

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON SMALL BUSINESS

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January 30, 2019
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HELD AT: 250 Broadway - Committee Rm.
14th Fl

B E F O R E: MARK GJONAJ
Chairperson

COUNCIL MEMBERS: Diana Ayala
Stephen T. Levin
Bill Perkins
Carlina Rivera

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

Jackie Mallon, First Deputy Commissioner, New York City Small Business Services

Steven Pinker, Executive Director of Food Service Industry Partnership, New York City Small Business Services

Andrew Rigie, Executive Director, New NYC Hospitality Alliance, Food and Beverage Hospitality Council & Chair of New York City Nightlife Advisory Board

Robert Bookman, Attorney & Appointee on Health Department Advisory Board & Appointee to Nightlife Advisory Board

Kathleen Riley, New York City's Admin Relations Coordinator, New York State Restaurant Association

Frank La Corte, Podama (sic) Restaurant East Midtown Partnership BID Uptown

Peter Fahey, Saint Pat's Bar & Grill

Peter Fitzpatrick, Allied Management

Jim Quint, Duncan Brands

2 [sound check] [pause] [gavel]

3 CHAIRPERSON GJONAJ: Good afternoon. I
4 am Council Member Mark Gjonaj, Chair of the Committee
5 of Small Business, and I'd like to welcome you to our
6 hearing on the restaurant industry, the very
7 important restaurant industry. Thank you for making
8 time for us today. Mom and pop restaurants are
9 beloved institutions in neighborhoods across the city
10 whether it's a diner, a pizzeria, a local café or a
11 quick service restaurant, the news we share these
12 places and the hospitality of the people that run
13 them and enable individuals and families to form
14 memories and bonds of affection that span
15 generations, but recent years have not been kind to
16 the local entrepreneurs who are small business owners
17 many of which are Minority and Women Owned
18 Businesses. Rents have skyrocketed [coughs] lower
19 costs—labor costs have nearly doubled, and new
20 policies have upended a regulatory climate that has
21 not been particularly stable to begin with. According
22 to data from the Federal Reserve, first service
23 restaurants in New York City have shed roughly 2,000
24 jobs over the last two years. Just last year iconic
25 institutions such as Casa Mia to TF Fratz (sic) and

2 Carmuda (sic) Café all closed their doors. The
3 Department of Social Service operates a number of
4 programs that are designed to facilitate not only the
5 grown and development of food service establishments,
6 but also steers developers and aspiring
7 entrepreneurs. I'm excited to learn from the
8 perspective, experience and data provided by SBS, the
9 roughly 24,000 restaurants New York served as an
10 important entry point into the labor force for
11 thousands of individuals including myself. In fact,
12 1 in 3 people get their first job in the restaurant
13 industry. Restaurants are a major draw for tourists
14 and provide nourishment for New Yorkers. I'd like to
15 see city agencies doing everything in their power and
16 everything t hat works so that this sector can expand
17 rather than stagnate or be run out of town by over-
18 regulation and taxation. Regulations like the Fair
19 Work Week package passed in 2017 are actually hurting
20 the very people they intended to serve. These
21 mandates on small businesses while well intended are
22 overly restricted and financially burdensome while
23 adversely affect the day-to-day operations. We can
24 agree that the concept of providing two weeks advance
25 schedule notice helps employees. However, additional

2 rules that penalize small business owners forcing
3 them to pay fines or premium pay for employee looking
4 to fill a shift actually prevent their shifts from
5 ever being filled. This means fewer hours for
6 employees who want to make extra money, and an
7 increased workload on those employees on shift while
8 understaffed. I'd like to thank the committee staff,
9 Counsel Irene Valosky; Policy Analyst Michael Kurtz;
10 as well as my Chief of Chief Reggie Johnson; and my
11 Legislative Director Durban Zimbali for making this
12 hearing possible. Finally, I'd like to recognize the
13 Committee Chair—committee members that are here with
14 me, Council Member Ayala and others that will be
15 joining us. Thank you for being here. Our first
16 panel SBS Jackie Mallon and Stephen Pinker. Can we
17 swear you in?

18 DEPUTY COMMISSIONER MALLON: Yes.

19 LEGAL COUNSEL: Do you affirm to tell the
20 truth, the whole truth, and nothing but the truth in
21 your testimony before this committee, and to respond
22 honestly to Council Member questions?

23 DEPUTY COMMISSIONER MALLON: I do.

24 LEGAL COUNSEL: Thank you.

2 Is this working? I can't tell. Yes so
3 good to go?

4 CHAIRPERSON GJONAJ: Good.

5 DEPUTY COMMISSIONER MALLON: Alright.

6 Good afternoon Chair Gjonaj and members of the
7 Committee on Business. My name is Jackie Mallon and
8 I'm the First Deputy Commissioner of the New York
9 City Small Business Services. At SBS we aim to
10 unlock economic potential and create economic
11 security for all New Yorkers by connecting them to
12 quality jobs, moving stronger and fostering thriving
13 neighborhoods across the five boroughs. I'm joined
14 by my colleagues Steven Pinker, the Executive
15 Director of Food Service Industry Partnership. Today
16 I'm pleased to testify on our support of the New York
17 City restaurant industry. There are well over 20,000
18 restaurants in the New York City employing over
19 270,000 New Yorkers. Restaurants are present in
20 almost neighborhood and are essential to our city's
21 identity. To assist restaurant owners, SBS offers
22 many resources that help them start, operate and
23 grown. Our services to support restaurants include
24 our Client Management and Compliance Advisory
25 Services, which help restaurant owners navigate the

2 regulatory process and ensure they're in compliance
3 with regulations necessary to maintain public health
4 and safety. We also help restaurants owners access
5 capital, hire new employees and fund employee
6 training through NYC Business Solution Centers. On
7 an average annual basis, SBS helps open up roughly
8 500 restaurants, fill nearly 3,000 open positions at
9 restaurants and connect about 100 restaurants through
10 around \$4 million in financing. SBS also works
11 directly with the industry—restaurants industry
12 through our industry partnership known as the NYC
13 Food and Beverage Industry Partnership, which is made
14 up of 30 New Yorker restaurants industry leaders, key
15 professional associations and community based
16 organizations that focus on skills training. The
17 partnership allows us to work directly with the
18 industry on priority issues impacting both employers
19 and workers to support the growth of the industry.
20 Key priorities include helping restaurants navigate
21 the regulatory environment addressing the demand for
22 skilled workers, and providing support to adapt to
23 the rising costs of doing business in—in the city.
24 While protecting public health and safety is
25 essential, we know that government regulations are

2 sometimes not totally clear or straight forward for
3 business owners. This is particular true for
4 restaurant operators who typically interact with
5 multiple regulatory agencies. One of the first
6 efforts to address the regulatory concerns of
7 business was the Small Business First Initiative
8 launched in 2015. The Mayor's multi-agency effort
9 including DOHMH, FDNY, DCA, DOB and DSNY helps
10 businesses understand comply with city regulations,
11 reduces the regulatory burden on businesses and
12 ensure equal access to-to city support for all
13 business owners. We developed SBS 30 commitments
14 based on the feedback from hundreds of business
15 owners. Some of examples of the ways we would help
16 business save time and money include: Creating an
17 online portal where businesses can see all their
18 interactions with the city; launching a first of its
19 kind compliance consultation program; streamlining
20 regulatory agency processes. The NYC Business
21 Portals had more than 70,000 accounts created with a
22 monthly average of more than 100,000 new visitors
23 since launching. To provide direct support to
24 businesses, SBS cross-trained new staff called
25 Compliance Advisors in the regulatory requirements of

2 various agencies. Armed with this information, these
3 compliance advisors were able to complete more than
4 2,600 on-site consultations for restaurants helping
5 these building owners to avoid common violations
6 before their inspections. SBS has also worked with
7 agencies and Council to streamline time consuming and
8 costly processes for businesses. This past year we
9 worked with the Council to establish Local Law 195,
10 which consolidates processes for fire suppression
11 systems, fire alarms systems and fire protection
12 plans so we will have the purview of the FDNY—FDNY.
13 Prior to the implementation of this Local Law, the
14 approval process for these systems required
15 restaurants to engage with both DOB and FDNY. These
16 processes change—changes will reduce the cost and the
17 administrative burden on businesses saving both time
18 and money without compromising public health and
19 safety. SBS looks forward to continuing our work
20 with agencies and the Council to make it easier for
21 businesses to comply with rules and regulations.
22 Restaurants are also currently undergoing an
23 unprecedented labor shorter—shortage. Members of our
24 industry partnership cited equipment and skilled
25 employees as one of the most important challenges for

2 the industry, and to address this data we launched
3 Stage NYC, a three-month program connecting Out of
4 School Out of Work youth with rewarding careers in
5 the New York City restaurant industry. The program
6 was designed to help make the restaurant sector's
7 growing demand for qualified culinary employees while
8 creating new career pathways for New Yorkers.
9 Participants paid on-the-job training with an
10 industry partner, and this hands-on experience allows
11 participants to gain all the tools needed for success
12 in the growing restaurant industry. We are now
13 refining the program based on lessons learned from
14 the initial pilot and plan to launch another cohort
15 early this summer. In addition, through SBS'
16 customized training program, we provide funds to
17 restaurants and other businesses to offset the cost
18 of training for their current staff so that they can
19 advance to higher paying jobs. SBS also hosts
20 businesses adopting changing local trends—trends such
21 as shift neighborhood demographics. For example,
22 we're changing markets made pot landmarks to
23 speculator harass existing commercial tenants, SBS
24 provides free legal services through our Commercial
25 Lease Assistance Program. Businesses including

2 restraints can work one-on-one with attorneys to
3 review lease renewal terms, negotiate with their
4 landlord, and even prepare court papers and motions
5 when litigation cannot be avoided. Restaurants have
6 raised concerns with adapting to new mandates and
7 increased costs. In recent years, New York City has
8 been on the forefront of providing essential basic
9 protections to workers. Since the start of this
10 Administration, the city has given workers and
11 private employers the right to paid sick leave and
12 required private employers to provide employees with
13 sexual harassment prevention training, and
14 information and most recently Mayor de Blasio paid
15 personal time, making New York City the first nation-
16 in the nation to offer personal time off for workers.
17 This comes along with mandates from the state
18 including paid family leave and an increase minimum
19 wage of \$15.00 for businesses within 11 or more
20 employees. While SBS fully supports the expansion of
21 these critical order protections, we have also heard
22 from restaurant owners who are struggling to adapt.
23 To assist, SBS offers business education resources to
24 help businesses to assess their costs, reduce
25 unnecessary expenses and increase their revenue.

2 This allows businesses to prepare for different forms
3 of business interruption and on expenses—expenses.
4 SBS also helps longstanding companies adjust to
5 changing work and commissions with Love Your Local.
6 Through this program businesses receive extra
7 business advice, and if eligible, grants to up to
8 \$90,000 for adaptation. These programs allow us to
9 test and analyze business interventions with the hope
10 of scaling effective solutions. As you can see, SBS
11 is an advocate for restaurants and we are committed
12 to ensure their success in New York City. We are
13 unique among our peer agencies as our role is to
14 serve as a resource to all business owners and
15 workers no matter where their—where they come from or
16 what barriers they face. We look forward to learning
17 more about the issues with us interfacing, and work
18 to address to them. Thank you and I am now happy to
19 answer your questions.

20 CHAIRPERSON GJONAJ: Thank you. So, let
21 me begin by addressing the 900-pound gorilla in the
22 room [laughter] and to ensure you are well versed in
23 our—I think we'll be celebrating our one-year
24 anniversary soon.

2 DEPUTY COMMISSIONER MALLON:

3 [interposing] Sure. This is true.

4 CHAIRPERSON GJONAJ: It's almost—it is
5 over a year ago that I requested from SBS the 6,000
6 rules and regulations that I'm aware of that exist.
7 We—SB1 was created just for that one purpose, to
8 review the 6,000 rules and regulations, decide or
9 decipher which are outdated or to dive us in (sic)
10 and streamline and make it an east to read and follow
11 trans-transparent way so our small businesses have a
12 fighting chance. It's one year later since my
13 request. It is four years since the formation of
14 SB1, which I believe now is more—has cost taxpayers
15 more than \$30 million, and the last fact that I was
16 seeing, SB1 was able to modify 80 regulations, which
17 means they made them more complicated instead of
18 getting rid of them. Can you please update me--

19 DEPUTY COMMISSIONER MALLON: [interposing]
20 Sure. Sorry.

21 CHAIRPERSON GJONAJ: --on when that will
22 be when I as Chair of Small Business, when will I
23 receive the 6,000 rules and regulations. When will
24 we create a format which has mom and business owners?
25 We'll know what was that to comply with? Why we'll

2 find that the hard way, which is normally through a
3 violation that requires them to pay a hefty fine?

4 DEPUTY COMMISSIONER MALLON: Good?

5 CHAIRPERSON GJONAJ: Yep.

6 DEPUTY COMMISSIONER MALLON: Okay, so we
7 always disagree a little bit on the number. We say
8 5,300, you say 6,000 or whatever reminder.

9 CHAIRPERSON GJONAJ: [interposing] Well,
10 okay. We follow up--

11 DEPUTY COMMISSIONER MALLON:
12 [interposing] A reminder, they do not all apply to
13 businesses.

14 CHAIRPERSON GJONAJ: Right.

15 DEPUTY COMMISSIONER MALLON: That--that
16 completes out of--of rules for both businesses and--and
17 the restaurants.

18 CHAIRPERSON GJONAJ: [interposing] But
19 that's a number that just sort of make it

20 DEPUTY COMMISSIONER MALLON:

21 [interposing] I know.

22 CHAIRPERSON GJONAJ: --okay, Commission,
23 divide it from the Comptroller's Office and that's
24 the number that I was given. Until I see them, we

2 can't even decide whether there's 5,300 or 6,000 and
3 that.

4 DEPUTY COMMISSIONER MALLON: [interposing]
5 Un-understood, understood and-and SB1 we're-the-
6 we're-well intentioned. SB1 was not to eliminate
7 rules per se. Part of it was a review, and you're
8 right, we are going to fight 80 rules that impacted
9 business and made modifications, and those are in
10 play. In addition, we've-as I said in my testimony,
11 we launched the-the Business Portal where you can-
12 everybody can get online and-and easily figure out
13 all the different rules and regulations. In fact,
14 your-your interactions aggregated for you when you
15 open up accounts. So, it's been, you know, improved
16 a lot in terms of transparency, compliance advisors I
17 talked about in my testimony. We've talked about in
18 the past. They are available to all businesses.
19 They go out pre-inspection, work with the business
20 and sort of walk through their situation, advise them
21 on what they should change so that they are not going
22 to be in violation. Violations have-have come down
23 during this administration. We talked about that as
24 well in the past, and so the list of-of 6,000 rules
25 I-I like it sounds like you're requesting that I

2 deliver you those, and is that right in like a-a
3 package?

4 CHAIRPERSON GJONAJ: I'll take them on
5 any format that's possible just so I can count them
6 myself and--

7 DEPUTY COMMISSIONER MALLON: [interposing]
8 Yes.

9 CHAIRPERSON GJONAJ: --help understand
10 what everyday small businesses have to go through or
11 what they should be going through, and making it a
12 lot easier for them by perhaps--and again, I go back
13 to not a single rule was removed from the books. It
14 took me almost a year or nine months to argue that
15 the outdated signage laws that date back to 1961
16 where our small businesses were receiving fines
17 between \$5,000 to \$20,000 on a sign that's been up
18 for decades that the city turned a blind eye to. And
19 overnight a lot of enforcement, and very
20 sophisticated group were using 311 as a weapon
21 virtually putting these small businesses out of
22 business over an outdated law that should have been
23 revised decades ago.

24 DEPUTY COMMISSIONER MALLON: Uh-hm. And--

2 CHAIRPERSON GJONAJ: And just so—just so
3 you know, the law required no more than 12 foot of
4 trip. It does—it didn't even allow for phone number
5 to be included. So, in the last 50+ years--more than
6 60 years. They are now marketing and the perception
7 of marketing has changed so much, and yet that one
8 rule where thousands were literally forced out of
9 business over the years. They could not possibly pay
10 the fee, hire the architect that was needed, and have
11 a new sign installed. It was unfair. SBS should
12 have been at the forefront on that, and never picked
13 up the issue.

14 DEPUTY COMMISSIONER MALLON: Uh-hm, uh-
15 hm. Well, you know, we've had this conversation, and
16 we really appreciate the Council's passing the law,
17 and we look forward to—to working together on its
18 implementation and getting the word out. Rules are
19 in place to ensure that the public is safe and—and
20 healthy and the quality of life is maintained, and I
21 think through SB1 we—we have made a lot of
22 improvements. Clarity—one of the—we talked to over
23 500 business owners when we put together the—the 30
24 commitments, and the—essentially, the number one
25 thing that—that frustrated them more than anything

2 was: I don't understand the rules. It's not
3 transparent. It's not clear. I don't and so many of
4 the things that we've put in place I think are
5 addressing those points. If you been on—if you've
6 been on the NYC Business Portal yourself, you—I mean
7 if you want to find the rules actually for
8 businesses, that's an excellent way for you to do it
9 because you can easily go through and it—and—and use
10 the tool--

11 CHAIRPERSON GJONAJ: [interposing] I use
12 it (sic)

13 DEPUTY COMMISSIONER MALLON: Yeah, I—I--

14 CHAIRPERSON GJONAJ: [interposing] Some-
15 some agency or agencies with the patterns and--

16 DEPUTY COMMISSIONER MALLON:

17 [interposing] No, we just put in here the type of
18 business that you're—that you're wanting to
19 investigate. It all pops out for you, and I must say
20 it's—it's a digital tool. It should always evolve
21 and—and get better as—as we get—we're using it and
22 we're learning it or not, but I think it's pretty
23 excellent. I want to stand on that one for sure in
24 terms of transparency and—and clarity, which is a lot
25 of what this is about.

2 CHAIRPERSON GJONAJ: Well, we'll have to
3 have a special hearing on easy transparent at another
4 day.

5 DEPUTY COMMISSIONER MALLON: [laughs]

6 CHAIRPERSON GJONAJ: As recently as 2000-
7 and January 2019, several of our restaurants have
8 closed.

9 DEPUTY COMMISSIONER MALLON: Uh-hm.

10 CHAIRPERSON GJONAJ: And I have roughly
11 30 that I'm aware of including a diner in very own
12 district the Pelham Bay Diner there after 47 years
13 closed up its doors, and it wasn't rent. It was the
14 over-burdens, the regulations, taxation and the
15 inability to compete that first amount. What is SBS
16 going to do as these businesses make decisions that
17 they can no longer compete, no longer satisfy the
18 needs of the employees and government, and we've done
19 a great job of pegging employers against employers.
20 And all the employers that I have been speaking to
21 the last year they are connected to the same-
22 connected. I need a happy employee. I want my--

23 DEPUTY COMMISSIONER MALLON: [interposing]
24 Right.

2 CHAIRPERSON GJONAJ: --employees to be
3 happy. I just--my dire mind doesn't support
4 satisfying the employees and government.

5 DEPUTY COMMISSIONER MALLON: Uh-hm.

6 CHAIRPERSON GJONAJ: And I can't fight
7 government. I don't have the resources. How do we
8 respond to a small business owner who says: I want
9 to do right. I want my employees to be able to earn
10 a decent living, be happy to come to work. They'll
11 provide better services. There would be less
12 turnover. They're advancing my place of business. I
13 just can't do it, and regulation is their number one
14 concern that prevents them from focusing on the needs
15 of their employees. What can we do to build healthy-
16 -

17 DEPUTY COMMISSIONER MALLON: [interposing]
18 So, it sounds like--like--like you and we agree, and we
19 support all of the--all of the policies that are in
20 place to--to support workers and their financial
21 stability and protections and so forth, and that's
22 what we hear from businesses as well. As I said, we
23 have through SB1 and other measures we have
24 instituted lots of reform and refining of processes
25 and all kinds of things that are intended to make it

2 much clear on how to do businesses. [coughs]

3 Violations have gone down during this Administration.

4 I don't--

5 CHAIRPERSON GJONAJ: [interposing] What's

6 the--

7 DEPUTY COMMISSIONER MALLON:

8 [interposing] Can you hear? What's that?

9 CHAIRPERSON GJONAJ: What's the--what's

10 the violations have gone down? Do you mean the

11 number or violations have gone down--

12 DEPUTY COMMISSIONER MALLON: [interposing]

13 Yes.

14 CHAIRPERSON GJONAJ: --or the actual

15 income that is derived from violations?

16 DEPUTY COMMISSIONER MALLON: Well, really

17 both.

18 CHAIRPERSON GJONAJ: What are those

19 numbers?

20 DEPUTY COMMISSIONER MALLON: I do not

21 have the numbers off the top of my head.

22 CHAIRPERSON GJONAJ: Can we request those

23 numbers [background comments] because I-I--there are

24 going to be plenty of this exercise today-- (sic)

25

2 DEPUTY COMMISSIONER MALLON:

3 [interposing] I'm already--

4 CHAIRPERSON GJONAJ: --on their first --on
5 their own experiences that after here--that they're
6 trying to do, which speaks to the next--

7 DEPUTY COMMISSIONER MALLON: [interposing]
8 Yes.

9 CHAIRPERSON GJONAJ: --but, right, when
10 you say what is that we can do, there are many that
11 are lined up here today to testify--

12 DEPUTY COMMISSIONER MALLON: Uh-hm.

13 CHAIRPERSON GJONAJ: --and I can't help
14 but complement them because they're speaking to the
15 many others that are afraid to attempt a hearing that
16 have talked to me off record, that have talked to me
17 on background, that are afraid to appear at a hearing
18 to be heard because of the fear of retaliation from
19 this city--

20 DEPUTY COMMISSIONER MALLON: Uh-hm.

21 CHAIRPERSON GJONAJ: --for fear, and
22 there's a real belief that if they are hurt that
23 miraculously the Department of Health will appear,
24 the Department of Buildings and a number of city
25 agencies after establishments issuing more violation

2 and summonses. That's not the government we're
3 supposed to have. If we're going to force the grip,
4 and we're going to consider our small businesses as a
5 partner that helped this city thrive. That should be
6 a challenge that I would imagine SBS would want to
7 meet on head first.

8 DEPUTY COMMISSIONER MALLON: Uh-hm.

9 CHAIRPERSON GJONAJ: So, you—and pleas
10 allow elaborate on that or you know me on this. (sic)

11 DEPUTY COMMISSIONER MALLON: [laughs]

12 CHAIRPERSON GJONAJ: What is it that
13 you're willing to do to let these small businesses
14 know on record that you're going to be retaliated
15 against?

16 DEPUTY COMMISSIONER MALLON: Uh-hm. On
17 record is not my impression that they're—that is the
18 way that and I mean—and I just want to remind you and
19 everyone we're not a regulatory agency, right. That
20 is not us. We're the Department of Small Business
21 Services, and so my knowledge is—is what it is. My
22 understanding is of the way that—that inspections
23 occur is really on a risk basis right. So, if
24 somebody has—has had violations, they are more likely
25 to get inspected more frequently. There is no one

2 that's being targeted. It's—it's merely a function
3 of what has happened before, and as I said earlier,
4 we have instituted some programs, and some—some
5 mazing changes to the processes to try to make it
6 easier. Compliance advisors are available to every
7 business in the city. They can call and make an
8 appointment. We will be on site. We will take a
9 loo. We have across-agency knowledge of—of the most
10 common violations. We provide advice, and advisors
11 (sic) are, in fact, avoided through that process. So,
12 it encouraged everyone that's here to—to call us,
13 tell you fellow business owners we are, you know,
14 here to try to address that.

15 CHAIRPERSON GJONAJ: The failure of
16 Compliance's advice.

17 DEPUTY COMMISSIONER MALLON: Yeah.

18 CHAIRPERSON GJONAJ: The specific—the—the
19 belief that if they speak up, that they will be
20 attacked and targeted.

21 DEPUTY COMMISSIONER MALLON: Uh-hm.

22 CHAIRPERSON GJONAJ: My understanding is
23 that you're not a regulatory agency.

24 DEPUTY COMMISSIONER MALLON: That's
25 correct.

2 CHAIRPERSON GJONAJ: But you're—I would
3 imagine you care for the wellbeing of our small
4 businesses.

5 DEPUTY COMMISSIONER MALLON: I do.

6 CHAIRPERSON GJONAJ: And if this is a
7 belief that our small business owners truly in their
8 heart believe that if they complain, they will be
9 targeted as an establishment or an industry, that's
10 what SBS I would imagine would want our small
11 business community to be--

12 DEPUTY COMMISSIONER MALLON: [interposing]
13 It's more a regulatory reason. I'm pretty sure. I
14 don't think anybody would fault that.

15 CHAIRPERSON GJONAJ: This a common—this
16 is a common belief. What can we do to help reinforce
17 the notion that they will not be under attack? That
18 they will--? Because they spoke up, they will not
19 become a target?

20 DEPUTY COMMISSIONER MALLON: We could
21 certainly convene members of the—the various agencies
22 and—and have discussions. You know, I—I just—it is
23 my firm belief that the—there is no system of
24 retaliation against small businesses in the—in the
25 city with our regulatory agencies. I think they are

2 trying to—to regulate so that the public is—is safe
3 and stays healthy and quality of life is maintained,
4 and I think that it—that their enforcement is founded
5 on the basis of risks, perceived risks. That is my
6 understanding, but I am more than happy to
7 participate in, to—to convene other partners at other
8 agencies to bring people together and have open
9 discussion about it.

10 CHAIRPERSON GJONAJ: I'll give—I'm going
11 to give you a perfect example.

12 DEPUTY COMMISSIONER MALLON: Yes.

13 CHAIRPERSON GJONAJ: The initiative by
14 this administration on clear curbs, and it's more to
15 probably—I would imagine that it appeared on the
16 books: No parking from 7:00 a.m. to 10:00 a.m. No
17 parking from 4:00 p.m. to 7:00 p.m. Where? Just the
18 red initial (sic) corridors. It was a para-program
19 but it wound up being a disaster.

20 DEPUTY COMMISSIONER MALLON: Uh-hm.

21 CHAIRPERSON GJONAJ: Those small
22 businesses were being forced out of business, and I
23 met with them literally crying saying that I cannot
24 pay my bills. What this has done to my business
25 model is completely undermined. I serve coffee. If

2 I can't have cars pull up to my establishment and
3 park seven blocks away, they're not coming in for my
4 donut or coffee. They're going to my competitor. So,
5 please come in and join me. Let's make sure that we
6 make a presentation to DOT and explain what this
7 program is doing. Oh, no, I can't do that because if
8 I do, the Department of Health will come and visit me
9 right after. Places were abandoned. I listened. I
10 said no. I assured that won't happen. No, it's set.
11 Councilman, I know—I know that they're going to come
12 after me, and they'll look into my place of business
13 and they'll issue me more violations that I can't
14 afford. That was their response.

15 DEPUTY COMMISSIONER MALLON: Uh-hm.

16 CHAIRPERSON GJONAJ: I never felt more
17 uncomfortable than that moment having a woman cry who
18 is willing to state to me about what has happened,
19 but unwilling to address the agency for fear.

20 DEPUTY COMMISSIONER MALLON: Uh-hm.

21 CHAIRPERSON GJONAJ: And that was 90
22 owned—woman-owned business an immigrant family that
23 were working in that business that their parents,
24 children, everyone that's it. That's just abated.

25 DEPUTY COMMISSIONER MALLON: Uh-hm.

2 CHAIRPERSON GJONAJ: Just to survive. I
3 did my best to convince her. They need to know what
4 more can we do to assure them that you don't have to
5 fear that government doesn't have a pair of scissors
6 on one hand and a hammer on the other--

7 DEPUTY COMMISSIONER MALLON: Uh-hm.

8 CHAIRPERSON GJONAJ: --and that's your
9 destiny. Should you speak up as Small Business
10 Services? We need to develop a platform that these
11 business owners can be heard, and alleviated these
12 concerns of retaliation.

13 DEPUTY COMMISSIONER MALLON: Uh-hm.

14 CHAIRPERSON GJONAJ: Can I get a
15 commitment from you that would be--that in the future
16 we'll do our part to let them know that they can be--
17 that they can speak up?

18 DEPUTY COMMISSIONER MALLON: Absolutely,
19 I'd be--we were--we would be happy to work together to--
20 to ensure that people are--are not fearful that the--
21 that the agencies are--are--the agencies with
22 retaliations like that, but it's my firm belief that
23 they are not and we will do whatever we can to work
24 together to--to assuage people of that people.

2 CHAIRPERSON GJONAJ: And that includes
3 the people in this room that maybe are afraid to use
4 the—the names of their locations.

5 DEPUTY COMMISSIONER MALLON: Yes.
6 Understood.

7 CHAIRPERSON GJONAJ: And that in the
8 coming—coming weeks and months they are targeted.

9 DEPUTY COMMISSIONER MALLON: Uh-hm.

10 CHAIRPERSON GJONAJ: We have to revisit
11 or some day we'll be fighting with them standing
12 shoulder to shoulder pushing back to show them the
13 most democratic city in the world--

14 DEPUTY COMMISSIONER MALLON: Yep.

15 CHAIRPERSON GJONAJ: --shouldn't be
16 attacking its small businesses, but making them a
17 partner or embrace them as the partners that we need
18 to.

19 DEPUTY COMMISSIONER MALLON: Yeah, and as
20 I said, you have our—my full commitment and in the
21 meantime, before we can get the message out of scale,
22 we have client managers available. They should feel
23 free to contact our—our folks, and if the situation
24 message was invasive, they would get involved and—and
25 do whatever they can in the meantime.

2 CHAIRPERSON GJONAJ: And you—you also
3 mentioned this ability where we can bring in the
4 various agencies to walk through a place of business
5 to avoid non-compliance with regulation, or welcome
6 these out. Is there any focus on the most common
7 violations? And I'll go back to that memory. It's
8 not the 6,000 or the 5,300 regulations. We're
9 focused on the most common--

10 DEPUTY COMMISSIONER MALLON: Uh-hm.

11 CHAIRPERSON GJONAJ: --which means that
12 you can have a walk-through which ever agencies, the
13 very next day, an agency can walk in, and the
14 violation can be issued. Where's the trust factor?
15 I want to comply. I want to make sure that I'm—all
16 the rules and regulations I'm adhering to. I am more
17 than happy to take time to sit with you and let my
18 make establishment to make sure that I'm in full
19 compliance, and that still find themselves out of
20 compliance. This is their feedback. So, we're not
21 doing enough. It's at best scratching the surface,
22 but there is not protections for us to say hey in
23 good faith working with them assuring them if their
24 walk-throughs are complying (sic), and we give you a
25 clean bill of health, that may be the next if of that

2 if an inspector walks in that that violation should
3 not come with a dollar amount.

4 DEPUTY COMMISSIONER MALLON: Uh-hm.

5 CHAIRPERSON GJONAJ: Give me time to cure
6 it. That would be embracing the small businesses
7 that are—that want to comply.

8 DEPUTY COMMISSIONER MALLON: Uh-hm.

9 [applause] And—and that is true in—in many cases and,
10 you know, we can work together to evaluate other than
11 census where that can—you can take case as well.

12 CHAIRPERSON GJONAJ: Well, that's a
13 commitment I—I hope that we can work on.

14 DEPUTY COMMISSIONER MALLON:

15 [interposing] Yeah, no doubt.

16 CHAIRPERSON GJONAJ: You mentioned the
17 science advisors, and--

18 DEPUTY COMMISSIONER MALLON: Yes.

19 CHAIRPERSON GJONAJ: --and I just found--
20 how often does the Hospitality Council meet?

21 DEPUTY COMMISSIONER MALLON: Or our
22 agency partnership? Is that what you mean?

23 CHAIRPERSON GJONAJ: Um--

24 DEPUTY COMMISSIONER MALLON: Yeah, I
25 think that's what you mean.

2 CHAIRPERSON GJONAJ: The Hospitality
3 Council--

4 DEPUTY COMMISSIONER MALLON: [interposing]
5 I didn't put kind of plans advisors in the--in the
6 partnership together. That's right. I'm sorry.

7 CHAIRPERSON GJONAJ: So, you just
8 announced that the New York City Food and Beverage
9 Hospital Council on September 2016.

10 DEPUTY COMMISSIONER MALLON: Yes.

11 CHAIRPERSON GJONAJ: Which includes more
12 than 30 leaders and experts in the hospitality
13 industry across the city. Members in this really--
14 recent meeting of the Hospitality Council--

15 DEPUTY COMMISSIONER MALLON: [interposing]
16 I feel there is something--I feel there is something
17 with them. (sic)

18 CHAIRPERSON GJONAJ: --and what were the
19 biggest takeaways from that meeting?

20 STEVEN PINKER: [interposing] About two
21 months ago.

22 CHAIRPERSON GJONAJ: Two months ago.

23 DEPUTY COMMISSIONER MALLON: About--about
24 two months ago.

2 CHAIRPERSON GJONAJ: And how many
3 meetings have you had since the September 2016?

4 DEPUTY COMMISSIONER MALLON: I will say
5 roughly six or seven. I can get back to you more
6 specifically with the whole group and they--sometimes
7 they just inform us, and so sometimes it's--It's
8 stated one-on-one with a few businesses, but the
9 whole group probably quarterly--like essentially
10 quarterly. I would have to look back.

11 CHAIRPERSON GJONAJ: What are the biggest
12 takeaways from those meetings?

13 DEPUTY COMMISSIONER MALLON: The--the--in
14 general, the--the and I'll let you jump in as well.

15 CHAIRPERSON GJONAJ: Sure.

16 DEPUTY COMMISSIONER MALLON: The--as--as I
17 said in my testimony key priorities were the
18 unprecedented labor shortage for in particular
19 skilled workers, navigating the regulatory then.
20 What can we do? What more can we do? What else can
21 we change? And the--the rising costs, what--what can
22 we do to mitigate those together? What solutions
23 are--are going to be most effective? Where are the
24 pain points or that kind of thing? Steven you want
25 to--?

2 STEVEN PINKER: Sure, sure. As someone
3 who like you grew—grew up with this industry, I owned
4 a restaurant for almost 20 years in the West Village.
5 Closed it in June of 2016. So, I'm really, really
6 well aware of the difficulties of operating a
7 business must less a food service establishment a
8 restaurant in the city. I engage in daily
9 conversation with one operator or another, and as
10 Jackie just mentioned, it's labor, the difficulty of
11 closing the skills gap, leaving the labor shortage.
12 It's being able to keep up with the changing
13 landscape, and a lot of the work that I've seen—I've
14 been with SBS now eight months and a lot of the work
15 that I see being done there, and that I am working
16 towards has to do with assisting businesses to
17 navigate the changing landscape. That includes
18 rising costs. That includes how the—the market in
19 the city is changing, and it's—it's a problem. This
20 has always been an incredibly difficult business,
21 incredibly difficult to keep up with on the day-to-
22 day, and incredibly difficult to keep up with on the
23 day-to-day plus keeping in touch and—and
24 understanding all the rules and regulations that need
25 to be adhered here. That in my interactions with

2 people like yours, everybody—all operators want to.
3 They—they want to do so for the protection of their
4 workers. They want to do so for the protection of
5 their customers, and obviously at the end of the day,
6 the protection of their businesses.

7 CHAIRPERSON GJONAJ: So, what have we
8 done in hearing the concerns specific to our—
9 obviously the labor pool is a variable the changes--

10 DEPUTY COMMISSIONER MALLON: Uh-hm.

11 CHAIRPERSON GJONAJ: --and matching up
12 employer with employees, only a port of that. What
13 have we done to address the other concerns?

14 DEPUTY COMMISSIONER MALLON: Which is it
15 has the lag usually a little bit.

16 DEPUTY COMMISSIONER MALLON: The concerns
17 other than meaning the labor?

18 CHAIRPERSON GJONAJ: That's right. Got
19 it.

20 STEVEN PINKER: Would you like to address
21 that?

22 DEPUTY COMMISSIONER MALLON: Yeah, sure.
23 We worker to—I want to just it's in my testimony, but
24 we did work together to put together a-a-a program
25 called Stage NYC, which is a-a sort of an

2 apprenticeship like program that takes Out of School
3 Out of Work youth, and gives them some—send up from
4 training and then puts them in the back of the
5 restaurant so they can learn a skill and start their
6 culinary career. So that needed back. We also spent
7 a considerable amount of time hearing about one
8 solution that the industry is very in favor of and
9 that's making modification to the—the rules that
10 would allow for a surcharge, and we need—talked about
11 that a lot. That's one solution. It's one way of—of
12 maybe generating more revenue to—to deal with rising
13 costs, we brought it to—to the Administration and our
14 partners, and ultimately the Administration
15 ministration determined it wasn't good for consumers,
16 and so that is not a solution that we're going to be
17 able to move forward with, and we're—we're working
18 through other methods of—but look. What's another
19 example of like a—a—a program that is intended to try
20 to get under what the cost—the—how to combat changing
21 market conditions and figure out with real life
22 examples how to scale solutions that could be
23 available to others.

24 CHAIRPERSON GJONAJ: So, I just want to
25 go back.

2 DEPUTY COMMISSIONER MALLON: I figured
3 you would.

4 CHAIRPERSON GJONAJ: You—you were—you
5 heard the stakeholders?

6 DEPUTY COMMISSIONER MALLON: Yep.

7 CHAIRPERSON GJONAJ: You went to the
8 administration?

9 DEPUTY COMMISSIONER MALLON: Yep.

10 CHAIRPERSON GJONAJ: You presented their
11 case, and the feedback--

12 DEPUTY COMMISSIONER MALLON: [interposing]
13 Together we did in—in parts, but yeah.

14 CHAIRPERSON GJONAJ: --and the feedback
15 was not—doesn't have the best interest of consumers.

16 DEPUTY COMMISSIONER MALLON: Uh-hm.

17 CHAIRPERSON GJONAJ: Why would those
18 businesses come back again if we couldn't even help
19 deliver on issue that's been everything--

20 DEPUTY COMMISSIONER MALLON: [interposing]
21 Because I said it's—that's one solution, which, you
22 know, I understand--

23 CHAIRPERSON GJONAJ: [interposing] It's
24 one of the—the most simplest of them all.

2 DEPUTY COMMISSIONER MALLON: I-it's-it's
3 clearly not simple. Smile, Steve and, you know,
4 there-we have a series of issues that we're trying to
5 work. It makes a lot more sense in my opinion to
6 continue to work together than it--than it does not to
7 because like, you know, it's a complex set of
8 problems, and--and so it's not always one thing that
9 is going to be the thing.

10 CHAIRPERSON GJONAJ: Yeah, whatever and
11 that's the problem. It's not one bit. It's not one
12 regulation. It's not one mandate. It's when we put
13 it all together. So, whether it be an--and I have one
14 I want to iterate, and I don't think you want to hear
15 otherwise from any of these employers. They really
16 want happy employees.

17 DEPUTY COMMISSIONER MALLON: Right,
18 that's-it's very consistent with what we hear as
19 well.

20 CHAIRPERSON GJONAJ: And let's look at
21 the last few years.

22 DEPUTY COMMISSIONER MALLON: Yeah.

23 CHAIRPERSON GJONAJ: Health insurance.

24 DEPUTY COMMISSIONER MALLON: Uh-hm.

2 CHAIRPERSON GJONAJ: Paid family leave,
3 sick leave, vacations, minimum wage increases. These
4 are all wonderful things. I'm not—and you won't get
5 the pushback from the employers that want to provide
6 these protections to their employees. You just can't
7 do that plus real estate taxes, water and sewer,
8 violations, and the bottom lines don't sustain it.
9 So, I look and there are these variables, the rules
10 and regulations, which we make, we undress, we
11 penalize. To them there I would imagine to be the
12 easiest challenge but, you know, let's reduce the
13 fees. Let's remove some of these fines.

14 DEPUTY COMMISSIONER MALLON: Uh-hm.

15 CHAIRPERSON GJONAJ: And the
16 Administration came back with not in the best
17 interest of consumers.

18 DEPUTY COMMISSIONER MALLON: Yeah, well
19 that's not exactly apples to apples what you just
20 said, but because that wouldn't be—that's on—they're
21 asking for a reduction in fine in that case.

22 CHAIRPERSON GJONAJ: I'm sorry.

23 DEPUTY COMMISSIONER MALLON: They're not—
24 this—this—this particular solution is not about
25 reducing fines.

2 CHAIRPERSON GJONAJ: Hm, taking them all
3 together is probably they asked for, but--

4 DEPUTY COMMISSIONER MALLON: Not exactly.
5 So, as I said, fines--fines have gone down in this
6 administration. We've implemented a number of things
7 that are--are intended and I think successfully make
8 the rules transparent. We've tried proactively
9 ensure that people are on site helping business, but
10 I'm not suggesting that we're done. There's, you
11 know, it's--it's an ever-evolving process, and the
12 world changes, technology changes, things change, and
13 we are committed to continuing to work together to
14 try to continually make it better and make it easier.

15 CHAIRPERSON GJONAJ: Thank you. Before
16 we get into this I just want to acknowledge--

17 DEPUTY COMMISSIONER MALLON: Yes.

18 CHAIRPERSON GJONAJ: --that we've been
19 joined by Council Member Rivera and Perkins. I'm
20 going to open up to my colleagues with any questions
21 that they may have. Council Member Ayala.

22 COUNCIL MEMBER AYALA: Can I go first?

23 Thank you. Good afternoon.

24 DEPUTY COMMISSIONER MALLON: Good
25 afternoon.

2 COUNCIL MEMBER AYALA: I wonder out of
3 all the new mandates that have been implemented in
4 the last few years if there is a specific mandate
5 that bothers the restaurant owners the most because
6 the want that, you know, you're consistently hearing
7 about.

8 DEPUTY COMMISSIONER MALLON: I'll go
9 first and then if you want to chime in. No, not a-
10 not a specific I think and I would agree with-with
11 the Chair. Most of what we're hearing is—I don't
12 know if it's really important and—and our workers are
13 super important. They make or break our—our success
14 particularly in a restaurant. It so people
15 intensive, but in general costs are difficult, and—
16 and the pace at which that some of these costs have
17 been rising is a little bit, you know, quicker than
18 might be comfortable if that's—would you displays or
19 something specific?

20 STEVEN PINKER: No, I completely agree.

21 COUNCIL MEMBER AYALA: So, does SBS—does
22 SBS have a mechanism to track the number of employees
23 that maybe were let go as a result of these new
24 policies?

2 DEPUTY COMMISSIONER MALLON: Not like a
3 real time tool. You know, typically they rely on-on
4 data that is collected through the federal
5 government.

6 COUNCIL MEMBER AYALA: Okay.

7 DEPUTY COMMISSIONER MALLON: Which has a
8 lag usually a little bit.

9 COUNCIL MEMBER AYALA: Do you track the
10 number of businesses that have been forced out as a
11 result of eventual increases?

12 DEPUTY COMMISSIONER MALLON: I'm sorry.

13 COUNCIL MEMBER AYALA: Do you-do you
14 also-do you track the number of businesses that have
15 been forced out of business due to rental increases?

16 DEPUTY COMMISSIONER MALLON: There is not
17 a reliable dataset. We are actually looking at that
18 as the Administration better ways of-of collecting
19 the-the much needed evidence.

20 COUNCIL MEMBER AYALA: And then I think
21 it's helpful because it will allow us to see where
22 exactly which communities that are more impacted and-
23 and where we need to-to be channeling our-our-our
24 resources. So, I-I would look for it to for further
25 conversation about that.

2 DEPUTY COMMISSIONER MALLON: Agreed.

3 COUNCIL MEMBER AYALA: Since the—since
4 the institution of the—the lard (sic) reading has
5 there—has there been a decrease in the number of
6 food-born illnesses?

7 DEPUTY COMMISSIONER MALLON: I honestly—
8 don't--

9 COUNCIL MEMBER AYALA: [interposing] Has
10 they applied it?

11 DEPUTY COMMISSIONER MALLON: --I don't
12 know the answer off the top of my head. What I do
13 know is that the—the percentage of—of letter grades
14 that A has gone up severely in the last couple of
15 year, but I don't know. I could certainly get back
16 to you. That's something that the Department of
17 Health would know.

18 COUNCIL MEMBER AYALA: No, I—I was
19 looking—I actually was reading on a briefing and I
20 noted that there are 26,955 restaurants in New York
21 City. Of that number, just 2,434 are in the Bronx
22 comparable to Brooklyn where we have 67,000;
23 Manhattan, you know, over 10,000; over 6,000 in
24 Queens. What do you attribute that to?

2 DEPUTY COMMISSIONER MALLON: In part I
3 would—that's sort aligned with the like the
4 distribution of population across the boroughs I
5 think. Do you have the number there?

6 STEVEN PINKER: The breakdown.

7 CHAIRPERSON MILLER: Yeah, like there are
8 a fewer people in the Bronx than there are in Queens
9 and Brooklyn and so there are fewer restaurants. So,
10 it's sort of my off-the-cuff answer, but yeah, that's
11 been like—yeah.

12 COUNCIL MEMBER AYALA: Yeah.

13 DEPUTY COMMISSIONER MALLON: Yeah, I
14 think there's a relationship between the—the—the
15 population size and the number of businesses and
16 restaurants, and the number of businesses in the
17 Bronx in general is lower than Queens and Brooklyn.

18 COUNCIL MEMBER AYALA: Okay. My—my
19 follow-up question. So, as part of our questions I
20 asked, we were—the information that we received I had
21 a question and I said that actually the way that I
22 read it, it implies that the Bread Kitchen, which is—
23 it's more distance in—in my district is an incubator
24 business. It's affiliated somehow with NYCHA, and I
25 have never heard that before. It's been in my—in my

2 district for over five years, and I've never heard
3 about there being some sort of connection between the
4 New York City Housing Authority, the residents and
5 the Hot Bread Kitchen. On the contrary, I think
6 people would argue that there isn't--there--that--that
7 the--the Hot Bread Kitchen isn't doing enough to
8 recruit members of the immediate community.

9 DEPUTY COMMISSIONER MALLON: Uh-hm.

10 COUNCIL MEMBER AYALA: So, I'm a little
11 bit kind of confused by that.

12 DEPUTY COMMISSIONER MALLON:
13 [interposing] I can tell you--I can tell you a little
14 bit about the--the--what I think. I haven't seen what
15 you're saying, but I can tell you a little bit about
16 what you--it might be referring to. We in partnership
17 with NYCHA run a--run a program called Food Business
18 Pathways, which is--which is targeting NYCHA residents
19 who have had some level of informal food business to
20 join the program and, you know, get the business
21 education so that they can move turning it into
22 formal business. Did I say formal just before? And
23 it was--it's an informal business. Now, we're going
24 to turn it into a formal business, and you help them
25 get licensed and--and then some of them are also given

2 time at food incubators so they can access the
3 commercial kitchen-kitchens there to develop their
4 product and Hot Bread Kitchen is one of the purchase
5 event-incubators.

6 COUNCIL MEMBER AYALA: Is it the new
7 program, though?

8 DEPUTY COMMISSIONER MALLON: It's the 3
9 years I think about--about--about 300 NYCHA residents
10 have--have completed it, and about two-thirds of those
11 guys--of those folks have gotten through the part
12 where they got their licenses and so forth, and then
13 as far as we know, all of them are--are operating
14 their businesses.

15 COUNCIL MEMBER AYALA: I would be really
16 interested in learning more about that--

17 DEPUTY COMMISSIONER MALLON:
18 [interposing] Okay.

19 COUNCIL MEMBER AYALA: --because I will
20 tell you that I go to every resident association
21 meeting, FECAP (sic) meeting. I have never--I've met
22 with Hot Bread Kitchen, and I have never, ever, ever
23 heard of this program, and so I'd be curious to know
24 when it was started? How many community residents
25

2 actually participated and graduated from the program.
3 How many of them came from that neighborhood?

4 DEPUTY COMMISSIONER MALLON: Uh-hm, uh-
5 hm. Yeah, that wouldn't. I'd be more than happy to
6 follow-up. I'd be delighted actually to--

7 COUNCIL MEMBER AYALA: [interposing] I'd
8 appreciate that.

9 DEPUTY COMMISSIONER MALLON: --to
10 especially find out about that. Not--not a problem.

11 COUNCIL MEMBER AYALA: Thank you.

12 DEPUTY COMMISSIONER MALLON: Sure.

13 CHAIRPERSON GJONAJ: Thank you. Just to
14 reiterate once again the [coughing] stats are 50% of
15 small businesses never make it to year 5. In the
16 restaurants industry, it's actually 80% never make it
17 to year 5. The obstacles that they have to overcome
18 are tremendous, and I believe Council Member Rivera
19 has a question.

20 COUNCIL MEMBER RIVERA: I do. Thank you
21 so much. Actually let me--yeah. SO, thank you for
22 being here. Thank you for your testimony.

23 DEPUTY COMMISSIONER MALLON: Thank you.

24 COUNCIL MEMBER RIVERA: I love
25 restaurants. Let me just go on the record.

2 [laughter] I live in a very restaurant rich district.
3 I represent East Village. I was just in a
4 restaurants last night in Kips Bay on Third Avenue
5 called My Friend Duke, a new restaurant and the owner
6 was undergoing—I think they were one of your maybe
7 compliance advisors.

8 DEPUTY COMMISSIONER MALLON: Uh-hm.

9 COUNCIL MEMBER RIVERA: So, you pay 100
10 bucks and they come in and kind of give a—an
11 inspection without it being an official inspection so
12 you could make sure you're dotting your I's and
13 crossing your T's.

14 DEPUTY COMMISSIONER MALLON: Uh-hm.
15 That—that doesn't—that's—that's a simply a program,
16 but we don't—there's no faces with our—our program.

17 MALE SPEAKER: So far.

18 DEPUTY COMMISSIONER MALLON: Yeah.

19 COUNCIL MEMBER RIVERA: Because they're
20 do it. (sic) To be fair, they're absolutely right.
21 It's great.

22 DEPUTY COMMISSIONER MALLON: Yeah.

23 [laughter]

24 COUNCIL MEMBER RIVERA: They're—they're
25 it.

2 DEPUTY COMMISSIONER MALLON: You can push
3 it.

4 COUNCIL MEMBER RIVERA: But I'm—I'm
5 getting—I'm getting to why I'm asking this.

6 DEPUTY COMMISSIONER MALLON: sure.

7 COUNCIL MEMBER RIVERA: I know that as my
8 husband has a couple of cafes and it's incredibly
9 difficult even then to survive and he's had to pivot
10 and he's closed the café and just even witnessing
11 that and-and how emotionally and financially draining
12 it is. So, I commend all of, you know, restaurant
13 business owners because it's so hard in New York
14 City, and we care about property and payroll, right?
15 Like those are the two of the most difficult things
16 to do within New York City, but it's also navigating
17 city bureaucracy and lead paint. And so, you said it
18 yourself just a few minutes ago that it's really hard
19 to navigate, and in your testimony this regulatory
20 environment. And so, with all of the violations
21 that you could potentially get, and even for someone
22 who is really on it. Maybe they have most of the
23 businesses, you know, a few little things could
24 result in a B for example and I know that I'm kind of
25 talking about DOH a little bit, but it could and t

2 hat kind of could really adversely impact your
3 business. So, my question to you is in terms of some
4 of the violations that are issued to small
5 businesses, is there—have you not revisited or
6 discussed or considered? You know, potentially
7 adding some of these violations where instead
8 warnings could be issued and—and periods where they
9 can cure the issue could be allotted before they're
10 actually issued a fine?

11 DEPUTY COMMISSIONER MALLON: Yeah, there—
12 there are many cases where that is true, and there
13 have been some changes during this Administration,
14 but we are, as we said earlier, we talked earlier
15 about this this very happy to continue to—to review
16 and see where else we can find instances where that
17 would be appropriate.

18 CHAIRPERSON GJONAJ: I just think—I
19 don't—I'm not aware of any violations that are not
20 associated with a fine.

21 DEPUTY COMMISSIONER MALLON: I'm
22 reasonably certain that -

23 CHAIRPERSON GJONAJ: [interposing] signs

24 DEPUTY COMMISSIONER MALLON: --signs for—
25 at—at—at through DCA.

2 CHAIRPERSON GJONAJ: That's the one that
3 we took a year.

4 DEPUTY COMMISSIONER MALLON: No, no, no,
5 no.

6 CHAIRPERSON GJONAJ: It took--

7 DEPUTY COMMISSIONER MALLON:
8 [interposing] No, no, no. There's--there's signs
9 associated with consumer awareness in your--in your
10 establishment.

11 CHAIRPERSON GJONAJ: Where I was. (sic)

12 DEPUTY COMMISSIONER MALLON: Yeah, those
13 are all curable, and--and--and again, I--

14 CHAIRPERSON GJONAJ: [interposing] You
15 may hit a pile, of course, each day. (sic)

16 DEPUTY COMMISSIONER MALLON: --am not a
17 regulatory--what's that? Yeah. Things like that.

18 CHAIRPERSON GJONAJ: There comes that
19 little pile of about 20-wide roll, 10 feet high to
20 have all of the proper notices and written in
21 different languages, but that's it. Okay, then we go
22 on.

23 DEPUTY COMMISSIONER MALLON: All of the
24 consumer protections tools that are--that are
25 necessary, and I also--my other--and again I'm--you've

2 got to forgive me. I'm not an expert on regulation,
3 but my understanding is also for DOH is a point
4 system, and it-it, you can under certain number of
5 points that you get, you have the opportunity to cure
6 after the first-before the first violation. But
7 there could be more opportunities to put those kinds
8 of-of solutions in place, and we are happy to work
9 together to try to get that.

10 COUNCIL MEMBER RIVERA: I mean there's so
11 much opportunity. I mean there's people in this room
12 that can tell you countless examples of-of just being
13 able to get a little bit more time to take care of
14 it. I mean not everyone is an expert on this
15 regulatory environment, but just imagine the between
16 trying to make sure that you pay your staff, and you
17 have the-you know, you're delivering amazing quality.
18 It is a lot considering that there are hundreds and
19 hundreds of violations that could potentially be
20 issued to you. That could actually lead to your
21 business closing in probably a month in this city.
22 So, I-I ask that if there--and I hope that we can all
23 work together--if there are violations in which--in
24 which a warning could go out first or there's a
25 longer cure period--

2 DEPUTY COMMISSIONER MALLON: Uh-hm.

3 COUNCIL MEMBER RIVERA: --I'd really,
4 really be advocating for that, and I hope that we can
5 work with some of the people in this room.

6 DEPUTY COMMISSIONER MALLON: Yep, and
7 would be—we are definitely committed to working
8 together on that for sure.

9 COUNCIL MEMBER RIVERA: Thank you, Mr.
10 Chair.

11 CHAIRPERSON GJONAJ: It's a great point,
12 Councilwoman, and I guess the—if it's violations that
13 are risking consumers' health and safety, obviously,
14 we want to make sure that no one—no one is health and
15 safety is at risk.

16 DEPUTY COMMISSIONER MALLON: Yep.

17 COUNCIL MEMBER RIVERA: Most of these
18 violations aren't an eminent danger to someone's
19 health and safety.

20 DEPUTY COMMISSIONER MALLON: I'm going
21 to—I—I actually think the—the top 10 violations for
22 restaurants are—are things like having to vermin and
23 food surfaces and things like that. So, which I'm
24 pretty happy about myself as a consumer.

25

2 CHAIRPERSON GJONAJ: And to the
3 Councilwoman's point where most of our small business
4 restaurant owners are making the donuts--

5 DEPUTY COMMISSIONER MALLON: Absolutely.

6 CHAIRPERSON GJONAJ: --selling the
7 donuts, delivering the donuts, having them understand
8 the rules and regulations and navigate in the
9 compliance end of it is not feasible for them.
10 Though their accountants do the A-trap (sic) person.
11 They're doing their own payroll on top of the so know
12 that they can keep their business going.

13 DEPUTY COMMISSIONER MALLON: Uh-hm.

14 CHAIRPERSON GJONAJ: I think it's-it's
15 upon us to come up with ways to allow them to focus
16 on their business, and that's they're model without
17 having to worry about the scissors or the hammer,
18 which is also the definition that those business
19 owners have given government.

20 DEPUTY COMMISSIONER MALLON: Understood.

21 CHAIRPERSON GJONAJ: We will continued
22 the questions with we understand that 80% of
23 restaurants will never make it to year 5. What has
24 the Hospitality Council done to change those
25 startling numbers?

2 DEPUTY COMMISSIONER MALLON: So, I'm
3 going to start and then—and then I'm going to— So,
4 with many of the things that we do as an agency, we
5 start with the—with the industry and like hear from
6 them, and I said before, the key priorities we
7 identified with industry partnership or the ones I
8 spoke of earlier, but as an agency we are never, you
9 know, happy to hear about business folding. We're—
10 we're with you. We don't want that to happen, and
11 many of the services that we are offering are
12 intended to try to get ahead of that. So, let's
13 visit education, access to financing, help with
14 commercial leases. All of those things are intended
15 to keep businesses healthy before they get to that
16 including restaurants, of course, until they get to
17 that point. Did you want to--?

18 STEVEN PINKER: Yeah, I only want to say
19 that it's the large restaurant groups that tend to
20 be—tend to have better infrastructure, tend to be
21 able to foresee issues before they come up, be able
22 to stay ahead of all these things. It's—it's the
23 education that I think we're working on in the
24 department to try and help for small businesses. The
25 business that are so involved in the day-to-day, but

2 it's much, much more difficult for them to do that—
3 that thinking ahead to see what's come down the pipe,
4 to stay on top of all the regulations, and it's that
5 education and that working with them that's of the
6 utmost importance, and we get a lot of our
7 information not only in what their specific needs
8 are, but to understand how it works best for the
9 larger restaurant groups, and how we can translate
10 that information, and get it out to the industry at
11 large.

12 CHAIRPERSON GJONAJ: Then how do we have
13 metrics for success in the terms of the Hospitality
14 Council? What metrics have we set up where to gauge
15 our accomplishments?

16 STEVEN PINKER: I think we're starting to
17 work on that.

18 CHAIRPERSON GJONAJ: Which was started in
19 2016?

20 STEVEN PINKER: Before my tenure, but I
21 completely understand it.

22 DEPUTY COMMISSIONER MALLON: Yeah, and—
23 and so a lot of the-the focus and with our industry
24 partners in general because if you—you may or may or
25

2 may not remember. They are born out of the Mayor's
3 Career Pathways strategy.

4 CHAIRPERSON GJONAJ: Uh-hm.

5 DEPUTY COMMISSIONER MALLON: And so as
6 of-of what we're trying to do is-is deal with the
7 labor shortage. That is one of the key things and we
8 believe our-our approach is like not in terms of like
9 people trained or enter jobs that you can count, but
10 more about industry partnerships are more about like
11 what can we systemically to make longer last change?
12 Like why? Wouldn't it be good in the future if
13 employers were well connected to institutions that
14 train people and they-institutions that train people
15 have a really handle on, you know, what-what's
16 required in order to-to succeed in the job and-and
17 they could just sort of work together like without
18 out us so--

19 CHAIRPERSON GJONAJ: I want an answer.

20 So, I come from out where there's a small business-

21 DEPUTY COMMISSIONER MALLON: [interposing]
22 Yeah.

23 CHAIRPERSON GJONAJ: --whether it be one
24 business or another, they're all the same difference.
25 The problem with the labor is not that we don't have

2 the pool to draw from, but if you're—the restaurant
3 that you're working for probably brings a closed
4 before it even gets up off the ground, draws people
5 away from that industry. So, why would I start
6 working as a chef or a cook when it's probable that
7 restaurant will be closed. 80% never make it to year
8 5. I remember the statistics that it would never
9 make it to year 1--

10 DEPUTY COMMISSIONER MALLON: Uh-hm.

11 CHAIRPERSON GJONAJ: --where you find
12 yourself unemployed. Some businesses close in the
13 first three months. That's after six months of
14 construction, waiting for the liquefier to come and
15 giver your approvals while you're paying your rent,
16 and making sure that you have a soft opening if
17 you're fortunate to plan for one. The problem is not
18 that we don't have the men and women that would be
19 willing to enter, but they've been burned so many
20 times.

21 DEPUTY COMMISSIONER MALLON: Yeah I mean
22 I'm not sure I would agree with you there, but--

23 CHAIRPERSON GJONAJ: Okay. [laughter]

24 DEPUTY COMMISSIONER MALLON: --I just
25 wouldn't.

2 CHAIRPERSON GJONAJ: I don't know. Would
3 you start a job that probably you'd be laid off
4 within the first year? You tell me.

5 DEPUTY COMMISSIONER MALLON: [laughs] I
6 think the--they from what we can tell and what we're
7 hearing that the people don't have the skill levels
8 that is required, and that is a definite gap and that
9 is, you know, an important problem that we're trying
10 to work together within the industry to solve. They--
11 they need skilled people.

12 CHAIRPERSON GJONAJ: Skills are
13 developed. These are whether it's a fast food
14 restaurant or a full service restaurant, you begin
15 somewhere and you hope that they're going to evolve
16 and move up within the positions and titles and that
17 also means salaries.

18 DEPUTY COMMISSIONER MALLON: Yes, that is
19 true.

20 CHAIRPERSON GJONAJ: My only experience,
21 I started off as a delivery person at \$6.00 a day
22 plus tip. From there I went dishwasher, kitchen,
23 pizza, and eventually became the manager, but before
24 I was 16.

25 DEPUTY COMMISSIONER MALLON: Uh-hm.

2 CHAIRPERSON GJONAJ: That's ho it's
3 supposed to be. If that pizzeria would have closed,
4 within a short period of time I would never have been
5 able to advance, and if I would have been [coughs]-
6 lost that employment opportunity, sure it's I
7 wouldn't have gone to another pizzeria. That's the
8 labor problem. The skillset that you're referring to
9 are you saying that we don't have enough out there
10 for waiters and waitresses and chefs and short order
11 chefs--

12 DEPUTY COMMISSIONER MALLON:
13 [interposing] I'm not saying that.

14 CHAIRPERSON GJONAJ: --and I don't agree
15 with you.

16 DEPUTY COMMISSIONER MALLON: I'm saying
17 that your industry is reporting to us. I-I didn't-I'm
18 not-that is not my coming-literally what the group
19 of-of folks that work with us on this have said.
20 There is-there is a shortage of so that we cannot
21 find people to fill these positions that can do the
22 job in the way we need them to, which is not-it's not
23 the only industry that is-that is facing this-this
24 sort of issue. So, tell me.

2 CHAIRPERSON GJONAJ: Let's say that--do
3 you recall what skills they were referring to? Is it
4 across the board?

5 DEPUTY COMMISSIONER MALLON: I think they
6 would say across the board, but the focus of Stage
7 NYC was on line cooks in particular.

8 CHAIRPERSON GJONAJ: Okay. Thank you. Do
9 any of you have any other questions for the
10 departments? No.

11 COUNCIL MEMBER PERKINS: Did she say that
12 this was language?

13 STEVEN PINKER: No, line cooks.

14 COUNCIL MEMBER PERKINS: Oh, line cooks.

15 STEVEN PINKER: Correct.

16 COUNCIL MEMBER PERKINS: Yeah.

17 CHAIRPERSON GJONAJ: I'm looking forward
18 to having you back. I'm sure someone is going to
19 remain here from SBS so as to hear--

20 DEPUTY COMMISSIONER MALLON: [interposing]
21 They'll be here.

22 CHAIRPERSON GJONAJ: -- the testimony of
23 some of the advocates that are going to passionately
24 explain what they're faced with day in and day out,
25 and I would hope that we can actually work on being

2 proactive to their needs instead of reactive. If-if
3 we understand the hurdles that they have to overcome
4 day in and day out, one of the major concerns is
5 well, if I'm not even aware of the current rules and
6 regulations, but I'm supposed to be complying, who's
7 tracking what is working its way through government
8 now? How do we give them the notices that maybe you
9 should be aware that there's a proposal as one of the
10 small businesses brought to my attention, as they
11 know the fear that it would actually become
12 legislation. Are we looking at potentially having
13 401(k)s and pension plans for our, yeah, minimum wage
14 earners? Is that the next step? Man, if there's
15 nothing left on the table besides coming with jobs
16 that no one should try to push them aside and say,
17 develop other skillsets that would create a vacancy
18 as they advance--

19 DEPUTY COMMISSIONER MALLON: Uh-hm.

20 CHAIRPERSON GJONAJ: --and they said I
21 hope you don't say that too loud because someone may
22 hear you, and next week we'll have another bill or
23 potential legislation to look at, and a hearing that
24 this where the fast food industry is going now.
25 Every employee deserves a pension a 401(k) and we're

2 going to make sure that they don't seek advancement,
3 the should.—they should be comfortable where they
4 are, and they say no I don't think that's where I
5 would like to go, but I'm still of the belief that we
6 inspire employees to become employers as they develop
7 these special skills, and the response from the chef
8 was: How would I do that and make a decent salary,
9 and they sleep well at night? I don't have to worry
10 about what's coming down the pipeline. I couldn't
11 respond to it. Thank you for your time.

12 DEPUTY COMMISSIONER MALLON: Thank you
13 very much.

14 STEVEN PINKER: Thank you.

15 DEPUTY COMMISSIONER MALLON: Look forward
16 to working together. [background comments]

17 CHAIRPERSON GJONAJ: So, our first panel
18 of advocates is panel 2 Andrew Rigie, Robert
19 Beckerman and Kathleen Wiley. [background
20 comments/pause] So, in no particular order, right.
21 Whatever you agree to. Please introduce your name.
22 If you're specific to an establishment or a ministry,
23 please indicate which.

24 ANDREW RIGIE: Good afternoon. My name
25 is Andrew Rigie. I am the Executive Director of the

2 New York City Hospitality Alliance. We are a not-
3 for-profit trade association that represents
4 thousands of restaurants and nigh life status means
5 throughout the five boroughs. I am also a member of
6 the Food and Beverage Hospitality Council through the
7 Department of Small Business Services that you have
8 referenced as well as the Chair of the City's
9 Nightlife Advisory Board. So, again, thanks for
10 having this hearing and I appreciate the comments and
11 support for restaurant industry. It's funny you
12 mentioned all the signs needing a whole wall, but
13 they need a hall for all the signs that have to be
14 posted throughout the establishment. So, contrary to
15 what a lot of people maybe in the public as well as
16 in government think, the restaurant industry is not
17 thriving. As a matter of fact, it's going through a
18 very challenging and transformational time. The
19 large number of empty storefronts through probably
20 all of your districts really hit this home. It's
21 really down to the onslaught of expensive and
22 complicated government mandates that have been
23 relentless over the years. Just the recent labor
24 mandates a long for restaurants in New York City
25 include a doubling of the tip wage in near three

2 years. We've had six consecutive annual minimum wage
3 increases, a \$300 increase to the minimum weekly rate
4 for salary-salaried employees, paid sick leave,
5 higher taxes, insurance, paid sick leave and all the
6 compliance costs plus-plus there's also the fact that
7 these increase put upward pressure on the wages of
8 all the other employees. So, if I was making, you
9 know, \$15.00 an hour, and then, you know, I demanded
10 for a two-year site, and then a more entry level
11 person comes in, and automatically gets \$15.00 an
12 hour, well, guess what? I have more experience
13 having more of a tenure. I am going to need \$17.00
14 or \$18.00. So it's not just the base wages. It
15 really impacts wages as a whole, and between 2010 and
16 2015 employment growth averaged about 6.5% of first
17 service in New York City restaurants. But in the
18 last three years since all of these cost increases,
19 we've seen a mass of slow-down. It appears that by
20 the end of 2018, we'll have less than 1% growth in
21 our industry here in the city. Now, that's the worst
22 since the Great Recession, and the decline frankly is
23 directly related in part to the pressures in rising
24 costs. Between 2012 and 2015 the growth in full
25 service—I'm sorry—full liquor and beer and wine

2 licenses was nearly 23%. Today, annual growth has
3 plummeted to the low single digits. In a recent
4 survey conducted by my organization, 75% of
5 restaurants respondents said that they will reduce
6 employee hours in 2019, and almost 50% indicated that
7 they would eliminate jobs as a result of mandates.
8 Now, eliminated employment growth at limited service
9 restaurants is very similar. The Health Department,
10 in the early 2000s there were about \$12 million in
11 annual fines. It has skyrocketed up to almost over
12 \$50 million back in 2012. It's dropped to about 30,
13 but that's still \$20 million almost more than it used
14 to be when we weren't having any food board in this
15 epidemic or outbreak. So, while we really appreciate
16 today's hearing, you know, thank you for holding it,
17 you know, I think a lot in the industry are sick are
18 sick and tired about talking about it. They're
19 frustrated and they demand reform, and we hope some
20 of the suggestions today will lead to that. So,
21 really quickly I'm going to read off a few different
22 proposals we think that the Council could act on
23 swiftly that would really help businesses, and then
24 we can certainly work together on some others, but
25 (1) you need to pass Intro 823. That's the

2 restaurants surcharge bill that was referenced
3 earlier. I can tell you as a member of the Food and
4 Beverage Council certainly workforce training is
5 critically important, but the one issue that has
6 continued to dome up is allowing restaurants the
7 option to pass a clearly disclosed surcharge on their
8 menus. This practice is allowed everywhere
9 throughout the rest of New York State, and the
10 country and in progressive cities: Seattle, Los
11 Angeles you name it. (2) We need to eliminate the
12 unjust and inequitable commercial rent tax that's
13 levied on thousands of businesses south of 96th
14 Street in Manhattan. Council Member Garodnick had
15 passed some legislation several years ago, and now
16 following that, Council Member Powers has recently
17 introduced legislation to further reform the
18 Commercial Rent Tax. (3) Most commercial tenants
19 they pay a portion of their landlord's property tax.
20 If we want to help preserve small businesses
21 especially if real estate, you know, prices continue
22 to stay so high, we could give a tax credit on the
23 portion of the property tax that commercial tenants
24 are playing-paying. That would be a significant
25 savings. We all know that restaurants are very labor

2 intensive. There's lots of discussions in other
3 industries frankly. Maybe that don't need it, but
4 those that definitely need intensive credits are the
5 restaurant industry. We hire people from all walks
6 of life. You don't need a college degree. You don't
7 need much experience. You just need the will to work
8 hard, and I think that the city could help offset
9 employing more people if we give some sort of tax
10 break to them, which would eliminate the unfair need
11 with the excise tax. It's only imposed on businesses
12 in New York City. It's about twice of what it is in
13 New York City than anywhere elsewhere in the state.
14 As Council Member Rivera mentioned earlier, we should
15 be looking at the fines and violations that are
16 issued under the Bloomberg Administration and Speaker
17 Quinn at the time, the city was required to review
18 all of the violations issued to restaurants and other
19 small businesses. Unfortunately, they came back and
20 it was just the low hanging fruit, the sign
21 violations, but there are countless other violations
22 in the code that aren't eminent hazards to the public
23 that certainly deserve to have a cure period or a
24 warning, and the list goes on. You know, we said we
25 can support businesses. Scaffolding reform we need.

2 We need to reform the letter grade adjudication
3 process and we can do this now whether it's through
4 rule making, or whether it's through legislation, but
5 we need to stop just talking about it, and we really
6 need to get down to rule making and legislation.
7 It's great to say that we love our city's restaurant
8 industry, but if we really loved them, we'd want to
9 support them, and we need to take action, and these
10 proposals are ways to do that. Thank you.

11 ROBERT BOOKMAN: Good afternoon. My name
12 is Robert Bookman. I'm an attorney in the city of New
13 York. I came from city government. It's hard to
14 believe over 30 some odd years ago went into private
15 practice. I-I am an expert in small business
16 regulatory work in the city of New York. I've been a
17 friend of this Council literally for decades. I am
18 your appointee on the Health Department Advisory
19 Board so I will talk a little bit about that. I am
20 your appointee on the Nightlife Advisory Board, and I
21 am counsel to the Trade Association, New York City
22 Hospitality Alliance. Prior to that I founded the New
23 York Nightlife Association, which existed for many
24 years when there was actually a night life in New
25 York. It's-it's great to hear and-and I don't mean

2 to underestimate it, Mr. Chairman. It's great to hear
3 what your opening statement was, but it's time for
4 the Council not just to talk the talk, but to walk
5 the walk and it's time for this Council just like it
6 is for Congress in Washington to recognize it as an
7 independent body that could pass legislation. It
8 doesn't need the approval of the Executive. In this
9 case the Mayor and can even, God forbid, override a
10 veto, if they so choose. If there are too many laws
11 and regulations on the books, and there are, you have
12 the power to change that. You don't need to work
13 with them. You don't need their permission. You
14 could pass legislation, and there was an attempt to
15 do that. In the last year of the Bloomberg
16 Administration we were at the forefront of working
17 with the Council at least in passing a law that
18 Bloomberg Administration went along kicking and
19 screaming that required the six city agencies that
20 deal most directly with small businesses, Consumer
21 Affairs, Health Department, Buildings Department, et
22 cetera—to come up with a list in six months of every
23 rule and regulation that could have an opportunity
24 to cure and warning period that would not impact
25 public health and safety. And unfortunately, the

2 timing is such that they delayed it beyond the
3 deadline you gave them. So, it was December of the
4 last of that Council and of the Bloomberg
5 Administration when they came back with their list,
6 and all that was on it was signs-in-source sign
7 violations. Not a single one. Not a single sidewalk
8 café violation because your planters grew over the
9 summer. So, it's not 32 inches high rather than 30
10 inches high, and you got a summons, you know, for
11 that. A true story or a sidewalk newsstand that got
12 a summons—a violation because it didn't have its
13 refund policy sign. When is the last time you
14 brought something back to a sidewalk newsstand, and
15 need to know what their refund policy was? So, that
16 was all they came back with, and one prominent
17 elected official at the time, Public Advocate Bill de
18 Blasio, excoriated the Council, and the
19 Administration while he was, you know, running for,
20 you know, for Mayor saying this was simply window
21 dressing that we need to get to the root of the real
22 violations that need warnings and an opportunity to
23 cure. You passed the legislation because something
24 is better than nothing, and believe it or not, I
25 think it was over \$10 million a year that the city

2 was collecting at that time just in nonsense sign
3 violations that nobody reads anyway. And the, we
4 looked excitedly for when Public Advocate de Blasio
5 became Mayor de Blasio and five years plus latter,
6 we're still looking for that legislation that he
7 promised to get rid of hundreds of-of rules and
8 regulations that could be handled with an opportunity
9 to cure and a warning. Government's first
10 responsibility, when at the Council of Consumer
11 Affairs, we believe our responsibility was educating
12 both the consumer and the business, and when we got
13 the—we got the business to comply with something, we
14 considered that a victory back then. Little did I
15 know that years later, a victory would only be if
16 they grabbed money from the business. That's
17 considered a victory in their monthly reports now,
18 how much money and fines did we bring in. One of the
19 council members talked about the Health Department.
20 Since I'm on that Advisory Board, when we meet
21 quarterly the first thing we get is a beautiful color
22 printout of the top 10 Health Department violations.
23 If you don't have it, you should. I'd be happy to
24 get it to you. It's—I don't need to give it to you
25 from the last two years because it's the same one

2 effectively every quarter. There are 10 violations
3 that are the top 10 violations year in and year out.
4 They account for 75% of all the Health Department
5 violation are these 10. A third of all the Health
6 Department violations in that top 10 are what are
7 considered minor violations what they call general
8 violations. They're not health and safety related,
9 and every time I say to them at the Advisory Board
10 there's some disconnected. You guys come to these
11 hearings, you come to these meetings, you talk about
12 how great you do with outreach, and programs.
13 They've got lots of programs helping small business
14 with this program and that program. We go to you for
15 100 bucks and we teach you how to do it. Well,
16 something is going on here. Either all the
17 restaurants owners are idiots, or there's something
18 with the way you train your inspectors, and there's
19 something with these rules that year in and year and
20 year out it's the same 10 violations. They're the top
21 10. Maybe they're not possible to comply with for
22 example in the city of New York. You know, for
23 example, one of them is—we found potential access for
24 vermin. Not saying they found vermin. That's a
25 different story. Obviously, that's a problem. There

2 isn't a restaurant in the city of New York and an old
3 building that doesn't have a crack somewhere that's
4 not a potential access for vermin. So, you don't
5 need to be rocket science to understand that that's
6 going to be the top 10 violations every year that
7 you're hitting people for fines. The—by the way to
8 answer your question about letter grades. In New
9 York letter grades was never designed in my opinion
10 to combat a crisis in food-borne illness from
11 restaurants because there's never been a crisis from
12 food-borne illness in New York City restaurants. We
13 are the darling of the world our food scene. It
14 always has been. God willing, it always will be.
15 It's never—it was a way to get more money, and it
16 worked because as Andrew said, we went from about \$10
17 million a year in fines before the letter grades,
18 over \$50 million a year in fines. The same
19 restaurant industry, the same no problem with—with
20 foodborne illness. The truth of the matter is most
21 foodborne illnesses, you can't tell where it comes
22 from, and when you can, it's not from a restaurant.
23 It's from—it's from your house. It's—it's from a
24 street vendor. It's from your cat walking across
25 your—your counter at home. That's where most

2 foodborne illnesses come from. Since it take 48
3 hours it's really hard-hard to track. The Health
4 Department will admit that. So, that's not what it's
5 about. So, now they want to take credit because of
6 legislation forced on them by the Council that fines
7 have gone down to \$30 million. You know, I was, you
8 know, I was pre-law and a law student, and I wasn't
9 very good in math, but that's three time \$10 million
10 when in the beginning of the Bloomberg Administration
11 we had a world famous, you know, restaurant industry
12 that nobody was getting sick at. So, I'm not
13 impressed that they're saying fines are lower now.
14 Lower from when? Yeah, lower from unbelievably
15 historic highs when over \$100 million a year in the
16 Bloomberg Administration because as we know, he was
17 very pro big business. He didn't care that much
18 about the little small business all that much, and he
19 truly believed that fines were a way to get
20 compliance not education. And so, they are taking
21 credit that 5 or 6 years later they are still way
22 higher than it was, but less than this unbelievable
23 ridiculous high. You know, I-to me that's not a, you
24 know, a great, you know, a great record. I was
25 shocked that he said-they said \$30 million so far in

2 small business first, and you still don't have a list
3 of violations, you know, rules and regulations or a
4 list of which ones can be eliminated. You know, give
5 me a million dollars. I'll get it here in 90 days or
6 [laughs] you know, it's not that hard. It's only
7 that's hard when you don't want the Council to have a
8 list of it, and you don't want to go work with them
9 on which rules and regulations are necessary, and
10 again, you have the power. A lot of these laws are
11 laws that you guys passed or you passed it with
12 authority for the agencies to promulgate regulations
13 pursuant to that. You can—you could change that
14 tomorrow. Another quick example. I'm sorry, you
15 know. We could talk—I mean we should all day long on
16 this. I've been doing this forever. You pass—you
17 pass a—a law and in that law it creates a fine, and
18 you state what the minimum and the maximum should be
19 from that fine. Some are—so first time violation
20 between a \$100 and \$500. Okay, a typical example.
21 What they have done now through rule making and just
22 in policy at ECB, you know, where—which is the
23 largest court in the country based on volume of cases
24 of they do, they've taken—they've taken the minimum
25 away. They said it's \$200 to \$500. So, wait a

2 minute. You hire an attorney. We go there. We're
3 trying to argue for a legal term. It's called
4 ramones (sp?) I don't know if any of you know what
5 that legal term is. It's to use this expressions
6 for, you know, we tried out best. We cured the
7 violation, you know, give us break and the DOJ says
8 yes I agree, \$200. Wait. Where did the \$200 come
9 from? The minimum fine is \$100. Oh, we were told
10 the minimum we can—we can assess is \$200. They are
11 overruling your legislation by changing the minimum.
12 You can't get away with that. What legislative body
13 would let the regulatory agency get away with that,
14 but you—but you do. Pass Intro 823. It's the last
15 thing I want to say. The only jurisdiction in the
16 country where a restaurant can't put a clearly
17 disclosed surcharge on its menu meeting all Consumer
18 Affairs requirements as far as size of print,
19 location, proximity on the message—on—the boards.
20 Wherever there's prices, we are the only jurisdiction
21 in the United States where we don't have as
22 restaurant owners the opportunity if we so choose to
23 do that on our—on our menus while airlines do it in
24 the city, taxis do it in the city. Surcharges are a
25 way of life today, hotels. It's a way of your

2 telephone bills, my God, your cable bills, surcharges
3 are not only required by government sometimes, but
4 they-they're never prohibited as long as the consumer
5 prior to, you know, ordering understand that because
6 of increased costs, because of increased labor costs,
7 we need an across-the-board 5% surcharge on all our
8 menu prices and there is-and it's a 1974 Consumer
9 Affairs rule, which prohibits it from the time where
10 menus were these big books that were printed once a
11 year. There was this temporary spike in beef charges
12 then. I'm not that old. This was after I came to-
13 before to the Consumer Affairs, and so restaurants,
14 you know, because of the spike in beef charges were
15 giving people a bill, and back then their \$3.00 steak
16 was \$3.50-you know 50 cents, and so they passed this
17 rule. Fast forward to now. It-it's nonsense. They-
18 they dragged us along for two years in that committee
19 saying they were going to take dare of it. They
20 didn't take care of it. We went to the Council.
21 Legislation was introduced by Council Members
22 Borelli, Espinal, Cornegy, Koslowitz. They're all
23 co-sponsors. We had a hearing and nobody said boo at
24 the hearing, you know. Last August it's scheduled
25 for a vote, and all of a sudden we're being attacked

2 by the Mayor and-and the Mayor's affiliates that we
3 are attacking the progressive agenda by letting
4 consumers know that all of these costs that they have
5 been putting on us come with the cost to the consumer
6 that it's not a magic wand. I tell clients all the
7 time I'm a lawyer. I'm not a magician. I can't make
8 things disappear. So, I tell-I say that to
9 government as well. You raise our costs, we got to
10 collect it some way. It's-it's either raising costs
11 or on the consumer, which they don't want people to
12 know about or it's reducing profits, which people the
13 margin says it's limiting more. They can't do it,
14 and that's why you're having a lot of closed doors.
15 Thank you.

16 KATHLEEN RILEY: I think I'm don't. Good
17 afternoon, everyone. My name is Kathleen Riley, and
18 I'm New York City's Admin Coordinator for the New
19 York State Restaurant Association. Where to assist,
20 I represent student labor establishment in New York
21 City and throughout New York State, and we're largest
22 hospitality trade association in the state of New
23 York. We've advocated on behalf of our members for
24 more than 80 years, and our members represent one of
25 the most-largest and most impacted constituencies in

2 the city as nearly every agency regulate some aspect
3 of the restaurant industry. I'm here today to voice
4 my industry support for lease renewal protections,
5 which are currently proposed in the Small Business
6 Jobs Survival Act, and to express concern over the
7 unintended consequences of the Mayor's proposal to
8 mandate paid time off for private businesses. First,
9 I will address the need for lease renewal
10 protections. New York City is facing a problem that
11 is two-fold: Beloved neighborhood staples are forced
12 to close either because their leases are not renewed
13 by the landlord through no fault of the tenant or any
14 extending circumstance or the lease can be renewed by
15 adding possible increase in rent. We applaud
16 Councilman Rodriguez and the numerous co-sponsors for
17 introducing 737 2018 more commonly known as the Small
18 Business Job Survival Act to address this problem.
19 The Small Business Job Survival Act or SBJSA, if
20 that's actually clear to say. I'm not sure. The
21 SBJSA would provide commercial tenants with new
22 protections including recourse to arbitration in the
23 face of often challenging lease renewal process. The
24 legislation would provide a fair and level playing
25 field for landlords and tenants alike, and they would

2 encourage reasonable lease trends and rent
3 determinations. The SBJSA provides a detailed list
4 of criteria to be considered for setting the rent in
5 stark contrast to the current situation in which
6 landlords can ask for any amount of rent without any
7 authority to reign them in. The SBJSA also prohibits
8 landlords from refusing to renew a lease without
9 cause. It details the scenarios that constitute
10 cause for careless (sic) landlords to explain and
11 prove the cause to the tenant allows the tenant to
12 challenge the cause if it's dubious. At the end of
13 the day, the legislation would provide leverage to
14 the current legal leverage list. It's a bad (sic)
15 need of protection for small businesses and could
16 literally be the difference between an untimely
17 shuttering of doors or 10 more years of the
18 neighborhood staple. Subsequently, I would like to
19 address a looming concern for the future of this
20 industry, which is the Mayor's proposal to mandate
21 paid time off for private businesses. In the State
22 of the City Address, Mayor de Blasio requested
23 legislation that would require private businesses
24 with more than five employees to offer 10 days of
25 paid time off per year. Unfortunately, the

2 restaurant industry is in no position to shoulder yet
3 another mandated increase in the worker compensation.
4 As it stands, businesses are struggling to
5 accommodate the recent minimum wage hike and the
6 majority of businesses, as Andrew referenced in his
7 survey, the majority of businesses report some
8 combination of cutting worker hours, cutting jobs and
9 raising menu prices. The restaurants industry
10 notoriously operates on razor thin margins and these
11 businesses do not have that thousands of extra
12 dollars in the budget to pay workers on days off.
13 This point of fact that thousands of dollars in
14 additional costs could literally shut down small
15 businesses is something that the Council has
16 acknowledged in the past as recently as earlier this
17 month when they passed arming that. We urge this
18 committee to take the same consideration when in the
19 impact of mandated paid time off. At the end of the
20 day, a paid time off mandate is likely to hurt the
21 very workers it would hope to help as restaurant
22 owners would be forced to cut even more hours and
23 jobs to try to stay in business. Many workers
24 currently in the restaurant base have chosen this
25 profession for the flexibility it provides. So, it

2 would be deeply ironic for these same folks to lose
3 their jobs in the name of government mandated worker
4 flexibility. In conclusion, the New York State
5 Restaurant Association supports the Small Business
6 Job Survival Act as an important piece of legislation
7 that will guarantee a much fairer lease renewal
8 process, and we caution the committee against the
9 negative effects of the paid time off mandate. Above
10 all else, we hope to continue to work in conjunction
11 with this committee to accomplish common sense
12 regulations that benefit the entire business
13 community, owners, workers and the city of New York.
14 Thank you.

15 CHAIRPERSON GJONAJ: Thank you. I have a
16 simple question for all three of you if you don't
17 mind answering. Your outlet for 2019, do you
18 anticipate expansion or further slow down with more
19 closures?

20 ANDREW RIGIE: Well, closures.
21 Basically, exactly what our report showed is people
22 are panicking right now. They are cutting hours and
23 they're laying people off. I hear more and more
24 people saying, you know, they're just trying to make
25 it through another year. So, over the next two years

2 I expect more of shakeup, more vacant storefronts
3 and, you know, we can't just rely on people
4 continuing to open up restaurants and employing
5 people.

6 ROBERT BOOKMAN: As you look at licensed
7 worker, my bread butter. So, I'm the canary in the
8 coal mine. I can tell you for sure a slow down and
9 it's not just a slowdown, and it's not just a number
10 or places that have a Health Department permit. It's
11 the type of places and how many people they employ
12 and what they make there. So, we're clearly seeing
13 starting last year and continuing now, it is the
14 number of what we call fine dining, but where there's
15 waiters and waitresses, where they make good money.
16 Our survey shows the average is \$27 an hour in the
17 city of New York between the tip wage and tips.
18 Those restaurants are going out of business being
19 replaced by fast casual. So, it's the same Health
20 Department permit. So—so numbers they often tell you
21 the truth, but those people make minimum wage in fast
22 casual where you stand on line at the salad place.
23 There's no tips. Those—those people are not going to
24 be able to get, you know—go to Broadway when they
25 come to New York to work three shifts a week, you

2 know be—you know and so they can become the next
3 Broadway star. You can't do that in a fast casual.
4 So be careful with the three-card monte with oh, the
5 number of spaces that have Health Department permits,
6 you know, the same or growing. It's the quality, you
7 know, and the types of employment is changing
8 dramatically, and it's not for the better.

9 CHAIRPERSON GJONAJ: Kathleen.

10 KATHLEEN: RILEY: I would agree, and to,
11 you know, elaborate on your point about fast casual,
12 it's not just minimum wage workers. It's also kiosks
13 so--

14 CHAIRPERSON GJONAJ: Which leads me to my
15 next question. Tell me about the—besides the areas
16 that have all been presented where regulation
17 enforcement, the aids and the bottom line is not
18 being able to substantiate businesses staying open.
19 The Grub Hub model, the secret, the silent partner--

20 ANDREW RIGIE: It's not what--

21 CHAIRPERSON GJONAJ: --and what is often
22 referred to.

23 ANDREW RIGIE: Yeah, I mean those
24 companies are basically almost taking--

2 CHAIRPERSON GJONAJ: [interposing] I
3 know that—I know this particular Grub Hub, but this
4 is whole--it didn't work.

5 ROBERT BOOKMAN: Yeah. No, these things
6 is over years, you know a lot of restaurants rely on
7 the income that's generated through these—this
8 delivery platform, you know, just to cover the
9 operating costs, but they've increased the percentage
10 that they take for each order so high that there is
11 no profit. You need the money to come in to run the
12 operations, but the amount of money you're actually
13 making for each delivery after they take out their
14 service fee is, you know, close to nothing. So, it's
15 a huge challenge. They're basically like a partner
16 in their delivery service, and these days restaurants
17 are trying to generate revenue any single way they
18 can. So, if they weren't using delivery, they may
19 try to do it, and if they try to do it, they're going
20 to be paying these huge fees.

21 ANDREW RIGIE: In New York, it's--

22 ROBERT BOOKMAN: I'm impressed the you're
23 aware of the—of that issue, quite frankly, and we
24 could use some Council help speaking to the state
25 because there are two state issues involved here.

2 We've never with the Attorney General's Office
3 because there's been a huge concentration in this
4 industry. It's to the point where it looks and
5 smells and tastes like a monopoly, and sure enough
6 their percentages have been going up since they've
7 become a monopoly.

8 CHAIRPERSON GJONAJ: I understand the
9 percentage is as high as 30+ percent on gross sales-

10 ROBERT BOOKMAN: [interposing] That's
11 right.

12 CHAIRPERSON GJONAJ: Is that correct?

13 ROBERT BOOKMAN: That's right, and it's-
14 and not-all they are is a platform. They're not even
15 doing the delivery.

16 CHAIRPERSON GJONAJ: So, just the numbers
17 there.

18 ROBERT BOOKMAN: [interposing] I mean it
19 should be a block, you know, you know.

20 CHAIRPERSON GJONAJ: Just use the numbers
21 that were provided earlier and the possibility and
22 what we've seen from 2012 and last year's equivalents
23 to those numbers there are no longer sustainable.

24 ROBERT BOOKMAN: What the-what restaurant
25 owners would tell us is we can't live with them, but

2 we're afraid to live without them because a lot of
3 our customers that come into the restaurant also call
4 through them and if we—if they can't get deliveries
5 through them, we may not see them, the once or twice
6 a week that they may have come into the restaurant,
7 but, you know, there's the state liquor law, which a
8 lot of these restaurants have that says that if you
9 participated in a percentage of revenues, you're
10 considered a partner and you must be on the liquor
11 license. So, I said to the State Liquor Authority,
12 how could we allow these delivery services to get
13 away with this--

14 CHAIRPERSON GJONAJ: Uh-hm.

15 ROBERT BOOKMAN: --when one-half percent
16 investor has to be on the liquor license and these
17 guys are in my—my right and my left pocket.

18 CHAIRPERSON GJONAJ: I don't think
19 they're going on any liquor licenses.

20 ROBERT BOOKMAN: Yeah. [laughter]

21 KATHLEEN RILEY: Our—our members I think
22 would—would say that they're in a similar position
23 where you sort of can't live with them, you can't
24 live without them. They—they charge fees that are
25 always getting higher, but they're a really important

2 part of the district restaurants system as well. So-
3 -

4 CHAIRPERSON GJONAJ: Have you see any
5 benefits to the Hospitality Council?

6 ANDREW RIGIE: [laughter] That was great
7 of you.

8 CHAIRPERSON GJONAJ: It was intended.
9 [laughter] You are speaking a lot about it.

10 ANDREW RIGIE: No, I-I will say the one
11 issues has been the surcharge issue from day one.
12 It's been clear that this is the most important
13 priority issue of everyone on that Council. I should
14 say the majority of people on that Council, and they
15 feel that they've just been drug-dragged along, and
16 nothing has happened at all, and then clearly at the
17 last minute on the eve of passing legislation, the
18 fact that mayor would come in with his people and
19 undermine the whole entire process, is even more
20 disturbing. You know, I know both the members that
21 spoke were on the prior panel. I know they're
22 working hard and they want to try to help us with
23 some of the workforce issues, but again, clearly the
24 main issue that so many people on that Council want
25 the city to address, they have not. So, I'd say the

2 estimation of a lot of those people they would say
3 no.

4 CHAIRPERSON GJONAJ: My last question for
5 you because have so many that are going to testify,
6 and I hope you sit to hear some of that testimony
7 because they're going to share some unique personal
8 experiences. If you had to rate the top three issues
9 that restaurants are facing that we could make a
10 change on today, but actually considering the fact of
11 whether they stay in business or not or maybe.

12 ANDREW RIGIE: Again, I-I hear that you
13 have control.

14 CHAIRPERSON GJONAJ: We have control of
15 it.

16 ROBERT BOOKMAN: Yeah, (1) I say, you
17 know, the restaurant surcharge issue. That's very
18 important to a lot of restaurants. (2) Doing
19 something with property tax. Obviously they are
20 going to be going up, but the property tax is
21 something that you can clearly assist with, and then
22 (3) would be the violations, long cure periods and
23 warnings for non-eminent public hazard.

24 CHAIRPERSON GJONAJ: And then there's
25 some of the real estate taxes. You know about water

2 and the sewer is the same thing. Real estate taxes,
3 and water and sewer.

4 ROBERT BOOKMAN: The commercial rent tax,
5 which we could get rid of finally. You know, those
6 taxes as well. Taxes that you have control over.
7 The-- you know, the liquor tax. It's only \$4 or
8 \$500, but there's no reason for it. It's, you know,
9 the New York City charges heavily.

10 ANDREW RIGIE: More exactly it's taxes
11 and reg--

12 ROBERT BOOKMAN: Regulations and let us--
13 let--

14 CHAIRPERSON GJONAJ: [interposing] And
15 the surcharges.

16 ANDREW RIGIE: [interposing] And let us--
17 let us--and let us, and let us get rid of the
18 surcharges, and there's one other thing on taxes,
19 too. There's something on a federal level that's
20 going to fight tax to credit, which is very familiar.
21 So, without getting into what it is (sic) the city
22 has taken the position that it is not an allowable
23 subtraction on your city return, which many
24 accountants and businesses are questioning. So, if
25 it could be allowed on a city return as an allowable

2 subtraction, you know, that can be a significant
3 amount of money that could help businesses, and again
4 going back to your point earlier, you know, it's kind
5 of like death by a thousand cuts. It's not just one
6 issue. It's collectively how these issues impact
7 you, and there's not one solution. So, I think we
8 need a comprehensive package of bills, and stand good
9 (sic) just because people come out to these hearings,
10 but, you know, they—they need action and that's why
11 we thank you for having today's hearing.

12 CHAIRPERSON GJONAJ: I want to thank you,
13 and I promise you that your testimony is not going to
14 fall on deaf ears. You have partners that are
15 willing to see this to the very end because the lives
16 and the businesses that are out there are dependent
17 on some change in there. Actually, now operating on
18 a negative with the hopes that the tides will turn
19 for as long as they can.

20 ROBERT BOOKMAN: A critical industry.
21 I'll—Can I—I'll finish up on quick story similar to
22 yours. The former president of our associations Will
23 and Carmine's Restaurant opened up one in Washington
24 because he won't open up any more restaurants in New
25 York any more. It's too—it's too—too burdensome, and

2 he held—and at the opening he had a—he had
3 dishwasher, a guy he hired as a dishwasher. He was,
4 you know, not a young guy. He came up to him and
5 said, Mr. Bank, I want to thank you for this job. I
6 want you to know that five years from now when we
7 have our celebration, you will come to me and say,
8 John, you're the best dishwasher I ever hired, and he
9 said, John, if in five years that's true and you're
10 still washing dishes then I failed you, and that's
11 our industry.

12 CHAIRPERSON GJONAJ: Thank you.

13 [background comments] Panel Number 3 and I apologize
14 and thank you for your patience. Frank La Corte,
15 James Malios, Peter Fahey and Peter Fitzpatrick.
16 [background comments/pause] [coughing] So, in no
17 particular order. When you do introduce yourself by
18 name if you care to, please indicate what
19 establishment or industry you're with.

20 JAMES MALIOS: [off mic] Sure. My name
21 is James Malios. I am partner in at 2 West Shelter
22 in New York, and with the Council for—Council for
23 Restaurants in Cantidori. (sic) [off mic] The volume
24 from the portal that we share, salad the business
25 that we're with this in New York, but thanks.

2 FRANK LACORTE: And I'm also with East
3 Midtown Partnership BID Uptown. So, Uptown from here
4 at least. Okay, so, I'm doing some of these things
5 and I—I understand how the sausage is made much like
6 you do know how our sausage is made like I always
7 like the way the sausage is made, but it's called the
8 next life and I get it. I'm not exactly always
9 popular with my friends in the business community
10 because I've advocated for that limit to credit is
11 okay as long as you can share with the back and front
12 of the house. I was on the—I probably—as well spoken
13 about that—not well spoken certainly, but I was
14 spoken about it as anyone. I billed a couple of
15 cranes to find out. So, I'm—what I'm going to tell
16 I'm coming from that position where I'm not a shield.
17 No one is like propping me up here and I talk to you
18 about stuff. You can look me up online. You'll find
19 tons of—a ton of stuff. We opened our last
20 restaurant and opened in the Hamptons because I
21 thought like New York was too hard, and I've lived
22 here my whole life. I drive two hours to Robo
23 restaurant in Suffolk because New York City was too
24 hard and too difficult. Couldn't deal—I made sure
25 there was money to do it, and also low pitch. Right,

2 it's like a Row House out with Patrick Swayze, if
3 you've ever—if you've ever seen a Patrick Swayze
4 movie. So, I'm not saying it's preach there, but
5 think about it. Podama (sp?) has tried 30 years in
6 New York so that the storied restaurants in New York,
7 and decision was go to Suffolk. Okay, and so I put
8 that in the perspective. It, you know, Lacey went
9 even—alright. So, there's two or three items I think
10 matter, and I want to paint them for you. You until
11 you walk Lexington and down in the '70s and '80s.
12 It's like Detroit up there. Alright, it's the Upper
13 East Side, and it's like Detroit down Lexington.
14 Okay, there's nothing there. The storefronts vacant
15 everywhere. The first thing on the paperwork in the
16 bureaucracy—I'm—I'm actually an attorney and I still
17 keep my license. I practice in appointment law. I
18 studied like an unbelievable amount of time on the
19 paperwork. I get it so not all city paper because
20 they all—they got a lawyer and what they've got—no I
21 guess not really. So, if I was to give you a piece
22 of advice on the paperwork is making it one form once
23 a year. We always meet with our staff once a year.
24 We have them re-sign paperwork for the state, one
25 form once a year. We can do that. Rolling forms on

2 a constant basis all it does is—I spent all my other—
3 not all but I'd say 12% or 10% of my time to it.
4 Okay, and I'm an attorney. So, forget, I mean I
5 can't imagine other people right. Second, the
6 surcharge. I'd like to talk about a support—
7 hopefully not of my time, but—Alright, so you guys
8 know that the Federal Law says—Federal Law says that
9 if you don't take the tip credit, you can share tips
10 to the front and back of the house. Right, that's
11 how Cali and all those other states do it, right.
12 The way I see the surcharge is it allows us to
13 basically do that much the way they do in Miami and
14 other cities where the surcharge effectively because
15 the tip, right. If you go to anyone in Miami, not
16 just hotels it's 20–20% of the bill. That's it. Okay.
17 Now, when we go through the classes of people that
18 this is beneficial for in terms of the businesses,
19 clients and the employees. First, I want to correct
20 you in the way that I do these trainings programs. I
21 was like a—I was laughing. I said is that joke that
22 they're talking with—they're talking—I talked to
23 that—to the Chavez Administration every year because
24 I've been trying to get the CEO for three years, and
25 I paid FDYN like \$10,000 and because the FD—I can't

2 something with the DOB. The fact that they're
3 talking about a training program is a joke. There
4 are no cooks. I'll put it into perspective with a
5 fact. This is a fact. When we opened in 2011, I did
6 a post for a cook on Craig's List. I get like 60
7 applications. Now, I get like maybe 10, and I've
8 been paying above minimum wage for years. Maybe 10
9 and 5 of those are like I worked in Hale and Hearty.
10 Okay, and not offense against Hale and Hearty, but
11 like that doesn't work in a—in a—in an upscale dining
12 establishment. There are no cooks. Now part of the
13 reason is my parents and my grandmother came to this
14 country, they knew some English. They worked in the
15 kitchens. Okay, that was a steady labor flow for us.
16 I—I-I know more people in restaurants jobs like I do
17 in in white collar jobs, okay. But right now the
18 students are going to be Uber drivers. They will be
19 Lyft drivers. They're not organizations. You train
20 all you want, man, and there are no—there is so
21 little labor. So, the only way for us to do this is
22 ask any restaurant person, and restaurant person.
23 The biggest problem is I cannot get people. The
24 biggest problem. So, what's the best way to get
25 people? Well, should only have to pay them better,

2 right. So, by the surcharge what I can then do is
3 take that and distribute it amongst all my employees
4 with-with-upon merit, on seniority without regard for
5 the-the artificial nature of the tip pool, and I want
6 to ask-you should ask yourselves this question, and I
7 want every City Councilperson to ask themselves this
8 question: When you've gone out and you've tipped,
9 have you ever tipped because the food was good? Have
10 you ever tipped because it came on time? Have you
11 ever tipped as my mother says because the bathrooms
12 are clean? My mom is like obsessed with the
13 bathrooms. Okay, it's like her whole thing. Well,
14 then that's it. Then we get to those people that get
15 it. It went to the front of the house, the servers.
16 So that your care for participated in. It is a
17 creating an economic disparity, and do understand
18 that it will defeat itself? You know. Okay, good.
19 So, it's equitable for the workers, and then I guess
20 and the client is paying more and it's a joke. I
21 mean whatever. I'll-if you submit be quiet, I'll be
22 quiet. So, I'll just spare the part about the
23 clients but, you know, what they are having, it's
24 being paid for. Don't worry about what the-the tax
25 on the-the 20% where they-they-they don't think we're

2 going to raise prices the other way? I mean to get
3 it—it's not. They're—they're even. So, it's
4 ridiculous. [background comments]

5 PETER FAHEY: My name is Peter Fahey and
6 Pete Fitzpatrick, Saint Pat's Bar & Grill today.
7 We're located at 22 West 46th Street. So, today just
8 basically we're going to talk about we've got 28 staff
9 working underneath us. Out of those 28, 9 of them
10 are kitchen, alright. We were—as you said all of the
11 small businesses are suffering at the moment for
12 being labor mandates, sales tax, property tax, et
13 cetera, et cetera. Basically, where we suffer most
14 is on our street between—on 46th between 5th and 6th on
15 the corner of 46th and 6th there's an alignment of
16 trucks, between 13 trucks there every morning from
17 5:00 a.m. to roughly 1:00 to 2:00 p.m. every day.
18 Now I see them more when I go in there, they be
19 fighting on the corner of the streets to get the
20 right spot to get the—the best spot to selling their
21 goods or whatnot. Now, these guys do they have food—
22 food certificate permits? Do they have—they have no
23 standing—allocated standing points. I mean it's
24 just—it's crazy. It's absolutely crazy and we'd
25 like—You know, to the corner the same line is

2 [coughs] wages. They have like, you know, whatnot.
3 What else? The garbage control, the city bins,
4 garbage city bins. Okay, and they're filling the
5 garbage city bins with their own garbage after their
6 day's work. They're leaving the streets in an
7 absolute mess. There's no control of them
8 whatsoever, you know. That's basically my point on
9 that.

10 PETER FITZPATRICK: So, my name is Pete
11 Fitzpatrick and I represent Allied Management and
12 fortunately for me most of these guys back here are
13 partners of mine in one form or another. We've got—a
14 midsize restaurant group called Allied and there's
15 about 11 restaurants we have, but mostly pubs or
16 smaller, and the thing that we need is we've
17 developing over—and it's—first of all, it's—it's
18 great that you guys up there, you know, you were
19 delivery men. You're on the route. You guys
20 understand what we're banging our heads on the damn
21 wall about all the time. Just to reiterate what this
22 gentleman was saying, to us it was like a kick in the
23 pants. I mean we are back of the house. Here's that
24 things lets out in real life. So you have a party.
25 You have a Christmas party. You have a \$2,000

2 Christmas party. You take an 18% tip against that.
3 The people who did the—the vast majority of the work
4 are the kitchen guys. They brought the buffet. They
5 put the chafing dishes. They brought stuff up, they
6 brought the staff down. They break—we can't include
7 them in the tipping process. So, now you're given an
8 18% tip to the front of the house. Come on. I mean
9 that should be some thing that's left to us because
10 that's how you keep good staff. You throw them a few
11 dollars. It's a Christmas—we can't do it any more.
12 The front of the house knows that we are—the mandate
13 is we can't do it. They'll jump on us. So, you took
14 that—that was taken away from us, but what—what we
15 need from the city, we're talking with the—the people
16 from the Council before—not the Council. Whoever
17 these guys were. It was a circle. We need partners
18 with the city. We can't have and survive a hostile
19 environment with DOB with the Department of Health.
20 We've partnered up with a lot of our, you now, AFI,
21 the food guys, Budweiser, Heineken. They've cut—we—
22 we look at the partners. We have to help each other.
23 Pete has 18 food trucks on the block. We could
24 survive the minimum wage. It's okay. We'll work
25 through it, we'll figure it out. We can't—he can't

2 have a lunch. That's the Brazil block, 46th Street.
3 I think there's been four restaurants closed on that
4 bloc. I mean are you kidding. We didn't know who
5 to talk who. Who the hell do we go to and say, hey,
6 listen, we got 18 food trucks. What's going on? How
7 many meals or are permanent? We don't know. I got—
8 there's John Doherty from 35th Street. He's been
9 waiting since—I got to tell you I think is it
10 October?

11 JOHN DOHERTY: [off mic] September.

12 PETER FITZPATRICK: September to get his
13 gas turned on. We had a fire. You know what you
14 need to turn on gas, a flashlight and a wrist to go
15 like this. That's it. We can't get it done.
16 Frankie here we're talking a couple minutes ago about
17 in a big rush to blame the landlords with the
18 increase in rent, increases in rent, whatever is
19 true. When you get a new lease, it's nightmare
20 because they can start from anywhere. Okay. Since
21 four years ago, there were—he's got 75% of the real
22 estate tax increase, the base increase. I'm not
23 positive but the real estate tax in that building the
24 last four our five years have went from about
25 \$114,000 to what are we are now?

2 MALE SPEAKER: [off mic] 142.

3 PETER FITZPATRICK: \$142. He's got 75%

4 of that pickup. You guys could do the math, and

5 forget it. I mean this is crushing. Paul Barbay

6 from Hurley's has been waiting on a-on a C of for how

7 many years.

8 PAUL BARBAY: [off mic] Three years.

9 PETER FITZPATRICK: For three years in

10 May. We've-we-he hired a company called Melrose. We

11 have another excellent company called RPO. These are

12 professional expeditors. They know City Hall. They

13 know the DOB. They still can't get anything done.

14 Four years he's been waiting. Nick. Here's

15 something that's going to make you-you-you folks up

16 there crazy. This never happened before. Nick

17 applied for a liquor license in a place we have on

18 Restaurant Row. Now you know you have to go through

19 all that-the community board and all that stuff, and

20 then it gets kicked up to the state. So, years ago,

21 three or four years ago, we would have the

22 restaurants finished, completed, built out, done and

23 then kind of wait around for two or three, maybe four

24 weeks for the license. He applied for his license it

25 was October 3rd. He got it a week before

2 Thanksgiving, okay. That's from Albany. We—we—we
3 put—we put plan for approval in the 10th of October.
4 Nothing. Zero. Nothing. I mean we don't even know
5 who to talk to. Who can—is there something like we
6 had an advocate somebody could say what's going on?
7 Can they push it? So, what do we do for advocates?
8 We get Melrose a big time expensive expediter. RPO
9 another big time expediter. We even hired the Walter
10 Borman & Associates and then you expedite it for Rock
11 Center. He still doesn't have the gas on. So, you
12 told the employees before—how many employees did you
13 have to let go, John? I don't even know.

14 JOHN DOHERTY: Seven.

15 PETER FITZPATRICK: Seven employees he
16 had to let go. You know, we didn't want to let any
17 of them go. They got kids going to college. They
18 got things to do. We can't hold onto them. So, it
19 was all, and again it was all back-of the-house stuff
20 because you could put a million heaters in the place
21 and keep the bar open, but if you don't have gas, you
22 can't—you can't turn a pilot on. So, that's—that's
23 the part we all have—we all have problems that are
24 similar but they're also dissimilar and we need a
25 partnership with the Council, with you, gentlemen and

2 ladies up there, and there's got to be a way we can
3 move these things along. I mean God forgive me to
4 talk about graft. I mean if somebody came in and
5 said listen, I'll take care of this all. I'll him
6 like 10 grand just to get it done. This is the
7 thing, nothing is happening. You can't move anything
8 forward. You can't get anything through. It goes to
9 an abyss and we really-Paul just told me today I
10 think. Did you just kind of get a C of O?

11 JOHN DOHERTY: Reapproved.

12 PETER FITZPATRICK: Do we have the--yeah,
13 this wasn't even resealed. This was a re-approval.
14 He got a--the other thing you guys know and this
15 isn't over. I can keep going on, the ADA. These ADA
16 claims are outrageous and here's the problem. Here's
17 how you know that this all--yeah, it's all--it's
18 ambulance chasing because when they come at us this
19 is the way the whole trajectory goes: We get
20 something from a lawyer that says: You got ADA
21 violations and they'll list them. Okay. Then it
22 goes into a horse trade. They want 200 grand. We
23 say well, we'll give you, you know, we'll give you
24 10. They'll say well, we want 150 and you give them
25 15, but this the way it goes. As soon as they get

2 paid do you think that those lawyers follow up
3 whether those ADA things were cured? A player. It's
4 a shakedown. We would be happier if you guys from
5 the city or DOB would come and say, listen, this is
6 what you've got to do. Fine us. We owe money
7 because if we're in violation, we're in violation
8 and we're okay. I don't need clown from 33rd Street
9 to come up and bang me [laughter] for-for-for 15
10 grand just to pay a client if he's taking half. It's
11 such a-it's such a shakedown, it's not even funny,
12 and that's pretty much-I apologize for getting
13 emotional on you gentlemen and gentlemen and ladies,
14 but we're-we are under serious, serious, serious
15 pressure and I could see within these guys here. I
16 mean there's-there's three or four of these places
17 that might be here like after Saint Patty's Day.
18 We're that close, and the reason we did this, the
19 reason we're all-like we were saying before everybody
20 here is either an immigrant or a son or daughter of
21 an immigrant. You know, we're happy to do this work.
22 You know, we're happy to do it for Bev. You were
23 saying before we don't want to do HR. We can't. We
24 don't want to have-we don't want to be, you know, the
25 guy-the guys who go down to the city and file this

2 stuff. What do you call them? The expediters.
3 That's what—we can't do that. We're here to do food
4 and bev and we're happy to do food and bev, and we're
5 happy to give you a great restaurant and a great
6 experience and a great meal in a clean place that you
7 could eat off the floor. Another thing, too. Wait
8 and I'm be out of your hair, folks. The guys from
9 McHale's so what they got was they got a—we had a—a
10 big leak on the roof of the building and what happens
11 is the roof kind of drops some stuff, some plaster or
12 sheetrock on the morning we just happened to get a
13 Board of Health inspection, which was okay. They
14 gave us a B-an A—and A—a B—a B with and A pending on
15 the—on the grades right. We went and we them
16 complied and we did everything we were supposed to
17 do. We haven't seen anybody since. So, if you go on
18 the website, if you go on any those places, we're
19 still sitting with a B and we're good to go. Just
20 send us somebody to inspect it. That's all we want.
21 If it's not right then—then tell us. You can't sit
22 on these things. Nick Verses has been waiting for
23 the Building Department to get their act together
24 since October. October, November, December, January.
25 Did you pay your February month yet? \$10,000 month.

2 It's 50 grand. He's out. That's where you got to
3 start. The second you buy a pub or a restaurant, you
4 got to start opening. You got to get moving because
5 you go debt service or rent that's piling on you.
6 He's \$50,000 behind the 8 Ball. He hasn't even
7 flipped one hamburger on the grill there. That's the
8 problem. We need a partnership with you folks in the
9 Council and the departments in the city. We need to
10 work together because we're all in this together.
11 These are taxes that we get from the city comes from
12 us. The employment we get from the city comes from
13 us. Payroll tax comes—we're happy. That's part of
14 being in New York. We get it, but we cannot be
15 banging our head against DOB, Board of Health, Con-
16 Ed. We—that's what's killing us. I'm not sure if
17 it's over-regulation or just apathy. I don't really
18 know what the heck is going on down there, but we
19 can't through, and with a state agency you guys know.
20 When a state agency comes in 2 or 3 or four months
21 ahead of the city agency, that's a problem, but we
22 could walk here. That's it. Alright. Thank you.

23 PETER FAHEY: Okay, getting back to the
24 tip credit, we need to keep the tip credit. If we
25 don't keep the tip credit, where do we get the front-

2 of-house staff. Front of house are making good
3 money. They're making upwards of \$25 to \$30 an hour.
4 I have a restaurant on Restaurant Row called Bourbon
5 Street on my front-of-house staff on Broadway they're
6 doing shows, they're auditions. They're all time
7 paid workers. They're all working 20 to 30 hours a
8 week. If they're not making \$30 an hour, they are
9 not going to stay in the restaurant business. They
10 are going to go out and drive an Uber car. So, we
11 should be allowed to take care of the back of house.
12 We're not allowed to do that. Our wait staff if
13 directed would give a portion of their tips to the
14 back of house because they understand how important
15 it is for the back of house to do their job correctly
16 because back of house performing correctly is
17 enhancing front of house. [background comments] So,
18 that makes the difference. If we have to pay our
19 front of house \$15.00 an hour as opposed to the
20 \$10.00 we are paying now, we're taking a \$5.00 tip
21 credit that would—with the hours that we're operating
22 front of the house, would probably cost us about
23 \$250,000 extra in payroll plus payroll taxes. We
24 can't afford that would put me out of business right
25 now. If I have to come up with another \$250,000 a

2 year, that puts me out of business. With credit in
3 the years, we need it to stay, and we need to be
4 aiming to take care of the back of house better.
5 Like as Peter mentioned when we do parties at
6 Christmas time the month November and month of
7 December we do a lot of parties. We do \$6 or \$7,000
8 dollars parties with 18%, we should be able to kick
9 some of that back to the back of house. The minimum
10 wage went up to \$15.00 an hour. My dishwasher gets
11 \$15.00 an hour. My porter who is sweeping the floor
12 gets \$15.000 an hour. My cook was on \$15.00 an hour.
13 He's not on \$15.00 an hour any more. He's on \$17.00,
14 he's on \$19.00, he's on \$20.00 an hour. They all
15 went up salary because everyone got bumped up. It
16 wasn't just the minimum wage that got bumped up. The
17 people that were there before they were making \$16.00
18 an hour \$15.00 an hour. They went up to \$18.00,
19 \$19.00, \$20.00 and like it's hard. It's right across
20 the board. So, I mean the dun to preserve the tip
21 credit reduction.

22 CHAIRPERSON GJONAJ: Thank you,
23 gentlemen. I do want to follow up with some of your
24 issues. I'm going to give you my card. I want to
25 know about the C of O, the gas, and the other issues

2 that you are faced with that are preventing you from
3 opening up [applause] and—and I promise I will do
4 that. I want you to know that your testimony is going
5 to be—I can't be on everything. I wish I had a magic
6 wand to make all of our problems go away, but we're
7 going to prioritize your needs and come up with a
8 format that we can challenge the issues that you're
9 faced with. I'm hoping that we can start a proactive
10 approach versus a reactive. We should for
11 restaurants to close down before we figure out how o
12 make it right, and that proactive partnership that
13 you're referring to is what you would want from
14 government. So, I promise you that I will be focused
15 on that with my colleagues that sit on this committee
16 that you won't be forgotten, and we're going to get
17 ahead of the problems and not try to correct them
18 when they happen.

19 FRANK LA CORTE: Instead of non-sense
20 training programs and ridiculous things that don't
21 matter in the real world and they've used that money
22 and hire people to actually help us in the DOB like
23 they're supposed to and get to a decision maker. I've
24 had SBA people push something hallway to the DOB and
25 the DOB basically said F you, right or told me to

2 buzz off and then they dropped it. I spent all that
3 money on people to help us so we had to hire
4 expediters for \$30,000. Instead, you know, just do
5 it that way. Drop all those programs. They're a
6 waste of money.

7 CHAIRPERSON GJONAJ: Thank you.

8 FRANK LA CORTE: It's just like we were
9 saying before it's--

10 CHAIRPERSON GJONAJ: Thank you.

11 FRANK LA CORTE: --a partnership
12 mentality. If we could get that from you guys at the
13 Council and from the--the city agencies, well then
14 we'd be good. We'd be okay, but we--we definitely
15 need a partnership. We need a working partnership.

16 CHAIRPERSON GJONAJ: I agree

17 FRANK LA CORTE: And thank you very much
18 and I really appreciate your time.

19 CHAIRPERSON GJONAJ: Thank you for being
20 here, and making a statement. [background comments]
21 Hold on.

22 COUNCIL MEMBER PERKINS: [off mic] I want
23 to ask a question.

24 FRANK LA CORTE: Yes, sir.

2 COUNCIL MEMBER PERKINS: [off mic] So,
3 during your partnership have you [coughs] asked about
4 that partnership?

5 FRANK LA CORTE: I-I would love to. I
6 would-I don't know--

7 COUNCIL MEMBER PERKINS: [interposing]
8 You ask, you ask them.

9 FRANK LA CORTE: I don't know who to ask.

10 COUNCIL MEMBER PERKINS: I think you--

11 FRANK LA CORTE: Wait a second yes.

12 PETER FITZPATRICK: But a lot of these
13 problems, too, Councilman. A lot of these problems,
14 too, like the restaurant business in New York for
15 years chugged along. We chugged along on volume. We
16 chugged along because the city's business things were
17 good, and now we're-we went from like-and it's, now
18 it's partially due to wages, partially due to a whole
19 lot of-we went from 60-70 miles an hour down to zero.
20 It seems like that, and now we're all-we're all
21 running around saying what the hell is going on?
22 Like the profits are-why anybody would be new and go
23 into this business. I've been in the-I've been in
24 the-I opened my first restaurant in Manhattan in '82.
25 So, I've being doing it for a long time. I've never

2 seen—but there's such a contentious attitude between
3 DOB and the Board of Health. I mean it's almost like
4 they—you—you actually go—before about when you were
5 saying and I never thought about it that way that the
6 retaliatory nature of some of the stuff, but
7 everybody is afraid. The first thing we're saying is
8 to hang the meter. Should we go? You don't want to
9 say I don't want to say I don't know if we want to
10 go. Do we want to go? Maybe we'll go and we want to
11 say where the pubs are. Maybe we'll go. We might.
12 Well, I'll be vague, but it's almost as if—it's
13 almost as if they come in

14 CHAIRPERSON GJONAJ: And if you're out of
15 place, not get a fine?

16 PETER FITZPATRICK: Very rarely. They're
17 going to find something, and generally they're going
18 to find something that isn't enough to change you're
19 A from a B. They will clock for something. You
20 figure—let's say you have—I'm just guessing, your
21 Board of Health guy paid \$100 or \$150 a day or
22 whatever he's getting. He's going to come out. You
23 know they got to feel like they got to make the
24 balance, they got a pay amount. They're to pay him
25 back for the same amount if you—that's the way we

2 feel. I know it's probably not true, but that's the
3 way we feel.

4 CHAIRPERSON GJONAJ: We have different
5 inspectors coming up with different scenarios where
6 an inspector comes in and says no this is wrong. You
7 correct it. Another inspector comes in and says,
8 it's good.

9 PETER FITZPATRICK: [interposing] I know.
10 [background comments] I know. That actually
11 happened. That actually that story that's—that's—
12 that's very specific and I'll tell you I can
13 guarantee everybody here would agree with me, the ADA
14 stuff oh, my God, you're like a loud line. They're
15 talking, you know, college trigonometry to me, and I—
16 I like I didn't—I'm an Algebra guy from high school.
17 I don't even know. Just give the metes and bounds as
18 the city. We'll be—this is one of the things we will
19 be happy for you guys to handle. You know, come out
20 and tell us what we need to do. What was the best
21 and can you do it? If we dropped the ball, that's
22 okay. We just got to get these lawyers off the side
23 of our neck. They're looking for \$200,000 because
24 who's Ranny? His limped. His ramp is—the pits on
25 the ramp it's supposed to go I believe Frankie said—

2 FRANK LA CORTE: [interposing] Another
3 inch.

4 PETER FITZPATRICK: --a foot. Yeah. His
5 pits—we measured the—the thing. [laughs]

6 CHAIRPERSON GJONAJ: Okay, I've been in
7 there.

8 PETER FITZPATRICK: See, it's short. I
9 mean and they come out with the—the numbers. It's
10 not listen, we're going to--we're going to make you
11 behave. We're going to fine you \$1,000 or \$500
12 because your ramp is—get a new ramp. That's what you
13 guys would do. That's okay. Instead it was \$200,000.

14 PETER FITZPATRICK: You know, that's how
15 hard you press in the—in the Health Department
16 violation hearing. In other words, I cannot go in
17 and say if someone issues a new violation and I can
18 prove that that structure and that setup had been the
19 same for six years, I cannot argue the precedent
20 should apply in assessing this inspector's—

21 CHAIRPERSON GJONAJ: [interposing] That
22 this deserves attention.

23 PETER FITZPATRICK: So, that's probably—
24 probably what you were saying before with the
25 interpretation on the Board of Health guys.

2 FRANK LA CORTE: Because we can't argue
3 precedent in any way, it's a constant moving target
4 of compliance.

5 CHAIRPERSON GJONAJ: Right.

6 FRANK LA CORTE: Depending on--so all you
7 need is one person to say one thing. Then all of a
8 sudden that becomes effectively code.

9 CHAIRPERSON GJONAJ: The issue there or
10 offense is after being in business for 30 years
11 received a violation that the sink was too far from
12 the cappuccino machine--

13 FRANK LA CORTE: [interposing] Yeah, I can
14 say--

15 CHAIRPERSON GJONAJ: --that was too close
16 to the floor.

17 FRANK LA CORTE: [interposing] Yes, that
18 was my problem.

19 CHAIRPERSON GJONAJ: So, to correct the
20 sink being closer to the coffee machine the
21 Cappuccino machine--

22 FRANK LA CORTE:--correct.

23 CHAIRPERSON GJONAJ: --quoted another
24 violation that it was too close to the door.

2 FRANK LA CORTE: [interposing] I had the
3 same problem as you. That's why I know the precedent
4 of the argument. Because I walked in to the—to the
5 Health Department and I said, for—for the better pat
6 of 30 years for the building and the six years that
7 I've been here no one has said that there's a problem
8 with this sink issue. This one person comes and
9 makes issue argument and, you know, I cannot—I cannot
10 make that argument. We cannot make that argument.

11 CHAIRPERSON GJONAJ: Thank you,
12 gentlemen. Thank you. I have these cards for you.

13 FRANK LA CORTE: Thank you.

14 CHAIRPERSON GJONAJ: And we have one
15 final person testifying Jim Quint. [background
16 comments] Thank you for bringing that. [background
17 comments]

18 JIM QUINT: Good afternoon Chair Gjonaj,
19 Council Member Perkins. My name is Jim Quint. I
20 represent Duncan Brands. Thank you for the
21 opportunity to testify about the hardships that
22 Duncan Brands franchisees face as small business
23 owners in the restaurant industry. As you know,
24 Duncan is the largest storefront operator in New York
25 City. They have over 630 locations and provide over

2 12,500 jobs, but these are not corporate owned
3 stores. Contrary to public—to the misconception,
4 they're a network of small business owners who have
5 chosen to franchise with Duncan Brands. These are
6 franchisees who are no different than the thousands
7 of other small business owners across the city.
8 They're responsible for the day-to-day operation of
9 their businesses, hiring and retaining workers, and
10 managing their own finances. They are the people who
11 take out the loans, assume the debt and all of the
12 responsibility that comes with running a small
13 business. Over the years the cost of rent and
14 supplies and maintenance and other costs have graced
15 with inflation, but these are—are expected cost
16 increases that they can, you know, plan for.
17 Unfortunately, we hear a lot of comments from elected
18 officials about wanting to help small businesses grow
19 and create jobs. You know, the single largest
20 increase in their budgets has been a flurry of new
21 regulations, rules and laws that seek to micro-manage
22 their day-to-day operations and end up increasing
23 their costs. They impose new fines. They create new
24 administrative hurdles, which all cost these business
25 owners money. Often under the guise of very

2 intentioned public policy pursuits, these regulations
3 have little like they—little or no—not effect but the
4 new rules actually threaten the way that people do
5 business, and one of the—over the years you’ve seen
6 goth New York City and New York State, which both of
7 you gentlemen have experience in on both the city and
8 state government. We’ve seen a dramatic increase in
9 the minimum wage, newly imposed paid sick leave laws,
10 scheduling rules, many labeling changes, increased
11 delivery fines, and we have new organics recovery
12 requirements in New York City for commercial
13 businesses. All of these days—all of these things
14 raise the cost of doing business. One of the things
15 in particular that I want to talk about and I only
16 have two things that I want to raise. I don’t want
17 to take up too much of your time, but the first thing
18 is so-called Fair Work Week Laws. These were passed
19 in 2017. It was a package to provide advance notice
20 of scheduling to employees and create protections
21 against lost hours. These laws have actually led to
22 less hours and less opportunity for many employees
23 looking to pick up additional hours when seeking to
24 fill a shift left open by someone who calls out sick
25 or otherwise. This adversely affects both the

2 employees and the small business owners throughout
3 New York City, and let me just run off a few things
4 that the Fair Work Week Laws have impacted. Number
5 1. It makes it harder for small business owners to
6 provide their employees with flexible scheduling and
7 additional shifts when requested due to the
8 imposition of penalties, which the Council at the
9 time called a premium pay. Since employees do not
10 have to provide at least two weeks notice before
11 calling out nor do they ever because you don't know
12 that you're going to be sick or have an emergency or
13 have to take care of a loved one with two weeks
14 notice. You find out 24 hours ahead of time. That
15 doesn't matter in the law. The law says that if you
16 call out, and someone wants to replace you, the
17 person they replace you with has to be paid a
18 premium, and that adds to the cost of doing business.
19 It harms employees who value their flexibility and
20 part time work by preventing them from picking up
21 additional hours. If I want additional hours, I have
22 to make sure that I'm swapping out a shift with
23 someone, and that's always possible for things to do.
24 Not all the employees are going to know each other
25 and even if they do, they won't know when some shift

2 is open. So people who are looking to get extra
3 hours don't have that opportunity often times. It
4 also reduces the quality of customer service. Right.
5 So, if somebody calls out and the restaurant owner
6 can't actually get someone else in to fill that
7 shift, or they don't want to have to pay this premium
8 pay, they're going to leave that shift open. Now you
9 have a full shift that is under-staffed and the
10 customers that are coming in are not getting the
11 customer service that they deserve and rely upon, and
12 those--those shift workers are now forced to actually
13 work two or three times as hard just to maintain that
14 same level of work. It's stifles business growth.
15 It prevents further investment by small business
16 owners. I can't tell you how many times I hear from
17 folks that they're concerned about expanding their
18 business because they don't know what next is going
19 to come from the government. The other--the other
20 costs of--of supplies and--and maintenance and all the
21 other--the--whatever it is they have to purchase, they--
22 they can kind of forecast that, but when government
23 comes in and decides that they're going to put these
24 new restrictions on business owners, there's no way
25 for them to know that that's coming. And it also

2 creates a cottage industry for plaintiffs' attorneys
3 by opening up small businesses to costly litigation
4 under the guise of protecting employees. Some of the
5 previous people who testified talked about this
6 problem and it is indeed a very serious problem and a
7 very costly undertaking for small business owners who
8 have very limited profit margins, and-and struggle
9 everyday to maintain their businesses. The last
10 thing I want to talk about is the organics recovery
11 pilot expansion. The New York City Council passed a
12 law in 2013 to create a commercial organics recovery
13 program for stadiums, arenas, hotels, you know, large
14 entities like catering halls and the like. They have
15 to have over 7,000 square feet of space or over-
16 depending on where they were. It might have been
17 15,000 square feet of space or if they were a chain,
18 it had to be two or more that had more than 8,000
19 square feet of space. But in the law they set it up
20 that the Sanitation Commission was obligated to
21 determine whether there is sufficient capacity within
22 a 100 mile radius of the city to process this organic
23 waste that is being generated. Now, in addition, the
24 Commissioner is supposed to determine whether the
25 cost of processing the organic waste is competitive

2 with the cost of disposing of the organic waste in a
3 landfill that is up to 100 miles away. Okay, note
4 that, up to 100 miles away. So, as organic waste
5 processing capacity increases within the region then
6 the Commissioner is able to phase in the requirement
7 of increasing the number of commercial enterprises to
8 source separate the organic waste. While this latter
9 clause allows for the Expansions Program, the city
10 Department of Sanitation has not conducted or
11 provided the results of a study on sufficient
12 capacity. The department also chose to impose
13 commercial organics recovery on all food service
14 establishments that are part of a chain with 100 plus
15 locations within the city confines, within the five
16 boroughs. This expansion doesn't take into account
17 the amount of organic material that's actually
18 generated by each location. The cost incurred by the
19 small business owners to hire carters to find a
20 carter that actually will accepted an—and pick up the
21 organic waste, or anything regarded to the—the size
22 of the store, the ability for them to put different
23 containers that are required back of house, and mind
24 you this is all back of house, not front house
25 because I think people have a tough enough time

2 figuring out the—the overall, you know, recycling
3 process, but we're getting there, and so one of the
4 things that we call on you, too, is please like we
5 think the New York City Council should call on the
6 Department of Sanitation to revisit—to revise the
7 expansion of this commercial organics recovery
8 program, and make it something that is—that is
9 efficient and for lack of a better word doable.

10 CHAIRPERSON GJONAJ: Jim, what is the
11 cost for some of the Duncan's—to comply with the
12 organic recycling.

13 JIM QUINT: It's TBD. Alright, so this
14 is new to the—to the—it goes into effect on February
15 15th and we'll find out what the costs are, but the
16 costs are going to increase because now you have to
17 have not just a—you don't have to just have a
18 recycling pickup. Along with your normal garbage,
19 you'll have to have recycling. You'll have to have
20 normal garbage and then you'll have to have organic
21 waste recovery pickup. So, just imagine it's, you
22 know, it's just adding another—it's adding another
23 piece to that—that—that pie.

24 COUNCIL MEMBER PERKINS: Is is—it's—it's
25 compounding costs?

2 JIM QUINT: Yes.

3 COUNCIL MEMBER PERKINS: Is it--

4 JIM QUINT: [interposing] So, with that--

5 because that--everybody. Oh, it will be measurable.

6 We just don't know yet because it hasn't started. It

7 starts on February 15th.

8 CHAIRPERSON GJONAJ: So, aren't they

9 making contract agreements now because I'm sure

10 they're set or is picking up the commercial carting

11 is not going to be equipped to--

12 JIM QUINT: Correct, but we don't yet

13 have a full list of who was approved by the Business

14 Integrity Commission to collect organic waste and not

15 every entity that collects, you know, normal waste

16 and recyclable material, it's also--

17 CHAIRPERSON GJONAJ: Required.

18 JIM QUINT: Not--not even required. Able,

19 willing.

20 CHAIRPERSON GJONAJ: This goes into

21 effect when?

22 JIM QUINT: February 15th.

23 CHAIRPERSON GJONAJ: What was at the seat

24 of that (sic) besides getting rid of the whole

25 program on that?

2 JIM QUINT: No, no, no. Everybody and-
3 and we understand the need and the intent of the law
4 and the expansion. There's no question about that,
5 but the approach hasn't been one that is doable
6 though it--that it's--it's going to be very difficult
7 for people to comply. It's going to be very costly.
8 If you have a business that has--is a--is a 400-square
9 foot kiosk or a walk-up window like you have down the
10 street here on Courtland, there's nowhere to put an
11 extra bin. There's nowhere to turn inside the place.
12 I mean you--you--you are very limited in your space and
13 your capacity. Aside from that, they're not
14 generating a lot of waste, but they still will have
15 to put everything that isn't organic material to the
16 side, and figure out how to get someone to come and
17 collect it every week, every, you know, three times a
18 week, whatever that requirement will be.

19 CHAIRPERSON GJONAJ: And you're going to
20 be required to sort through your organics or is this
21 going to be beans versus everything else or lines?

22 JIM QUINT: [interposing] Organics
23 material will go in on, but it has to be source
24 separated from everything else.

2 CHAIRPERSON GJONAJ: Well, you guys
3 should be very careful with this because this could
4 be imposed on the restaurants across the board sooner
5 or later and--

6 JIM QUINT: Well, that's the concern,
7 right. So, they-if they're-if they're expanding this
8 into an arena where they're not taking into account
9 the amount organic material that's generated by a
10 particular business, that's telling you something.
11 It's-and-and we get it. The overall goal is
12 laudable. It's just the approach is-is-it doesn't--

13 CHAIRPERSON GJONAJ: [interposing] So,
14 this will also contribute to congestion problems I'm
15 going to guess because if these trucks have to make
16 their way from one neighborhood to another
17 neighborhood, certainly you're not going to get
18 capacity. I don't imagine we're going to have a
19 tremendous amount of volume of organic recyclables.
20 Is this an idea--

21 JIM QUINT: [interposing] You're adding
22 another truck or you're adding a larger truck
23 depending on-I'm not a Sanitation expert but however
24 that works out, we-I would ask you to ask the

2 Sanitation Department what the pickup requirements
3 are.

4 CHAIRPERSON GJONAJ: We have our work cut
5 out for us, Council Member.

6 COUNCIL MEMBER PERKINS: Sounds like they
7 can save the room. (sic)

8 CHAIRPERSON GJONAJ: And as far as the
9 Fair Work—the Fair Work Week predictable scheduling,
10 what's the number of employees that are needed?

11 JIM QUINT: It's not necessarily the
12 number of employees, but you have to have your—if
13 you're in a—a business that's 30 or more
14 establishments across the country. So, they—they're
15 specifically talking about chain restaurants.

16 CHAIRPERSON GJONAJ: So, if you have less
17 than five employees you--

18 JIM QUINT: [interposing] Wait. No, it's
19 15 or more.

20 CHAIRPERSON GJONAJ: 15 or more
21 employees, which if you're going to stress long-term
22 there, you're certainly a--

23 JIM QUINT: But again, you have to have
24 30 or more across the country. That's—that's another
25 stipulation. It's, you know, the—the gentleman who is

2 talking about owning a place on 42nd, he's not
3 required to give that 2-weeks advance notice. You
4 know, that's not—it's—it's a different entity.

5 CHAIRPERSON GJONAJ: So, we have some
6 work to look at that as well. So, regardless of how
7 many units owned just because you are a franchise
8 operation--

9 JIM QUINT: Yes sir.

10 CHAIRPERSON GJONAJ: --with more than 30
11 locations in the nation--

12 JIM QUINT: Yes sir.

13 CHAIRPERSON GJONAJ: --you would have to
14 comply?

15 JIM QUINT: Right, and with the
16 Sanitation rule it's if you have 100 more within the
17 city.

18 CHAIRPERSON GJONAJ: I think it certainly
19 has that.

20 JIM QUINT: Yeah.

21 CHAIRPERSON GJONAJ: Why between 230 and
22 100?

23 JIM QUINT: I don't know. I didn't write
24 it. I don't know. [laughter]

2 CHAIRPERSON GJONAJ: Before my time and
3 before I think your time as well, correct the
4 organics and the Council Members.

5 JIM QUINT: [interposing] Yes.

6 CHAIRPERSON GJONAJ: That's way--

7 JIM QUINT: [interposing] Okay before
8 that.

9 CHAIRPERSON GJONAJ: Thank you, Jim.

10 JIM QUINT: Thank you very much.

11 CHAIRPERSON GJONAJ: [gavel] This will
12 conclude today's hearing. I want to thank you all
13 for your time and your testimony. [background
14 comments/pause]

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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. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date February 26, 2019