

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENT OPERATIONS AND SMALL BUSINESS

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April 21, 2010
Start: 11:15 am
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HELD AT: Council Chambers
City Hall

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

COUNCIL MEMBERS:
Karen Koslowitz
Mathieu Eugene
Peter Koo
Letitia James

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

Sami Naim
Assistant Counselor
Mayor Michael R. Bloomberg

Steven Kogel
Vice President
Association of Water, Sewer Excavators

Robert Bookman
Counsel
New York State Restaurant Association, New York Night
Life Association, New York City Newsstand Operators
Association

Martin Kasdan
Executive Vice President of the Riverside Memorial
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President of Schwartz Brothers Jeffer Memorial Chapel
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Arthur Goldstein
Counsel
Association of Water and Sewer Excavators

Leah Archibald
Executive Director
East Williamsburg Valley Industrial Corporation

Joseph Robles
President
Knight's Collision Experts of Brooklyn

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2 CHAIRPERSON BREWER: Good morning,
3 I'm Gale Brewer, Chair of Governmental Operations
4 and it's an honor to be here with my friend and
5 colleague, Diana Reyna, who will speak in a few
6 minutes. We've been joined by Council Member
7 Karen Koslowitz who's bill we're going to be
8 considering today and Dr. Mathieu Eugene who is
9 from Brooklyn. And we're going to just do a quick
10 PowerPoint and then the co-chair, Chair of the
11 Small Business Committee will also do her opening.

12 So Intro 118, which is sponsored by
13 Council Member Karen Koslowitz, is what we're
14 talking about today and it would require the
15 Mayor's Office of Operations to develop and
16 disseminate a business owner's bill of rights.
17 It's mostly the product of discussions of the
18 panel on regulatory review. That particular panel
19 was put together by the Mayor's office and by the
20 Speaker's office and the City Council and at a
21 later date, according to the very esteemed Matt
22 Gewolb, who is counsel to this committee, there
23 will be much more discussion about what came out
24 of that regulatory committee and I would really
25 look forward to that.

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2 But today Intro 118 would require,
3 but not be limited to, that a notice would be put
4 in businesses of every business owner's right to
5 do the following: Consistent enforcement;
6 compliment or complain about an inspector; contest
7 a notice of violation; courteous inspector;
8 inspector who can answer reasonable questions;
9 inspector with a sound knowledge of the applicable
10 laws, rules, and regulations. Operations would
11 distribute the bill of rights to all relevant
12 business owners including via electronic
13 publication and notify such business owners if the
14 bill of rights is subsequently updated or revised.
15 Operations would develop and implement a plan in
16 cooperation with relevant agencies to facilitate
17 distribution of the bill of rights to business
18 owners immediately prior to or during an
19 inspection.

20 And after we've heard from the
21 esteemed chair of the Small Business Committee, we
22 will proceed with testimony from the
23 administration. I also want to thank Kanol
24 Mahatra [phonetic] from my office. Thank you.

25 CHAIRPERSON REYNA: Thank you,

2 Madam Chair Brewer. I wanted to just thank my
3 colleagues for attending this hearing.

4 Good morning, I am Diana Reyna,
5 Chair of the Committee on Small Businesses. I'd
6 like to thank the staff for conducting this
7 important hearing and moving forward on this bill
8 of rights for our small businesses in the city of
9 New York. As you may know, there are
10 approximately 220,000 small businesses that reside
11 in the city. These businesses account for 98% of
12 all businesses and employ a little over 1.5
13 million people, which makes up more than half of
14 the city's entire private sector workforce.

15 It is also no surprise to anyone
16 here that in this economy small businesses are
17 struggling mightily. The loss of jobs in the
18 private sector continues to mount and small
19 businesses continue to have serious problems
20 maintaining cash flow, accessing capital, and
21 simply having the know-how to operate and succeed
22 in the city.

23 In addition to these problems, a
24 major source of discontent cited repeatedly by
25 small businesses in dealing with the city's

2 enforcement of rules and regulations, as part of
3 the regulatory review panel's process, many
4 businesses were asked about their interactions
5 with city government to which many complained
6 about discourteous inspectors, the inconsistent
7 enforcement and the regulations, the lack of
8 information regarding their right to contest
9 notices of violation, among many other concerns.

10 That's why I think this particular
11 introduction of law, number 118, the business bill
12 of rights is a major step in the right direction
13 in that business owners will, at the very least,
14 finally have the most basic information necessary
15 for dealing with city agencies. In short, the
16 bill will direct that the Mayor's Office of
17 Operations produce a document that will state
18 every business owner's right to one consistent
19 enforcement of agency rules; two, compliment or
20 complain about an inspector or inspectors; and
21 three, information sufficient to allow a business
22 owner to do so contest a notice of violation
23 before the relevant tribunal among others.

24 The bill will also direct that
25 Operations to distribute the bill of rights to all

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2 relevant business owners by way of the internet
3 and to notify business owners if the bill of
4 rights is updated or revised.

5 This bill will be an important step
6 towards proving to the small business community
7 that the city government is serious when it says
8 that it wants to create a less intrusive and more
9 business-friendly environment for our small
10 businesses in the city of New York. I look
11 forward to hearing from the members of the
12 administration and public who have come here today
13 to testify, and I thank again all the staff who
14 have put their countless hours on this issue.
15 Thank you.

16 CHAIRPERSON BREWER: Council Member
17 Koslowitz, do you want to make a statement?

18 COUNCIL MEMBER KOSLOWITZ: Thank
19 you, Chairs Brewer and Reyna and the Members of
20 the Small Business Committee for your time today.

21 Everyone knows that small
22 businesses are the lifeline of the economy. New
23 York City has more small businesses than any other
24 city in this country, and with the shape of the
25 economy today, we in government should be doing as

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2 much as we can to help small businesses. Keeping
3 small businesses informed of government policies
4 and regulations will empower owners with their
5 rights. The business bill of rights will do this
6 by advising business owners of their rights as
7 they relate to agency inspections. The bill of
8 rights will guarantee consistent enforcement of
9 agency rules, fair inspectors, and the ability to
10 contest a violation.

11 [Pause]

12 The current system puts too much
13 strain on small business owners. They have to
14 deal with too many agencies, oftentimes with each
15 agency telling them something different. This
16 bill will give the owner the piece of mind of
17 knowing that they are being dealt with in a fair
18 way without excessive red tape. Oftentimes,
19 people think that small businesses are fading away
20 in New York City, but it's exactly the opposite
21 that is true. There are nearly one million small
22 businesses in New York City. In fact, nearly half
23 of New York state's small businesses are located
24 right here in our great city.

25 I urge my council colleagues to

2 support this incredibly important legislation.

3 Thank you very much for this hearing.

4 CHAIRPERSON BREWER: Thank you very
5 much. You may proceed.

6 [Pause]

7 SAMI NAIM: Good morning, Chair
8 Brewer and Chair Reyna and members of the
9 Committee. I am Sami Naim, Assistant Counselor to
10 Mayor Michael R. Bloomberg, and I'm here on behalf
11 of the administration to testify in support of
12 Intro number 118, which would establish a business
13 owner bill of rights.

14 Let me first say that the Bloomberg
15 Administration remains steadfast in its commitment
16 to providing the best customer service to all New
17 Yorkers. Indeed, since 2002, improving customer
18 service standards has been a cornerstone of the
19 administration. In fact, Mayor Bloomberg signed
20 an executive order to create a customer service
21 within the Mayor's Office of Operations to ensure
22 that every member of the public who interacts with
23 city agencies receives the best customer service
24 possible, regardless of how those services are
25 received, whether in person, over the phone, by

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2 letter, mail, or nyc.gov.

3 Let me also begin by reaffirming
4 the administration's commitment to small
5 businesses--a commitment we share with the City
6 Council. Small businesses are critical engines of
7 our economy, employing half of all New Yorkers who
8 work in the private sector. They are also
9 important contributors to our quality of life,
10 creating a special and unique sense of community
11 in neighborhoods throughout the five boroughs.

12 Intro number 118 builds upon both
13 these commitments by establishing customer
14 services standards for small business owners that
15 they can expect to receive when subject to a
16 routine agency inspection. Indeed, the bill would
17 help encourage feedback from business owners
18 regarding their inspection experience. Our
19 customer service group, along with agency managers
20 can then take this feedback and determine where
21 operational improvements need to be made in order
22 to maintain the consistent level of
23 professionalism and customer service across city
24 agencies.

25 Accordingly, Intro 118 will provide

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2 a foundation for constructive and informed
3 interactions between small business owners and
4 agency inspectors.

5 It is important to know, however,
6 that the bill will not undermine or disrupt the
7 critical work carried out every day by our agency
8 inspectors to ensure the safeguard the public's
9 health, safety, and well-being. Nor will it serve
10 as a tool for an uncooperative business owner to
11 use to prevent an agency inspector from enforcing
12 the law.

13 That being said, we request that
14 the Council modify the bill to provide for an
15 explicit exception for undercover inspections that
16 may be undertaken by agencies, as well as law
17 enforcement investigations and inspections by the
18 police department which have heightened public
19 health and safety implications. Without an
20 explicit exception, the bill would be read to
21 undermine these important special enforcement
22 tools which of course would be an unintended
23 consequence for a bill whose primary focus is the
24 routine agency inspections which comprise the
25 overwhelming majority of inspections in the city.

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3 In conclusion, we look forward to
4 working with the City Council to refine Intro 118
5 and ensure that the bill of rights strikes the
6 correct balance between effective customer service
7 and law enforcement allowing small businesses to
8 reach their full potential and ensuring consumer
9 confidence and the highest standards for public
10 health and safety are promoted through proper
11 agency oversight.

12 Lastly, I would like to thank
13 members of the Council and their staff for their
14 leadership on this and other initiatives to assist
15 small businesses.

16 Thank you and I will be happy to
17 answer any questions you have.

18 CHAIRPERSON REYNA: Thank you so
19 much. Mr. Naim, I just wanted to make sure that
20 we have your position on the legislation on the
21 record, so the administration is in full support.

22 SAMI NAIM: Yes.

23 CHAIRPERSON REYNA: And can you
24 describe your preliminary plans for drafting and
25 disseminating this document? Has that been
decided?

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2 SAMI NAIM: Not yet, but I mean
3 we're trying to--I mean the goal is to get the
4 information out there, so as many avenues as
5 possible and, you know, whether they be electronic
6 and I think we prefer electronic just because it's
7 the quickest and easiest way, but also recognizing
8 that there are businesses out there that don't
9 have access to the internet. So--

10 CHAIRPERSON REYNA: Correct.

11 SAMI NAIM: --we will devise a plan
12 around both those needs. One, getting it out
13 there, and two, recognizing there's a digital
14 divide.

15 CHAIRPERSON REYNA: And the
16 language has not been drafted yet.

17 SAMI NAIM: We're still working
18 with the language, yes.

19 CHAIRPERSON REYNA: And what
20 agencies would be included as part of the city
21 government good effort in providing the bill of
22 rights so that both the small business owner as
23 well as the relevant city agency is aware of the
24 bill of rights?

25 SAMI NAIM: I mean the core

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2 agencies would probably be the big inspection
3 agencies so, you have Department of--

4 CHAIRPERSON REYNA: [Interposing]
5 Can you just give examples.

6 SAMI NAIM: --Buildings, Department
7 of Transportation, Consumer Affairs, DEP,
8 Environmental Protection, Health, and the fire
9 department as well. So we had insight from key
10 members of the administration on this and on other
11 initiatives to help small businesses.

12 CHAIRPERSON REYNA: Will there be
13 consultation by the small business owner that will
14 have the opportunity to represent whether that's
15 the Chamber of Commerces that will sit with you to
16 be able to help draft the language so that you can
17 get the small business perspective, not just the
18 agency perspective?

19 SAMI NAIM: This bill is a product
20 of the regulatory review panel which was a panel
21 of--

22 CHAIRPERSON REYNA: Correct.

23 SAMI NAIM: --members of the
24 administration and City Council. What we did was
25 we did a five borough tour, we reached out to all

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2 the small businesses--

3 CHAIRPERSON REYNA: Right.

4 SAME NAIM: --in each borough, the
5 local Chambers of Commerce, local economic
6 development corporations, as well as, you know,
7 industry representatives of major--

8 CHAIRPERSON REYNA: [Interposing]
9 No, I understand that piece.

10 SAMI NAIM: --and the bill was
11 devised around all that feedback.

12 CHAIRPERSON REYNA: Right.

13 SAMI NAIM: So--

14 CHAIRPERSON REYNA: [Interposing]
15 But the language is still in draft formation--

16 SAMI NAIM: Right.

17 CHAIRPERSON REYNA: --and has not
18 been made public.

19 SAMI NAIM: Right, we'll continue
20 to work with the Chambers and all the key
21 stakeholders that we engaged during our panel
22 outreach phase. So I mean it's a conversation
23 that we'd love to continue to have.

24 CHAIRPERSON REYNA: Right, and as
25 far as the bill of rights printing of this

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2 particular document, will there be a logo that is
3 generic for small businesses or is it going to
4 establish a logo pertaining to that particular
5 relevant city agency?

6 SAMI NAIM: I think that will,
7 yeah, I think Mayor's Office of Ops and the
8 customer service group will try to devise a way
9 that, again, the goal is to get the information
10 out there and get people to pay attention to it so
11 whichever way is most effective, I think they'll
12 work accordingly.

13 CHAIRPERSON REYNA: And I don't
14 know if my other colleagues have questions, I know
15 the sponsor of the bill has a question and Council
16 Member Eugene has a question, so I will turn over
17 the mic to Council Member Koslowitz.

18 COUNCIL MEMBER KOSLOWITZ: Thank
19 you. Do the agencies ever talk to each other, do
20 the different agencies have copies of the other's
21 regulations?

22 SAMI NAIM: I mean, the agencies do
23 talk to each other on certain interagency
24 initiatives and each agency has their own legal
25 division, have their own inspections, I mean we've

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2 done a lot to coordinate agency actions over the
3 last few years and we're continuing to do that.

4 So I mean I guess the answer is yes, but of course
5 we could do better.

6 COUNCIL MEMBER KOSLOWITZ: Because
7 that's what's important. I know in my area where
8 I represent we had an incident where a business
9 was closed down for a really very minor infraction
10 that was corrected within 24 hours, but once a
11 restaurant is closed, it makes the people in the
12 area think twice about going into that restaurant
13 wondering why they were closed and usually they
14 think of the worst reason why they were closed.
15 And I know another instance where someone had a
16 sign hanging on a wall and the sign was on the
17 wall and the person said the sign belongs on this
18 wall and they moved the sign and then another
19 department came in to inspect and they gave him a
20 ticket because the sign was in the wrong place, it
21 belonged on the wall that the sign was on
22 originally. So it seems that people don't talk
23 and this person had no leg to stand on and had to
24 pay the fine. So I would like to see more
25 communication and the bill of rights, when you say

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2 you're getting input, are you getting input from
3 the Chambers in Manhattan or all the Chambers
4 throughout the city?

5 SAMI NAIM: Well the last point, I
6 mean we're getting input from all the Chambers
7 throughout the city and I continue to get e-mails
8 from Marva Kalish at the Queens Chamber of
9 Commerce, I don't know if you're on that list but
10 so we have an ongoing discussion.

11 But as far as interagency
12 coordination, I mean this is a goal of the
13 Administration, we have an Office of Special
14 Enforcement, they do a great job of trying to like
15 get everyone on the same page, we also have a lot
16 of another initiatives to just coordinate city
17 actions in a better way. So I mean it's a shared
18 goal and we recognize it.

19 COUNCIL MEMBER KOSLOWITZ: I mean I
20 personally, and the reason this is introduced is
21 because it helps the owners of small businesses
22 know what their rights are because usually an
23 inspector walks in and they panic and I know many
24 of them say they get a fine for something. I mean
25 you know it could be the smallest thing but they

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2 have to pay the fine. So I would like to try and
3 stop that as much as we possibly can. Thank you.

4 CHAIRPERSON BREWER: Well I have a
5 question over here, but also Council Member Peter
6 Koo has joined us from Queens, he knows more about
7 this topic than anybody in the whole City Council.
8 Council Member Eugene, did you have a question?

9 COUNCIL MEMBER EUGENE: Yes [off
10 mic].

11 CHAIRPERSON BREWER: And then
12 Council Member Koo.

13 COUNCIL MEMBER EUGENE: Thank you
14 very much, Madam Chair. I just want to thank you
15 for that testimony, sir, and I want also to
16 commend and congratulate the sponsors of this
17 bill. This is a very important one, especially in
18 New York and we know that the small business
19 owners, they are facing already struggles and
20 difficulties for many reasons. Okay, I don't
21 think that we should put more burden on them and
22 it is our responsibility to relieve as a matter of
23 fact, the burden, you know, they are facing and I
24 think this is a wonderful bill. But my question
25 is I know, and I commend the mayors [off mic] for

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2 that he is doing to reach out with the business
3 and to give access to information to the small
4 business owners.

5 My first question what is a tool
6 that the small business owners will have to
7 contest or to respond in case those inspectors
8 don't follow the principle of this bill? And I
9 mean that so what they will have to protect their
10 rights?

11 SAMI NAIM: So that what happens
12 when the rights are not--

13 [Crosstalk]

14 COUNCIL MEMBER EUGENE: Yes.

15 CHAIRPERSON BREWER: Pull the
16 microphone closer.

17 SAMI NAIM: Oh, sorry. So, yeah,
18 so I think what the bill will do is generate
19 feedback where we're not meeting the goals that
20 are provided for in the bill or rights.

21 COUNCIL MEMBER EUGENE:

22 [Interposing] So I mean, excuse me, let me explain
23 this, I mean even with the bill, if there's some
24 abuse, you see what I mean, improper behavior or
25 action from the inspectors, what the business

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2 owners will have to protect their rights and to
3 contest [off mic].

4 SAMI NAIM: Yeah, I think there are
5 disciplinary mechanisms in place already. I mean
6 what the bill would do was allow us to address
7 matters where people's rights aren't being upheld
8 in a more global scale to ensure that inspectors
9 agency-wide, citywide, are abiding by the goals
10 that we set forth, these very basic customer
11 service principles that will help interactions
12 between a small business owner and an inspector,
13 not just any one inspector, but inspectors from a
14 variety of agencies. But with regards to a
15 specific inspector, there are mechanisms in place
16 at agencies to discipline Inspector X or Inspector
17 Y.

18 COUNCIL MEMBER EUGENE: We know
19 that in New York there are so many immigrant
20 people, they are business owners, they are part of
21 the fabric and part of the economy, but they are
22 not proficient in English. What do you have in
23 place to translate or to make sure that they
24 understand exactly what the bill is about and they
25 get access also to the information in terms of

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2 languages, I'm talking about those who speak
3 Chinese and Creole, Spanish and...

4 SAMI NAIM: Yeah, so yeah, and
5 again, the goal is to reach as many New Yorkers as
6 possible and with small businesses, I mean a huge
7 proportion of small businesses are immigrant
8 owned, we've done initiatives with Spanish
9 speaking businesses in the past, we hope to expand
10 that further. And as we push out the bill of
11 rights, we want to reach as many business in
12 possible, including those whose owners come from
13 other lands and who may not be proficient in
14 English.

15 COUNCIL MEMBER EUGENE: So how are
16 you going to reach out to people who don't speak,
17 let's say in the people in the community, are you
18 going to partner with local institution or
19 community-based organization to reach out to
20 everybody? Because one of the things that we are
21 facing in New York some of the time there are
22 services that are available, but the people they
23 don't know, they don't get access to that, to the
24 services because they don't know. They don't
25 reach out to them and let them know what is

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2 available. What do you have in place to reach out
3 to people?

4 SAMI NAIM: Yeah, and I would say
5 like the Mayor's Office of Operations is a
6 customer service group, this is on their radar,
7 like how to reach people, New Yorkers with limited
8 English proficiency and they have a variety of
9 methods to reach people through different language
10 access initiatives to reach the Chinese speaking,
11 the Spanish speaking, Haitian, Creole New Yorkers
12 out there. So it is like providing information to
13 New Yorkers and how to get as many New Yorkers as
14 possible in as many languages as we can and it is
15 on our radar. And it is something that we address
16 whenever we push out information, including this
17 bill of rights.

18 COUNCIL MEMBER EUGENE: Thank you
19 very much. Thank you, Madam Chair, thank you.

20 CHAIRPERSON BREWER: Mr. Koo, and
21 just so you know, Mr. Koo is a very famous small
22 businessman.

23 COUNCIL MEMBER KOO: Thank you,
24 Madam Chairs. I was late because I was talking to
25 one of my subtenants in my business. He said

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2 business no good, the economy is down and that he
3 wants to get out of the lease and I say, why, you
4 know, he said, no, doing business in New York City
5 is very tough now, you know. When he import
6 something, a container get hold up in the [off
7 mic] in the customs and he has to pay the \$6,000
8 fines to release the container because some
9 paperwork problems, and then he said when he wants
10 to deliver some [off mic], the [off mic] agents
11 giving the ticket, no, were just stopping by and
12 [off mic] for something and they won't let him
13 drive away, they just block his van and he had to
14 pay \$120 fine for that. And people are not
15 interested in buying cosmetics now and all these
16 other problems. So our small businesspeople have
17 a lot of problems and the city has to think of
18 some way to help.

19 This bill of rights were pretty
20 good, but when you do this bill however you had to
21 talk to different segments of the businesspeople
22 and the Koreans have their own problems, Chinese
23 have problems. No, the Spanish might have their--
24 they have other problems so we had to reach out to
25 different groups to help these small

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2 businesspeople. People are [off mic] small
3 business is the backbone of the economy, but a lot
4 of times the city is not helping the small
5 businesspeople and they overfine the small
6 business. The restaurants get so many fines now,
7 they're going to get out of business some of them
8 because each little thing is \$1,000 fine for
9 restaurant people. And even when you want to sell
10 cigarettes, well it's not people that
11 intentionally sell cigarettes to minors, no, the
12 Consumer Affairs will send out agents and hire
13 some African-Americans, they're very tall and
14 looks very older, they're 18 years old and they go
15 on Saturday and Sundays to the small drugstores to
16 buy cigarettes and if they go to 10 stores, one or
17 two of them will sell a cigarette to the minor
18 without checking. I mean it's their fault too,
19 but the city's not helping them by sending out
20 these--I forgot [off mic] to go out and they just
21 want to make some money from the small business
22 people. It's like \$1,000 too, those fines, I'm
23 sure they're very heavy fines, they only make a
24 few hundred dollars a day but yet they're fined
25 \$1,000 for selling a carton of cigarettes to a

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2 minor and they send out some students and they
3 look like 18, 19 years old, big tall guys and a
4 lot of stores, they are run by immigrants, the
5 cashier, they don't know [off mic] even the [off
6 mic].

7 COUNCIL MEMBER KOSLOWITZ: That's
8 my bill also.

9 COUNCIL MEMBER KOO: So we have to
10 find some way to help the small businesspeople and
11 my personal problem is that I have a pharmacy,
12 right, and I pay high rent already and I also pay
13 a lot of commercial real estate tax, like for a
14 small store like mine, 2,000 square feet, I paid
15 \$7,000 something, almost close to \$8,000
16 commercial tax for the city. But in return, what
17 did the city do for us? They didn't pick up my
18 garbage, we had to find private garbage [off mic]
19 to pick up garbage, we had to pay \$300 a month,
20 \$400 a month to pick up garbage and meanwhile they
21 allow all this illegal vendors selling on the
22 streets competing with me. They're selling
23 batteries, umbrellas, even though they are small
24 items and they don't pay rent, they don't pay tax,
25 and [off mic] nobody come to the [off mic] like

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2 [off mic] anything and they're there every
3 Saturday and Sunday talking about law enforcement,
4 they should enforce those laws instead of and
5 sending traffic agents to fine people for making
6 deliveries, they [off mic] already, they might
7 find this small businesspeople give--

8 [Crosstalk]

9 COUNCIL MEMBER KOO: --we give them
10 a hard time.

11 CHAIRPERSON BREWER: Council
12 Member, you have [off mic], do you have any
13 questions for this gentleman?

14 COUNCIL MEMBER KOO: So my question
15 is this bill of right, they should go out and go
16 to different communities and talk to the different
17 business associations, the Chinese Business
18 Association, Korean Business Association, the
19 Hispanic Business Association and teach them the
20 rights because a lot of times we protect [off mic]
21 protect the consumers but sometimes we had to
22 protect--we had to do a balance, we had to protect
23 the businesspeople too, otherwise if they go out
24 of business who's going to--where's the [off mic]
25 coming from? So my basic question is you [off

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2 mic] the different groups because different groups
3 have problems. [Off mic] sometimes [off mic]
4 business told me consumer always want to return
5 something, they think they're Macy all their--but
6 small business people [off mic] on different
7 scales, they cannot allow people to return the
8 things every time they're not happy with the
9 merchandise but there's a rule there. But a
10 customer doesn't care that you have posted a sign
11 there already say no return, no credit, but they
12 say, oh, we were in a Macy, they let [off mic] so
13 they assume they can do it everywhere. So we have
14 to let the businesspeople know about their rights
15 too and make sure that consumers understand that
16 too.

17 CHAIRPERSON BREWER: So I think one
18 of the questions that I come out of is how would
19 this bill help to accomplish some of the aspects
20 that Council Member Koo is talking about to
21 support the small business? 'Cause obviously the
22 consumer is part of this, but how does this
23 support the small business? And talk into the
24 microphone if you can. Thank you.

25 SAMI NAIM: Yeah, sure. I mean

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BUSINESS

2 small businesses face a lot of challenges
3 especially now with the economic downturn, what
4 this bill does is at least makes those
5 interactions with agency inspectors a little more
6 professional, a little more friendly and just
7 guarantees some consumer service baselines. I
8 mean nobody likes to get a violation and
9 inspections have to take place to enforce the law
10 and enforce the code and to protect the public's
11 health, safety, and well-being. But what we can
12 do and where we can work together on is to make
13 sure that when an inspector does conduct an
14 inspection, that that inspection is done in a
15 courteous and professional manner and that small
16 businesses and inspectors moving forward can have
17 a productive working relationship.

18 COUNCIL MEMBER KOO: Yeah, so
19 another part I want to mention, we have to educate
20 the small businesspeople, whether they're in a
21 restaurant industry or in the cigarette retail,
22 wherever, the bodega industry, we have to educate
23 the small businesspeople. Our goal as government
24 is not to fine them, but educate them. So if
25 after education they don't obey the regulation,

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BUSINESS

2 then we can fine them, but first we have to go out
3 and teach them how to avoid the fines, how to
4 avoid this nicky picky regulations, how do we want
5 them to obey it. And then we have to make sure
6 that enforcement agencies when they go in the
7 business, like you said, they had to be polite,
8 but a lot of them, they are very rude. They go in
9 a restaurant they say nobody leave, they think
10 they're FBI agents they're acting like and
11 everybody has to freeze and no movement. Because
12 the restaurant owners, they don't have the
13 knowledge to challenge them, they think, oh, no,
14 they don't speak the language or they don't have
15 the knowledge. So we have to make sure the
16 different agencies they have a set of rules, they
17 treat the restaurant owners, the businesspeople
18 like their customers, they should respect them
19 because they make money for the city. Instead I'm
20 going to go there and try and get [off mic] on
21 little things, you know, where's the mop, where's
22 this, where's that, you know.

23 CHAIRPERSON BREWER: Thank you.

24 We've been joined by Council Member Erik Dilan
25 from Brooklyn. My only question is the process

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BUSINESS

2 now for discussing and educating is what? In
3 other words, there's small business forums and I'm
4 familiar with the one-stops and so on, but when
5 this bill passes and when there is something to
6 discuss, how would the business owner provide the
7 feedback? Will there be a more comprehensive way
8 for the business owner to provide the feedback
9 that Council Member Koo feels is lacking now? In
10 other words, I didn't know that on Sundays these
11 young people are going to come, couldn't we have
12 that kind of discussion about the cigarette
13 testers--I know some of those cigarette testers--
14 before they arrive? In other words, what could be
15 the education? How could this bill be used as an
16 educational force, both for feedback from the
17 business and also as an educational tool?

18 SAMI NAIM: Well again, like Ops
19 will develop a plan and they have certain
20 initiatives underway and what they would love to
21 do is get feedback when the bill or when an
22 inspector is not abiding by the bill. That way
23 they can reallocate their efforts accordingly to
24 ensure that there is customer service across
25 agencies. How that will be done, I think they'll

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BUSINESS

2 determine that, but it's going to be in a way that
3 does definitely inform the process because they
4 don't want to, again, they're trying to ensure a
5 consistent level of customer service and this
6 would be a great help for that.

7 CHAIRPERSON REYNA: Mr. Naim, I'm
8 trying to understand exactly the answer to Council
9 Member Eugene's question concerning the
10 dissemination of the bill of rights in different
11 languages. You didn't say yes or no and what
12 languages will be definitively available for the
13 bill of rights, can you just elaborate?

14 SAMI NAIM: I mean we do have a
15 customer service group that focuses on language
16 access and they're like the professionals in this
17 area to understand which languages materials need
18 to be in, where the greatest need so we can put
19 resources where the greatest needs are. But
20 again, it is a goal of ours to provide information
21 to as many business owners as possible and the
22 fact is there are a lot of business owners who
23 have limited English proficiency. So, again, the
24 customer service will take a look at that knowing
25 that we need to reach a lot of business owners,

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BUSINESS

2 whether they speak English or another language and
3 devise a plan accordingly.

4 CHAIRPERSON REYNA: And how long
5 before there's going to be a draft that will be
6 made available so that on the business side, small
7 businesses can give input to make sure whether
8 that's through the same participants, through the
9 regulatory review panel so that nothing is
10 finalized before it's been reviewed?

11 SAMI NAIM: [Off mic] so you're
12 asking like when can a draft be distributed or...?

13 CHAIRPERSON REYNA: The regulatory
14 panel--

15 SAMI NAIM: Right.

16 CHAIRPERSON REYNA: --exists, will
17 the regulatory panel have the ability to review
18 the language that is going to be drafted once it's
19 drafted before finalizing for print version, can
20 it be shared amongst the panel to ensure that all
21 issues have been addressed and to go over what the
22 plan is as far as other languages being printed,
23 as well as ensuring that all the appropriate
24 agencies have been dealt with so that the panel is
25 fully aware of what its intended goal was is being

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2 BUSINESS

met?

3 SAMI NAIM: Right, yeah, I mean the
4 panel is a great mechanism because it has all
5 these administrative figures in place and then
6 also it was a great mechanism to reach out to
7 business owners, so as a product of the panel I
8 mean it would only make sense to reach out to
9 those business owners and--sorry, the panel
10 members and other key stakeholders to ensure that
11 it is a product that actually meeting the goal.

12 CHAIRPERSON REYNA: Correct.

13 [Pause]

14 CHAIRPERSON REYNA: So we have a
15 request from our sponsor of the bill to make sure
16 that she gets to see this particular document, but
17 we want to be able to work with the administration
18 to know that what the intended goal of the panel
19 is going to come to fruition and before it meets
20 the public's eye, that we're all in agreement that
21 the language is appropriate and meets the need.

22 When I had asked concerning the
23 different agencies, I didn't hear you mention
24 Department of Health, did you--

25 SAMI NAIM: [Interposing] Yeah, I

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BUSINESS

2 did.

3 CHAIRPERSON REYNA: --mention--

4 SAMI NAIM: If I did not, then I
5 meant to, but--

6 CHAIRPERSON REYNA: Okay. I just
7 want to make sure because in the instance of the
8 situation that Council Member Koslowitz had
9 mentioned regarding a small business in the
10 restaurant arena, you have these complaints of
11 inspectors coming in and they're enforcing the
12 law, but the regulation is being written by the
13 Board of Health and I don't know if the Board of
14 Health is being included in the discussion. And
15 so I go back to the point that Council Member
16 Brewer had raised interagency discussion, Council
17 Member Koslowitz mentioned it as well, I mentioned
18 it as well, and so it's very important that these
19 agencies understand to talk to each other and to
20 know that their inspectors, aside from sensitivity
21 training, are aware of current regulations and
22 what is not working as well, that we're
23 understanding there needs to be a revision of
24 these particular regulations because they're
25 intrusive in conducting business, then we should

2 revisit these regulations. Is that something that
3 you would be able to agree with or can you take
4 back to the drafting counselors that are coming up
5 with the language to be able to understand that
6 these agencies and others who aren't perhaps not
7 mentioned like the Board of Health are in the same
8 room together?

9 SAMI NAIM: Yeah, so I mean with
10 DOH like this bill would apply to like DOH
11 inspectors as well and it is a challenge and we
12 have a dedicated group of professionals at the
13 Mayor's Office of Ops that are handling this issue
14 as well, how to ensure consistent customer service
15 across agencies. We don't any outliers, we don't
16 want one agency to be treating New Yorkers in a
17 completely discourteous and unprofessional manner.
18 So we definitely agree that there needs to be
19 coordination on these customer service tools and
20 this is one way we can do that and we can get
21 feedback too from business owners when the rights
22 are not being upheld--

23 CHAIRPERSON REYNA: Right.

24 SAMI NAIM: --and then we can focus
25 our efforts accordingly so that way there isn't a

2 blind spot so to speak.

3 CHAIRPERSON REYNA: Right, but the
4 blind spot from what you're mentioning can also
5 exist if we're hearing complaints because this
6 process is going to give an adjudication process
7 that favors the small business to complain against
8 an agency to raise a red flag. What is going to
9 happen to all these complaints, how are they going
10 to be managed to deal with perhaps a reality that
11 right now goes under the radar screen because it's
12 all about enforcement, paying a fine, and moving
13 on? So that we're able to take these complaints
14 and do something about them, perhaps there's a
15 regulation that is not befitting to the industry
16 and that the regulation is not healthy to conduct
17 business for the small business owner.

18 SAMI NAIM: Right, I guess as far
19 as like the rulemaking process or the legislative
20 process, I mean there are mechanisms in place
21 already and I'm sure we would help inform those
22 mechanisms in place without disrupting them 'cause
23 when people do--when they do have a complaint they
24 would like to access their Council Member, their
25 Community Board, or they like to reach out to SBS

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2 BUSINESS

3 and those people are well positioned to actually
4 affect change so we wouldn't want to take that
5 away from anyone. What this does, and I think
6 where this is great is just that we can get that
7 like instant feedback regarding an inspection and
8 how it's carried out. So once a rule is in place,
9 how is it being carried out and if we are getting
10 a lot of feedback in one direction, certainly we
11 should be sharing--

12 [Crosstalk]

13 CHAIRPERSON REYNA: [Interposing]
14 Correct, and that's exactly what I'm trying to
15 communicate to you and I'm happy that you're
16 expressing the same feedback and knowing that
17 we're going to work with agencies moving forward
18 to understand that if these complaints are coming
19 in in one direction that we revisit exactly what
20 this regulation is doing to that particular
21 industry as far as that small business is
22 concerned. Thank you.

23 CHAIRPERSON BREWER: Thank you very
24 much. Unless there are any other questions, thank
25 you very much and we appreciate your testimony.
The next panel is Robert Bookman, Martin Kasdan,

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2 BUSINESS

3 whom I know from my area, and Steven Kogel.

4 [Pause]

5 ROBERT BOOKMAN: Should I start?

6 CHAIRPERSON BREWER: I know

7 Bookman's going to go first.

8 ROBERT BOOKMAN: Absolutely because
9 just listening to all that, I couldn't hold myself
10 back, the question was whether I get arrested or
11 just wait my turn, you know.

12 Thank you, good morning. My name
13 is Robert Bookman, I am an attorney in practice in
14 the city of New York, I've represented small
15 businesses for I think about 30 years now, I am
16 counsel to city chapters of the New York State
17 Restaurant Association, the New York Night Life
18 Association, and the smallest of mom and pop's,
19 the sidewalk New York City Newsstand Operators
20 Association.

21 This bill is a rare step in the
22 right direction, it is pro-small business and as
23 such we support it and true we thank you for
24 introducing it, Councilwoman and members of the
25 Committee for giving it a hearing. But frankly it
is only symbolic and the city's small businesses

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BUSINESS

2 need more than symbolism, we need real help from
3 an ever increasing over-regulated, over-fined job
4 killing business environment.

5 The bill is as fine as far as it
6 goes but the problem is it does not go very far.
7 It talks about rights, but what use are rights
8 such as consistent enforcement, as Council Member
9 Koslowitz mentioned, but with no consequences if
10 my rights are violated? When there's no redress
11 mechanism or you cannot use your rights being
12 violated as a defense--and the bill specifically
13 says you cannot--then it's not very meaningful
14 rights, is it? It's really not rights at all,
15 it's a bill of suggestions. You know, our first
16 10 amendments to our Constitution aren't called
17 the Bill of Suggestions, they're called the Bill
18 of Rights because rights have consequences when
19 your rights are violated. The stuff we heard here
20 from the administration indicates to me that
21 there's no consequences for any of these rights
22 being violated.

23 The example that Council Member
24 Koslowitz used, why shouldn't it be a defense in a
25 hearing if one agency tells you to put a sign on

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BUSINESS

2 one wall and another agency tells you to put a
3 sign on another wall? That should be an absolute
4 defense at the hearings, I was told what to do and
5 I did it. That person shouldn't have had to go
6 pay a fine.

7 With all due respect, let me make
8 some suggestions for some other rights that we
9 think the city's small businesses can use right
10 now if you want a less intrusive and more
11 business-friendly environment. One, the right to
12 a warning and time to correct non-safety related
13 violations instead of a fine. What is our public
14 policy here in this city? Is it compliance or is
15 it fund raising? Well I'm afraid we all really
16 know what the answer to that is: It's
17 fundraising. The Health Department fines, since
18 fiscal year '03, only seven years, against our
19 industry, the restaurant industry, has gone up
20 from \$12 million to over \$39 million next year--
21 over a 300% increase. And you, with all due
22 respect, are giving them more inspectors next year
23 to fine us even more or you're allowing them to
24 pass more burdensome regulations that we cannot
25 afford, that will only hurt our city's reputation,

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2 such as letter grading on our windows.

3 Right number two, the right to have
4 what you did wrong in an ever-increasing
5 encyclopedia of regulations explained to you in
6 your native language by the inspector. Three, the
7 right not to waste half a day of business going to
8 a tribunal to fight these violations. In 2010 you
9 would think we can come up with a better
10 mechanism, how about adjudication by mail, not
11 just to plead guilty, but to plead not guilty. Or
12 how about video conferencing? My kids videochat
13 with hundreds of other kids every day, way too
14 much than I would like them to. We have video
15 conferences with our teachers now, we don't have
16 to go to open school night to meet with the
17 teachers. My high school kids, their science
18 teacher does extra review by video conferencing
19 with 30 kids at home at 7 o'clock at night. We
20 can't do video adjudications?

21 Four, how about the right to a one-
22 year moratorium on all new regulations and
23 mandates during this worst economy since the
24 depression while we wait for this long-awaited
25 regulatory reform recommendations and changes

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BUSINESS

2 which are long overdue? How about that right, how
3 about let's stop adding more regulations while
4 we're waiting for the reforms that we were
5 promised?

6 And a fifth right that I just
7 thought of on my way over here and give me enough
8 time I can come up with 100 more is how about the
9 right to have an inspection in most cases at a
10 convenient time, not one that in the middle of
11 restaurant service or prime time for a club where
12 12 inspectors walk in from multiple agencies to
13 check whether you have your PA permit, to check
14 your paperwork? How about a right to have an
15 inspection at a convenient time, not one that
16 shuts down your business?

17 I think we need to address the real
18 concerns of the small business community with a
19 real bill of rights, one that has real teeth and I
20 know that every person here's heart is in the
21 right place, I know 'cause we've met with you and
22 I've heard you on other issues, but this bill is
23 not addressing what our concerns are. Thank you.

24 CHAIRPERSON BREWER: Who's next?

25 Go ahead.

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2 STEVEN KOGEL: Good morning, it's
3 still morning. My name is Steven Kogel, I am the
4 Vice President of the Association of Water, Sewer
5 Excavators, we are basically subsurface plumbing
6 contractors.

7 First of all, the association
8 applauds you introducing the Intro 118, we do
9 appreciate that. Too often business owners are
10 being forced to defend the company at ECB court
11 for NOVs which are not issued by the agency who
12 issues the permits. Case in point, DOT, DEP,
13 building inspectors, they must take civil service
14 examinations, these tests are necessary to ensure
15 the inspectors have knowledge of their field.
16 DEP, their knowledge in plumbing, water, and sewer
17 distribution; DOB is for plumbing and building
18 codes; DOT for street excavation and restoration.
19 Each of these agencies write NOVs under their own
20 jurisdiction, however, traffic enforcement, police
21 department, they decide they can write NOVs
22 relating to DOD permits without proper training.
23 Again, they do not have a civil service test.
24 This is unfair practice result in too many NOVs to
25 get dismissed because they do understand the rules

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BUSINESS

2 and it costs business owners time, energy, and
3 money to defend. We ask that traffic enforcement
4 be limited to traffic issues unrelated to street
5 permits.

6 Another issue is ECB court. ECB
7 notices of hearings are not sent or received in
8 this case NOV's to be become defaulted. What
9 happens is we go to ECB court, we don't get our
10 answer within a reasonable amount of time or we
11 don't get a date if it's adjourned, so what
12 happens, it goes in default. A ticket for \$1,000
13 becomes a \$5,000 ticket. [Pause] this requirement
14 it's the application to open of a default judgment
15 may be denied by ECB, which, again, that \$1,000
16 ticket because a \$5,000 ticket. To ensure proper
17 notice of hearings we ask them in addition to mail
18 it, to e-mail it to us sent to ensure respondent
19 has received a new court date. In many incidents,
20 the agencies are dealing with the same permittee
21 and thus e-mails are readily available. This will
22 reduce the amount of requests for open judgments,
23 protect the rights of the respondents.

24 Lastly, the ECB must notify
25 respondents in a timely fashion of a judge

2 decisions. We can go to court today and I would
3 say on an average three months later we'll get a
4 decision. [Pause] Waiting for a month is not
5 acceptable, waiting for more than a month is not
6 acceptable.

7 On behalf of the association, we
8 want to thank the members of the City Council for
9 the opportunity to comment on these issues.

10 CHAIRPERSON BREWER: Thank you very
11 much. Martin?

12 MARTIN KASDAN: Good morning, my
13 name is Marty Kasdan, I'm the Executive Vice
14 President of the Riverside Memorial Chapel, and
15 the President of Schwartz Brothers Jeffer Memorial
16 Chapel in Forest Hills, Queens. It's also my
17 pleasure to serve as the President of the
18 Metropolitan Funeral Directors' Association.

19 The Met represents more than one-
20 half of the funeral homes in New York City and our
21 association consists mainly of family-owned and
22 operated funeral homes which are located in all
23 the neighborhoods of New York City.

24 As small business owners, the
25 funeral directed community dances to the tune of

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2 the federal regulations through the FTC funeral
3 rule, OSHA rules and regulations, the rules and
4 regulations of the New York State Department of
5 Health, Bureau of Funeral Directing, as well as
6 the Department of Consumer Affairs of the city of
7 New York. Most of these rules and regulations are
8 similar and we've gotten used to the meaning and
9 the reason for the laws and regulations being in
10 place in each jurisdiction. The preponderance of
11 the funeral home owners in New York City and the
12 rest of the country qualify as small business
13 owners. The corporate owned funeral homes, which
14 are only 8% of the business in the United States
15 have the additional burden of Sarbanes-Oxley
16 regulations and meeting the standards of a
17 publicly held company.

18 Taking all of this into
19 consideration and looking at the meeting for this
20 committee of the City Council in what we hope will
21 be a full consideration by the Council of Intro
22 number 118. The offices, the Met, and our
23 executive director have looked at the initial
24 writing of 118 and wonder if the committee members
25 have been listening to the deliberations of our

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2 officers and board or whether or not you've heard
3 from your local funeral directors concerning the
4 recent sweep conducted by the Department of
5 Consumer Affairs of the City of New York. There
6 was not one complaint made to the Department of
7 Consumer Affairs, but a sweep was done.

8 Like other small business owners,
9 we have been put into the rotation of the DCA and
10 face telephone price shopping and visits from DCA
11 inspectors over the past few months. We have no
12 issue with the right of the City of New York to
13 make consumer protection regulations, but we do
14 have an issue with the fact that the inspectors
15 sent to our locations have absolutely no knowledge
16 about our business and how the city rules and
17 regulations deal with what they are looking for
18 during their inspections. Our way of doing
19 business have changed over the past decade, which
20 was approximately the last time we saw any
21 inspectors from the DCA coming into our funeral
22 homes. Credit is due to the DCA for reaching out
23 to nearly 600 registered funeral businesses within
24 the city of New York and price shopping prior to
25 going into the business to make inspections. We

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2 also applaud the DCA administration for taking a
3 series of meetings with the Metropolitan Funeral
4 Directors Association during the inspection
5 process based on the complaints from the local
6 funeral home owners to the Met.

7 The issues are the same as those
8 addressed in this proposal for which we meet today
9 to gather testimony from the small business
10 community. Just as an aside, most of our member
11 firms qualify under the rule of [off mic] from the
12 Small Business Administration as small businesses.
13 We need to know from the committee members what is
14 the qualification and standard you are using to
15 determine what is a small business in discussing
16 and deliberating the proposed bill before you.
17 According to our meetings with the DCA, each
18 borough has a different inspection process and
19 different inspectors and they have never been
20 fully trained in how a funeral home works and how
21 the regulation affect these firms. Each inspector
22 has the right to determine and make discretionary
23 decisions as to how the rules and regulations
24 work. Part of the DCA funeral rules and
25 regulations call for the funeral home to have

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2 available in their lobby for public consumption a
3 copy of the latest general price list, a list
4 which obviously contains the prices for that
5 funeral home, as well as the different rules and
6 regulations and include FTC funeral rule
7 regulations and disclosures, State of New York
8 Bureau of Funeral Directing rules and regulations,
9 as well as DCA rules and regulations, which also
10 concern the same part of the services and
11 merchandise, but yet have different disclaimers to
12 each. Some of the inspectors cited the funeral
13 home owners for up to \$1,000 fine for not having
14 the general price list posted on the wall of the
15 funeral home lobby, much like a price in a local
16 delicatessen. Our meetings with the DCA address
17 these issues and others, some of the DCA rules and
18 regulation were relevant when they were
19 promulgated more than a decade ago, but the manner
20 in which our members do business today has been
21 altered, the effectnesses of the DCA rules and
22 regulations are suspect since they had no idea
23 that these business changes had taken place. We
24 applaud as the association the tenor and contents
25 of this proposal before your committee and we

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2 BUSINESS

3 suggest that you investigate further in how these
4 inspections from all agencies affect the ability
5 of some of the regulated business to make a profit
6 and therefore be able to continue to pay their
7 city taxes, licensing fees, and provide well
8 needed jobs in the city of New York.

9 Our suggestion for addition to this
10 bill is as follows, more will come as we have more
11 time to review the bill with our members,
12 officers, directors, and our legal counsel. If a
13 city department has a right to inspect a business,
14 we suggest like many of the businesses they
15 inspect they meet with the business association
16 that might represent the class of businesses and
17 check how the business has changed or [off mic] to
18 meet their ability to meet the rules and
19 regulations. What other rules and regulations
20 from other government agencies may have changed
21 the way the business is being affected so one law
22 in the City of New York may be trumped by the
23 State of New York. All of the funeral directors
24 in the state of New York are required to go
25 through 12 hours of continuing education training
prior to renewal of their funeral directing

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2 license each two year period. We are required to
3 continually educate ourselves concerning health
4 and safety issues, public health issues, business
5 rules and regulations, OSHA training, this keeps
6 us current and yet the DCA did no investigation
7 and held no meetings with any funeral director
8 association and including the Metropolitan Funeral
9 Directors Association to ask how the conduct of
10 the business of the past 10 years since their last
11 round of investigations has changed. Continuing
12 education's a requirement for our members and
13 should be for the city agency which regulates a
14 business.

15 Since the DCA rules and regulations
16 were passed, many of the funeral homes in the city
17 of New York had changed their manner of doing
18 business. They no longer stock a complete line of
19 caskets in their selection room, it's become too
20 expensive, the manufacturers used to put them
21 there on consignment. Cost of doing business have
22 made it impossible to continue to do this. The
23 present funeral director has either end cuts to
24 the display of the caskets or he or she makes
25 available litho pictures or computer generated

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BUSINESS

2 pictures for the families to display and to make
3 their selection. However, the DCA regulation
4 calls for the three least expensive caskets to be
5 shown to the consumer and many of our firms are
6 fined for having pictures of those caskets like
7 they have of all the other caskets on display.
8 This holds true for all of the caskets in their
9 display rooms. We have many other instances, but
10 we'll gladly discuss them in much greater detail
11 in the committee after this hearing is completed.

12 We also suggest that during
13 consideration this bill of rights for the small
14 business owner you consider adding some additional
15 items to the bill of rights. The small business
16 owner should expect equal treatment by all city
17 inspectors and this could be accomplished by the
18 establishment of a standard checklist for the
19 inspector. This checklist should also be made
20 available to the business owners so they know how
21 to prepare for an inspection and can use it as a
22 guide for conducting their business on a regular
23 basis. We also suggest that the small business
24 owner or manager can tell an inspector coming in
25 that they don't have time for that spot inspection

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2 but they can ask for an inspector to make an
3 appointment to come back, such is the case with
4 both OSHA and the Federal Trade Commission.
5 During many of the recent DCA inspections of
6 funeral homes, the owner or licensed manager was
7 not available when the inspector arrived and the
8 inspector was doing their inspection no matter
9 what, they did it with a staff member who really
10 had nothing to do with the day-to-day operation or
11 the compliance of all the federal, state, and city
12 regulations and of course fines ensued. This
13 caused many misunderstanding on the part of the
14 inspector and the employee and led to many fines
15 which were later overturned when the funeral home
16 met with the hearing officer of the DCA.

17 The last item we would like to
18 discuss is the procedure for how you can
19 adjudicate a fine which is part of this
20 committee's very thoughtful bill. Our recent
21 series of fines led many of our members to be told
22 they could settle their fines for less by not
23 going through the hearing process. If they settle
24 for half, it wouldn't end up no need to show up to
25 a hearing. Our question of the DCA was and of

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2 this committee is if you have that type of
3 procedure and that's how you adjudicate fines, how
4 is the funeral home or any other business listed
5 on the records of that particular inspection
6 agency, are they listed as someone who is not
7 following the law or someone who settled a fine,
8 or they are going to be put on the list to be
9 called next and be inspected immediately
10 thereafter after the fines have been paid? We
11 were being fined and deemed guilty before going
12 through the hearing process. Our belief is that
13 the hearing process cost the DCA too much money to
14 run and therefore pleading guilty was the way you
15 should go. Pay the freight and move on. We had
16 no idea how this settlement would show up on DCA
17 records. To the credit to most of our members of
18 our community they came to the hearing and were
19 given a fair hearing and many of the fines were
20 overturned when the hearing officer met with the
21 funeral director and the inspector. It was clear
22 in many instances that the inspector, who more
23 than likely had never either visited a funeral
24 home or had not been asked to visit a funeral home
25 in 10 years did not know what the law meant or how

3 it was supposed to be adjudicated. The
4 inspector's interpretation of the rules and
5 regulations has caused a citing and possible fine
6 and they expected the merchant to roll over and
7 take the fine. If there is an ability for an
8 agency to inspect and fine, then there should be a
9 clear way in which the firms side and can be heard
10 and get their day in court whether they are right
11 or wrong. The impression by most of our member
12 firms is the city DCA was looking for the quick
13 money and since they had not inspected us in more
14 than a decade and had no complaints prior to
15 conducting this sweep, that it was all about the
16 money the city could raise. In order to keep the
17 small business owner working and keeping the jobs
18 within our city communities, the bill before us is
19 a necessary thing with changes that must be added
20 on.

21 We applaud your committee and staff
22 for the research they have done and suggest you
23 meet not only with the local Chambers of Commerce,
24 but with trade associations which represent the
25 firms going through city inspections and find out
their issues with the system.

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2 We thank you for the opportunity to
3 testify and thank our friends for making us aware
4 of this bill and hearing through one of our MFDA
5 board members, otherwise our association was not
6 notified of this going on. Thanks again to all of
7 you on the committee and your staff and your
8 thoughtfulness and caring for the consumer of the
9 city of New York.

10 CHAIRPERSON BREWER: Thank you very
11 much. We've been joined by Council Member Tish
12 James. I have one question, what would be the
13 best mechanism to kind of follow up on what you
14 have suggested and Council Member Koo, about how
15 business owners can register the problems with the
16 inspection? Because it wasn't clear from what the
17 administration said how that is going to work and
18 rather than--

19 MARTIN KASDAN: You can go first.

20 CHAIRPERSON BREWER: --ask them,
21 I'd rather ask you what would be the best
22 mechanism. Because obviously one of the problems,
23 and I know, Rob, you outlined them, there are many
24 issues that we can deal with, but if this bill is
25 going to be successful, one of the ways that it

2 could help business is to have feedback but I
3 don't know how to do the feedback.

4 ROBERT BOOKMAN: I have a specific
5 suggestion for you, we're really only talking
6 about five or six agencies for the most part that
7 are responsible for the overwhelming majority of
8 the inspections with small businesses. We believe
9 that there should be in each of those agencies an
10 independent business ombudsman, just like the
11 Inspector General has an IG in each agency that
12 responds, not to the commissioner of that agency,
13 but to the inspector general, it could be a small
14 business agency, but there should be an
15 individual, it only has to be one, and that person
16 is there either in the licensing section or in the
17 adjudication section and that's the person that
18 the small business people can go up to. And it's
19 not just in the inspection process, it's going to
20 file a sidewalk café application, waiting online
21 for an hour and then being told, oh, we've changed
22 the rules, this check must be certified now, come
23 back another time. Being treated rudely by a
24 clerk in that situation is just as bad as an
25 inspector and can involve just as much lost time.

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2 I got to tell you, I've been filing applications
3 for 25 years professionally, I got paid to do it,
4 and I can't tell you how many times we get sent
5 away, I can't imagine how an individual
6 businessperson could ever file an application in
7 the city of New York on their own and not go
8 berserk.

9 So I think that's the solution,
10 there should be a--and we're not talking about a
11 lot of lines here and they certainly know how to
12 raise fines when they need to without having
13 committees and goals and regulatory review panels,
14 so the money's there for it if they want it to be
15 there for it and that should be a visible person
16 in each of the five or six agencies where small
17 businesspeople can go to complain about the
18 inspection, where they can go to complain about
19 the licensing, where they can get a friendly
20 hearing and it's that person's job then to start
21 following up, contact the elected officials and
22 contact the heads of those agencies and say we've
23 been getting complaints in the following way.

24 People are not going to complain to the inspector
25 and they're not going to complain to the

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2 inspector's supervisor, you might as well put a
3 bullet, you know, one of Sarah Palin targets, you
4 know, on our back because it's tantamount to
5 saying come inspect me again, we're at war with
6 your agency, it needs to be an independent person.

7 CHAIRPERSON BREWER: That's a clear
8 answer. Go ahead, somebody else wants to--

9 ARTHUR GOLDSTEIN: [Interposing]
10 Well I could [off mic] Arthur Goldstein, counsel
11 to the Association of Water and Sewer Excavators.
12 I essentially agree with Mr. Bookman's response to
13 the question, hopefully that individual could be
14 found within the existing budget 'cause otherwise
15 they'll probably try to raise fees.

16 But first on a positive note, the
17 plumbing businesses that I work with in the
18 association actually besides all the bad
19 experiences they've had with government, they
20 actually have some very good interaction with DOT
21 and DEP because they meet as an industry with the
22 agencies, usually six or eight people from the
23 agencies, different divisions are there and
24 there's a real good dialogue, and at times we've
25 talked about training issues and had particularly

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2 DOT become more responsive. And it also depends
3 on who they assign, there happens to be a terrific
4 assistant commissioner in DOT who seems to be
5 available seven days a week and answers his cell
6 phone on weekends when there are problems with--

7 CHAIRPERSON BREWER: My kind of
8 person.

9 ARTHUR GOLDSTEIN: --inspectors.
10 He happens to be a terrific individual.

11 On the other side there are
12 enforcement issues that could help consumers and
13 small businesses in our industry, in the plumbing
14 field, but the city hasn't acted on it yet. We've
15 alerted the agencies about sewer liners happen to
16 be illegal in the city of New York, it says it
17 clearly on two different New York City documents
18 that we have, and maybe more. And there are
19 several ways that we've suggested over a period of
20 time to enforce against this and nothing has
21 happened. You and I could grab a yellow pages
22 right now, you'll see advertisements for this in
23 the five boroughs. I've brought this issue to the
24 attention of Councilwoman Koslowitz and her staff
25 is reviewing the materials and feedback has been

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2 strong and it might actually lead to a hearing
3 that might press the agencies to do the work. But
4 in this particular issue, the consumer deals with
5 a business that recommends a sewer liner and then
6 oftentimes these sewer liners don't operate
7 properly and then they end up calling in our
8 businesses to fix the problem the way it should
9 have been fixed in the first place. From the
10 consumer's perspective they're paying double the
11 amount; from a businessperson's perspective,
12 they're now facing an angry consumer who when you
13 give them your normal price, it seems outrageous
14 because they just spent several thousand dollars
15 for the sewer liner. So it's issues like that,
16 I'm sure there are others that could be identified
17 that if the right type of enforcement was put in
18 place, you could help both, in this case, both
19 consumers and businesses.

20 There's another issue I wanted to
21 bring up. There are times when agencies don't
22 respect other agencies or the communication isn't
23 as good as it should be. The City Council passed
24 an amnesty program and DOF was in charge of the
25 amnesty program and we applaud you for that

2 amnesty program, feedback has been pretty good
3 from members of my association, there have been a
4 few that had problems with DOB. In our industry,
5 we have plumbing licenses and you report to DOB
6 and when those licenses are up for renewal, some
7 of our plumbers got into the situation where DOB
8 didn't want to renew because DOF didn't finish the
9 amnesty program. In other words, you have to get
10 the lists right. So one of my clients ended up
11 suing so that on the last day, December 28th, he
12 wouldn't be out of business, because if DOB had
13 its way apparently, and corp counsel, if he didn't
14 sue, he wouldn't have a license, he happens to owe
15 several hundred thousand dollars, which he's going
16 to work out in the payment plan, and he would have
17 been out of business. And so without suing, which
18 cost him a pretty penny, I hope I see it someday,
19 but nevertheless we have a huge bill that, by the
20 way, some of that money could have gone to pay the
21 amnesty program.

22 [Pause]

23 ARTHUR GOLDSTEIN: I'll wrap up.

24 The point is if DOB would have had better
25 communication with DOF, which I couldn't

2 effectuate, we ended up suing and in a matter of
3 another few days we're going to end up, because I
4 bought the time by suing, in exactly the same
5 place, there will be a DOF, essentially a DOF
6 payment plan in place and this gentleman will stay
7 open and employ the number of people he's been
8 employing for the last few years. Without suing,
9 he would have been out and it all happened because
10 of the lack of strong communication between
11 agencies.

12 So this bill I think is a terrific
13 first step and the number of the suggestions that
14 Mr. Bookman made sound reasonable to me. I think
15 beyond passing it, the task at hand is the follow
16 up, what happens with the communication, what
17 happens with the training, and what happens with
18 the philosophy in terms of stings that Mr. Koo
19 mentioned. Why wouldn't you on a Sunday, when a
20 lot of owners aren't even in their establishments,
21 send in someone, catch them, but this should be a
22 sting to educate. If the owner's not there, a
23 letter goes to the owner and said, you know what,
24 you could have had \$1,000 fine, you've got to
25 retrain your staff, it doesn't matter that the

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2 person is six foot tall and looks that. I'm 50
3 years old, I like to be carded, so it's not--some
4 businesspeople get the mentality that they don't
5 want to card people 'cause it's insulting.

6 STEVEN KOGEL: You're that old
7 already, Arthur?

8 ARTHUR GOLDSTEIN: I'm 50, I'm a
9 young 50. So I'm sorry.

10 [Pause]

11 COUNCIL MEMBER JAMES: Counsel, you
12 said something about getting the lists right, and
13 I wasn't sure why there was a need to sue and just
14 let me paraphrase, is it because it was unclear
15 that during the amnesty period you have to pay off
16 your fines before your license would've had to be
17 renewed? Is that what you--

18 [Crosstalk]

19 ARTHUR GOLDSTEIN: You either had
20 to pay off your fines--

21 COUNCIL MEMBER JAMES: Right.

22 ARTHUR GOLDSTEIN: --or establish
23 for DOB--

24 [Off mic]

25 [Crosstalk]

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2 COUNCIL MEMBER JAMES: --agreement?

3 ARTHUR GOLDSTEIN: --where the
4 fines were. So there was a list, which I'm not
5 sure I've ever seen an accurate list--

6 COUNCIL MEMBER JAMES:

7 [Interposing] So let me just so I can understand
8 it, so if I had arranged a payment agreement with
9 Department of Finance, would that be sufficient to
10 have my license renewed, yes or no?

11 ARTHUR GOLDSTEIN: Yes. Except
12 they'd also have to know--and let's say you had
13 100 violations--

14 COUNCIL MEMBER JAMES: Yes.

15 ARTHUR GOLDSTEIN: --you're putting
16 50 in the program, okay?

17 COUNCIL MEMBER JAMES: Okay. The
18 amnesty program.

19 ARTHUR GOLDSTEIN: In the amnesty
20 program.

21 COUNCIL MEMBER JAMES: Right.

22 ARTHUR GOLDSTEIN: You would show
23 the signed deal--

24 COUNCIL MEMBER JAMES: Yes.

25 ARTHUR GOLDSTEIN: --to DOB and

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2 then the other 50, let's just keep it simple,
3 they're awaiting hearings.

4 [Off mic]

5 COUNCIL MEMBER JAMES: Right.

6 ARTHUR GOLDSTEIN: Okay? 'Cause
7 there are several categories--

8 COUNCIL MEMBER JAMES: Right.

9 ARTHUR GOLDSTEIN: --I could have
10 given you, but for the sake of this conversation,
11 it's easier just to say they're awaiting hearings--

12 -

13 COUNCIL MEMBER JAMES:

14 [Interposing] So some are being adjudicated and
15 some are--

16 [Crosstalk]

17 ARTHUR GOLDSTEIN: --so DOB would
18 seek documentation that you're awaiting hearings--

19 COUNCIL MEMBER JAMES: Right.

20 ARTHUR GOLDSTEIN: --and rightfully
21 so--

22 COUNCIL MEMBER JAMES: Right.

23 ARTHUR GOLDSTEIN: --they are
24 satisfied that they know it's in a process, they
25 know some were paid and they know, for example, my

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2 client had some waiting to hear whether their
3 defaults were going to be opened 'cause they
4 weren't served properly, so DOB accepted that.
5 What DOB didn't accept in this client's case and I
6 think--

7 COUNCIL MEMBER JAMES: Right.

8 ARTHUR GOLDSTEIN: --two of our
9 other members?

10 STEVEN KOGEL: Yes.

11 ARTHUR GOLDSTEIN: Is that they
12 didn't complete the DOF process, they properly
13 filed on time, but DOF needed to sit down at a
14 conference table with them and go over what's
15 going to be in the program 'cause the lists are
16 never accurate, unless there's less than 10
17 violations. And so DOF needed time to get the
18 lists right.

19 COUNCIL MEMBER JAMES:

20 [Interposing] So the burden is on the applicant to
21 prove to DOF that in fact everything is either
22 being litigated, being paid off, or whatever, is
23 that--

24 ARTHUR GOLDSTEIN: [Interposing]
25 DOB, yes.

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2 COUNCIL MEMBER JAMES: DOB, okay.

3 ARTHUR GOLDSTEIN: The DOF would
4 just accept whatever you wanted from the list in
5 the program 'cause that's the easy part, but if
6 you're telling DOF that something's on your list
7 are wrong, you have to work with them to get the
8 list right--

9 COUNCIL MEMBER JAMES: And when--

10 ARTHUR GOLDSTEIN: --and they've
11 been doing a great job of that.

12 COUNCIL MEMBER JAMES: --and what
13 was the basis of the lawsuit?

14 ARTHUR GOLDSTEIN: That they were
15 going to destroy his business.

16 COUNCIL MEMBER JAMES: Got it,
17 okay. Okay.

18 ARTHUR GOLDSTEIN: There was more
19 to it than that, but--

20 COUNCIL MEMBER JAMES: Okay.

21 STEVEN KOSEL: If I may butt in--

22 COUNCIL MEMBER JAMES: Sure.

23 STEVEN KOSEL: --regarding this, I
24 was told by the horse's mouth--

25 COUNCIL MEMBER JAMES: Yeah.

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2 STEVEN KOGEL: --when DOF and ECB
3 sat down, DOF didn't want any assistance from ECB,
4 so here I go try to renew my license and I had my
5 license since--I'm a master plumber since 1980,
6 for the first time, they said your fines aren't
7 paid up, I have a letter from DOF said that Mr.
8 Kogel was in good standings, his company's in good
9 standings--

10 COUNCIL MEMBER JAMES: Right.

11 STEVEN KOGEL: --give him his
12 license.

13 COUNCIL MEMBER JAMES: Right.

14 STEVEN KOGEL: Now the building
15 department required a list from ECB, the ECB list
16 is not the same as DOF--

17 COUNCIL MEMBER JAMES: Oh, that's
18 what I didn't understand--

19 STEVEN KOGEL: --it's not--

20 COUNCIL MEMBER JAMES: --thank you
21 for clarifying.

22 STEVEN KOGEL: Okay. And what we
23 like to have also is the outstanding summonses
24 that ECB came up with to go into the relief
25 program as well.

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2 COUNCIL MEMBER JAMES: So who is
3 responsible for reconciling these lists in the
4 city of New York?

5 STEVEN KOGEL: They're putting the
6 burden on the plumber, which should not be.
7 Again, they had their opportunity to sit down and
8 say this is exactly what you owe, these are your
9 summonses--

10 COUNCIL MEMBER JAMES: Right.

11 STEVEN KOGEL: --and it didn't
12 happen that way.

13 COUNCIL MEMBER JAMES: So one of
14 the suggestions is that there be some independent
15 entity that reconciles these lists, is that what
16 I'm hearing?

17 [Off mic]

18 COUNCIL MEMBER JAMES: Among other
19 things.

20 ARTHUR GOLDSTEIN: I'd start with
21 just figuring why--and I don't know if he'll get
22 into the story but I think Mike's also a member of
23 the association, but he's going to--

24 [Crosstalk]

25 ARTHUR GOLDSTEIN: --has separate

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2 testimony. There were stories amongst the members
3 where they'd show up at ECB and request their
4 list, and I think this happened to Steve as well,
5 on a Friday--

6 COUNCIL MEMBER JAMES: Right.

7 ARTHUR GOLDSTEIN: --they'd get a
8 printout, they go back on Monday or Tuesday and
9 they hand in a list and someone behind the window
10 would check it against another list or what should
11 have been the same exact list--

12 COUNCIL MEMBER JAMES: Right.

13 ARTHUR GOLDSTEIN: --and they say
14 no, there's two or three ECB violations on our
15 list that you don't have from your Friday list and
16 it's not like it was today's violations.

17 CHAIRPERSON BREWER: Can I just say
18 we've got to out of here at 1 o'clock--

19 ARTHUR GOLDSTEIN: Okay.

20 CHAIRPERSON BREWER: --just so
21 everybody knows so--

22 [Crosstalk]

23 CHAIRPERSON BREWER: --and Diana
24 Reyna has a question and Peter Koo, so why don't
25 you do--go ahead.

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2 CHAIRPERSON REYNA: Oh, I'm sorry,
3 I just wanted to get some clarity on what Mr.
4 Bookman had mentioned concerning a warning system
5 as opposed to you're guilty and then if you're
6 innocent it's on you, but we're still finding you
7 guilty. DOH currently in the provisions of a
8 corrective action so to speak gives the
9 opportunity that if you have eight points of a
10 notice of violation, that equals out to four minor
11 violations, will give you the opportunity and that
12 is considered the innocent before proven guilty
13 aspect of trying to give the opportunity to the
14 small business owner and it's reset provided that
15 there are corrective measures that have taken
16 place on an annual basis it's renewed. Is that
17 something that either, A, is working, B, is not
18 enough, or C, throw it out because it has nothing
19 to do--it doesn't meet the standard vision of
20 let's change the behavior so that there's a
21 warning system, look, we need you to perform this
22 way, there's less contradiction amongst agencies
23 and inspectors internally and a corrective measure
24 is provided the opportunity as opposed to fining?

25 ROBERT BOOKMAN: I think as far as

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2 the Health Department concerns, I think the answer
3 is a bit of B and a bit of all the above. Yes,
4 that's the right idea, eight points out of a
5 possible 300 is a joke so it's not enough; 28
6 points is passing according to them, although in
7 my calculation out of 300 points you're basically
8 getting an A to pass. But it seems to us and to
9 restaurant owners that if you pass there should be
10 no fine, whether it's 8 points or 27 points, pass
11 is pass.

12 CHAIRPERSON REYNA: Because you can
13 pass but with points.

14 ROBERT BOOKMAN: Yeah, oh, you
15 could pass with points and in fact most people do
16 pass and still have to spend a half a day in the
17 Health Department and 1,000 to \$1,500 in fines and
18 they passed.

19 CHAIRPERSON REYNA: Right.

20 ROBERT BOOKMAN: I mean there is no
21 sense anymore of that we're in this together and
22 that the public policy is to correct violations,
23 to educate as Council Member Koo said, it's to
24 fine--

25 CHAIRPERSON REYNA: Right.

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2 ROBERT BOOKMAN: --and it's not
3 just Department of Health, I mean although there's
4 great Department of Health stories. We have one
5 member who--

6 [Off mic]

7 ROBERT BOOKMAN: All right.

8 CHAIRPERSON REYNA: No stories.

9 ROBERT BOOKMAN: But it's not just
10 that agency, I mean Consumer Affairs will give a
11 sidewalk café a violation for having an extra
12 table but what it turns IS out the plan showed it
13 was a four-top and the guy put two two-tops
14 together, it wasn't taking up any more space, the
15 fee--

16 CHAIRPERSON REYNA: [Interposing]
17 It's just together.

18 ROBERT BOOKMAN: --the fee is not
19 based on how many tables you have for the last
20 five years, what are you getting a violation for.
21 That should be something, if it's a violation at
22 all, that you should be able to correct and we're
23 going to be back within 10 days, if you haven't
24 corrected it then, we're going to fine you.

25 CHAIRPERSON REYNA: Correct, and

2 currently there is no corrective action, there is
3 no warning system and just--

4 ROBERT BOOKMAN: [Interposing] Our
5 whole philosophy is upside down and it's not--you
6 know, we love and you Council Members love to
7 bring in examples, I'm looking at Gale here, of
8 other cities when you want to pass new laws here
9 in New York and you say well this city does that,
10 why shouldn't we, or this city does that, why
11 shouldn't we, but when it comes to looking how
12 other cities do their general enforcement, of how
13 they're much more cooperative-based, education-
14 based, not fine-based, somehow you guys lose the
15 phone numbers to the other cities.

16 CHAIRPERSON BREWER: All right.

17 CHAIRPERSON REYNA: Well thank you
18 very much for that clarity, Mr. Bookman, and I
19 look forward to--

20 [Crosstalk]

21 COUNCIL MEMBER JAMES: --underlying
22 issue.

23 [Laughter]

24 CHAIRPERSON REYNA: I look forward
25 to seeing what you had laid out in your testimony

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2 and you didn't provide us with an actual written
3 testimony--

4 ROBERT BOOKMAN: [Interposing] I do
5 have copies.

6 CHAIRPERSON REYNA: Fantastic, can
7 you provide that to the Sergeant-At-Arms so that--

8 ROBERT BOOKMAN: Absolutely.

9 CHAIRPERSON REYNA: --way we have a
10 copy?

11 ROBERT BOOKMAN: Sure.

12 CHAIRPERSON REYNA: But again, I
13 want to stress to you how we're going to continue
14 the pressure of seeing a draft formation so that
15 we're meeting the goal and that it's not a
16 symbolic bill of rights but that it is a bill of
17 rights as expressed in your testimony concerning
18 how to protect innocent before proven guilty.

19 ROBERT BOOKMAN: It's interesting
20 he also wouldn't commit to how this would be
21 disseminated. How about disseminate it with the
22 inspection? Here's your brochure.

23 CHAIRPERSON BREWER: Let me get to
24 Peter Koo and then we'll come back, is that okay?

25 MALE VOICE: Sure.

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2 CHAIRPERSON BREWER: I promise, is
3 that all right, Diana?

4 CHAIRPERSON REYNA: Yes.

5 COUNCIL MEMBER KOSLOWITZ: We're
6 going to sit down and--

7 [Pause]

8 CHAIRPERSON BREWER: Peter Koo.

9 COUNCIL MEMBER KOO: Okay. I
10 myself is a small businessman for a long time so I
11 sympathize with all the situations in all the
12 industries and being a small businessman in New
13 York City is really tough as compared with other
14 cities. So right now I'm City Council Member so I
15 welcome you all suggestions to me and we'll work
16 through this Committee of Small Business and
17 different committees, we have to work together
18 with the administration to ensure they don't
19 overburden the small businesspeople.

20 So my question is when you have any
21 suggestions, please let us know. If you receive
22 unfair untreatment, we have to do something about,
23 you know [off mic] sometimes most of the small
24 businesspeople they just say oh, we got a ticket,
25 we just pay for it and we had to let in [off mic]

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3 unfair treatment they have to let us know, then we
4 correct this.

5 [Off mic]

6 COUNCIL MEMBER KOSLOWITZ: Yes,
7 this bill was drafted to recognize small
8 businesses and what they go through. Trust me,
9 I'm going to sit down and talk to all of you and
10 we're going to try and work out something that's
11 good for small business.

12 ROBERT BOOKMAN: Thank you.

13 STEVEN KOGEL: Yes, as Mr. Bookman
14 said, we have issues--

15 CHAIRPERSON BREWER: [Interposing]
16 Pull the mic towards you--

17 STEVEN KOGEL: Okay.

18 CHAIRPERSON BREWER: --and--

19 STEVEN KOGEL: As was said earlier
20 by Mr. Bookman that we have similar things
21 happening in our industry. For example, if we do
22 an excavation in roadway, that hole goes down two
23 inches, right away we're going to get a summons
24 for \$1,200, but where is the safety to the people
25 out there? That should be their first concern,
not collecting money. I think this is all they

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2 really want is go there, collect money.

3 And one more issue, it has to be a
4 better procedure at ECB court for appeals. The
5 appeals you have to pay first and then appeal it.
6 When DOT or police department does an appeal, they
7 don't have to pay anything, it's not fair, it has
8 to be a better procedure out there for this.

9 Thank you.

10 CHAIRPERSON BREWER: Thank you very
11 much. I have a lot of friends who are judges,
12 administrative judges at ECB and they say there
13 are a lot of problems, so we've been talking here
14 about major oversight of ECB, I'm quite familiar
15 with it. And Rob Bookman, we will work on video
16 conferencing, I am 100% supportive of that. Thank
17 you all very much.

18 STEVEN KOGEL: Thank you.

19 ROBERT BOOKMAN: Thank you.

20 CHAIRPERSON BREWER: The next panel
21 is Joseph Robles and Leah Archibald.

22 [Off mic]

23 [Long Pause]

24 LEAH ARCHIBALD: Well thank you.

25 [Pause]

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2 CHAIRPERSON BREWER: Whomever would
3 like to [pause] whoever would like to go ahead, go
4 ahead.

5 LEAH ARCHIBALD: Okay. Okay. Joe
6 has extended that offer to me. My name's Leah
7 Archibald and I'm the Executive Director of
8 EWVIDCO, the East Williamsburg Valley Industrial
9 Corporation. We are the non-profit local
10 development corporation that works with the
11 thousand industrial businesses in North Brooklyn.
12 These firms employ over 15,000 individuals, many
13 of whom are neighborhood residents.

14 I want to applaud the committee for
15 putting forth this legislation, I think this is an
16 excellent step toward creating more
17 predictability, clarity, transparency, and
18 consistency in code enforcement for our local
19 businesses. I would suggest that in addition to
20 examining the way that inspections are handled and
21 inspectors are deployed that can the overall
22 enforcement framework be examined. You know,
23 currently there is--especially with the businesses
24 we represent, which are manufacturers, they have
25 to deal with a very wide variety of inspectors

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3 from a very wide variety of agencies.

4 I want to use--let's see, now I
5 need my glasses--I want to use one example of one
6 of our local firms to illustrate the frustrations
7 that some of our businesses have with inspectors.
8 One of our local garment manufacturers was just
9 telling me the other day that they had an elevator
10 inspector come by. Now apparently elevator
11 inspections have been subcontracted, it's not a
12 city inspector anymore, there are a variety of
13 different private subcontractors that are handling
14 elevator inspections, so he has an elevator
15 inspector come by, he finds a violation, he writes
16 it up. The manufacturer does the work that he's
17 been told that he has to do so he files back with
18 the City the form that needs to be submitted as
19 well as a cover letter and the receipts proving
20 that he had the work done. He's found that he's
21 been in default, he asks why he's in default, he
22 had the form notarized but not the cover letter
23 that went with the form. So he went and took a
24 day off of work and went for the hearing to appeal
25 it and admits to the administrative law judge
you're, you know, yes, I did the work, I'm in

2 compliance now, but you're right, I didn't
3 notarize the cover letter and then the
4 representative from the City is like, see, he
5 admitted he's wrong and they're awaiting a
6 decision on this, but it looks as if they're going
7 to be fined because they're theoretically not in
8 compliance because we're missing a notarized
9 signature on one of the pieces of paper he
10 submitted for documentation. This is just one
11 example of how the businesses feel like they are
12 being mined for proceeds for the tax coffers, you
13 know, they feel like they get it coming and going,
14 this is a guy, he's like he admitted, okay, I had
15 the work done, I proved that I had it done, and it
16 wasn't good enough.

17 One other additional example he
18 mentioned to me was because, for example, with the
19 elevator inspections because a variety of
20 companies are doing this and they are sending out
21 a variety of inspectors, they can inspect anytime
22 they want, anytime they're in the neighborhood.
23 So recently he had two different elevator
24 inspectors from two different private companies
25 inspecting him simultaneously. You know, going to

2 write up the same violation. It's very
3 frustrating for folks, they would honestly rather
4 be doing what it is they do, which is
5 manufacturing goods and keeping high quality
6 working class jobs in our communities.

7 So thanks very much for examining
8 this issue. I'd like to offer the assistance of
9 my organization, as well as my colleagues in the
10 industrial business zones throughout New York
11 City, we're here to help, we're here to be the
12 front door. If you need anything, please let me
13 know if we can be of further assistance.

14 [Pause]

15 JOSEPH ROBLES: Okay. I came here
16 this morning with Leah and I reviewed her
17 testimony, there's one thing I think you need to
18 add there. At this hearing--I'm also the
19 president of EWIDCO.

20 Our member, what he brought to our
21 attention is that the inspector was asking the
22 hearing officer to impose the maximum fine at the
23 hearing and I think that just goes to show what
24 we're dealing with where we have a business owner
25 who manufactures, he doesn't really--he's not

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2 there to comply with violations, but he did his
3 best, he got it corrected, he had the form
4 notarized he thought was correct and that form did
5 have to get notarized but the cover letter he
6 failed to read that that needed to be notarized
7 and then you go into a hearing and you have a city
8 inspector just looking for the maximum fine, which
9 really leads me to wonder what is the culture in
10 these agencies if we're coming in as business
11 owners who employ people and we complied, but we
12 did something wrong 'cause it's not something we
13 do every day. Why is the culture of these
14 inspectors to the point where they're advising to
15 the hearing officer, look, he did something wrong,
16 I would expect an inspector that's fair to say,
17 okay, they complied, but they left something out,
18 give them the minimum 'cause he really did do
19 everything wrong, but he forgot one T to cross or
20 I to dot.

21 CHAIRPERSON BREWER: Just introduce
22 yourself, I'm sorry.

23 JOSEPH ROBLES: Oh, I'll go right
24 to this then, okay. To my testimony which I've
25 submitted. My name is Joseph K. Robles, I am the

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3 President of Knight's Collision Experts of
4 Brooklyn. I am also the Metropolitan Regional
5 Vice President of the Empire State Towing and
6 Recovery Association, and the President of
7 EWVIDCO.

8 Today's hearing on the business
9 owners' bill of rights is of primary importance to
10 the towing and repair industry because many of the
11 City's policies are not friendly to the industry
12 which is comprised of hundreds of small
13 businesses.

14 Towing companies such as mine rely
15 heavily upon government contracts. In order to
16 remain in business, my company tows disabled and
17 damaged vehicles from two sections of the city
18 arterial highway system. Many other companies
19 including my own participate in the City's DARP
20 and ROTOW programs where they remove damaged and
21 abandoned vehicles from city streets.

22 The rates that towers may charge
23 under these programs are set by law, as are the
24 rates they may charge for towing vehicles that are
25 illegally parked on private property, the rates on
the ROTOW program, for example, were set at \$80

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2 per tow approximately 10 years ago.

3 For the past two years, the towing
4 industry has been seeking legislation to increase
5 these rates and the rates under all other programs
6 to \$185. While this may appear to be a large
7 increase, it is the same amount that the city
8 police marshals, sheriffs, and Department of
9 Finance SCOFFLAW towers are permitted to charge.
10 It is also more in keeping with rates that are
11 charged in many other metropolitan areas.

12 CHAIRPERSON BREWER: [Interposing]
13 Council Member Koslowitz reminds us that in
14 Consumer Affairs she's going to be taking up these
15 issues, so just FYI.

16 COUNCIL MEMBER KOSLOWITZ: And I'm
17 meeting with you on Friday.

18 JOSEPH ROBLES: Friday, yes, thank
19 you. I'll make it quick as I can. The town--well
20 San Francisco is at 220, Dallas is at 212, Oakland
21 is 180, and Chicago, Baltimore, and Philadelphia
22 are at 150. The town of North Hampstead recently
23 approved a rate of 125 plus \$5 per mile after the
24 first mile, which brings the rate of an average
25 tow to 150 to \$175.

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3 As you know, fuel costs have
4 skyrocketed in recent years, the cost of insurance
5 and equipment has also risen dramatically and
6 quite frankly I am finding it difficult to remain
7 in business and provide a decent wage to my
8 employees under the current rate structure. ESTRA
9 is in the process of reintroducing legislation to
10 address this issue and I ask for your support on
11 this most important bill.

12 The towing industry is regulated by
13 the Department of Consumer Affairs which at times
14 can be difficult to work with. To illustrate
15 Sections 20-110 and 20-211 of the Administrative
16 Code requires corporations and partnerships to
17 obtain prior approval from DCA before bringing in
18 a major shareholder, which is more than 10%
19 interest, or adding or terminating a general
20 partner. It is not unusual for DCA to fail to
21 provide such timely approval in a timely fashion
22 thereby causing prospective business ventures to
23 fail. Accordingly, DCA should be required to
24 provide these prior approvals within a reasonable
25 amount of time.

It is not unusual in the towing

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3 industry, as well as many other industries, for a
4 towing company to purchase the business and assets
5 of another towing company. Here too, DCA is often
6 tardy in approving these transaction. If the
7 purchasing company is already licensed by DCA, I
8 see no reason why such prior approvals are even
9 necessary. It should be sufficient for the
10 purchasing company to provide DCA with timely
11 notice of the transaction.

12 Towers may be fined or suspended by
13 DCA for committing numerous infractions, such as
14 failing to respond to an accident or overcharging.
15 Under it's various towing programs, while I
16 recognize that the DCA has a duty to police the
17 industry, there have been numerous instances in
18 which charges have been brought for violations
19 that were alleged to have occurred months and even
20 years in the past. Because it is virtually
21 impossible to defend against such stale charges, I
22 suggest that a statute of limitation should be
23 imposed on DCA's ability to bring these charges.
24 Many of these issues would never come to the
25 forefront if there were better cooperation between
DCA and the towing industry.

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2 There is a vehicle within existing
3 law that should foster this cooperative effort:
4 the Tow Advisory Board. However, DCA has not
5 convened this board for several years and has
6 allowed the current membership on the board to
7 expire. In past years, ESTRA has submitted
8 legislation that would provide the City Council
9 with greater oversight over the Tow Advisory Board
10 and we welcome the opportunity to resubmit the
11 legislation in the current session. Thank you for
12 providing me with the opportunity to express my
13 views on these issues of importance in my
14 industry.

15 CHAIRPERSON BREWER: Thank you both
16 very much, it's always nice to see Council Member
17 Reyna's wonderful constituents and business owners
18 here. Are there any questions? Council Member
19 Koslowitz.

20 COUNCIL MEMBER KOSLOWITZ: I just
21 wanted to make a statement that I will have a
22 hearing on this because I'm not aware that the
23 Towing Advisory Board hasn't held a hearing and I
24 would like to know why, so I'm going to have a
25 hearing on that also.

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2 JOSEPH ROBLES: I think it may have
3 been the last time you were on the Council--

4 COUNCIL MEMBER KOSLOWITZ:
5 Absolutely.

6 JOSEPH ROBLES: --that they had a--
7 it's been a long time.

8 [Crosstalk]

9 COUNCIL MEMBER KOSLOWITZ: Really,
10 okay.

11 JOSEPH ROBLES: I would say
12 probably around seven years to the best of my
13 knowledge. Thank you.

14 COUNCIL MEMBER KOSLOWITZ: It's
15 even more. Thank you.

16 [Crosstalk]

17 LEAH ARCHIBALD: Thank you.

18 CHAIRPERSON BREWER: All right,
19 thank you very much. Anything else? So we're
20 delighted to have had this hearing with Small
21 Business and Governmental Operations and we look
22 forward to following up on the many issues that
23 were brought to our attention today.

24 [Pause]

25 CHAIRPERSON REYNA: I just want to

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2 thank my colleagues and my co-chair, Gale Brewer,
3 for this very informative and interesting first
4 step towards providing adjudication processes to
5 the small business owners of the city of New York
6 and we ensure that the administration is going to
7 share with us the language in draft formation so
8 that we have met the goal of ensuring a bill of
9 rights to protect small businesses in the city of
10 New York. Thank you so much.

11 CHAIRPERSON BREWER: Thank you.

12 We'll be voting on this committee not today on
13 this bill, but we will be voting on it in the near
14 future in Governmental Operations. Thank you very
15 much.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature Tammy Wittman

Date April 30, 2010