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THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING

Hon. Andrew Cohen, Chair

May 13, 2020

PROPOSED INT. NO. 1916-A:

By Council Members Cohen, Chin, Powers, Yeger, Louis, Ayala, Rivera, Lander, Koslowitz and Rosenthal

TITLE:

A Local Law in relation to requiring the waiver and refund of certain sidewalk cafe revocable consent fees, and providing for the repeal of such provision upon the expiration thereof

PROPOSED PRECONSIDERED INT. NO. -A:

By Council Members Matteo and Yeger

TITLE:

A Local Law in relation to license, permit, consent and registration

renewal extensions, and requiring at least 45 days notice for renewal following the COVID-19 emergency

I. INTRODUCTION

On May 13, 2020, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Andrew Cohen, will hold a remote vote on two pieces of legislation: Proposed Int. No. 1916-A by Council Member Cohen, a local law in relation to requiring the waiver and refund of certain sidewalk cafe revocable consent fees, and providing for the repeal of such provision upon the expiration thereof; and Proposed Preconsidered Int. No. __-A by Council Member Matteo, in relation to license, permit, consent and registration renewal extensions, and requiring at least 45 days notice for renewal following the COVID-19 emergency.

The Committee previously heard testimony on these bills, along with several others, at a remote joint hearing with the Committee on Small Business on April 29, 2020. Those invited to testify included representatives from the New York City Department of Small Business Services (SBS), representatives from the Department of Consumer and Worker Protection (DCWP) (formerly the Department of Consumer Affairs), representatives from the Office of Nightlife at the Mayor's Office of Media and Entertainment, representatives from third-party delivery platforms, small business advocates, chambers of commerce, business improvement districts, and other community-based non-profit organizations. Feedback on these bills has contributed to their subsequent amendments.

II. BACKGROUND

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization (WHO) declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International

Concern (PHEIC).¹ SARS-CoV-2 is not the first virus to pose a serious threat to modern civilization in recent decades. In 2003, the severe acute respiratory syndrome (SARS) was labelled the “first pandemic of the 21st century”, because it spread quickly across continents, infected more than 8,000 people and killed nearly 800.² By comparison, COVID-19 has infected 2.5 million people across 210 countries, and has killed nearly 800,000 people as of April 22, 2020.³

The ease with which the virus spreads has caused governments across the globe to shut-down businesses, schools, religious and cultural institutions, and mandate various levels of social isolation. While this has helped to limit the spread of the virus, stay-at-home orders have had a catastrophic impact on economic markets and particularly small businesses.

1. The Impact on Small Businesses Amid the COVID-19 Crisis

In New York, Governor Andrew Cuomo issued an executive order – New York State on PAUSE (PAUSE) – that closed all on-site, non-essential businesses, effective March 22, 2020, to help stop the spread of SARS-CoV-2.⁴ The list of essential businesses that are still permitted to operate, to some degree, include:

¹ World Health Organization “Rolling updates on coronavirus disease (COVID-19)”, last updated April 18, 2020, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

² James W. DeLuc and M. Anita Barry “SARS, the first pandemic of the 21st century”, *Emerging Infectious Diseases*, November 2004, vol. 10(11), e26, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3329048/>.

³ Worldometer “Countries where COVID-19 has spread”, April 22, 2020, available at:

<https://www.worldometers.info/coronavirus/countries-where-coronavirus-has-spread/>.

⁴ Governor Andrew Cuomo “Governor Cuomo signs the ‘New York State on PAUSE’ executive order”, March 20, 2020, available at: <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

- Health care operations – such as hospitals, medical labs, walk-in clinics, home healthcare, elder care, veterinaries, nursing homes, licensed mental health providers, and medical billing support personnel.
- Infrastructure – such as airports, public utilities, hotels, commercial shipping ports, and telecommunications.
- Manufacturing – such as food processing, pharmaceuticals, automobiles, household paper products, and chemicals.
- Retail – such as grocery stores, pharmacies, farmer’s markets, gas stations, restaurants (for take-out and delivery only), and convenience, hardware and pet food stores.
- Services – such as laundromats, postal services, trash and recycling collection, bicycle and automotive repair, funeral homes, and animal shelters.
- Financial Institutions – such as banks and lending institutions, insurance companies, and accounting firms.
- Human Services Providers – such as food banks, homeless shelters and community care programs.
- Construction – insofar that it supports affordable housing, hospitals, roads, transit facilities, homeless shelters or schools.
- Public Health and Safety – such as law enforcement, fire and emergency services, building cleaners or janitors, and residential moving services.

- Logistical, Technological and Child Care Services – such as technology support for online services, child care programs, government owned or leased buildings and essential government services.
- Recreation – such as parks and open spaces (not including playgrounds), and boatyards and marinas.
- Professional Services – such as lawyers and real estate services.
- News Media; and
- Defense.⁵

Although this list covers a range of industries that are permitted to operate during PAUSE, a large proportion of New York’s small (and large) businesses have still had to severely reduce their capacities. According to an analysis by the NYC Comptroller, the City’s hotels are projected to only maintain an occupancy rate of 20 percent, while restaurant sales are expected to drop by a staggering 80 percent. Real estate and retail sales are both expected to decline by 20 percent.⁶

These figures for the restaurant industry reflect the results of a recent survey by the New York State Restaurant Association. According to their findings, sales have declined by 79 percent, and New York State restaurants are expected to lose \$3.6 billion in sales revenue, in

⁵ Empire State Development “Guidance for determining whether a business enterprise is subject to a workforce reduction under recent executive orders”, April 19, 2020, available at: <https://esd.ny.gov/guidance-executive-order-2026>, last accessed April 22, 2020.

⁶ New York City Comptroller Scott M. Stringer “Comptroller Stringer: City must take immediate action to prepare for economic impacts of COVID-19 and protect vital services for most vulnerable New Yorkers”, March 16, 2020, available at: <https://comptroller.nyc.gov/newsroom/comptroller-stringer-city-must-take-immediate-action-to-prepare-for-economic-impacts-of-covid-19-and-protect-vital-services-for-most-vulnerable-new-yorkers/>.

April alone.⁷ Just over half (51 percent) of all restaurants have been able to move their operations online, and unemployment rates in this sector have skyrocketed, as 80 percent of restaurant workers have lost their jobs.⁸

Restrictions similar to PAUSE have been implemented across the country, which has caused a massive reduction in the number of small businesses operating. In their survey of small businesses (under 500 employees), the National Bureau of Economic Research found that 43 percent of businesses had closed due to COVID-19 and that they had reduced their staff by about 40 percent since January 2020.⁹ The results were more severe in the Mid-Atlantic region, which includes New York, where 57 percent of businesses were closed, and staff employment decreased by 47 percent.¹⁰ According to the survey's conclusion, about 20 percent of the nation's employees work in "retail trade, leisure and hospitality and these sectors are particularly vulnerable to the current pandemic."¹¹

2. Federal, State and Local Government Response to Help Small Businesses

The nation's economy is dependent on its small businesses. There are approximately 27 million of these businesses across the country and they are responsible for employing 57 million workers.¹² When including the owners of these businesses, in addition to employees, that total

⁷ New York State Restaurant Association "Restaurant industry impact survey: New York State", April, 2020, available at: https://www.nysra.org/uploads/1/2/1/3/121352550/restaurant_industry_impact_survey_new_york_state_2.pdf.

⁸ Id.

⁹ Alexander W. Bartik et al. "How are small businesses adjusting to Covid-19? Early evidence from a survey", *National Bureau of Economic Research*, April 2020, available at: <https://www.nber.org/papers/w26989.pdf>.

¹⁰ <https://www.nber.org/papers/w26989.pdf>.

¹¹ Id.

¹² Information Station "How important are small businesses?", January 3, 2017, available at: <https://informationstation.org/video/how-important-are-small->

comes to an estimated 85 million people.¹³ According to the Small Business Administration, small businesses are responsible for creating two-thirds of the Country's new jobs.¹⁴ Given their vital role, it is crucial that they are either given alternative means to operate, in as lucrative a manner as possible, throughout the COVID-19 crisis, and/or are provided the necessary support to restart their operations once social distancing measures have been lifted.

a. Federal Government Assistance

During this crisis, small businesses in New York City may apply for various assistance programs including funding distributed by the federal government through its Small Business Administration (SBA). These programs include the Paycheck Protection Program (PPP),¹⁵ the Economic Injury Disaster Loan and Advance (EIDL) and the SBA Express Bridge Loans and Debt Relief programs. The federal government has also temporarily increased the unemployment insurance stipend that laid-off or furloughed workers may receive, which may have implications for the workforce of some small businesses.

Paycheck Protection Program

The Coronavirus, Aid, Relief, and Economic Security Act (CARES ACT) originally allocated about \$349 billion in federal funds for PPP, with an additional \$322 billion authorized

[businesses/?utm_source=google&utm_medium=cpk&gclid=EA1aIQobChMI-Ymy3df86AIVGoziCh0QRQPrEAAYASAAEgl7ivD_BwE.](https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp)

¹³ Id.

¹⁴ United States Small Business Administration "Small Businesses generate 44 percent of U.S. economic activity", January 30, 2019", available at: <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

¹⁵ United States Small Business Administration "Paycheck Protection Program", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp> (last visited on April 9, 2020).

by Congress in late April.¹⁶ The program provides various types of employers, including small businesses, nonprofits, self-employed individuals and independent contractors, access to loans to cover payroll costs of up to \$100,000 per employee, rent and mortgage interest prior to February 15, 2020, and utilities. Loans are calculated per employer or per location, and may be as high as 2.5 times the average monthly payroll for the one-year period before the loan application is submitted, to a cap of \$10 million. Loans are calculated differently for seasonal and new employers. Employers of fewer than 500 workers may apply for these loans through a network of banks ranging from large to smaller banks.¹⁷ Banks may not require applicants to supply collateral or personal guarantees, and applicants may only apply for one PPP loan.

PPP loans can be forgiven up to the value of eight weeks of payroll costs of up to \$100,000 per employee, rent and mortgage interest prior to February 15, 2020, and utilities. To qualify for loan forgiveness, however, 75 percent of the amount loaned must be used for payroll costs, and employee and salary levels must be maintained, or else the forgiven amount will be reduced. If not forgiven, PPP loans accrue at a one percent interest rate and must be paid back within two years, with an optional deferral of up to six months. There are no loan fees or prepayment penalties.

¹⁶ Emily Cochrane and Jim Tankersley “Senate approves aid for small-business loan program, hospitals and testing”, April 21, 2020, *New York Times*, available at: <https://www.nytimes.com/2020/04/21/us/politics/congress-business-relief-ppp.html>.

¹⁷ In the recent funding allocation, \$60 billion was set aside for lenders with less than \$50 billion in assets. See Aaron Gregg and Renae Merle “How to get a small-business loan under the new \$484 billion coronavirus aid package”, April 23, 2020, *The Washington Post*, available at: <https://www.washingtonpost.com/business/2020/04/22/small-business-loan-faq>.

Economic Injury Disaster Loan and Advance¹⁸

Small businesses may apply for the SBA's existing Economic Injury Disaster Loan program (EIDL), which the CARES Act expanded upon. The existing program provides economic relief for small businesses of fewer than 500 employees or otherwise meets SBA size standards, self-employed persons, independent contractors and nonprofits in the form of loans of up to \$2 million. To be eligible, entities must also demonstrate the ability to repay the loan. Interest rates are low (3.75 percent for small businesses and 2.75 percent for nonprofits) and feature long-term repayment plans of up to 30 years.

The CARES Act expanded upon this program to provide a loan advance. Eligible entities that can show a temporary loss of revenue can receive an advance of up to \$10,000 upon successful application for an EIDL loan. That advance may be forgiven by the federal government.

SBA Express Bridge Loans¹⁹ and Debt Relief²⁰

The CARES Act allocated funds for SBA's Express Bridge Loan program and their Debt Relief program. The Express Bridge Loan program quickly provides funds of up to \$25,000 for businesses eligible for SBA's 7(a) loans to overcome a temporary loss of revenue. SBA's Debt Relief program allows businesses that are eligible for SBA's 7(a), 504 and microloans to receive

¹⁸ United States Small Business Administration "Economic injury disaster loan emergency advance", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance> (last visited on April 9, 2020).

¹⁹ United States Small Business Administration "SBA Express Bridge Loans", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-express-bridge-loans> (last visited on April 9, 2020).

²⁰ United States Small Business Administration "SBA debt relief", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-debt-relief> (last visited on April 9, 2020).

limited payment of principal, interest and fees on these loans. The 7(a), 504 and microloans are SBA's standard small business loan programs, which were established before the onset of COVID-19. The 7(a) loans are available for general business purposes, such as working capital, equipment, furniture, and land and building.²¹ They are provided through a lender.²² The 504 loans are issued by Certified Development Companies for long-term, fixed-asset financing for small businesses, such as the purchase and improvement of land and buildings.²³ Microloans are temporary, short-term loans of up to \$50,000 to small businesses for general business purposes, and are offered by nonprofits.²⁴

The federal government's PPP program, although heavily utilized, has raised some concerns. As of April 13, 2020, the program had issued about 1,661,367 loans totaling over \$342 billion, with over 4,975 lenders participating.²⁵ However, a recent ranking of businesses receiving loans as a percentage of each state's eligible payroll revealed that New York State placed second to last, with only 23.1 percent of eligible businesses receiving a loan.²⁶ By contrast, Nebraska and North Dakota reached 74.7 percent and 71.5 percent respectively.²⁷ Further, some industries fared better than others, with the construction industry receiving the

²¹ United States Small Business Administration Office of Financial Assistance: Resources, 7(a) Loans", available at: <https://www.sba.gov/offices/headquarters/ofa/resources/11428> (last visited on April 9, 2020).

²² Id.

²³ United States Small Business Administration "Office of Financial Assistance: Resources, 504 Loans", available at: <https://www.sba.gov/offices/headquarters/ofa/resources/4049> (last visited on April 9, 2020).

²⁴ See 13 CFR § 120.2 for the definition of this and other, traditional SBA loan programs.

²⁵ United States Small Business Administration "Paycheck Protection Program (PPP) Report: Approvals through 4/16/20", available at: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>.

²⁶ Zachary Mider and Cedric Sam "Small-business rescue shows not all states are created equal", updated April 20, 2020, *Bloomberg*, available at: <https://www.bloomberg.com/graphics/2020-sba-paycheck-protection-program/>.

²⁷ Id.

highest percentage of loans (13 percent) and restaurants receiving less than nine percent,²⁸ despite representing about 14 percent of companies employing under 500 people.²⁹ Of the restaurants who received loans, some reports allege that too many have gone to large chains, and a handful of these companies have received blowback for accepting loans. A Reuters article claimed that 25 percent of the initial \$350 billion allocated to SBA loan programs went to fewer than two percent of the firms that got relief, with some of these being large, publicly-traded companies with “thousands of employees and hundreds of millions of dollars in annual sales.”³⁰ Among these companies is the Ruth’s Hospitality Group (owns 150 Ruth’s Chris Steak Houses), Potbelly (\$409.7 million in sales and 6,000 employees) and Shake Shack (8,000 employees). Both Ruth’s Hospitality Group³¹ and Shake Shack have agreed to return their loans, the latter of which citing an ability to raise the funds through other means.³² Similarly, dozens of large companies with financial or legal problems have reportedly received significant loans through the program, according to an analysis of 200 publicly-traded companies that reported receiving a total of \$750 million through PPP.³³ Since it became known that large companies had been benefitting from PPP, the SBA published additional guidance emphasizing that businesses may only apply for the loan if, in good faith, they can certify that “[c]urrent economic uncertainty

²⁸ United States Small Business Administration “Paycheck Protection Program (PPP) Report: Approvals through 4/16/20”, available at: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>.

²⁹ Andy Sullivan, Howard Schneider and Ann Saphir “Main street bailout rewards U.S. restaurant chains, firms in rural states”, April 17, 2020, *Reuters*, available at: <https://www.reuters.com/article/us-health-coronavirus-usa-lending-analys/main-street-bailout-rewards-us-restaurant-chains-firms-in-rural-states-idUSKBN21Z3FL>.

³⁰ *Id.*

³¹ Peter Rudegeair, Heather Haddon and Ruth Simon “Ruth’s Chris to repay loan amid outcry over rescue program”, updated April 23, 2020, *The Wall Street Journal*, available at: <https://www.wsj.com/articles/public-companies-have-to-repay-small-business-rescue-loans-11587670442>.

³² Luisa Beltran “Restaurant chains received many of the biggest PPP loans”, updated April 23, 2020, *Barron’s*, available at: <https://www.barrons.com/articles/restaurant-chains-received-many-of-the-biggest-ppp-loans-51587573556>.

³³ Jessica Silver-Greenberg, David Enrich, Jesse Drucker and Stacy Cowley “Large, troubled companies got bailout money in small-business loan program”, April 26, 2020, *The New York Times*, available at: <https://www.nytimes.com/2020/04/26/business/coronavirus-small-business-loans-large-companies.html>.

makes this loan request necessary to support the ongoing operations of the Applicant,” and that public companies with “substantial market value” are unlikely to be able to make such a certification.³⁴ Companies who received the loan before this guidance and repay it before May 7, 2020 will be deemed to have certified in good faith.³⁵

The manner in which PPP was offered to the public and the complexity of its terms and conditions may have contributed to a lack of success for many small business owners. Although the program began accepting applications on Friday, April 3, 2020, some large banks refused to participate at first, citing a lack of guidance from the federal government.³⁶ When more banks did begin to accept applications, there was confusion regarding what conditions the banks could apply. SBA authorized a last-minute raise from half a percent to a one percent interest rate, reportedly to address concerns from banks about being unable to service the loans at an interest rate of only half a percent.³⁷ Further, some large banks attached unexpected conditions to their applications, like having a previous banking relationship with them before February 15, 2020.³⁸

³⁴ United States Small Business Administration “Paycheck Protection Program Loans: Frequently Asked Questions (FAQs)” updated April 23, 2020, <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

³⁵ Id.

³⁶ Brian Thompson “No small-business relief yet: False start on Paycheck Protection Program loans”, April 3, 2020, *Forbes*, available at: <https://www.forbes.com/sites/brianthompson1/2020/04/03/no-small-business-relief-yet-false-start-on-paycheck-protection-program-loans/#163172d034c4>.

³⁷ “SBA increases rate, clarifies terms on Paycheck Protection Program loans”, *ABA Banking Journal*, April 2, 2020, <https://bankingjournal.aba.com/2020/04/treasury-sba-to-increase-rate-on-paycheck-protection-program-loans/>; Michela Moscufo “How to get, and give, Paycheck Protection Program loans through the SBA”, April 3, 2020, *Forbes*, available at: <https://www.forbes.com/sites/michelamoscufo/2020/04/03/how-to-get-and-give-paycheck-protection-program-loans-through-the-sba/#3f766faa27e8>.

³⁸ See e.g. Bank of America “Small Business Administration Paycheck Protection Program application” available at: <https://about.bankofamerica.com/promo/assistance/latest-updates-from-bank-of-america-coronavirus/small-business-assistance>, (last visited April 8, 2020); JPMorgan Chase & Co “Paycheck Protection Programs FAQs & useful tips”, available at: <https://recovery.chase.com/cares1/ppp-faqs#accordion-1586386467723-1-panel>, (last visited April 8, 2020); and Wells Fargo “Small Business Administration Paycheck Protection Program”, available at: <https://update.wf.com/coronavirus/paycheckprotectionprogram/>, (last visited April 8, 2020).

A few weeks after the lending program began, it ran out of funds,³⁹ seemingly validating concerns from some experts that the program was not sufficiently well-funded, or disbursing funds quickly enough.⁴⁰

The federal government's EIDL program quickly experienced funding shortages as well. For many applicants, a cap of \$2 million per borrower was significantly reduced to \$15,000.⁴¹ Furthermore, although the program was touted as featuring a quick turnaround on payments, many applicants waited weeks for approval and found that the amount disbursed to them was much less than the initial approval amount.⁴² In a survey of 885 small business owners conducted by the National Federation of Independent Business the day after the SBA's EIDL and PPP programs ran out of funds, 80 percent were still waiting to hear about their loan applications.⁴³

Immigrant communities in NYC may have had even more difficulty applying to and obtaining federal funds, which would considerably impact the City's economy. Immigrant workers make up 45 percent of the city's workforce⁴⁴ and own one-half of New York City's businesses.⁴⁵ In some neighborhoods, immigrant-owned businesses employ up to 42 percent of

³⁹ Stephen Gandel "Paycheck Protection Program out of money: Thousands of small businesses shut out", *CBS News*, April 16, 2020, available at: <https://www.cbsnews.com/news/paycheck-protection-program-out-of-money-small-businesses-shut-out>.

⁴⁰ Jim Tankersley "Virus throws millions out of work, and Washington struggles to keep pace", April 9, 2020 *The New York Times*, available at: <https://www.nytimes.com/2020/04/09/business/coronavirus-unemployment-washington.html?action=click&module=Top%20Stories&pgtype=Homepage>.

⁴¹ Stacy Cowley "Small Businesses Wait for Cash as Disaster Loan Program Unravels", April 9, 2020, *The New York Times*, available at: <https://www.nytimes.com/2020/04/09/business/smallbusiness/small-business-disaster-loans-coronavirus.html>.

⁴² *Id.*

⁴³ National Federation of Independent Business "80% of PPP applicants are still urgently waiting for financial assistance" April 20, 2020, available at: <https://www.nfib.com/content/press-release/economy/80-of-ppp-applicants-are-still-urgently-waiting-for-financial-assistance>.

⁴⁴ Mayor's Office of Immigrant Affairs "State of Our Immigrant City: Annual Report", March 15, 2018, available at: <https://www1.nyc.gov/assets/immigrants/downloads/pdf/annual-report-2018.pdf>.

⁴⁵ *Id.*

the neighborhood population.⁴⁶ Yet, there have been questions surrounding whether undocumented immigrants can be eligible for the PPP program, since it requires an Employee Identification Number or Social Security Number on its program application.⁴⁷ The application originally required business owners to be U.S. citizens or permanent residents.⁴⁸ In the past, SBA placed additional restrictions and requirements on access to loans for non-citizens.⁴⁹

In addition, certain features of the federal government's PPP program may disproportionately disadvantage minority business owners from obtaining loans. A loophole allowing bank servicers to prefer businesses with a previous lending relationship may lead to the exclusion of many minority businesses.⁵⁰ Many microbusinesses in New York City may have not previously applied for loans or lines of credit, and therefore may not have relationships with local banks.⁵¹ The Congressional Black Caucus has recognized the "history and legacy" of racial inequality in the banking system, and as banks default to lending to businesses to which they have lent money before, minority-owned businesses could be disproportionately denied and excluded.⁵²

⁴⁶ Lena Afridi "The Displacement Crisis of Immigrant-Owned Small Businesses", February 15, 2018, *Shelter Force*, available at: <https://shelterforce.org/2018/02/15/displacement-crisis-immigrant-owned-small-businesses/>.

⁴⁷ United States Small Business Administration "Paycheck Protection Program: Borrower application form", effective April 3, 2020, available at: <https://www.sba.gov/sites/default/files/2020-04/PPP-Borrower-Application-Form-Fillable.pdf>.

⁴⁸ See Emily Guerin "Massive Federal Loan Program for Small Businesses Off to Rocky Start", April 3, 2020, *LAist*, https://laist.com/2020/04/03/small_business_ppp_paycheck_protection_program_loans_stimulus_coronavirus.php.

⁴⁹ See United States Small Business Administration "SBA Eligibility Questionnaire, for Standard 7(a) Guaranty", available at: https://www.sba.gov/sites/default/files/bank_eligibility_questionnaire_0.pdf; and Kimberly Rotter and Dawn Papandrea "What Are SBA Loan Requirements?", February 28, 2020, *U.S. News & World Report*, available at: <https://loans.usnews.com/complete-list-of-sba-loan-requirements>.

⁵⁰ Mary Alice Parks "Minority-owned small businesses face unique, steep hurdles amid coronavirus cash crunch", April 8, 2019, *ABC News*, available at: <https://abcnews.go.com/Health/minority-owned-small-businesses-face-unique-steep-hurdles/story?id=70011898>.

⁵¹ Id.

⁵² Id.

For those with access to COVID-19 funding programs, there are drawbacks to consider. Although the federal government's PPP program offers loan forgiveness, there are significant conditions to satisfy. Seventy-five percent of the PPP loan's forgiven amount must be spent on payroll costs, a condition that appears to have taken shape late in the process.⁵³ If 75 percent of the forgiven amount must be spent on payroll costs, that may leave less for businesses to spend on obligations such as rent and utilities, which may be disproportionately higher in our City.⁵⁴ Some businesses may decide, and some have decided, that the program is too risky, or that it is more valuable to their employees to lay them off, so that employees may collect a higher salary through the federal government's expanded unemployment insurance program.⁵⁵ If a business does not qualify for full forgiveness of the loan, PPP requires the small business owner to pay off the loan within two years, after a six-month deferral.⁵⁶ Small businesses in the City may be concerned about being able to pay back these loans, and about being burdened with more debt.

For many small businesses in the City, dealing with an unpredictable and contagious virus that has already significantly disrupted the ability of many to earn revenue makes borrowing money a risky endeavor. With the exception of SBS's Employee Retention Grant Program, which was only available for the smallest of City businesses (1-4 employees), almost all the funding available to businesses have taken the form of loans. There are concerns about

⁵³ United States Small Business Administration "Interim Final Rule: Business Loan Program Temporary Changes; Paycheck Protection Program", Issued April 2, 2020, available at: <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>.

⁵⁴ Greg Iacurci "Your Forgivable Loan May Be Undercut by This Provision of the Paycheck Protection Program", updated April 9, 2020, *CNBC*, available at: <https://www.cnn.com/2020/04/07/this-part-of-paycheck-protection-program-could-reduce-forgivable-loans.html>.

⁵⁵ Jim Tankersley "Virus Throws Millions Out of Work, and Washington Struggles to Keep Pace", April 9, 2020, *The New York Times*, available at: <https://www.nytimes.com/2020/04/09/business/coronavirus-unemployment-washington.html?action=click&module=Top%20Stories&pgtype=Homepage>.

⁵⁶ United States Small Business Administration "Paycheck Protection Program", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

whether the City's economy will strengthen quickly enough to satisfy the terms of these loans, and businesses might struggle to pay off additional debt (even at low or no interest rates) after this sustained period of closure and reduced income. A 2019 survey conducted by the Federal Reserve found that as many as 70 percent of small businesses have outstanding debt.⁵⁷ Similarly, a 2016 JPMorgan study concluded that most small businesses did not have enough cash reserves to carry them through a significant economic downturn, with the median independent restaurant having only enough extra cash to last them 16 days.⁵⁸

b. New York State Assistance

In addition to closing 100 percent of non-essential businesses statewide, the PAUSE executive order provides a 90-day moratorium on residential and commercial evictions.⁵⁹ Since commercial rent is typically the largest cost and greatest concern for business owners,⁶⁰ the 90-day moratorium provides short-term relief to businesses. The Governor's moratorium on commercial rent is only for a 90-day period, however, and there is currently little guidance over whether evictions will resume after the 90 days is over.

Beyond the Governor's Executive Order pausing commercial evictions, New York State is not currently administering any specific programs to provide relief to small businesses. NYS's

⁵⁷ Federal Reserve Banks "Small Business Credit Survey: 2019 Report on Employer Firms", available at: <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf>. Also see Bridget Bartolini "City's Small Businesses Need Rent Stabilization to Survive COVID-19, Advocates Say", April 6, 2020, *City Limits*, available at: <https://citylimits.org/2020/04/06/citys-small-businesses-need-rent-stabilization-to-survive-covid-19-advocates-say>.

⁵⁸ See Bridget Bartolini, id.

⁵⁹ Governor Andrew M. Cuomo "Video, Audio, Photos & Rush Transcript: Governor Cuomo Signs the "New York State on Pause" Executive Order", March 20, 2020, <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-cuomo-signs-new-york-state-pause-executive-order>.

⁶⁰ Association for Neighborhood & Housing Development "The Forgotten Tenants: New York City's Immigrant Small Business Owners", March, 2019), available at: <https://anhd.org/report/forgotten-tenants-new-york-citys-immigrant-small-business-owners>.

Empire State Development (ESD) has information on its website about the SBA's COVID-19 loan programs, including resources on how businesses can apply for relief.⁶¹ ESD's website directs businesses to other existing relief efforts as well, such as a pro bono legal advice service for small businesses applying for the Paycheck Protection Program.⁶²

c. New York City Assistance

Support for New York City's small businesses from local government has been provided in numerous ways. Financial aid, through loans and grants programs, has been offered through the Department for Small Business Services (SBS). Meanwhile, the Department of Consumer and Worker Protection (DCWP) has also provided assistance by reducing regulatory burdens through pausing some of the fees that it administers and extending deadlines for various renewals.

Small Business Services

On March 8th, Mayor de Blasio announced that SBS would create two financial relief programs, the Employee Retention Grant Program and Small Business Continuity Loan Fund, to provide financial relief to small businesses during the crisis.⁶³ To qualify for either program, businesses were required to provide documentation proving that over a two-month period in 2020 their revenues decreased by 25 percent due to COVID-19.⁶⁴ Businesses with fewer than five employees were eligible for the Employee Retention Grant Program, which provided a grant

⁶¹ Empire State Development "Apply for Small Business Administration (SBA) COVID-19 Loans", available at: <https://esd.ny.gov/small-business-administration-sba-covid-19-loans>.

⁶² Id.

⁶³ Office of the Mayor "Mayor de Blasio Provides Updates on New York City's COVID-19 Response", March 8, 2020, available at: <https://www1.nyc.gov/office-of-the-mayor/news/124-20/mayor-de-blasio-provides-on-new-york-city-s-covid-19-response>.

⁶⁴ Id.

covering up to 40 percent of a business's payroll for two months, with a maximum amount of \$27,000.⁶⁵ On April 3rd, SBS stopped accepting applications to the grant program.⁶⁶ The Small Business Continuity Loan Fund provided a zero-interest loan to businesses with fewer than 100 employees for up to \$75,000.⁶⁷ As of April 8th, SBS paused application intake for the loan fund due to an overwhelming number of applications. Accordingly, small businesses in NYC can now only apply to the SBA programs to receive necessary financial relief.⁶⁸

According to SBS, the NYC Employee Retention grant program provided assistance to 1,200 small businesses. SBS allocated \$10 million to the program, and small businesses received an average amount of \$7,800.⁶⁹ SBS is expecting to give out \$20 million in loans through the Small Business Continuity Loan Fund. Before the fund closed online applications on April 5th, over 15,000 businesses initially applied, and 8,500 businesses completed applications.⁷⁰

However, some city advocates have raised concerns about access to these funds. SBS was swift to offer their grant and loan programs, acting quickly to bridge an important funding gap before the federal government established their own, but the rollout was flawed. The program initially required business owners to supply documentation demonstrating a drop in

⁶⁵ NYC Department of Small Business Services “NYC Employee Retention Grant Program”, (as of April 2, 2020), available at: <https://www1.nyc.gov/nycbusiness/article/nyc-employee-retention-grant-program>. Program information is still available at: https://www.paulweiss.com/media/3979874/nyc2-employee-retention-grant-program-summary_4-6.pdf.

⁶⁶ Id.

⁶⁷ NYC Department of Small Business Services “NYC Small Business Continuity Loan Program”, (as of April 7, 2020) available at: <https://www1.nyc.gov/nycbusiness/article/nyc-small-business-continuity-loan-program>. Program Information still available at: <https://www.natlawreview.com/article/nyc-financial-assistance-businesses-impacted-covid-19>

⁶⁸ Id.

⁶⁹ Sophia Chang, “Funds Are Coming For Small Businesses, But Some Will Have To Wait”, April 1, 2020, *Gothamist*, available at: <https://gothamist.com/news/funds-are-coming-small-businesses-some-will-have-wait>.

⁷⁰ Id.

revenue in the two consecutive months of 2020, when the full effects of COVID-19 were not yet felt by many businesses.⁷¹ The program eventually allowed business owners to supply information for March 2020, which may have allowed many more business to be eligible.⁷² It was also unclear whether non-profit organizations were eligible for SBS's programs, until the website reflected that non-profits were eligible for the Employee Retention Grant Program, but not the Small Business Continuity Loan Fund.⁷³ While applications were quickly accepted for the Employee Retention Grant Program, the Fund was not available for weeks afterward, and the website confusingly displayed a "Pre-Application" form that did not actually register anyone for consideration to receive funds.⁷⁴ Some users felt that SBS had not provided clear information on the terms of their programs, and that the online application process contained many technical glitches.⁷⁵ One user claimed to have lost her application entirely after the SBS website crashed.⁷⁶

Small business owners who are not conversant in English may have had difficulty understanding the terms and conditions, and how to apply to the programs, without materials available in other languages. SBS took weeks to translate application materials on their website,

⁷¹ Moshe Schulman, Alexis Percival and Patrick Cournot "The Paycheck Protection Program Is Failing: Small Businesses Such as Ours Won't Survive without a Lot More Help", April 16, 2020, *The Atlantic*, available at: <https://www.theatlantic.com/ideas/archive/2020/04/relief-small-business/610066/>, ("Last month, de Blasio announced a \$75,000 interest-free loan available to local businesses that could prove a 25 percent decrease in sales over a two-month period in comparison with sales in the same two months in 2019. Only recently did we meet the threshold, since our drop-off was so sudden, starting in the second week of March, unlike restaurants in Chinatown, for instance, that closed in February. As of last week, applications were closed. Our attorneys think they can push ours through since they created an account in time, but the money is presumed to have dried up.")

⁷² See NYC Department of Small Business Services "Participation Affidavit", available at:

https://www1.nyc.gov/html/sbs/downloads/pdf/COVID19_SBCL_participation_affidavit_form.pdf.

⁷³ See NYC Department of Small Business Services "Assistance & Guidance for Businesses Impacted Due to Novel Coronavirus", available at: <https://www1.nyc.gov/site/sbs/businesses/covid19-business-financial-assistance.page> (last viewed on April 24, 2020). Page has since been updated to reflect the fact that the programs are no longer being offered.

⁷⁴ See id.

⁷⁵ Sophia Chang, "Funds Are Coming For Small Businesses, But Some Will Have To Wait", April 1, 2020, *Gothamist*, available at: <https://gothamist.com/news/funds-are-coming-small-businesses-some-will-have-wait>.

⁷⁶ Id.

and even then only translated certain materials, with text on the website being translated by browser tools.⁷⁷ Further, it is unknown how much outreach was done to immigrant communities through representative organizations or otherwise.

Some critics felt that the requirements for the Employee Retention Grant Program were not inclusive enough. Eligibility was limited, with only the very smallest businesses employing 1-4 people able to receive a grant.⁷⁸ This may have excluded many restaurants, since they may typically employ more than four personnel, such as a manager, servers, bus staff, cooks and hosts.

In the midst of struggles and confusion regarding SBS's grant and loan programs, the programs abruptly ended without much notice.⁷⁹ This may have closed the door on many small businesses who had intended to apply for the programs, but did not have a chance to do so, or were not yet able to gather the necessary documentation materials. Some users claimed that SBS failed to communicate the most basic aspect of the programs: that funds were limited and that time was of the essence.⁸⁰ One user termed it a "lottery" and expressed frustration that business

⁷⁷ See NYC Department of Small Business Services "Assistance & Guidance for Businesses Impacted Due to Novel Coronavirus", available at: <https://www1.nyc.gov/site/sbs/businesses/covid19-business-financial-assistance.page> (last viewed on April 24, 2020). Page has since been updated to reflect the fact that the programs are no longer being offered, but materials had not been translated as of March 20, 2020. See also a tweet publicizing an SBS guide in languages other than English from NYC Mayor's Office of Immigrant Affairs, March 24, 2020, available at: <https://twitter.com/NYCImmigrants/status/1242484476057354240>. Re-tweeted by NYC Department of Small Business Services on March 24, 2020, available at: https://twitter.com/nyc_sbs.

⁷⁸ NYC Department of Small Business Services "NYC Employee Retention Grant Program", (as of April 2, 2020), available at: <https://www1.nyc.gov/nycbusiness/article/nyc-employee-retention-grant-program>. Program information is still available at: https://www.paulweiss.com/media/3979874/nyc2-employee-retention-grant-program-summary_4-6.pdf.

⁷⁹ Rachel Holliday Smith "Half a Billion Dollars' Needed from \$20M City Small Business Loan Pool", April 16, 2020, *The City*, available at: <https://thecity.nyc/2020/04/de-blasios-usd20m-nyc-small-business-loan-program-falls-short.html>.

⁸⁰ Id.

decisions were made based upon the programs' promises.⁸¹ According to one SBS loan processor, the programs may have had as much as half a billion dollars in loan requests, and only \$20 million in funds to provide.⁸² Despite getting at least 600 applications for the SBS loan program, the funding may have only been enough to provide loans for 250 to 400 businesses.⁸³ Council Speaker Corey Johnson has called for an expansion of the program from a maximum of \$75,000 per business to \$250,000 per business.⁸⁴

Department of Consumer and Worker Protection

In addition to financial assistance through loans and grants, City support for small businesses has also come through DCWP. DCWP licenses more than 75,000 businesses in more than 50 industries and enforces key consumer protection, licensing, and workplace laws that apply to countless more. DCWP regularly plays a key role in city initiatives involving small businesses.

As the COVID-19 crisis continues to unfold, DCWP has announced several measures to assist small businesses by alleviating various regulatory burdens. In March 2020, DCWP ceased collecting sidewalk cafe consent fees that were due and, shortly thereafter, commenced refunds for restaurants that had already paid their fees.⁸⁵ Though sidewalk cafe consent fees vary depending on the size, location, and whether it is enclosed or unenclosed, they typically cost

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ New York City Council "New York City Council Speaker Corey Johnson Proposes \$12 Billion Relief Plan to Help Workers and Businesses Impacted by COVID-19", March 19, 2020, available at: <https://council.nyc.gov/press/2020/03/19/1888/>.

⁸⁵ Mayor's Executive Emergency Order No. 105, April 4, 2020, available at: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-105.pdf>.

restaurants thousands of dollars.⁸⁶ There are approximately 1,400 sidewalk cafes in the City, representing an annual revenue of between \$11 million to \$12 million. Most restaurants pay these fees in a four-part installment plan over a one-year period at a monthly interest rate of 1.5 percent.⁸⁷ Three installments remain for the year, and restaurants could still be required to pay the remaining installments if the state of emergency is lifted. Given the significant losses many restaurants have suffered; some restaurants may not have the ability to cover any remaining payments that come due.

DCWP also extended renewal deadlines for most licenses that expire during the pendency of the state of the emergency.⁸⁸ The Mayor subsequently issued an emergency executive order extending deadlines for all city licenses and permits.⁸⁹ However, some city agencies still appear to be requiring businesses to renew their permits, creating some confusion in certain industries.⁹⁰

The declaration of the state of emergency has also led to an uptick of businesses and workers alike reaching out to DCWP for assistance with regard to the City's worker protection laws, including the Fair Workweek Law, Paid Safe and Sick Leave Law, and the Temporary Schedule Change Law. In response, DCWP published guidance specific to addressing employer obligations during the COVID-19 state of emergency. The guidance also included information

⁸⁶ See NYC Department of Consumer Affairs "2018 consent fees for street space: For unenclosed and small unenclosed sidewalk café", available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Consent-Fees.pdf>.

⁸⁷ R.C.N.Y. §2-45.

⁸⁸ NYC Department of Consumer Affairs "Does your consumer affairs license expire February through June 2020?", available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Does-Your-Consumer-Affairs-License-Expire-February-through-June-2020.pdf>.

⁸⁹ Mayor's Emergency Executive Order No. 107, § 4, April 14, 2020, available at: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-107.pdf>.

⁹⁰ See e.g. Department of Buildings, "COVID-19 Response: Administrative Enforcement (AEU) and Licensing Units Updates," available at: https://www1.nyc.gov/assets/buildings/pdf/covid19_aeu-licensing_response_sn.pdf.

on state and federal employment laws.⁹¹ However, some industries have criticized the Mayor for not suspending enforcement of the Fair Workweek and Temporary Schedule Change Laws entirely. The National Restaurant Association argued that businesses cannot afford premium pay for last minute schedule changes, which are necessary in light of employees falling ill and sudden decreased staffing needs.⁹²

On March 17, 2020, DCWP promulgated an emergency Rule under the City's Consumer Protection Law that makes price gouging illegal for any personal or household good or any service that is needed to prevent or limit the spread of or treat COVID-19.⁹³ Leading up to the state of emergency, the agency received almost 1,000 complaints of price gouging on items such as hand sanitizer and masks. By April 8th, the Department had received more than 7,200 complaints and had issued 2,700 violations.⁹⁴ While many of these violations have been issued to egregious offenders,⁹⁵ some businesses have raised concerns that DCWP is failing to address price gouging in the supply chain by wholesalers.⁹⁶

⁹¹ NYC Department of Consumer and Worker Protection "Update about Workplace Laws as NYC Seeks to Stop the Spread of the New Coronavirus (COVID-19)", available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Complying-with-NYC-Workplace-Laws-During-COVID-19.pdf>.

⁹² Letter from Keith Stephenson, National Restaurant Association, to Mayor de Blasio (March 20, 2020), on file.

⁹³ NYC Department of Consumer Affairs "Department of Consumer and Worker Protection issues emergency rule that makes price gouging illegal for any item or service needed to limit the spread of Coronavirus", March 17, 2020, available at: <https://www1.nyc.gov/site/dca/media/pr031720-DCWP-Emergency-Rule-Price-Gouging-Illegal.page>.

⁹⁴ Priscilla DeGregory "NYC files law suits against stores for coronavirus price gouging", April 8, 2020, *New York Post*, available at: <https://nypost.com/2020/04/08/nyc-files-lawsuits-against-stores-for-coronavirus-price-gouging/>.

⁹⁵ Andrew Denney "Coronavirus in NY: UES pharmacy fines for drastically marking up face masks", March 25, 2020, available at: <https://nypost.com/2020/03/25/coronavirus-in-ny-ues-pharmacy-fined-for-drastically-marking-up-face-masks/>.

⁹⁶ Priscilla DeGregory "NYC files law suits against stores for coronavirus price gouging", April 8, 2020, *New York Post*, available at: <https://nypost.com/2020/04/08/nyc-files-lawsuits-against-stores-for-coronavirus-price-gouging/>.

III. CONCLUSION

The various governmental approaches to support small businesses during this crisis have provided some measure of relief for small business owners and their employees; however, there are range of outstanding issues that continue to make operating a business during the pandemic particularly difficult. The vast array of departments and agencies have made it difficult for businesses to navigate and, as discussed, there have been numerous limitations to the government programs that are further compounded by the technological and language barriers that some small business owners also face. This comes on top of the other issues that small businesses have to navigate during this crisis range from trying to make rent and payroll, finding suppliers and moving retail online, to negotiating insurance claims, delivery commissions, and bank loans.

IV. BILL ANALYSIS

Proposed Int. No. 1916-A

Proposed Int. No. 1916-A would require the City to waive and/or refund all revocable consent fees for unenclosed sidewalk cafes that are due between March 1, 2020 until February 28, 2021. Enclosed sidewalk cafe revocable consent fees would be waived for the duration of section two of the Mayor's Emergency Executive Order No. 105 issued on April 4, 2020, as that section may be extended. If passed, this bill goes into effect immediately. It sunsets on March 1, 2021.

Proposed Preconsidered Int. No. -A

This bill would require city agencies to publish a list of any licenses, permits, consents or registrations that are not covered by the renewal extension provided for by section four of the

Mayor's Emergency Executive Order No. 107 issued on April 14, 2020. This list must be made available on agency websites no later than 14 days after the enactment of this bill. In addition, this bill requires that all renewal deadlines be no earlier than 45 days after section four of the Mayor's emergency order lapses. For licenses, permits, consents or registrations that expire on or after March 12, 2020 and are for a term of less than 45 days, the renewal extension provided for in this bill would only be for the original duration of the license, permit, consent or registration. If passed, the bill goes into effect immediately.

Proposed Int. No. 1916-A

By Council Members Cohen, Chin, Powers, Yeger, Louis, Ayala, Rivera, Lander and Koslowitz

A Local Law in relation to requiring the waiver and refund of certain sidewalk cafe revocable consent fees, and providing for the repeal of such provision upon the expiration thereof

Be it enacted by the Council as follows:

Section 1. Waiver of sidewalk cafe consent fees. a. Notwithstanding any inconsistent provision of law, the city shall waive the requirement that a fee be paid for:

1. A revocable consent to operate an enclosed sidewalk cafe pursuant to section 20-225 of the administrative code of the city of New York, to the extent that such payment is due for the period covering March 1, 2020 until the date that section two of emergency executive order number 105, as issued by the mayor on April 4, 2020, and as extended thereafter, expires; and

2. A revocable consent to operate an unenclosed sidewalk cafe pursuant to section 20-226 of the administrative code of the city of New York, to the extent that such payment is due for the period covering March 1, 2020 until February 28, 2021.

b. The city shall issue a refund for any payment of a fee that is required to be waived pursuant to subdivision a of this section.

c. This section shall not apply to any fee relating to a petition for a new consent to operate a sidewalk cafe filed with the department of consumer affairs on or after March 30, 2020.

d. The department of consumer affairs shall have the authority to promulgate any rules necessary to administer the provisions of this section.

§ 2. This local law takes effect immediately and expires and is deemed repealed on March 1, 2021.

LS #14484
5/5/2020 5:43 p.m.

Proposed Preconsidered Int. No. ____ - A

By Council Members Matteo and Yeger

A Local Law in relation to license, permit, consent and registration renewal extensions, and requiring at least 45 days notice for renewal following the COVID-19 emergency

Be it enacted by the Council as follows:

Section 1. a. The mayor or his designee shall publish a list of any license, permit, consent or registration issued by a city agency that, to the extent reasonably ascertained by the mayor or such designee, is not within the scope of section 4 of the mayor's emergency executive order number 107, published April 14, 2020, as amended. Such list shall be published on the city's website no later than 14 days after the enactment of this local law.

b. An agency that administers any license, permit, consent or registration that has been extended by section 4 of the mayor's emergency executive order number 107, published April 14, 2020, as amended, shall not require such license, permit, consent or registration to be renewed for at least 45 days after it is no longer subject to such emergency executive order, during which time notice of the requirement to renew shall be provided on the website of such agency. Any such license, permit, consent or registration shall be deemed to be further extended during such time period. Notwithstanding the foregoing, for any license, permit, consent or registration that expired or required renewal on or after March 12, 2020 and had a term of less than 45 days, the extension provided by this subdivision shall be for at least the term of such license, permit, consent or registration.

§ 2. This local law takes effect immediately.

5/5/2020