



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK
Jumaane D. Williams

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON SMALL BUSINESS -
HEARING
SEPTEMBER 14, 2020**

Good morning,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank the Committee on Small Business chair Mark Gjonaj for holding this hearing on an important issue.

I cannot emphasize enough that small businesses are at risk amid the current economic crisis. I believe that the Council, the administration, and the general public know this very well. The news from the Governor of returning to indoor dining, albeit limited to 25 percent capacity, is welcome news for some small businesses, but more needs to be done. The unemployment data from the New York State Department of Labor for July 2020 is 20 percent. That means one in five New Yorkers are officially without a job, and this may not even count those who are barely surviving in part-time positions. This affects communities with small businesses that now will see fewer customers.

We can see the effects of the ongoing crisis in the federal government's Paycheck Protection Program. While it did provide assistance, many zip codes in the Bronx received less than \$10 million based on PPP data. In fact, no zip code in the Bronx received more than \$50 million in PPP loans, let alone over \$25 million. Meanwhile, concentrations of loans between \$50 million to \$160 million were found in southern Manhattan and the coastal areas of Brooklyn and Queens. Seven businesses in New York City received less than \$10. Is that enough to survive? We have to ask ourselves how we can expect a recovery based on these problems.

Communities of more color have faced the brunt of the economic crisis. Recovery programs need to take these communities into consideration to make a meaningful impact. We cannot forget about the immigrant in Chinatown who owns a business that mostly relies on the City's tourists to survive. We cannot forget about the business in Concourse passed down through family generations facing a sudden crisis. We cannot forget about the business in Jackson Heights started by an immigrant needing income to pay the rent and put food on the table. These may be hypothetical situations, but there are real stories of small business owners struggling that we need to remember.



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I understand these stories. As a former business owner myself, I know the difficulties in running a small business. That is why I believe this crisis needs leadership. We need bold leadership. We need creativity. We have been in crises before and survived, and I believe our City will persevere.

That is why I support the legislation before the committee today that would extend personal liability for commercial leases or rental agreement to March 31. COVID-19 is still a threat that many New Yorkers still fear. We do not have to look far to see this. We have a low infection rate, but that should not mean complacency. Of course, we need to do more. As I have reiterated in the past, my legislation, Introduction 1990, would create zero-interest rate loans for small business, independent contractors, and non-profit organizations. This would be administered through the Department of Small Business Services with specific details at the discretion of the commissioner.

We have no news of more City programs despite around \$48 million distributed in loans and grants to businesses. Congress is yet to decide on providing more funding for PPP or even assistance for municipalities. The news is grim, and I acknowledge that as I have done before. People are still going to work and wondering how to survive the following day. The rent is still due. When then?

We need strong proposals and policies moving forward. The legislation before the committee today and Introduction 1990 are examples of that. Far more needs to be done to address recovery efforts and respond to existing problems for businesses. Why not create new relationships between banks and businesses in predominantly communities of more color? Why not use funds from progressive taxes that tax the rich and luxury items on state level to provide more support for businesses? There are many possibilities, and I hope for more action for small businesses in the coming months.

Small businesses are a vital part of our economy, and I welcome any support for them. This year has been challenging. That is why we need to provide long-term solutions for problems that will persist into 2021 and beyond. I welcome the administration's testimony, and I thank the chair again for holding today's hearing.

TESTIMONY

BY

COMMISSIONER JONNEL DORIS

NEW YORK CITY

DEPARTMENT OF SMALL BUSINESS SERVICES

BEFORE

THE COMMITTEE ON SMALL BUSINESS

OF THE

NEW YORK CITY COUNCIL

MONDAY, SEPTEMBER 14, 2020

Good morning Chair Gjonaj, Speaker Johnson, and members of the Committee on Small Business. My name is Jonnel Doris, Commissioner of the New York City Department of Small Business Services (“SBS”). I hope that each of you and your loved ones are staying safe and healthy during these difficult times. It is my pleasure to testify before the City Council today on the pre-consideration of Intro 1932, that seeks to extend the temporary personal guarantee protection provisions for commercial tenants impacted by COVID-19 until March 2021. I am grateful for the Council’s ongoing support and partnership as we work together to advocate for small businesses throughout the city.

The economic crisis brought forth by COVID-19 has been tremendous. Rent challenges for commercial tenants continue to place enormous pressure on our business owners now more than ever, disproportionately affecting our communities of color. Before the pandemic, small business owners were receiving free legal representation via our **Commercial Lease Assistance Program**, as they engaged with their landlords to discuss changes to their lease obligations. Since the program’s existence, SBS has assisted over **800 businesses** with more than **900 legal issues** related to their leases. This program gets at the core of our mission, serving the businesses that need it most. Over **50%** of the total

pool of our clients are from women owned businesses and more than **70%** of our clients are minority owned businesses. In August, the Mayor announced the continuation of the program, allowing us to continue to serve and reach more businesses during this time.

Though rent affordability has been an issue that this Administration has taken on since its early days, the financial crisis brought forth by COVID-19 has only heightened these challenges and forced us to think creatively, which is why we are here to speak on the Administration's support for the extender bill relating to Local Law 55 of 2020, which aims to extend the guarantee protection provisions of Local Law 55 for commercial tenants impacted by COVID-19 until March 2021. We have heard from our constituents how the bill has allowed them to plan accordingly, allowing business owners to make determinations without having to endure additional losses. Many businesses are planning to make a decision before the end of the month on whether to remain open, this extension allows for further planning and allows them to generate additional income in the absence of federal aid.

SBS has worked hard to be nimble and adaptable in addressing the challenges faced by our constituents. We have worked tirelessly to connect small business owners to more than **\$78 Million** in financing awards,

partnered with Health, DOT, and other agencies to launch the Open Restaurants initiative, which has far exceeded our expectations with more than **10,000** participating restaurants since launch. And since pivoting our Workforce1 services to an all-virtual platform due to the pandemic, we have helped more than **46,000** job seekers and continue to work with more than **700** employers on over **12,000** job opportunities across the five boroughs to ensure that New Yorkers are connected to good jobs.

We will continue to think creatively and work collaboratively with the Council, city agencies, and our community partners to find ways to further assist our small businesses and job seekers during these times. Thank you again for the opportunity to testify today. I am happy to take any questions you might have.

REBNY Testimony | September 14, 2020

The Real Estate Board of New York to The Committee on Small Business of the New York City Council Concerning Pre- Considered Intro T2020-6599

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association. Founded in 1896, REBNY represents commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. REBNY strongly supports policies that expand the local economy, grow and improve the City's housing stock and create greater opportunities for all New Yorkers. Thank you to the City Council for the opportunity to testify on this important legislation.

REBNY opposes Pre-considered Intro T2020-6599 that modifies Local Law 55/2020 by extending the unenforceability of personal guaranties in connection to certain commercial leases to March 31, 2021.

The pandemic's impact on New York City's economy is broad, adversely affecting tenants and owners alike. Accordingly, the pandemic's economic burden should not be shifted from one group to another, but this is exactly what Local Law 55 of 2020 does by effectively forgiving rent for a period of up to six months. Upon a tenant's default for non-payment of rent and without the enforceability of a personal guarantee, owners have no recourse to collect rent or any portion thereof, making it difficult for owners to meet mortgage and property tax payments. Pre-considered Intro No T2020-6599 only furthers that precarious situation by extending the owner's inability to collect rent or any default payments to a total of twelve months.

Commercial tenants have already begun to abandon their leases knowing that no party will be responsible for the unpaid rent. Indeed, in a survey of small property owners, one out of five had commercial tenants have either abandoned or threaten to abandon their leaseholds during the period from March to August.[1]

In May, REBNY expressed grave concerns that Intro No 1932 (now, Local Law 55 of 2020) substantially impairs contractual expectations by effectively forgiving debt obligations, thereby raising questions of the law's ability to pass Constitutional muster. Article I, Section 10 of the US Constitution, also known as the Contracts Clause, states that "No State ... shall pass ... any law impairing the Obligation of Contracts[.]" REBNY reiterates those concerns with Pre-considered Intro No. T2020-6599.

Melendez et al v The City of New York et al is a lawsuit filed by small property owners challenging Local Laws 53, 55 and 56 on Constitutional grounds including the Contracts Clause as described above. Oral argument was just heard on September 11. It would be incumbent on the Council to at least learn of the Court's decision prior to enacting Pre-Considered Intro No T2020-6599.

For the foregoing reasons, REBNY opposes Pre-Considered Intro No T2020-6599.

[1] Small Property Owners of New York, (August 25, 2020), Retrieved from <https://spony.org/2020/08/small-property-owners-of-new-york-announces-majority-of-owners-and-managers-of-small-properties-are-working-with-tenants-by-reducing-forgoing-and-offering-rent-concessions>

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**Testimony of
the New York City Hospitality Alliance
Before the Committee on Small Business
September 14, 2010**

My name is Andrew Rigie, and I am Executive Director of the New York City Hospitality Alliance (“The Alliance”), is a not-for-profit trade association representing restaurant and nightlife establishments throughout the five boroughs. I want to thank Chair Mark Gjonaj, Councilmember Rivera, and members of the small business committee for the opportunity to testify in support of T2020-6599, which will extend the temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19.

Small business owners who have personal liability clauses in their leases have been left vulnerable by not being able to pay rent due to the ongoing government mandate limiting their operations. In fact, according to our recent rent survey of restaurant and bar owners, 83% of respondents said they could not pay any, or only paid partial rent in the month of July. We expect a similar situation in the month of August, and for the unforeseen future as restaurants in NYC will only resume at a 25% indoor occupancy on September 30, and those fortunate enough to have outdoor dining expect a slowdown in business as the weather cools.

Too many of our city’s restaurants and nightlife establishments have already permanently shuttered and so many are on the brink of survival. It would be a tragedy if New Yorkers not only lose their small businesses by no fault of their own, but also, they have their landlord take their personal assets. We cannot let this happen, and that is why the City Council must pass this legislation. Furthermore, if this extension is not enacted into law, many small business owners who have otherwise successful restaurants, bars and clubs will give their keys back to their landlords now because they can’t risk being personally liable.

New York City will not economically and socially recover unless the hospitality industry is at the core of our city’s recovery. This legislation is helping small businesses recover while protecting their owners from personal financial ruin. We urge the City Council to vote in support of this T2020-6599 and urge the Mayor to sign it into law. We appreciate the City Council and the Small Business Committee for their time and consideration.

If you have any questions or concerns, I am reachable at arigie@thenycalliance.org

Respectfully submitted,



Andrew Rigie
Executive Director
NYC Hospitality Alliance



September 14, 2020

Testimony of Camilla Marcus on behalf of Relief Opportunities for All Restaurants (ROAR)

Good afternoon Chair Gjonaj and members of the Committee on Small Businesses. I would like to thank you for holding today's hearing on such an important topic and on this essential legislation to extend temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19. I would also like to thank Councilmember Rivera and Speaker Johnson for sponsoring this legislation. My name is Camilla Marcus and I am submitting this testimony on behalf of Relief Opportunities for all Restaurants (ROAR). ROAR was created in March by a group of restauranteurs to support our industry and our workers during this unprecedented crisis and to advocate for reforms that would help our industry come out of this crisis more sustainably than before. We have been proud to work with our partners at all levels of government to work to help restaurants through this crisis and in collaboration with Robin Hood we have raised over \$1.5 million for direct cash assistance to NYC restaurant workers economically harmed by COVID-19. What we all know, however, is that our industry needs far more support and restructuring as the pandemic continues to ravage our people and our businesses. ROAR strongly supports this legislation and believes in extending these protections for the duration of the ongoing pandemic.

As you know, restaurants are central to New York. They are vital to our neighborhoods, to tourism, and to the cultural fabric of the City. More importantly, restaurants employ more people than any other industry in New York, almost 1 million strong -- who are predominantly minorities and immigrants -- being disproportionately hit by the COVID crisis. As the largest private employer in the City, the restaurant industry here has been hit harder than any other industry in any state. Our density, dependence on public transportation, high cost of living and soaring occupancy create the perfect storm here in New York unlike anywhere else in the country. As we get back on our feet restaurants of all sizes will need to be reimaged to accommodate the new reality of costly health and safety protocols for staff, social distancing for guests, loss of event and catering revenue, increase in costs for packaging for takeout and delivery, new fees for third party delivery vendors, potential future and unknown disruptions. Best case scenario, sales are projected to drop 50% for at least the next 12-18 months, even with the return of limited indoor dining and some form of outdoor dining.

It is unfortunately commonplace in New York for restaurant owners to have personal guarantees on their leases, as long as they were in possession of the premises. These clauses were designed to protect landlords from tenants being open and operating but not paying rent. However, this kind of personal liability being so open ended, for the duration of the lease, in practice have become draconian particularly when you consider they remain in place years after tenancy begins and alongside significant security deposits. What's more, restaurants have been faced with an unprecedented burden



in the wake of the current pandemic -- tenants are technically in possession, but cannot operate or have their operations greatly limited by government order in response to the ongoing public health crisis. 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. It is detrimental enough that many small business owners fear losing their business, but now they are in fear of losing their personal home or savings. Personal guarantees are being leveraged as a debilitating cost that puts our families at immense risk as an unjust backstop for a once in a lifetime pandemic that we didn't cause.

The Council's passage of Intro. 1932-A earlier this summer provided real relief and assurances to business owners as they spoke to their landlords and determined their future ability to operate in the City. It is one of the only measures that has brought landlords to the negotiating table, however with mixed success given the limited current scope of expiring on September 30 alongside the constitutional challenges currently in court, rather than running in parallel to government restrictions on restaurant operations. As restrictions remain in place and business operations cannot safely return to normal, many restaurant owners fear losing their personal savings and risking stability for their own families in the coming weeks. In fact, I closed my restaurant west~bourne, at 137 Sullivan Street in Soho, last week for just this very reason. With a landlord who refused to negotiate reasonably given the new reality we were dealt, I simply could not gamble my personal financial stability with a one-year old son at home at the risk of this legislation not being extended, and the end of month deadline just loomed too powerfully. I now hope that our closing was not in vain. The legislation being discussed today will provide medium term assurance and relief to many of us in the restaurant business who are faced with an impossible choice and enormous uncertainty in the coming months.

Thank you again for this opportunity to provide testimony in support of this legislation and for your ongoing and continued support of New York City's restaurants and the hundreds of thousands of New Yorkers who work in the restaurant business. Our teams are everything to us and this relief in uncertain times is essential to the lives of so many New Yorkers.

A handwritten signature in black ink, appearing to read "Camilla", with a long, sweeping horizontal line extending to the right.

Camilla Marcus

Co-Founder of ROAR

Chef/Founder of west~bourne

There is tremendous misinformation about personal guarantees and Good Guy Guarantees. There will be a hearing on Monday to possibly extend the non-enforcement period. Several court cases have been filed challenging the law's constitutionality including the Melendez case below. If the law is extended there are safeguards that should be included to make it more fair to all parties. Here are some major points:

- many small coops and small landlords were unfairly hit by the city council's action

- while some landlords in New York are large corporations, many are not. In some cases, the retail tenant is in fact a larger corporate entity than the individual landlord.

- the incentive to negotiate has been eliminated by the Council legislation, Why are landlords faced with an inability to negotiate?

- no landlord wants to evict a tenant now in this time of high vacancies. The pendulum had shifted to favor tenants.

- The city council could have passed legislation that incentivized both parties (the landlord and tenant) to meet in the middle (and therefore share the pain).

- the tenant can walk away with no payment at all beyond the initial security deposit.

- COVID 19 is obviously neither the fault of the NYC tenants nor the NYC landlords.

- It might have been more fair to allow the personal guarantee enforcement hiatus to take place only after the payment of 50% (rather than zero) of the rent due, or to make the hiatus applicable only in cases where rent, or annual sales, or number of stores exceeded a defined level, with the aim of exempting small landlords.

Bo Riccobono

Position Paper Against Extension of Prohibition of Enforcing Personal Guarantees for Retail Lease

I am an owner and manager of several properties throughout NYC which contain retail stores on the ground floor and apartments above. The properties have been hit very hard by COVID. Residential and retail vacancies have soared. Residential collections from occupied apartments are about 70% and retail collections are about 30%. I am having a very difficult time paying expenses to run the buildings and also paying mortgage expenses.

I have been working with all my retail tenants. Some are essential businesses which have done well in these trying times, e.g. pharmacies, liquor stores, bicycle stores, etc. and have been paying rent. However, most are businesses that have been hit hard by COVID. They are bars, restaurants, small retailers, bakeries, nail salons, etc.

When a retail tenant leaves, I am most likely looking at six months of vacancy before re-renting the store (if I'm lucky), broker expenses of three months, fix-up of the store, legal fees and a free rent period (often 3 months). All this with a likely decrease in rent. I expect that any time I have a retail vacancy, it will generally cost me the equivalent of at least one year of lost rent, usually much more. Therefore, I always work to keep tenants in place wherever possible.

I do have a few tenants, however, who know the law and have deliberately chosen not to work with me:

- I have an ice cream store that has several locations throughout the city and the manager and owner do not respond to me, despite my offers to work with them. Their store in my building has been shuttered since March. It is located on a very busy street. Why would any serious business person running an ice cream store be closed in the spring and summer? Because they know they don't have to open because of COVID laws that have totally emasculated my ability to enforce a valid contract that they signed with the advice of their lawyer. They had arrears before COVID. These arrears are generally caught up in the warmer months. Other locations of theirs in the city are open. They just don't feel like opening and don't feel like working with me.

- I have a Dunkin Donut franchise owned by an operator who owns 29 other Dunkin Donut franchises plus other franchises. He has only recently chosen to return my emails and refuses to pay any rent unless I forgive all arrears and accept a tiny fraction of rent going forward. He knows his personal guaranty is not enforceable.

I have worked with all my tenants who need help. I have not looked to evict anyone. Not because I can't, but because I understand the hardship they are experiencing and I know we're all in this together. I have been working with all of my tenants who are willing to work with me. I have forgiven months of rent, temporarily slashed current rent, etc.

I cannot operate a business where I have absolutely no way to enforce valid leases. I cannot pay my utilities, my superintendent, my real estate taxes, my management fees or my mortgage if tenants don't pay rent.

I have personal guarantees in all my retail leases in the form of Good Guy Guarantees (GGG). The idea behind a GGG is to encourage a tenant to vacate the space as soon as they know they will not be able to sustain their business. The personal guarantee only applies to the time the tenant is in occupancy.

Once they vacate, the personal liability stops. The vacating tenant can easily stop their losses by vacating the store and go across the street to one of many vacant stores and start with a clean slate at a lower rent. There is virtually no risk to the tenant whether GGGs are enforceable or not. However, without a landlord being able to enforce GGGs, there is no incentive for a failing business to leave. The tenant stays either shuttered or not and allows the owner no ability to start fresh with a new business (likely at a lower rent). The owner has no legal power to get rent or have the store tenant vacate.

I rarely get paid on GGGs, because tenants generally are in touch with me to leave the space as soon as possible or they assign the lease to a third party. The personal guarantee is merely a tool to help me quicken the process and encourage a tenant to be a “good guy”.

Extending the prohibition against GGG enforcement does not help tenants whose intentions are good. Those tenants, especially in COVID times, will find an owner willing to work with them, or at worst will cut their losses and vacate right away. Extending prohibition of GGG enforcement only helps bad tenants. They scoff at owners knowing there are no consequences for their bad behavior.

I respectfully request you allow us to continue to conduct our business and trust that we all know we are all in this together. Please allow us to enforce Good Guy Guarantees.

Thank you.

Eric Margules

Margules Properties, Inc.



CCPA



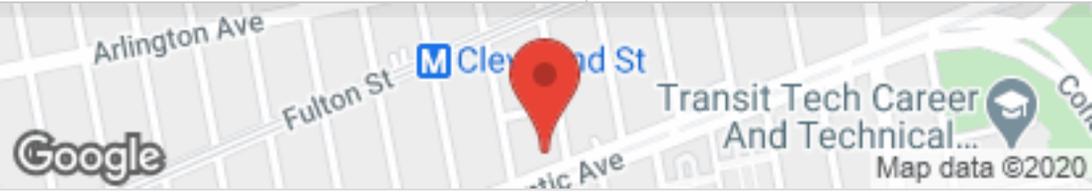
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Asian American Federation

Testimony for New York City Council Oversight Hearing on City Services and Supports for Immigrant Business Owners

Submitted to the New York City Council Committee on Small Business

September 14, 2020

Thank you, Chair Mark Gjonaj and the Committee on Small Business, for convening this hearing.

My name is Ahyoung Kim, and I am the Associate Director of Small Business Programs at the Asian American Federation (AAF). AAF's mission is to raise the influence and well-being of the pan-Asian American community through research, policy advocacy, public awareness, and organizational development. We represent a network of nearly 70 member and partner agencies that support our community through their work in health & human services, education, economic development, civic participation, and social justice. Through our Small Business Program, we directly serve nearly 100 Asian-owned small businesses in Flushing and work together with groups that support thousands of Asian small business owners across the city, such as the Korean American Business Council of New York.

In our rapid response efforts in the face of this pandemic, we have facilitated the distribution of over 320,000 masks and hundreds of thermometers to small business owners. We also set up a resource center for policy change and in-language government assistance programs, and continue to provide direct services for business owners who need marketing and administrative assistance. In the past month, we have also conducted a survey to assess the impact of the pandemic on Asian small business owners across the city, which was tied to a \$100,000 grant.

We thank Councilmember Rivera for pushing to extend the protection of small business owners subject to the personal liability clause. The good guy clause is an especially pressing issue for immigrant small business owners with little resources or access to legal assistance. With the extension of this protection, we request there be ample outreach to the immigrant communities to make sure all small business owners are aware of their rights in-language when this bill passes.

To add on, we need more protective measures to serve as a safety net for the most vulnerable small business owners with little to no access to meaningful assistance.

In this time of crisis, we have seen an unprecedented increase in the unemployment claims in the Asian community. In some weeks, the year-to-year increase in Asian UI applications in NYS were over 6,000%. Many Asian small business owners have been largely let down and left in the dark in the fight against COVID-19.

As you well know, Asian small businesses started seeing a dramatic decline in their revenue from as early as January this year as anti-Asian sentiment was fueled by politically motivated racism. The lack of timely response on this matter has added to the anxiety and fear for their own safety among Asian small business owners and their staff.

Lack of Meaningful Assistance:

Government assistance programs aimed at economic stimulus and emergency relief for small business owners did not consider the nature of immigrant small businesses and the impacts on the application process.

The SBS Employee Retainment Grant was closed in just two weeks, without meaningful effort to assist those unable to apply due to language barrier. Since then, SBS has been guiding small business owners to seek assistance through federal programs such as the Paycheck Protection Program (PPP), but many found the program inaccessible or irrelevant to their needs. As a result, zip codes with the highest concentration of Asian small businesses, such as Flushing and Corona, have seen the lowest approval rate for SBA loans in all of New York City.

The **Commercial Lease Assistance program**, which provides crucial legal assistance at this time for small business owners in lease disputes with their landlords is greatly underutilized by immigrant small business owners as well, because of language access. AAF welcomes the re-funding of this crucial program, but such services are not relevant to new immigrant business owners who desperately need the assistance without language access. We ask that Council oversee the implementation to ensure that in-language services by the program grantees is a priority.

Outreach to Immigrant Small Business Owners:

Immigrant small business owners with limited English proficiency are lost without the lack of language access as city and state regulations change at an alarming rate. SBS webinars with language access become available weeks after a new policy is introduced, during which time LEP small business owners are left to scramble for information in desperation. We have requested for webinars that focus more on what to expect during inspections, along with advice on the cure process if in-language info sessions cannot be offered sooner.

Moreover, SBS's current level of outreach to business owners leaves immigrant small business owners out. In our survey of Asian small business owners in New York City, **over 90% of our respondents answered they are not a member of BID or Chambers of Commerce.** Nonetheless, there is little opportunity for such small business owners to directly engage with SBS for information or to request assistance.

Immigrant small business owners also fall prey to corporate greed that targets them for easy revenue. For example, ConEd is billing exorbitant 'demand fees' to charge them the same or

higher electricity fees, despite their businesses operating at a 30% capacity compared to pre-COVID times. Despite their desperation, to whom business owners should ask for help is unclear, due to the absence of a trusted relationship with City agencies.

City Regulations and Inspections:

Hostile inspections that result in tickets and fines add unbearable logistical and financial burden on already struggling businesses. The current system where 311 complaints automatically trigger inspections are widely abused, and inconsistent practices by inspectors add to the frustration. Immigrant small business owners are frustrated with hostile practices and lack of will to communicate during inspections. Other than offering the hotline service with little language assistance, SBS's response to matters regarding inspections has largely been that SBS itself is not a regulatory institution. As a result, small business owners with limited English proficiency have no contact point at City Hall to ask for guidance and resort to paying off the tickets or avoid dealing with the violation at all, incurring exorbitant interests on their fines.

New regulations that don't make sense are also putting our small businesses in jeopardy. The Korean Cleaners Association expects hundreds of their members will close business this year because of unreasonable fire safety regulations. Small business owners with lack of access to government agencies are at risk of closing because bureaucracy stands between compliance and well-intended business owners. Instead of engaging with the stakeholders directly, city agencies are deferring to speaking with vendors who do not represent the best interests of the small businesses--causing monopoly and unfair competition in the market.

RECOMMENDATIONS:

In light of this state of Asian small businesses in New York City, AAF recommends the following:

- **Introduce meaningful language access**
 - Mandate same-day release of in-language material introducing new policies and regulation.
 - Increase funding for community-based organizations that offer direct services and language access to immigrant small business owners with limited English proficiency.
 - Fund CLA program partners to provide language access to LEP small business owners.
- **Increase outreach to immigrant small business owners**
 - Fund community-based organizations that offer direct services to small business owners in areas where BID or Chambers of Commerce are not present.
 - Increase media buys from ethnic media outlets to disseminate crucial information regarding policy changes.

- **Reduce small business burdens caused by bureaucracy in City agencies**
 - Streamline permitting and licensing process, and decrease the required documents to apply for permits.
 - Designate a small business liaison in SBS to facilitate interagency discussions with small business owners.
 - Mandate each City agency to have point persons for community affairs in all languages they are mandated to provide language access.

- Support the creation of a **culturally and linguistically appropriate small business support centers** to provide immigrant small businesses with the in-language technical support they need to thrive in New York City.

Example: AAF plans to establish an Asian Small Business Center in East Queens with staff who can provide in-language assistance to pan-Asian small business owners in the region. The City's small business assistance centers need to be decentralized and located in areas where immigrant small businesses are heavily concentrated. Currently, owners are unable to take advantage of any City services because they are located too far from where they work, and such services provide no meaningful language access.

Our Center will provide:

- Seminars – Provide informational seminars and technical assistance which reflects the specific needs of different Asian business communities and the industries they work in
- Civic Engagement – Inform small business owners of regulation and policy changes from the get-go to minimize any negative impact at the implementation stage. We would reach out to owners in a systematic manner to inform them of policy changes and invite feedback through ongoing discussions.
- Education about Regulations – Provide in-language materials to guide immigrant small business owners through inspections. These materials would inform owners of what their responsibilities are and what to expect during inspections, which will help them understand how to be in compliance.
- Business Trainings – Create in-language guides for how to start and run a small business in New York City. These guides will establish a common ground of understanding as well as reflect specific needs of different Asian business communities and the industries they work in.
- Build Capacity – Build the capacity of Asian community-based organizations to provide small business assistance to community members. While a few of our member agencies have a small business program, many of the emerging Asian communities in New York City are not receiving the small business assistance they need. Community-based organizations are the first place that Asian small business owners go to for help, and the City must ensure that these organizations are properly prepared to offer assistance.

Thank you!

The Case For Revising the Personal Guarantee (GGG) Law

In my research on this I was surprised to see an extreme and unfounded anti-landlord bias and little real understanding of the issue. I was told that the Council was moved to act primarily to help restaurants after some hard-headed landlords refused to negotiate with their tenants. This was short sighted and wrong. But I can tell you from my personal experience that many landlords, seeing the obvious, quickly negotiated rent deferrals and abatements in order to keep tenants in place under conditions of weak demand.

- GGGs were invented in NY 25/30 years ago to make it easier for smaller tenants to rent commercial spaces (including retail spaces). Without GGGs, tenants would have been required to place much larger security deposits upfront. Many small to medium sized businesses don't have this extra cash on hand when signing a lease. Also, many tenants don't have sufficient resources with their bank to provide a Letter of Credit.

- From the landlord's perspective, even though additional security deposits or personal guarantees or Letters of Credit are better, the GGG was a workable halfway position. In many instances it is economically easier for a small business to sign a GGG, and it provided the landlord with some capped protection - usually 90 days, the equivalent of 3 extra months of security deposit, giving the landlord some coverage while trying to find a new tenant.

- It should be noted that a GGG helps the tenant in that it allows a way out of a lease if a business is failing. The signer of the GGG, usually one of the principals of the business, guarantees payment of rent according to the lease terms. There is a notice period, usually 90 days, after which the lease is terminated if all rent is paid in full.

- While some landlords in New York are large corporations, many are not. In some cases, the retail tenant is in fact a larger corporate entity than the individual landlord.

- Retroactively invalidating existing GGGs in store retail leases across NYC, has enabled opportunistic tenants with more than one store lease, to

pick and choose the better leases in their portfolio and walk away from the ones it deemed less favorable - with the intention in some cases of re-signing somewhere else at a cheaper rate as early as next year as new lease rates plummet. For those tenants with a number of stores in the U.S., it is the NYC leases they are walking away from, as the GGG is primarily a NY concept, while in places like Florida and California there are often leases with larger security deposits or personal guarantees making it more difficult to simply walk away. The tenant may attempt to engage in a dialogue with their California and Florida landlords to work out a restructuring plan that is workable, but the incentive to negotiate in NYC has been eliminated by the Council legislation, and no negotiation happens. The tenant can walk away with no payment at all beyond the initial security deposit.

- COVID 19 is obviously neither the fault of the NYC tenants nor the NYC landlords. One party (the tenant) has been saying why should I pay rent when I can't be operational for reasons that were beyond my control - and the other party (the landlord) says why should I accept ZERO payment of rent, when the contract signed clearly states that rent remains payable IN FULL, regardless of any event beyond our control, such as a pandemic.

-The city council, instead of doing what it did to smaller landlords, could have passed legislation that incentivized both parties (the landlord and tenant) to meet in the middle (and therefore share the pain) for the period from March through September. Instead, the Council provided the opportunity for tenants to pay nothing, and leave smaller landlords across NYC high and dry.

-It might have been more fair to allow the GGG enforcement hiatus to take place only after the payment of 50% (rather than zero) of the rent due, or to make the hiatus applicable only in cases where rent, or annual sales, or number of stores exceeded a defined level, with the aim of exempting small landlords.

-On top of this, these smaller NYC landlords are unable to recover anything from their business interruption insurance, as there is often an exclusion for pandemics in such contracts enabling the insurance companies to pay nothing. Landlords are therefore stuck in the middle - their lease contracts

which did not provide for any reduction of rent during the pandemic, have been retroactively altered by the city council to allow tenants to pay nothing, but their business interruption insurance coverage has NOT been similarly altered. The landlord therefore gets hurt, all as a result of a pandemic that was no more or less the fault of NYC landlords, than it was of the tenants or the insurance companies.

Please run this by your policy people. I have no way of discovering how many landlords were affected by this poorly constructed legislation, but I do know that many small coops were hit hard. Although the chances of an eventual court decision invalidating the law are strong, such a decision is probably a year or two away.

I certainly understand the political appeal of anti-landlord legislation, but I don't think the Council even considered the damage they were inflicting on small landlords and coops.

I will be happy to provide follow-up information.

Many thanks, Bo

Bo Riccobono
bo5@mac.com
917 572 4515

To NYC Council:

Re: Personal liability for commercial leases

I have owned and operated Andrews Coffee Shop at 463 7th Ave since 1983. I have always paid my rent on the 1st of each month. Since March 16, 2020 we have been closed as a result of the restriction due to COVID19, but we plan on reopening on September 30 as per guidelines with 25% capacity. I have a good guy clause in my lease that requires me to personally guarantee all rents as long as I am in possession of the space. There is no way that when the guaranty was signed I or the landlord could have anticipated a shutdown such as we have had. Unless the personal liability protection is extended I and many others would face the choice of closing or face devastating personal liability. Without this protection we will have to keep our business closed and then reopen at 25% but be liable for 100% of our expenses. The injustice is clearly obvious. Please extend the protections.

Sincerely,

Monir Zamel
Andrews Coffee Shop
463 7th Ave
New York, NY 10018
917-843-3213

Guy Yedwab
Board of Directors
League of Independent Theater
September 14th, 2020

Testimony to City Council on the Urgent, Critical Need to #CancelRent to Save Arts Venues

Thank you to the committee for the opportunity to testify before you today. I am on the board of directors of the League of Independent Theater, an advocacy organization representing the interests of those who create theater performances in or run 99 seat or less theaters, and non-traditional theater. Our members are the grassroots, creating new theater across all five boroughs, from every cultural community of this city. We are also a member of the United for Small Business NYC coalition, fighting to defend small businesses. We estimate roughly 60,000 theatermakers work in theater in New York, and virtually every single one passes through the small, independent venues.

Almost half of the seats for theaters are in independent theater venues.¹ 84% of independent theaters rent their performance space.² In other words, when you venture out beyond the largest institutions, theater largely depends on renting commercial space. Whether open or closed, these performance venues continue either pay rent – or, more likely, fail to pay the rent, accruing piles and piles of debt. Based on a survey conducted by IndieSpace, rents for independent theaters range from \$2,200 per month to \$42,000 per month.

¹ THE MAYOR'S OFFICE OF MEDIA AND ENTERTAINMENT, ALL NEW YORK'S A STAGE: NEW YORK CITY SMALL THEATER INDUSTRY CULTURAL AND ECONOMIC IMPACT STUDY (2019).

² NEW YORK INNOVATIVE THEATRE FOUNDATION, STATISTICAL ANALYSIS OF OFF-OFF-BROADWAY BUDGETS (2008).

Many cultural venues are on the verge of closing, and some have already closed permanently.³ However, even closing venues are not enough to protect those who operate cultural venues. Even closing permanently and walking away, they may owe tens or even hundreds of thousands in back rent.

Suspending the personal guaranty protects the individuals who operate these theaters from suffering the calamity personally. Those who chose to open a small community-based cultural venue will not need to personally suffer a crisis that has been caused by a failure of leadership. So long as we have chosen to abandon renters to pay rent with no income, through no fault of their own, the least we can do is protect their personal safety and stability. Otherwise, the commercial rent crisis will impact the housing rent crisis, magnifying that displacement as well.

In speaking with our members, some of those who have been forced to close might decide one day to reopen their businesses. This will be far more difficult if they are carrying tens or hundreds of thousands of dollars of debt from their previous space.

The personal guarantee protection is not a solution to the commercial rent crisis. Far from it. Without cancellation of rent, theater venues and other small businesses will continue to close for months to come. But if the City continues to fail

³ Key spaces that have already closed include Shetler Studios, Champion Studios, Chelsea Studios, Simple Studios, the Artists Co-Op, the Barrow Group, Upright Citizens Brigade, and more.

Guy Yedwab
Board of Directors
League of Independent Theater
September 14th, 2020

to act on the rent crisis, the least it can do is ensure that the personal livelihood of those who have been abandoned is not endangered as well.



Council of New York Cooperatives & Condominiums

TESTIMONY TO THE COMMITTEE ON SMALL BUSINESS

Regarding T2020-6599

September 14th, 2020

The Council of New York Cooperatives & Condominiums is a membership organization providing information, education and advocacy for housing cooperatives and condominiums located throughout the five boroughs of New York City and beyond. More than 170,000 New York families make their homes in CNYC member buildings, which span the full economic spectrum from very modest, income-restricted housing to solid middle class apartment complexes to upscale dwellings. The common thread is that these buildings are owed by their residents and operate as self-governing representative democracies.

Our City, State, and Nation continue to face an unparalleled health and economic crisis. New Yorkers are suffering greatly and it is understandable that the City Council is to provide additional relief to commercial tenants. However, we write today to also raise voices of the city's co-operatives and condominiums which are also struggling at this time.

There are around 100,000 households throughout the five boroughs in co-op buildings that have commercial space and may be lucky enough to have commercial tenants during this difficult time. The owners and shareholders in these buildings are not large real estate companies – they are average citizens and families. These citizens and families rely on the rental income from commercial tenants to offset some of their monthly maintenance and other carrying-costs.

Many co-ops and condos are working collaboratively with their commercial tenants to establish payment plans and other ways to weather this crisis together. It is almost always of mutual interest to find a way forward that prevents commercial tenants from needing to end a lease or vacate a site, especially during these hard economic times when finding another tenant would be extremely difficult. However, the legislation being considered today could mean that a co-op or condo might be forced to wait until April 2021 to see any rent payments from a commercial tenant. We are deeply concerned about the impact this might have on the operations of our member buildings who are already facing rising operating costs across the board and the livelihoods of our residents who are already under tremendous financial strain.

CNYC shares a desire to find relief for those New Yorkers who need it most. However, we must caution against legislation which could have major negative consequences for our City's homeowners. We look forward to working with the City Council to address these issues and countless others during this difficult time for all.

Hello,

This testimony is in support of extending the personal liability protection for small business owners currently set to expire on 9/30/20.

I am a Brooklyn resident, parent, and owner of 5 small businesses. Of those businesses we have been able to secure agreements with 4 of our landlords to remain in our spaces and hopefully reopen fully post-covid. That said, one of our landlords has demanded full rent with no flexibility while our business is operating at 15-20% of standard revenue.

We are in the position of needing to close and return all SBA loan funds we have not already spent operating and paying rent, and the personal liability protections provided by 1932-A is the only way we'll be able to do so without incurring significant personal liability on the part of myself and my family.

My wife is an ER doctor who got Covid-19 at work and has been working full time for the people of NYC. Without an extension of 1932-A our home and livelihood will be at stake, as will my ability to continue operating my other 4 businesses.

Thanks,

Julian Brizzi
973-634-6694
julian@rucolabrooklyn.com

Rucola/Celestine/Grand Army/Magazine/Nicky's Unisex

To Council Corey Johnson, Carlina Rivera and Ben Kallos,

My name is Debra Strougo and I am the owner of 5 fitness businesses in NYC - In Manhattan, where I was born and raised. One of my businesses is on the UES, one in Chelsea, and one on East 34th street which is why I am emailing you. My businesses have been closed since the governor closed fitness facilities in mid March.

I'm writing to ask whether the City Council is considering extending the suspension of personal guarantees on commercial leases. As you know it's currently set to expire at the end of September. I can't overestimate the importance of this issue to myself and all other small business owners that are legally required to be closed due to the virus.

Once we're able to reopen it's very likely that people will be cautious about returning to indoor fitness classes and restaurants as well. Unless the suspension of the personal guarantee is extended, the potential personal financial risk we face could be devastating for myself and all other small business owners and our families.

We also need to address defaults caused by COVID-related closures. Specifically, landlords are trying to disallow exercises of termination clauses and good guys if businesses are in default, and this will also hurt not only us but landlords as well as they will try and keep us in our leases when we cant pay.

We had a successful business before the shut down and hope that with the appropriate COVID-19 precautions in place we can recover, but we need more time given how long this has gone on. Extending the suspension of the personal guarantee will give me and all the other small business owners affected by the state mandated shut down that opportunity.

Thank you,

Debra Strougo

To whom it may concern –

I'm writing to ask you to extend the personal guarantee moratorium in NYC. I'm the Founder & CEO of 12 fitness studios, SLT, throughout NYC, 8 of which I have personal guarantees on and all of which remain shut due to the city's determination that group fitness can't yet resume. Given this situation, I personally owe over \$1,000,000 to landlords and the amount increases every month. How can I be expected to make good on this money without the ability to make any revenue? While the pandemic is to blame for our shutdown, it's the city who continues to keep us closed. It is 100% the responsibility of the city to do something about the personal responsibilities I continue to accrue. My kids' educations and our livelihood are at stake.

Thanks for your consideration.

Amanda

To the City Council Small Business Committee,

My name is Jared Blank and I am the owner of a fitness business in NYC Council district 3 near Grand Central Station. (I live near in District 2) We are named Brick New York and mainly run high intensity interval training fitness classes. We've been closed since the governor closed fitness facilities in mid March.

I'm writing to ask whether the City Council is considering extending the suspension of personal guarantees on commercial leases. As you know it's currently set to expire at the end of September. I can't overestimate the importance of this issue to myself and all other small business owners that are legally required to be closed due to the virus.

Once we're able to reopen it's very likely that people will be cautious about returning to indoor fitness classes and restaurants as well. Unless the suspension of the personal guarantee is extended, the potential personal financial risk we face could be devastating for myself and all other small business owners and our families.

We had a successful business before the shut down and I think that with the appropriate Cover-19 precautions in place we can recover in time. I'd like the opportunity to try. Extending the suspension of the personal guarantee will give me and all the other small business owners affected by the state mandated shut down that opportunity. Without the extension I'll have to permanently close our doors at the end of September or potentially face personal bankruptcy.

Thank you,

Jared Blank

My name is Bram Robinson and I am the owner of Upstate Stock here in Williamsburg, Brooklyn. At one point, in November of 2019, I opened my third physical store in Williamsburg. I build stores with my bare hands, with my friends and families. These stores are large concepts that are meant to be not only flagships for my accessories brand and my knitting factory, but community hubs where people can come and buy specialty groceries, get coffee and food, and purchase over 200 local and NY made brands, ranging from kale from Long Island to tshirts made in the Catskills.

As of Monday, the 14th of September 2020 I will be papering up the windows of that third location, to go along with boarded up windows of another one of my stores. I have one location remaining, my large one, that completely pivoted and became very grocery heavy for the height of the pandemic and helped locals stay out of large grocery stores for basics like milk and eggs and luckily, with the support of the local community, has done quite well. My other two locations did not have grocery store licenses and were both forced to shutter in March. I boarded my East Williamsburg location up after two attempted break-ins and have now converted that one into our production facility where we make all of our products and sew hundreds of masks a week on over a dozen sewing machines.

I attempted to re-open my South Williamsburg location in July as my landlord was putting increasing pressure on me to pay rent and work out a deal on closed months and the rest of this year. Due to this pressure I spent thousands restocking it and bringing 4 staff back to work there. Unfortunately, the neighborhood is devastated where that location is, I am the only business open in 4 blocks with the vacancy rate of storefronts is at 90% and the massive Greendesk offices abandoned completely. The gross revenue of that location is down 40% since February, when it was only 3 month old business already barely breaking even. Essentially, my re-opening has failed and the tourists I was relying on to come down to Domino Park and the water front are gone with no foreseeable return and another long cold Winter about to start. This location has put incredible stress on my company and myself financially and emotionally with my employees not wanting to work there and me not having the bandwidth to do anything but continue to focus on the main revenue generator, my last open store. This store would have sunk my company in the long run if I did not do something, so as of Monday I now have 1 location left out of 3. Suffice it to say, my landlord there is not taking it well and now saying I owe all back rent, not just what was negotiated and of course, I will be personally liable for the surrender clause in my lease rider.

To add to this, my main location has been open the entire time, since the height of all this and I have had 6 months of experiences most people would be hard pressed to believe if I didn't have the TV interviews to prove it, and all these interviews for the wrong reasons. At the main location we have had an incident with an NYPD officer which is subject to a serious Internal Affairs investigation, been burglarized twice, had to call 911 over violent incidents, and just had an all around incredibly stressful and tense 6 months.

For my effort and my ability to pivot and save my company by converting my main store into a grocer and another into a manufacturing space, I will be sued by my landlord for the space I could not save. I know almost all the business owners in Williamsburg on some level and I know how many of them have had to vacate or "negotiate" with their landlords, and almost none of them have a real estate lawyer on retainer like I do. Unlike many of them who just left or are still

thinking they have rent forgiveness I know we are liable for these the rent "forgiven" unless it's in a rider to amend the lease and I know we are all personally liable to whatever provision our leases have concerning what happens when you surrender your space. We need some type of negotiating tool if we want REAL rent forgiveness for 6 months of massive revenue loss and leverage if we cannot survive and need to close down and shutter our businesses. That tool is protections for us when we vacate. We are not trying to get away with anything as my landlords imply, and threaten to sue me, like I am stealing from them. I am closing down my dreams, stores I spent hundreds of thousands of dollars putting into and years of work. The landlord has the fruits of my labor with renovated spaces and hundreds of thousands in rent over the time I was there and they need to understand that any litigation in the year or so to come will just mean more closures than even now.



Monday, September 14th, 2020

To Whom it May Concern,

We own and operate three gyms in NYC that have been mandated to be closed since March 16th, 2020. We have lost 90% of our revenue since then and are desperately trying to negotiate with landlords so we have the ability to reopen. The threat of being on the hook for personal guarantees is going to significantly impact our risk tolerance for reopening. There is so much uncertainty around when we can open up again and what capacity restrictions and safety protocols will be mandated. It's hard enough to keep our businesses alive while we are forced to not operate and adding on the potential burden of personal guarantees when Intro 1931-A expires at the end of the month is an additional undue burden.

Please extend the suspension of all personal guarantees through 2021 so that we have one less risk to consider as we try to restart and rebuild our business.

Thank you for your consideration.

Sincerely,
William Heath

CEO
Mile High Run Club

9/16/20

To the NYC City Council and all relevant Committees:

I am writing to urge you to extend the personal liability protections for individuals currently guaranteeing commercial leases in the city. These protections will save thousands of individuals from personal bankruptcy resulting from the closure of their businesses as a result of the COVID pandemic. I encourage the Council to not only extend this protection, but to extend the protections to at least 6 more months so longer term plans may be made. While the many measures passed by the Council in aid of small business during the crisis have been appreciated, the continual short term extensions make it nearly impossible for any type of strategic planning to take place.

Thank you for your consideration of this important matter.

James Siler



September 14, 2020

Dear Chair Gjonaj and Members of the Small Business Committee:

My name is Karen Narefsky and I am the senior organizer for equitable economic development at the Association for Neighborhood & Housing Development. ANHD is a nonprofit whose mission is to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. Our members include more than 80 neighborhood-based community development organizations across New York City.

ANHD is also a member and convener of United for Small Business NYC, a coalition of community organizations across the city fighting to protect small businesses from the threat of displacement, with a focus on owner-operated, minority-run businesses that serve low-income and minority communities. As you know, businesses in these communities were extremely vulnerable even before COVID-19, due in large part to the lack of legal rights or protections for commercial tenants.

Commercial tenants who are signing an initial lease often sign personal guaranties because their business does not have significant financial assets. This means that if they are unable to meet their lease obligations, including not being able to pay rent, they are at risk not only of losing their business but of personal financial ruin. Due to COVID-19 and the economic collapse, many small business owners are facing this risk right now.

We supported Local Law 55 when it was first introduced and we believe it should be extended through March 2021 as proposed. While some businesses that were closed in April have been able to reopen in a limited capacity, the public health requirements of operating during a pandemic have only increased financial strain. Furthermore, many small businesses and non-profit cultural spaces that rely on public assembly may not be fully operational for long after the COVID-19 period.

We do believe the legislation would benefit from some additional clarity. The current definition of “personal liability provision” is ambiguous and may leave some of the most vulnerable small businesses with personal financial exposure. Many personal guaranties are executed simultaneously with leases but are separate documents rather than provisions of the leases themselves. These guaranties should also be clearly included in the definition in order for the legislation to have its intended effect. Additionally, many small businesses sign leases in the name of a d/b/a or in the business owner’s name. These business owners have not signed guaranties, but they face substantial financial risk and should be protected from personal liability where they are unable to pay their rent because of COVID-19.

We support this legislation and the Council’s intent to provide some relief to the City’s most vulnerable small business owners and their employees. However, the underlying problem is that small businesses cannot pay rent without income, and commercial tenants are still largely at the mercy of individual property owners. We urge the Council to take additional measures of rent relief and financial support for small businesses to ensure that those who are still here can weather the long-term economic effects of the virus as much as possible.