

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL
OPERATIONS JOINTLY WITH
COMMITTEE ON SMALL BUSINESS

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December 12, 2013
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HELD AT: Hearing Room
City Hall

B E F O R E: GALE A. BREWER
Chairperson

COUNCIL MEMBERS:

Peter F. Vallone, Jr.
Diana Reyna
Mathieu Eugene
Letitia James
Margaret S. Chin
Peter A. Koo
Andy L. King

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

Emily Newman
Acting Director
Mayor's Department of Operations

Peter Bruland
Assistant Commissioner for Analysis &
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Department of Consumer Affairs

Marla Tepper
General Counsel
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Manager of Neighborhood Economic
Development Initiatives
Brooklyn Chamber of Commerce

Robert Bookman
General and Legislative Counsel
New York City Hospitality Alliance

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2 CHAIRPERSON BREWER: Good morning. I'm
3 Gail Brewer. And we're here to talk about
4 Governmental Operations and Small Business. I
5 Chair Governmental Operations. You'll hear in a
6 minute from my wonderful colleague Diana Reyna,
7 Chair of Small Business. And it's her phenomenal
8 bill that's being discussed here today. I'm here
9 with David Sitzer [phonetic] who is Counsel to the
10 Committee and Tim Madisof [phonetic] who is policy
11 analyst and Will Cowell from my office is on his
12 way.

13 So this bill is part of the Council's
14 ongoing effort to improve the regulatory climate
15 for small business in New York. I want to
16 congratulate Council Member Reyna. This is an
17 excellent bill. And I'm always very critical.
18 This is excellent. So it traces its origins to
19 Local Law 45 of 2009, which created the regulatory
20 review panel to look at the City's regulatory
21 environment for small businesses and to recommend
22 improvements that would make it easier to open and
23 run a business in our city by minimizing costs and
24 burdens, regulatory burdens.

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2 The panel issued its report in December
3 2009. Since then many of its recommendations have
4 been implemented successfully. Among the panel's
5 recommendations are: Ensuring compliance with
6 agency rules through means other than issuing a
7 fine for a first violation for those violations
8 that do not pose an immediate threat to public
9 health, safety or welfare. The council acted on
10 this recommendation by passing Local Law 35 of
11 2013, which requires seven agencies to recommend to
12 the council and the mayor -- to recommend to the
13 council and the mayor violations that should allow
14 a cure period before a penalty was given.

15 After the mayor's office of operation
16 review of 2,986 infractions issued by the seven
17 applicable agencies, Operations issued a cure
18 period report early this year -- I hope it's online
19 -- which identified 83 infractions, which were
20 cumulatively cited 166,769 times in FY 2013, which
21 were good candidates for a cure period for a first
22 offense. The primary purpose of the legislation
23 heard today -- being heard today -- is to codify
24 these recommendations. And now I'd love to turn
25 the microphone over to Council Member Reyna.

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2 COUNCIL MEMBER REYNA: Thank you so
3 much my co-chair, the very capable next borough
4 president, Gail Brewer. I want to just thank her
5 and her committee, her committee staff. This has
6 been a long awaited opportunity for small business
7 throughout the City of New York.

8 Good morning. My name is Diana Reyna,
9 Chair of the Small Business Committee. I'd like to
10 welcome everyone. I'd also like to acknowledge the
11 wonderful work of Government Operation and its
12 Committee Chair Gail Brewer, thanking her for
13 agreeing to have a joint hearing on this pre-
14 considered introduction, which I have sponsored,
15 which would amend the Administrative Code of the
16 City of New York in relation to replacing certain
17 fines with warnings or opportunities to cure.

18 Today's hearing is a continuation of
19 the regulation review process that started in 2009
20 with the creation of the Regulation Review Advisory
21 Panel. The purpose of which was to simplify the
22 regulations effecting the City's small businesses
23 so they could focus more on doing business and less
24 on the burdens of dealing with government
25 bureaucracy.

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2 To that end, earlier this year, the
3 council passed local Law 35, a local law that
4 required the Department of Buildings, Consumer
5 Affairs, Health and Mental Hygiene, Environmental
6 Protection, Sanitation, Fire and Transportation to
7 conduct a review of the violations they each
8 enforce under New York City Administrative Code,
9 the Rules of the City of New York and New York City
10 Health Code. And to report which -- I apologize.
11 And a report -- to report which of their violations
12 offer no cure period or other opportunity for
13 ameliorative action and second to recommend to the
14 Council and the Mayor whether such an opportunity
15 should be added to any such violations.

16 The report would be due in 120 days
17 from the effective date of the legislation. The
18 Bill we consider today would codify the
19 recommendations that the Mayor's Office of
20 Operations report entitled Cure Period Review,
21 which was prepared pursuant to Local Law 35 of
22 2013. And I'd like to thank the Mayor's Office of
23 Operations for getting this many agencies that were
24 identified in Local Law 35 to cooperate with the
25 law and give their findings.

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2 I have a couple of things I wanted to
3 just share about this bill as it stands before us
4 today. Some concerns I want the administration to
5 address in its testimony. First, I am proud to be
6 the primary sponsor of this Bill and will provide -
7 - that will provide opportunities to cure for
8 violations that resulted in 166,769 citations in
9 fiscal year 2013. This Bill represents real relief
10 for all the small business owners who paid fines on
11 those citations. However, one thing that this bill
12 does not do is codify recommendations for cure
13 periods for the Department of Health and Mental
14 Hygiene violations relating to restaraunts.

15 In fact, contrary to the provisions of
16 Local Law 35, the Mayor's office made no
17 recommendations at all regarding these violations.
18 Instead, the administration has decided of its own
19 accord to ignore Local Law 35 and to instead give
20 the panel reviewing these violations until 2015 to
21 report its findings. I would like the
22 administration to explain today where it found its
23 authority to ignore the laws of this Council. And
24 I would like to also know why the administration
25 needs a year and a half from when Local Law 35 was

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2 enacted to 2015 for this review. And more to the
3 point, I want to express my concern that after four
4 years of telling restaurant owners we would review
5 the regulations that affect them, we are pushing
6 these issues down the road into the middle of the
7 next administration.

8 That said, I reiterate my support for
9 the legislation here before us and look forward to
10 hearing testimony from the administration and the
11 public. I'd like to thank again the Small Business
12 Committee members as well the Committee of
13 Government Operations and its staffing, the Chair
14 Gail Brewer, but especially the staff who have
15 worked on these particular piece of legislation,
16 Peter Drivas, my policy analyst, Jeffery Campana,
17 our Committee Counsel, as well as Counsel for
18 Government Operations, David Sitzer. David has
19 been a tremendous author of making sure that all
20 the legal ramifications of this bill are, in fact,
21 going to guide what would be the best relief for
22 small businesses, and I really wanted to
23 acknowledge his work. Thank you for making sure
24 this was completed before the end of this term and
25 making sure that we were able to get the best

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2 relief possible for all of the small business in
3 the City of New York. Thank you.

4 CHAIRPERSON BREWER: I would like to
5 call Emily Newman who is, I believe, sitting there
6 from the Office of Operations. And then I know
7 sitting behind you, if they decide they want to
8 join you, but Maria Tepper, General Counsel of
9 Department of Consumer Affairs and Peter Bruland.
10 Go ahead and start your testimony. And thank you
11 very much for being here. You've got to move the
12 mic over.

13 MS. NEWMAN: Good morning, Chairs
14 Brewer and Reyna and Members of the Committee on
15 Governmental Operations and Small Business. My
16 name is Emily Newman and I'm the Acting Director of
17 the Mayor's Office of Operations. I'm joined today
18 by colleagues from DCA, DSNY and DEP. On behalf of
19 the Administration, I would like to thank you for
20 this opportunity to testify about the City
21 Council's proposed Bill in relation to replacing
22 certain finds with warnings or opportunities to
23 cure.

24 As part of the larger effort to make it
25 easier for businesses to open and operate in our

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2 city, the City Council passed Local Law 35 earlier
3 this year requiring a retrospective review of the
4 violations issued by the Department of Buildings,
5 Department of Consumer Affairs, Department of
6 Health and Mental Hygiene, Department of
7 Transportation, Department of Environmental
8 Protection, the Fire Department and the Department
9 of Sanitation. The purpose of this review is to
10 help businesses avoid owner's penalties for their
11 first infractions by identifying violations for
12 which each agency can implement a cure period or
13 other ameliorative action prior to the imposition
14 of a penalty or a fine.

15 Operations partnered with these
16 agencies to conduct the analysis. We also worked
17 with the New Business Acceleration Team, NBAT, and
18 the Mayor's Office of Immigrant Affairs, MOYA, to
19 gather stakeholder feedback. Over the course of
20 seven meetings in all five boroughs, the
21 Administration met with over 80 individuals
22 representing business and property owners, elected
23 officials, community boards, chambers of commerce,
24 business improvement districts and other industry
25 groups.

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2 The concerns raised ranged from
3 violation severity to confusion over the
4 requirements. We also heard the interactions with
5 NBAT, which educates business owners prior to
6 inspections, were beneficial. All of this feedback
7 was considered throughout the analysis.

8 To fulfill the mandate of Local Law 35,
9 2,986 violations were reviewed. The analysis
10 focused on violations that do not pose imminent
11 threats to public health or safety, that have the
12 potential to be corrected or cured, that are issued
13 to businesses operating with the required permits
14 and licenses and where the opportunity to cure
15 would not remove an important element of
16 deterrence.

17 The Administration issued a report
18 recommending that 83 violations issued by four
19 agencies, DEP, DCA, DOHMH and DSNY could adopt cure
20 periods. The other three agencies reviewed, DOB,
21 DOT and FDNY, already issued 223 violations with
22 cure periods. Because so much of what DOB and DOT
23 regulate relates to public health and safety, no
24 additional cure periods were recommended. All of
25 FDNY violation types are curable unless they are

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2 deemed criminally hazardous. And so no further
3 FDNY changes were recommended.

4 Had the recommended cure periods been
5 in place in fiscal year 2013, respondents would
6 have had the opportunity to cure more than 65,000
7 infractions without a financial penalty, a
8 significant cost savings for businesses and
9 property owners of approximately 3.8 million. The
10 Administration has made a number of efforts to help
11 businesses open and operate in the city and
12 supports the implementation of cure periods for
13 many first offenses. When properly administered,
14 cure periods can build awareness of agency
15 regulations while decreasing costs to business and
16 property owners.

17 I would, however, like to highlight
18 some considerations that are key to implementing
19 cure periods in the most effective way and are
20 essential to our support of this bill. Working
21 together with the Council the Administration has
22 made significant advancements to DSNY's recycling
23 program, which has been in place since the early
24 1990s. Recycling is a major component of the
25 City's integrated solid waste management system and

1 critical to the City's solid waste management
2 policy and planning strategies. This year alone
3 DSNY advanced its recycling program significantly
4 by designating rigid plastics as recyclables for
5 DSNY pick up, commenced a residential organic waste
6 collection pilot in certain neighborhoods across
7 the city and recently rolled out its first
8 installment of new public space recycling
9 receptacles on the City's public streets.

11 DSNY is committed to expanding and
12 maximizing recycling. For DSNY to continue in its
13 efforts, it needs the help and cooperation of all
14 New Yorkers. Education and Enforcement are key
15 components to ensure that all New Yorkers comply
16 with the recycling laws. The report issued by the
17 Administration identifies a number of violations
18 that could support cure periods focusing on
19 offenses that could easily be cured such as
20 signage, are used to provide property owners of
21 business -- of buildings with fewer than nine units
22 a chance to learn recycling rules.

23 The Administration's report identifies
24 that a zero dollar first violation with a cure
25 period is acceptable; however, only if the second

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2 violation is increased to \$250. Raising the second
3 violation to \$250 puts residence on notice that the
4 City is serious about its commitment to an increase
5 recycling participation and that everyone is
6 responsible for complying with the City's recycling
7 laws that have been in place for almost 25 years.
8 The Bill does not increase the second violation and
9 without this change, we cannot support the Bill as
10 it stands.

11 DCA has made significant efforts to
12 foster compliance with consumer protection laws
13 through extensive outreach and education, including
14 creating plain language inspection checklists
15 identifying exactly what inspectors look for and
16 making them available online and in the DCA
17 licensing center, creating a comprehensive online
18 business toolbox providing all the laws and rules
19 licensees need to know along with information about
20 required signs, forms, model receipts, contracts
21 and violations. Launching online chat
22 functionality so that business owners can ask
23 questions of DCA staff during business hours.

24 Instituting business education days
25 during which DCA staff visits every retail business

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2 in neighborhoods throughout the city to point out
3 potential violations without writing warnings --
4 sorry, without writing violations. Responding to
5 requests for interpretation services and hosting
6 evening open house events for specific industries
7 to review laws and licensing requirements and
8 discuss enforcement issues.

9 We want to ensure that when a violation
10 is cured, it is treated as a first violation.
11 Offering a cure, only as part of a new penalty
12 settlement of a violation, will deter future
13 violations while protecting the City's consumers.
14 With that approach, the submission of the cure
15 constitutes an admission of failure to comply with
16 the law. And if there are future violations of the
17 same provisions, the violation will be identified
18 as a second offense.

19 The Administration is also concerned
20 about the point at which a respondent may submit
21 proof of compliance. As written, the Bill permits
22 the respondent to submit a cure in advance of a
23 hearing as part of a settlement as well as at a
24 hearing. This may encourage respondents to
25 adjudicate the case and then submit a cure only if

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2 it appears that they are going to be found guilty.
3 That approach is not only countered to the purpose
4 of the legislation but may also burden DCA's
5 adjudication tribunal.

6 I'd also like to clarify that cure
7 periods for industries which traditionally prey
8 upon immigrant populations and individuals and
9 families with low incomes and could impact persons
10 with disabilities were not included in the
11 Administration's report and we will not support
12 their inclusion in this Bill. The sections dealing
13 with immigration service providers should be
14 removed from the Bill.

15 Industries with a high track record of
16 illegal conduct directed to low income consumers
17 such as used car dealers or tax preparers should
18 not have an opportunity to cure all violations.
19 For these types of businesses, the opportunity to
20 cure should be restricted to signage violations for
21 which evidence of a cure can be presented. Stoop
22 line stand violations should also removed from the
23 Bill as stoop line stands use public sidewalk space
24 and cause ADA concerns if not properly monitored.

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2 I'd also like to note that the Bill
3 identifies a number of rules for which a cure --
4 for which a cure would be made available.
5 Revisions of these rules, which we support, should
6 be done through a rule making rather than within
7 this Bill. My office can work with the relevant
8 agencies to help move changes through the rule
9 making process.

10 Finally, although we are supportive of
11 implementing cure periods, I want to call out some
12 significant operational hurdles that will have to
13 be addressed in order to implement these changes.
14 Sanitation supervisors, the staff at DSNY who
15 currently issue paper tickets, do not have access
16 to handheld computer systems used to issue notices
17 of violation in the field as is used by sanitation
18 police and enforcement agents. This handheld
19 system automatically issues a repeat violator
20 ticket to a respondent based on information
21 received from ACD. Without these tools in the
22 field sanitation supervisors cannot issue formal
23 warnings or repeat violator summons.

24 For DSNY to implement these changes,
25 all supervisors would need handhelds, an effort

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2 that will take time to implement. DCA has similar
3 concerns. They would need time to make changes to
4 their database system, which was not configured to
5 include cure periods. Their inspectors will also
6 need handhelds to transmit information from the
7 field. DCA anticipates substantial cost to
8 implement these changes.

9 In sum, the Administration agrees that
10 the goals of this legislation are important but is
11 not in agreement with the legislation as it stands.
12 We welcome the opportunity to work with Council
13 staff to make changes to the Bill. I'm now
14 available to answer any questions you may have.
15 Thank you.

16 CHAIRPERSON BREWER: We have Council
17 Member Koo and Council Member Chin. Is there
18 anybody else? Thank you very much for joining us.
19 Council Member Koo knows everything about this
20 topic.

21 I have a couple of questions. I know I
22 have spent some time -- I want to just talk about
23 education and DCA as an example. I had the
24 opportunity to go around my neighborhood on the
25 west side with an inspector from DCA. And it was

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2 really educational, I think, for everyone in the
3 sense that managers in these stores change. I know
4 you mentioned they can go to night classes and do
5 something online and so on. I don't -- I'd like to
6 hear from the community, but I don't think a lot of
7 people do that. Now maybe they should, but the
8 fact of the matter is that when we went -- I
9 probably went to, I don't know, 100, 150 stores, we
10 went to a lot. And what I find is, for instance,
11 if you have a watch in a case in a retail
12 establishment and if the price is turned over, that
13 can be a violation.

14 I understand that from the consumer
15 prospective, but I think we actually have to put
16 some effort into this door to door as opposed to
17 just online, and I'm the biggest tech person. But
18 I also wanted to be realistic. So either we have
19 to think of a way of e-mailing people constantly to
20 look online, every single store in the City of New
21 York, or we have to do more on the ground. And
22 maybe we have to educate in a different kind of
23 way. I don't think there's a substitute for going
24 door to door. And I think that's the kind of
25 education we need.

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2 Now, you didn't talk about that except
3 peripherally. And I don't know how many retail
4 establishments DCA has gone to, but this is what we
5 found. Managers change all the time. And one
6 manager may know something and another not. You
7 have the mom and pops, which I love. You have the
8 chain stores, which I hate, but I know they're
9 there. And it's a constant struggle to get them
10 educated. So how does that come up in Operation's
11 thinking that across the board -- not just DCA,
12 which does a good job, I think, in doing that. How
13 else do you anticipate going door to door to let
14 people know in person what the challenges are? The
15 fire department does that. They actually go -- I
16 see it in my district office a lot -- checking on
17 buildings. So what other agencies do that? And
18 how effective is it? And how much is it done? And
19 is it part of Operation's guidance and leadership?

20 MS. NEWMAN: It's a great question. I
21 think that DCA is the example that I'm most
22 familiar with, with their business education days.
23 They can certainly jump in and add some color to
24 this, but I think that is a great example of going
25 door to door, meeting with business owners and with

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2 the managers who are there day to day. I'm not
3 sure, you know, what all of the agencies do in that
4 regard and that was not part of what operations
5 looked at here. It has been part of what
6 operations has looked has looked at sort of in the
7 bigger, you know, overhaul of the way that we
8 interact with businesses. That's something that we
9 can certainly look into making a more, sort of,
10 routine approach to working with small businesses.

11 I think in that is a great example of -

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13 CHAIRPERSON BREWER: And that is
14 wonderful.

15 MS. NEWMAN: -- working very closely
16 with businesses. They do work one on one, they do
17 visit businesses at their location and sort of walk
18 through what an inspector will look at.

19 CHAIRPERSON BREWER: The mostly start
20 with new businesses, however.

21 MS. NEWMAN: They mostly start with new
22 businesses, that's right. So that's where we are
23 now. We know that it is a great sort of example
24 and a great model for agencies to follow. I can

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2 pull together information for you about what
3 agencies --

4 CHAIRPERSON BREWER: I would like to
5 know, I mean, how many education days other
6 businesses -- other agencies do and how they think
7 it's effective. I mean, in DOT -- I know you
8 didn't mention DOT because they already do it. But
9 my next door neighbor -- apparently with DOT,
10 obviously, large buildings need to fix their
11 sidewalks themselves. The City Council passed that
12 law, good idea. Problem. Now DOT doesn't have
13 anything to do. So now they target small business,
14 small buildings like my neighbor.

15 So you can hardly see the crack in the
16 sidewalk. I mean you would need a microscope to
17 see this crack. So she gets a ticket. Of course
18 she comes knocking on my door to get rid of the
19 ticket. But the fact of the matter is just because
20 -- then I call up DOT and I said, why in the world
21 did she get a -- because, Gail, we need to target
22 small buildings because they're not part of the
23 legislation. And so now everybody is going out and
24 looking for things that are in front of small
25 buildings. That should be a cure period if this

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2 little tiny crack that you can hardly see is
3 relevant, then she should have a time, I think, to
4 fix it as opposed to getting a violation.

5 So that would be an example. She had
6 no idea. You can hardly see this crack, so how are
7 you supposed to know about it, et cetera. So I
8 think this notion of using staff to give education
9 is equally important. Now, the recycling and then
10 I'll stop. Okay. That's great, recycling. I'm
11 for recycling. Terrible numbers in the City of New
12 York. We're all for recycling.

13 I swear to God people still don't know
14 what the hell to do. Right? I mean, they're still
15 wondering about which to put in what and so on and
16 so forth. So before you say everybody gets
17 tickets, I think we still need to work on the
18 education front. I mean, I don't know, maybe you
19 know what to do. Excuse me, where am I supposed to
20 put this? If I don't know -- then even though you
21 send things in the mail, but it's not a huge, huge
22 education. I just want education to be much more
23 front loaded.

24 MS. NEWMAN: Okay.

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2 CHAIRPERSON BREWER: Okay. Regarding
3 stoop line stands and tax preparers, we know what
4 they are, why did you put it in the report but now
5 support apparently?

6 MS. NEWMAN: So that is a great
7 question. After talking with DCA they highlighted
8 those concerns. I apologize. I don't know why it
9 wasn't raised sooner, but in the last week or two
10 sort of working through this together, that was a
11 concern that DCA raised. I do realize that they
12 were in the report and I apologize for that.

13 COUNCILPERSON BREWER: The Counsel
14 would like to ask a question.

15 MR. SITZER: I'm David Sitzer, Counsel
16 to the Gov Ops Committee. If they were in the
17 initial report, that was vetted by DCA, correct?

18 MS. NEWMAN: Correct.

19 MR. SITZER: So they vetted it and they
20 included certain violations -- you're being
21 summoned.

22 [Pause]

23 MS. NEWMAN: We're being told that it
24 was our fault and that they did not see that. So,
25 again, I don't know. I'm new to the Mayor's Office

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2 of Operations and I just started there a couple of
3 weeks ago.

4 MR. SITZER: I recognize that Liz
5 Weinstein is out and Andrea Bender is out, and so
6 I'm sympathetic to the fact that there's -- the
7 people who actually worked on the report are not
8 necessarily around.

9 MS. NEWMAN: Right. But regardless it
10 sounds like there was a miscommunication. DCA is
11 saying they had not signed off on those and seen
12 them.

13 CHAIRPERSON BREWER: Council Member
14 Reyna.

15 COUNCIL MEMBER REYNA: Thank you, Madam
16 Chair, and thank you David for that. I just want
17 to continue that line of question as far as
18 removing what would be tax preparers. And there
19 was an additional -- stoop lines was it?

20 MS. NEWMAN: And immigrant services.

21 COUNCIL MEMBER REYNA: As far as the
22 report is concerned, did the Mayor's Office of
23 Immigrant Affairs joint the conversation after the
24 report was done?

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2 MS. NEWMAN: I don't believe that they
3 did. Again, I can check and get back to you. They
4 were very involved in the outreach that we did with
5 the communities. I don't believe that they
6 reviewed sort of the final list of recommendations
7 from the agencies.

8 COUNCIL MEMBER REYNA: And did DCA
9 review the findings after the report was compiled?

10 MS. NEWMAN: All of the agencies
11 reviewed the findings after the report was
12 compiled. All of the agencies reviewed the
13 findings and agreed on them with us.

14 COUNCIL MEMBER REYNA: So they're
15 retracting what would be tax preparers in other
16 areas for cure periods.

17 MS. NEWMAN: We would like to leave out
18 tax preparers, stoop line stands. Please.

19 MR. BRULAND: I'm Peter Bruland, I'm
20 Assistant Commissioner for Analysis and Planning at
21 DCA, and I've worked extensively on this report.
22 Just quickly, on the question of tax preparers, we
23 are not actually saying we need to strike
24 everything about tax preparers out. The signage on
25 tax preparers we are willing to leave in. That was

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2 agreed to and put in there properly. It was just
3 that, I believe, in looking at the draft of the
4 Bill we saw as written it appeared that it would
5 extend to other areas of tax preparer law, which we
6 were not prepared to offer a cure period for.

7 COUNCIL MEMBER REYNA: Could you just
8 give us an example so we have clarity as to what
9 you're referring to.

10 MR. BRULAND: So, for example, tax
11 preparers are required to post signs stating
12 whether they are licensed accountant, an attorney
13 or otherwise have certain qualifications. We would
14 offer a cure period for those sorts of things. We
15 would not offer a cure period for things like do
16 you give a signed copy of the return back to the
17 person who filed the taxes.

18 COUNCIL MEMBER REYNA: And is that
19 because once you're not given a copy of that filed
20 tax it's not possible to cure such an exercise.

21 MR. BRULAND: Essentially at that point
22 it's not possible to cure. It's very difficult to
23 cure. Are we asking them to send to everyone who
24 may have filed taxes prior to us visiting them a
25 signed copy? It's unclear how that would be

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2 proven. In addition, we feel like those are areas
3 where there is more potential for direct harm to
4 the consumer, in this case the person getting the
5 tax prepared. Certainly we don't want them
6 fraudulently claiming to be an accountant when
7 they're not. But we do understand that someone may
8 just realize they don't need to post that sign. So
9 we see that as something that's easily curable and
10 has less of a direct cause for harm.

11 COUNCIL MEMBER REYNA: We've been
12 joined by Council Member King of the Committee on
13 Small Business. I also wanted to just understand
14 what was the universe of this particular example
15 you've just given in reference to what would be
16 summons issued in a tax preparer's office where a
17 copy of their filed income tax was not given.

18 MR. BRULAND: I don't have the universe
19 of that off the top of my head.

20 COUNCIL MEMBER REYNA: And do we have
21 separate documents that would allow us to
22 understand what universe we're referring to that's
23 going to, as part of your recommendations, be
24 removed from the cure period and what is that
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2 representation in reference to the total summons
3 issued for 2013?

4 MR. BRULAND: So in terms of the
5 report, the measures directly referring to tax
6 preparers that were in that report were correct.
7 The measures in terms of the list of DCA violations
8 that we had specifically -- has to now be
9 extracted. And, again, this was due to some
10 miscommunication, I guess, between us in the
11 Mayor's Office of Operations and the back and forth
12 on getting this final bill in. We thought we had
13 already had this stricken and they had missed that
14 change. So there was some mistake there.

15 In terms of the actual things listed
16 here, for the tax preparer these are signage
17 violations that we would include. So everything on
18 that report is accurate there. The ones that we
19 would be removing are the stoop line stand 237B.
20 That's nothing to do with signage. That slipped
21 in. It was misidentified as signage and slipped
22 into an initial draft. We had sought to remove
23 that and it didn't come out. But that is about the
24 physical stand is too large and is potentially
25 obstructing the sidewalk.

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2 The only other things we were looking
3 that were actually on that list to take out were
4 things that have been written approximately once in
5 the last year and those were related to immigration
6 service providers.

7 COUNCIL MEMBER REYNA: So I just want
8 to make sure that the Committee receives what would
9 be a tabulation of what was removed from that total
10 in the report versus what you're recommending to
11 analyze exactly what we're referring to in
12 reference to summons issued and no cure period as
13 the preference.

14 I want to just go back to the issue of
15 the Department of Health and Mental Hygiene and the
16 fact that in the report there was no mention of
17 what would be in cure periods in relationship to
18 restaurants and the issue of having heard four
19 years' worth of hearings on grievances by
20 restaurant owners. And Local Law 35 specifically
21 stated that it needed what would be a review of the
22 administrative code and rules promulgated by what
23 would be this agency as it impacts small business,
24 but that exercise did not come to fruition. Can
25 you just explain why?

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2 MS. NEWMAN: So we did analyze the
3 DOHMH along with the other six agencies that were a
4 part of Local Law 35. We looked at over a thousand
5 infractions issued by DOHMH.

6 COUNCIL MEMBER REYNA: For 2013.

7 MS. NEWMAN: For fiscal year '13.
8 However, because so much of what DOHMH does ties to
9 public health and safety, we found very few
10 violations that we felt could be recommended. So I
11 mentioned that we really -- we really sort of
12 pulled out those violations that tied to imminent
13 threats to public health and safety.

14 COUNCIL MEMBER REYNA: Ms. Newman, I'm
15 sorry. I just want to make sure that we
16 understand. Part of our number of hearings that
17 we've had as far as the small business committee,
18 joint or otherwise on grievances, petition to the
19 council by individual members or efforts through
20 hearings or efforts through touring small
21 businesses is the fact that we've had non-health
22 violations that were more so of an issue than not.
23 And, obviously, no one wants to put the public's
24 safety in harm's way. But the fact that we found

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2 so few seems to me to contradict what we've heard
3 for four years.

4 And so I really want to understand as
5 part of the cure period exercise what were the
6 violations that -- in relationship to restaurants
7 because we were never given any report on
8 restaurants as to why they were excluded when I
9 know for a fact there are restaurants who have non-
10 public safety issues as far as violations that have
11 certainly been issued at exorbitant amount of money
12 and could probably have lost one or two employees
13 because of it. Is that something you're prepared
14 to speak on?

15 MS. NEWMAN: It's nothing I'm prepared
16 to speak on. I apologize that you did not receive
17 a report on DMHOH. I can pull that information
18 together and provide it to you.

19 COUNCIL MEMBER REYNA: And then just to
20 understand, there's a 2015 date that is supposed to
21 report back what would be recommendations. Then
22 what is that exercise for if there seems to be this
23 conclusion that there is very few findings for cure
24 periods for DMHOH that would summons what would be
25 any recommendations.

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2 MS. NEWMAN: So I want to apologize
3 because I'm not familiar with that date. And, you
4 know, I -- if I had known that that was out there,
5 I would have certainly looked into it much more.
6 I'm seeing a lot of headshakes. So we can look
7 into it. And I really do apologize for not being
8 prepared to speak on that.

9 COUNCIL MEMBER REYNA: So just to
10 assist with the background on the explanation I was
11 given by the Mayor's office there was an advisory
12 panel that was performed pursuant to what would be
13 a local law passed that would comprise of many
14 different stakeholders in the City of New York that
15 would be assembled after the first of the year,
16 which would then review what would be DMHOH and
17 possibly Board of Health rules to be able to
18 understand what are the different rules that exist
19 and the administrative code that would need to be
20 reported with recommendations after the findings
21 were concluded for cure periods in relationship to
22 restaurants.

23 MS. NEWMAN: Okay. Thank you.

24 COUNCIL MEMBER REYNA: Is that
25 something that you're familiar with?

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MS. NEWMAN: It is not.

COUNCIL MEMBER REYNA: Is anyone behind you assisting you?

MS. NEWMAN: No.

COUNCIL MEMBER REYNA: So I'd like to have, after this hearing, a conversation so that we can circle back.

MS. NEWMAN: That'd be great.

COUNCIL MEMBER REYNA: To understand. So I'm going to have Counsel to Government Operations clarify even further. But this is the part that was very frustrating as a sponsor to this bill and the four years of work and advocacy and making sure that we were going to protect and give an opportunity for our small businesses. And that's not to say that this Bill is not a great start to what would be relief, but I do believe that we had an obligation to have a recommendation on behalf of what was the spirit and intent of this bill, especially having authored Local Law 35, which would spearhead what would be more concrete opportunity for cure periods. And that exercise did not come to fruition. So one second.

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2 MR. SITZER: This is David Sitzer
3 again, Counsel to the Committee on Gov Ops. So I
4 don't want to speak for the Council Woman, but I do
5 want to just try to clarify what I -- my
6 understanding, which is that as part of the
7 restaurant review reform package, the Council
8 created restaurant advisory board. And one of the
9 topics that the advisory board is going to be
10 reviewing pursuant to the law is whether there are
11 provisions in the health code that don't relate
12 directly to public health and safety.

13 And so I believe that that's the --
14 what she's referring to and what the priority is.
15 I don't want to speak for you Council Member, but
16 what a priority would be going forward in terms of
17 -- because DOHMH restaurant violations weren't
18 included in this report. The report just said, you
19 know, because of the restaurant package that
20 working -- that DOHMH is working on with the
21 council currently at the time that the report was
22 produced, you know, none of those were included.
23 And so that was -- the result of that was the
24 advisory board Bill. And so I think the priority
25 is that that advisory board take that mandate

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2 seriously and look if there's anything in the
3 health code that shouldn't be in the health code
4 because it doesn't relate directly to public safety
5 with respect to restaurants.

6 MS. NEWMAN: Thank you.

7 CHAIRPERSON BREWER: Couple more
8 questions and then I know some of my colleagues
9 have questions. I want to know about the -- how
10 the cure periods will be brought to the agencies.
11 Would it be proof of compliance electronically?
12 And if not, why not? And also you mentioned the
13 issue of handhelds. I think this is a good
14 opportunity and is this something that agencies or
15 Operations are looking at in terms of getting
16 handhelds for these agencies?

17 MS. NEWMAN: So this is something that
18 we have started to talk about.

19 CHAIRPERSON BREWER: We've been talking
20 about it for ten years.

21 MS. NEWMAN: This is something that
22 Operations has started to talk about with
23 Sanitation and with DCA. We started to understand
24 what would be required and we will be able to start
25 moving down that path to implement those handhelds

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2 and the changes to their system. In terms of
3 showing the cure -- can one of you speak to that?

4 MS. TEPPER: I'm Marla Tepper, General
5 Counsel at the Department of Consumer Affairs.
6 Good morning. The revised Bill that we got last
7 night states that proof can be produced
8 electronically. We have not had a chance to
9 discuss. Proof of compliance can be produced
10 electronically, so we have not had a chance to
11 discuss internally the exact mechanisms for that.
12 We currently, of course, allow businesses to
13 communicate with us electronically, so I think that
14 would be consistent with that practice. But I
15 think we have to look at the operational impact of
16 that.

17 In most instances I think we're talking
18 about a document, so that's possible. If it's
19 something physical and large, for example, that the
20 business wants to show us, that would be more
21 difficult. So we're open, obviously, to discussing
22 how to make this work for us and for the
23 businesses.

24 CHAIRPERSON BREWER: Okay. Great.
25 Thank you. Has the rule making process started for

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2 any of the changes highlighted in your operational
3 final cure period report? You alluded to that in
4 your testimony.

5 MS. TEPPER: They have not. As of
6 right now, as I understand it, many of those are
7 included in the bill.

8 CHAIRPERSON BREWER: That's where we'd
9 like to keep it.

10 MS. TEPPER: Right. And that's where
11 we would like to pull it away from.

12 CHAIRPERSON BREWER: Take it out.
13 Right.

14 MS. TEPPER: And so I think we need to
15 sort of see where we land on that. We can
16 certainly start the rule making process
17 immediately.

18 CHAIRPERSON BREWER: Okay. Because we
19 would like to keep it in the Bill to be sure that
20 hit happens just FYI.

21 MS. TEPPER: We would also like to be
22 sure that it happens.

23 CHAIRPERSON BREWER: Right. Okay.

24 MS. TEPPER: We'd like to do it through
25 the rule.

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2 CHAIRPERSON BREWER: Okay. Council
3 Member Reyna has another question.

4 COUNCIL MEMBER REYNA: Thank you, madam
5 Chair. I just wanted to understand. You mentioned
6 the cost of handheld devices. Is this an effort
7 that's already been studied within the
8 Administration as far as costs? Is this part of
9 what would be an effort to upgrade what would be
10 any technical devices for agencies that have
11 opportunities to spend money as needed with tools
12 that are advanced in the technological world to be
13 able to keep up with these changes? Has this gone
14 further than just being identified as a need? Is
15 there a budget for it? What is the cost? Is there
16 a spending -- is there a purchase order that has
17 been filed already? I just want to understand.

18 MS. TEPPER: Sure. Sanitation and DCA
19 should jump in at any point. The systems that they
20 need would be building off of existing systems. So
21 Sanitation has folks in the field already who use
22 handheld devices. The folks who do -- who issue
23 violations related to recycling don't have those
24 handheld devices. So this would be an extension of
25 existing technology that they have.

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2 I also believe that they are not --
3 they don't currently include cure periods.

4 CHAIRPERSON BREWER: They're coming up.
5 We'd love to hear from them.

6 MR. KUZNITZ: Hi. I'm Todd Kuznitz,
7 the Director of PMD, formally the Director of
8 Enforcement for Sanitation. Right now the agents
9 and the sanitation police use handheld devices to
10 issue summons. They are not equipped to issue
11 warnings using those devices. We want to and we're
12 looking at expanding it to our supervisors who
13 issue paper summons by hand. Right now we're still
14 researching trying to find a device that would also
15 issue parking summons because the majority of
16 summons issued by supervisors are parking summons.

17 We think it would be more cost
18 effective and more, you know, responsible if we
19 have one device that could do both as opposed to
20 two separate devices or two separate systems. And
21 the recycling violations that are listed in this
22 bill are all for residential buildings. There's --
23 we don't see a way to have a cure period because
24 once the garbage is out, once the recycling is out
25 and it's contaminated, if the recycling is

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2 contaminated with garbage, whether it's mixed one
3 way or the other, there's no way to separate it.
4 The truck is going to come and it's going to throw
5 it into a garbage truck.

6 It's not like we can say you have 30
7 days to separate your garbage. There are some
8 violations, and I know this Bill deals mainly with
9 businesses, but there are violations that we issue
10 to businesses for signage. Those we could probably
11 work with a cure period as we do now in some
12 respect. When a person -- when we walk into a
13 business that doesn't have a private corridor
14 sticker, we ask them if they can produce a receipt
15 or a contract or something to show they have
16 private corridor. If they show us that proof, then
17 we don't issue a summons. We just tell them, call
18 your corridor, get another detail. We'll go back
19 in two or three weeks and find out if they got that
20 detail and if not, then we would issue a summons.

21 COUNCIL MEMBER REYNA: That's a cure
22 period currently.

23 MR. KUZNITZ: That's an informal cure
24 period, yes. We don't issue a formal warning. We
25 just tell them, go to your corridor, call them up,

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2 get a detail. And in a few weeks later, we'll go
3 back and check again.

4 COUNCIL MEMBER REYNA: Some of our
5 small businesses complain about debris that's -- on
6 a windy day wasn't there one second and then the
7 other it's blown to their side. Do you feel that
8 that could be an opportunity for a cure period at
9 that moment to just have the manager or whomever
10 takes care -- is a caretaker for the actual small
11 business to be able to deal with that immediate
12 clean-up action as opposed to receiving what would
13 be a summons at that moment for a piece of gum
14 wrapper or a shopping bag blown in the air in front
15 of their small business.

16 MR. KUZNITZ: Well, we normally train
17 the agents to use common sense and discretion.
18 They really shouldn't be issuing violations on a
19 windy day where -- you know, they're not supposed
20 to follow the wrapper from store to store or house
21 to house and issue everybody a violation, they're
22 supposed to use common sense.

23 COUNCIL MEMBER REYNA: And as far as
24 dirty sidewalk summons, what is the volume of
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2 summons issued to small businesses at that
3 particular category of summons?

4 MR. KUZNITZ: I don't have those
5 numbers with me.

6 COUNCIL MEMBER REYNA: Do you say --
7 would you -- would it be fair to say that it's a
8 high volume because I heard you mention there is
9 not much that is issued to the small business and
10 you already have an informal warning.

11 MR. KUZNITZ: Well, that's for the
12 private corridor decal.

13 COUNCIL MEMBER REYNA: Right. Okay.

14 MR. KUZNITZ: With dirty sidewalks, for
15 instance, and dirty curb areas there's only two
16 one-hour time periods a day that we can issue that
17 summons. So they basically -- every store knows
18 between, let's say, one and two o'clock in the
19 afternoon somebody might inspect your sidewalk.
20 There's no guarantee we'll be there, but that's the
21 only period that you have to clean that sidewalk.
22 So they know we're coming.

23 COUNCIL MEMBER REYNA: And I just want
24 to make sure that we focus on the fact that it's
25 very difficult for small business owners to

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2 understand every rule and code on the books. I
3 mean, as far as the Council is concerned and the
4 Administration, this was a huge undertaking because
5 that's how much is on the books as far as rules and
6 laws. And this was exactly the opportunity to
7 understand and help educate ourselves and clean
8 what would be those particular opportunities that
9 we don't need to hammer what would be small
10 businesses over the head consistently because you
11 can get the for practically breathing. If we could
12 probably find a rule or code that they could be
13 violating on that action.

14 So I wanted to just understand, you
15 know, is there other areas where small business --
16 and Department of Sanitation was one of the highest
17 agencies issuing what would be summons to small
18 businesses unless the bar graph that was used was
19 including residential, which then skewed what would
20 be the small business impact.

21 MR. KUZNITZ: That might be including
22 residential, yes.

23 COUNCIL MEMBER REYNA: So the volume of
24 what was represented in the report is really
25 residential, not small business.

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2 MR. KUZNITZ: It would be probably both
3 mixed together.

4 COUNCIL MEMBER REYNA: And issuing a
5 warning is educating the business. So we want to
6 do more education. Is there areas in the
7 Department of Sanitation where we need to do more
8 educating by warning?

9 MR. KUZNITZ: Most of our violations
10 deal with cleanliness issues. You know, that dirty
11 sidewalk that's not clean today, that debris might
12 blow across the street and effect the neighbor who
13 actually cleans every day. So we don't feel a
14 warning is necessary or should be given. People
15 know they have to clean their sidewalks. We go
16 around store to store and we tell people this is
17 your routing time, this is the time you should be
18 cleaning your sidewalk, this is the only time we
19 can issue a violation for that.

20 We have a published -- an online
21 summary of sanitation rules and regulations that
22 lists all the violations that we could issue both
23 residential and to businesses. We do outreach at
24 Street Fest and different types of festivals where
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2 we have a table set up with recycling information
3 and sanitation information.

4 COUNCIL MEMBER REYNA: Has the
5 Department of Sanitation seen what would be a
6 higher compliance amongst small businesses?

7 MR. KUZNITZ: As far as cleanliness,
8 I'd say yes. Streets are much cleaner.

9 COUNCIL MEMBER REYNA: Okay. Because I
10 do notice that there has been a decrease from '09
11 to 2013, and is that due to compliance or less
12 tickets issued because of less enforcement?

13 MR. KUZNITZ: No, that's due to
14 compliance. That's certainly due to compliance.
15 We use a summons as an educational tool to tell the
16 people -- because we hope -- if you get, for
17 instance, a \$100 summons, you're not going to want
18 another one. So you know you're going to send
19 either your worker outside to sweep or to put the
20 garbage out properly. You know that you don't want
21 that violation again.

22 When we do warning periods for new
23 violations, we find those same people, they don't
24 really care. It's only a warning. They'll never
25 get me again, it doesn't matter, until they finally

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2 get a summons. That's when we see the compliance
3 coming up again, when they realize that we're out
4 there issuing summons, then they take the time to
5 comply.

6 COUNCIL MEMBER REYNA: And my last
7 question. As far as the Administration's report
8 identifying zero dollar first violation with a cure
9 period as acceptable, you were -- and this is a
10 question for you Emily. The -- in your testimony
11 you just mentioned the support for a zero penalty
12 with a cure period acceptable if the second
13 violation is increased to \$250. What is the amount
14 for the first violation currently?

15 MR. KUZNITZ: Right now first violation
16 on a residential violation for recycling is \$25.

17 COUNCIL MEMBER REYNA: And is the
18 current fine of \$25 on the first offense resulting
19 in compliance?

20 MR. KUZNITZ: Yes, in most cases it is.
21 We track -- using the handheld we're able to track
22 repeat violators and the numbers aren't
23 astronomically high at all.

24 COUNCIL MEMBER REYNA: And so I would
25 find that a \$250 on a second violation is quite

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2 steep considering that there is compliance on the
3 \$25. Why such a drastic increase?

4 MR. KUZNITZ: Because, again, when we -
5 - we found through the years when a new violation
6 comes out and we have a warning period, there is no
7 compliance for the warning period. When somebody
8 actually has to pay a fine, then they think twice
9 next time. When they get warnings, they're really
10 -- they don't care, you know, in a lot of cases.
11 Some people do. A lot of people just don't care
12 because their attitude is, well, they picked up my
13 garbage anyway. You know, here I'm getting a
14 warning for doing something wrong but yet it's
15 taken off the street.

16 We're not going to leave garbage there
17 or leave recycling that's contaminated until
18 somebody from the residence can come out and fix
19 it. The other problem we have with warnings is --
20 you know, in order to warn somebody, you have to
21 see them face to face. You should be able to talk
22 to them and explain what you're doing -- what they
23 did wrong. We ring the doorbell at a residence,
24 not everybody answers the door. And then we'll
25 just leave the violation, they'll see what's wrong.

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2 If they're still not sure, they'll call us, they'll
3 look on our website, they'll call an elected
4 official who will call us. But one way or the
5 other, we'll get the information to them.

6 COUNCIL MEMBER REYNA: Sure.

7 MR. KUTZNITZ: With a business, at
8 least you're walking into the business, you're
9 talking face to face with somebody, you can tell
10 them what the problem is. You can't do that with a
11 residence. They get warnings and then they go
12 outside and they look. Well, my recycling is gone
13 so I guess this must be a mistake or, you know,
14 they just throw it in, hopefully, the recycling
15 pail.

16 COUNCIL MEMBER REYNA: Thank you very
17 much.

18 CHAIRPERSON BREWER: Thank you for your
19 very detailed analysis, sir. We really appreciate
20 it. Council Member Chin.

21 COUNCIL MEMBER CHIN: Thank you. I
22 would like to -- I guess my question really is
23 going to focus on Department of Consumer Affairs. I
24 hope you have a representative here. I mean, in
25 the City we have a lot of, you know, immigrant

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2 businesses. There are language issues. And in my
3 case I wanted to like cite a couple of examples.
4 Like when an inspector goes into a store, are they
5 supposed to show their badge and let people know
6 their inspectors?

7 MS. NEWMAN: In some instances the
8 inspectors are acting as shoppers, so they're going
9 around the store and seeing whether the business
10 complies. And then when they -- ultimately when
11 they issue the violation, they will show their
12 badge. In other instances, they may show their
13 badge at the outset.

14 COUNCIL MEMBER CHIN: And when they
15 issue a violation, do they tell people that they're
16 giving them a violation?

17 MS. NEWMAN: They do explain what
18 they're doing. We have found that most of the
19 inspectors do try to achieve both the purpose of
20 educating the business as well as issuing the
21 violation.

22 COUNCIL MEMBER CHIN: My office has one
23 example where someone came into a hair salon and
24 was like asking about price for shampoo and stuff.
25 And I think the hair dresser answered, you know, \$8

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2 for short hair, \$9 for long hair. And then all of
3 a sudden later on she was handed a piece of paper
4 and asking her to sign. And then she realized
5 later on that it was a summons and that she had to
6 pay. And I don't think in that scenario where the
7 owner told us was they didn't know that they were
8 being issued a violation or what was the problem,
9 you know, what kind of sign should they have put up
10 there.

11 MS. NEWMAN: Yeah, I think based on
12 what you're saying, that's something that we should
13 spend some more time with the inspectors educating
14 them on. We do spend a lot of time training the
15 inspectors as to how to conduct inspections. And I
16 think, by in large, they do a really good job of
17 that balance between being enforcers of the law and
18 educators. But I will bring that back to the
19 agency and we can discuss that more with --

20 COUNCIL MEMBER CHIN: Well, yeah, I
21 mean, I would appreciate that. We have a lot of
22 cases, especially in the immigrant community when
23 there's a language barrier. I had another example
24 where it was a jewelry store. It was busy with
25 customers and someone came in and looked and one of

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2 the price was turned over, but you could actually
3 see the price if you look on the side. But, you
4 know, the owner said he didn't want us -- you know,
5 want them to take it out. And then at the end,
6 they told him to sign something and they were busy,
7 and later on they found that they issued like a
8 couple of violations.

9 I mean, it's like the businesses now
10 will have to take time off, you know, their hectic
11 schedule to go and fight it, right? So in some
12 ways, you know, small businesses are like looking
13 at these fines and say the City is raising, you
14 know, revenues from us -- from them. And they're
15 not getting the support they should be getting. So
16 it's sort of like -- I mean, they're doing that.
17 They're issuing violations and when they come in --
18 I guess it's the whole thing with the cure period
19 is that it's their way to really kind of educate
20 people and let them know what the problem is and
21 then come back another time and do the inspection
22 again. So that at least people learn that instead
23 of off the bat, you know, they get a ticket.

24 And that is really an issue. Because I
25 think if you look at it, you can tell us. I mean,

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2 how much money does the agency, Department of
3 Consumer Affairs generate through fines and
4 violations and number of, you know, summons that
5 are given out? I think that would give a broader
6 picture of how our small businesses are being
7 effected.

8 CHAIRPERSON BREWER: I'd also like to
9 know how many education visits have been done in
10 languages. So in other words, how many times have
11 people been in your district to educate the
12 hairdresser, et cetera?

13 COUNCIL MEMBER CHIN: I have never
14 gotten a call from Department of Consumer Affairs
15 to let me know that you're doing an education
16 visit. I would love, you know, for you to do that
17 and we can help publicize it.

18 CHAIRPERSON BREWER: We could pass a
19 law.

20 COUNCIL MEMBER CHIN: I mean, that's
21 what these small businesses are asking for. You
22 know, like -- and one of the question, I guess, to
23 follow with that is we're looking at the feedback
24 that we have gotten from small businesses that,
25 okay, if when something change, right, some policy

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2 change or some rules change, how do they get that
3 information? Do they have to go online to get it?
4 Like how does the agency notify these small
5 businesses that there was some change in the rule,
6 now they've got to post certain things or whatever?

7 MS. NEWMAN: Okay. You've raised a
8 number of questions so let me see if I can answer
9 them starting with the last question. When
10 businesses are licensees and there is a rule or law
11 changed, we do mail them notification of the law or
12 rule change.

13 CHAIRPERSON BREWER: In what language?

14 MS. NEWMAN: We generally do those
15 mailings, I believe, in English and we -- we do --
16 I can't -- I think that we need to follow up on the
17 specific language issue because we do do many of
18 our publications in multiple languages. We also do
19 inspections using Language Line with some
20 frequency. And we do hearings using Language Line
21 as well.

22 But I think that the question that you
23 started with about what kind -- how can we enhance
24 our already -- what I think are really good -- and
25 we're always trying to improve on how we reach out

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2 to small businesses in our educational efforts and
3 that's evident on our website. We have a lot of
4 open houses for businesses, when small businesses
5 can come to the agency and learn about the laws and
6 rules and those are great.

7 CHAIRPERSON BREWER: They don't go
8 because they're too busy though. I'm just saying.
9 Some do go. But we just have to work as a City. I
10 know you do a great job. But we need to work as a
11 City somehow to go to them too.

12 MS. NEWMAN: I think that we are very
13 open as an agency to thinking about ways to expand
14 our educational outreach. You've raised a couple
15 of issues with regard to how our inspectors conduct
16 inspections. I don't think that's the majority of
17 inspectors. It is something I will bring back to
18 the agency and we will discuss specifically the
19 types of concerns that you've raised to make sure
20 that we're actually using that inspection as an
21 opportunity to educate.

22 The Bill that we're talking about does
23 provide cures in situations where we think
24 providing a cure is appropriate. And I think that
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2 balance coupled with the expanded education efforts
3 will address some of your concerns.

4 COUNCIL MEMBER CHIN: I think to really
5 expand on the education, I'm willing to go with
6 you. I mean, to walk the community because the
7 small businesses are in all the different, you
8 know, council districts. We have a lot of
9 business, you know, improvement districts. We have
10 68 in the city that would probably also help do
11 that. Because one of the other items that we
12 listed here, I guess talking about the stoop line
13 stand, I mean, a lot of them are bigger than it
14 should be.

15 Within the immigrant community, for
16 example, if we did the education beforehand, this
17 way like the issue is out there, the warning is out
18 there letting people know what the law is, what the
19 rule is. And if you violate it afterward, then
20 they can't complain about getting a violation or a
21 ticket. It's really -- the education is not just
22 for individual businesses. It's for the whole
23 community, for the consumers to know what their
24 rights are. So it's really a comprehensive thing
25 so that we could support our own businesses, but we

1
2 also want them to follow the rules. But they do
3 really need to know what they are. And by kind of
4 like, you know, walking on the street and letting
5 them know this is what it is. And then you come
6 back a couple months later and you can re-inspect
7 again.

8 MS. NEWMAN: I think that the bill
9 takes a different approach to how cure periods will
10 be provided. You have raised other ways of
11 educating the community, more door to door. We do
12 work extensively with community groups, business
13 improvement districts and welcome suggestions on
14 how to expand our outreach. And as I said, we're
15 always looking for ways to enhance what is already
16 a very aggressive outreach and education component
17 of the agency.

18 COUNCIL MEMBER CHIN: But I think the
19 way to show how effective, you know, the agency's
20 outreach and education effort is if we see the
21 revenue, you know, generated from the fines goes
22 down. That's the only way to see that is working.
23 But I don't know. We really need to look at how
24 much revenue is the agency generating from fines.

1
2 I mean, that's really what we're going to have to
3 look at. Thank you, Madam Chin.

4 CHAIRPERSON BREWER: Thank you very
5 much. We've been joined by Council Member Vallone,
6 Council Member Eugene. Council Member Vallone has
7 a question.

8 COUNCIL MEMBER VALLONE: Thank you.
9 And I think a warning with a cure period is
10 probably the best way to educate someone. It gets
11 their attention and gets the job done.

12 I'm just outraged, outraged here today.
13 I apologize for being a little late. When they say
14 gridlock a workday, they're not kidding. Plus I
15 have another hearing next door. But I've been
16 getting caught up to what's going on here. And I
17 have been traveling around to the restaurants in my
18 district, the restaurant capital of the world
19 telling the help is coming. And I'm very -- I'm
20 lying because based on there's a couple signage
21 violations in here when it comes to restaurants.
22 You're telling me six months, that's all you can
23 find.

24 I mean, I just go out to eat and people
25 come up to me with these things. They've got a

1
2 violation for the wrong kind of garbage can in
3 their restroom. Garbage can in their restroom,
4 that's a public health situation, for having a
5 drain pipe too far away from the sewer? Three days
6 ago a business that opened up next door to me less
7 than a month ago got a violation for putting a sign
8 out. They didn't realize it was a no-tolerance
9 area. It wasn't bothering anybody. It was leaning
10 up against a building, but they got \$150 violation.

11 I'm not -- I didn't conduct a six-month
12 study. These people are coming up to me and I can
13 find these violations like that. But you guys
14 couldn't find anything but a signage violation when
15 it comes to restaurants. Is that what the
16 testimony is?

17 MS. NEWMAN: So I understand your
18 frustration. We actually hit on this earlier.
19 There is a panel that's been pulled together that
20 sounds like is going to be making recommendations
21 related to restaurants and public health as it
22 relates to DOHMH. I'm not familiar with that and
23 so I am going to look into that and I'm going to
24 come back to these two committees to provide some
25

1
2 more information. I apologize for not having it
3 today.

4 COUNCIL MEMBER VALLONE: Okay. I know
5 it's not your fault. You're relatively new too.
6 But this law doesn't provide for panels to be
7 formed in the next administration. It was supposed
8 to get the work done in this six months. And I
9 would highly recommend that this Committee add in
10 violations that it has found and not rely on the
11 Administration when it comes to this because
12 they've shirked their duty when it comes to helping
13 our restaurants and our restaurants can't wait to
14 2015. They needed help a long time ago. This help
15 was promised to them and I think we need to give it
16 to them immediately. So thank you.

17 CHAIRPERSON BREWER: I have one
18 question for Disney [sp?] again, which is that
19 without the handhelds how do you handle second and
20 subsequent violations because you may not know what
21 the first one was.

22 MR. KUZNITZ: Todd Kuznitz, Director of
23 Enforcement. The supervisors that issue handhelds
24 -- handwritten summons do not issue second or third
25 violations. Everything they issue is a first no

1
2 matter how many times the persons in violation
3 because we have no way of tracking it.

4 CHAIRPERSON BREWER: Okay. So very
5 good answer, but if you had the handhelds, then you
6 would.

7 MR. KUZNITZ: Yes, that's correct.

8 CHAIRPERSON BREWER: All right. We
9 need to get you handhelds. Okay. Anything else
10 over there? Anybody else? Thank you very much. I
11 think if we can leave you with one message, we're
12 all saying the same thing. We have got to do
13 education before we issue violations. And the A-
14 frame that Council Member Vallone just mentioned,
15 you know, I've had the same problem. You know, we
16 all think they know because we're insiders, but
17 they don't know. And we've got to find a way, even
18 to do this door-to-door discussion before we issue
19 violations. Okay. Thank you.

20 Next panel, Robert Bookman, James Ellis
21 and Victor Wong.

22 [Pause]

23 COUNCIL MEMBER REYNA: And you may
24 begin.

1
2 MR. BOOKMAN: I'm just a quiet talker.
3 I have no outdoor voice. Good morning. Robert
4 Bookman, Counsel to the New York City Hospitality
5 Alliance, the trade association that represents the
6 City's restaurants, bars, nightclubs and
7 destination hotels as well as the New York City
8 Newsstand Operator's Association, the trade group
9 that represents the small mom and pop sidewalk
10 newsstand operators and for 27 years attorney in
11 private practice representing small business in the
12 City of New York.

13 The City government is addicted to
14 fining small businesses. That's just a fact. You
15 all know it. And we need -- like all addicts, we
16 need to wean the addict off of their addiction.
17 This Bill is a very small but significant step in
18 the right direction of weaning the City off of the
19 addiction of fining businesses, an addiction that
20 has really skyrocketed over the last decade.

21 As we know in the hearings we've had on
22 health department where the fines went from \$12
23 million over \$52 million in a ten-year period.
24 Consumer affairs, similar increase numbers.
25 Sanitation, similar increase numbers. So the good

1 news here and the shocking news at the same time is
2 the number of violations that are included in --
3 that are just signed violations. Apparently the
4 report says something about 166,000 signed
5 violations issued by these agencies to businesses.
6 About 25 percent, if I recall, of all violations
7 that they've issued and in some agencies, Consumer
8 Affairs, I think there was a higher percentage of
9 their overall number of violations.
10

11 So on the one hand that's shocking
12 because that's really low hanging fruit to sign
13 violations. And on the other hand, we're talking
14 about a significant number of violations here that
15 if this bill was passed would work out with some
16 sort of no fine or, you know, a period of
17 correction. At \$100 to 200 depending on the agency
18 and depending on the sign, you know, we're talking
19 tens of millions of dollars, potentially over \$30
20 million. I mean ten million here, ten million
21 there, before you know it you're talking real
22 money.

23 But I'm also very disappointed in
24 what's not in the Bill. If you recall, you
25 originally gave them three months. They asked for

1
2 six and you compromised on four. So after four
3 months, they reviewed almost 3,000 violations and
4 they came up with 83. That's less than one-third
5 of one percent of all violations that they deem as
6 safe enough to issue a correction period, not even
7 warning, a correction period. At that time -- at
8 the time Public Advocate Deblazio [phonetic] was
9 saying he didn't think the Administration was
10 taking this Bill seriously. And I think in
11 retrospect, I think we can all agree, they did not.

12 We could sit here today in the next 30
13 minutes and come up with more than 83 violations
14 that could safely be done with warnings. And as
15 far as -- and if you're serious about adding some
16 in for the health department, I'll sit down with
17 your counsel, you know, in the next day or two and
18 come up with many, many health department
19 violations that we have talked about in these last
20 hearings that we've all agreed are not safety
21 related. A dented can on a shelf, a leaky faucet,
22 a cracked tile. The health department signs are
23 not even included in this Bill.

24 We've promised help is on the way this
25 year, not in 2015. And I think we have to add in

1
2 some health department violations that I think we
3 can all agree are non-critical, non-safety related
4 that could be cured in many situations in front of
5 the inspector, before the inspector walks out the
6 door. Now that's an education.

7 The other thing that is -- so those are
8 the two disappointments is that the very few
9 numbers that they came up with on violations, the
10 health department was excluded all together, both
11 you Councilman Reyna and Councilman Brewer both
12 expressed that, those disappointments.

13 And I think the last is in the
14 conversation you had with the sanitation official
15 concerning warnings and, you know, how complicated
16 it is and in some situations it doesn't -- it
17 doesn't make sense issue a cure period, let's say,
18 on a recycling situation. A warning, however, is
19 better in many situations. And I was hoping this
20 Bill -- we would be going towards warnings more
21 than cure periods. A warning is a real document
22 that the inspector is giving you, which by the
23 nature of it is an education going on, you know, to
24 answer Councilwomen Chin's issue.

1
2 Because they're saying that sign --
3 you're missing a sign or you're -- on a sidewalk
4 café, your planters I've now measured are 34 inches
5 high because it's summer and they've grown. And
6 the law says they can only be 30 inches high, so
7 you've got to like trim them by four inches.
8 That's a warning. You give them -- you give them a
9 piece of paper, you give them a warning. You say
10 we're going to be back within 30 days. And if
11 they're not down to 30 inches, you're going to get
12 a summons.

13 By issuing this Bill, it's still having
14 them issue those 166,000 summons and shifting the
15 burden to the businesses and each agency for them
16 to figure out how they're going to accept proof for
17 this cure. It's still -- and many agencies may
18 require half a day visit to the agency to show the
19 pictures that you know -- you know, you've now put
20 the sign up or the sign was up but the inspector
21 didn't feel it was a conspicuous enough location.
22 We get those violations too. I think we're aiding
23 more problems and not solving enough by having
24 these be cure periods as opposed to warnings.

1
2 A warning is very straightforward. We
3 were here. We think you're in violation of the
4 law. We're not giving you a summons this time.
5 This is what you need to do to correct it. Here's
6 a piece of paper that says what you need to do to
7 correct it perhaps. Or if you're not sure or if
8 we're not speaking the same language as you, here's
9 websites or phone numbers that you can call to find
10 out what you need to do to correct this, this thing
11 and as we say in the old days, we're done.

12 So I think we don't want to knock past
13 this because it's real dollars and ultimately
14 that's helping people. But I think it needs more
15 and it needs more warnings and less cures.

16 MR. ELLIS: Good morning, Chair Reyna
17 and Chair Brewer, Members of the New York City
18 Council Committee on Government Operations and
19 Small Business as well as guests. I'm James Dean
20 Ellis and I serve as Manager of Neighborhood
21 Economic Development Initiatives for Brooklyn
22 Chamber of Commerce.

23 I stand before you on behalf of Carlos
24 Scissura, our President and CEO of the Brooklyn
25 Chamber in support of replacing certain fines with

1
2 warnings or opportunity to cure. The Brooklyn
3 Chamber is a membership organization primarily
4 focused on business assistance, which represents
5 the interest of nearly 1,500 businesses in Brooklyn
6 and across the borough.

7 The Brooklyn Alliance is the not-for-
8 profit economic development organization of the
9 chamber, which works to address the needs of
10 businesses through direct business assistance
11 programming. Small businesses are important to a
12 healthy economy as they improve quality of life in
13 the communities within which they serve. They help
14 to close the unemployment gap and are a source of
15 revenue for government, thus contributing directly
16 to economic development. However, business owners
17 are being inundated with fines and fees from
18 various City agencies without clear understanding
19 of how they can be a good cooperative citizen and
20 avoid cost associated with non-compliance.

21 As such, we applaud your efforts in
22 facilitating this hearing to discuss ways in which
23 the New York City Council can work with businesses
24 to reduce the burden associated with fines. In
25 April of this year, the Brooklyn Chamber of

1
2 Commerce highlighted the plate of excessive fines
3 and regulations in the New York City Mayoral Forum
4 Candidates Issue Book, which we presented to all
5 the mayoral candidates in the race at the time. In
6 this report it was estimated to the New York City
7 Department of Consumer Affairs earns up to \$10
8 million in revenue each year from collecting fines.
9 There are also reports of businesses being fined
10 \$500 for lacking certain signage or \$100 for having
11 a chalkboard open in an incorrect position and
12 leaning against a store front.

13 In addition, every year the Chamber
14 surveys its membership to examine common issues
15 faced by the Brooklyn business community. This
16 data is then compiled and forms the basis of our
17 legislative agenda, which we present to elected
18 officials at the state and federal levels during
19 our lobbying trips. Within this survey respondents
20 are asked to rank the top ten obstacles to growth
21 and this issue, fines and regulations, has
22 consistently remained in the top ten. In 2012, it
23 ranked number nine with 37 percent of respondents
24 stating that it was problematic.

1
2 By replacing fines with warnings and
3 opportunities to cure, the working relationships
4 between government and small business can be
5 improved. And this perception that government is
6 not there to help but to only collect money and
7 deplete businesses of this valuable resource can be
8 changed. Again, we applaud the efforts of both
9 committees in hosting today's hearing. And we
10 sincerely hope that legislation is enacted to
11 provide relief from burdensome fines which
12 ultimately pose a threat to continued
13 revitalization of our city. Thank you very much.

14 MR. WONG: Good morning. And thank you
15 all for this opportunity. My name is Victor Wong
16 and I'm the Director of Business Outreach at the
17 Partnership for New York City. Over the past six
18 months, we've been working to develop Go Biz NYC, a
19 coalition of small business groups representing
20 over 25,000 small businesses across the five
21 boroughs. That's more than one in ten of all of
22 our City's small businesses.

23 Our supporters include prominent small
24 business leaders as well as Chambers of Commerce,
25 local development corporations, industry

1
2 associations and community based organizations. I
3 have met with many small business owners in my
4 outreach efforts and their biggest complaint by far
5 has been the high level of fines. New York City's
6 punitive regulatory environment adds to the already
7 high cost of doing business here and makes many of
8 these entrepreneurs feel unwelcome despite their
9 significant contribution to the city's communities
10 and local economy. Of the city's 220,000
11 businesses, nearly 89 percent or 200,000 have fewer
12 than 20 employees. Furthermore, half of the owners
13 of these small businesses are immigrants, meaning
14 many of them are relatively recent arrivals, do not
15 necessarily speak English and are unfamiliar of the
16 city's complex regulatory environment.

17 All of the business owners I have met
18 have expressed their eagerness to fully comply with
19 the law. After all, given that many of them
20 operate on razor thin margins, they need to keep
21 business cost low and want to avoid unexpected
22 fines. However, unexpected fines are exactly what
23 many small business owners are getting. The
24 current policy seems to expect these entrepreneurs
25 to already know and comply with the hundreds of

1
2 regulations that apply to their particular
3 businesses. As a result, many small business
4 owners are given expensive fined for violating
5 obscure laws.

6 This is built up a substantial amount
7 of friction between the city and small business
8 community. That's why many small business owners
9 feel the city is more interested in raising fine
10 revenue in the short term instead of working with
11 them to ensure that their businesses survive,
12 thrive and remain a reliable source of tax revenue
13 in the long term.

14 The proposed local law is an important
15 first step toward ensuring that the city shifts to
16 a policy of education and compliance by giving
17 small business owners the opportunity to learn
18 about and then correct certain first time, minor,
19 non-health violations before being penalized. We
20 support the proposed law, which will begin to
21 reduce friction between the city and the small
22 business community.

23 In fact, the analysis that proceed the
24 proposal incorporated the feedback of many small
25 business groups and leaders from our Go Biz NYC

1
2 network. WE encourage this type of engagement in
3 hope that the city will continue to be more open
4 and responsive to the needs of its small business
5 owners. Of course, more remains to be done to
6 support New York City's small businesses and make
7 it easier for them to navigate and comply with the
8 city regulations.

9 We propose that the Council consider
10 establishing a working group to do a regular
11 analysis of which violations to serve a cure period
12 and also which regulations can be consolidated or
13 even eliminated. The inspection process needs to
14 be more open and transparent so that when business
15 owners receive a notice of violation, they
16 understand exactly what they have done incorrectly
17 and how to correct it. It is also important to
18 ensure that the information about the regulations
19 the need to comply with is easily accessible and
20 comprehensible.

21 These are just a few of the many ways
22 to make the city more small business friendly.
23 Small businesses will always be an important part
24 of the city's economy and the city needs to do
25 whatever it can to make them help it here. We

1
2 appreciate the work you are doing on behalf of this
3 community and we look forward to collaborating with
4 you to tackle the challenges that remain. Thank
5 you.

6 CHAIRPERSON BREWER: Thank you. We've
7 been joined by Council Member Letitcia James. One
8 question I have, Robert, is for the 83 versus,
9 whatever it was, 3,000.

10 MR. BOOKMAN: 3,000.

11 CHAIRPERSON BREWER: Did you -- have
12 you done -- I know this is a very extensive
13 project, but have you done any analysis to see
14 others that you think should be part of the -- I
15 would say either warning or cure period?

16 MR. BOOKMAN: Yeah, sure. I've done it
17 for -- I did it for Speaker Gifford. I've done it
18 for Speaker Quinn. We've been doing it for years.

19 CHAIRPERSON BREWER: Okay. So you've
20 done that with -- and did you have any discussions
21 with the agencies, even though the regulatory panel
22 or afterwards about that list? I know you've been
23 bringing it up --

24 MR. BOOKMAN: The business community,
25 yeah. You know, our organization, the Chamber of

1
2 Commerce, we were all called into a meeting when
3 they had about half of their 90-day period, 120-day
4 period left, as mentioned in the report. And we
5 found -- quite frankly, we found that meeting very
6 lacking in scope and in seriousness.

7 We asked them at the time you're
8 halfway into this, please give us a -- you know,
9 where is the list of the stuff that you've come up
10 with, which is the ones that you've thrown out,
11 which are the ones are you considering? They had
12 nothing. They wanted us to come up with ideas. We
13 said we're not going to negotiate against
14 ourselves. Please give us a list before the
15 deadline of what you're considering and we'll be
16 happy to then respond to it and add to it. They
17 never did. It was the one obligatory meeting so
18 that it could be put in their report.

19 CHAIRPERSON BREWER: Was anybody from
20 the city council at that meeting?

21 MR. BOOKMAN: No.

22 CHAIRPERSON BREWER: Okay. Next time
23 invite us, whether the agencies do or not.

24 MR. BOOKMAN: I can't invite you to --
25

1
2 CHAIRPERSON BREWER: No, no, I'm just
3 saying -- people invite us all the time. They
4 don't -- there's ways of inviting.

5 Second question, just on the language.
6 Council Member Chin brought it up. When I went
7 around with DCA, I could see the language issues
8 were there. I neglected to ask them, but we will,
9 for a copy of whatever they send out, the indicated
10 they send something out to the businesses. We want
11 to see a copy of that, what language it's in, et
12 cetera, et cetera. You probably know what it is,
13 but I want to get it directly from the agency.

14 MR. BOOKMAN: I -- you know, Counsel
15 Tepper is an excellent counsel and I enjoy working
16 with her, but she may be mistaken on that answer.
17 I don't recall Department of Consumer Affairs or
18 any agency ever sending out a notice to all its
19 licensees that new law is in effect or that a new
20 rule is in effect in any language.

21 CHAIRPERSON BREWER: That's how we're
22 going to ask for it.

23 MR. BOOKMAN: I certainly as -- you
24 know, supposed to get those things as registered as
25 counsel and I -- you know. We just passed a

1 newsstand legislation. The effective date went in
2 with \$5 to \$10. Obviously, I let my members know
3 but they didn't receive anything from Consumer
4 Affairs. Even on good news. Good news, new law.
5 You know, so I don't think that happens.
6

7 CHAIRPERSON BREWER: Okay. That's why
8 we're going to ask for it. I've never seen it
9 either. My other question is what do you think --
10 help me to understand a little bit more. I'm from
11 the education. I feel really strongly about it,
12 which is sort of what you're talking about when you
13 say warning. Maybe those are indistinguishable
14 situations, although education doesn't include the
15 writing discussion, warning does. So help me to
16 understand how you think that can work as opposed
17 to cure.

18 MR. BOOKMAN: You know, I agree with --
19 I agree with you on that. And I've said it in
20 testimonies before that from my days when I left
21 city government -- I was at Consumer Affairs. When
22 I left city government 27 some-odd years ago, in
23 the years I was there I was counsel, I was director
24 of adjudication. The focus was on compliance. We
25 considered, you know, when we went up against a

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2 business that was violating, whether it was the
3 consumer protection law or any of the rules and
4 regulation, that we won when we got the business to
5 comply. And the fine or the assurance of
6 discontinuance or the stipulation that we signed
7 was secondary just to get something in writing with
8 them. It's clear to me over the years that the
9 public policy has shifted from compliant --
10 education and compliance to fines.

11 CHAIRPERSON BREWER: Well, we know that
12 already.

13 MR. BOOKMAN: And whether -- and
14 there's often not even any follow up on whether
15 there is compliance or not. They'd rather issue a
16 second violation or a third violation. They're not
17 -- they don't care about whether there's
18 compliance. It's not the public goal. So how do
19 you do it?

20 There are too many -- I think there are
21 too many businesses to really realistically --

22 CHAIRPERSON BREWER: Going door to
23 door.

24 MR. BOOKMAN: -- expect them going door
25 to door. And like you said, they can -- if they

1
2 do, six months later it's a whole new cast of
3 characters that they have to go door to door. I
4 truly believe that a warning, crafted properly, is
5 the best methodology for government to be educating
6 with small businesses because it says what the
7 problem is, it says how you can cure it.

8 CHAIRPERSON BEWER: So it might be one
9 thing for businesses, because that's where the
10 gentleman from sanitation made sense. I mean, I'm
11 not home a lot.

12 MR. BOOKMAN: Yeah, I don't know about
13 residence.

14 CHAIRPERSON BEWER: I know, but I'm
15 just saying. So you have to have maybe two
16 different systems, one for businesses and one for
17 residences because residents are often not home.

18 MR. BOOKMAN: I'm sure you do.
19 However, having said that, if I came home -- if I
20 had a private house in the city and I came home and
21 there was a sticker on my front door from the
22 Department of Sanitation in bright yellow saying
23 warning, you know, you saved \$100 bucks today
24 because you got a first-time warning, I think
25 people would read it.

1
2 CHAIRPERSON BREWER: Uh-huh, okay. All
3 right. Those are good issues. Council Member
4 Reyna.

5 COUNCIL MEMBER REYNA: Thank you so
6 much. I wanted to just take a moment to understand
7 this midway consultation with stakeholders in the
8 business community who were brought in by the
9 Administration but the Council was left out. And
10 not that that's your responsibility, but it would
11 have been nice to, in partnership, be informed that
12 you were being called in to comply with what would
13 be an exercise that would assist you having
14 responded to what was Local Law 35.

15 And I wanted to just get an
16 understanding if all three of you were at that
17 meeting?

18 MR. BOOKMAN: Brooklyn Chamber of --
19 Carlos was. We were. We thought -- my
20 understanding was that was part of the requirement
21 that they meet with us.

22 COUNCIL MEMBER REYNA: Let me just
23 continue. Were any of you consulted by the
24 Administration about the advisory panel during that
25

1
2 discussion? That is supposed to be formed and --
3 for restaraunts?

4 MR. BOOKMAN: No.

5 COUNCIL MEMBER REYNA: And was an
6 advisory panel ever brought up?

7 MR. BOOKMAN: No.

8 COUNCIL MEMBER REYNA: Was there a 2015
9 date?

10 MR. BOOKMAN: No.

11 COUNCIL MEMBER REYNA: And is there a
12 document listing your proposed violations that were
13 submitted to this group of agencies through the
14 Mayor's Office of Operations as submitted by you as
15 stakeholders in this meeting?

16 MR. BOOKMAN: No. We had some, but --

17 COUNCIL MEMBER REYNA: But you said no
18 and you said yes. If you could just speak into the
19 mic. Robert. Identify yourself.

20 MR. BOOKMAN: Different people did.

21 COUNCIL MEMBER REYNA: You did not.

22 MR. BOOKMAN: I did not submit
23 anything.

24 COUNCIL MEMBER REYNA: And have you
25 submitted it to the council?

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MR. BOOKMAN: No.

COUNCIL MEMBER REYNA: Okay.

MR. ELLIS: I'm unaware if the Chamber has submitted any information to that effect.

COUNCIL MEMBER REYNA: And identify yourself.

MR. ELLIS: I'm James Ellis.

COUNCIL MEMBER REYNA: Thank you, James.

MR. WONG: And Victor Wong. We did submit some proposals.

COUNCIL MEMBER REYNA: And did you submit them to the Council?

MR. WONG: No.

COUNCIL MEMBER REYNA: Okay. This meeting, was it prior to the advisory board bill passing?

MR. BOOKMAN: No, this was after it passed and part of -- my understanding is part of the bill is they were supposed to meet -- we assumed the Council was aware of this. They were supposed to meet with stakeholders to --

COUNCIL MEMBER REYNA: The Administration.

1
2 MR. BOOKMAN: Because the Bill required
3 them, in four months, to report back to you. And
4 part of that was in the conversations back and
5 forth. I was led to believe that the Council
6 agreed with them that they would meet with
7 stakeholders to -- you know, prior to them issuing
8 their report to you, you know, to get our input.
9 So to us it wasn't a secret meeting, it was part of
10 the whole process.

11 We just had a lot of disagreement at
12 that meeting because we felt that they -- it was a
13 perfunctory meeting where they did not have a
14 single recommendation yet to show us. And my
15 feeling was that I was not going to give them a
16 list that, therefore, they would say was an
17 exhaustive list. I never thought in a million
18 years they were going to come up with only sign
19 violations, I've got to tell you. You know, having
20 -- you know, in retrospect I would have rethink
21 [sic] it.

22 COUNCIL MEMBER REYNA: Robert, can you
23 just share with me why wasn't that list not
24 submitted to the Council at the very least?
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2 MR. BOOKMAN: I never submitted any
3 list to them, to anybody.

4 COUNCIL MEMBER REYNA: To our Council.

5 MR. BOOKMAN: I was never asked.

6 COUNCIL MEMBER REYNA: As a
7 representative of the Restaurant's Association,
8 wouldn't that be your duty to submit what would be
9 that list?

10 MR. BOOKMAN: No, because the bill you
11 passed was -- which I had some questions about, as
12 you recall. The bill you passed was that you guys
13 felt that you could not on your own come up with a
14 list to do legislation. So the bill you passed was
15 an interim step where you said the Administration
16 should do it and that they would report back to
17 you. It wasn't --

18 COUNCIL MEMBER REYNA: So, Robert, as
19 far as the Restaurant Association and this list --

20 MR. BOOKMAN: The Hospitality Alliance.

21 COUNCIL MEMBER REYNA: And Hospitality
22 Alliance. What were you supposed to do with this
23 list that exists?

24 MR. BOOKMAN: I don't know what list
25 you're referring to.

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2 COUNCIL MEMBER REYNA: The one that you
3 referred to.

4 MR. BOOKMAN: I didn't refer to any
5 list.

6 COUNCIL MEMBER REYNA: Okay. So
7 there's no list?

8 MR. BOOKMAN: There is no list, only
9 their report.

10 COUNCIL MEMBER REYNA: So then do you
11 except the Administration's list as definitive?

12 MR. BOOKMAN: No, I think it's a joke.

13 COUNCIL MEMBER REYNA: So what -- what
14 are you submitting as your recommendations? You
15 have none?

16 MR. BOOKMAN: I was asked to comment on
17 a piece of legislation. We're commenting on that
18 piece of legislation. I you're asking the
19 industries and the business alliances to come up
20 with a list of violations that we think should be
21 in this legislation, we'll all be happy to do so
22 and we'll be happy to do it quickly.

23 COUNCIL MEMBER REYNA: That is exactly
24 what I'm asking for.

25 MR. BOOKMAN: We're happy to do it.

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2 COUNCIL MEMBER REYNA: I'd like to
3 review that in a very timely manner.

4 MR. BOOKMAN: Absolutely.

5 COUNCIL MEMBER REYNA: And it would
6 assist us in continuing the efforts that we've been
7 discussing for four years considering the fact that
8 there's this advisory board bill that passed. You
9 are very well aware of the advisory board, correct?

10 MR. BOOKMAN: This Health Department
11 Advisory --

12 COUNCIL MEMBER REYNA: The advisory
13 board bill that was supposed to --

14 MR. BOOKMAN: Right. Yes.

15 COUNCIL MEMBER REYNA: You are aware of
16 it?

17 MR. BOOKMAN: Correct.

18 COUNCIL MEMBER REYNA: And is it your
19 understanding that the function of that advisory
20 board -- complete the sentence if you can.

21 MR. BOOKMAN: The function of that
22 advisory board was to continue with and expand upon
23 what was supposed to be in this bill for the health
24 department. This bill was -- and you were
25 correcting your initial statement. Did not exclude

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2 the health department, they unilaterally excluded
3 themselves. In this bill they were supposed to
4 come up with some recommendations for you for the
5 health department. We all thought there would be
6 some there. We were shocked that there was none.
7 The --

8 COUNCIL MEMBER REYNA: So is it fair to
9 say that --

10 MR. BOOKMAN: The next thing they're
11 supposed to expand upon looking at other aspects of
12 the health code to see where they could be changed
13 to be more business friendly.

14 COUNCIL MEMBER REYNA: More business
15 friendly towards restaurants so that --

16 MR. BOOKMAN: Yes.

17 COUNCIL MEMBER REYNA: -- there was an
18 agreement is what I'm hearing you say to me and
19 this committee, both committees, is that there was
20 an agreement that restaurant associated fines and
21 violations would be looked at through this advisory
22 board later.

23 MR. BOOKMAN: In addition to this
24 legislation.

25 COUNCIL MEMBER REYNA: Later.

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MR. BOOKMAN: More, yes, more or later.

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COUNCIL MEMBER REYNA: You agree to a 2015 date?

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MR. BOOKMAN: Well, the legislation says it. Whether we agreed or not is kind of irrelevant. That's what the legislation has and that's -- and we supported that legislation. It's part of a whole package of health department reforms, if you recall, that -- and one of this was this panel that the industry is supposed to be a part of. And this panel is supposed to look at the entire health code and look at -- and the entire inspection process and make recommendations to the health department and to you.

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So, for example, you know, letter grades, look at how that's operated and --

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COUNCIL MEMBER REYNA: In 2015?

MR. BOOKMAN: Yes. But at no point was anybody -- at no point did that -- and it couldn't have because it came later. This bill was passed long before the bill you're referring to was passed. So at no point did the subsequent bill retroactively, you know, exempt the Administration

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2 from including some health department violations in
3 this bill. And that seems to be what --

4 COUNCIL MEMBER REYNA: Has happened.

5 MR. BOOKMAN: What has happened. And
6 it's really not connected because they were well
7 into their four-month deadline by the time that
8 bill even had a hearing. So unless they were
9 clairvoyant, they couldn't have known that. So
10 this is truly on their -- the health department's
11 own, with all due respect, arrogance deciding that
12 there is not a single thing in the entire health
13 code that could be a warning because if we do it,
14 it must be public safety. Did the sarcasm come
15 through there?

16 COUNCIL MEMBER REYNA: You are prepared
17 to submit the list?

18 MR. BOOKMAN: We're prepared to create
19 a list and submit it to you as quickly as Council
20 wants to -- I believe we have a meeting, an
21 informal meeting of our group early next week to do
22 just that, to come up with a list. We thought for
23 the next --

24 COUNCIL MEMBER REYNA: Well, I would
25 think that you already have a list.

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2 MR BOOKMAN: No, we don't. There is no
3 secret --

4 COUNCIL MEMBER REYNA: So for the last
5 four years there has never been a list that you've
6 been compiling?

7 MR. BOOKMAN: Correct. I mean, we can
8 create one awfully quickly.

9 COUNCIL MEMBER REYNA: And I just want
10 to be very sensitive to the timeline here. We have
11 to be aggressive with your opportunity to work
12 around the clock to submit those recommendations.
13 And so I want to make sure that you understand that
14 timeline and after this hearing if you could just
15 remain. Not only speak to Counsel to Government
16 Operations but speak to my Counsel, Jeffery
17 Campana, because there has to be an effort to
18 submit all recommendations and then a vetting
19 process with the Administration that gives us ample
20 time, the stated day for this bill where we were
21 planning on voting this out is going to be the 19th
22 of December. Thank you very much.

23 MR. BOOKMAN: Thank you.

24 CHAIRPERSON BREWER: Council Member
25 Chin.

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2 COUNCIL MEMBER CHIN: Thank you. I'm
3 glad we had this discussion and we're looking
4 forward to see, you know, your contribution, you
5 know, to putting together that list. I guess my
6 question is -- you know, because you've been
7 talking to a lot of the small business, restaurants
8 and -- I mean, have some of the businesses, you
9 know, mentioned to you like how many times they
10 have gotten visited from different agencies and
11 whether like these are regular visit or they just
12 like they pop in whenever they feel like it, once
13 or twice a year or is it once a year?

14 MR. BOOKMAN: Not really. I mean, you
15 know, obviously small businesses once a year is too
16 many, one time too many. But for regulatory
17 purposes, you know, they need to be visited. I
18 know a lot of these agencies are complaint driven
19 and, you know, they respond when they've got some
20 sort of complaint. But others like Consumer
21 Affairs, they'll go visit like every sidewalk
22 newsstand at least once a year, you know, even
23 though there's never a complaint about a sidewalk
24 newsstand, so I think it's a mixture.

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2 CHAIRPERSON BREWER: Wait, wait, wait.
3 Wait. Sometimes there's complaints about sidewalk
4 newsstands.

5 MR. BOOKMAN: Oh, yeah. All right.
6 None that are in the association. Restaurants,
7 obviously, especially since the letter grades,
8 complained the most about the frequencies of
9 inspection and that the whole letter grade system
10 many of them feel is a scheme to get more -- get
11 more inspections in the course of a year, you know,
12 and generate more fines.

13 COUNCIL MEMBER CHIN: Well, I guess, we
14 will follow up with the agency to see what they
15 sent to, you know, the small businesses when they
16 say that those rules change and they send. Because
17 the complaint we've heard is that people don't know
18 what the changes are. And the other thing is when
19 a small business, just getting started -- you know,
20 when they go to Department of Consumer Affairs,
21 whatever, to apply for the license to open up their
22 business, are they giving -- are they giving all
23 the information, the signs and everything that they
24 are supposed to put up or --

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2 MR. BOOKMAN: Well, they are given a
3 packet. Attached to the license application packet
4 is a copy of all the laws and rules for that
5 license category, in English only. And if you're a
6 lawyer, you know, you can get through it. And if
7 you're not, it's daunting. It's not in plain
8 English. It's a copy of the laws and the rules
9 that you guys pass and they pass. So it's in
10 legalese and it's not simple. And they do not
11 necessarily attach all of the signs and stuff. I
12 mean sometimes yes, sometimes no.

13 COUNCIL MEMBER CHIN: So, I guess, I
14 mean, it would be better if they do include all the
15 signs that this business is supposed to post up so
16 people don't have to go around and create their own
17 sign and then get ticketed for not having the right
18 language that sends that message. I mean, this is
19 what we've heard for --

20 MR. BOOKMAN: I think that's a no
21 brainer.

22 COUNCIL MEMBER CHIN: Yeah. And also, I
23 guess, in terms of really having a more simple way
24 of -- a fact sheet that can lay out exactly the
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2 essence of the law that any small business owner
3 would be --

4 MR. BOOKMAN: I think that's a -- Gail
5 - Council Member -- Borough President. I don't
6 know what to call you anymore.

7 CHAIRPERSON BREWER: Gail.

8 MR. BOOKMAN: Gail, I think that's an
9 excellent idea that's now thought of. As far as --
10 it's on the education front. Since every new
11 business, at least -- we can't go retroactively but
12 on every new business, as part of that application
13 package that they pick up, a plain language cover
14 sheet about the highlights of the laws and how do
15 you comply would be a great idea.

16 COUNCIL MEMBER CHIN: And also include
17 all the signs that --

18 MR. BOOKMAN: Yeah, like they include
19 like their sign, you know, that you have to post
20 but they won't give you a facsimile, for example,
21 of what a new refund policy sign might look like or
22 the very many other signs that the law might
23 require as opposed to the DCA sign. They won't
24 give you the DCA sign, but then you'll get a
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2 violation for your refund policy is not adequately
3 worded.

4 CHAIRPERSON BREWER: Well, the other
5 thing is I think that NBAT needs to be expanded.
6 They do a great job.

7 MR. BOOKMAN: They do definitely need
8 to be expanded and they definitely do a great job.

9 CHAIRPERSON BREWER: I don't know if
10 you've worked with them, but they are excellent but
11 they only have so much staff.

12 MR. BOOKMAN: Yeah, I hope the new
13 Administration recognizes their importance and --

14 CHAIRPERSON BREWER: I would triple
15 their staff and --

16 MR. BOOKMAN: And broadens them.
17 Mostly they've been concentrating in my industry,
18 the hospitality industry. They are unbelievably
19 great.

20 CHAIRPERSON BREWER: They are great.

21 COUNCIL MEMBER CHIN: Okay. Thank you.

22 CHAIRPERSON BREWER: Council Member
23 Vallone. Oh, sorry. Go ahead.

24 MR. ELLIS: I just want to respond to
25 Council Member Chin's inquiry about certain

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2 repetitive inspections. Speaking from just an
3 example in the experience that I've had. One
4 particular restaurant that I do interface with
5 quite regularly had no less than six inspections in
6 16 months. It became this cyclical nature of
7 inspection --

8 CHAIRPERSON BREWER: Was it complaint
9 driven or you don't know?

10 MR. ELLIS: It didn't appear to be
11 complaint driven. It was just the cyclical nature
12 of the way this community as being inspected. And
13 there would be an inspection, there would be a
14 compromise of a letter grade. The proprietor would
15 up his letter grade, of course, for good standing
16 in the community, go to the appeal, pay the fines
17 or appeal the fines that were happening. And then
18 within a short amount of time following that, would
19 be re-inspected again and have to go through this
20 process again.

21 So it was -- it was -- with all
22 seriousness that I can recall, it was no less than
23 six times in 16 months. This was Red Hook.

24 CHAIRPERSON BREWER: Council Member
25 Vallone.

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COUNCIL MEMBER VALLONE: Thank you.
The open chalkboard you mentioned was the exact same thing that happened to the guy next to me. Instead of leaning on his building, it was open. And he just started the business a week earlier and got the fine. And it makes too much since, Rob, I'll call you, what you say about giving a warning and saying we'll be back in 30 days. There's clearly not any business people working on this over there on the mayor's side because they would understand that it would be cheaper for the business to pay the hundred buck then to come down and to show some sort of a cure to their violation, which they shouldn't have received in the first place.

So I would hope that we take your advice on that and issue a warning first before the violation is even issued. That makes more sense. But there aren't a lot of business people on the Council either. There's like three and none of them own restaurants that I know of. I could be wrong. So I can't tell you the importance of getting us a list yesterday. As I said, we don't know about broken tile violations unless you tell

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2 us. And it's maybe too late already. And I'm not
3 thrilled about that.

4 But you guys have to get it to us as
5 soon as possible. I know you didn't want to
6 negotiate against yourself and give the mayor a
7 list so they wouldn't go any further than your
8 list, but at some point you've got to take it upon
9 yourselves to get us a list. You know, we're not
10 business people and we're working on a billion
11 different bills that don't have anything to do with
12 the restaurant industry and then you have this one.
13 And so you've got to get us a list as soon as
14 possible so that hopefully we can still put some of
15 that in.

16 It may be too late. I mean, I'm gone.
17 I don't know if anyone else -- Gail will still be
18 around to help you, but she's gone from the
19 Council. Diane is gone from the Council.
20 Margaret.

21 MR. BOOKMAN: Too many good people
22 gone.

23 COUNCIL MEMBER VARALLO: Well, we
24 wanted -- I wanted to help you and, you know,
25 unfortunately, we're not going to give all the help

1
2 that we wanted to give. It's going to be a little
3 bit of help.

4 MR. BOOKMAN: One issue, you know, that
5 I'm concerned about, Council, is this bill can only
6 require warnings on administrative code not rules?

7 CHAIRPERSON BREWER: It's code.

8 MR. BOOKMAN: Is it?

9 COUNCIL MEMBER REYNA: It's both. It's
10 always been both.

11 MR. BOOKMAN: Okay. Because majority
12 of our list are rules, not add code stuff.

13 COUNCIL MEMBER REYNA: I just want to
14 share. You know, it's very frustrating and
15 disappointing to have the same conversation over
16 and over again. And I understand that the small
17 business community it becomes very challenging to
18 leave the businesses alone with workers and then
19 not -- and be self-supervised, right. So the
20 Associations are supposed to represent them. It's
21 incumbent upon the Associations to continue to work
22 with the Council knowing how much effort has been
23 put into this.

24 And I feel like the conversations
25 continue to go around in circles with very little

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2 results. And it's because there's never this
3 comprehensive dialogue that produces what would be
4 actual written recommendations. And that cannot
5 continue to be the case. And I will not sit here
6 and expect that. And I am in need of the
7 cooperation of the small business community and its
8 representation to submit that.

9 And it is not incumbent upon me to do
10 that because I want to hear from the small business
11 community, not the other way around. You're tired
12 of hearing from government imposing on you, so then
13 don't let that be the case.

14 MR. BOOKMAN: Got it.

15 COUNCIL MEMBER REYNA: Thank you very
16 much.

17 COUNCIL MEMBER VARALLO: I was just
18 finishing up. And I think the Chairs have asked
19 all the questions I was going to ask. And I want
20 to thank them for working so hard on this, all of
21 you. This is really important to the restaurants
22 in my neighborhood. I can barely go out to eat,
23 especially on 30th Avenue, without an owner sitting
24 down next to me and just complaining the entire
25 time I'm there. And they have a lot of common

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2 sense recommendations, as we've just heard from Mr.
3 Bookman. And if we don't get them done now, I'm
4 sure Margaret and Gail as borough president, will
5 continue to make sure these things get done with
6 the next Administration, which may be a little bit
7 more in touch with our small businesses, which
8 doesn't make any sense but may actually be true.

9 And so thank you for what you've done
10 up to now. It's been a pleasure to work with you
11 for the last 12 years. I don't know if we'll have
12 another hearing. And I look forward to getting
13 this done. Thank you all.

14 CHAIRPERSON BREWER: Thank you very
15 much. And I want to thank Diana Reyna. And I want
16 to thank all of the Committee staff for making this
17 possible. This is an incredibly important issue
18 and it's not done yet. I hope that in your
19 recommendations that you include the expansion of
20 NBAT because I think that that needs to be said
21 over and over again and that would help Diana Reyna
22 in terms of issues that need to be addressed.

23 Because I don't think we can do this
24 education without the support of more staff. And I
25 have no idea of the relationship between the staff

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2 that does the inspection, the staff that does the
3 education. I know that when I went out with DCA,
4 it was not an inspector. It was somebody who was
5 knowledgeable but not an inspector because it
6 didn't have enough to do that education and the
7 inspection. So, again, it's the cultural shift. I
8 mean, if we do more education, then we don't have
9 to do as many inspections because they'll be
10 educated and they won't make a mistake. So these
11 are all the questions that we need to address.

12 Thank you very, very much. We are
13 finished.

14 [Gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. 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.



Date 01/06/2014