
4 grocery stores and determine what they are throwing
5 out and finding different sources where they can
6 distribute the food. Another [INAUDIBLE] just
7 addressing the wasted food at the foodbanks, we have
8 the assumption that once the food ends up in a food
9 bank that it is actually used, and that is not
10 necessarily the case. We could also be doing waste
11 audits at food banks. So, that could be very
12 [INAUDIBLE] preliminary to determine where the food
13 is not being donated where it could be donated.

14 I think that we need to have businesses follow
15 the law. They should be recycling. They need to be
16 composting just like everyone else in New York City
17 needs to be recycling and hopefully composting. And,
18 ideally, they would be donating their food also. And
19 I think that we could do things to strengthen that.
20 But, I disagree with pairing those two issues.
21 Thanks.

22 COMMITTEE COUNSEL: Thank you.

23 Our next panelist will be Justin Wood. And, at
24 this time, if there is anyone on the Zoom whose name
25 hasn't been called and you are waiting to testify,
please use the Zoom Raise Hand Function.

3 Justin Wood, you may begin upon the sergeant's
4 announcement.

5 SERGEANT AT ARMS: Starting time.

6 JUSTIN WOOD: Hello, and thank you, everyone.
7 Thank you to Chairs Menin and Ung for holding this
8 hearing.

9 My name is Justin Wood, and I am the Director of
10 Policy at New York Lawyers for the Public Interest.
11 Thank you for the opportunity to testify today.

12 I want to echo the concerns of my friend, Anna
13 Sacks and others, that while we fully support the
14 intention of Intro 491 to boost food donations in the
15 City, and we really appreciate the Council's focus on
16 the related issues of the climate impacts of food
17 waste, uh, disposing food waste in landfills and
18 incinerators, where the vast majority of it is going,
19 over production of food in our city, and, then, of
20 course, the vast food insecurity and hunger that so
21 many New Yorkers are experiencing, we really
22 appreciate the intent of this bill to start to
23 address that.

24 We have gone out on... Like, just last summer,
25 the same week that DSNY was scheduled to begin
enforcement on the commercial organics and recycling

3 laws, we were lucky enough to join Anna and others on
4 a zero waste tour in Manhattan. We went out in the
5 evening when businesses were closing, and frankly you
6 usually don't testify with anecdotes, but what we saw
7 was shocking. It was huge. And Council Member
8 Brewer talked about this, too. Huge black garbage
9 bags -- and these are not small businesses that were
10 violating organics and recycling laws. These were
11 big businesses -- including some of the ones that
12 Anna mentioned -- huge garbage bags full fresh,
13 edible bread, vegetables, just expired dairy
14 products. It was expected, but frankly shocking to
15 see the level of food waste coming, not just from
16 small businesses, but from big, we know to be really
17 profitable, grocery chains and restaurant chains in
18 our city while New Yorkers across the City are also
19 going hungry. And we are all too aware of the
20 climate crisis and the impact that waste has on it.

21 So, we do agree that action is necessary. We
22 disagree with this approach for some of the reasons
23 that came out of the hearing today. DSNY's
24 enforcement of the current organics law is minimal --
25 as we heard from DSNY, and we have also gone through
the open data. There are just very few of these

3 fines being issued. And it is not clear that, uh,
4 forgiving violators would be a sufficient motivation
5 for the bigger businesses, especially when they are
6 producing so much food waste to start participating
7 in food donation.

8 So, a couple of approaches we would be really
9 happy to work with the Council on, one: I think
10 mandating food donation as Deputy Commissioner
11 Anderson mentioned. We would support that,
12 especially, again, for the larger businesses that are
13 highly profitable and could easily work this into
14 their operations. [TIMER CHIMES] There is no reason
15 we should not mandate that. There is a mandate at
16 the state level, but it doesn't apply to New York
17 City, which is concerning.

18 And, then, secondly, as we have heard a lot of
19 testimony about, we have been pushing for years for
20 the implementation of the commercial waste zones
21 program. And that is an opportunity to ensure that
22 businesses incentives and the waste haulers
23 incentives are, for the first time, aligned, and
24 there is consistent, clear, in multiple languages,
25 customer education on how to donate food, on how to
reduce food waste, and how to properly sort,

3 separate, and ensure that the remaining scraps are
4 composted or anaerobically digested alongside of
5 other recyclables.

6 I know that I am over time. I will just wrap up
7 by saying, we also... New York Lawyers also has
8 concerns about Local 815 in some of the specific
9 impacts that reducing some of the violations where
10 there is a range might have on owners and the most
11 problematic bad actors that also take advantage of
12 consumers. Two instances that we have seen, uh,
13 representing our clients, are the violations on
14 transfer stations, uh, waste transfer stations. And,
15 then, on violators of the immigration services
16 providers in the Consumer Protection laws. So, we
17 would really want to see a full schedule, a full..
18 and have the public see -- across every agency --
19 what the impacts of implementing this bill would be.
20 And we would urge a more narrow, tailored approach
21 than this sort of broad approach to changing the
22 fines where there may be unintended consequences on
23 bad actors. Thank you very much.

24 CHAIRPERSON MENIN: Thank you very much for your
25 testimony. And, again, to clarify as I said at the
outset, the bill is in no way intended to apply to

3 waste transfer stations, it is not intended to apply
4 to bad actors, that is the last thing it is intended
5 to apply. It is supposed to be, again, for first
6 time violators, where there isn't a safety harm,
7 consumer harm, so just to clarify that. But, I
8 really appreciate your testimony. Thank you very
9 much.

10 COMMITTEE COUNSEL: Just to make sure that we have
11 not missed anyone, do we have Alex Stein or Vivian
12 Moody (sp?)? If you are on the Zoom, please raise
13 the Zoom Raise Hand Function. Seeing no hands
14 raised, Chair, I will turn it over to you to close us
15 out.

16 CHAIRPERSON MENIN: Okay, wonderful. Well, thank
17 you all very much. I, first of all, want to thank my
18 co-chair once again, Sandra Ung, for this hearing.
19 Is there anything you want to say? Great, then we
20 are going to close the hearing. Thank you very much.

21 [GAVELING OUT] [GAVEL SOUND]
22
23
24
25

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 February 16, 2023