Committee on Small Business

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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 SMALL BUSINESS**

**Hon. Mark Gjonaj, Chair**

##### September 14, 2020

**PRECONSIDERED INT. No. \_\_\_:** By Council Members Rivera and the Speaker (Council Member Johnson)

**TITLE:** To amend the administrative code of the city of New York, in relation to extending temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19

**ADMINISTRATIVE CODE:** Amends § 22-1005

1. **INTRODUCTION**

On September 14, 2020, the Committee on Small Business, chaired by Council Member Mark Gjonaj, will hold a remote hearing on “The State of Small Businesses” and Preconsidered Int. No. \_\_, in relation to extending temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19. Those invited to testify include representatives of the Department of Small Business Services (SBS), small business advocates, chambers of commerce, Business Improvement Districts (BIDs) and other organizations.

1. **BACKGROUND**

In late December 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]](#footnote-1) As of September 4, 2020, COVID-19 has infected over 27.6 million people across 213 countries and territories, and has killed almost 900,000 people.[[2]](#footnote-2) In the United States alone, there have been over six million infections and over 189,000 deaths.[[3]](#footnote-3) To date, New York has had over 440,000 infections and over 33,000 deaths, many of which took place in New York City.[[4]](#footnote-4)

The progressive nature by which the virus spreads has caused governments across the globe to shutdown businesses, schools, religious and cultural institutions, and mandate various levels of social isolation. While this has seemingly helped to limit the spread of the virus, stay-at-home orders have had a catastrophic impact on economic markets, particularly small businesses that thrive from regular contact with their community and neighbors.

**1. Limitations on City Businesses in Response to COVID-19**

In New York, Governor Andrew Cuomo issued a series of executive orders to help stop the spread of SARS-CoV-2. Executive Order 202.3 prohibited all on-premises service by restaurants and bars, and ordered gyms, fitness centers, and movie theaters to cease operations entirely as of March 16, 2020.[[5]](#footnote-5) Drive-in theaters were allowed to open as of May 15, 2020,[[6]](#footnote-6) although indoor, movie theater service remains prohibited. When New York City entered Phase Two of the Governor’s reopening plan on June 22, 2020, restaurants and bars were allowed to begin outdoor dining, however they have been unable to host any indoor dining until September 30, 2020, at which point the Governor has announced they can operate at 25% capacity indoors.[[7]](#footnote-7) On August 17, 2020, the Governor announced that gyms and fitness centers could reopen at 33% indoor occupancy across the state, starting August 24, 2020, subject to the assent of local elected officials.[[8]](#footnote-8) However, Mayor de Blasio chose to delay the opening of gyms and fitness centers until September 2, 2020.[[9]](#footnote-9) Thus, by September 30, 2020, restaurants and bars, gyms, fitness centers and movie theaters will have been either prohibited from serving customers indoors, or subject to significant indoor occupancy restrictions, for over six months.

Executive Order 202.7, issued by the Governor, restricted the operation of personal care services.[[10]](#footnote-10) Barbershops, hair salons, nail salons, tattoo or piercing parlors, and related personal care services were required to close to the public as of March 21, 2020.[[11]](#footnote-11) Barbershops and hair salons were then allowed to re-open at 50% capacity on June 22, 2020, when NYC entered Phase Two of the Governor’s reopening plan.[[12]](#footnote-12) Nail salons, tattoo parlors, piercing parlors, and other related personal care services subject to Executive Order 202.7 were allowed to re-open at 50% capacity on July 6, 2020, when NYC entered Phase Three of the Governor’s reopening plan.[[13]](#footnote-13) Thus, by the end of September 2020, these businesses will have been fully closed for over three months and open at half capacity for less than four months.

With the issuance of the Governor’s Executive Order 202.8, which modified Executive Order 202.6, non-essential businesses were closed beginning March 22, 2020.[[14]](#footnote-14) When New York City entered Phase Two on June 22, 2020,[[15]](#footnote-15) many of these non-essential businesses were allowed to reopen at 50% capacity, including retail businesses.[[16]](#footnote-16) As was the case with personal care businesses, non-essential businesses subject to this guidance will have been closed for three months and open at half capacity for only three months as of September 30, 2020.

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

As businesses were subject to operational restrictions and New Yorkers stayed home to stop the spread of the virus, consumer spending declined in the City. In late March 2020, consumer spending dropped 44 percent year-over-year, according to Mastercard.[[17]](#footnote-17) The Manhattan Chamber of Commerce reported that foot traffic in Manhattan at the end of August was down nearly 40 percent compared to pre-COVID times.[[18]](#footnote-18)According to an August 2020 report by the City Comptroller, small business revenues have dropped 26.4 percent since January, ranking NYC 40th among the 52 largest American cities.[[19]](#footnote-19)

The drastic drop in consumer spending in the City and resulting loss in revenue for businesses has made it difficult for business owners to continue paying rent. The Hospitality Alliance surveyed over 500 restaurants, bars, nightclubs, and event venues in NYC about their rent obligations in June. The resulting report found that approximately 80 percent of respondents did not pay their full rent in June, while over 70 percent of landlords did not waive rent payments for restaurants, bars and clubs.[[20]](#footnote-20) The Hospitality Alliance produced another nearly identical survey in July. It found that 83 percent of respondents did not pay their full July rent, up from 80 percent in June, and around 71 percent of landlords did not waive rent payments.[[21]](#footnote-21) The current outlook for many small businesses is dire as they experience massive revenue declines but must continue paying the same fixed costs, such as rent, as pre-COVID times. Camilla Marcus, the owner of the restaurant west~bourne in Soho wrote in an op-ed about her business’s closure, “Restaurants are universally facing a simple and stark equation: our income has been cut by 75%, but most of our operating costs, including our rent, remain the same. And, there's no end of the tunnel in sight.”[[22]](#footnote-22) Over 300 city restaurateurs have since joined a class action lawsuit against the City and the State over the prohibition on serving customers indoors;[[23]](#footnote-23) the NYC Hospitality Alliance has also threatened a lawsuit.[[24]](#footnote-24) On September 9, 2020, Governor Cuomo announced the indoor dining may resume in NYC beginning September 30, but even then only at 25 percent capacity.[[25]](#footnote-25)

Because of the high cost of rent and the inability to make adequate revenue, restaurant and other small business owners affected by COVID-19-related restrictions on their operations have urged the Council to extend Local Law 55 of 2020 (Int. No. 1932-A), which protects certain COVID-19-impacted commercial tenants from personal liability when a default of other such event occurs between March 7, 2020 and September 30, 2020. Personal liability provisions in commercial leases may hold a business owner personally responsible if they are unable to pay rent by threatening the seizure of their personal assets or property.[[26]](#footnote-26) In order to prevent this, an owner must turn in the keys to the property, effectively ending their lease. According to one restaurant owner, “Come September 30… if [Local Law 55] doesn’t get extended – [you] might see a massive number of evictions. Evictions will continue to happen at an exponential rate, and I think this will be the specific last straw many restaurateurs are holding onto.”[[27]](#footnote-27) The owner predicted that if Local Law 55 is not extended, it would be “a fatal blow to the restaurant industry.”[[28]](#footnote-28)Another owner predicted that many restaurants that have not already closed would “giv[e] up, thinking there’s no real help at all.”[[29]](#footnote-29)

In addition to paying rent, small businesses have had the added burden of locating and purchasing personal protective equipment (PPE). To both ensure the safety of their employees and create a safe environment for consumers to shop, small business owners have purchased stockpiles of PPE, plexiglass shields, and other safety devices. Restaurants, retail stores, grocery stores, and other establishments have had to retrofit their spaces to abide by the State’s reopening guidelines.[[30]](#footnote-30) A recent report by McKinsey concluded that small grocery stores could spend up to 1% of their revenue in cleaning products and possible additional labor costs.[[31]](#footnote-31) According to Dr. Susan Bailey, president of the American Medical Association, the dramatic increase in need for PPE will continue to be a problem for "churches, schools, businesses, everyone that's trying to reopen needs PPE, and we're all competing for the same small supply."[[32]](#footnote-32) To assist small businesses in this effort, the City has been distributing free face coverings for reopening businesses of 100 employees or less.[[33]](#footnote-33) Additionally, the City has created an online, searchable directory of PPE suppliers.[[34]](#footnote-34)

Thousands of small businesses have closed in New York due to their inability to continue paying their fixed costs such as rent and the new safety COVID-related equipment they must purchase. In his May 22nd press conference, Governor Cuomo reported that over 100,000 small businesses have closed across the State since the pandemic began.[[35]](#footnote-35) According to the City Comptroller report, at least 2,800 small businesses closed permanently between March 1st and July 10th.[[36]](#footnote-36) Partnership for New York City predicts that as many as a third of the 230,000 small businesses in NYC may never reopen.[[37]](#footnote-37)

As small businesses have shut their doors, the livelihoods they generate for both employees and business owners have disappeared. The unemployment rate in the City, at 19.8% as of July 2020,[[38]](#footnote-38) was nearly 16 percentage points higher than the previous July,[[39]](#footnote-39) and may continue to be high even after the pandemic subsides as thousands of small businesses might permanently close. Labor statistics from the New York State Department of Labor indicate that employment in the “Food Services and Drinking Places” industries are down 48.9% in July 2020 as compared to July 2019,[[40]](#footnote-40) and employment in “Full Service Restaurants” is down 57.7%.[[41]](#footnote-41) Many “Retail Trade” businesses are also down. For example, employment in “Clothing and Clothing Accessories Stores” is down 38.7%,[[42]](#footnote-42) with “Clothing Stores” specifically down 49.5%.[[43]](#footnote-43) Employment in “Furniture and Home Furnishings Stores” is down 38.5%,[[44]](#footnote-44) and in “Sport. Goods, Hobby, Book, and Music Stores,” it is down 24.2%.[[45]](#footnote-45) Employment in the “Personal and Laundry Services” sector, which includes barbershops, hair salons, and the other personal care businesses, is down 34.4%.[[46]](#footnote-46)

A May 2020 report from the New York City Independent Budget Office projected that a total of 115,000 leisure and hospitality jobs would be lost by October 2020,[[47]](#footnote-47) and that even if distancing restrictions are relaxed, industries with “strong ties to tourism,” such as hospitality, would continue to lose jobs due to a decline in foreign tourists.[[48]](#footnote-48) A Partnership for New York City report from July 2020 classifies an estimated 679,000 accommodation and food service jobs as vulnerable to loss – the most of any sector in the city – 58% coming from small businesses that employ fewer than 100 people.[[49]](#footnote-49) The closure of City businesses will leave households “struggling to feed their families and pay rent,” [[50]](#footnote-50) and the impact of job loss in the City may disproportionately affect Black, Hispanic and Asian residents. The report estimates that 40-50% of jobs held by people of color are at risk of loss,[[51]](#footnote-51) as opposed to 30% for white residents.[[52]](#footnote-52) The survival of the small business economy is essential to ensure the City can have a strong, equitable economic recovery from the financial collapse caused by the pandemic.

**3. The Need for Greater Federal Aid for Small Businesses**

In response to the devastation caused by COVID-19, the federal government passed the Coronavirus, Aid, Relief, and Economic Security Act (CARES ACT), which included support for small businesses. The CARES Act allocated about $349 billion in federal funds for the Paycheck Protection Program (PPP), with an additional $322 billion authorized by Congress in late April.[[53]](#footnote-53) The PPP provided 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 were 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 was submitted, to a cap of $10 million.[[54]](#footnote-54)

The Paycheck Protection Program was intended to boost small businesses by helping them retain staff, therefore decreasing job losses.[[55]](#footnote-55) While New York was the epicenter of virus’ outbreak in the United States, it received disproportionately less money from the PPP than did other states. Just over 74% of New York’s eligible payroll was covered by loans from the PPP, ranking 44th of the 50 states. In contrast, states that did not experience nearly the same economic devastation as New York, such as Utah and Hawaii, had nearly 94% of their eligible payroll covered by the PPP.[[56]](#footnote-56)

While many small businesses in New York City did receive federal aid, small businesses are still in dire need of financial relief from the federal government. The PPP closed to new applications in August, and if Congress does not allocate further aid for small businesses, their past efforts to boost the small business economy may end up delaying mass closures rather than preventing them.[[57]](#footnote-57) According to John Lettieri, president and chief executive of the Economic Innovation Group, the PPP “was a mechanism to buy time. It was never the long-term solution.”[[58]](#footnote-58) As New York enters the fall, colder weather will bring new challenges, as outdoor dining and other weather-dependent adaptations small business owners implemented to increase business will become less reliable. Additionally, the winter could bring a surge in new cases, which could have the same effect as occurred when the virus first hit New York of decreasing small businesses revenue.[[59]](#footnote-59) Accordingly, federal aid will be necessary to assuage the financial anxieties of small business owners.

1. **CONCLUSION**

The Council seeks to gain a better understanding of how SBS is supporting small businesses in the city as they have reopened or continue to operate at limited capacity. The Council is also interested in hearing from small businesses about the challenges they face as they grapple with diminished funding opportunities and operational restrictions. The Committee also welcomes the input of community groups, BIDs and other commercial organizations about the impact small business closures have had on the city’s neighborhoods.

1. **LEGISLATIVE ANALYSIS**

**Preconsidered Int. No. \_\_\_, A Local Law to amend the administrative code of the city of New York, in relation to extending temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19**

This bill would amend Local Law 55 of 2020, which temporarily prohibits the enforcement of personal liability provisions in commercial leases or rental agreements involving certain COVID-19 impacted tenants, to extend this protection from September 30, 2020 to March 31, 2021. Local Law 55 applies to businesses that have been impacted by mandated closures and service limitations in the Governor's Executive Orders, as extended. Specifically, it covers (1) businesses required to stop serving food or beverages on-premises or to cease operations altogether under Executive Order Number 202.3 issued by the Governor on March 16, 2020; (2) non-essential retail businesses subject to in-person limitations under guidance issued by the New York State Department of Economic Development pursuant to Executive Order Number 202.6 issued by the Governor on March 18, 2020; and (3) businesses required to close to the public under Executive Order Number 202.7 issued by the Governor on March 19, 2020. Threatening to or attempting to enforce a personal liability provision is also considered an illegal form of commercial tenant harassment under Local Law 55.

Preconsidered Int. No. \_\_

By Council Member Rivera and the Speaker (Council Member Johnson)

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to extending temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19

..Body

Be it enacted by the Council as follows:

Section 1. Paragraph 2 of section 22-1005 of the administrative code of the city of New York, as added by local law number 55 for the year 2020, is amended to read as follows:

2. The default or other event causing such natural persons to become wholly or partially personally liable for such obligation occurred between March 7, 2020 and [September 30, 2020] March 31, 2021, inclusive.

§ 2. This local law takes effect immediately.

LS # 15881

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49. “A Call for Action and Collaboration”, Partnership for New York City, July 2020, pg. 34, <https://pfnyc.org/wp-content/uploads/2020/07/actionandcollaboration.pdf>. *See also* McKinsey & Company, “Lives and livelihoods: Assessing the near-term impact of COVID-19 on US workers,” April 2, 2020, <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/lives-and-livelihoods-assessing-the-near-term-impact-of-covid-19-on-us-workers> (projecting that the food services industry has the highest number of vulnerable jobs nationwide – Exhibit 3). [↑](#footnote-ref-49)
50. “A Call for Action and Collaboration”, Partnership for New York City, July 2020, pg. 58, <https://pfnyc.org/wp-content/uploads/2020/07/actionandcollaboration.pdf> [↑](#footnote-ref-50)
51. “Jobs at risk” is calculated in the report as a percentage equal to the number of vulnerable jobs by race over the total employment figures by race. The percentage of jobs at risk for Asian and Black city residents is about 40%; for Hispanic residents, the percentage is about 50%. [↑](#footnote-ref-51)
52. “A Call for Action and Collaboration”, Partnership for New York City, July 2020, pg. 58, <https://pfnyc.org/wp-content/uploads/2020/07/actionandcollaboration.pdf> [↑](#footnote-ref-52)
53. 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/congressbusiness-relief-ppp.html>. [↑](#footnote-ref-53)
54. In the recent funding allocation, $60 billion was set aside for lenders with less than $50 billion in assets. See

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package”, April 23, 2020, The Washington Post, available at:

<https://www.washingtonpost.com/business/2020/04/22/small-business-loan-faq>. [↑](#footnote-ref-54)
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58. *Id.* [↑](#footnote-ref-58)
59. Ben Casselman, “Small-Business Failures Loom as Federal Aid Dries Up” The New York Times, September 1, 2020, <https://www.nytimes.com/2020/09/01/business/economy/small-businesses-coronavirus.html> [↑](#footnote-ref-59)