

TESTIMONY

BY

EUAN ROBERTSON

FIRST DEPUTY COMMISSIONER

NEW YORK CITY

DEPARTMENT OF SMALL BUSINESS SERVICES

BEFORE

THE COMMITTEES ON SMALL BUSINESS

CONSUMER AFFAIRS

AND

GOVERNMENTAL OPERATIONS

OF THE

NEW YORK CITY COUNCIL

TUESDAY, APRIL 14, 2015

Good afternoon Chair Cornegy, Chair Espinal, Chair Kallos and members of the committees on Small Business, Consumer Affairs and on Operations here today. My name is Euan Robertson, and I am the First Deputy Commissioner of the Department of Small Businesses Services ("SBS"). I'm joined today by my colleagues from SBS, as well as my colleague, Amit Bagga from the Department of Consumer Affairs ("DCA"), Marisa Senigo from the Office of Administrative Trials and Hearings ("OATH") and Geraldine Sweeney from the Mayor's Office of Operations.

Today, I will outline the work that SBS does to support small businesses throughout the five boroughs, and comment on the bills you are considering today. Following my testimony, I am happy to take your questions.

New York City is home to approximately 220,000 businesses, and as you may know, 98% of all businesses in New York City are small businesses with fewer than 100 employees. Approximately 89% of New York City's businesses are very small with fewer than 20 employees. Small businesses also employ almost half the city's private sector workforce. They are critical to the long-term health of our economy and if we are to remain competitive in a global economy, we must foster an environment where it is easy for small businesses to open, operate and grow.

The de Blasio administration is deeply committed to serving these businesses and has proven this commitment through the launch of several key initiatives. In 2014, Mayor de Blasio reduced the revenue requirements from fines at DCA and the Department of Health and Mental Hygiene ("DOHMH"). DCA has also implemented a number of reforms to ease the burden on small businesses – which Amit will highlight in his testimony - and their efforts highlight how the administration is changing the approach to business engagement and outreach.

SMALL BUSINESS FIRST:

But we can and we must do more. This is why in February, the Mayor announced Small Business First, a \$27 million dollar comprehensive plan to reduce the regulatory burden on small businesses in the City. Through Small Business First, SBS and the Mayor's Office of Operations brought together more than 15 City agencies to collaboratively develop a framework with which to improve the way that businesses interact with the City – saving businesses time and money. As part of our business engagement strategy, we also asked businesses and stakeholders for how to improve the regulatory climate and make the City more business friendly. We created an online web form to collect ideas, promoted the initiative on social media and through email blasts, and we hosted several roundtables across the five boroughs to hear from business owners. As a result, we received more than 600 ideas that helped inform our efforts. The result was 30 initiatives that were driven by public input and in close coordination with our agency partners. These initiatives are focused around four pillars:

- Providing clear information and coordinated services through one-stop sites both online and in-person;

- Creating an environment of education and compliance, as opposed to punitive enforcement;
- Reducing the burden of complex regulations and fines; and,
- Ensuring equal access for all business owners.

For the purposes of this hearing, I will focus on the initiatives that I believe overlap with the legislation under consideration today.

INTRO. 724:

As it relates to Intro 724, which would call for a Small Business Advocate within SBS, we believe that several initiatives within Small Business First would achieve many of the intentions of the bill. One of Small Business First's signature recommendations is to provide business owners with client managers as a single point of contact to help business owners navigate government. Building on the existing services through SBS' Division of Business Acceleration, these client managers can help facilitate interactions with other agencies, provide a pre-inspection walkthrough to help businesses comply before they receive a fine or violation, and guide businesses in understanding how to resolve violations. Additionally, Small Business First recommends the creation of a one-stop business center – different from the existing NYC Business Solutions Centers – that will offer businesses a centralized location to get information, receive support services, transact with the City and access client managers to provide one-on-one assistance. Through these recommendations in Small Business First, we will add six client managers that will be stationed at our one-stop business center, and we will increase the number of Department of Buildings (“DOB”) and Fire Department (“FDNY”) client managers already at SBS.

We recognize that businesses often cannot visit SBS in person and we already have begun efforts to better connect businesses to services online. Through Small Business First, we are creating a comprehensive online business portal where businesses will be able to login to an account where they can access information, find relevant checklists and permitting requirements, connect to services and conduct transactions. To simplify the navigation to this portal, we will also have “Business” tabs on each business-facing agency's website.

Another recommendation outlined in Small Business First is the creation of a Small Business Advisory Board, which will be tasked with, among other things, raising issues that the business community is facing, presenting recommendations to the Commissioner to improve the City's regulatory environment, and selecting a focus – like dry cleaning regulation or signage issues – for an annual focused review.

INTRO. 726:

In response to Intro 726, which calls for the expansion of Business Education Days, I want to touch on the work that has already begun to provide proactive support to businesses. Through Small Business First, we currently are partnering with the Mayor's Office of Data

Analytics (“MODA”) to identify neighborhoods with high levels of violations, and then will deliver tailored outreach plans to help businesses better understand how to comply with City regulations. Another initiative as part of Small Business First is providing educational events in communities in partnership with City agencies. SBS and the administration are committed to improving outreach and better informing businesses owners about existing rules and regulations and how to comply, as well as the free services available to help businesses start; operate and grow. I will let DCA talk specifically about their outreach efforts, but I will say they have been tremendous partners, both as part of Small Business First, but also in efforts like Paid Sick Leave and our joint partnership through SBS’ Division of Business Acceleration that currently houses a DCA inspector. Moving forward, we will partner with DCA to provide financial counseling to businesses through their Office of Financial Empowerment (“OFE”). Building upon DCA’s model of Business Education Days, and we look forward to working with them, DOB, DOHMH and our other agency partners to build out this initiative.

Regarding Intro 724 and Intro 726, we heartily agree with the legislation’s intent, that is why we have already begun efforts to address these issues and I hope to work with the Council to incorporate this work. Regarding Intro 724, we have three primary concerns:

1. First, we worry that in creating a Small Business Advocate that is separate from the business-facing work that our Divisions do, we will be making it more complicated to connect businesses to our various services. We do not want to create an added level of bureaucracy.
2. Second, we think there may be opportunities to use our existing client managers who currently are an entry point for businesses that need help navigating government, but expand their role to be small business advocates. This would be a slight variation on the single Small Business Advocate called for in the legislation. As we expand the role of client managers to our one-stop centers, we hope to work with the Council to help market to businesses.
3. Finally, it is important for us to stay focused on solving problems for businesses. The way the current bill is written, it describes the Small Business Advocate as a person who would take complaints, but not as interagency facilitators.

Following the hearing we are happy to send over our recommendations for this legislation that we feel will allow the Small Business Advocates more leeway to work with businesses directly to help them navigate government and access business support services.

INTRO. 723:

I defer to my colleagues here to discuss Intro 723 in detail, but I want to mention that through Small Business First, we are committed to providing equal access to services for all business owners. We agree with the Council that providing more common language and translated services and materials for businesses throughout the City is crucially important, which is why the 30th recommendation in Small Business First addresses the work outlined in this bill.

INTRO. 456:

In regards to Intro 456, I will defer to my colleagues to speak in detail about it, but broadly through Small Business First we have several initiatives that will make it easier for businesses to adjudicate violations at OATH.

I want to thank the Council for their commitment to serving the small businesses in New York City. I thank you for the opportunity to testify, and look forward to answering any of your questions.

**Testimony of the
New York City Department of Consumer Affairs
Before the
New York City Council Committees on Consumer Affairs, Small Business, and
Governmental Operations**

Testimony on Intro. 726 and Intro. 729

April 14, 2015

Good afternoon Chairman Espinal, Chairman Cornegy, Chairman Kallos, and members of the Committees on Consumer Affairs, Small Business, and Governmental Operations. I am Amit Bagga, Deputy Commissioner of External Affairs at the Department of Consumer Affairs (“DCA”), and I am joined by my colleagues Marla Tepper, General Counsel and Deputy Commissioner of Legal Affairs, Alba Pico, First Deputy Commissioner, and Sandra Abeles, Deputy Chief of Staff.

Thank you for inviting us to testify about Intro. 726 and Intro. 729 today.

DCA’s overall mission is to empower consumers and businesses alike to ensure a fair and vibrant marketplace. The agency licenses approximately 80,000 businesses across 55 different industries, mediates complaints between consumers and businesses, conducts patrol inspections and legal investigations, educates businesses about laws and rules, and also enforces several labor-related laws, such as the Earned Sick Time Act, the Living Wage Executive Order, and soon, the “transit benefits” law. DCA also houses the Office of Financial Empowerment (“OFE”), which is the first municipal government initiative in the country with the specific mission to educate, empower, and protect New Yorkers with low incomes.

Intro. 726: Business Education Days

Today’s testimony will first address Intro. 726, a bill that would require, among other things, the Commissioners of the Departments of Consumer Affairs and Small Business Services (“SBS”) to organize and conduct business education days, on which we shall provide local businesses with information regarding the City’s consumer protection and other related laws, such as those related to pricing and licensing. The agencies would also be required to conduct these business education days in at least two separate locations within each borough and the first such day must occur before June 30 of this year. DCA supports this legislation.

I am pleased to report to you that since 2003, DCA has held 10 “Business Education Days,” on which, DCA and SBS staff, along with local business organizations, community associations, and elected officials, have visited hundreds of small businesses across the five boroughs to educate business owners about key consumer protection laws and licensing requirements.

On these business education days, representatives have gone door-to-door in small business corridors, educating business owners and operators about regulations that apply to their businesses, so that they know about the laws they must comply with - before an inspector might come visit them and issue violations. DCA staff members then conduct a mock inspection to highlight compliance issues, covering licensing requirements, refund rules, receipts and price posting, and weights and measures rules, among others.

During our most recent business education day, DCA staff visited thirty-four communities across the five boroughs to educate more than 2,000 businesses about how to avoid violations. With the help of local Business Improvement Districts (BIDs), elected officials, and community organizations, DCA identified business strips to target for education. In each borough, DCA visited between three and 11 business communities: from Parkchester in The Bronx to Canarsie in Brooklyn, from East Harlem in Manhattan to Jamaica in Queens, and from Brownsville in Brooklyn to Port Richmond on Staten Island. In each community, DCA staff provided businesses with our “10 Things Every Business Should Know” guide, which is available in English, Spanish, Chinese, Korean, Russian, Haitian Creole, and Bengali, both in print and on our website. A copy of this guide is also on your chairs. As you can see, the guide provides critical information to business owners about licensing requirements, price posting, the process by which consumer complaints are resolved, and addresses other questions and concerns frequently posed to the agency by business owners.

DCA has also shared information about its online Business Toolbox, which features the City’s first online “live chat” option. This way, business owners can save precious time by not having to visit DCA’s Licensing Center or take time away from their customers to call in a question.

Outreach

DCA is proud of its continued work with sister agencies to conduct robust, multi-lingual outreach and education for businesses on topics ranging from paid sick leave to the earned income tax credit and small business relief.

With the help of our sister agencies and community partners, DCA conducted unprecedented outreach on Paid Sick Leave, a signature achievement for both Mayor de Blasio and Speaker Mark-Viverito. As of April 10, 2015, DCA has posted information on our website in 26 languages, distributed more than 1.9 million pieces of paid sick leave literature, visited more than 1,500 businesses in person to educate owners about the law, and held or attended nearly 850 paid sick leave-related events across the five boroughs. These events have included workshops with SBS’ Jobs Plus participants, presentations before dozens of industry groups, ranging from The Bodega Association to the New York Hospitality Alliance, community events such as street fairs and NYCHA Family Days, and specific trainings for multi-branch businesses, such as Gregory’s Coffee and Ricky’s Cosmetics. Of our events, 482 have taken place in boroughs

outside Manhattan and more than twenty five percent of them have taken place in a language other than English.

Beyond paid sick leave, we are committed to interagency collaboration in all elements of our outreach – from the immigrant town halls we have been hosting with SBS, as well as the Mayor’s Office of Immigrant Affairs and the Community Affairs Unit, to our collaboration with the Human Resources Administration, the Department of Homeless Services, and NYCHA to distribute information about the Earned Income Tax Credit to eligible New Yorkers. Additionally, our enforcement division has had significant direct engagement with community boards through participation in business education events and attendance at borough or district service cabinet meetings.

DCA is firmly committed to educating businesses about laws and rules and bringing them into compliance before violations are issued and fines are assessed. We look forward to continued collaboration with SBS and other sister agencies, industry groups, BIDs, merchant associations, community-based organizations, community boards, and of course, the City Council on educating our City’s businesses.

Small Business Relief Package

Under Mayor de Blasio’s leadership, DCA has deepened its commitment to educating business before issuing violations and assessing fines. In July 2014, DCA implemented approximately two dozen reforms that will ultimately result in the reduction of fines assessed on small businesses by \$5 million in the current fiscal year, as compared to the previous fiscal year.

One key reform was the reduction in the number of counts per violation type for minor infractions. In the past, if five cans of a particular food product were missing price tags, a count would be noted for each can, each count resulting in an incremental increase in the total fine amount, even though the type of the violation was exactly the same. Our reforms now assess all counts of a particular type of violation – pricing in this case – as one count. This change has been particularly helpful to small businesses such as bodegas and local grocery retailers, which often do not have resources to cover the costs of large and onerous fines. In addition to reducing fines, our business relief package increases transparency and fairness and greatly expands DCA’s education and outreach efforts. As a former small business owner, Commissioner Menin knows how important it is to obtain clear, consistent information from the City about laws and rules. To further Mayor de Blasio’s vision of reducing burdens on small business owners, DCA introduced a new Legal Ombudsman in October 2014. Our Ombudsman is dedicated to answering questions that businesses have about the laws that DCA enforces.

DCA is also particularly focused on meeting the needs of immigrant small business owners, who, by some estimates, own or operate 40% of our City’s businesses. For example, 41 of our most commonly-used inspection checklists are now on our website in plain English and in several other languages including Bangla, Arabic, Spanish and Chinese. Additionally, patrol inspections

can now be conducted on the spot in an owner's language of choice by using Language Line. These important changes help eliminate fear and confusion on the part of immigrant small business owners and also help increase access to information and facilitate compliance with the law.

To ensure small business owners are informed about these changes, in fall of 2014, the agency launched a citywide business education tour with each of the borough-wide chambers of commerce. By the close of 2014, the agency worked in partnership with BIDs, community-based organizations, and elected officials to hold an additional 74 events reaching over 3,000 businesses.

Thank you for giving DCA the opportunity to testify about this important issue. I would now like to offer comments on Intro. 729, a bill that would require an annual analysis of, and recommendations based on, violations dismissed by DCA's tribunal.

Intro. 729: Reporting Dismissed Violations

We appreciate the opportunity to testify about Intro. 729 today; it is in the joint pursuit of effective tools to provide relief to small business owners and ensure efficient and effective government operation that DCA offers its position on the legislation being addressed today.

DCA has worked tirelessly to ensure that we aid the business community with compliance while we also maintain a rigorous structure of oversight over our City's businesses, particularly those that egregiously flout laws and rules, engage in predatory or deceptive practices, and have a negative impact on consumers or the marketplace.

As we have testified today, we are also careful to ensure that businesses are not subject to excessive violations and fines and we employ careful and calibrated enforcement methods to ensure compliance. DCA also shares the Council's goal of minimizing violations that are not properly charged, and therefore already has clear protocols in place to assess dismissed violations.

Among other things, Intro. 729 proposes that the agency include a catalogue and an analysis of the characteristics of the violations dismissed by DCA's tribunal and the reasons for their dismissal in an annual report.

The issuance of charges depends on individual facts. A tribunal's assessment of charges may be contingent on a variety of factors, including the credibility of witnesses. The agency agrees that ensuring accuracy and efficiency in our operations, as well as minimizing inconveniences faced by small businesses, requires, as the bill states, "planned action." Our legal and enforcement divisions assess every violation dismissal on an individual basis to determine whether the dismissal is appropriate or whether we have grounds for an appeal, and whether adjustments in forms, checklists, and trainings are necessary.

Considering the unique nature of each dismissal, it is crucial that any reporting mechanism accurately and appropriately reflect violation dismissal data. As such, DCA welcomes the opportunity to work with the Mayor's Office and the Council to identify an appropriate way in which to report violation dismissal data.

We would like to note that our rate of violation dismissals is low. In fact, violations are dismissed by the agency's tribunal at such low levels that the analysis of dismissal rates on an annual basis is not likely to show statistically significant trends. Of the notices of hearing ("NOHs") that DCA has issued in Fiscal Year 2015 to date¹, only 5.6% of those NOHs contained a charge that was ultimately dismissed. Considering how low this rate is, a catalogued report issued on an annual basis is not likely to show trends in violation dismissal.

Once again, thank you for the opportunity to testify before you today on these two important bills; my colleagues and I will be happy to answer any questions you might have.

¹ Through March 31, 2015



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Gale A. Brewer, Borough President

**Testimony of Gale A. Brewer, Manhattan Borough President
Joint Hearing of the New York City Council Committees on Small Business, Consumer Affairs,
and Governmental Operations
April 14, 2015**

Good morning. My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Chair Espinal, Chair Cornegy, and Chair Kallos and to the members of all three committees for the opportunity to testify.

The legislation presented today encompasses substantial proposals to help New York City's small businesses grow and prosper. From my own experience in city government and from my office's research in preparing our recently released small business report (*Small Business, Big Impact: Expanding Opportunity for Manhattan's Storefronters*), I've seen how inconsistent regulatory measures place a burden on small businesses in Manhattan—a borough that has historically created a majority of jobs for New Yorkers—and limits their capacity as a gateway to the middle class, especially for immigrants and ethnic communities.

One area of concern is the point where New York City agencies interface with small businesses to ensure that they comply with regulations.

Each year the Department of Consumer Affairs (DCA) licenses nearly 80,000 businesses in 55 industries. The DCA protects New Yorkers from business practices that may cause economic or physical harm—for instance, misleading product signage, availability of receipts, and the sale of expired over-the-counter medicine—but it also helps businesses by educating them about their rights and responsibilities. For many small businesses, the DCA is their principal contact with city government. As such, the DCA has a responsibility to provide clear and useful assistance to those businesses they oversee to ensure a fair and vibrant marketplace.

From our interviews with small business owners, we repeatedly heard DCA inspectors described as taking a guilty-until-proven innocent approach, viewing business owners as willfully negligent or perhaps even as scam artists. If a business owner is discovered to have unknowingly violated a regulation, he or she should be given the opportunity to learn from this mistake and fined only if the situation is not corrected. This situation is compounded by the fact that each city agency deploys its own inspectors with specific checklists, subjecting small businesses to at least four different visits.

To alleviate these tensions, more needs to be done to improve government communication with business and maximize city inspector efficiencies. In addition to the bills being proposed today, I'd like to offer some additional recommendations:

- **Combine overlapping inspections.** Agencies with complementary goals can combine efforts to provide more comprehensive oversight. An ideal combination would be NYPD's Traffic Enforcement Agents and Department of Sanitation inspectors. Combining inspections would give owners fewer interruptions from tending to their business and allow sanitation and traffic laws to be dealt with simultaneously. The city might pilot this process by recruiting experienced inspectors for the new position or by creating interagency teams to go into the field.
- **Transform DCA inspectors into educators.** Inspectors have the potential to become the city's greatest asset for connecting with small businesses. While inspecting retail establishments is important for consumer protection, DCA should reform and expand this position to make it a Small Business Education Specialist. This role would be viewed as a teacher guiding small businesses in their efforts to achieve compliance. Education Specialists would engage in outreach on behalf of NYC Small Business Services, nonprofit partners, and local BIDs when applicable. They would connect the city to the needs of the small businesses and respond with a menu of available city services.

- **Provide language services for Cure Law participants.** The 2013 Cure Law—which I co-sponsored as a Council member—listed 84 DCA violations that can be corrected by submitting certification that the condition has been fixed. It also allows businesses to avoid DCA fines by expanding the list to include over 100 types of violations that can be corrected. We need to ensure that small businesses—regardless of their fluency or ability to converse in English—have the necessary language support to submit paperwork to “cure” first-time DCA violations. Otherwise, immigrants and the illiterate might be unable to benefit from this law, which helps small business owners by reducing the number and cost of fines, increasing transparency and fairness, and increasing business education. I’m pleased to already be working closely with Chair Cornegy on this issue.

These recommendations have a common goal: to transform interactions between small business owners and DCA and other regulatory agencies into learning opportunities that can make small businesses more sustainable. DCA is already moving in that direction under the dynamic leadership of Commissioner Menin, and I look forward to continuing our conversations with the agency on how to move the ball forward even further.

I am eager to work with the Mayor and members of the Council on other ways to aid small businesses, some of which are addressed in our report: taking the pressure off lease renewals, modernizing policies governing street vending, encouraging “condo-ization” of storefront space, and creating “low-intensity” commercial districts.

I applaud the sponsors of these bills for their commitment to preserving the local commercial stakeholders that enhance our communities and working to improve upon the bounds between local government and the businesses that seek their assistance.

Thank you.

SMALL Business

BIG Impact

*Expanding
opportunity
for Manhattan's
storefronters*



Gale A. Brewer

MANHATTAN
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Executive Summary

The Manhattan Borough President's Office (MBPO) produced this report to help more small businesses thrive and grow, because small businesses have historically provided the majority of jobs for New Yorkers and a gateway to the middle class, especially for immigrants and ethnic communities.¹

Over the past few years, however, the future of the city's small businesses—and specifically street-level retail stores and restaurants—has begun to look murky. High rents, corporate competition, and real estate development deals are creating challenges over and above the ones small businesses typically face.

Activists have cited the speed with which commercial landlords move to evict small businesses to make space available for a corporate franchise or a bank, which can and do pay substantially higher rents. These evictions are having an impact on Manhattan's commercial landscape. Vast stretches where mom-and-pops once prevailed have disappeared from Clinton and Chelsea to Little Italy and the Bowery. Empty storefronts persist for weeks, months, and even years, and more and more streetcorners are claimed by major banks and corporate chains.

Launching a small business in New York City has never been easy. Of the thousands that open every year, many close that same year. Landlords evict commercial tenants for a variety of reasons. Tenants close up shop not just because of escalating rents but also because of back taxes, damages or losses for which they haven't carried enough insurance, and demographic changes among clientele. Regardless of why small businesses close, when they do, everyone loses, because small businesses hire locally, contract out services locally, make local purchases, and give New York City streets their character.

Based on what the MBPO heard from small business stakeholders, we've made recommendations under four categories: (1) help small businesses cope in the current real estate market, (2) improve government interaction with small businesses, (3) reform the city's Commercial Rent Tax, and (4) maximize resources among government agencies.



Special thanks to Lucian Reynolds of the MBPO Land Use Division for his extensive work on this report.

HOW BIG IS SMALL?

Finding the data to help analyze the small businesses targeted in this report was difficult because there is no standard definition of "small." We looked at how federal, state, and city agencies set the maximum number of employees a business can have to qualify as a small business:

Federal: *Depending on industry sector, the U.S. Small Business Administration (SBA) measures business size by either the company's dollar value or the number of employees. The Small Business Act defines small business as generally one with fewer than 500 employees.*

The SBA further recognizes microbusiness as an organization with fewer than five employees and small enough to require little capital (\$35,000 or less) to get started.

State: *New York defines small business as a shop that employs fewer than 100 people.*

Local: *New York City's Small Business Services doesn't give a hard number; rather, it encourages any business to inquire about its services.*

Clearly there's a need for better integration of benchmarks and criteria between different levels of government when it comes to smaller shops. It would be great to have common thresholds. We believe that the majority of storefronters our recommendations will help are businesses with 15 or fewer employees.

New York City has been fertile ground for small businesses

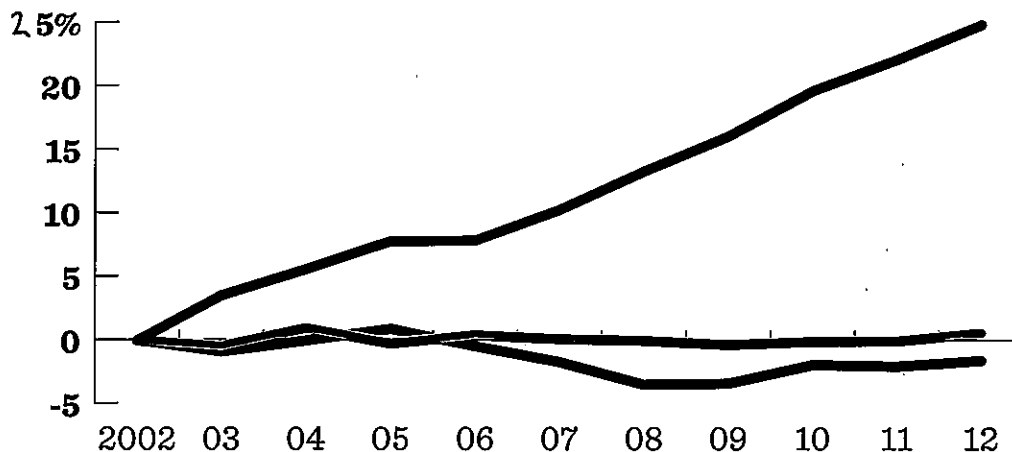
Successful small businesses make our city stronger, bolstering our unique identity and helping to revitalize neighborhoods. They provide a broad range of essential services—such as washing clothes, repairing shoes, and cooking and delivering food—and often go beyond that, exposing their customers to new products or experiences.

Although New York is one of the world’s most expensive and competitive places to do business, entrepreneurs with one or only a handful of employees are undeterred from entering the ring. According to an October 2014 report by the Center for an Urban Future, firms with fewer than five employees constituted the bulk of growth in new businesses in New York City between 2000 and 2013, providing a net gain of 31,421 jobs.²

These numbers, of course, reflect the meteoric growth in digital and tech startups, buoyed by an array of Silicon Alley co-working spaces like New Work City and AlleyNYC.³ In addition, according to U.S. Census data compiled by the Center for an Urban Future, 7.9% of Manhattan residents were self-employed (meaning “in own not-incorporated businesses”) in 2012, a larger share of the workforce than in any other borough.⁴ When you add up these tens of thousands of Manhattanites, you can see how



Growth rate in quantity of 100+ employee firms



Growth rate in quantity of under-99 employee firms

Source: U.S. Census Bureau data for New York County

INTERVIEWEES

Patreinnah Acosta-Pelle, Business Development Advisor and Consultant, Harlem Congregations for Community Improvement
Curtis Archer, President, Harlem Community Development Corporation
Sean Basinski, Director, Street Vendor Project
Wellington Chen, Exec. Dir., Chinatown BID
Kerri Culhane, Associate Director, Two Bridges Neighborhood Council
Alexandra Hanson, Policy Director, NYS Ass'n for Affordable Housing
William Kelley, Exec. Dir., Village Alliance
Sung Soo Kim, President and CEO, Korean American Small Business Service Center of New York
Doug Kleimann, NY Real Estate Sales Associate
Tim Laghlin, Exec. Dir., Lower East Side BID
Jamie McDonald, author of *New York Originals: A Guide to the City's Classic Shops and Mom and Pops*
Danny Meyer, CEO, Union Sq. Hospitality Group
Scott Millstein, Exec. Dir., CORO New York Leadership Center
Ramon Murphy, Pres., Bodega Ass'n of the U.S.
Bernadette Nation, Director, City Business Assistance Program, NYC Small Business Services
Angelina Ramirez, Exec. Dir., Washington Hts. BID
Carlina Rivera, Program Manager, Good Old Lower East Side
Sara Romanoski, Managing Director, East Village Community Coalition
Penny Ryan, District Manager, Community Bd. 7
Fred Owens, Development Dir., Project Enterprise
Nancy Ploeger, President, Manhattan Chamber of Commerce
Martha Soffer, Economic Development Specialist, Small Business Administration

firms with fewer than 20 employees constitute over 90% of the businesses in the New York metropolitan area.⁵

U.S. Census data on business patterns for Manhattan (New York County) between 2002 and 2012 reveal some interesting trends.⁶ For instance, the number of businesses with fewer than 99 employees and more than 99 employees varied by only a few percentage points in 2010. The number of food establishments with fewer than 99 employees appeared to be unaffected by the 2008 recession, increasing steadily by 25% over 2002 levels. Finding success in the restaurant business is notoriously difficult, but there seems to be no limit in the number of entrepreneurs attempting to do so in Manhattan.

The focus of this report is what we call storefronters—retail stores/services and food purveyors/restaurants that rely on street-level customer activity for their success—and therein lies the challenge. In a booming commercial real estate market, chain stores don't need to be profitable to afford their lease, because the street-level location may be more useful as an advertisement than as a means to profitably move merchandise. Storefronters, on the other hand, struggle mightily to pay \$65.14 per square foot—the average Manhattan asking rent in the fourth quarter of 2014 according to Avison Young.⁷

The types of small businesses we seek to help are independent (not part of a national chain and not franchisees), responsive to a neighborhood clientele, and have often built their businesses with very little capital, using their life's savings or getting loans from friends or family. Franchisees are often similar to our targeted storefronters, but the nature of the franchise allows them certain economies of scale and advertising support that are not enjoyed by those who fit our definition.

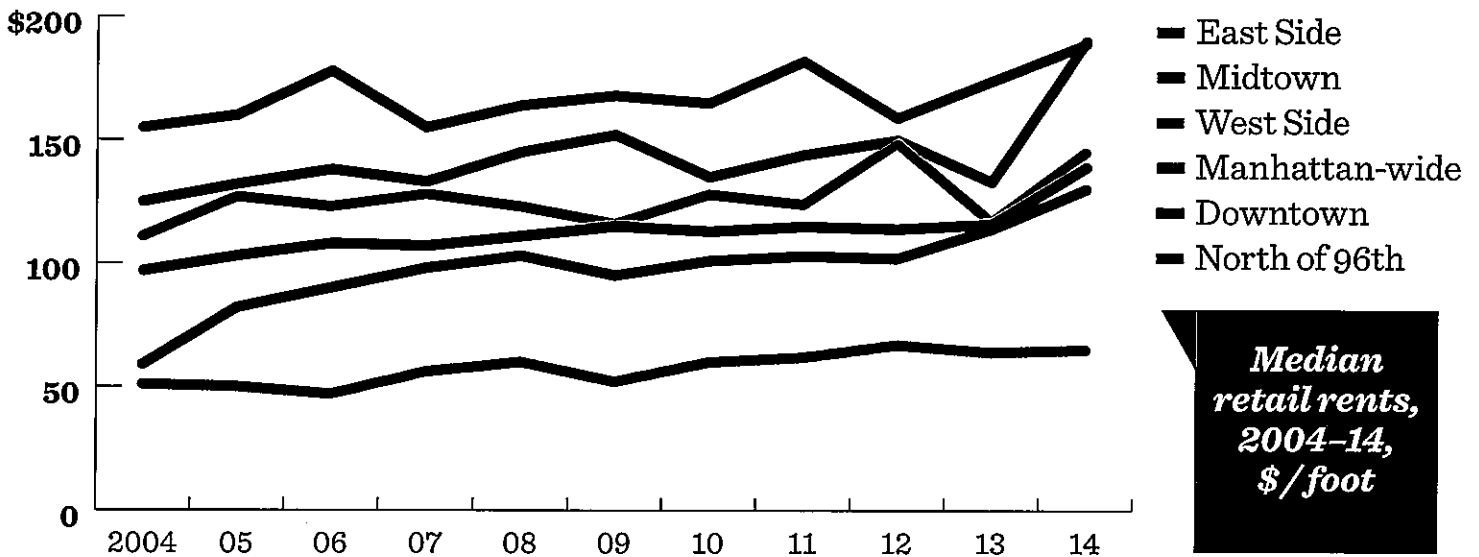
When small businesses are replaced with chain banks or chain drugstores, the market fails both the business owners and New Yorkers who prefer unique and specialized services. It also fails the economy. As noted urban theorist Jane Jacobs discussed in a 2003 interview, "The general idea at the time I wrote *The Economy of Cities* was that small businesses were . . . no longer of any importance. It's only a few years ago that it became the accepted new wisdom—which is true—that most of the jobs added in an economy are added in small businesses, not from growth in already large businesses."⁸

Challenges to making it in Manhattan

This report was shaped by what we heard during interviews with individuals from a wide spectrum of organizations in neighborhoods in all parts of Manhattan (see sidebar at left). These interviews gave us critical perspective on the market, on the damage that large rent increases are causing storefronters, and on challenges these entrepreneurs face daily.

Rising commercial rent and changing clientele

We've all seen businesses close under sad but recognizable circumstances. Most often, the market just does not exist for their product or service. Even well-established firms can be done in by credit problems, changes in management



Source: Real Estate Board of New York, Spring Retail Report 2014

costs, or retirement. Recently, however, New Yorkers have seen something different happening: the closing of businesses that have stood the test of time and enjoy healthy patronage from the neighborhood and surrounding city. The reason: large-scale increases in commercial rents.

As more ultra-high-income individuals move into New York City, property values and rents escalate, and owners of ground-floor retail spaces search for the new market ceiling. Many are avoiding locking themselves into 10- or 15-year leases at a price per square foot that may turn out to be below that of neighboring buildings. Instead, they are keeping their stores vacant until they land a tenant who accepts a higher rate, which establishes a new market norm.

Businesses that can't adapt their models to afford higher rents can do nothing but close. If banks and chain drug stores are the only tenants that can afford top-market prices, New York City will see greater numbers of storefronters going under.

With rising rents come new clientele, and a marked change in neighborhood demographics can significantly alter shopping patterns. The dissipation of an ethnic enclave could reduce demand for certain goods or services, even if the incoming population has the same purchasing power.⁹ Many small businesses consider a shift in strategy risky, but their failure to alter their business strategy is just as risky. A shift in neighborhood tastes could necessitate additional investment—for instance, a capital investment like a new display counter or funding to cover the retraining of employees to provide a new service—that the owner is unable to afford.

Ill-informed management decisions

In speaking with Bernadette Nation, Director of the City Business Assistance Program at New York City's Department of Small Business Services (SBS), we learned more about what causes businesses to fail. In the wake of natural or manmade disasters—for instance, building fires and flooding—SBS's program helps business owners pick up the pieces, connecting them to emergency response programs and helping them negotiate with insurance companies.

Here are some common small business pitfalls Ms. Nation cited:¹⁰
Not carrying enough insurance. Though businesses are usually required to buy insurance as part of their lease, many buy bare-minimum policies that prove insufficient for each type of coverage.

Delaying tax payments. Many small businesses elect to pay their state sales tax annually rather than quarterly, which gives them more time to dip into money that should be earmarked for the state. To further complicate matters, the state may not contact the business about unpaid sales tax until the second or third year, whereupon the owner might not have properly accounted for the sales tax revenues and is unable to pay.

Not budgeting for utilities. New small business owners are often unaware that utilities treat business customers differently from residential customers: if they fall behind on their payments, Con Edison will cut off electricity and gas to the shop.

Lack of readiness to change or expand

Communities can change a lot over the course of a 15-year lease. If a business serves a neighborhood of young families with strollers, they may need to reflect on their business plan if a decade passes and children become adolescents but young families are no longer moving in. Consumption patterns change as well. Family bakeries and bagel shops have had a wild ride as tastes have changed from no-carb to whole-grain bread to gluten-free products.

Some small business owners may fear change, especially if they have been running their business the same way for a long time. These businesses would benefit from an organization that could help them identify the new market and make any needed adjustments to their strategy.

Changing consumer tastes might force business owners to carry more expensive products that would require taking out a loan. But because many small businesses have been built from personal savings or loans from friends or family, their owners don't have experience gathering the paperwork to successfully apply for a loan. Moreover, many fear an application that requires them to be transparent about their business's financial history and future.

Both New York State's Empire State Development Corporation (ESDC) and the federal government's Small Business Administration (SBA) have loan programs for small businesses. Independent microloan organizations like Accion and Grameen America serve needs that are too small for traditional banks and credit unions. If more small businesses could be connected with these services, more would succeed.

Business-inhibiting laws and policies

Although city, state, and federal governments all have agencies that respond to the needs of small businesses, government can also restrict business when enforcing those zoning codes, laws, and regulations to protect the public's interests. These inhibitors include:

Rigid zoning codes. New York City's Zoning Resolution dictates whether a business can operate in any of the five boroughs. Business types are separated into groups, and each group may be included in one or more zoning districts or commercial overlays. The city's current zoning system distinguishes between residential, commercial, and manufacturing uses. Exceptions can be made as some commercial districts may be built with residential units and certain commercial establishments are allowed in some manufacturing zones. These rigid descriptions do not leave much room for interpretation, and storefronters need room to innovate.¹¹ Real estate development is an incredible opportunity to add ground-floor commercial units to the market and increase Manhattan's overall supply. Unfortunately, many new commercial spaces are built out in large dimensions that please investors but not storefronters, who are unable to justify spacious floor plans suited to chain pharmacies and banks.¹²

Uncooperative agency inspectors. Various New York City agencies interface with small businesses to ensure that they comply with regulations—the Department

of Consumer Affairs (DCA), the Department of Sanitation (DSNY), the Department of Transportation (DOT), and the Department of Health and Mental Hygiene (DOHMH).

The DCA protects New Yorkers from business practices that may cause economic or physical harm—for instance, misleading product signage, availability of receipts, and the sale of expired over-the-counter medicine. For many storefronters, the DCA is their principal contact with city government. But for many of the small business owners we interviewed, DCA inspectors were perceived as taking a guilty-until-proven innocent approach, viewing business owners as willfully negligent or perhaps even as scam artists.

As people making a life for themselves, storefronters are not inclined to look for problems. If the owner is discovered to have unknowingly violated a regulation, he or she should be given the opportunity to learn from this mistake and be fined only if the situation is not corrected. This situation is compounded by the fact that each city agency deploys its own inspectors with specific checklists, subjecting small businesses to at least four different visits and complex interactions over regulation.

Commercial Rent Tax. If you are an entrepreneur who does business between 96th Street and Chambers Street in Manhattan, the cost of doing business will likely include the Commercial Rent Tax. For the most part, this is a tax levied on for-profit commercial tenants paying at least \$250,000 per year in gross rent. It turns out that this threshold is easier for a small business to reach than one might expect.

To calculate gross rents, the city looks at how much a business pays its landlord every month per the requirements of its lease. Gross rent takes other costs into account, such as property taxes. Many commercial leases have pass-through clauses that make a lessee pay any increase in property taxes for their space. So if their landlord's property taxes increase, the tenant will have to pay the difference; what the tenants pay in property taxes is included in what is considered gross annual rent. This tax-on-a-tax punishes successful business owners for improving their neighborhoods.

Opportunities and challenges for street vendors. Street vendors are storefronters without a brick-and-mortar location. This style of retail should be a very low-cost, low-risk way to enter the marketplace, as the vendor doesn't need a commercial lease and may be able to get his/her business up and running with little or no credit. In reality, however, street vendors' overhead is often higher than anticipated. They may be operating from a table or cart, but their equipment and inventory may need to be transported and must be safely stored when not in use, which can be costly.

The city recognizes street vendors as a legitimate business type, but policies that limit the expansion of street vending constrain opportunity. The city capped the number of street vendor licenses in 1979 and has not been taking new names on the waiting list since 1992. (There are exemptions for U.S. military veterans or First Amendment vending like newspapers and magazines.) The city also makes it difficult for street vendors to contract private carting services for their business waste (which can result in business waste ending up in overflowing public trash receptacles).¹³

Gaps in government support

Government agencies—New York City's SBS prime among them—provide very useful resources to help small businesses. New York State's ESDC and Harlem Community Development Corporation (Harlem CDC), along with the federal government's SBA, have offices that provide small business support. Like the regulatory agencies, these agencies seek to improve the lives of New Yorkers, but sometimes gaps in service occur.

Department of Small Business Services. SBS helps demystify the process of getting a business up and running and overseeing New York City's Business Improvement Districts (BIDs). Although SBS works hard to lower the barrier to entry for small businesses of every class, our interviews revealed a handful of issues that reduce its effectiveness.

While SBS offers impressive services for those preparing to establish a business that conforms to current laws and regulations,¹⁴ the same types of services are not available for street vendors who may or may not hold a license but want to expand into a brick-and-mortar location. Such a service is sorely needed as New York City has no lack of entrepreneurs. This SBS service could assist them in launching informal-sector businesses or helping legitimate microbusinesses as they grow to stay in compliance with laws and regulations that previously did not apply to them.

SBS provides services to storefronters that could be complemented by available state and federal services. Unfortunately, the city does not appear to be coordinating its efforts with ESD, SBA, or other agencies. SBS is best situated to provide small businesses with individualized assistance. Entrepreneurs would be better served if SBS coordinated its services with those of other agencies, making referrals to clients and tracking when this is done.

Business Improvement Districts. BIDs are credited with improving the look and feel of commercial areas by providing additional sanitation services and beautifying the area with plantings and tree care. Many BIDs, like that in Washington Heights, provide an expansive slate of services to small businesses by conducting market research and lobbying on their behalf.

Because BIDs are primarily funded by an assessment on real properties within the district's boundaries, many of our interviewees expressed dismay that the funding mechanism makes BIDs beholden to property owners over all other constituents. It makes sense that BIDs seek to improve property values for the entities that dominate their boards and from which they garner most of their budgets. But the city needs to empower BIDs to provide more services that benefit storefronters in their catchment areas.

Recommendations

We need to pursue all possible avenues to help new storefronters survive and existing ones strengthen their foothold in Manhattan neighborhoods. Given the challenges our interviewees helped us identify, the MBPO suggests the following solutions.

Help small businesses cope in the current real estate market

To take some of the pressure off of lease renewals, we recommend institution of a mandatory negotiation and mediation period, with the option of a short-term lease extension. As a long-term commercial lease draws to a close, these policies will aid both small business owners and property owners alike by ensuring a frank, informed conversation takes place while maintaining protection and flexibility for both parties. This isn't a new concept—in 1986, the Small Business Retail Study Commission (SBRSC) examined the city's retail market and included this policy in its recommendations. Three decades later, the urgency is only greater, and this is an idea whose time has come.

Unlike commercial rent control, this plan leaves the question of how much a tenant will pay for the duration of their lease to the negotiation between tenant and landlord. It does not give the city or state authority over market rates; it merely requires both parties to talk. If an agreement is not reached, the lease is extended to give the tenant a reasonable amount of time to move.

The landlord of a small retail business with an expiring commercial lease would have to contact that tenant 180 days before the end of the lease to let the tenant know whether



they intend to offer a renewal. If they do, they will also have to provide the terms. Should the tenant seek to negotiate with the landlord or the landlord's representative, they would have to do so within 30 days of receiving the terms.

If the negotiation does not produce an agreement, the tenant or the landlord may invoke nonbinding mediation within 30 days. This way, landlords are not able to simply run out the clock on their tenant without coming to the table in some way. The mediation session must have a mediator present, and if the mediator feels that progress is being made toward an agreement, he or she can order that the parties attend a second round of mediation. If both parties do not agree on lease terms, the tenant's current lease is extended for one year with up to a 15% increase in rent. This gives the tenant enough time to search for a new retail space.

We also recommend an increase in the supply of ground-floor retail space to provide more competition between building owners and more competitive leases for small businesses. More commercial space in the neighborhood can also give a business that is forced to move out of its current space a way to secure a more favorable lease in the same neighborhood. This is another good idea with roots in the 1986 SBRSC report, and there are several ways the city might put it into practice:

Don't allow ground-floor retail to expire. Many ground-floor commercial units have been functioning as a nonconforming use but were grandfathered as an existing use under the 1961 zoning. When these spaces lay vacant for two or more years, they were required to conform with the permitted use, which meant an end to the continuation of that space as retail. The commercial overlay would allow existing businesses to expand and new small businesses to replace those that close without the danger of losing the grandfathered retail space forever.

Create an Urban Neighborhoods Fund. The New York State Association for Affordable Housing has found that current subsidy programs do not adequately support the creation of ground-floor retail. To ensure that such space is built whenever possible, it proposes an Urban Neighborhoods Fund for the city's affordable housing developments.¹⁵ This fund would reduce the level of debt that a developer must carry on the retail portion of their project, which can reduce the amount of rent that that building needs to charge. Cheaper commercial spaces providing important neighborhood services can be prioritized for storefronters. The fund is structured to leverage federal and state resources and would be administered by the New York City Department of Housing Preservation and Development.

Expand retail opportunities by expanding commercial overlay districts. It's critical that the city allow for additional commercial retail density in places where upzonings occur and create opportunities for commercial activity in surrounding areas. The Department of City Planning (DCP) should match the expansion of commercial overlay districts with additional zoning provisions requiring new buildings with a certain amount of commercial frontage to have a minimum number of storefront establishments. In neighborhoods like the Upper West Side, banks are assembling smaller commercial retail units to create larger frontages, which allow them to use the space as advertising. The Upper West Side's 2012 Neighborhood Retail Streets rezoning protected storefronters by preventing the further loss of appropriately sized commercial spaces. Under the new provisions, banks and formula retail could still use building cellars, space on the second floor, and commercial space behind other smaller units to expand their usable commercial area without having to dominate the street frontage.

Create commercial opportunities for storefronters within public housing complexes. Commercial overlays should be added to the existing residential zones to permit retail activity. The New York City Housing Authority (NYCHA) could then remodel the bases of some of its buildings to allow for ground-floor commercial units to replace underutilized

***Expand
the supply
of retail
space***

storage or workshop space. This will provide additional revenue for the cash-strapped NYCHA as well as important “eyes on the street” storefronts that help create vibrant and safe neighborhoods—something that “towers in the park”-style developments often lack.¹⁶ **Create an ultra-low-intensity commercial district.** Zoning currently lumps together a broad range of uses classified as retail, but more than one metric can be used to measure building intensity. If a ground-floor retail space is strategically important to a business and the intensity is low, parts of the city could accommodate the business even if currently zoned as residential. Many residential zones allow for community facilities that can be used for medical offices. A low-intensity commercial district would create additional commercial space for other types of unobtrusive businesses. Because this class of business would no longer compete for commercial space, demand would be reduced. This pilot would require an agency with experience in business plans to assist the DCP in establishing the low-intensity threshold and reviewing applications. The low-intensity zones should be distributed near commercial areas experiencing high demand for ground-floor commercial stock.

Make it easier to buy the building

One way for storefronters to avoid the need for lease negotiations is to buy the commercial space they had been leasing. Given the current market for residential property in Manhattan, however, it is unlikely that many owners could manage this.

One solution is to separate residential and commercial units into condominiums. The SBA’s 504 Loan allows businesses to purchase properties valued at up to \$5 million if they can provide at least 10% of the purchase amount and if 51% of the building is used as part of the business.¹⁷ A program that promotes “condo-ization” for compliance would make the purchase of ground-floor retail space possible for storefronters. A procedure with New York State’s Real Estate Finance Bureau would allow building owners to easily separate the uses if the split has no effect on residential tenants.¹⁸ Once the commercial units are legally separate, the commercial tenant is far more likely to use 51% of the condominium.

To incentivize this process, the city could implement a program by which buildings that have accumulated heavy Buildings Department fines or are in arrears in Department of Environmental Protection sewer payments can get these debts reduced by using the earnings from the sale of their commercial condominium to pay for the necessary capital improvements. The property owner would have to agree to not apply for a Major Capital Improvement by New York State’s Department of Homes and Community Renewal, which would allow them to increase the tenant’s rent in return for fixing the serious, longstanding issues.

Improve government interaction

As noted in the previous section, improving interactions with DCA, DSNY, DOT, DOHMH, and other regulatory agencies can make small businesses more sustainable.

Combine overlapping inspections. Agencies with complementary goals can combine efforts to provide more comprehensive oversight. An ideal combination would be NYPD’s Traffic Enforcement Agents and Department of Sanitation inspectors. Combining inspections would give owners fewer interruptions from tending to their business and allow sanitation and traffic laws to be dealt with simultaneously. The city might pilot this process by recruiting experienced inspectors for the new position or by creating interagency teams to go into the field.

Transform inspectors into educators. Inspectors have the potential to become the city’s greatest asset for connecting with storefronters. While inspecting retail establishments is important for consumer protection, DCA should reform and expand this position to make it a Small Business Education Specialist to assist small businesses in achieving compliance. Education Specialists would engage in outreach on behalf of SBS, nonprofit

Maximize city inspector efficiencies

partners, and local BIDs when applicable. They would connect the city to the needs of the storefronter and respond with a menu of available city services.

Provide language services for Cure Law participants. The 2013 Cure Law—which the MBP co-sponsored as a City Council Member¹⁹—listed 84 DCA violations that can be corrected by submitting certification that the condition has been fixed. It also allows businesses to avoid DCA fines by expanding the list to include over 100 types of violations that can be corrected. We need to ensure that storefronters—regardless of their fluency in English—have enough language support to properly submit their paperwork to “cure” first-time DCA violations. Otherwise, those with limited fluency might be unable to benefit from this law, which helps small business owners by reducing the number and cost of fines, increasing transparency and fairness, and improving business education.

The persistence of street vendors in the face of adversity confirms their entrepreneurial spirit. New York City should help these sidewalk storefronters grow their businesses.

Create a ladder of entrepreneurship. SBS can strengthen the pipeline to fill brick-and-mortar retail spaces by helping fledgling entrepreneurs learn stronger business practices. Because every vendor has different needs, SBS could build out multilevel, multi-language curricula beginning with the basics (building and using credit) and finishing with classes on commercial lease negotiation.

Raise the cap on vendor licenses and permits. The current limit has not been raised since 1981. Allow new entrepreneurs to go into business for themselves. New York City should think of every new business as a startup, not just those seeking venture capital funding.

Issue temporary license papers to replace lost or stolen licenses. DCA does not currently issue temporary cards for vendors to use until their replacement card arrives. So if a street vendor loses his or her license card for any reason, he or she is unable to work until receipt of a replacement, which can take up to a month.

**Empower
street
vendors**

Reform the Commercial Rent Tax

City government should improve how the Commercial Rent Tax deals with store-fronters. In particular, the base gross annual rent should be raised from \$250,000 to exclude the majority of storefronters from qualifying for the tax. All retail tenants should also be allowed to ignore any property tax pass-throughs when calculating gross annual rent.

Facilitate agency collaboration

New York City has the potential to give small businesses access to a full line of free or low-cost business services. SBS’s Business Express is a fantastic tool to jumpstart new businesses.²⁰ The state’s ESD has a Business Mentorship Program.²¹ The federal government’s SBA has impressive loan programs and conducts free seminars.²² To get businesses the support they need, we recommend an integrated system in which each level of government takes in new clients and passes them off to the agency providing those services.

Publish enhanced SBS open data. Before the city, state, and federal governments begin sharing their caseloads, SBS must develop a way to track and tally the number of businesses it takes in and subsequently hands off to state or federal partners. These data will enter the city’s Open Data Portal (created by Local Law 11 of 2012, co-sponsored by the MBP as a Council Member),²³ where they can be analyzed by external organizations to better target the needs of storefronters.

Co-locate agencies from different levels of government. Each of the government agencies should share an office space for overlapping and complementary programs where employees who cover intake, handoffs, and strategic planning can work, communicate, and build partnerships. If developed jointly, future programs could reduce administration

**Integrate
city, state,
and federal
services**

costs across all levels of government, with the savings applied to help small businesses. **Expand 311 to cover state and federal programs.** The city's 311 operators are trained to ask the right questions and navigate the caller through a special knowledge base to narrow the list of possible services. While city services and agencies are well represented, state and federal programs should also be included, especially if a similar service is not offered by the city. For example, if a minority or woman who owns a business wants to become certified as an M/WBE and do business with the state, a call to 311 would connect the client with Harlem CDC to start the certification process.



**Leverage
BID
resources**

Few organizations know the current commercial climate of an area like the local BID. Moreover, BID staffers often have very close relationships with the businesses in their catchment areas. BIDs pay to collect important data, and their staff have the training to identify trends that would help local businesses strengthen their products and services in light of changing consumer tastes.

Partner with SBS to identify and help struggling businesses. BIDs can help identify storefronters who need SBS assistance and refer them to the closest center. For example, because the Washington Heights BID and SBS share office space, they work very closely together to target needed services. SBS should explore how this model can be replicated throughout the city and give BIDs more power to directly help small businesses.

Develop the capacity to provide microloans. Once the local BID has identified ways to strengthen a business, the owner may need a small loan to begin selling a new line of products or update a sign. SBS should start a pilot program to give BIDs with a large share of storefronters the ability to provide microloans of less than \$25,000. These loans can help to build a business's credit rating and expose entrepreneurs to the loan procurement process. Organizations with experience in providing microloans are in turn eligible for assistance from the SBA.²⁴



**Encourage
government
innovation**

Government can help small businesses achieve economies of scale. As with the Affordable Care Act, action by the state or federal governments to unify the buying power of individuals or small organizations brings economies of scale to everyday people.

Create a New York State commercial insurance exchange platform. Commercial insurance comes in many forms. Depending on the nature of a business and where it is located, it could have at least four types of commercial insurance. While many commercial leases require fire and theft insurance, other types of insurance (like business interruption insurance and flood insurance) are often not required but no less important. When leases do require fire and theft insurance, storefronters sometimes buy cheap plans with poor coverage. A commercial insurance exchange would allow them to input important aspects of their business— such as risk factors, size of shop, and approximate value of capital investment—and then allow them to shop between the various plans according to monthly cost or payout.

Launch an annual SBS competition for small business apps. Small businesses have a great deal to gain from the proliferation of smartphones. Well-written apps can help them work together and build their own scale without having to be part of a chain. Mind My Business by Vizalytics Technology allows business owners to subscribe to a feed about what is happening in their neighborhood and what people are saying about their shop.²⁵ CUPS by Urban CUPS Inc. creates a single customer loyalty program for independent coffee shops to share, freeing consumers to reward themselves by drinking coffee regardless of where they are in Manhattan.²⁶

Next steps

As a follow-up to this report, we will convene a series of roundtables with small business stakeholders, elected officials, and city, state, and federal agency representatives—including all individuals we interviewed for this report.

The first two roundtables—one for Upper Manhattan and another for Lower—will focus on first-year pitfalls among new storefronters. From these discussions, we will gather information from city, state, and federal agencies to produce a menu of the most common pitfalls that can doom a business in its infancy. Such a comprehensive publication does not currently exist and would be indispensable to new and existing businesses.

The second series of roundtables will focus on three of our recommendation areas: (1) Help small businesses cope in the current real estate market (2) Improve government interaction with small businesses (3) Maximize resources among government agencies.

Our goal is to learn which of our recommendations will best serve a particular neighborhood or community and tailor strategies to varying needs across the borough.

With this targeted feedback, we will be better prepared to move ahead on all fronts to increase the social mobility that small businesses have always provided New Yorkers, especially lower-income families and immigrants. Storefronters and small businesses more generally are essential to preserving the character of our neighborhoods and maintaining the livability of New York City for the middle and working class.

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April 14th, 2015

Written testimony respectfully submitted to NYC Council Committees on Consumer Affairs, Small Business and Governmental Operations by Andrew Hoan Steininger, Senior Vice President & Chief of Staff at the Brooklyn Chamber of Commerce in Support of Int. No. 456-A, Int. No. 723 – 726 and Int. No. 729.

Hon. Rafael L. Espinal, Jr., Chair, NYC Council Committee on Consumer Affairs
Hon. Robert E. Cornegy, Jr., Chair, NYC Council Committee on Small Business
Hon. Ben Kallos, Chair, NYC Council Committee on Governmental Operations

Good Afternoon Chairs Espinal, Cornegy and Kallos, other committee members and guests.

I'm Andrew Hoan Steininger, Senior Vice President and Chief of Staff at the Brooklyn Chamber of Commerce (BCC). We're a membership-based, business assistance organization representing the interests of over 2,000 member businesses, as well as other businesses across the borough of Brooklyn. The Brooklyn Alliance (BA) is the not-for-profit, economic development affiliate of the BCC, which works to address the needs of businesses through direct business assistance programs.

We are pleased to be presenting testimony today both as a member of the 5 Boro Chamber Alliance – and we are grateful to Nancy Ploeger for providing testimony generally on behalf of our five organizations' business members across the City – as well as on behalf of the Brooklyn Chamber directly, more specifically as a major provider of business support services in Kings County. We hope that our unique additional experience in the role of a direct business service provider might also prove informative and helpful for the Committees.

We applaud the convening of today's hearing, which seeks to support small businesses by reducing red tape and administrative burdens, providing language translations of rules and regulations, offering direct guidance and support through the creation of a Small Business Advocate Office, allowing owners to provide feedback after inspections and further engage the business community by facilitating educational events.

These are all steps in the right direction, which improve the relationship between businesses and government, as well grow and develop entrepreneurship across our city. Red tape issues represent a major stumbling block that continue to threaten the ability of businesses to provide jobs and create a sustainable economic environment in NYC. According to our 2014 Member Issues Survey, excessive government regulations fines and violations is the 3rd biggest obstacle to doing business in NYC.

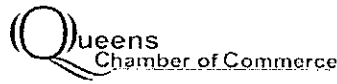
As such, the BA remains committed in our mission as the borough's leading economic development organization to work with our elected officials, governmental agencies and community organizations to foster a healthy and robust business environment throughout Brooklyn.

With your support, we are grateful to be able to provide direct business assistance in various

languages to small businesses, including **Chamber on the Go** -- Launched in September 2014, Chamber On The Go uses a mobile van to deploy our services to neighborhoods across Brooklyn, and throughout NYC; **NYC Business Solutions** -- The BA is the contracted partner for the Brooklyn center and offers a suite of services through the New York City Department of Small Business Services (SBS); and **Avenue NYC (Neighborhood Entrepreneurship Project)** -- This program addresses the needs of small businesses by providing neighborhood shopping districts with direct business support.

We strongly support the bills being proposed today and look forward to continuing to work with our elected officials to improve the experience of doing business in NYC. Please don't hesitate to reach out to the Brooklyn Alliance should you need feedback or if we can be helpful in any way. It is our hope that Int. No. 724 produces strong advocacy for small businesses, without slowing the wheels of government. Effective collaboration with existing business support initiatives such as 'Small Business First', a program lead by Commissioner Torres-Springer and her team at SBS, will also help to increase the effectiveness of the bills being proposed.

Thank you again for facilitating today's hearing and for inviting us to testify on the issues.



5 Boro Chamber of Commerce Testimony

Int. No. 456-A; Int. No. 723 Int. No. 724 Int. No. 725 Int. No. 726 Int. No. 729

April 14, 2015 1pm

Submitted by:

Lenny Caro, Bronx Chamber of Commerce, Linda Baran, Staten Island Chamber of Commerce, Carlo Scissura, Brooklyn Chamber of Commerce, Queens Chamber of Commerce & Nancy Ploeger, Manhattan Chamber of Commerce

Thank you for holding this hearing today and inviting us to testify. On behalf of the Five Borough Chambers of Commerce and the 7500+ business members we represent, I would like to take this opportunity to comment on Intro 456A, Intros 723 through 726, and Intro 729, all of which represent an enormous positive change in the way NYC hopes to interact with small businesses. Intro 456A requires an annual analysis of the Office of Administrative Trials and Hearings' tribunal dismissals, paving the way for a decrease in unwarranted penalties and fines. Intro 723 will provide protocols for inspector interactions with non-English speaking businesses, making it easier for business owners to understand and communicate with City agencies. Intro 724 creates the Office of the Small Business Advocate within SBS, an office we hope will be modeled after the now-shuttered Business Outreach Center. Intro 725 will require that business feedback be included in agency inspector customer service training, providing consistency and giving business owners a say in how they are treated by inspectors and agencies. Intro 726 will require that DCA and SBS hold multiple business education events throughout the year, making sure business owners from all five boroughs and in all neighborhoods are educated and aware of current law and have the tools to comply. Finally, Intro 729 will require an annual analysis of DCA tribunal dismissals, identifying potential policy changes that will streamline the inspection and regulatory process.

For years, our Chambers have spoken out on behalf of small businesses who feel like City government is too often confusing, bureaucratic, and draconian. We have testified in the past that large cultural changes were needed to improve the relationship between our City's businesses, and the agencies empowered to regulate them. The bills being discussed today are a large step in the right direction and represent a concerted effort by this City Council to address the growing needs of the business community.

Business owners in New York City face an alphabet soup of City, State, and Federal regulations, licensing requirements, labor and employment mandates, and other burdens. Viewed separately, these requirements seem like reasonable policies intended to protect the public good. Viewed as a whole however, it is easy to see these mandates and regulations as stifling growth and slowing our economy. It is reassuring to see this City Council act to alleviate some of these burdens and recognize the positive impact that small businesses have on our economy.

We want to stress support for the Small Business Advocate's role in navigating red tape issues in a timely manner and offer much-needed guidance. This is an important liaison to have for small businesses. The Advocate would have direct interactions with SBS, the Department of Consumer Affairs, and all agencies that deal with businesses to improve the experience and limit the negative effects of regulations, fines, and fees.

In conclusion, we are happy to see this Council incorporate feedback from the business community into these commonsense bills. We hope that these policies translate into real action at all the agencies involved, and we look forward to continue working with the Council and this administration to ensure our business community thrives.



Testimony in favor of Intros 729, 726, 725, 724, 723.

Good Afternoon,

To begin, I would like to thank Chairman Cornegy, Chairman Espinal and Chairman Kallos for convening this hearing and for their ongoing support to NYC's Small Business Owners. My name is Nick Petrie, I am the Small Business Organizer for Make the Road NY and I am here today to testify in favor of intros 729, 726, 725, 724 and 723.

Make the Road NY is New York's largest immigrant justice organization. With over 16,000 members, we organize low-income immigrant New Yorkers in Bushwick, Brooklyn, Jackson Heights, Queens, Port Richmond and Midland Beach Staten Island and Brentwood, Suffolk County around a wide range of issues from fair immigration policy to access to quality housing and education.

Small Business United is the small business organizing project of Make the Road NY. Through our network of small business leaders, Small Business United engages more than 250 small business owners across NYC weekly. Our members are overwhelmingly low-income immigrant entrepreneurs. They often lack formal business training and face many serious obstacles to success from language barriers to lack of immigration status. Small Business owners build the unique fabric of our neighborhoods in Bushwick, Brooklyn and Jackson Heights, Queens.

There have been great strides since the beginning of Mayor De Blasio's administration shifting the relationship between Small Business Owners and City agencies from a punitive one to a supportive one. In particular, our membership has seen meaningful changes in their interactions with The Department of Consumer Affairs. In recent months, a visit from a DCA inspector is a supportive, educational experience, rather than a fearful one. Before these reforms were instituted, a visit from a DCA inspector often meant receiving a series of fines in a language the business owner did not understand without any change to fix non-dangerous violations before receiving a fine.

The intros proposed today are an important next step in supporting the economic engines of our city. Reducing the burden of fines on small businesses is one of the most direct and effective ways the city government can support job creating and long-term sustainable tax base growth. Most crucial for our membership is the dedication to language access during inspections and the commitment to consistent enforcement of regulations.

The story of Juan Alonso, owner of Taqueria Izucar in Bushwick, Brooklyn, illustrates the necessity of language access during inspections. Juan is an immigrant from Puebla, Mexico. He and his wife Gicela opened Taqueria Izucar almost five years ago so they could provide for their family of nine. In particular, Gicela wanted consistent work that would allow her the flexibility to care for her son with special needs.

Almost a year ago, Juan and Gicela were cleaning their restaurant before opening for the day when an inspector from the Department of Health arrived. Juan attempted to explain

to the inspector that they were not open yet and asked that she return when they were open. However, being a monolingual Spanish speaker, Juan could not communicate with the inspector who only spoke English. Without clear communication, the inspector continued the inspection as if they were currently serving food to customers. While Gicela was mopping the floor, the inspector wrote them a violation for having standing water in the food preparation area. While Juan was soaking all of the dishes from the night before in hot, soapy water, the inspector wrote them a violation for improper storage of serving utensils. All in, Juan and Gicela received fines totaling more than \$2,500. If translation services had been provided, the misunderstanding could have been avoided from the outset, allowing Juan and Gicela to continue safely preparing for their day and for the inspector to focus their energy on the most pressing concerns for public health. Because of receiving this fine, Juan and Gicela were not able to hire additional staff and follow-through on their plan to expand their business to a second location. The direct financial hardship and the fear of fines in the future stopped critically needed investment and job growth in Bushwick.

Beyond language access, consistent enforcement of regulations is crucial to fostering a supportive climate for small business owners. City regulations often seem cumbersome and incomprehensible for immigrant entrepreneurs. This perception can be exacerbated by uneven enforcement of regulations and lack of clarity for what compliance should look like.

After receiving a violation, small business owners receive documentation showing what those violations were. However, this is almost always written exclusively in English and in language that is not accessible to the business owner. Rather than focusing on technical terms and jargon for violations, these reports should explain in clear language what violation occurred. Most crucially, these documents do not explain what compliance would be, they just identify the problem. Without a clear explanation of not only the problem but the solution, business owners cannot know how to be in compliance and prevent unnecessary fines in the future. Providing clearly written prescriptions for compliance after each inspection would allow small business owners to know exactly how to follow the regulations. As a telling example, in the past, DCA inspectors told members that they can label a shelf of merchandise to indicate the prices of everything on a shelf. Then, another DCA inspector has issued fines to our members for lack of prices on individual merchandise on the same shelf. We would suggest that no one be fined for complying with inspector's orders. This will help businesses comply with critical city regulations and help business owners avoid potentially crippling fines. Therefore, we propose that demonstrating compliance with an earlier inspector's orders should constitute a viable defense against a new fine for the same violation.

City agencies have already taken transformative steps towards engaging immigrant small business owners in a respectful and productive way to bolster job creation and business investment. Intros 729, 726, 725, 724 and 723 will continue supporting the economic engines of our city and foster necessary job creation.

Proposed Laws Impacting Small Business in New York City

THE RESTAURANT INDUSTRY PERSPECTIVE

On April 14, 2015, the New York City Council Committees on Small Business, Consumer Affairs, and Governmental Operations will hold a joint hearing to discuss Intros 456-2014, 723-2015, 724-2015, 725-2015, 726-2015 and 729-2015, each a Local Law seeking to assist small businesses in New York City.

The New York State Restaurant Association submitted this document as written testimony at the hearing to share input from the restaurant industry's perspective on the proposed law.



NEW YORK
STATE
RESTAURANT
ASSOCIATION

April 14, 2015

Good afternoon Chairmen Cornegy, Espinal, Kallos, and members of the council here today. My name is James Versocki and I am counsel to the New York City chapter of the New York State Restaurant Association (the "Association") and I am here today to present the hospitality industry's perspective on Intros 456-2014, 723-2015, 724-2015, 725-2015, 726-2015 and 729-2015.

The New York State Restaurant Association is a trade group that represents approximately 5,000 food service establishments in New York City and over 10,000 statewide. The Association is the largest hospitality trade association in the State of New York and it has advocated on behalf of its members for over 75 years. Our members, known as Food Service Establishments, represent one of the largest constituencies regulated by the City as they are regulated by nearly every New York City agency.

NEW YORK CITY IS ONE OF THE PILLARS OF THE CULINARY WORLD.

Our restaurants employ hundreds of thousands of New Yorkers and are a backbone of the tourism trade here in New York City. To ensure the continued viability of the restaurant and hospitality industry, New York City must have sensible and reasonable regulations that protect consumers and the restaurants that serve them.

The Association has worked hand-in-hand with the City to develop innovative methods to assist small businesses. One of the hallmarks of that effort was the creation of the NYC Business Acceleration team ("NYCBA") at the Department of Small Business Services ("SBS") (originally known as the New Business Acceleration Team). **The Association has been pleased with the efforts, and responsiveness, of the NYCBA team to both new and existing businesses.** For example, just last year this Administration created the Small Business First initiative that set forth many of the goals sought by the proposed legislation.¹

The Association wants to ensure that the proposed legislation does not jeopardize already existing, and developing, systems to support small businesses. The Association believes that the impact of the legislation should not be to detract or derail those efforts, particularly those in SBS, to assist small businesses.

Yet while NYCBA's team as currently constituted is effective, the Association does have concerns about the effectiveness of, and continuation of, NYCBA if staff leave or if such a service is not mandated by this Council. That being said, the Association has always had concerns about the need for an agency to help navigate other agencies – the very essence of NYCBA. All should be concerned that the proposed legislation, especially

¹ <http://www1.nyc.gov/assets/smallbizfirst/downloads/pdf/small-business-first-report.pdf>

Intro 724, does not morph into the creation of yet another office to help navigate even more agencies. The Association asks that the Council carefully weigh this to avoid the duplication of services already offered by the City.

As to the specific bills, the Association submits the following initial comments:

- Intros 456-A & 729: The Association asks that the Council ensure the proposed reports mandated by Sections 1048(6) and 2203(5) of the New York City charter be required to be made publicly available, including the data used to compile the report. We also believe this information should be compiled and shared by all agencies, including those that issue fines to small businesses.
- Intro 723: As a high percentage of small businesses are owned by recent immigrants, the Association supports language protocols to help them navigate the often very confusing, and frightening, inspection process.
- Intro 725: Businesses have often felt frustrated by the inability to provide feedback to the agencies that regulate them. Inasmuch as Intro 725 seeks to formalize a reporting process, the Association supports such an effort.
- Intro 726: Outreach and educating businesses first (before issuing fines) has been a mantra of the Association for years. The Association has hosted numerous training sessions with agencies, including the Department of Consumer Affairs. We ask that such educational seminars occur at all agencies and not just the DCA.

CONCLUSION

The Association looks forward to working with the Council and its staff to help further develop these bills into the most effective support for small business that can be found.

A vital part of NYS Restaurant Association's mission is to seek the development of a fair and equitable regulatory environment that encourages the success and growth of New York City's world famous restaurant industry. The Association thanks you for the opportunity to provide these comments today on behalf of the members of the NYS Restaurant Association in New York City and the entire food service industry.

Respectfully submitted,

James W. Versocki, Esq.
Counsel, NYC Chapter
New York State Restaurant
Association

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 723 Res. No. _____

in favor in opposition

Date: 4/14/2015

(PLEASE PRINT)

Name: Nick Petrie

Address: 301 Grove St, Brooklyn, NY

I represent: Make the Road NY

Address: 301 Grove St, Brooklyn, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Sabrina Fong

Address: _____

I represent: Mayor's Office of Operations

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: NANCY FLOEGER

Address: MCC 1375 BROADWAY

I represent: MANHATTAN CHAMBER + CHAMBERS 4 BOC

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 14 APRIL 2015

(PLEASE PRINT)

Name: EUIAN ROBERTSON

Address: 110 WILLIAM ST, MANHATTAN, 10003

I represent: DEPT OF SMALL BUSINESS SERVICES

Address: AS ABOVE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Marla Tepper

Address: 42 Broadway

I represent: Department of Consumer Affairs

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 726/729 Res. No. _____

in favor in opposition

Date: 4.14.15

(PLEASE PRINT)

Name: Amit Bagg

Address: 42 Broadway

I represent: DCA

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/15/15

(PLEASE PRINT)

Name: Andrew Steininger

Address: _____

I represent: Brooklyn Alliance

Address: 335 Adams Street Suite 2700

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-14-15

(PLEASE PRINT)

Name: Sandra Abelas

Address: 42 Broadway

I represent: Dept of Consumer Affairs

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Alba Pico

Address: 42 Broadway

I represent: Dept. of Consumer Affairs

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ADIRA SIMAN

Address: _____

I represent: DEPARTMENT OF SMALL BUSINESS

Address: SERVICES 110 WILLIAM ST. NY 10038

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DR. GORDON W.

Address: 790 3RD AVENUE

I represent: NY FED.

Address: 200 3RD AVENUE NY 10003

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 104/1000 Res. No. _____

in favor in opposition

Date: 4/14/15

(PLEASE PRINT)

Name: ROBERT BOOKMAN

Address: 325 BRADWAY, NY, NY 10007

I represent: NYC HOSPITALITY ALLOWANCE & TRF NYC

Address: NEWS PAPER OPERATORS ASSOC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. 456-A Res. No. _____

in favor in opposition

Date: 4/14/15

(PLEASE PRINT)

Name: MARISA SENIGO

Address: 66 John Street, 10th fl, NY, NY 10038

I represent: OATH

Address: 100 Church Street, 12th floor, NY, NY 10007

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. 456-A Res. No. _____

in favor in opposition

Date: 4/14/15

(PLEASE PRINT)

Name: John Castelli

Address: 100 Church St, 12th floor, NY, NY 10007

I represent: OATH

Address: 100 Church St, 12th floor, NY, NY 10007

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. all Res. No. _____

in favor in opposition

Date: 4/14/15

(PLEASE PRINT)

Name: Ahmed Tigani

Address: 1 Centre Street

I represent: Office of Manhattan Borough President

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/14/15

(PLEASE PRINT)

Name: SHELDON LOBEL

Address: 18 E 41 ST

I represent: FOR

Address: ZONING ADVISORY COUNCIL

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: GERALDINE SWEENEY

Address: _____

I represent: MAYOR'S OFFICE OF OPERATIONS

Address: _____

Please complete this card and return to the Sergeant-at-Arms