

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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HELD AT: 250 Broadway
Committee Room - 14th Floor

B E F O R E:
DANIEL R. GARODNICK
Chairperson

COUNCIL MEMBERS:
Leroy G. Comrie, Jr.
Julissa Ferreras
G. Oliver Koppell
Karen Koslowitz
Michael C. Nelson

A P P E A R A N C E S

Fran Freedman
Deputy Commissioner for External Affairs
Department of Consumer Affairs

Cary David Kessler
General Counsel
Amusement & Music Owners Assn. of New York

Kenneth Goldberg
President
Amusement & Music Owners Assn. of New York

Richard Kirby
Executive Vice President
Betson Enterprises

Allen Weisberg
President
Apple Amusements Corp.

Chuck Peitz
President and Founder
Tricorps Amusements

Danny Frank
Executive Director
Amusement & Music Owners Assn. of New York

CHAIRPERSON GARODNICK: Good

afternoon, and welcome to the Consumer Affairs Committee of the New York City Council, today is Tuesday, January 15th. My name is Dan Garodnick, and I have the privilege of chairing this Committee. I'm joined today by Council Members Mike Nelson, Karen Koslowitz and Julissa Ferreras. The topic of today's hearing is amusement arcades and the amusement arcade license that the Department of Consumer Affairs issues. DCA, the Department of Consumer Affairs, has the regulatory authority over amusement devices and arcades in New York City. Current law says that establishments with ten or more player-operated amusement devices, they need to obtain a license from DCA. In order to procure a license an arcade must provide some documentation from the Department of Buildings, showing that the arcade will be located in an area zoned to allow arcades, generally a commercial or mixed-use zone, or a letter of no-objection from the Department. The history of this issue is a little more complicated than some issues we see. In 2009 the Council passed Local Law 86, which amended the

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2 administrative code by exempting establishments
3 with fewer than 10 amusement devices from the
4 definition of an amusement arcade, and therefore
5 the requirement that they obtain a license from
6 the Department of Consumer Affairs. This all
7 followed a change in interpretation of the law by
8 DCA between 2001 and 2003, in 2001 DCA authored a
9 memorandum which stated that two linked amusement
10 devices that could be played simultaneously by two
11 people would be considered one device for the
12 purposes of section 20-2011 of the administrative
13 code. Subsequently in 2003 -- and a different
14 commissioner, I should note -- DCA authored a
15 memorandum with a different interpretation,
16 defining a player-operated amusement device as a
17 device that could be played by one person. Under
18 this interpretation linked devices would be
19 counted separately regardless of how many players
20 could be playing simultaneously. So the example I
21 like to use when I think of this in my own is I am
22 there at an arcade, I am on a jet ski somewhere,
23 I've got Fran Freedman at the Department of
24 Consumer Affairs on one side, I have my colleagues
25 here on the Committee on the other side, we are

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2 all racing against each other on a jet ski, and as
3 we go, the Department of Consumer Affairs is
4 interpreting that as, let's say that there are
5 five of us on five different jet skis, five
6 amusement devices, whereas the 2001 interpretation
7 would have interpreted that as one device. At the
8 Council's first hearing on Local Law 86 in 2009,
9 DCA expressed some concerns about exempting
10 establishments with nine or fewer games from
11 licensing regulations, that it might possibly make
12 truancy, the enforcement of truancy regulations at
13 these locations more difficult, and the Council in
14 response made certain adjustments to the bill to
15 try to address that issue. So we now are hearing
16 a bill that is introduced by our colleague,
17 Council Member Karen Koslowitz, and I'm going to
18 turn the microphone to her in a moment to explain
19 it. But in short, and this is the way I think of
20 it, it makes the interpretation of the rule go
21 back to the way it was in 2001, and it would
22 address the issue of whether a single unit that
23 allows multiple players or games to occur at the
24 same time should be considered one unit for the
25 purposes of licenture. And so I think I'm going

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2 to just stop there and allow Council Member
3 Koslowitz to explain it in greater detail, and
4 then we'll look forward to hearing from the
5 Department of Consumer Affairs and representatives
6 from the industry to help us understand this issue
7 in greater depth and the various considerations
8 that may be in play here. Councilwoman.

9 COUNCIL MEMBER KOSLOWITZ: Thank
10 you, Chair Garodnick. Intro 690 deals with the
11 issues that currently exist in the classification
12 of single- or multi-player amusement games.
13 Currently there is a discrepancy in how to treat
14 amusement games which may be played by two or more
15 persons. The issue is whether to classify these
16 devices as one amusement device or two. This
17 legislation amends the administrative code by
18 adding a new sub-paragraph to clarify the law by
19 classifying linked amusement games as one device.
20 This legislation will help classify as to whether
21 or not the location, where the devices are
22 located, is deemed an arcade under the
23 administrative code. On April 20th, 2001 the
24 Commissioner of Consumer Affairs, Jane Hoffman,
25 permitted games that were linked to be counted as

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2 one game. This permitted operators to place more
3 games at a location to maximize their ability to
4 provide entertainment to many establishments
5 throughout New York City. Unfortunately, in 2003
6 that permission was revoked in a letter sent in
7 2003, no specific reasons were given as to why
8 Commissioner Hoffman's decision was reversed. The
9 current interpretation under the administrative
10 code serves no useful purpose and is detrimental
11 to small businesses who own these amusement
12 devices. Intro 690 would help alleviate any
13 burdens placed on these small businesses during
14 these difficult economic times by allowing them to
15 add more gaming devices. I look forward to this
16 hearing as an opportunity to discuss with Consumer
17 Affairs the current practices when it comes to
18 amusement machines. I just want to add that I
19 have a very, very personal interest in this. My
20 father-in-law, may he rest in peace, was in the
21 coin-operated amusement machines, and he worked
22 very, very hard his whole life to make a living.
23 And now this industry has been kicked many, many
24 times. They took away the cigarette machines that
25 they could no longer have out there, the amusement

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2 machines now they have tried to eliminate. We
3 want to keep these businesses in business, they're
4 a very important business to us. And now
5 especially after Hurricane Sandy, this industry
6 now has lost a lot in the arcades down the South
7 Shore and all throughout the boroughs and states.
8 So it is very important that they be allowed to
9 put their machines in places, and if you have one
10 machine, one machine, and two people could play on
11 that machine, I think it should be counted as one
12 machine, and allow them to put other machines into
13 places. It's good for them, and it's good for the
14 businesses because it attracts people into the
15 other businesses. So I think small business needs
16 this, this industry needs this, and it disheartens
17 me to know that a law was passed, Local Law 86 was
18 passed, and then it was taken and turned around,
19 and we took a law that was in effect, and we made
20 adjustments to hurt this industry. So obviously I
21 am fully supportive of this wholeheartedly. Thank
22 you.

23 CHAIRPERSON GARODNICK: Thank you,
24 Council Member Koslowitz. And with that we are
25 going to turn to the testimony portion of the

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2 hearing, we'll invite Fran Freedman, the Deputy
3 Commissioner of the Department of Consumer Affairs
4 up to the witness table, and Deputy Commissioner,
5 whenever you are ready, please feel free to get
6 started.

7 MS. FREEDMAN: Thank you so much.
8 Happy New Year, everyone. Good afternoon,
9 Chairman Garodnick and members of the Consumer
10 Affairs Committee, I'm Fran Freedman, I'm the
11 Deputy Commissioner for External Affairs for the
12 Department of Consumer Affairs. Commissioner
13 Mintz asked me to thank you for the opportunity to
14 comment on Intro 690, a bill which would change
15 the definition of an amusement for the purposes of
16 triggering the need for a city license. On its
17 face this bill appears innocuous, merely
18 modernizing the definition of amusement devices to
19 reflect the advent of multi-player machines.
20 However, existing statutory language and over a
21 decade of enforcement practice fully and formally
22 reflect and accommodate such multi-player devices.
23 In reality, and the reason the Department is
24 strongly in opposition, this bill seeks to violate
25 community zoning regulations to more than possibly

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2 quadruple arcade machine playing in neighborhoods
3 where such activity is excluded by zoning. Let me
4 give you a bit of context. The requirement for
5 the licensing of arcades is based on, and
6 supports, the zoning resolutions that proscribe
7 where such entities may be located. In other
8 words, a company can only get a city license to
9 operate an arcade if it applies to operate such an
10 entity in a neighborhood where zoning allows it.
11 By repeatedly seeking to raise the bar on what is
12 and is not a so-called single device or raise the
13 bar on how many devices do or do not constitute an
14 arcade, the industry's goal has been to evade the
15 need for a license and therefore to operate in
16 whichever neighborhoods they choose, in
17 contravention of zoning regulations. These zoning
18 restrictions were enacted to limit unwelcome
19 community impact, given the traditional role of
20 arcades as magnets that draw in crowds of players
21 engaged in competitive gaming that can lead to
22 boisterous behavior. Businesses required to be
23 licensed as arcades are subject to public safety
24 and quality-of-life regulations that most notably
25 could include the ability to proscribe the

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2 conditions for operations to minimize adverse
3 impact on the surrounding area, including
4 requirements for security and supervision and
5 hours of operation. The authority to do so is
6 particularly important, given the industry's
7 historic attraction of minors and concerns
8 regarding truancy. Other regulations govern prize
9 redemption to inhibit gambling and pricing and
10 rule disclosures to insure fair playing
11 conditions. As for the supposed intent of this
12 statute, we note that existing law, 20-211B of the
13 administrative code as amended in 2005, already
14 defines a device with language that clearly
15 accommodates multi-player machines. It says in
16 relevant part, and I quote, "player-operated
17 amusement device means any machine, contrivance,
18 apparatus, booth or other device intended as a
19 game that one or more persons are permitted to
20 play by controlling the mechanical, electrical or
21 electronic components that are needed to operate
22 or manipulate the game in exchange for the payment
23 of a fee, charge or thing of value, and that
24 provides amusement, diversion or entertainment."
25 What the industry seeks, and has been

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2 unsuccessfully seeking, from the Department for
3 over a decade is not clarity, but statutory wiggle
4 room to declare multiple devices only a single
5 device if they can be connected to each other,
6 such that multiple players can play in tandem.
7 Two people playing on the same device? No
8 problem. That is a single device in existing law.
9 But this bill would allow arcade operators to
10 assert that multiple machines that accommodate two
11 people or even four or more people, as in the
12 example the Chair gave -- and you'd win jet ski,
13 sir -- should be considered only a single device
14 if there exists a connection or setting by which
15 the players on the multiple machines can also
16 elect to play against each other rather than
17 individually on their own machine. Why the
18 concern about counting devices? Because the law
19 defines an arcade as having ten or more devices,
20 if you connect two machines together, to enable
21 players to play against each other, now you only
22 have one machine to be counted. Where the law
23 defines an arcade as ten or more machines,
24 suddenly you could have 18 connected machines, or
25 even more, depending on connective technology, and

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2 evade licensing and thus neighborhood zoning. The
3 Department rejected industry efforts almost a
4 decade ago, as the Council Member indicated,
5 reiterating by formal interpretation letter a very
6 simple device definition, in fact written by
7 Commissioner Mintz himself in his then capacity as
8 Deputy Commissioner. Commissioner Mintz wrote
9 that regardless of whether one machine could be
10 connected to a second for in-tandem play, and I
11 quote, "If an amusement device can be played by a
12 single person, it shall be counted as an amusement
13 device", an amusement device. If you look at
14 Exhibit A to this testimony, that's this
15 photograph, this shows a single device, a machine
16 that clearly can accommodate multiple players, you
17 can see the two joysticks. Exhibit B, that's the
18 second one, shows what is actually at issue with
19 Intro 690, multiple devices that can be played
20 either separately or in tandem. And this picture
21 shows you a linked device, two separate slots for
22 your card, linked together by a strip, close
23 together. This is a multiple device that can be
24 played either separately or in tandem. To codify
25 such multiple machines as a single device is

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2 artifice and artifice in contravention of zoning
3 restrictions. To underscore the concern, let's
4 look at the multiplier effect of this bill in
5 historical context. When zoning and licensing
6 regulations were first put into place, the law
7 only allowed non-zoned arcade activity up to four
8 machines. Originally that meant four players.
9 With industry advancement and new multi-player
10 machines, the original exception to arcade zoning
11 restrictions doubled from four to eight players.
12 In 2008-2009, the Council chose to more than
13 double that number of exceptions to nine machines,
14 thus, with multi-player machines, a business could
15 entertain as many as 18 people playing at once,
16 despite zoning restrictions otherwise. Now the
17 industry is seeking the Council, is asking the
18 Council, to consider, under the guise of merely
19 clarifying a definition, doubling or even tripling
20 that end run around zoning to 36 or more players,
21 beyond the originally-contemplated four players.
22 For these reasons, the Department strongly opposes
23 Intro 690. I'll be happy to answer your
24 questions.

25 CHAIRPERSON GARODNICK: Thank you

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2 very much, and I know that there are questions.
3 But before I turn to my colleagues and ask a
4 couple of questions of my own, I want to recognize
5 the presence of Council Members Leroy Comrie and
6 Oliver Koppell. Deputy Commissioner, let me start
7 us off here for a moment and ask whether there is
8 any inherent reason why the Department of Consumer
9 Affairs is involved in licensing arcades, aside
10 from the zoning questions that you mentioned. The
11 reason I ask this is because when we usually have
12 this conversation, the Committee and the
13 administration, we're talking about industries
14 where somebody is committing a fraud against the
15 public in one form or another, whether they are
16 advertising used cars that are not present when
17 people show up on the lot, or they are home
18 improvement contractors who are, you know,
19 scamming people unwittingly or wittingly, but the
20 people do not realize what is happening. Is there
21 something about this industry where you have seen
22 an issue of, you know, coins that are, you know,
23 being stolen from people or money that is being
24 stolen? I mean, those are the usual areas in
25 which we are licensing industries, is that an

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2 issue here, or is this solely a question of zoning
3 and land use, as far as you're concerned?

4 MS. FREEDMAN: Well, the Department
5 is attempting to be faithful to what we assume --
6 and you would know, Council would know better than
7 we -- the original intent of the license in the
8 first place, which was to use licenture to insure
9 that zoning regulations and issues involving
10 minors, especially children in school, were
11 concerned. And that's our interest, is to
12 maintain that original ... to maintain and insure
13 that licensing will continue to be the mechanism
14 by which those zoning regulations are adhered to.

15 CHAIRPERSON GARODNICK: Okay, so in
16 this context it is a little different than what we
17 see sometimes.

18 MS. FREEDMAN: Exactly.

19 CHAIRPERSON GARODNICK: In
20 licensing by the Department, in which it's really
21 not about fear of fraud on the public, it's more
22 about the city's hook to insure compliance with
23 zoning regulations.

24 MS. FREEDMAN: Precisely.

25 CHAIRPERSON GARODNICK: And truancy

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laws, is that correct?

MS. FREEDMAN: Exactly.

CHAIRPERSON GARODNICK: Okay. Is there no other procedure for the city to be able to exercise a violation of zoning laws than through licensing in this context? And I realize I'm asking the Department of Consumer Affairs this question, and not the Department of City Planning or the Department of Buildings, but is this the only mechanism that we have? It seems like there are other mechanisms available to us.

MS. FREEDMAN: I really can't answer that. I have no idea, except what we are responsible for maintaining.

CHAIRPERSON GARODNICK: It seems to me that there are a variety of different agencies which have the power to insure that zoning regulations are adhered to, which is why I was interested in your comments, Deputy Commissioner, that the goal for this license protocol is about zoning, as opposed to consumer protection. And so I think that's certainly a question that we need to take a look at, because, you know, we are not interested in making life harder on small

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businesses, but we certainly are interested in protecting zoning. So I think it's very--

MS. FREEDMAN: (Interposing) Zoning and truancy.

CHAIRPERSON GARODNICK: Zoning and truancy.

MS. FREEDMAN: Right.

CHAIRPERSON GARODNICK: Those are both issues that we would be concerned about. But we have to make sure that our other mechanisms are consistent here and that they make sense. Okay, I'm actually going to come back and I will clean up after my colleagues if there's anything they miss. But I'm going to turn to the bill's sponsor, Council Member Koslowitz.

COUNCIL MEMBER KOSLOWITZ: Thank you. You know, I'm sitting here and I'm listening, and your statement sounded very, very, you know, good. Are you saying to me that only coin-operated amusement machines cause truancy? Is that what you're saying?

MS. FREEDMAN: No, we're not discussing the machines, it's the arcade, it's the issue of--

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COUNCIL MEMBER KOSLOWITZ:

(Interposing) Okay, so let's go to arcades. Are you saying only arcades cause truancy, that's the only reason that we have truancy, is because of arcades?

MS. FREEDMAN: Of course not.

COUNCIL MEMBER KOSLOWITZ: How many arcades are in the City of New York?

MS. FREEDMAN: I will tell you how many are licensed, it's a very interesting thing to look at. We have only 18 licensed ... 18, 18 licensed arcades, and in 2007, before the new law was passed, we had 45.

COUNCIL MEMBER KOSLOWITZ: And are you saying because the law was passed, they went down? Or--

MS. FREEDMAN: (Interposing) I'm simply stating a fact.

COUNCIL MEMBER KOSLOWITZ: Well, I think we've made it very hard for these businesses to stay in business, and I would really like to look into, that there were 45 and now there are 18. Is it because we've been putting them out of business?

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2 MS. FREEDMAN: I think that's
3 certainly a question, a fair question for the
4 industry to answer.

5 COUNCIL MEMBER KOSLOWITZ: Well,
6 I've had, you know, conversations and I remember
7 years ago wherever you went there were arcades. I
8 don't firmly believe that truancy is a result of
9 having arcades. I mean, if I owned a store and I
10 had machines, and I saw kids coming in there
11 during school days, where they should be in
12 school, I think that I would say something to
13 those children that you cannot play the machines
14 at this time.

15 MS. FREEDMAN: Well, in fact,
16 Council Member, every arcade by law, by Council's
17 law, has to state that minors may not be in the
18 arcade during certain hours.

19 COUNCIL MEMBER KOSLOWITZ: So there
20 you are, because I remember, I did the law, Local
21 Law 86 was my law. So I remember that. So it
22 stated in the law.

23 MS. FREEDMAN: It is indeed.

24 COUNCIL MEMBER KOSLOWITZ: That if
25 a child comes in and shouldn't be there, that you

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should not allow that person to play the machine.
And then on the other hand now, you're saying the
machines cause truancy. Are you saying that--

MS. FREEDMAN: (Interposing) No,
no.

COUNCIL MEMBER KOSLOWITZ: ... is
doing their job? They're not telling the kids to
leave?

MS. FREEDMAN: We never said that
the machines cause truancy.

COUNCIL MEMBER KOSLOWITZ: So what
you're saying really--

MS. FREEDMAN: (Interposing) It was
a--

COUNCIL MEMBER KOSLOWITZ:
(Interposing) ... doesn't apply, in your statement
you mentioned truancy as one of the reasons.

MS. FREEDMAN: That was one of the
concerns when the bill was originally passed by
the Council.

COUNCIL MEMBER KOSLOWITZ: And it
was addressed. It was addressed, because it was a
concern of ours also, and it was addressed. So I
mean, I don't see that as an equation of why we

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2 should be putting people out of business, which is
3 really what we're doing. If you're telling me
4 from 45 arcades and we're down now to 18 in New
5 York City, then we are putting people out of
6 business. That's what it shows me. Because I am
7 sure that that is what is happening, it does not
8 pay for the strict rules that small businesses
9 have to be put through, to stay in business is
10 really a crime in what we are doing to our small
11 business.

12 MS. FREEDMAN: It could also
13 indicate that there are many more arcades out
14 there with simply under ten devices and they
15 simply don't need a license.

16 COUNCIL MEMBER KOSLOWITZ: I
17 represent a pretty large district, a pretty large
18 district, and with a lot of diversity, and I can
19 tell you right now that in my district I don't
20 have any arcades. At all. So right here we see
21 that there are no arcades in my district, and I'm
22 sure many others will say the same thing. So I'm
23 not going to continue, I just ... local 86 addressed
24 the truancy, it addressed a lot of issues that we
25 were concerned about when I was doing the bill,

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and the Commissioner decided, by memorandum, to take a law and see it the way he saw it, and once again going against small business. And I have to ask you another question. How come -- I sit on the Consumer Affairs Committee, and I love to see you, I love to hear you speak, but the only time I have ever seen the Commissioner, and I sit on a lot of committees, the only time I have ever seen the Commissioner is during the budget times. He has never come before this Committee to testify on any kind of basis, and I think it's a put-down to this Committee that he does not show up.

MS. FREEDMAN: Thank you, I'll certainly relate that, thank you.

CHAIRPERSON GARODNICK: Thank you, Council Member Koslowitz, and before I go to Council Member Comrie, let me just ask one question in the interim, Deputy Commissioner. In your testimony you said that the bill would potentially more than quadruple arcade machine playing in neighborhoods where the activity is excluded, and you gave the number of 36 or more players in a context in which you would still not need zoning.

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MS. FREEDMAN: Right.

CHAIRPERSON GARODNICK: I'm not sure I understand that. Let me just go back to the ... let's go back to the jet skis for a second, because in the jet ski example, let's say that there is enough jet skis on a, you know, on a particular device to accommodate everybody on this panel, and we are all competing against one another for the prize of best Council Member on a jet ski in an amusement arcade. In that context we have, I don't know, maybe nine or ten people sitting up here. That would, under this configuration be considered one machine.

MS. FREEDMAN: Right.

CHAIRPERSON GARODNICK: You would consider it ten.

MS. FREEDMAN: No, no. No, if it's one machine that can accommodate many players, that's already been taken care of.

CHAIRPERSON GARODNICK: Okay, so in that example--

MS. FREEDMAN: (Interposing) That's absolutely right, that's not--

CHAIRPERSON GARODNICK:

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(Interposing) ... you're not touching.

MS. FREEDMAN: However, however, if you linked two of those jet ski machines together, to look like the picture.

CHAIRPERSON GARODNICK: Yep.

MS. FREEDMAN: And you had ... and you counted that as one machine, you would then have 18 people on something that was then counted as only one machine. What we're saying is that the linked machines should not be counted as one machine, they should be counted as two machines. In the photo that's in my testimony, there are two distinct slots, now you can buy a card, in fact I brought the card, you can buy a card -- it shows you what I'm doing on the weekends -- you can purchase a card and you put it in that slot. Those are two distinct slots, you can play that game with one person, or you can play it in tandem, and I guess you could imagine your jet ski configuration. But that machine that's linked shouldn't be counted as one machine, that's two machines.

CHAIRPERSON GARODNICK: I guess I don't see the distinction between this machine and

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my jet ski example, because the jet ski example--

MS. FREEDMAN: (Interposing) You can continue to link machines and count them as one, and continue to fly under the radar, even if you have 18 such linked machines.

CHAIRPERSON GARODNICK: Right, but just take my example of the one machine, which is linked together with ten individual jet skis. You can actually, if I'm there by myself, I can play against the computer; if Council Member Koppell shows up, the two of us can play together; if Council Member Koslowitz shows up, the three of us can play against one another, etc., etc., etc. So we are ... it is one ... it is one machine which allows you to play by yourself or with a variety of different people. Under the current definition of the Department of Consumer Affairs, that is how many machines?

MS. FREEDMAN: No, under the law. Under the law.

CHAIRPERSON GARODNICK: Yes, that's right, under the existing law.

MS. FREEDMAN: That is correct. That's what it says--

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CHAIRPERSON GARODNICK:

(Interposing) And under the interpretation by the Department of Consumer Affairs.

MS. FREEDMAN: That's one machine.

CHAIRPERSON GARODNICK: That's one machine. Okay. Council Member Comrie.

COUNCIL MEMBER COMRIE, JR.: Thank you, Chair Garodnick. That was the line of questioning that I was going to go into also. That's okay, it's good, because I'm confused as to Exhibit B, if we can just go back to Exhibit B. Because it has two sets of numbers on it, the 10 to 200 number on here, or ... I don't see how this is considered the one machine if it has two separate slots on it.

MS. FREEDMAN: It shouldn't be.

COUNCIL MEMBER COMRIE, JR.: Okay.

MS. FREEDMAN: But that's a linked machine.

COUNCIL MEMBER COMRIE, JR.: But isn't there a difference between a machine like this that's ... this is where you put a coin in and you try to get the coins out, correct, as opposed to the machines that are trying to do sports or

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2 linked, like going back to the jet ski, or you
3 know, the sports machines or the group activity-
4 type machines, as opposed to this is a machine
5 that is more focused on trying to win a prize?
6 Has there been a distinction in the Department of
7 Consumer Affairs as to the entertainment machines-
8 -

9 MS. FREEDMAN: (Interposing) No,
10 no.

11 COUNCIL MEMBER COMRIE, JR.: ... that
12 exercise-type machines.

13 MS. FREEDMAN: No, no.

14 COUNCIL MEMBER COMRIE, JR.: The
15 karaoke-type machines?

16 MS. FREEDMAN: No, no, no.

17 COUNCIL MEMBER COMRIE, JR.: So you
18 never made those type of breakdowns?

19 MS. FREEDMAN: No, no. Not at all,
20 not at all.

21 COUNCIL MEMBER COMRIE, JR.: But
22 you do realize that a lot of the newer, like I've
23 taken my kids to ... what's the name of that place?
24 Dave & Buster's, and Chucky Cheese.

25 MS. FREEDMAN: Chucky Cheese.

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COUNCIL MEMBER COMRIE, JR.: Right.

Is Chucky Cheese considered an arcade?

MS. FREEDMAN: If they have more than ten, and in fact we ... more than ten devices, and in fact we license a few Chucky Cheeses.

COUNCIL MEMBER COMRIE, JR.: You license Chucky Cheese--

MS. FREEDMAN: (Interposing) I don't know if we license your particular one, but for example there's a Chucky Cheese--

COUNCIL MEMBER COMRIE, JR.:
(Interposing) The one in Long Island City is the only one that's in Queens, so.

MS. FREEDMAN: I could take a look and see, but I know, for example, there's a Chucky Cheese in the Bronx.

COUNCIL MEMBER COMRIE, JR.: Right.

MS. FREEDMAN: That is in fact an arcade.

COUNCIL MEMBER COMRIE, JR.: That's just considered an arcade.

MS. FREEDMAN: Yes. Has a license, duly licensed, yes.

COUNCIL MEMBER COMRIE, JR.: Right.

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2 But now Chucky Cheese, they have individual game
3 machines and also they have group game machines,
4 and my understanding of the needs of the industry
5 is that they're trying to do more group playing
6 machines because that tends to want to bring in
7 customers and move away from the individual
8 machines, because frankly those are things that
9 people can play on their home computer. So in
10 order to try to maintain a market share, or try to
11 stay in business, they're trying to move to the
12 group play machines, or the dance thing, or the
13 karaoke or the jet ski-type machines, in order to-
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15 MS. FREEDMAN: (Interposing) Multi-
16 player machines are allowed.

17 COUNCIL MEMBER COMRIE, JR.: Multi-
18 player machines so that they can maintain a
19 customer base and continue to stay in business,
20 frankly. So you know, I was just wondering if the
21 Department had delineated between an arcade-type
22 machine where you would get an individual prize,
23 and a machine where you're actually just having a
24 group experience. And if that can be considered
25 as part of the parameters and breakdowns in the

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2 machines, because I am too concerned about
3 maintaining small business in the community and
4 maintaining an opportunity to have family-style
5 businesses as well. I'm not ... I am not as
6 concerned about the loitering, because we have,
7 you know, a good business owner would not permit
8 the loitering situation in their establishments,
9 so we can work on that. But to allow the business
10 owners to maintain an opportunity to stay in
11 business, since it seems like the individual
12 arcade machines are no longer attracting
13 customers. So I think we need to look into
14 whether or not that is an opportunity to create
15 that type of opportunity for the multi-player
16 machines that are entertainment to be considered
17 one machine, so.

18 MS. FREEDMAN: That's already
19 accommodated in the law.

20 COUNCIL MEMBER COMRIE, JR.: It's
21 already accommodated?

22 MS. FREEDMAN: Yes.

23 COUNCIL MEMBER COMRIE, JR.: Oh, it
24 doesn't seem to be distinctive here, because you
25 didn't show any examples of those types of

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2 machines. Exhibit A is clearly an older-style
3 machine and it's not one of the type machines that
4 are prevalent at Dave & Buster's or Chucky Cheese
5 even any more, so I would look at that as well.
6 And Exhibit B clearly is an old-style arcade
7 machine that you would see almost in Atlantic City
8 more than at most of the arcades that are around
9 at the particular points. So--

10 MS. FREEDMAN: (Interposing) I
11 guess I have to get out more on the weekends.

12 COUNCIL MEMBER COMRIE, JR.: Well,
13 you know, we can understand, you can take--

14 MS. FREEDMAN: (Interposing) But
15 these are in fact, these are pictures that in fact
16 were taken at Chinatown Fair in Manhattan.

17 COUNCIL MEMBER COMRIE, JR.: Right.
18 Okay. So and then ... well, you said you couldn't
19 delineate on the zoning piece and I would go into
20 that in detail, but I think that most of the
21 zoning regulations were put into place to try to
22 create neighborhood situations or to enhance and
23 protect neighborhood-type neighborhoods from being
24 overrun by nightlife more than family
25 entertainment, and I would want to caution before

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2 we start to go down that, or utilize that as an
3 excuse, to remember what we're trying to do here
4 is maintain and keep a business industry as well,
5 that are, you know, run by New Yorkers and are
6 owned by New Yorkers and are managed and
7 maintained by New Yorkers as well. So I think we
8 need to try to figure out how we can best
9 accommodate this industry to make this happen,
10 which is why I signed on to the bill,
11 understanding, you know, it would still ...
12 understanding what children are looking at and
13 what families are trying to do now, and the need
14 to get families out to actually entertain each
15 other together, or group entertainment, what the
16 industry is trying to do as well. So I don't have
17 any other questions at this time, Mr. Chair, I
18 think I might want to come back a little later.

19 CHAIRPERSON GARODNICK: Okay, thank
20 you very much, Council Member Comrie. Now we're
21 going to go to Council Member Ferreras.

22 COUNCIL MEMBER FERRERAS: Good
23 afternoon.

24 MS. FREEDMAN: Hi.

25 COUNCIL MEMBER FERRERAS: So my

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2 question kind of was already highlighted by
3 Council Member Comrie, and it just seems that the
4 machines that you brought in as examples really
5 speak to the date of when these machines were
6 produced, because Exhibit A seems like a very
7 modern, and probably what we see more often than
8 Exhibit B. And out of the I think you said 14
9 licensed--

10 MS. FREEDMAN: (Interposing) 18.

11 COUNCIL MEMBER FERRERAS: 18. I
12 wrote my note somewhere here. 18 out of 45, are
13 any of these in movie theaters? Because my
14 experience now when I see gaming, it really is in
15 the movie theater, because they're not in the
16 neighborhoods any more.

17 MS. FREEDMAN: I may be able to
18 answer that in a second.

19 COUNCIL MEMBER FERRERAS: Okay, we
20 have time.

21 MS. FREEDMAN: If you wouldn't
22 mind, excuse me.

23 COUNCIL MEMBER FERRERAS: Sure.

24 MS. FREEDMAN: Actually they all
25 look free-standing to me. I can give you a

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borough breakdown, but I--

COUNCIL MEMBER FERRERAS:

(Interposing) Yeah, that was my next question.

MS. FREEDMAN: Would you like a
borough breakdown?

COUNCIL MEMBER FERRERAS: Yes.

MS. FREEDMAN: Okay, so there are
two in Manhattan, two in the Bronx, two in Staten
Island, five in Queens and six in Brooklyn. Quite
a few, there are at least three Chucky Cheeses,
one in Brooklyn, one in Astoria, Council Member
Comrie was at the one to which you were referring
perhaps?

COUNCIL MEMBER FERRERAS: In
Astoria, yes.

MS. FREEDMAN: Astoria.

COUNCIL MEMBER FERRERAS: Uh huh.

MS. FREEDMAN: Yes, so that is in
fact one of the Chucky Cheeses that ... yeah. None
of these seem to be located, Council Member, in
movie ... or at least if it's in a movie theater,
it's not indicated here.

COUNCIL MEMBER FERRERAS: Okay.

And then my other question, if we go back to

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Exhibit A, if the point is that Exhibit B does not constitute one machine because it has two slots from players can play on, why is it not that if there's two slots underneath this one--

MS. FREEDMAN: (Interposing) No, no, if you ... if I may.

COUNCIL MEMBER FERRERAS: Yes.

MS. FREEDMAN: Show you. So, you know, I don't know how clear this is, but these were two machines that, if you look down the middle, were pushed together, connected, and that strip that you see, the bar that connects them, that gold-looking bar, so these were two machines connected, and one person can play, or more than one person can play. That's what we mean by the connected machines.

COUNCIL MEMBER FERRERAS: And then this other machine, Exhibit A, has your same position of one person can play or more than one person can play.

MS. FREEDMAN: Exactly, exactly, which is fine.

COUNCIL MEMBER FERRERAS: So you're giving me the same definition for two different

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machines.

MS. FREEDMAN: No, this is a multi-player machine.

COUNCIL MEMBER FERRERAS: Okay.

MS. FREEDMAN: A multi-player machine--

COUNCIL MEMBER FERRERAS:

(Interposing) A multi-player machine.

MS. FREEDMAN: Not a multi-device, this is a multi-player machine, this is two devices counting as one device.

COUNCIL MEMBER FERRERAS: So if I were able to, and I guess we'll speak to the industry, but if I have the capacity, the gaming capacity to turn this one device into an 18-player machine, if I should choose so, if it's just a whole bunch of people dancing or whatever it is, it's different ... what you're saying is it's different if I were to bring three machines together to give me the capacity for 18 players.

MS. FREEDMAN: Exactly.

COUNCIL MEMBER FERRERAS: I don't understand. I'm very confused, because if what we're trying to do is discourage from 18 players

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playing, how does that--

MS. FREEDMAN: (Interposing)

Because multi-player machines are already approved. Multi-player machines are--

COUNCIL MEMBER FERRERAS:

(Interposing) So if I'm the industry and I'm sitting here, I'm just going to upgrade and get the new machines, and I'm good.

MS. FREEDMAN: That's fine.

COUNCIL MEMBER FERRERAS: That's

fine. This is absolutely ... I mean, what you're trying to explain to me makes absolutely no sense to me, and I'm really trying. I tried to understand it.

MS. FREEDMAN: The idea, the idea is that if you can link machines, you can link as many as you want and still maintain the under-nine ... I mean the under-ten, and then you don't need a license.

COUNCIL MEMBER FERRERAS: I can also still have the same amount of players and makes the same amount of money from a more modern system that will allow me to have more players.

MS. FREEDMAN: As long as it's not

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many machines put together, linked together.

COUNCIL MEMBER FERRERAS: Again, this makes absolutely no sense, and if I'm in the industry, I would do everything to get as many small ... of my small business owners to just get more modern machines. I think that what you're trying to prevent is not being prevented by this law, if that's what you're trying to do. Because you're not keeping up to pace with the capacity--

MS. FREEDMAN: (Interposing) The law in fact does not prevent it. What we're saying is, the law should prevent it.

COUNCIL MEMBER FERRERAS: What I'm saying is--

MS. FREEDMAN: (Interposing) The law allows it.

COUNCIL MEMBER FERRERAS: ... that what you're explaining, you're giving me the definition and it seems that what you're looking at is capacity. All of a sudden you don't want linked machines, but the capacity is the same. I mean, we could go back and forth, because you have your statement and your position, and that's going to be your statement and your position. As

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2 elected I have to vote on this piece of
3 legislation, I think it is, you know, in your best
4 interests to help this make sense to us and right
5 now it makes absolutely no sense to me personally.
6 Thank you.

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CHAIRPERSON GARODNICK: Let me see
8 if I can help, because I was confused ... I'm
9 confused by the same issue that Council Member
10 Ferreras is confused with, and I think actually
11 through her questioning I may now have a better
12 understanding. I'm certain that it still doesn't
13 make sense in the big picture, but in terms of
14 what the issue is that's confusing me. So back to
15 jet skis for a second. If we had the
16 accommodation of a jet ski machine, which is a
17 multi-player machine, all of us can play together,
18 there's let's say ten of us here. And there are
19 nine of those jet ski machines that could
20 accommodate 90 people in that arcade, it would not
21 require a license by the Department of Consumer
22 Affairs, is that correct?

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MS. FREEDMAN: That is correct,
24 unfortunately.

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CHAIRPERSON GARODNICK: Okay. So

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it is correct, but it is not DCA's desire for that circumstance to be present. You want the law to be more restrictive than that, but that is--

MS. FREEDMAN: (Interposing) That is already part of the law.

CHAIRPERSON GARODNICK: Today the law would allow--

MS. FREEDMAN: (Interposing) Today.

CHAIRPERSON GARODNICK: ... that situation.

MS. FREEDMAN: Yes, exactly.

CHAIRPERSON GARODNICK: And in contrast the law would not allow--

MS. FREEDMAN: (Interposing) It would not allow you to link.

CHAIRPERSON GARODNICK: It would not allow there to be ten--

MS. FREEDMAN: (Interposing) Many, many, many more of those--

CHAIRPERSON GARODNICK:
(Interposing) Five linked machines, five multi-device machines, these machines if you had a situation if you would have ten people in an arcade.

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2 MS. FREEDMAN: Or more, I mean, we
3 don't know how many.

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CHAIRPERSON GARODNICK: Just a
5 minute ... ten of these multi-device machines, it
6 would require a license. Is that correct?

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MS. FREEDMAN: It should require a
8 license.

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CHAIRPERSON GARODNICK: And does
10 require a license under the law today.

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MS. FREEDMAN: Yes.

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CHAIRPERSON GARODNICK: Okay, just
13 to establish the law today.

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MS. FREEDMAN: That's exactly
15 right.

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CHAIRPERSON GARODNICK: So in a
17 scenario in which you have an arcade which
18 accommodates ten people, in this example, licensed
19 required. But in an arcade which has my jet ski
20 example, 90 people in that arcade, no license
21 required. Correct?

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MS. FREEDMAN: If they only have
23 nine devices and not ten, right.

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CHAIRPERSON GARODNICK: The example
25 that I gave.

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MS. FREEDMAN: Exactly.

CHAIRPERSON GARODNICK: So correct, okay. So now we understand what the law allows and what it requires.

MS. FREEDMAN: Exactly.

CHAIRPERSON GARODNICK: And it's the reason why there is some confusion and the reason why we're having this conversation. But all of this leads me back to my first question, which is, why are we using the Department of Consumer Affairs as a vehicle to deal with zoning questions altogether, but we understand your point that you believe that it should be more restrictive ... well certainly you don't want us to change the rules here, but you even think it should be more restrictive than the law is presently, is that correct?

MS. FREEDMAN: No we don't want it to be more restrictive, we simply don't want the multi-linked machines to count as one machine.

CHAIRPERSON GARODNICK: Well, you also said that you don't want the multi-player machines to allow for 90 people in an arcade without a license.

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MS. FREEDMAN: If it's under ten.

I mean--

CHAIRPERSON GARODNICK:

(Interposing) So yes. I mean, the example that I gave was nine multi-player machines, which each could accommodate ten people.

MS. FREEDMAN: Actually, I'm not going to advocate one way or the other, because the law, the law as written, that ... and we support the law, that under ten machines, even if they're multi-player machines, do not require a license.

CHAIRPERSON GARODNICK: The DCA takes no position--

MS. FREEDMAN: (Interposing)
Exactly.

CHAIRPERSON GARODNICK: ... on the subject of multi-player machines in this context, is that correct?

MS. FREEDMAN: Exactly. That having been already part of the law.

CHAIRPERSON GARODNICK: Okay, I'm going to go to Council Member Koppell.

COUNCIL MEMBER KOPPELL: Just so we completely understand, I think I understand why my

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2 colleague, Ms. Ferreras, is confused. You're
3 saying, I take it -- let me just turn this off --
4 you're saying that if one machine, there's one
5 machine, it only has one slot, but it allows ten
6 players to play on that one ... well, let's say nine
7 players to play on that one machine, that's okay
8 under the law.

9 MS. FREEDMAN: That's what the law
10 says.

11 COUNCIL MEMBER KOPPELL: Right.

12 MS. FREEDMAN: A multi-player
13 machine is counted as one machine.

14 COUNCIL MEMBER KOPPELL: But if I
15 connect nine machines together, and they have nine
16 different slots, allowing nine people to play,
17 that is not permitted under the current law.

18 MS. FREEDMAN: Correct.

19 COUNCIL MEMBER KOPPELL: And you
20 don't want to change that.

21 MS. FREEDMAN: That is correct.

22 COUNCIL MEMBER KOPPELL: But what's
23 confusing, I guess, to some of us is that there's
24 really no difference between the two. It allows
25 the same number of players to play, in one case

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2 it's one machine, because as Council Member
3 Ferreras said, it's a modern machine that has now
4 this ability to allow nine people to play. In the
5 other example, let's say they're older machines
6 and someone figured out how to link them, you say
7 that's no good. But it seems to me that all this
8 law is doing is sort of evening the playing field.
9 If the idea is that you don't want nine people to
10 play at once, because that puts too many people in
11 the establishment or whatever, then we should make
12 it illegal or make it licensable, not illegal, but
13 make it licensable to have one machine that allows
14 nine players. It makes no sense to say you can
15 have one machine with nine players, but you can't
16 have nine machines with nine players--

17 MS. FREEDMAN: (Interposing) Our
18 only concern--

19 COUNCIL MEMBER KOPPELL:
20 (Interposing) ... that are linked, it doesn't make
21 any sense.

22 MS. FREEDMAN: Our only concern is
23 what the trigger is for a license. Now the
24 trigger--

25 COUNCIL MEMBER KOPPELL:

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(Interposing) Yeah, but--

MS. FREEDMAN: (Interposing) The trigger today ... it has nothing to do with number of players, it has to do with the number of devices.

COUNCIL MEMBER KOPPELL: That's right, and that makes no sense.

MS. FREEDMAN: And that's our concern.

COUNCIL MEMBER KOPPELL: But it makes no sense, because there's no ultimate distinction in the establishment as to whether you have one machine that's manufactured to accommodate nine people or nine machines that are linked to accommodate nine people. It makes no difference.

MS. FREEDMAN: But it's the counting for the number of devices.

COUNCIL MEMBER KOPPELL: But that doesn't ... that's a distinction that has no meaning, no import, it has no import, whether it's one machine with nine players or nine machines with nine players, it's not of any import. If your point is that having nine players playing at

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2 once is a problem, then you should offer to amend
3 the law to reduce the number, but not to create a
4 distinction that makes no difference. All that
5 the law that we have before us is doing is
6 creating a rational situation. It doesn't make
7 sense to say one machine with nine players is
8 okay, but nine machines with nine players is not
9 okay. That just doesn't make any sense to me.

10 MS. FREEDMAN: Well, nine machines,
11 nine machines does not require a license.

12 COUNCIL MEMBER KOPPELL: Yes, but--

13 MS. FREEDMAN: (Interposing) If an
14 arcade has only nine machines--

15 COUNCIL MEMBER KOPPELL:

16 (Interposing) Well, whatever it is, the point is
17 that making a distinction based on whether it's
18 one machine or more than one machine doesn't seem
19 to make a difference. It may make a difference
20 how many people can play at once, but the
21 distinction that you're making, or that the law
22 now makes, makes no sense. Hence, I think the law
23 makes sense. If we should have fewer players,
24 that's a different proposal, and we could
25 entertain it.

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2 CHAIRPERSON GARODNICK: Thank you,
3 Council Member Koppell, I'm going to go back to
4 Council Member Ferreras with apologies, because I
5 didn't realize.

6 COUNCIL MEMBER FERRERAS: It's
7 quite all right, Chair. On average, because you
8 seem to have ... and I guess from your perspective,
9 a concern, a valid concern from your perspective,
10 of linking these nine machines and on average what
11 space are we talking about? Isn't this like the
12 back of a pizza shop or, you know, the capacity to
13 link, all this fear that you have of all these
14 linked machines, you know, on average what do
15 these small ... and I'm going to ask this of the
16 industry, obviously, but it just seems that there
17 is no ... I mean I would think just capacity to be
18 able to link all these machines that you're so
19 fearful of just doesn't seem realistic. An arcade
20 is an ... like Chucky Cheese is Chucky Cheese, and
21 it's an arcade. So in the sites that you visited,
22 what's the space? Like where are these machines
23 that you're concerned about them linking? What is
24 the average? Where are they located? What type
25 of business?

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2 MS. FREEDMAN: Well, the ones that
3 are licensed, Council Member, aren't just arcades,
4 you know, like Chinatown Fair, it's an arcade,
5 it's a large space.

6 COUNCIL MEMBER FERRERAS: Right,
7 but wouldn't you want to start ... if the concern is
8 that there are these machines that are going to be
9 linked and that we're going to create these new
10 arcades potentially that are going to be under the
11 license. So you're concerned that if they're
12 linked it won't trigger--

13 MS. FREEDMAN: (Interposing) Right.

14 COUNCIL MEMBER FERRERAS: ... the
15 number.

16 MS. FREEDMAN: That's correct.

17 COUNCIL MEMBER FERRERAS: So if the
18 trigger is concern about those types of
19 businesses, what do you think those businesses
20 look like? Like who are these businesses? Is it
21 a Laundromat, a pizzeria? I don't think that you
22 can link 12 machines or nine machines and have, at
23 least by the pictures that you brought me, these
24 machines are huge. So isn't there like a capacity
25 issue in these businesses?

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2 MS. FREEDMAN: I really have ... I
3 can't answer that question, I don't know about
4 capacity.

5 COUNCIL MEMBER FERRERAS: Yeah, I
6 think, you know, and I ... again, and I'm going to
7 have to reiterate what my colleague said, that
8 it's unfortunate that the Commissioner can't come
9 to testify in these hearings more often, but after
10 this hearing I can only say that I'm going to join
11 on the bill. So thank you, Chair, thank you.

12 CHAIRPERSON GARODNICK: Thank you,
13 Council Member. And if ... I don't see anybody else
14 with questions, so I will end with one question
15 and one observation. Deputy Commissioner, you
16 noted that the bill seeks to violate community
17 zoning regulations to more than quadruple arcade
18 machine playing in neighborhoods where such
19 activity is excluded by zoning. Why do you think
20 that this is actually an effort to try to violate
21 zoning? What is our ... the source of the concern
22 here?

23 MS. FREEDMAN: Well, if you can fly
24 under the radar with less than ten machine
25 devices, but link them, you can have as many--

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CHAIRPERSON GARODNICK:

(Interposing) Do we have--

MS. FREEDMAN: (Interposing) ...
machines as you want.

CHAIRPERSON GARODNICK: ... entities
that are flying under the radar now?

MS. FREEDMAN: I have no idea, all
I can tell you is we've seen a diminution of
licensed machines.

CHAIRPERSON GARODNICK: Right but
in a city that's the size of New York, for us to
go--

MS. FREEDMAN: (Interposing)
Licensed businesses.

CHAIRPERSON GARODNICK: ... from 45
to 18, we're talking about small issues here
relative to the issues we sometimes deal with. So
it's hard to, it's hard for us--

MS. FREEDMAN: (Interposing) It's
hard to know, it is hard to know.

CHAIRPERSON GARODNICK: To know how
much of a concern this should be at all. Okay,
and the observation that I would make is that
there are some disconnect here on the law and the

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2 goals of the law, because it seems like the
3 concerns here are zoning, and the concerns here
4 are truancy. They're not about deceptive business
5 practices, as we frequently discuss.

6 MS. FREEDMAN: Right, the quality
7 of life issues, etc.

8 CHAIRPERSON GARODNICK: The quality
9 of life I put that in the connection ... in
10 connection with zoning.

11 MS. FREEDMAN: Right.

12 CHAIRPERSON GARODNICK: So the way
13 you regulate issues like that are through zoning
14 and they are through capacity issues of how many
15 people you want in one establishment at a time.
16 So I think we're going to need to take a whole
17 look at this issue. We'll hear from the industry,
18 obviously, and I'm sure they will make some
19 suggestions to us on this bill, or also some of
20 the issues that we have raised with you. So with
21 that, we thank you for your testimony.

22 MS. FREEDMAN: Thank you.

23 CHAIRPERSON GARODNICK: And we are
24 going to call up our next panel, which will
25 include Cary David Kessler, Ken Goldberg, Danny

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2 Frank and Richard Kirby. Sorry if I did damage to
3 anybody's name, but I think we did all right, so.
4 We have one other panel, we'll put you with them.
5 Okay, we're going to do two panels today, the
6 first one will be Kirby, Goldberg and Kessler, and
7 then the second panel will be Frank, Peitz and
8 Weisberg. Gentlemen, thank you, welcome. When
9 you get started, just make sure that your
10 microphone is on, we'll start ... you seem ready to
11 go, so why don't we start with you? Hit the
12 button on the back of the microphone, and if you
13 could just introduce yourself ... a little higher,
14 actually. Well, maybe the sergeant will help you.
15 There you go, you're on now. State your name and
16 we're ready to hear from you. Thank you.

17 MR. KESSLER: Thank you, Chair
18 Garodnick. I am Cary David Kessler, the general
19 counsel for the Amusement & Music Owners
20 Association of New York, which is a not-for-profit
21 corporation dedicated to the betterment of the
22 amusement industry. I am going a little bit out
23 of turn because I have a court appearance on
24 Lafayette Street that apparently the CPLR doesn't
25 exempt City Council hearings from court

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appearances.

CHAIRPERSON GARODNICK: They

should.

MR. KESSLER: So the members--

CHAIRPERSON GARODNICK:

(Interposing) They should.

MR. KESSLER: I think as long as we're considering other issues, I think that should be part of the issues also, but they are waiting for me, so I also will leave all of the questions regarding industry standards to ... you have the real deal here, you have small business people here who could better address certain issues. But I'm glad to go first, and it's a privilege to always testify before this Committee, because I have a history going back to the early 1990's, when under former Councilman and Commissioner Zerillo they re-evaluated all of the industries that DCA regulates, and what they found is that the only purpose of regulating the amusement machine industry was for the sake of regulation, and that there are more important issues. There was an article in the Daily News last week regarding funeral practices, and not to

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2 dump on any one particular industry, but there are
3 more important concerns for DCA. There are no
4 complaints about someone getting back their
5 quarter, zero, I know of none. And I've been
6 doing this now for 20 years, and letters and
7 telephone calls, we always invite the
8 Commissioner, call us, if there's a problem, we
9 want to regulate ourselves. And in a two-year
10 period, between Commissioner Hopkins' letter and
11 the revocation letter by Deputy Commissioner
12 Mintz, there wasn't one concern about this issue,
13 not one, because I've been here since 1990.
14 Unfortunately I'm turning 60 next month, Council
15 Member Koppell, so we go back to Albany and now
16 we're here, and my mind still remembers all the
17 history from that original 1990 big de-regulation
18 push that was supported by this Council back in
19 the 90's and that's why you don't have all this
20 regulation on the industry, it's not needed. And
21 what I've done for you, in my little brief
22 remarks, is ... and I won't read of course
23 everything here, although I do like my reference
24 to Neil Armstrong, may he rest in peace, because
25 this is a very small bill, as everyone has pointed

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2 out. But the reason why this is a perfect
3 opportunity, and Chair Garodnick, maybe it's a
4 good opportunity to look at the zoning laws,
5 because let me digress, I've had the opportunity
6 to go in front of the Department of Buildings and
7 try to get around use group 15 for a major toy
8 store, which I cannot name, because they needed to
9 do games that you had to pay for, so to avoid a
10 truancy issue, and they couldn't get around use
11 group 15 either. It's a daunting effort, as my
12 remarks say. And I'm sorry I can't mention the
13 client, but this is a crucial, crucial issue for
14 locations to face. They can't get around the DOB
15 regulations, and I've met with the deputy
16 commissioners and they would love to do it. But
17 these zoning laws are what, maybe 200 years old?
18 Maybe, maybe older. So it would be a perfect
19 opportunity to review those laws. So in Exhibit
20 1, I gave you of course Commissioner Hoffman's
21 letter as well as the revocation letter. In
22 Exhibit 2, Council Member Comrie, you may remember
23 your bill regarding pool tables and billiard
24 tables. What we did was we eliminated from the
25 count billiard and pool tables from amusement

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2 machines, so that if you have three or more, you
3 have to get a billiard room license, so that we
4 made it even further difficult ... more difficult, I
5 would say, for the location to just add as many
6 machines as they like. Then under Exhibit 3, and
7 I'm sorry you don't have color-coded paper, I know
8 it's a little difficult, we have of course the
9 2009 legislation that of course Council Members
10 Comrie and Koslowitz sponsored, going from the
11 four to nine, and I apologize, this is a misprint.
12 And I think in the three years I haven't heard one
13 complaint, not a complaint. The members, who will
14 go into greater detail, represent most of the bars
15 and taverns in the five boroughs. The Council
16 Member who asked the question regarding space hit
17 the nail right on the head. You can't have
18 machines that have 90 people in a bar -- and by
19 the way, just as an aside, if they are dancing
20 machines, you can't anyhow because there's a law
21 called the cabaret law. You can't dance. I tried
22 a case once where the patron got up and wiggled to
23 the bar, and the fire marshal was there and gave
24 her a ticket ... gave the bar owner a ticket, for
25 not having a cabaret license. That's how

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2 ludicrous that law is. And you had to see the
3 fire marshal repeat the dance for me, that one I
4 should have taped. P.S., that's the law though.
5 You can't have these dancing machines without a
6 cabaret license. And I know, Council Member
7 Comrie, that's a problem in some of the areas. In
8 Exhibit 4 I gave you a copy of what the arcade
9 license law even looks like. Most people have
10 never seen this law. I've gone through it, I've
11 filed it, on behalf of many clients. A lot of
12 them fail. Council Member Koslowitz, you asked a
13 great question, why are there so few of these?
14 Because the costs are prohibitive. Our members
15 used to number 60 strong, we're down to, I'll let
16 Mr. Goldberg mention that, but we're down to half
17 of that. It's cost prohibitive, the cost of doing
18 business is incredibly steep. Now, I have to
19 conclude by saying this, November 5th, 2013 there's
20 going to be a casino/gambling amendment to the
21 constitution, most likely voted on by the people
22 of the State of New York, because I think the
23 State Legislature will be voting on that this
24 year. When we look forward to 2014, if we're
25 going to look at zoning laws also, Chair

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2 Garodnick, we ought to also consider petitioning
3 Albany and saying, you know, the Governor wants
4 these casinos upstate. Well, everyone knows that
5 nightlife business in the City of New York exceeds
6 all the sporting events that we have. Well, who's
7 the nightlife? It's the establishments like bars
8 and taverns that 99% of them are law-abiding.
9 Yes, we have, unfortunately you see in the paper
10 one or two, but we have bad apples everywhere.
11 But after 2013 there could be a movement north to
12 have entertainment centers that we have to start
13 considering to re-invent our entertainment centers
14 here, and that starts with the very small bars and
15 restaurants that attract so many people. 55
16 million people visited the City of New York, I
17 believe, last year, that's the number. Imagine
18 how many people go in to get a drink, a sandwich,
19 a pizza, and if they could only play machines,
20 look at the amount of business that could be
21 generated. So again, all the technical questions
22 regarding how much business and the kinds of
23 machines I'll leave to the next speakers because I
24 do apologize, I have a court appearance. Two
25 notes on a legal basis, one, if the question comes

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2 up, well, why can't this be solved by another
3 letter, based on what Commissioner Hoffman did in
4 2001? As a lawyer I couldn't allow and recommend
5 my clients to accept that, because I was there at
6 the meeting with Deputy Commissioner Mintz, I told
7 you I have history here, and do you know how much
8 money my members put in to those machines that
9 they had to take out after that letter came in
10 from Commissioner Mintz? These are machines that
11 ... again, I'll let my members express, \$5,000,
12 \$10,000, and the new business, people buy new
13 phones like I get a new newspaper every day.
14 These games have to be unhooked, changed, because
15 that's the tastes of the people. You can't just
16 leave a game in there for more than a year, people
17 change their tastes, and they'll explain that
18 again. And the other point of law is that, if we
19 don't have a law chipped in stone, nobody's going
20 to invest the money, no one is going to say, sure,
21 let's put in \$50,000 at a location, Terry's Bar &
22 Grill, without an assurance from this Council that
23 those machines are there to stay. And as I said,
24 by the way, when Chair Comrie ... excuse me, when
25 member Comrie was Chair Comrie, when we passed the

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2 increase in the arcade, I said, you know what, if
3 we're bad boys and girls and we do create this
4 tremendous problem that doesn't exist, I know
5 we'll be back here repealing these laws, and I
6 made that promise, and I've never gotten a call
7 from the Chair saying, Cary, guess what, you
8 haven't been good. But you know what, we've kept
9 our word, everybody has played fair, the new
10 arcade law has worked, and this law, like in 2001,
11 2002, 2003, will work again. I thank you for your
12 time, and again, it is a privilege always to be
13 here.

14 CHAIRPERSON GARODNICK: Thank you
15 very much, and good luck in your court appearance.

16 MR. KESSLER: Thank you, we'll see
17 you later.

18 CHAIRPERSON GARODNICK: Would you
19 like to go next?

20 MR. GOLDBERG: Yes.

21 CHAIRPERSON GARODNICK: Introduce
22 yourself, please.

23 MR. GOLDBERG: My name is ... as you
24 can see, I operate the machines, I don't repair
25 them. You know, a couple of you, before I get on

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2 with what I have to say, a couple of you expressed
3 a concern about Commissioner Mintz not being here,
4 which is pretty upsetting and disgraceful. But
5 what's even worse is Ms. Freedman comes here and
6 speaks before you and in front of us with
7 inaccuracies and innuendos, and then she's not
8 even around to hear our testimony or even let us
9 refute what she has to say, it's really
10 outrageous, you know, and this is not the first
11 time she's hit and run, okay, so.

12 CHAIRPERSON GARODNICK: Before you
13 go further, why don't you identify yourself for
14 the record, so we have it?

15 MR. GOLDBERG: My name is Kenneth
16 Goldberg. Dear members of the New York City
17 Council, thank you very much for your time and
18 effort to conduct this hearing to determine why
19 Bill 690 in relation to common show games deserves
20 to be voted out of Committee and favorably
21 supported by the City Council and enacted into law
22 by the Mayor. I am a New York City small business
23 owner, a second-generation, a legitimate employer
24 of about a dozen people, very typical of the types
25 of enterprises where New York City government very

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2 much needs to show its support and its
3 cooperation, rather than to impede it with
4 punitive regulations and restrictions. In simple
5 terms, the electronic amusement sector wants to be
6 able to define linked games as one game. As long
7 as I have been in this business, we never had a
8 problem with this until the current administration
9 with its new commissioner interpreted this law
10 much differently than his predecessors. It has
11 created a problem here where none ever existed.
12 Linked games allows for several people to play
13 simultaneously in competition. Linked games
14 create interest, fun, engagement and excitement.
15 To name a few, there are driving games, basketball
16 games, trivia contests. Imagine only one player
17 engaging in nightly Jeopardy. As small business
18 owners, we have gotten hammered in a variety of
19 ways. As examples, we have been around for
20 generations and decades minding our own business
21 without causing any problems, yet during the past
22 several years every other entity and business
23 model wants to invade our space and take it over.
24 What's worse is we have no way to compete. New
25 York City OTB, a broken and failed business

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2 organization ravaged by the evils of politics,
3 desperately attempted to jump into our locations
4 in its last waning days. The purpose of New York
5 City OTB was not supposed to compete and hurt
6 private enterprise. The New York State lottery,
7 which was allowed into bars, taverns, clubs and
8 entertainment centers, has tried its damndest to
9 unfairly compete in our marketplace as well. The
10 expanding gambling interests, elected officials
11 have allowed places like Yonkers and Aqueduct to
12 open, which are severely hurting us. Why would
13 you play on harmless docile games and amusements
14 when major gambling, with the attraction of
15 winning big cash, is now so accessible to all? I
16 look at the vast increase now in online gaming
17 technology, right on your smartphone, which
18 coincidentally the United States Supreme Court is
19 expected to make legal. Look at all the
20 challenging games that can be played right now on
21 your iPhone or Blackberry head-to-head. Without a
22 fair shot at creating competition like we are
23 requesting through the City Council with linked
24 games, it's as if we are otherwise fighting these
25 other government-assisted interests with both

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2 hands tied behind our backs. All these other
3 business models I have described have been
4 extended courtesies and liberties by government,
5 yet our industry was around long before any of
6 them. There are two other hits our industry
7 suffered, which I want to remind you of. There
8 was a public study just released last week which
9 shows that over 60% of the cigarettes sold in New
10 York State are now either bootleg, counterfeit or
11 some form of black market illegal product. Yes,
12 tobacco is an important public health issue, no
13 one can dispute that fact. But the whole approach
14 was mishandled by government and became a huge
15 economic sacrifice to many, including our
16 industry, and the taxpayers of New York State, to
17 the tune of about \$500 million a year. We were
18 the ones who vended cigarettes, paid our taxes and
19 license fees, only to be forced out by
20 legislation, and now this illegal trade is
21 thriving. Some of our other members were
22 financially hurt in other ways. Hurricane Sandy,
23 many locations were closed and some will never
24 open up again. We lost equipment, and I do not
25 know of a single AMOA New York member who received

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2 any relief or assistance from all the billions of
3 dollars supposedly being made available by our
4 government agencies. From what I know, our
5 members had to suffer through this by themselves
6 alone and absorb their losses. So members of the
7 New York City Council Consumer Affairs Committee,
8 I beg of you, pass this bill, give us a little
9 breathing room, allow us to come up for air.
10 Don't let the New York City Consumer Affairs
11 Department always try to kick us into the ground.
12 Give us a break by allowing us to help ourselves,
13 because we need it, and we need it now. Thank
14 you.

15 CHAIRPERSON GARODNICK: Thank you
16 very much. Thank you, Mr. Goldberg. Please.

17 MR. KIRBY: Chairman, Council
18 Members, thank you for the opportunity to be here.
19 My name is Richard Kirby, I'm the Executive Vice
20 President of the distributor called Betson
21 Enterprises, we're a fourth generation family-
22 owned company, with an office in New York State as
23 well as we employ many residents of the different
24 boroughs. I'd just like to add to a few things
25 before I get into ... I have two things I'd like to

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2 discuss. First of all, as we talk about the
3 economic problems that we're all having, being a
4 rather large company, and as the Deputy
5 Commissioner was mentioning, that we're at 18
6 arcades now down from 46, all I can tell you is,
7 the largest coin distributor of coin-operated
8 equipment not only in the country but in the
9 world, my sales on video games are down 75% to
10 80%. My employees have gone from probably in the
11 500 range throughout the country down to a little
12 less than 300. So we're talking about an industry
13 that's in survival mode. We are a prime target
14 for that. We are there, we are fighting and
15 clawing every day to maintain. When you get on to
16 the subject of linked games, the biggest deterrent
17 that we have in our business are the home games,
18 and all the game developers, and selfishly I
19 happen to represent a few of the largest
20 developers in the industry, I'm also a marketing
21 company for some game developers, and they're
22 developing games, and no longer are they the
23 smaller-type games. As was mentioned before,
24 they're huge. Games are coming out today with 42
25 inch screens, that's the norm. Can you imagine

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2 taking, as the Deputy Commissioner was saying,
3 having games being linked, being built together,
4 two 42-inch games? I couldn't transport them,
5 Kenny couldn't transport them, none of us could
6 transport them, and we couldn't get them in
7 through the doors. So that's part of the reason
8 why, that we've gone to separate cabinets, but
9 when we're developing games that are creative.
10 One of the companies that I represent, Raw
11 Thrills, has developed a game that's online, and
12 they're losing sales because it's not
13 traditionally anybody can go up and play it, it
14 has to be hooked up to the internet, because they
15 know to compete and to stay in business we have to
16 fight the home market, which has all those
17 abilities. So that's where we are with linked
18 games. But there's another subject that the AMOA
19 of New York, which I'm a member of, has asked me
20 to talk about. And as Cary had mentioned before,
21 the lifeline of New York is the entertainment, the
22 bars and restaurants within the boroughs. And I,
23 myself and my company, are heavily involved in the
24 state of Illinois in video gaming. What is video
25 gaming? It's slot machines that are in liquor-

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2 pouring establishments, in this state you call
3 them on-premise establishments. You're allowed to
4 have between one and five units in these
5 facilities. As I go on, I'd like to read down so
6 I'm not missing things here. This new industry in
7 Illinois was voted into reality by the governing
8 body of senators and house of representatives,
9 with final approval by the governor, as a way to
10 help fund the state's capital bill, which was
11 earmarked to help put residents in Illinois back
12 to work. It's called Back to Work Illinois, and
13 not only won legislative support but also support
14 from labor groups, restaurant and tavern
15 associations, the hospitality industry, local
16 neighborhood groups, the chamber of commerce, just
17 to name a few different organizations that believe
18 putting residents back to work is important. We,
19 the amusement operators, Amusement and Music
20 Association of New York, would ask you, the
21 governing body of New York City, to support AMOA's
22 legislative program in Albany to expand this type
23 of equipment already in place at race tracks, run
24 by major out-of-state companies, to consider a
25 program similar to Illinois. This program would

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2 allow small locally-owned vending companies,
3 restaurants, taverns, financially-strapped
4 Veterans of Foreign Wars, Elks Clubs and other
5 organizations to survive in these tough times.
6 Who benefits from video gaming? As a source of
7 much-needed revenue, the state, the city, all the
8 small mom-and-pop businesses that employ local
9 residents, who in turn pay taxes, state and local,
10 buy food, furniture, cars and clothing from other
11 local companies. Let's not forget the city and
12 state revenue, which could go to much-needed road,
13 bridge and other programs that need funding. The
14 industry would like to offer to you, for you to
15 embrace ... the industry that we would like to offer
16 for you folks, one that is highly-regulated,
17 controlled by a gaming board, where all involved
18 need to pass background checks. These background
19 checks include owners of vending companies and
20 their employees, the employees and the owners of
21 restaurants, taverns and any other location
22 eligible for placement of these machines. These
23 machines to be connected via a central computer,
24 operated by a company that is accepted by the
25 State of New York to insure 100% compliance with

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2 the laws developed by the gaming board. I could
3 go on and on discussing the benefits for the city,
4 the state and the business community as a means of
5 generating revenue and allowing the residents of
6 our state to survive in these tough economic
7 times, but I will end here and answer any and all
8 questions. I would like to offer my services, as
9 well as any member of our association, to help in
10 making video gaming a reality in New York. Just
11 as an FYI, the state of Illinois, with casinos
12 similar to those in New York, have anticipated
13 additional revenue of \$375 million to help fund
14 their capital bill, which again consists of
15 programs such as road, bridge and education, to
16 name a few. The biggest part is, these dollars
17 put the folks back to work in the state, which I
18 think everybody is looking for, is a way to put
19 people back to state and everywhere. An ironic
20 part is that the City of New York has
21 approximately 11,000 (inaudible) licenses. The
22 whole state of Illinois has 12,000, so \$375
23 million is just the beginning of what could be
24 afforded in gaming. Thank you, and if there's any
25 questions, I'd be more than happy to answer.

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CHAIRPERSON GARODNICK: Thank you.

Let me just ask two points of ... two clarifying questions, really. The first is for Mr. Kirby, and the second is for Mr. Goldberg. Mr. Kirby, when you said that the sales on video games are down 75%, just so we understand it clearly, my sense for that would be that the reason for that is not necessarily an onerous DCA or city regulation, but perhaps an evolution where a lot of people are doing some of these games in their own homes. Is that ... do I have that right?

MR. KIRBY: You're on target on that, absolutely, sir.

CHAIRPERSON GARODNICK: Okay. And then for Mr. Goldberg, you had noted the games that we need to have multiple people playing simultaneously in competition, like the driving games, the basketball games, etc. That reminds me of my jet ski example, of, you know, multiple players on one game, which the Department of Consumer Affairs says they consider as only one machine, even though it has multiple players. Where is the disconnect here? Because, you know, it seems to me that we're all concerned about that

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2 issue, and if two people are playing against each
3 other, it seems, you know, rational that you would
4 count it as one, as opposed to as, you know, ten
5 separate games. But it seems like that continues,
6 that's a concern of yours here for the multi-
7 player games. Help us understand.

8 MR. GOLDBERG: You know what, after
9 listening to Ms. Freedman, I'm totally lost with
10 you. I've been in business 35 years, I'm totally
11 lost. But I'm going to answer that question for
12 you.

13 CHAIRPERSON GARODNICK: Okay.

14 MR. GOLDBERG: The one game
15 provides two players to play, and not
16 simultaneously, and not the same game. So we're
17 on your jet ski, you play your round, then I ... you
18 have to get up, and I've got to get on your game
19 to play my round. Okay, my round is over, now
20 it's your turn. Okay, we do that two or three
21 times. Now if we had the linked games, we're both
22 looking at the same screen, we're both playing the
23 same game together, okay, we're both doing the
24 same things, except I'm doing a little better than
25 you, okay? Excuse me. I have a little more

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practice, okay. So that's the difference, that's the entire difference, okay. We're playing the game simultaneously.

CHAIRPERSON GARODNICK: See, in her example, as I understood it--

MR. GOLDBERG: (Interposing) Her example, listen, we're all lost by her example.

CHAIRPERSON GARODNICK: Okay, I just wanted to make sure that the--

MR. GOLDBERG: (Interposing) I mean, I'm not sure she understands what's going on.

CHAIRPERSON GARODNICK: Similarly confused.

MR. GOLDBERG: Really.

CHAIRPERSON GARODNICK: This Committee, or at least the Chair, that from what she testified today, a multi-player machine, which has nine links, basketball players, jet skis, whatever, playing against one another, would count as only one machine under existing law, and under DCA's interpretation of that law. But you guys feel like that is not accurate, the way ... that is not the way they are interpreting the law, is that

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2 right?

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4 MR. GOLDBERG: Again, you know
5 what, theoretically it might be correct, you have
6 one game ... Rick, could you answer this a little
7 better? Do you want ... I mean, I'm at a loss with
8 this myself, you know, but Ms. Ferreras, she
9 explained, and Mr. Kirby agreed, I'm not going to
10 put nine basketball games in a location, I can't
11 get them in there. I'm lucky if I can get one in
12 there, and space is at a premium. The same thing
13 with your jet ski machine, with driving games,
14 like Mr. Kirby said, you can't even get them
15 through the door, let alone ... and they're costly.
16 Everybody forgot the cost, these games cost
17 \$10,000, \$15,000 apiece, okay. Do you think I'm
18 going to put that type of money into a pizza
19 parlor or a candy store? I mean, you'd have to be
20 out of your mind, it's a select few locations that
21 we would do this with, not many. Rick, is there
22 something you wanted to add?

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MR. KIRBY: No, I think you
answered it pretty good, Kenny.

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MR. GOLDBERG: Okay.

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CHAIRPERSON GARODNICK: Council

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Member Ferreras.

COUNCIL MEMBER FERRERAS: Thank you, and you actually answered the question, just because I want to have it on the record as a follow-up to my question to the previous panel. On average, what do these businesses look like, the ones that they're so fearful that are going to have this abundance of linking of video games? What kind of shops are these?

MR. GOLDBERG: They're not here, they're a figment of her imagination, they're not here. You know, a pizza store is what, 1,500 maybe square feet, a 1,000 square feet. They have tables and they have chairs. We don't even see these games in these establishments any more. It's a figment of her imagination, the fear that she sent through this entire room ... it's ludicrous. You know, the only thing she said correctly was that the games were innocuous, you know, because she should have ended it there. This is such a benign bill that we're asking for, it's really wasting a lot of time on this, it's crazy, it's really mind-blowing, that she would even come here. And again, not to stay to answer

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2 some questions is outrageous in itself. When she
3 doesn't even take care of her own house, and one
4 of my colleagues will explain that in a little
5 while.

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COUNCIL MEMBER FERRERAS: Okay,
thank you very much.

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MR. GOLDBERG: Thank you.

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CHAIRPERSON GARODNICK: So just to
follow up on some of these points. Really it's
very few locations in which somebody would be able
to get the multi ... the massive number of multi-
player machines through the door, or all those
linked machines through, you're not talking about
your typical pizza parlor or whatever.

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MR. GOLDBERG: No, this is not ...
exactly.

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CHAIRPERSON GARODNICK: This is a
small, this would apply to a small group of
potential arcades, is that accurate?

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MR. KIRBY: Yeah, as she mentioned
before, two locations that she mentioned, the
Chucky Cheese and the Dave & Buster's, they're the
type locations, okay, not the type of locations
that we represent, which are barrooms, taverns,

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2 pizza parlors.

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CHAIRPERSON GARODNICK: And they're covered now, and they would also be covered under the change, wouldn't they?

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MR. KIRBY: Exactly.

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CHAIRPERSON GARODNICK: So of no real consequence there. And there's nobody ... you guys don't think that there's anybody on the margins here who suddenly are exempt from being licensed, whereas they were otherwise required to be licensed?

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MR. GOLDBERG: You know what, financially it doesn't pay, it's not feasible, you know, to go ahead and open one of these ... open up a storefront with nine linked jet ski games. Now I can appreciate the fact you like this jet ski game, but you know what, to have nine of them, I'd go broke, okay. You need a little variety, okay, so you can't link nine jet ski games and hope you're making a buck at the end of the week, it may last--

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MR. KIRBY: (Interposing) If somebody ordered that, I'd have a heart attack.

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CHAIRPERSON GARODNICK: Okay, got

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it, thank you, gentlemen, we appreciate your testimony, we're going to call our next panel.

MR. GOLDBERG: Thank you very much.

CHAIRPERSON GARODNICK: Thank you.

Which is, we've got Mr. Peitz, Mr. Weisberg and Mr. Frank. Gentlemen, welcome, both of the microphones appear to be on, so no need for technical expertise here, you can just go right ahead and get started, and introduce yourself. Thank you.

MR. WEISBERG: Okay. Hi, my name is Allen Weisberg, I am President of Apple Amusements Corporation, we're an operating company throughout New York City, the five boroughs, as the name Apple represents, it was named after the Big Apple. And I want to thank the City Council for hearing and listening to our testimony. I appreciate your time, and if you don't mind, I'm going to read from this. I appreciate your time, study and effort to conduct this hearing to determine why Bill #690 in relation to the amusement arcades deserves to be voted out of Committee favorably, supported by the City Council, and enacted into law by the Mayor. I am

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2 an endangered species, a small business owner,
3 second-generation in the Greater New York metro
4 region. I am a responsible employer of about a
5 dozen people, and every Friday I am very conscious
6 and aware of the challenges I face to meet a
7 payroll. How people work for me and how people
8 make their livelihood through me are dependent on
9 my small business for their paycheck, and frankly
10 it is becoming more and more difficult to contend
11 with everything that the Federal, state and local
12 governments throw at us, whether it's income
13 taxes, sales taxes, property taxes, disability
14 insurance, health care insurance, and more. Bill
15 #690 is relatively a simple harmless way for the
16 New York City Council to give the small business
17 vendors in our sector a modest boost. What we are
18 seeking here is not going to hurt anyone and will
19 create a little economic development bump for all
20 of us. So why should the New York City Consumer
21 Affairs Department always look to put roadblocks
22 and obstacles in our way? Is this because
23 Commissioner Mintz is paranoid about losing some
24 power? Is it really about his idiosyncrasies?
25 Because anyone with common sense and reason who I

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2 speak with, when I explain the simplicity of what
3 we want, one plug equals one game, so that people
4 who go to establishments where our amusements are
5 located will be able to have some fun together,
6 participating in contests, having competition and
7 the like, where our games might enjoy some focus
8 and attention. I cannot believe that will all
9 that goes on in the City of New York, agency
10 officials concern themselves here with such
11 minutiae. It has been previously stated that our
12 industry has been getting hammered where people
13 are passing up play at our amusements in order to
14 play games right on their iPhone, without any
15 Consumer Affairs regulations. In fact the home
16 video game consumers are now able to buy very
17 often surpass our entertainment. Every one of our
18 AMOA New York members are invested with this
19 equipment in terms of our livelihood and our
20 equity. Someone spoke earlier about AMOA New York
21 members suffering from Hurricane Sandy. I too
22 lost both equipment and locations due to this
23 disaster, and yet no one from the government has
24 come around to help me. Yet as I earlier pointed
25 out, the people who work for me are counting on me

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for their salaries and compensation every week.
Please give us a break here with passing 690, so
that perhaps our revenues will pick up a little.
I thank you again.

MR. PEITZ: Good afternoon, my name
is Chuck Peitz, I am the President, founder of
Tricorps Amusements and the current Secretary of
New York AMOA. I had asked Ken Goldberg if I
could come and speak with you briefly to give you
some insight as to, I'll call it the nature of
linking games within our industry. And I have to
say that I'm actually thoroughly impressed,
because I sat and listened to you people for a
half an hour, and I think that you have a very
good grasp of exactly what we're facing and how it
actually pertains to the real environment. You
know what the games are, you know what the
interaction is, you know what you like about it,
so I don't really have to be here at all. I
appreciate being here, but I'm thoroughly
impressed by your knowledge of our industry. The
only thing that I would say is I had brought some
manufacturers' flyers and they're on your desks.
The only thing that I would say is that the city

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2 has acknowledged that multi-player games are okay.
3 What has happened to our industry is that where
4 years ago multi-player games were played, let's
5 say two drivers were together. Well, what has
6 happened is, as the technology has changed, and as
7 the manufacturing part of our industry has
8 changed, in order to compete with the home games
9 and the big screens and such, manufacturing has
10 changed. You know, 10, 15 years ago the average
11 driving game had a 19 inch monitor on it. Now it
12 comes with a 42 inch flat screen on it. So the
13 ability to make that as a, let's say, one-unit
14 multi-player game just isn't possible, so that's
15 why they're producing them as they are now. And
16 in order to have people play together, they
17 developed the technology by which they could link
18 them. So in many ways it's much the same product
19 that we had ten years ago, which the city really
20 said was okay, but what they've changed is the
21 delivery system by which we provide it to the
22 locations. And so I'm just going to leave it at
23 that, I think you have a very good understanding
24 of what we are straddled with, and if the
25 manufacturing part of our industry is creating

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2 products that we are not allowed to deliver to the
3 consumer, that can only hurt us, you know, and
4 that is really it. I very much appreciate your
5 time and thank you very much.

6 CHAIRPERSON GARODNICK: Thank you.

7 MR. FRANK: I'm Danny Frank, I'm
8 the Executive Director of AMOA New York, I've been
9 working for this trade association on and off
10 since 1975. I remember when there were several
11 hundred members of it, and we've shrunk down to
12 approximately less than 50 over the years from
13 1975. It's a changed industry, it's very tough
14 for these people to stay in small business and
15 fulfill all of the pressures and obligations that
16 they must do on a regular basis, and the ... respect
17 the entrepreneurism here in this industry, the
18 investment that these people make in their games,
19 in establishing their routes and in developing
20 their routes. And as Mr. Goldberg the president
21 of the association said earlier, I don't want to
22 repeat things, but tobacco, sales of tobacco was a
23 huge part of this industry for these vendors, and
24 for whatever reason, I'm not going to debate all
25 of that, but they lost that whole industry, okay.

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2 Music, electronic music, unrelated to this
3 government body, but on the Federal level and the
4 U.S. Supreme Court, there are all sorts of issues
5 with copyright infringement on electronic music
6 that this industry suffers under, okay. And so
7 therefore the games, the amusements, is one of the
8 few areas that they have left in terms of an
9 economic revenue stream and a livelihood, okay,
10 that's what it's come down to, and this bill, this
11 690, would give these people a little bit of a
12 boost, okay, in a time when things are pretty
13 hard. You heard several people speak about
14 Hurricane Sandy, what went on, and all of the
15 other, you know, competitive forces that have
16 tried in recent years to enter our space and come
17 into our turf, whether it's OTB, whether it's the
18 gambling interests that want to come in with huge
19 money, and they want to come in and usurp what we
20 do. It's very tough for us right now. I do want
21 to say a word or two about Fran Freedman. True to
22 form she made her kamikaze run here and disparaged
23 our industry very unfairly. She did the exact
24 same thing several years ago, when Council Member
25 Comrie was Chairman of this Committee at a

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2 hearing, and at that time she made claims, and
3 frankly they were lies, that she had a lot of
4 complaints about our industry at the Consumer
5 Affairs Department. And Mr. Comrie, correct me if
6 I'm wrong, if I'm speaking out of turn, it was a
7 year later and I don't think there was one
8 complaint that surfaced. So it's very unfortunate
9 that she couldn't even stay here to listen to the
10 industry, and I might also say that our industry
11 very respectfully, with proper protocol, we have
12 asked for a meeting with Mr. Mintz, we've asked to
13 have communication with Mr. Mintz. The man has
14 never taken a meeting, he has never picked up the
15 phone, he never calls us. So, and that's in
16 contrast to his predecessors, who we have had a
17 good relationship with. So I mean, I don't know
18 how this man, he seems to be very out of touch
19 with our industry, and I think it's more about a
20 power control, a power trip that he's on. One
21 other thing I want to share with you with Ms.
22 Freedman, going back to last May, and I am happy
23 to email back and forth, I did not bring copies of
24 it, but going back to last May, I provided Ms.
25 Freedman with a number of gambling devices,

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2 gambling devices that are located in locations,
3 everything from Laundromats to candy stores, okay,
4 in this city. I gave her a whole list, okay. Her
5 extent of enforcement on this -- and we don't want
6 to see locations running that are illegal, it's
7 not fair to our industry, it gives our industry a
8 bad name, okay. Here it is we're into the new
9 year, okay, I don't believe that one of those
10 locations that go back to last May, I don't
11 believe that anything has happened to any of them,
12 okay. So she speaks about quality of life. About
13 a month ago I gave Ms. Freedman a list of several
14 arcades that should be licensed, that are actively
15 running in New York City, okay, and this goes back
16 a month now, okay. One of them, as an example,
17 she mentions to me in an email right before this
18 hearing, okay, she sent me, because she knew we
19 would probably bring this up, okay, Two Bits Retro
20 Arcade, she says "location was closed to the
21 public due to renovation, no business hours were
22 posted." In other words, that absolves her and
23 her agency of doing anything about it. Here is
24 last Sunday's New York Times, January 11th, one of
25 these arcades, Two Bits Retro Arcade, is written

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2 up in the New York Times here, major article,
3 okay, how it's operating. And again, we brought
4 this to her attention going back a month ago, and
5 nothing, so far as I could see, nothing was done
6 on it, all right. And here it is, and so I really
7 think that Ms. Freedman, instead of pouncing on
8 legitimate responsible business owners who are
9 trying to earn a livelihood and ask for a little
10 bit of accommodation to improve upon their
11 business, instead of pouncing on that and bullying
12 us, she should take care of some of the things
13 that are patently, grossly illegal, and nothing is
14 done on them. So thank you very much for your
15 time and your consideration here.

16 CHAIRPERSON GARODNICK: Thank you
17 for that, and I have a couple of questions for you
18 gentlemen, because there was a variety of
19 references to giving the industry a little boost
20 here. And certainly you have a sympathetic
21 audience in the City Council, and we're talking
22 about finding ways to eliminate unnecessary rules
23 or lighten the burden when we can. But what is a
24 lingering question for me is how are we really
25 helping in this context? Who are we affecting

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2 here? Are there people who are presently going
3 through the licensing process who do not want to
4 have to have that burden? Are there people,
5 businesses that are on the cusp of being licensed,
6 and don't want to be, and therefore this bill will
7 allow them to not have that burden? Because as I
8 read the law, we're talking about an operator fee
9 biannually of a hundred bucks, and an arcade fee
10 of 340 bucks for the licensing obligation. So
11 what are we, what are we most concerned about
12 here, and who are we ... who are we protecting in
13 reality? Like, what is the problem with the way
14 things currently stand.

15 MR. FRANK: When you say
16 protecting, Mr. Garodnick.

17 CHAIRPERSON GARODNICK: Yes.

18 MR. FRANK: What does protecting
19 mean, like?

20 CHAIRPERSON GARODNICK: So let me
21 be clear in my question. What I don't understand
22 is, what we're worried about here under the
23 current framework. Because it sounds like the way
24 it's been described by the industry, they're ... in
25 order to have lots and lots of machines, it's

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2 very, very difficult, very expensive, very, very
3 space-constraining. So if that's a difficult
4 thing to do, presumably most businesses would not
5 actually get up to the ten machine limit anyway.
6 So what are we worried about from your perspective
7 that we are trying to address here?

8 MR. WEISBERG: I have an example
9 when she mentioned--

10 CHAIRPERSON GARODNICK:

11 (Interposing) Please.

12 MR. WEISBERG: I'm sorry, when the
13 Commissioner, when she mentions the fact that the
14 number of arcades reduced. I closed one last
15 year, a year and a half, just about a year ago.
16 We employed in that arcade, it was a billiard
17 center with a game, it was there in existence in
18 the Bronx for 50 years, a long time, a long time.
19 In order to have that license, we had to get a
20 special permit from both ... from the City of New
21 York we had to get a variance, very, very
22 expensive to get a variance in order to have an
23 arcade license, to have that. My choices at the
24 time were, close this game room, or hire an
25 attorney and an architect and go back to the

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2 variance board, and \$40,000 and many, many hours
3 in trying to convince the board to extend our
4 variance, because every five years that variance
5 would renew. As the industry income became less
6 and less because of home games and competition in
7 that area, it wasn't economically feasible. But
8 at the same time it would have been economically
9 feasible to keep some machines in that location,
10 maybe not the 60 or 70 machines that we had there,
11 but certainly I could have put in linked games at
12 the time, and I could have kept that place open,
13 and I could have kept the 11 people that were
14 employed there, they could have continued on. So
15 I mean, that's just my own experience.

16 CHAIRPERSON GARODNICK: Well, let
17 me ask you about that for a second. So that
18 arcade with that billiard center was operating
19 under a special permit as granted by the Board of
20 Standards and Appeals?

21 MR. WEISBERG: Correct.

22 CHAIRPERSON GARODNICK: For which
23 you needed to get a variance periodically.

24 MR. WEISBERG: For an arcade, in
25 order to get an arcade license.

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CHAIRPERSON GARODNICK: Once--

MR. WEISBERG: (Interposing) Every five years.

CHAIRPERSON GARODNICK: So once every five years. And in order for you to get your license from DCA you needed to show them that you had the variance from BSA.

MR. WEISBERG: Correct.

CHAIRPERSON GARODNICK: Okay, so it wasn't the Consumer Affairs license itself which was the burden, it was the fact that in order to get the Department of Consumer Affairs signoff, you needed to get the variance from BSA.

MR. WEISBERG: That is correct, but it is a twofold situation. Had ... being that we had to jump through those hoops, and we did have to do that, the alternative would have been to say, let me put linked games in there, and not have an arcade license, and it would have made just as much money. Because I did have the space to do that.

CHAIRPERSON GARODNICK: So if you put in linked games, if you put in my jet skis, you would have been okay.

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2 MR. WEISBERG: I think I would have
3 been okay, yeah.

4 CHAIRPERSON GARODNICK: And you
5 decided against doing that, why?

6 MR. WEISBERG: We could not do that
7 with the amount of space that we had, I would have
8 had to use less space, I could have used less
9 space for the game room and put linked games in at
10 the time, but I was only allowed to put a certain
11 amount of machines, I would have had to give up
12 the arcade license, and I was ... because of
13 Consumer Affairs licensing at that time, at that
14 time I could only put four games in. So that was
15 not an option. Had this bill license been there,
16 I could have put maybe 12 games in, I would have
17 maybe put three jet skis, three car racing
18 machines, have them linked, I had the space. And
19 we would have been able to stay open.

20 CHAIRPERSON GARODNICK: Okay, so is
21 it fair to say that the concern here is really
22 this type of a concern, where it is the zoning
23 question, which would require a variance of some
24 type, which is a precondition for DCA licenture?
25 Is that really the challenge that businesses are

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2 facing? Because it seems to me like, if it's DCA
3 license without other outstanding issues, it's,
4 you know, yes, okay, it's irritating to spend, you
5 know, several hundred dollars every couple of
6 years, but that's not what's prompting the feeling
7 that we need to give a boost to the industry or
8 help out or cut a break, or whatever the language
9 is, it's the fact that there are some of these
10 entities which are operating in areas for which
11 they need a special permit, or otherwise need
12 special permission to be there under the zoning
13 rules. Correct?

14 MR. WEISBERG: Correct, yeah.

15 CHAIRPERSON GARODNICK: All right,
16 I understand. Go ahead.

17 MR. FRANK: I want to point out,
18 Mr. Garodnick, and again the members of the
19 Council I think amply made this point, including
20 yourself. I mean, we all have one of these in one
21 form or another, and I have 30 games on this that
22 I can play, okay, as I'm sure all of you do. And
23 by Ms. Freedman's rationale here, I mean, maybe a
24 bar or a tavern or a club owner ought to
25 confiscate this as they walk in the door, so that

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2 there's only one that exists, because if two or
3 three people or four people wanted to play the
4 same game together in competition, on their own
5 individual iPods or Blackberries or whatever, Ms.
6 Freedman would have a big problem with that,
7 because, you know, these people would be linking
8 these devices. I don't understand that. I mean,
9 it doesn't make sense, so again, this would help
10 us a little bit, in respect that any vendor, any
11 operator -- correct me if I'm wrong, Chuck and
12 Allen -- the investment that they make in
13 equipment in the hopes that they've picked the
14 right marketplace, they've done the right research
15 on traffic and everything, that they're going to
16 set up a revenue stream for themselves, okay.
17 They're not going to put in seven games or eight
18 games or ten games just for the sake of putting
19 them in. There's an enormous commitment and an
20 investment there, and also the real estate
21 involved. These decisions just aren't flippant
22 or, you know, very casually-done. There's a lot
23 of study and commitment that goes into this. And
24 the laws of economics here I think need to work.
25 Right?

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2 MR. WEISBERG: Yeah, I would say
3 so. Also, what happens, New York is a very, very
4 big market, and there ... Rick Kirby, who is ... thank
5 you for coming, Rick, one of the reasons why I
6 believe that their company has done so well over
7 the years is that because it is a very, very rich
8 market in the East Coast, in the New York market,
9 it is a major part to the distributing companies,
10 and the majority of their equipment is sold to
11 that area. And the reason why I bring that up is
12 the factories respond to the marketplace, and if
13 there's a product that could be made for this
14 marketplace, they will. If the marketplace says
15 no, you cannot have something, they won't. So
16 depending on what these laws are, and if you make
17 it, if the city makes it difficult, and they know
18 they can't make something, and I'm going to be
19 hypothetical to give you an example, a trivia game
20 to compete against a number of people to compete
21 against each other is fun, but if you have to play
22 by yourself it's not fun. So if you're in a
23 restaurant and there are multiple ... and you have
24 multiple machines linked, and they can be small
25 little units that sit on the top of the bar, a

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2 restaurant, a Friday's or an Applebee's, something
3 of that situation, there's a reason for a
4 manufacturer saying, wait a second, this makes
5 sense, we can manufacture and sell to this
6 marketplace. And the small business owner, we
7 don't ... another point is, it's not only just
8 helping us, we place our machines, and the way our
9 industry works is we work on a revenue-share
10 basis. We buy the machines, we maintain the
11 machines, we have technicians that work for us
12 that go out and fix these machines. We have truck
13 drivers that go deliver them, pick them up, we
14 have warehouses where we recondition them. But
15 what happens to the money that goes into those
16 machines? That money is usually divided on a 50-
17 50 basis, we give the storekeepers 50% of that
18 money, it helps pay for their rent, it helps pay
19 for their employees. That money is not only, it's
20 helping more than just us. When we go out and buy
21 a vehicle to fix the ... we're helping the car
22 industry, where it's just so many different
23 aspects of what we do that a little help, a little
24 help from the city would, you know, it goes a long
25 way, not just to us, but to a lot of other people.

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2 CHAIRPERSON GARODNICK: Okay, well
3 thank you, I think we're going to let that be the
4 last word for today, and we certainly appreciate
5 everybody coming to testify, Council Member
6 Koslowitz, we appreciate you introducing the bill.

7 MR. FRANK: Thank you very much.

8 CHAIRPERSON GARODNICK: And
9 provoking this discussion, and we'll look forward
10 to working with you to incorporate what we heard
11 today, and we thank everybody, and with that we're
12 adjourned.

13 MR. FRANK: Thank you.

C E R T I F I C A T E

I, Richard A. Ziats, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature _____

Date January 21, 2013