

THE COUNCIL

*Minutes of the Proceedings for the
STATED MEETING
of
Wednesday, May 13, 2020, 1:41 p.m.
held remotely via video-conference*

*The Majority Leader (Council Member Cumbo)
presiding as the Acting President Pro Tempore*

Council Members

Corey D. Johnson, *Speaker*

Adrienne E. Adams	Mark Gjonaj	Bill Perkins
Alicia Ampry-Samuel	Barry S. Grodenchik	Keith Powers
Diana Ayala	Robert F. Holden	Antonio Reynoso
Inez D. Barron	Ben Kallos	Donovan J. Richards
Joseph C. Borelli	Andy L. King	Carlina Rivera
Justin L. Brannan	Peter A. Koo	Ydanis A. Rodriguez
Fernando Cabrera	Karen Koslowitz	Deborah L. Rose
Margaret S. Chin	Rory I. Lancman	Helen K. Rosenthal
Andrew Cohen	Bradford S. Lander	Rafael Salamanca, Jr
Costa G. Constantinides	Stephen T. Levin	Ritchie J. Torres
Robert E. Cornegy, Jr	Mark D. Levine	Mark Treyger
Laurie A. Cumbo	Farah N. Louis	Eric A. Ulrich
Chaim M. Deutsch	Alan N. Maisel	Paul A. Vallone
Ruben Diaz, Sr.	Steven Matteo	James G. Van Bramer
Daniel Dromm	Carlos Menchaca	Kalman Yeger
Mathieu Eugene	I. Daneek Miller	
Vanessa L. Gibson	Francisco P. Moya	

At the time of this virtual Stated Meeting, there was one vacant seat in the 37th Council District (Brooklyn). This seat will remain vacant pending the swearing-in of the certified winner of a General Election to be held on Tuesday, November 3, 2020.

The Majority Leader (Council Member Cumbo) assumed the chair as the Acting President Pro Tempore and Presiding Officer for these virtual proceedings. Following the gaveling-in of the Meeting and the recitation of

the Pledge of Allegiance, the Roll Call for Attendance was called by the City Clerk and the Clerk of the Council (Mr. McSweeney).

After consulting with the City Clerk and Clerk of the Council (Mr. McSweeney), the presence of a quorum was announced by the Majority Leader and Acting President Pro Tempore (Council Member Cumbo).

There were 50 Council Members marked present at this Stated Meeting held remotely due to the coronavirus pandemic. The virtual Stated Meeting was video-conferenced via Zoom.

INVOCATION

The Invocation was delivered by Imam Dr. Tahir Kukaj serves as the spiritual leader of the Albanian Islamic Cultural Center, located at 307 Victory Boulevard, Staten Island, NY 10301.

Mr. Speaker, the Honorable Corey Johnson,
Members of the New York City Council,
public servants, ladies and gentlemen.
I'm honored to have been invited to offer the Invocation
as we gather remotely to begin our meeting today.

In the name of God, the compassionate and merciful,
praise be to God, Lord of the worlds, our Creator.
Creator of the universe, known by many names.
The compassionate, the merciful,
ruler of life on the day of reckoning,
You alone we worship and You alone we ask for help,
guidance on a straight path.
The path of those that have received Your grace,
not the path of those that have brought down wraths,
nor those who wander astray.
Our Lord, we ask you
that you bless our City Council and its members.
Bless our city, our state,
and our great country, United States of America.
God of justice and mercy,
thank You for Your countless blessings and gifts.
The gift of life and opportunity
to serve the people of our city.
Help us to act with character and conviction.
Help us to listen with understanding and good will.
Help us to speak with charity and nobility.
Give us a spirit of service.
Remind us that we are stewards of your authority.
Guide us to be the leaders that New York people need.
Our Lord, remind our City Council members
that no matter where we live,
everyone, regardless of race, gender, age, and other aspects,
black or white, Hispanic or Asian,
Christian, Muslim, Jew, Hindi, Sikh, or atheist,

is our neighbor.
 Our sibling in humanity.
 Grant our leaders the wisdom and courage
 to know and do what is right and good and true.
 May they and we speak out
 when it is time to speak out
 and listen patiently and receptively
 when it's a time to listen.
 May they and You always be guided
 by the spirit of community,
 by the spirit of justice,
 and by the spirit of love.
 Our Lord, as we live through difficult times,
 we ask You to bless all first responders,
 doctors, nurses, volunteers,
 social workers, philanthropists, humanitarians.
 Bless our scientists
 to find a cure for this plague and every illness.
 Bless all those that respect instructions.
 Stay home. Stay safe.
 In Your name we make this prayer.
 Amen.

Council Member Rose moved to spread the Invocation in full upon the record.

During the Communication from the Speaker segment of this Meeting, the Speaker (Council Member Johnson) expressed his hope that everyone and their families remained safe and healthy. He also thanked the employees of the Council for their hard work during these difficult times.

The Speaker (Council Member Johnson) reported that as of May 12th, twenty thousand New Yorkers were lost to the coronavirus pandemic. Many civil servants had died due to COVID-19 including a significant number of Department of Education and MTA workers. The Speaker (Council Member Johnson) also acknowledged that two more members of the FDNY had died from 9/11-related illnesses: retired Firefighter Paul J. Greco, who passed away on May 6, 2020; and retired Lieutenant Kevin C. Dunn, who passed away on May 7, 2020. On behalf of the Council, he offered his condolences to the families and friends of Lieutenant Dunn and Firefighter Greco and to the entire Fire Department.

The Speaker (Council Member Jonson) asked for a Moment of Silence in memory of the New Yorkers who lost their lives to COVID-19 as well as for Lieutenant Dunn and Firefighter Greco.

At this point, a Moment of Silence was observed.

* * *

ADOPTION OF MINUTES

Council Member Adams moved that the Minutes of the Stated Meeting of April 22, 2020 be adopted as printed.

COMMUNICATION FROM CITY, COUNTY & BOROUGH OFFICES

M-241

Communication from the Queens Borough President - Pursuant to Section 241 and 245 of the New York City Charter, submitting the Queens Borough Board's Response to the Mayor's FY'21 Preliminary Budget and the Mayor's FY'21 Executive Budget.

(For text, please see the New York City Council website at <https://council.nyc.gov> and refer to the attachments section for [the M-241 of 2020 file](#); please also see the Queens Borough President website at <https://www.queensbp.org> for the [February 25, 2020 Queens Borough Board's Response](#))

Received, Ordered, Printed and Filed.

REPORTS OF THE STANDING COMMITTEES

Report of the Committee on Consumer Affairs and Business Licensing

Report for Int. No. 1916-A

Report of the Committee on Consumer Affairs and Business Licensing in favor of approving and adopting, as amended, a Local Law in relation to requiring the waiver and refund of certain sidewalk cafe revocable consent fees, and providing for the repeal of such provision upon the expiration thereof.

The Committee on Consumer Affairs and Business Licensing, to which the annexed proposed amended local law was referred on April 22, 2020 (Minutes, page 825), respectfully

REPORTS:

I. INTRODUCTION

On May 13, 2020, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Andrew Cohen, held a remote vote on two pieces of legislation: Int. No. 1916-A by Council Member Cohen, a local law in relation to requiring the waiver and refund of certain sidewalk cafe revocable consent fees, and providing for the repeal of such provision upon the expiration thereof; and Preconsidered Int. No. 1940-A by Council Member Matteo, in relation to license, permit, consent and registration renewal extensions, and requiring at least 45 days notice for renewal following the COVID-19 emergency. Both bills passed with a vote of seven in the affirmative, zero in the negative and zero abstentions.

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

II. BACKGROUND

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization (WHO) declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern (PHEIC).¹ SARS-CoV-2 is not the first virus to pose a serious threat to modern civilization in recent decades. In 2003, the severe acute respiratory syndrome (SARS) was labelled the “first pandemic of the 21st century”, because it spread quickly across

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

continents, infected more than 8,000 people and killed nearly 800.² By comparison, COVID-19 has infected 2.5 million people across 210 countries, and has killed nearly 800,000 people as of April 22, 2020.³

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

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

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

- Health care operations – such as hospitals, medical labs, walk-in clinics, home healthcare, elder care, veterinaries, nursing homes, licensed mental health providers, and medical billing support personnel.
- Infrastructure – such as airports, public utilities, hotels, commercial shipping ports, and telecommunications.
- Manufacturing – such as food processing, pharmaceuticals, automobiles, household paper products, and chemicals.
- Retail – such as grocery stores, pharmacies, farmer’s markets, gas stations, restaurants (for take-out and delivery only), and convenience, hardware and pet food stores.
- Services – such as laundromats, postal services, trash and recycling collection, bicycle and automotive repair, funeral homes, and animal shelters.
- Financial Institutions – such as banks and lending institutions, insurance companies, and accounting firms.
- Human Services Providers – such as food banks, homeless shelters and community care programs.
- Construction – insofar that it supports affordable housing, hospitals, roads, transit facilities, homeless shelters or schools.
- Public Health and Safety – such as law enforcement, fire and emergency services, building cleaners or janitors, and residential moving services.
- Logistical, Technological and Child Care Services – such as technology support for online services, child care programs, government owned or leased buildings and essential government services.
- Recreation – such as parks and open spaces (not including playgrounds), and boatyards and marinas.
- Professional Services – such as lawyers and real estate services.
- News Media; and
- Defense.⁵

Although this list covers a range of industries that are permitted to operate during PAUSE, a large proportion of New York’s small (and large) businesses have still had to severely reduce their capacities. According to an analysis by the NYC Comptroller, the City’s hotels are projected to only maintain an occupancy rate of 20

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

³ Worldometer “Countries where COVID-19 has spread”, April 22, 2020, available at: <https://www.worldometers.info/coronavirus/countries-where-coronavirus-has-spread/>.

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

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

percent, while restaurant sales are expected to drop by a staggering 80 percent. Real estate and retail sales are both expected to decline by 20 percent.⁶

These figures for the restaurant industry reflect the results of a recent survey by the New York State Restaurant Association. According to their findings, sales have declined by 79 percent, and New York State restaurants are expected to lose \$3.6 billion in sales revenue, in April alone.⁷ Just over half (51 percent) of all restaurants have been able to move their operations online, and unemployment rates in this sector have skyrocketed, as 80 percent of restaurant workers have lost their jobs.⁸

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

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

The nation's economy is dependent on its small businesses. There are approximately 27 million of these businesses across the country and they are responsible for employing 57 million workers.¹² When including the owners of these businesses, in addition to employees, that total comes to an estimated 85 million people.¹³ According to the Small Business Administration, small businesses are responsible for creating two-thirds of the Country's new jobs.¹⁴ Given their vital role, it is crucial that they are either given alternative means to operate, in as lucrative a manner as possible, throughout the COVID-19 crisis, and/or are provided the necessary support to restart their operations once social distancing measures have been lifted.

a. Federal Government Assistance

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

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

⁷ New York State Restaurant Association "Restaurant industry impact survey: New York State", April, 2020, available at: https://www.nysra.org/uploads/1/2/1/3/121352550/restaurant_industry_impact_survey_new_york_state_2_.pdf.

⁸ Id.

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

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

¹¹ Id.

¹² Information Station "How important are small businesses?", January 3, 2017, available at: https://informationstation.org/video/how-important-are-small-businesses/?utm_source=google&utm_medium=cpk&gclid=EAIaIQobChMI-Ymy3df86AIVGoZCh0QORPrEAAYASAAEgI7ivD_BwE.

¹³ Id.

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

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

Paycheck Protection Program

The Coronavirus, Aid, Relief, and Economic Security Act (CARES ACT) originally allocated about \$349 billion in federal funds for PPP, with an additional \$322 billion authorized by Congress in late April.¹⁶ The program provides various types of employers, including small businesses, nonprofits, self-employed individuals and independent contractors, access to loans to cover payroll costs of up to \$100,000 per employee, rent and mortgage interest prior to February 15, 2020, and utilities. Loans are calculated per employer or per location, and may be as high as 2.5 times the average monthly payroll for the one-year period before the loan application is submitted, to a cap of \$10 million. Loans are calculated differently for seasonal and new employers. Employers of fewer than 500 workers may apply for these loans through a network of banks ranging from large to smaller banks.¹⁷ Banks may not require applicants to supply collateral or personal guarantees, and applicants may only apply for one PPP loan.

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

*Economic Injury Disaster Loan and Advance*¹⁸

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

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

*SBA Express Bridge Loans*¹⁹ *and Debt Relief*²⁰

The CARES Act allocated funds for SBA's Express Bridge Loan program and their Debt Relief program. The Express Bridge Loan program quickly provides funds of up to \$25,000 for businesses eligible for SBA's 7(a) loans to overcome a temporary loss of revenue. SBA's Debt Relief program allows businesses that are eligible for SBA's 7(a), 504 and microloans to receive limited payment of principal, interest and fees on these loans. The 7(a), 504 and microloans are SBA's standard small business loan programs, which were established before the onset of COVID-19. The 7(a) loans are available for general business purposes, such as working

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

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

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

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

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

capital, equipment, furniture, and land and building.²¹ They are provided through a lender.²² The 504 loans are issued by Certified Development Companies for long-term, fixed-asset financing for small businesses, such as the purchase and improvement of land and buildings.²³ Microloans are temporary, short-term loans of up to \$50,000 to small businesses for general business purposes, and are offered by nonprofits.²⁴

The federal government's PPP program, although heavily utilized, has raised some concerns. As of April 13, 2020, the program had issued about 1,661,367 loans totaling over \$342 billion, with over 4,975 lenders participating.²⁵ However, a recent ranking of businesses receiving loans as a percentage of each state's eligible payroll revealed that New York State placed second to last, with only 23.1 percent of eligible businesses receiving a loan.²⁶ By contrast, Nebraska and North Dakota reached 74.7 percent and 71.5 percent respectively.²⁷ Further, some industries fared better than others, with the construction industry receiving the highest percentage of loans (13 percent) and restaurants receiving less than nine percent,²⁸ despite representing about 14 percent of companies employing under 500 people.²⁹ Of the restaurants who received loans, some reports allege that too many have gone to large chains, and a handful of these companies have received blowback for accepting loans. A Reuters article claimed that 25 percent of the initial \$350 billion allocated to SBA loan programs went to fewer than two percent of the firms that got relief, with some of these being large, publicly-traded companies with "thousands of employees and hundreds of millions of dollars in annual sales."³⁰ Among these companies is the Ruth's Hospitality Group (owns 150 Ruth's Chris Steak Houses), Potbelly (\$409.7 million in sales and 6,000 employees) and Shake Shack (8,000 employees). Both Ruth's Hospitality Group³¹ and Shake Shack have agreed to return their loans, the latter of which citing an ability to raise the funds through other means.³² Similarly, dozens of large companies with financial or legal problems have reportedly received significant loans through the program, according to an analysis of 200 publicly-traded companies that reported receiving a total of \$750 million through PPP.³³ Since it became known that large companies had been benefitting from PPP, the SBA published additional guidance emphasizing that businesses may only apply for the loan if, in good faith, they can certify that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant," and that public companies with "substantial market value" are unlikely to be able

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

²² Id.

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

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

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

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

²⁷ Id.

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

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

³⁰ Id.

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

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

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

to make such a certification.³⁴ Companies who received the loan before this guidance and repay it before May 7, 2020 will be deemed to have certified in good faith.³⁵

The manner in which PPP was offered to the public and the complexity of its terms and conditions may have contributed to a lack of success for many small business owners. Although the program began accepting applications on Friday, April 3, 2020, some large banks refused to participate at first, citing a lack of guidance from the federal government.³⁶ When more banks did begin to accept applications, there was confusion regarding what conditions the banks could apply. SBA authorized a last-minute raise from half a percent to a one percent interest rate, reportedly to address concerns from banks about being unable to service the loans at an interest rate of only half a percent.³⁷ Further, some large banks attached unexpected conditions to their applications, like having a previous banking relationship with them before February 15, 2020.³⁸ A few weeks after the lending program began, it ran out of funds,³⁹ seemingly validating concerns from some experts that the program was not sufficiently well-funded, or disbursing funds quickly enough.⁴⁰

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

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

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

³⁵ *Id.*

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

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

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

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

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

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

⁴² *Id.*

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

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

⁴⁵ *Id.*

businesses employ up to 42 percent of the neighborhood population.⁴⁶ Yet, there have been questions surrounding whether undocumented immigrants can be eligible for the PPP program, since it requires an Employee Identification Number or Social Security Number on its program application.⁴⁷ The application originally required business owners to be U.S. citizens or permanent residents.⁴⁸ In the past, SBA placed additional restrictions and requirements on access to loans for non-citizens.⁴⁹

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

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

For many small businesses in the City, dealing with an unpredictable and contagious virus that has already significantly disrupted the ability of many to earn revenue makes borrowing money a risky endeavor. With the exception of SBS's Employee Retention Grant Program, which was only available for the smallest of City businesses (1-4 employees), almost all the funding available to businesses have taken the form of loans. There are concerns about whether the City's economy will strengthen quickly enough to satisfy the terms of these loans, and businesses might struggle to pay off additional debt (even at low or no interest rates) after this sustained period of closure and reduced income. A 2019 survey conducted by the Federal Reserve found that as

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

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

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

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

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

⁵¹ *Id.*

⁵² *Id.*

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

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

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

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

many as 70 percent of small businesses have outstanding debt.⁵⁷ Similarly, a 2016 JPMorgan study concluded that most small businesses did not have enough cash reserves to carry them through a significant economic downturn, with the median independent restaurant having only enough extra cash to last them 16 days.⁵⁸

b. New York State Assistance

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

Beyond the Governor's Executive Order pausing commercial evictions, New York State is not currently administering any specific programs to provide relief to small businesses. NYS's Empire State Development (ESD) has information on its website about the SBA's COVID-19 loan programs, including resources on how businesses can apply for relief.⁶¹ ESD's website directs businesses to other existing relief efforts as well, such as a pro bono legal advice service for small businesses applying for the Paycheck Protection Program.⁶²

c. New York City Assistance

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

Small Business Services

On March 8th, Mayor de Blasio announced that SBS would create two financial relief programs, the Employee Retention Grant Program and Small Business Continuity Loan Fund, to provide financial relief to small businesses during the crisis.⁶³ To qualify for either program, businesses were required to provide documentation proving that over a two-month period in 2020 their revenues decreased by 25 percent due to COVID-19.⁶⁴ Businesses with fewer than five employees were eligible for the Employee Retention Grant Program, which provided a grant covering up to 40 percent of a business's payroll for two months, with a

⁵⁷ Federal Reserve Banks "Small Business Credit Survey: 2019 Report on Employer Firms", available at:

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

⁵⁸ See Bridget Bartolini, id.

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

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

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

⁶² Id.

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

⁶⁴ Id.

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

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

However, some city advocates have raised concerns about access to these funds. SBS was swift to offer their grant and loan programs, acting quickly to bridge an important funding gap before the federal government established their own, but the rollout was flawed. The program initially required business owners to supply documentation demonstrating a drop in revenue in the two consecutive months of 2020, when the full effects of COVID-19 were not yet felt by many businesses.⁷¹ The program eventually allowed business owners to supply information for March 2020, which may have allowed many more business to be eligible.⁷² It was also unclear whether non-profit organizations were eligible for SBS's programs, until the website reflected that non-profits were eligible for the Employee Retention Grant Program, but not the Small Business Continuity Loan Fund.⁷³ While applications were quickly accepted for the Employee Retention Grant Program, the Fund was not available for weeks afterward, and the website confusingly displayed a "Pre-Application" form that did not actually register anyone for consideration to receive funds.⁷⁴ Some users felt that SBS had not provided clear information on the terms of their programs, and that the online application process contained many technical glitches.⁷⁵ One user claimed to have lost her application entirely after the SBS website crashed.⁷⁶

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

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

⁶⁶ Id.

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

⁶⁸ Id.

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

⁷⁰ Id.

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

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

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

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

⁷⁴ See id.

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

⁷⁶ Id.

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

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

In the midst of struggles and confusion regarding SBS's grant and loan programs, the programs abruptly ended without much notice.⁷⁹ This may have closed the door on many small businesses who had intended to apply for the programs, but did not have a chance to do so, or were not yet able to gather the necessary documentation materials. Some users claimed that SBS failed to communicate the most basic aspect of the programs: that funds were limited and that time was of the essence.⁸⁰ One user termed it a "lottery" and expressed frustration that business decisions were made based upon the programs' promises.⁸¹ According to one SBS loan processor, the programs may have had as much as half a billion dollars in loan requests, and only \$20 million in funds to provide.⁸² Despite getting at least 600 applications for the SBS loan program, the funding may have only been enough to provide loans for 250 to 400 businesses.⁸³ Council Speaker Corey Johnson has called for an expansion of the program from a maximum of \$75,000 per business to \$250,000 per business.⁸⁴

Department of Consumer and Worker Protection

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

As the COVID-19 crisis continues to unfold, DCWP has announced several measures to assist small businesses by alleviating various regulatory burdens. In March 2020, DCWP ceased collecting sidewalk cafe consent fees that were due and, shortly thereafter, commenced refunds for restaurants that had already paid their fees.⁸⁵ Though sidewalk cafe consent fees vary depending on the size, location, and whether it is enclosed or unenclosed, they typically cost restaurants thousands of dollars.⁸⁶ There are approximately 1,400 sidewalk cafes in the City, representing an annual revenue of between \$11 million to \$12 million. Most restaurants pay these fees in a four-part installment plan over a one-year period at a monthly interest rate of 1.5 percent.⁸⁷ Three installments remain for the year, and restaurants could still be required to pay the remaining installments if the

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

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

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

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Id.

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

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

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

⁸⁷ R.C.N.Y. §2-45.

state of emergency is lifted. Given the significant losses many restaurants have suffered; some restaurants may not have the ability to cover any remaining payments that come due.

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

The declaration of the state of emergency has also led to an uptick of businesses and workers alike reaching out to DCWP for assistance with regard to the City's worker protection laws, including the Fair Workweek Law, Paid Safe and Sick Leave Law, and the Temporary Schedule Change Law. In response, DCWP published guidance specific to addressing employer obligations during the COVID-19 state of emergency. The guidance also included information on state and federal employment laws.⁹¹ However, some industries have criticized the Mayor for not suspending enforcement of the Fair Workweek and Temporary Schedule Change Laws entirely. The National Restaurant Association argued that businesses cannot afford premium pay for last minute schedule changes, which are necessary in light of employees falling ill and sudden decreased staffing needs.⁹²

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

III. CONCLUSION

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

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

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

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

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

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

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

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

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

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

businesses have to navigate during this crisis range from trying to make rent and payroll, finding suppliers and moving retail online, to negotiating insurance claims, delivery commissions, and bank loans.

IV. BILL ANALYSIS

Int. No. 1916-A

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

Preconsidered Int. No. 1940-A

This bill would require city agencies to publish a list of any licenses, permits, consents or registrations that are not covered by the renewal extension provided for by section four of the Mayor's Emergency Executive Order No. 107 issued on April 14, 2020. This list must be made available on agency websites no later than 14 days after the enactment of this bill. In addition, this bill requires that all renewal deadlines be no earlier than 45 days after section four of the Mayor's emergency order lapses. For licenses, permits, consents or registrations that expire on or after March 12, 2020 and are for a term of less than 45 days, the renewal extension provided for in this bill would only be for the original duration of the license, permit, consent or registration. If passed, the bill goes into effect immediately.

(The following is the text of the Fiscal Impact Statement for Int. No. 1916-A:)



**THE COUNCIL OF THE CITY OF
NEW YORK**

FINANCE DIVISION

LATONIA MCKINNEY, DIRECTOR

FISCAL IMPACT STATEMENT

PROPOSED INTRO NO. 1916-A

**COMMITTEE: Consumer Affairs and
Business Licensing**

SPONSORS: Council Members Cohen, Chin, Yeger, Louis, Ayala, Rivera, Lander, and Koslowitz.

TITLE: In A Local Law in relation to requiring the waiver Powers, and refund of certain sidewalk café revocable consent fees, and providing for the repeal of such provision upon the expiration thereof.

SUMMARY OF LEGISLATION: Proposed Intro No. 1916-A would waive and/or refund sidewalk café consent fees for enclosed sidewalk cafes to the extent that such payment is due for the period covering March 1, 2020 until the date the mayoral executive order waiving their fee obligation expires. Additionally, the bill would waive and/or refund sidewalk café consent fees for unenclosed sidewalk cafes to the extent that such payment is due for the period covering March 1, 2020 through February 28, 2021. The fee waivers and/or refunds would not apply to any fee relating to a petition for a new consent to operate a sidewalk café filed with the Department of Consumer Affairs on or after March 30, 2020.

EFFECTIVE DATE: This local law would take effect immediately and would expire and be deemed repealed on March 1, 2021.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2021

FISCAL IMPACT STATEMENT:

	Effective FY20	FY Succeeding Effective FY21	Full Fiscal Impact FY21
Revenues (+)	\$0	(\$7,400,000)	(\$7,400,000)
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: Sidewalk café consent fees are collected on a March-to-February annual basis and are due on March 1st, although are often paid in quarterly installments on March 1st, June 1st, September 1st, and December 1st. Mayor de Blasio’s Executive Order 105, as extended by subsequent executive orders, waives consent fees for unenclosed and enclosed sidewalk cafes from March 1, 2020 – May 9, 2020, and as such, realizes a loss of \$2.9 million for the March 1st quarterly payment. However, as of the release of the Fiscal 2021 Executive Plan, the Office of Management and Budget (OMB) still anticipates collecting \$8.6 million in Fiscal 2021, including the anticipated consent fee revenue for the remaining three quarters of the calendar year. OMB has also stated that enclosed sidewalk café consent fees only constitute 15 percent of total revenue the City collects on a yearly basis, while unenclosed café consent fees total 75 percent of total revenue, with 1,170 unenclosed sidewalk cafes with a consent agreement on file for the period of March 1, 2020 through February 28, 2021. Provided that the Mayor does not extend his Executive Order waiving sidewalk café consent fees beyond June 1, 2020, because this bill would waive consent fees only for unenclosed sidewalk cafes until February 28, 2021, it is estimated that this bill would result in a loss in revenue of \$7.4 million in Fiscal 2021.

IMPACT ON EXPENDITURES: It is estimated that there would not be an impact on expenditures resulting from the enactment of this legislation because the relevant agencies would use existing resources to accomplish its requirements.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCES OF INFORMATION: New York City Council Finance Division
Mayor’s Office of Legislative Affairs
Department of Consumer Affairs
Office of Management and Budget

ESTIMATE PREPARED BY: Sebastian Palacio Bacchi, Senior Financial Analyst

ESTIMATE REVIEWED BY: Nathaniel Toth, Deputy Director
John Russell, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: This legislation was introduced to the Council as Intro. No. 1916 on April 22, 2020 and was referred to the Committee on Consumer Affairs and Business Licensing (Committee). The Committee heard the legislation on April 29, 2020, and the legislation was laid over. The legislation was subsequently amended, and the amended version, Proposed Int. 1916-A, will be considered by the Committee on May 13, 2020. Upon a successful vote by the Committee, Proposed Int. 1916-A will be submitted to the full Council for a vote on May 13, 2020.

DATE PREPARED: May 5, 2020.

(For text of Int. No. 1940-A and its Fiscal Impact Statement, please see the Report of the Committee on Consumer Affairs and Business Licensing for Int. No. 1940-A printed in these Minutes; for text of Int. No. 1916-A, please see below)

Accordingly, this Committee recommends the adoption of Int. Nos. 1916-A and 1940-A.

(The following is the text of Int. No. 1916-A:)

Int. No. 1916-A

By Council Members Cohen, Chin, Powers, Yeger, Louis, Ayala, Rivera, Lander, Koslowitz, Rosenthal, Kallos, Vallone, Lancman, Constantinides, Holden and Menchaca.

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

Be it enacted by the Council as follows:

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

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

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

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

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

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

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

ANDREW COHEN., *Chairperson*; MARGARET S. CHIN, PETER A. KOO, KAREN KOSLOWITZ, BRADFORD S. LANDER, JUSTIN BRANNAN, KALMAN YEGER; Committee on Consumer Affairs and Business Licensing, May 13, 2020 (Remote Hearing). *Other Council Members Attending: Council Member Gjonaj.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

At this point, the Speaker (Council Member Johnson) announced that the following items had been **preconsidered** and amended by the Committee on Consumer Affairs and Business Licensing and had been favorably reported for adoption.

Report for Int. No. 1940-A

Report of the Committee on Consumer Affairs and Business Licensing in favor of approving and adopting, as amended, a Local Law in relation to license, permit, consent and registration renewal extensions, and requiring at least 45 days notice for renewal following the COVID-19 emergency.

The Committee on Consumer Affairs and Business Licensing, to which the annexed proposed preconsidered and amended local law was referred on May 13, 2020, respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Consumer Affairs for Int. No. 1916-A printed in these Minutes)

The following is the text of the Fiscal Impact Statement for Int. No. 1940-A:



**THE COUNCIL OF THE CITY OF
NEW YORK**

FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR

FISCAL IMPACT STATEMENT

**PROPOSED PRECONSIDERED
INTRO 1940-A**

**COMMITTEE: Consumer Affairs and
Business Licensing**

SPONSORS: Council Members Matteo and Yeger.

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

SUMMARY OF LEGISLATION: This bill would require that the Mayor or his designee publish a list of any license, permit, consent or registration issued by a city agency that is not included within the scope the mayoral emergency executive order extending renewal dates during the pendency of the COVID-19 state of emergency and that all issuing agencies publish such list on their website no later than 14 days after the enactment date of this law. Additionally, this would require that any agency that administers any license, permit, consent or registration that has been extended by the same mayoral executive order shall not require such license, permit, consent or registration to be renewed for at least 45 days after it is no longer subject to such emergency executive order, during which time notice of the requirement to renew shall be provided on the website of such agency.

EFFECTIVE DATE: This local law would take effect immediately.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2021

FISCAL IMPACT STATEMENT:

	Effective FY20	FY Succeeding Effective FY21	Full Fiscal Impact FY21
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is estimated that there would be no impact on expenditures resulting from the enactment of this legislation.

IMPACT ON EXPENDITURES: It is estimated that there would not be an impact on expenditures resulting from the enactment of this legislation because the agencies responsible for carrying out its requirements would be able to use existing resources.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCES OF INFORMATION: New York City Council Finance Division
Mayor's Office of Legislative Affairs
Department of Consumer Affairs

ESTIMATE PREPARED BY: Sebastian Palacio Bacchi, Senior Financial Analyst

ESTIMATE REVIEWED BY: Nathaniel Toth, Deputy Director
John Russell, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: This legislation was introduced to the Council as Preconsidered Intro. on April 22, 2020 and was referred to the Committee on Consumer Affairs and Business Licensing (Committee). The Committee heard the legislation on April 29, 2020, and the legislation was laid over. The legislation was subsequently amended, and the amended version, Preconsidered Intro-A, will be considered by the Committee

on May 13, 2020. Upon a successful vote by the Committee, Preconsidered Intro-A will be introduced to the Council and submitted for a vote on May 13, 2020.

DATE PREPARED: May 5, 2020.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1940-A:)

Int. No. 1940-A

By Council Members Matteo, Yeger, Rosenthal, Lancman, Holden, Kallos and Menchaca.

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

Be it enacted by the Council as follows:

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

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

§ 2. This local law takes effect immediately.

ANDREW COHEN., *Chairperson*; MARGARET S. CHIN, PETER A. KOO, KAREN KOSLOWITZ, BRADFORD S. LANDER, JUSTIN BRANNAN, KALMAN YEGER; Committee on Consumer Affairs and Business Licensing, May 13, 2020 (Remote Hearing). *Other Council Members Attending: Council Member Gjonaj.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Housing and Buildings

Report for Int. No. 1936-A

Report of the Committee on Housing and Buildings in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to amending the definition of harassment to include threats based on a person having been impacted by COVID-19.

The Committee on Housing and Buildings, to which the annexed proposed amended local law was referred on April 22, 2020 (Minutes, page 859), respectfully

REPORTS:**INTRODUCTION**

On May 13, 2020, the Committee on Housing and Buildings, chaired by Council Member Robert Cornegy, Jr., held a hearing on Int. No. 1936-A, in relation to amending the definition of harassment to include threats based on a person having been impacted by COVID-19, which was first heard on April 28, 2020. More information about this bill, along with the materials for that hearing, can be found at <https://on.nyc.gov/3bkkNa9>.

Int. No. 1936-A

Int. No. 1936-A would expand the definition of tenant harassment to protect individuals who may be harassed due to their status as an essential employee or a person impacted by COVID-19, or whether they received a rent concession or forbearance for any rent owed during the COVID-19 crisis.

This legislation would take effect immediately.

Update

On Wednesday, May 13, 2020, the Committee adopted Int. No. 1936-A by a vote of nine in the affirmative, one in the negative, and zero abstentions.

The following is the text of the Fiscal Impact Statement for Int. No. 1936-A:



THE COUNCIL OF THE CITY OF NEW YORK FINANCE DIVISION

LATONIA MCKINNEY, DIRECTOR

FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 1936-A

COMMITTEE: Housing and Buildings

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to amending the definition of harassment to include threats based on a person having been impacted by COVID-19.

SPONSORS: By Council Members Torres, the Speaker (Council Member Johnson), Kallos, Van Bramer, Chin, Powers, Rivera, Louis and Rosenthal.

SUMMARY OF LEGISLATION: Proposed Int. No. 1936-A would amend the definition of harassment in the Housing Maintenance Code to include threats based on a person having been impacted by COVID-19, including: having been diagnosed with or experiencing symptoms of COVID-19, having a member of such person’s household diagnosed with COVID-19, providing care for a person diagnosed with COVID-19, unemployment as a result of the COVID-19 pandemic, status as an essential employee, or receipt of a rental concession or forbearance for any rent owed during the COVID-19 period. These protections would be established for individuals impacted by COVID-19 between March 7, 2020 and the later of the expiration of the Governor’s executive order issuing a moratorium on enforcement of residential evictions (Executive Order No. 202.8) and extended thereafter, or September 30, 2020.

EFFECTIVE DATE: This local law would take effect immediately.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2021

FISCAL IMPACT STATEMENT:

	Effective FY20	FY Succeeding Effective FY21	Full Fiscal Impact FY21
Revenues	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is estimated that there would be no impact on revenues resulting from the enactment of this legislation because full compliance with the legislation is anticipated.

IMPACT ON EXPENDITURES: It is anticipated that there would be no impact on expenditures resulting from the enactment of this legislation because existing resources would be used by the Department of Housing Preservation and Development (HPD) to implement the provisions of this local law and non-City entities would bear the costs of any penalties in connection with tenant harassment actions pursuant to the legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A**SOURCE OF INFORMATION:** New York City Council Finance Division**ESTIMATE PREPARED BY:** Sarah Gastelum, Principal Financial Analyst**ESTIMATED REVIEWED BY:** Chima Obichere, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: This legislation was introduced to the full Council as Int. No. 1936 on April 22, 2020 and was referred to the Committee on Housing and Buildings (Committee). A joint hearing was held by the Committee and the Committee on Consumer Affairs and Business Licensing on April 28, 2020, and the bill was laid over. The legislation was subsequently amended and the amended version, Proposed Intro. No. 1936-A, will be considered by the Committee on May 13, 2020. Following a successful vote by the Committee, Proposed Intro. No. 1936-A will be submitted to the full Council for a vote on May 13, 2020.

DATE PREPARED: May 7, 2020.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1936-A:)

Int. No. 1936-A

By Council Members Torres, the Speaker (Council Member Johnson), Kallos, Van Bramer, Chin, Powers, Rivera, Louis, Rosenthal, Vallone, Lancman, Constantinides and Menchaca.

A Local Law to amend the administrative code of the city of New York, in relation to amending the definition of harassment to include threats based on a person having been impacted by COVID-19

Be it enacted by the Council as follows:

Section 1. Subparagraph f-4 of paragraph 48 of subdivision a of section 27-2004 of the administrative code of the city of New York, as added by local law number 163 for the year 2017, is amended to read as follows:

f-4. repeatedly contacting or visiting any person lawfully entitled to occupancy of such unit (i) on Saturdays, Sundays or legal holidays, (ii) at times other than the hours between 9 a.m. and 5 p.m. or (iii) in such a manner as can reasonably be expected to abuse or harass such person, provided that if such person has notified such owner in writing that such person consents to being contacted or visited at specified hours or in a specified manner, such owner may also contact or visit such person during such specified hours and in such specified manner, and provided further that an owner may contact or visit such person for reasons specifically authorized or mandated by law or rule; [or]

§ 2. Subparagraph f-6 of paragraph 48 of subdivision a of section 27-2004 of the administrative code of the city of New York, as added by local law number 48 for the year 2018, is amended to read as follows:

f-6. requesting identifying documentation for any person lawfully entitled to occupancy of such dwelling unit that would disclose the citizenship status of such person, when such person has provided the owner with a current form of government-issued personal identification, as such term is defined in section 21-908, unless such documentation is otherwise required by law or is requested for a specific and limited purpose not inconsistent with this paragraph[.]; *or*

§ 3. Paragraph 48 of subdivision a of section 27-2004 of the administrative code of the city of New York is amended by adding a new subparagraph f-7 to read as follows:

f-7. threatening any person lawfully entitled to occupancy of such dwelling unit based on such person's actual or perceived status as an essential employee, status as a person impacted by COVID-19, or receipt of a rent concession or forbearance for any rent owed during the COVID-19 period; provided that for the purposes of this subparagraph:

(1) the term "COVID-19" means the 2019 novel coronavirus or 2019-nCoV;

(2) the term "COVID-19 period" means March 7, 2020 through the later of (i) the end of the first month that commences after the expiration of the moratorium on enforcement of evictions of any tenant residential or commercial set forth in executive order number 202.8, as issued by the governor on March 20, 2020 and extended thereafter or (ii) September 30, 2020, inclusive;

(3) the term "essential employee" means a person employed by or permitted to work at or for a business classified as an essential business by the New York state department of economic development in accordance with executive order number 202.6, as issued by the governor on March 18, 2020 and extended thereafter; and

(4) the term "person impacted by COVID-19" means a person who has experienced one or more of the following:

(i) such person was diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(ii) a member of such person's household was diagnosed with COVID-19;

(iii) such person was providing care for a family member or a member of such person's household who was diagnosed with COVID-19;

(iv) such person became unemployed, partially unemployed, or could not commence employment as a direct result of COVID-19 or the state disaster emergency declared in executive order number 202, as issued by the governor on March 7, 2020; or

(v) such person became primarily responsible for providing financial support for the household of such person because the previous head of the household died as a direct result of COVID-19;

§ 4. This local law takes effect immediately.

ROBERT E. CORNEGY, Jr., *Chairperson*; FERNANDO CABRERA, MARGARET S. CHIN; HELEN K. ROSENTHAL, RITCHIE J. TORRES, BARRY S. GRODENCHIK, BILL PERKINS, MARK GJONAJ, CARLINA RIVERA, FARAH N. LOUIS; Committee on Housing and Buildings, May 13, 2020 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Small Business

Report for Int. No. 1898-A

Report of the Committee on Small Business in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining.

The Committee on Small Business to which the annexed proposed amended local law was referred on February 27, 2020 (Minutes, page 669), respectfully

REPORTS:

I. INTRODUCTION

On May 13, 2020, the Committee on Small Business, chaired by Council Member Mark Gjonaj, held a vote on four bills designed to help small businesses in the City weather the negative impacts of the COVID-19 outbreak: (1) Int. No. 1898-A by Council Members Gjonaj and Moya, a local law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining; (2) Int. No. 1908-B by Council Members Moya and Gjonaj, a local law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining; (3) Int. No. 1914-A by Council Member Adams and the Speaker (Council Member Johnson), a local law to amend the administrative code of the city of New York, in relation to harassment of commercial tenants impacted by COVID-19; and (4) Int. No. 1932-A by Council Member Rivera and the Speaker (Council Member Johnson), a local law to amend the administrative code of the city of New York, in relation to personal liability provisions of leases for commercial tenants impacted by COVID-19. At the vote on May 13, the Committee voted 5 in favor 0 opposed and 0 abstentions on the bills.

The Committee previously heard testimony on these bills during a joint hearing on April 29, 2020, with the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Andrew Cohen. Those who testified included representatives from the New York City Department of Small Business Services (SBS), representatives from the Department of Consumer and Worker Protection (DCWP) (formerly the Department of Consumer Affairs), representatives from third-party delivery platforms, small business advocates, chambers of commerce, Business Improvement Districts (BIDs), and other community-based non-profit organizations.

II. BACKGROUND

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization (WHO) declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern (PHEIC).¹ COVID-19 has infected 4.2 million people across 212 countries, and has killed over 288,000 people as of May 12, 2020.²

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

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

In New York, Governor Andrew Cuomo issued an executive order – New York State on PAUSE (PAUSE) – that closed all on-site, non-essential businesses, effective March 22, 2020, to help stop the spread of SARS-CoV-2.³ The list of essential businesses that are still permitted to operate, to some degree, include:

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

² Worldometer “Countries where COVID-19 has spread”, April 22, 2020, available at: <https://www.worldometers.info/coronavirus/countries-where-coronavirus-has-spread/>.

³ Governor Andrew Cuomo “Governor Cuomo signs the ‘New York State on PAUSE’ executive order”, March 20, 2020, available at: <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

- Health care operations – such as hospitals, medical labs, walk-in clinics, home healthcare, elder care, veterinaries, nursing homes, licensed mental health providers, and medical billing support personnel.
- Infrastructure – such as airports, public utilities, hotels, commercial shipping ports, and telecommunications.
- Manufacturing – such as food processing, pharmaceuticals, automobiles, household paper products, and chemicals.
- Retail – such as grocery stores, pharmacies, farmer’s markets, gas stations, restaurants (for take-out and delivery only), and convenience, hardware and pet food stores.
- Services – such as laundromats, postal services, trash and recycling collection, bicycle and automotive repair, funeral homes, and animal shelters.
- Financial Institutions – such as banks and lending institutions, insurance companies, and accounting firms.
- Human Services Providers – such as food banks, homeless shelters and community care programs.
- Construction – insofar that it supports affordable housing, hospitals, roads, transit facilities, homeless shelters or schools.
- Public Health and Safety – such as law enforcement, fire and emergency services, building cleaners or janitors, and residential moving services.
- Logistical, Technological and Child Care Services – such as technology support for online services, child care programs, government owned or leased buildings and essential government services.
- Recreation – such as parks and open spaces (not including playgrounds), and boatyards and marinas.
- Professional Services – such as lawyers and real estate services.
- News Media; and
- Defense.⁴

Although this list covers a range of industries that are permitted to operate during PAUSE, a large proportion of New York’s small (and large) businesses have still had to severely reduce their capacities. According to an analysis by the NYC Comptroller, the City’s hotels are projected to only maintain an occupancy rate of 20 percent, while restaurant sales are expected to drop by a staggering 80 percent. Real estate and retail sales are both expected to decline by 20 percent.⁵

These figures for the restaurant industry reflect the results of a recent survey by the New York State Restaurant Association. According to their findings, sales have declined by 79 percent, and New York State restaurants are expected to lose \$3.6 billion in sales revenue, in April alone.⁶ Just over half (51 percent) of all restaurants have been able to move their operations online, and unemployment rates in this sector have skyrocketed, as 80 percent of restaurant workers have lost their jobs.⁷

Restrictions similar to PAUSE have been implemented across the country, which has caused a massive reduction in the number of small businesses operating. In their survey of small businesses (under 500 employees), the National Bureau of Economic Research found that 43 percent of businesses had closed due to COVID-19 and that they had reduced their staff by about 40 percent since January 2020.⁸ The results were more severe in the Mid-Atlantic region, which includes New York, where 57 percent of businesses were closed, and

⁴ Empire State Development “Guidance for determining whether a business enterprise is subject to a workforce reduction under recent executive orders”, April 19, 2020, available at: <https://esd.ny.gov/guidance-executive-order-2026>, last accessed April 22, 2020.

⁵ New York City Comptroller Scott M. Stringer “Comptroller Stringer: City must take immediate action to prepare for economic impacts of COVID-19 and protect vital services for most vulnerable New Yorkers”, March 16, 2020, available at: <https://comptroller.nyc.gov/newsroom/comptroller-stringer-city-must-take-immediate-action-to-prepare-for-economic-impacts-of-covid-19-and-protect-vital-services-for-most-vulnerable-new-yorkers/>.

⁶ New York State Restaurant Association “Restaurant industry impact survey: New York State”, April, 2020, available at: https://www.nysra.org/uploads/1/2/1/3/121352550/restaurant_industry_impact_survey_new_york_state_2.pdf.

⁷ Id.

⁸ Alexander W. Bartik et al. “How are small businesses adjusting to Covid-19? Early evidence from a survey”, *National Bureau of Economic Research*, April 2020, available at: <https://www.nber.org/papers/w26989.pdf>.

staff employment decreased by 47 percent.⁹ According to the survey's conclusion, about 20 percent of the nation's employees work in "retail trade, leisure and hospitality and these sectors are particularly vulnerable to the current pandemic."¹⁰

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

The nation's economy is dependent on its small businesses. There are approximately 27 million of these businesses across the country and they are responsible for employing 57 million workers.¹¹ When including the owners of these businesses, in addition to employees, that total comes to an estimated 85 million people.¹² According to the Small Business Administration, small businesses are responsible for creating two-thirds of the Country's new jobs.¹³ Given their vital role, it is crucial that they are either given alternative means to operate, in as lucrative a manner as possible, throughout the COVID-19 crisis, and/or are provided the necessary support to restart their operations once social distancing measures have been lifted.

Federal Government Assistance

During this crisis, small businesses in New York City may apply for various assistance programs including funding distributed by the federal government through its Small Business Administration (SBA). These programs include the Paycheck Protection Program (PPP),¹⁴ the Economic Injury Disaster Loan and Advance (EIDL) and the SBA Express Bridge Loans and Debt Relief programs. The federal government has also temporarily increased the unemployment insurance stipend that laid-off or furloughed workers may receive, which may have implications for the workforce of some small businesses.

Paycheck Protection Program

The Coronavirus, Aid, Relief, and Economic Security Act (CARES ACT) originally allocated about \$349 billion in federal funds for PPP, with an additional \$322 billion authorized by Congress in late April.¹⁵ The program provides various types of employers, including small businesses, nonprofits, self-employed individuals and independent contractors, access to loans to cover payroll costs of up to \$100,000 per employee, rent and mortgage interest prior to February 15, 2020, and utilities. Loans are calculated per employer or per location, and may be as high as 2.5 times the average monthly payroll for the one-year period before the loan application is submitted, to a cap of \$10 million. Loans are calculated differently for seasonal and new employers. Employers of fewer than 500 workers may apply for these loans through a network of banks ranging from large to smaller banks.¹⁶ Banks may not require applicants to supply collateral or personal guarantees, and applicants may only apply for one PPP loan.

⁹ <https://www.nber.org/papers/w26989.pdf>.

¹⁰ Id.

¹¹ Information Station "How important are small businesses?", January 3, 2017, available at: https://informationstation.org/video/how-important-are-small-businesses/?utm_source=google&utm_medium=cpk&gclid=EAIaIQobChMI-Ymy3df86AIVGozICh0QRQPPrEAAAYASAAEgI7ivD_BwE.

¹² Id.

¹³ United States Small Business Administration "Small Businesses generate 44 percent of U.S. economic activity", January 30, 2019", available at: <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

¹⁴ United States Small Business Administration "Paycheck Protection Program", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp> (last visited on April 9, 2020).

¹⁵ Emily Cochrane and Jim Tankersley "Senate approves aid for small-business loan program, hospitals and testing", April 21, 2020, *New York Times*, available at: <https://www.nytimes.com/2020/04/21/us/politics/congress-business-relief-ppp.html>.

¹⁶ In the recent funding allocation, \$60 billion was set aside for lenders with less than \$50 billion in assets. See Aaron Gregg and Renae Merle "How to get a small-business loan under the new \$484 billion coronavirus aid package", April 23, 2020, *The Washington Post*, available at: <https://www.washingtonpost.com/business/2020/04/22/small-business-loan-faq>.

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

*Economic Injury Disaster Loan and Advance*¹⁷

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

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

*SBA Express Bridge Loans*¹⁸ and *Debt Relief*¹⁹

The CARES Act allocated funds for SBA's Express Bridge Loan program and their Debt Relief program. The Express Bridge Loan program quickly provides funds of up to \$25,000 for businesses eligible for SBA's 7(a) loans to overcome a temporary loss of revenue. SBA's Debt Relief program allows businesses that are eligible for SBA's 7(a), 504 and microloans to receive limited payment of principal, interest and fees on these loans. The 7(a), 504 and microloans are SBA's standard small business loan programs, which were established before the onset of COVID-19. The 7(a) loans are available for general business purposes, such as working capital, equipment, furniture, and land and building.²⁰ They are provided through a lender.²¹ The 504 loans are issued by Certified Development Companies for long-term, fixed-asset financing for small businesses, such as the purchase and improvement of land and buildings.²² Microloans are temporary, short-term loans of up to \$50,000 to small businesses for general business purposes, and are offered by nonprofits.²³

The federal government's PPP program, although heavily utilized, has raised some concerns. As of April 13, 2020, the program had issued about 1,661,367 loans totaling over \$342 billion, with over 4,975 lenders participating.²⁴ However, a recent ranking of businesses receiving loans as a percentage of each state's eligible payroll revealed that New York State placed second to last, with only 23.1 percent of eligible businesses

¹⁷ United States Small Business Administration "Economic injury disaster loan emergency advance", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance> (last visited on April 9, 2020).

¹⁸ United States Small Business Administration "SBA Express Bridge Loans", available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-express-bridge-loans> (last visited on April 9, 2020).

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

²⁰ United States Small Business Administration Office of Financial Assistance: Resources, 7(a) Loans", available at: <https://www.sba.gov/offices/headquarters/ofa/resources/11428> (last visited on April 9, 2020).

²¹ Id.

²² United States Small Business Administration "Office of Financial Assistance: Resources, 504 Loans", available at: <https://www.sba.gov/offices/headquarters/ofa/resources/4049> (last visited on April 9, 2020).

²³ See 13 CFR § 120.2 for the definition of this and other, traditional SBA loan programs.

²⁴ United States Small Business Administration "Paycheck Protection Program (PPP) Report: Approvals through 4/16/20", available at: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>.

receiving a loan.²⁵ By contrast, Nebraska and North Dakota reached 74.7 percent and 71.5 percent respectively.²⁶ Further, some industries fared better than others, with the construction industry receiving the highest percentage of loans (13 percent) and restaurants receiving less than nine percent,²⁷ despite representing about 14 percent of companies employing under 500 people.²⁸ Of the restaurants who received loans, some reports allege that too many have gone to large chains, and a handful of these companies have received blowback for accepting loans. A Reuters article claimed that 25 percent of the initial \$350 billion allocated to SBA loan programs went to fewer than two percent of the firms that got relief, with some of these being large, publicly-traded companies with “thousands of employees and hundreds of millions of dollars in annual sales.”²⁹ Among these companies is the Ruth’s Hospitality Group (owns 150 Ruth’s Chris Steak Houses), Potbelly (\$409.7 million in sales and 6,000 employees) and Shake Shack (8,000 employees). Both Ruth’s Hospitality Group³⁰ and Shake Shack have agreed to return their loans, the latter of which citing an ability to raise the funds through other means.³¹ Similarly, dozens of large companies with financial or legal problems have reportedly received significant loans through the program, according to an analysis of 200 publicly-traded companies that reported receiving a total of \$750 million through PPP.³² Since it became known that large companies had been benefitting from PPP, the SBA published additional guidance emphasizing that businesses may only apply for the loan if, in good faith, they can certify that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant,” and that public companies with “substantial market value” are unlikely to be able to make such a certification.³³ Companies who received the loan before this guidance and repay it before May 7, 2020 will be deemed to have certified in good faith.³⁴

The manner in which PPP was offered to the public and the complexity of its terms and conditions may have contributed to a lack of success for many small business owners. Although the program began accepting applications on Friday, April 3, 2020, some large banks refused to participate at first, citing a lack of guidance from the federal government.³⁵ When more banks did begin to accept applications, there was confusion regarding what conditions the banks could apply. SBA authorized a last-minute raise from half a percent to a one percent interest rate, reportedly to address concerns from banks about being unable to service the loans at an interest rate of only half a percent.³⁶ Further, some large banks attached unexpected conditions to their applications, like

²⁵ Zachary Mider and Cedric Sam “Small-business rescue shows not all states are created equal”, updated April 20, 2020, *Bloomberg*, available at: <https://www.bloomberg.com/graphics/2020-sba-paycheck-protection-program/>.

²⁶ *Id.*

²⁷ United States Small Business Administration “Paycheck Protection Program (PPP) Report: Approvals through 4/16/20”, available at: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>.

²⁸ Andy Sullivan, Howard Schneider and Ann Saphir “Main street bailout rewards U.S. restaurant chains, firms in rural states”, April 17, 2020, *Reuters*, available at: <https://www.reuters.com/article/us-health-coronavirus-usa-lending-analys/main-street-bailout-rewards-us-restaurant-chains-firms-in-rural-states-idUSKBN21Z3FL>.

²⁹ *Id.*

³⁰ Peter Rudegeair, Heather Haddon and Ruth Simon “Ruth’s Chris to repay loan amid outcry over rescue program”, updated April 23, 2020, *The Wall Street Journal*, available at: <https://www.wsj.com/articles/public-companies-have-to-repay-small-business-rescue-loans-11587670442>.

³¹ Luisa Beltran “Restaurant chains received many of the biggest PPP loans”, updated April 23, 2020, *Barron’s*, available at: <https://www.barrons.com/articles/restaurant-chains-received-many-of-the-biggest-ppp-loans-51587573556>.

³² Jessica Silver-Greenberg, David Enrich, Jesse Drucker and Stacy Cowley “Large, troubled companies got bailout money in small-business loan program”, April 26, 2020, *The New York Times*, available at: <https://www.nytimes.com/2020/04/26/business/coronavirus-small-business-loans-large-companies.html>.

³³ United States Small Business Administration “Paycheck Protection Program Loans: Frequently Asked Questions (FAQs)” updated April 23, 2020, <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

³⁴ *Id.*

³⁵ Brian Thompson “No small-business relief yet: False start on Paycheck Protection Program loans”, April 3, 2020, *Forbes*, available at: <https://www.forbes.com/sites/brianthompson/2020/04/03/no-small-business-relief-yet-false-start-on-paycheck-protection-program-loans/#163172d034c4>.

³⁶ “SBA increases rate, clarifies terms on Paycheck Protection Program loans”, *ABA Banking Journal*, April 2, 2020, <https://bankingjournal.aba.com/2020/04/treasury-sba-to-increase-rate-on-paycheck-protection-program-loans/>; Michela Moscuro “How to get, and give, Paycheck Protection Program loans through the SBA”, April 3, 2020, *Forbes*, available at: <https://www.forbes.com/sites/michelamoscufo/2020/04/03/how-to-get-and-give-paycheck-protection-program-loans-through-the-sba/#3f766faa27e8>.

having a previous banking relationship with them before February 15, 2020.³⁷ A few weeks after the lending program began, it ran out of funds,³⁸ seemingly validating concerns from some experts that the program was not sufficiently well-funded, or disbursing funds quickly enough.³⁹

The federal government's EIDL program quickly experienced funding shortages as well. For many applicants, a cap of \$2 million per borrower was significantly reduced to \$15,000.⁴⁰ Furthermore, although the program was touted as featuring a quick turnaround on payments, many applicants waited weeks for approval and found that the amount disbursed to them was much less than the initial approval amount.⁴¹ In a survey of 885 small business owners conducted by the National Federation of Independent Business the day after the SBA's EIDL and PPP programs ran out of funds, 80 percent were still waiting to hear about their loan applications.⁴²

Immigrant communities in NYC may have had even more difficulty applying to and obtaining federal funds, which would considerably impact the City's economy. Immigrant workers make up 45 percent of the city's workforce⁴³ and own one-half of New York City's businesses.⁴⁴ In some neighborhoods, immigrant-owned businesses employ up to 42 percent of the neighborhood population.⁴⁵ Yet, there have been questions surrounding whether undocumented immigrants can be eligible for the PPP program, since it requires an Employee Identification Number or Social Security Number on its program application.⁴⁶ The application originally required business owners to be U.S. citizens or permanent residents.⁴⁷ In the past, SBA placed additional restrictions and requirements on access to loans for non-citizens.⁴⁸

In addition, certain features of the federal government's PPP program may disproportionately disadvantage minority business owners from obtaining loans. A loophole allowing bank servicers to prefer businesses with a previous lending relationship may lead to the exclusion of many minority businesses.⁴⁹ Many microbusinesses in New York City may have not previously applied for loans or lines of credit, and therefore may not have

³⁷ See e.g. Bank of America "Small Business Administration Paycheck Protection Program application" available at: <https://about.bankofamerica.com/promo/assistance/latest-updates-from-bank-of-america-coronavirus/small-business-assistance>, (last visited April 8, 2020); JPMorgan Chase & Co "Paycheck Protection Programs FAQs & useful tips", available at: <https://recovery.chase.com/cares1/ppp-faqs#accordion-1586386467723-1-panel>, (last visited April 8, 2020); and Wells Fargo "Small Business Administration Paycheck Protection Program", available at: <https://update.wf.com/coronavirus/paycheckprotectionprogram/>, (last visited April 8, 2020).

³⁸ Stephen Gandel "Paycheck Protection Program out of money: Thousands of small businesses shut out", CBS News, April 16, 2020, available at: <https://www.cbsnews.com/news/paycheck-protection-program-out-of-money-small-businesses-shut-out>.

³⁹ Jim Tankersley "Virus throws millions out of work, and Washington struggles to keep pace", April 9, 2020 *The New York Times*, available at: <https://www.nytimes.com/2020/04/09/business/coronavirus-unemployment-washington.html?action=click&module=Top%20Stories&pgtype=Homepage>.

⁴⁰ Stacy Cowley "Small Businesses Wait for Cash as Disaster Loan Program Unravels", April 9, 2020, *The New York Times*, available at: <https://www.nytimes.com/2020/04/09/business/smallbusiness/small-business-disaster-loans-coronavirus.html>.

⁴¹ Id.

⁴² National Federation of Independent Business "80% of PPP applicants are still urgently waiting for financial assistance" April 20, 2020, available at: <https://www.nfib.com/content/press-release/economy/80-of-ppp-applicants-are-still-urgently-waiting-for-financial-assistance>.

⁴³ Mayor's Office of Immigrant Affairs "State of Our Immigrant City: Annual Report", March 15, 2018, available at: <https://www1.nyc.gov/assets/immigrants/downloads/pdf/annual-report-2018.pdf>.

⁴⁴ Id.

⁴⁵ Lena Afridi "The Displacement Crisis of Immigrant-Owned Small Businesses", February 15, 2018, *Shelter Force*, available at: <https://shelterforce.org/2018/02/15/displacement-crisis-immigrant-owned-small-businesses/>.

⁴⁶ United States Small Business Administration "Paycheck Protection Program: Borrower application form", effective April 3, 2020, available at: <https://www.sba.gov/sites/default/files/2020-04/PPP-Borrower-Application-Form-Fillable.pdf>.

⁴⁷ See Emily Guerin "Massive Federal Loan Program for Small Businesses Off to Rocky Start", April 3, 2020, *LAist*, <https://laist.com/2020/04/03/small-business-ppp-paycheck-protection-program-loans-stimulus-coronavirus.php>.

⁴⁸ See United States Small Business Administration "SBA Eligibility Questionnaire, for Standard 7(a) Guaranty", available at: https://www.sba.gov/sites/default/files/bank_eligibility_questionnaire_0.pdf; and Kimberly Rotter and Dawn Papandrea "What Are SBA Loan Requirements?", February 28, 2020, *U.S. News & World Report*, available at: <https://loans.usnews.com/complete-list-of-sba-loan-requirements>.

⁴⁹ Mary Alice Parks "Minority-owned small businesses face unique, steep hurdles amid coronavirus cash crunch", April 8, 2019, *ABC News*, available at: <https://abcnews.go.com/Health/minority-owned-small-businesses-face-unique-steep-hurdles/story?id=70011898>.

relationships with local banks.⁵⁰ The Congressional Black Caucus has recognized the “history and legacy” of racial inequality in the banking system, and as banks default to lending to businesses to which they have lent money before, minority-owned businesses could be disproportionately denied and excluded.⁵¹

For those with access to COVID-19 funding programs, there are drawbacks to consider. Although the federal government’s PPP program offers loan forgiveness, there are significant conditions to satisfy. Seventy-five percent of the PPP loan’s forgiven amount must be spent on payroll costs, a condition that appears to have taken shape late in the process.⁵² If 75 percent of the forgiven amount must be spent on payroll costs, that may leave less for businesses to spend on obligations such as rent and utilities, which may be disproportionately higher in our City.⁵³ Some businesses may decide, and some have decided, that the program is too risky, or that it is more valuable to their employees to lay them off, so that employees may collect a higher salary through the federal government’s expanded unemployment insurance program.⁵⁴ If a business does not qualify for full forgiveness of the loan, PPP requires the small business owner to pay off the loan within two years, after a six-month deferral.⁵⁵ Small businesses in the City may be concerned about being able to pay back these loans, and about being burdened with more debt.

For many small businesses in the City, dealing with an unpredictable and contagious virus that has already significantly disrupted the ability of many to earn revenue makes borrowing money a risky endeavor. With the exception of SBS’s Employee Retention Grant Program, which was only available for the smallest of City businesses (1-4 employees), almost all the funding available to businesses have taken the form of loans. There are concerns about whether the City’s economy will strengthen quickly enough to satisfy the terms of these loans, and businesses might struggle to pay off additional debt (even at low or no interest rates) after this sustained period of closure and reduced income. A 2019 survey conducted by the Federal Reserve found that as many as 70 percent of small businesses have outstanding debt.⁵⁶ Similarly, a 2016 JPMorgan study concluded that most small businesses did not have enough cash reserves to carry them through a significant economic downturn, with the median independent restaurant having only enough extra cash to last them 16 days.⁵⁷

New York State Assistance

In addition to closing 100 percent of non-essential businesses statewide, the PAUSE executive order provides a 90-day moratorium on residential and commercial evictions.⁵⁸ Since commercial rent is typically the largest cost and greatest concern for business owners,⁵⁹ the 90-day moratorium provides short-term relief to

⁵⁰ Id.

⁵¹ Id.

⁵² United States Small Business Administration “Interim Final Rule: Business Loan Program Temporary Changes; Paycheck Protection Program”, Issued April 2, 2020, available at: <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>.

⁵³ Greg Iacurci “Your Forgivable Loan May Be Undercut by This Provision of the Paycheck Protection Program”, updated April 9, 2020, *CNBC*, available at: <https://www.cnn.com/2020/04/07/this-part-of-paycheck-protection-program-could-reduce-forgivable-loans.html>.

⁵⁴ Jim Tankersley “Virus Throws Millions Out of Work, and Washington Struggles to Keep Pace”, April 9, 2020, *The New York Times*, available at: <https://www.nytimes.com/2020/04/09/business/coronavirus-unemployment-washington.html?action=click&module=Top%20Stories&pgtype=Homepage>.

⁵⁵ United States Small Business Administration “Paycheck Protection Program”, available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

⁵⁶ Federal Reserve Banks “Small Business Credit Survey: 2019 Report on Employer Firms”, available at: <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf>. Also see Bridget Bartolini “City’s Small Businesses Need Rent Stabilization to Survive COVID-19, Advocates Say”, April 6, 2020, *City Limits*, available at: <https://citylimits.org/2020/04/06/citys-small-businesses-need-rent-stabilization-to-survive-covid-19-advocates-say>.

⁵⁷ See Bridget Bartolini, id.

⁵⁸ Governor Andrew M. Cuomo “Video, Audio, Photos & Rush Transcript: Governor Cuomo Signs the “New York State on Pause” Executive Order”, March 20, 2020, <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-cuomo-signs-new-york-state-pause-executive-order>.

⁵⁹ Association for Neighborhood & Housing Development “The Forgotten Tenants: New York City’s Immigrant Small Business Owners”, March, 2019), available at: <https://anhd.org/report/forgotten-tenants-new-york-city-immigrant-small-business-owners>.

businesses. The Governor’s moratorium on commercial rent is only for a 90-day period, however, and there is currently little guidance over whether evictions will resume after the 90 days is over.

Beyond the Governor’s Executive Order pausing commercial evictions, New York State is not currently administering any specific programs to provide relief to small businesses. NYS’s Empire State Development (ESD) has information on its website about the SBA’s COVID-19 loan programs, including resources on how businesses can apply for relief.⁶⁰ ESD’s website directs businesses to other existing relief efforts as well, such as a pro bono legal advice service for small businesses applying for the Paycheck Protection Program.⁶¹

New York City Assistance

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

Small Business Services

On March 8th, Mayor de Blasio announced that SBS would create two financial relief programs, the Employee Retention Grant Program and Small Business Continuity Loan Fund, to provide financial relief to small businesses during the crisis.⁶² To qualify for either program, businesses were required to provide documentation proving that over a two-month period in 2020 their revenues decreased by 25 percent due to COVID-19.⁶³ Businesses with fewer than five employees were eligible for the Employee Retention Grant Program, which provided a grant covering up to 40 percent of a business’s payroll for two months, with a maximum amount of \$27,000.⁶⁴ On April 3rd, SBS stopped accepting applications to the grant program.⁶⁵ The Small Business Continuity Loan Fund provided a zero-interest loan to businesses with fewer than 100 employees for up to \$75,000.⁶⁶ As of April 8th, SBS paused application intake for the loan fund due to an overwhelming number of applications. Accordingly, small businesses in NYC can now only apply to the SBA programs to receive necessary financial relief.⁶⁷

According to SBS, the NYC Employee Retention grant program provided assistance to 1,200 small businesses. SBS allocated \$10 million to the program, and small businesses received an average amount of \$7,800.⁶⁸ SBS is expecting to give out \$20 million in loans through the Small Business Continuity Loan Fund. Before the fund closed online applications on April 5th, over 15,000 businesses initially applied, and 8,500 businesses completed applications.⁶⁹

⁶⁰ Empire State Development “Apply for Small Business Administration (SBA) COVID-19 Loans”, available at: <https://esd.ny.gov/small-business-administration-sba-covid-19-loans>.

⁶¹ Id.

⁶² Office of the Mayor “Mayor de Blasio Provides Updates on New York City’s COVID-19 Response”, March 8, 2020, available at: <https://www1.nyc.gov/office-of-the-mayor/news/124-20/mayor-de-blasio-provides-on-new-york-city-s-covid-19-response>.

⁶³ Id.

⁶⁴ NYC Department of Small Business Services “NYC Employee Retention Grant Program”, (as of April 2, 2020), available at: <https://www1.nyc.gov/nycbusiness/article/nyc-employee-retention-grant-program>. Program information is still available at: https://www.paulweiss.com/media/3979874/nyc2-employee-retention-grant-program-summary_4-6.pdf.

⁶⁵ Id.

⁶⁶ NYC Department of Small Business Services “NYC Small Business Continuity Loan Program”, (as of April 7, 2020) available at: <https://www1.nyc.gov/nycbusiness/article/nyc-small-business-continuity-loan-program>. Program Information still available at: <https://www.natlawreview.com/article/nyc-financial-assistance-businesses-impacted-covid-19>

⁶⁷ Id.

⁶⁸ Sophia Chang, “Funds Are Coming For Small Businesses, But Some Will Have To Wait”, April 1, 2020, *Gothamist*, available at: <https://gothamist.com/news/funds-are-coming-small-businesses-some-will-have-wait>.

⁶⁹ Id.

However, some city advocates have raised concerns about access to these funds. SBS was swift to offer their grant and loan programs, acting quickly to bridge an important funding gap before the federal government established their own, but the rollout was flawed. The program initially required business owners to supply documentation demonstrating a drop in revenue in the two consecutive months of 2020, when the full effects of COVID-19 were not yet felt by many businesses.⁷⁰ The program eventually allowed business owners to supply information for March 2020, which may have allowed many more business to be eligible.⁷¹ It was also unclear whether non-profit organizations were eligible for SBS's programs, until the website reflected that non-profits were eligible for the Employee Retention Grant Program, but not the Small Business Continuity Loan Fund.⁷² While applications were quickly accepted for the Employee Retention Grant Program, the Fund was not available for weeks afterward, and the website confusingly displayed a "Pre-Application" form that did not actually register anyone for consideration to receive funds.⁷³ Some users felt that SBS had not provided clear information on the terms of their programs, and that the online application process contained many technical glitches.⁷⁴ One user claimed to have lost her application entirely after the SBS website crashed.⁷⁵

Small business owners who are not conversant in English may have had difficulty understanding the terms and conditions, and how to apply to the programs, without materials available in other languages. SBS took weeks to translate application materials on their website, and even then only translated certain materials, with text on the website being translated by browser tools.⁷⁶ Further, it is unknown how much outreach was done to immigrant communities through representative organizations or otherwise.

Some critics felt that the requirements for the Employee Retention Grant Program were not inclusive enough. Eligibility was limited, with only the very smallest businesses employing 1-4 people able to receive a grant.⁷⁷ This may have excluded many restaurants, since they may typically employ more than four personnel, such as a manager, servers, bus staff, cooks and hosts.

In the midst of struggles and confusion regarding SBS's grant and loan programs, the programs abruptly ended without much notice.⁷⁸ This may have closed the door on many small businesses who had intended to apply for the programs, but did not have a chance to do so, or were not yet able to gather the necessary documentation materials. Some users claimed that SBS failed to communicate the most basic aspect of the

⁷⁰ Moshe Schulman, Alexis Percival and Patrick Cournot "The Paycheck Protection Program Is Failing: Small Businesses Such as Ours Won't Survive without a Lot More Help", April 16, 2020, *The Atlantic*, available at:

<https://www.theatlantic.com/ideas/archive/2020/04/relief-small-business/610066/>, ("Last month, de Blasio announced a \$75,000 interest-free loan available to local businesses that could prove a 25 percent decrease in sales over a two-month period in comparison with sales in the same two months in 2019. Only recently did we meet the threshold, since our drop-off was so sudden, starting in the second week of March, unlike restaurants in Chinatown, for instance, that closed in February. As of last week, applications were closed. Our attorneys think they can push ours through since they created an account in time, but the money is presumed to have dried up.")

⁷¹ See NYC Department of Small Business Services "Participation Affidavit", available at:

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

⁷² See NYC Department of Small Business Services "Assistance & Guidance for Businesses Impacted Due to Novel Coronavirus", available at: <https://www1.nyc.gov/site/sbs/businesses/covid19-business-financial-assistance.page> (last viewed on April 24, 2020). Page has since been updated to reflect the fact that the programs are no longer being offered.

⁷³ See id.

⁷⁴ Sophia Chang, "Funds Are Coming For Small Businesses, But Some Will Have To Wait", April 1, 2020, *Gothamist*, available at: <https://gothamist.com/news/funds-are-coming-small-businesses-some-will-have-wait>.

⁷⁵ Id.

⁷⁶ See NYC Department of Small Business Services "Assistance & Guidance for Businesses Impacted Due to Novel Coronavirus", available at: <https://www1.nyc.gov/site/sbs/businesses/covid19-business-financial-assistance.page> (last viewed on April 24, 2020). Page has since been updated to reflect the fact that the programs are no longer being offered, but materials had not been translated as of March 20, 2020. See also a tweet publicizing an SBS guide in languages other than English from NYC Mayor's Office of Immigrant Affairs, March 24, 2020, available at: <https://twitter.com/NYCImmigrants/status/1242484476057354240>. Re-tweeted by NYC Department of Small Business Services on March 24, 2020, available at: https://twitter.com/nyc_sbs.

⁷⁷ NYC Department of Small Business Services "NYC Employee Retention Grant Program", (as of April 2, 2020), available at: <https://www1.nyc.gov/nycbusiness/article/nyc-employee-retention-grant-program>. Program information is still available at: https://www.paulweiss.com/media/3979874/nyc2-employee-retention-grant-program-summary_4-6.pdf.

⁷⁸ Rachel Holliday Smith "Half a Billion Dollars' Needed from \$20M City Small Business Loan Pool", April 16, 2020, *The City*, available at: <https://thecity.nyc/2020/04/de-blasios-usd20m-nyc-small-business-loan-program-falls-short.html>.

programs: that funds were limited and that time was of the essence.⁷⁹ One user termed it a “lottery” and expressed frustration that business decisions were made based upon the programs’ promises.⁸⁰ According to one SBS loan processor, the programs may have had as much as half a billion dollars in loan requests, and only \$20 million in funds to provide.⁸¹ Despite getting at least 600 applications for the SBS loan program, the funding may have only been enough to provide loans for 250 to 400 businesses.⁸² Council Speaker Corey Johnson has called for an expansion of the program from a maximum of \$75,000 per business to \$250,000 per business.⁸³

Department of Consumer and Worker Protection

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

As the COVID-19 crisis continues to unfold, DCWP has announced several measures to assist small businesses by alleviating various regulatory burdens. In March 2020, DCWP ceased collecting sidewalk cafe consent fees that were due and, shortly thereafter, commenced refunds for restaurants that had already paid their fees.⁸⁴ Though sidewalk cafe consent fees vary depending on the size, location, and whether it is enclosed or unenclosed, they typically cost restaurants thousands of dollars.⁸⁵ There are approximately 1,400 sidewalk cafes in the City, representing an annual revenue of between \$11 million to \$12 million. Most restaurants pay these fees in a four-part installment plan over a one-year period at a monthly interest rate of 1.5 percent.⁸⁶ Three installments remain for the year, and restaurants could still be required to pay the remaining installments if the state of emergency is lifted. Given the significant losses many restaurants have suffered; some restaurants may not have the ability to cover any remaining payments that come due.

DCWP also extended renewal deadlines for most licenses that expire during the pendency of the state of the emergency.⁸⁷ The Mayor subsequently issued an emergency executive order extending deadlines for all city licenses and permits.⁸⁸ However, some city agencies still appear to be requiring businesses to renew their permits, creating some confusion in certain industries.⁸⁹

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

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ New York City Council “New York City Council Speaker Corey Johnson Proposes \$12 Billion Relief Plan to Help Workers and Businesses Impacted by COVID-19”, March 19, 2020, available at: <https://council.nyc.gov/press/2020/03/19/1888/>.

⁸⁴ Mayor’s Executive Emergency Order No. 105, April 4, 2020, available at:

<https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-105.pdf>.

⁸⁵ See NYC Department of Consumer Affairs “2018 consent fees for street space: For unenclosed and small unenclosed sidewalk café”, available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Consent-Fees.pdf>.

⁸⁶ R.C.N.Y. §2-45.

⁸⁷ NYC Department of Consumer Affairs “Does your consumer affairs license expire February through June 2020?”, available at:

<https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Does-Your-Consumer-Affairs-License-Expire-February-through-June-2020.pdf>.

⁸⁸ Mayor’s Emergency Executive Order No. 107, § 4, April 14, 2020, available at:

<https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-107.pdf>.

⁸⁹ See e.g. Department of Buildings, “COVID-19 Response: Administrative Enforcement (AEU)

and Licensing Units Updates,” available at: https://www1.nyc.gov/assets/buildings/pdf/covid19_aeu-licensing_response_sn.pdf.

also included information on state and federal employment laws.⁹⁰ However, some industries have criticized the Mayor for not suspending enforcement of the Fair Workweek and Temporary Schedule Change Laws entirely. The National Restaurant Association argued that businesses cannot afford premium pay for last minute schedule changes, which are necessary in light of employees falling ill and sudden decreased staffing needs.⁹¹

On March 17, 2020, DCWP promulgated an emergency Rule under the City’s Consumer Protection Law that makes price gouging illegal for any personal or household good or any service that is needed to prevent or limit the spread of or treat COVID-19.⁹² Leading up to the state of emergency, the agency received almost 1,000 complaints of price gouging on items such as hand sanitizer and masks. By April 8th, the Department had received more than 7,200 complaints and had issued 2,700 violations.⁹³ While many of these violations have been issued to egregious offenders,⁹⁴ some businesses have raised concerns that DCWP is failing to address price gouging in the supply chain by wholesalers.⁹⁵

c. Third-Party Delivery Services

Even before the COVID-19 outbreak, online delivery services – platforms such as Grubhub, Uber Eats, DoorDash or Postmates connecting consumers to delivery and take-out from a range of local restaurants – have been a popular way for consumers to dine. According to the survey by the National Restaurant Association, around 60 percent of consumers nationwide ordering takeout used a third-party delivery service.⁹⁶ The real estate research firm CBRE predicts that by 2022, 70 percent of online delivery sales will occur on a third-party delivery platform.⁹⁷

Restaurant owners may decide to list their businesses on third-party delivery services to expand their marketing and delivery services. Third-party delivery services have successfully driven web traffic to their own sites, making it less popular to order from restaurants directly. They can utilize Google ads to place themselves at the top of restaurant search results, and benefit from sophisticated search engine optimization, leaving restaurants’ websites buried low in the search results or in between ads for services like Uber Eats or DoorDash.⁹⁸ The platforms may integrate with other web services where related web traffic may be directed. Grubhub, for example, has established a partnership with Yelp to integrate their delivery service into Yelp restaurant listings, so that if a web user views a listing and chooses to order delivery through that listing, the order is placed through Grubhub.⁹⁹ Yelp also has an agreement to list a Grubhub-owned phone number for restaurants on its listings, so

⁹⁰ NYC Department of Consumer and Worker Protection “Update about Workplace Laws as NYC Seeks to Stop the Spread of the New Coronavirus (COVID-19)”, available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Complying-with-NYC-Workplace-Laws-During-COVID-19.pdf>.

⁹¹ Letter from Keith Stephenson, National Restaurant Association, to Mayor de Blasio (March 20, 2020), on file.

⁹² NYC Department of Consumer Affairs “Department of Consumer and Worker Protection issues emergency rule that makes price gouging illegal for any item or service needed to limit the spread of Coronavirus”, March 17, 2020, available at: <https://www1.nyc.gov/site/dca/media/pr031720-DCWP-Emergency-Rule-Price-Gouging-Illegal.page>.

⁹³ Priscilla DeGregory “NYC files law suits against stores for coronavirus price gouging”, April 8, 2020, *New York Post*, available at: <https://nypost.com/2020/04/08/nyc-files-lawsuits-against-stores-for-coronavirus-price-gouging/>.

⁹⁴ Andrew Denney “Coronavirus in NY: UES pharmacy fines for drastically marking up face masks”, March 25, 2020, available at: <https://nypost.com/2020/03/25/coronavirus-in-ny-ues-pharmacy-fined-for-dramatically-marking-up-face-masks/>.

⁹⁵ Priscilla DeGregory “NYC files law suits against stores for coronavirus price gouging”, April 8, 2020, *New York Post*, available at: <https://nypost.com/2020/04/08/nyc-files-lawsuits-against-stores-for-coronavirus-price-gouging/>.

⁹⁶ Hudson Riehle and Melissa Wilson, *Harnessing Technology to Drive Off-Premises Sales*, National Restaurant Association, (2019) https://www.restaurant.org/Downloads/PDFs/Research/research_offpremises_201910.

⁹⁷ Richard Barkham Et. al. 2019 *U.S. Food In Demand Series: Restaurants*, CBRE Research, (November 13, 2019), <http://cbre.vo.llnwd.net/grgservices/secure/US%20Food%20in%20Demand%20Restaurants%20November%202019.pdf?e=1580227024&h=921d142a16987e8b83de8d99d3cdeb8c>

⁹⁸ ChowNow, “Is Your Restaurant’s Search Engine Traffic Being Hijacked?”, July 2, 2019, available at: <https://get.chownow.com/blog/is-your-restaurant-search-engine-traffic-being-hijacked>.

⁹⁹ Grubhub, “Yelp and Grubhub Complete Online Ordering Integration”, March 19, 2018, available at: <https://media.grubhub.com/media/press-releases/press-release-details/2018/Yelp-and-Grubhub-Complete-Online-Ordering-Integration/default.aspx>.

that calls placed through the number may result in charges on the restaurant.¹⁰⁰ By contrast, smaller restaurants may not have the means to create their own apps or websites that drive web traffic to their own sites rather than to third-party delivery platforms,¹⁰¹ especially when faced with the sudden impacts of COVID-19. Further, if a restaurant does not have an agreement with a given third-party platform, that platform may act to redirect web traffic from the restaurant to others it partners with through the setup of a decoy page.¹⁰²

As expected, third-party platforms have reported a considerable uptick in order volume during the COVID-19 pandemic.¹⁰³ Grubhub's CEO Matt Maloney acknowledged that the pandemic has led Grubhub to expand their business: "We've received 10 to 15 times our usual new restaurant leads. This interest has led to four to five times more new restaurant go-lives compared to our previous record-breaking day."¹⁰⁴ In their first quarter 2020 results, Grubhub's CFO Adam Dewitt acknowledged, "COVID-19 has driven a significant uptick in new diners and orders from existing users as most restaurant dining rooms have been temporarily closed nationwide."¹⁰⁵

Commission Fees

The four major third-party delivery platforms in New York City utilize different commission models that can charge the restaurant as high as 30 percent or more per order. Grubhub/Seamless, the largest platform operating in New York City, accounts for over 60 percent of meal delivery sales.¹⁰⁶ The company charges restaurants a 10 percent fee for all orders delivered by a Grubhub courier,¹⁰⁷ and additional marketing commission in exchange for increased visibility on their platform, up to around 20 percent.¹⁰⁸ There are also additional processing fees.¹⁰⁹ Orders may include phone calls, which Grubhub determines via an algorithm to be orders: such phone calls are charged commission fees of an average of the last six orders placed.¹¹⁰ Uber Eats and DoorDash each account for around 17 percent of City meal delivery sales.¹¹¹ Uber Eats charges restaurants a 30 percent fee for orders delivered by Uber couriers,¹¹² and a 15 percent fee for orders that are made on the Uber Eats website but delivered by a restaurant's delivery worker.¹¹³ DoorDash charges restaurants promotion

¹⁰⁰ Jaya Saxena, "Yelp Funnels Users' Calls through Grubhub to Help Collect Widely Criticized Referral Fees from Restaurants", *Eater*, August 6, 2019, available at: <https://www.eater.com/2019/8/6/20756799/yelp-grubhub-phone-numbers-referral-fees-restaurants>.

¹⁰¹ Lauren Stine, "Diners are delivery platform-loyal, study says", *Restaurant Dive*, August 26, 2019, available at: <https://www.restaurantdive.com/news/diners-are-delivery-platform-loyal-study-says/561641/>

¹⁰² ChowNow, "Is Your Restaurant's Search Engine Traffic Being Hijacked?", July 2, 2019, available at: <https://get.chownow.com/blog/is-your-restaurant-search-engine-traffic-being-hijacked>.

¹⁰³ Susie Cagle, "Fees are murder': delivery apps profit as restaurants forced to close doors", *The Guardian*, April 3, 2020, available at: <https://www.theguardian.com/world/2020/apr/03/delivery-app-restaurants-coronavirus-california>.

¹⁰⁴ Elisabeth Buchwald, "Restaurants can't survive on delivery alone, says Grubhub CEO Matt Maloney", March 23, 2020, *MarketWatch*, available at: <https://www.marketwatch.com/story/restaurants-wont-be-able-to-survive-on-delivery-only-says-grubhub-ceo-matt-maloney-2020-03-21>.

¹⁰⁵ "Grubhub Reports First Quarter 2020 Results", Grubhub, May 6, 2020, available at: <https://media.grubhub.com/media/press-releases/press-release-details/2020/Grubhub-Reports-First-Quarter-2020-Results/default.aspx>

¹⁰⁶ Kathryn Roethel Rieck, "Which company is winning the food delivery war?", April 21, 2020, *Second Measure*, available at: <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/>

¹⁰⁷ Grubhub, "Grubub Pricing", available at: https://learn.grubhub.com/wp-content/uploads/2018/08/Grubhub_One-Pager_Pricing-Overview_Final.pdf

¹⁰⁸ David Yaffe-Bellany, "New York vs. Grubhub", September 30, 2019, *The New York Times*, available at: <https://www.nytimes.com/2019/09/30/business/grubhub-seamless-restaurants-delivery-apps-fees.html>

¹⁰⁹ Grubhub, "Grubub Pricing", available at: https://learn.grubhub.com/wp-content/uploads/2018/08/Grubhub_One-Pager_Pricing-Overview_Final.pdf

¹¹⁰ Adrienne Jeffries, "Yelp is Screwing Over Restaurants By Quietly Replacing Their Phone Numbers", August 6, 2019, available at: https://www.vice.com/en_us/article/wjwebw/yelp-is-sneakily-replacing-restaurants-phone-numbers-so-grubhub-can-take-a-cut

¹¹¹ Kathryn Roethel Rieck, "Which company is winning the food delivery war?", April 21, 2020, *Second Measure*, available at: <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/>

¹¹² Julie Littman, "Delivery by the numbers: How top third-party platforms compare", October 3, 2019, *Restaurant Dive*, available at: <https://www.restaurantdive.com/news/delivery-by-the-numbers-how-top-third-party-platforms-compare/564279/>

¹¹³ Uber, "How do fees work on Uber Eats", available at: <https://help.uber.com/ubereats/article/how-do-fees-work-on-uber-eats?nodeId=65d229e2-a2b4-4fa0-b10f-b36c9546cf55>

fees, marketing fees, and subscription fees, totaling about 30 percent.¹¹⁴ Similar to Grubhub, DoorDash charges restaurants a commission fee “in exchange for promoting and featuring the Merchant...on the DoorDash Platform,” and for all orders delivered by DoorDash couriers (known as “Dashers”).¹¹⁵ Postmates accounts for just under five percent of delivery sales in the City.¹¹⁶ Under the Postmates model, restaurants do not pay a fee for using Postmates couriers, but pay a standard commission fee “based on the contract signed” by the restaurant upon joining the platform.¹¹⁷ If working with a platform that varies its commission fees when a restaurant uses its own delivery couriers, restaurants may choose to separately contract with services like Relay that can deliver food instead of a third-party platform. It is believed that New York City, which has long had food delivery,¹¹⁸ has tens of thousands of delivery couriers,¹¹⁹ many of which work for independent companies like Relay.¹²⁰

City restaurateurs have expressed difficulty remaining financially profitable while contracting with third-party delivery services, even before dine-in restrictions associated with COVID-19. The City Council had previously conducted two oversight hearings this legislative session related to the rise of third-party delivery platforms in the City.¹²¹ During these hearings, small businesses and advocates highlighted issues they experienced from using these platforms, including high commission fees, restrictions on menu pricing, and erroneous fees they were forced to pay from consumer phone calls that do not result in orders.¹²² Third-party delivery services’ practices have also been challenged in court. In 2018, a class action lawsuit was filed in the United States District Court for the Eastern District of Philadelphia against Grubhub. According to the plaintiff, an owner of a local Indian restaurant chain, Grubhub had committed wrongful conduct, including, but not limited to, “withholding commissions for sham telephone food orders, depriving more than 80,000 restaurants of revenues and profits that rightfully belong to them.”¹²³ Another class action lawsuit was filed in the United States District Court for the Southern District of New York in April 2020 against all four third-party delivery platforms.¹²⁴ The lawsuit alleges that all third-party delivery platforms have violated U.S. antitrust law by requiring restaurants to charge delivery customers and dine-in customers the same price for each menu items, while imposing “exorbitant” fees of 10 percent to 40 percent of revenue to process delivery orders.¹²⁵

With COVID-19 dine-in restrictions in place and restaurants relying on delivery and take-out, high commission fees from third-party delivery services have reportedly made it even more difficult for the City’s restaurants to survive. GrubHub CEO Matt Maloney has acknowledged that high commission fees are

¹¹⁴ DoorDash “Terms of Service - United States DoorDash Merchants”, available at: https://help.doordash.com/merchants/terms-of-service-us?language=en_US#payment-fees-and-taxes; DoorDash, “Merchant FAQs”, available at: <https://get.doordash.com/faq>.

¹¹⁵ DoorDash “Terms of Service - United States DoorDash Merchants”, available at: https://help.doordash.com/merchants/terms-of-service-us?language=en_US#payment-fees-and-taxes

¹¹⁶ Kathryn Roethel Rieck, “Which company is winning the food delivery war?”, April 21, 2020, *Second Measure*, available at: <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/>.

¹¹⁷ Postmates “Payment FAQ”, available at: <https://support.postmates.com/merchant/articles/226618648-article-Payment-FAQ>

¹¹⁸ Willa Glickman, “What the Apps That Bring Food to Your Door Mean for Delivery Workers”, *The New York Review of Books*, September 29, 2019, <https://www.nybooks.com/daily/2019/09/20/what-the-apps-that-bring-food-to-your-door-mean-for-delivery-workers/>.

¹¹⁹ Id.; Wilfred Chan, “I am a New York food courier. Right now, it's worse than you think”, *The Guardian*, April 3, 2020, <https://www.theguardian.com/world/2020/apr/03/food-courier-coronavirus-pandemic-new-york>.

¹²⁰ Lisa Fickensher, “NYC seeks to limit fees by food apps like Grubhub during emergencies”, *New York Post*, April 23, 2020, <https://nypost.com/2020/04/23/nyc-council-to-press-food-deliverers-to-stop-charging-restaurants-fees/>.

¹²¹ New York City Council “Oversight – The Changing Market for Food Delivery”, June 6, 2019, available at: [https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=705634&GUID=0BC09A92-5DB4-496B-90EE-BF75DF712131&Options=info&Search=](https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=705634&GUID=0BC09A92-5DB4-496B-90EE-BF75DF712131&Options=info&Search=;); and New York City Council “Oversight: ‘Ghost Kitchens’ ‘Virtual Restaurants’ and the Future of the Restaurant Industry”, February 6, 2020, available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=759804&GUID=B42220FE-417A-484C-B7CF-51725F784A71&Options=info&Search=>

¹²² Id.

¹²³ *TIFFIN EPS, LLC v. GrubHub, Inc.*, 2:18-cv-05630-PD, Complaint, p. 21.5., available at: https://cdn.vox-cdn.com/uploads/chorus_asset/file/16288289/Grubhub_lawsuit.pdf.

¹²⁴ The four platforms are Grubhub Inc. (which also does business as Seamless), DoorDash Inc., Postmates Inc., and Uber Technologies, Inc., which is the parent company of Uber Eats.

¹²⁵ Jonathan Stempel, “Grubhub, DoorDash, Postmates, Uber Eats are sued over restaurant prices amid pandemic” April 13th, 2020, *Reuters*, available at: <https://www.reuters.com/article/us-health-coronavirus-food-delivery-laws-idUSKCN21V2C1>.

unsustainable for restaurants during COVID-19. During an interview with MarketWatch, he was asked whether restaurants could survive on deliveries alone during the pandemic. Maloney responded, “Not in the long-term. The industry isn’t large enough for all restaurants to survive just on delivery, but they can survive for a matter of weeks potentially. It’s definitely not a long-term solution to bridge across restaurants.”¹²⁶ Feedback from restaurants has validated Maloney’s view. Restaurateurs testified at the Committee’s recent hearing on the impacts of COVID-19 that the high commission fees are not leaving them with enough money to keep their doors open. Evan Franca, owner of Brooklyn Crepe & Juice, compared the amount he typically made from orders placed before dine-in restrictions, when about 20 percent of his orders would come through the third-party platforms, with current orders through platforms constituting as much as 80 percent of his total order volume.¹²⁷ The fees as high as 30 percent leave him with insufficient revenue to cover his expenses.¹²⁸ Similarly, the owner of The Expat in upper Manhattan shed light on the high marketing fees he was paying through Grubhub’s phone order charges, which he claimed were mostly erroneous, required staff time to audit, and which were raised during the COVID-19 crisis.¹²⁹ Restaurant owners have made similar claims in recent articles, citing the burden of the fees as dining restrictions have made platform orders a high percentage of sales, and criticizing Grubhub’s phone order charges for their inaccuracy.¹³⁰

Perhaps because of the disproportionate financial burden high commission fees would place on restaurants during the pandemic, each of the four major third-party platforms developed their own COVID-19 relief programs. Grubhub’s program deferred commission fees for a set period.¹³¹ Uber Eats has waived the delivery fee on all orders for over 100,000 independent restaurants on its app¹³² and is collecting zero fees for all pick-up orders until June 30.¹³³ DoorDash is reducing commission fees by 50 percent for over 150,000 restaurants in the U.S., Canada and Australia,¹³⁴ and offering new restaurants the ability to join their platform and pay zero commissions for 30 days.¹³⁵ Postmates is temporarily waiving commission fees for businesses in the San Francisco Bay Area, LA, Sacramento and Detroit.¹³⁶

Some municipalities have already acted to limit commission fees to address the negative impacts the fees were having on restaurants during the pandemic. Mayor London Breed of San Francisco issued a mayoral declaration making it unlawful for a third-party delivery service to charge restaurants “a fee per online order for the use of its service that totals more than 15 percent of the purchase price of such online order.”¹³⁷ Mayor Breed’s cap will remain in effect through the remainder of the local emergency, or until businesses are permitted

¹²⁶ Elisabeth Buchwald, “Restaurants can’t survive on delivery alone, says Grubhub CEO Matt Maloney”, March 23, 2020, *MarketWatch*, available at: <https://www.marketwatch.com/story/restaurants-wont-be-able-to-survive-on-delivery-only-says-grubhub-ceo-matt-maloney-2020-03-21>

¹²⁷ Testimony of Evan Franca, Owner of Brooklyn Crepe & Juice, Hearing of the Committee on Small Business and the Committee on Consumer Affairs and Business Licensing, April 29, 2020.

¹²⁸ *Id.*

¹²⁹ Testimony of Andrew Ding, Owner of The Expat, Hearing of the Committee on Small Business and the Committee on Consumer Affairs and Business Licensing, April 29, 2020.

¹³⁰ Rebeca Ibarra, “Grubhub And Other Apps Hold Restaurants ‘Hostage’ In A Delivery-Only NYC, Owners Say”, *Gothamist*, May 7, 2020, <https://gothamist.com/food/grubhub-and-other-apps-hold-restaurants-hostage-delivery-only-nyc-owners-say>; Susie Cagle, “Fees are murder’: delivery apps profit as restaurants forced to close doors”, *The Guardian*, April 3, 2020, available at: <https://www.theguardian.com/world/2020/apr/03/delivery-app-restaurants-coronavirus-california>.

¹³¹ Grubhub “COVID-19 Impact, Delivery Safety and Supporting Local Restaurants”, March 18, 2020, available at: <https://blog.grubhub.com/health-and-safety>

¹³² Uber “A company that moves people is asking you not to move”, available at:

https://www.uber.com/au/en/coronavirus/?_ga=2.191168042.1434603565.1587677057-1914018361.1587677057

¹³³ Uber, “0% Service Fee for Pickup”, available at: <https://help.uber.com/restaurants/article/0-service-fee-for-pickup?nodeId=613e8d1e-c9b7-4dff-9541-5cff075e3cc5> (last visited on May 11, 2020).

¹³⁴ DoorDash “The latest on Coronavirus (COVID-19)”, available at: <https://get.doordash.com/covid-updates#businesses>

¹³⁵ DoorDash “COVID-19 merchant financial assistance”, available at: https://help.doordash.com/merchants/s/article/COVID-19-Merchant-Financial-Assistance?language=en_US

¹³⁶ Postmates “Postmates Coronavirus (COVID-19) Response”, March 16 2020, available at: <https://blog.postmates.com/postmates-coronavirus-covid-19-response-94eef5b1bbc2>

¹³⁷ Office of the Mayor San Francisco, London N. Breed “Ninth Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency Dated February 25, 2020”, available at: <https://sfmayor.org/sites/default/files/NinthMayoralSupplement.pdf>

to reopen for dine-in services, whichever comes first.¹³⁸ Chicago City Council Member Scott Waguespack introduced an ordinance making it unlawful for a third-party food delivery service to charge a covered establishment a fee that totals more than five percent of per online order.¹³⁹ The Hospitality Alliance and the Chambers of Commerce have also been calling for New York City to cap commission fees on third-party delivery platforms to 10 percent per order.¹⁴⁰

d. Commercial Leases and Evictions

As the effects of COVID-19 have reached many businesses across the City, commercial tenants may face pressure from their landlords to meet rental obligations when they do not have the funds to do so. In order to collect rent from commercial tenants, landlords may seek to enforce provisions in commercial leases that impose personal liability on business owners for non-payment of rent, utilities or taxes. Provisions that hold a business owner personally liable in the event they are unable to pay rent are common in small business leases.¹⁴¹ In order to prevent the seizure of personal assets or property, an owner must turn in the keys to the property, effectively ending their lease.

Gabriel Stulman, who owns five restaurants in Manhattan, articulated his concerns with the personal liability clauses in his leases.¹⁴² If he closes down his restaurant before the lease term expires, in order to avoid paying the landlord for entire lease term Stulman must pay any rent in arrears plus an additional three to six months. Stulman considers this “impossible to pay,” as his restaurant already owes hundreds of thousands of dollars in bills.¹⁴³ Such a predicament may leave him “personally bankrupt” and “at risk of losing the entirety of [his] life savings”.¹⁴⁴ Stulman also cites the hopelessness of relief efforts such as PPP, which, in order to qualify for the maximum amount of loan forgiveness, would provide him without enough funds to pay his workers, but not make his rent: “In the event that we are approved for any of the PPP Loans we applied for (still crossing our fingers), the 25 percent that can be used for non-payroll expenses in most cases won’t even be sufficient to cover the arrears owed in rent, so there definitely won’t be any aid in future months [for] rent, utilities, etc.”¹⁴⁵

Without recourse, landlords may resort to threats, which continues to make protecting businesses from harassment an important issue as the City grapples with the effects of COVID-19.

III. CONCLUSION

The various governmental approaches to support small businesses during this crisis have provided some measure of relief for small business owners and their employees; however, there are range of outstanding issues that continue to make operating a business during the pandemic particularly difficult. The vast array of

¹³⁸ Eve Batey “San Francisco Emergency Order says delivery apps must cap restaurant fees at 15 percent”, April 10, 2020, *Eater San Francisco*, available at: <https://sf.eater.com/2020/4/10/21216546/san-francisco-delivery-cap-door-dash-grubhub-uber-eats-postmates-caviar>.

¹³⁹ City of Chicago Office of the City Clerk “Ordinance”, April 22, 2020, available at: <https://files.constantcontact.com/58ea69d3101/e58501f0-4a68-4625-b689-f14570f4cde6.pdf>

¹⁴⁰ See NYC Hospitality Alliance “Restaurant rescue & save nightlife plan”, available at: <https://thenycalliance.org/information/updated-9-point-mitigation-and-support-plan> (last viewed on April 27, 2020); Testimonies of Robert Bookman and Andrew Rigie, NYC Hospitality Alliance, Hearing of the Committee on Small Business and the Committee on Consumer Affairs and Business Licensing, April 29, 2020; Testimony of the borough Chambers of Commerce, Hearing of the Committee on Small Business and the Committee on Consumer Affairs and Business Licensing, April 29, 2020.

¹⁴¹ NYC Department of Small Business Services, Comprehensive Guide to Commercial Leasing in New York City, pg. 21, <https://www1.nyc.gov/assets/sbs/downloads/pdf/about/reports/commercial-lease-guide-accessible.pdf>.

¹⁴² Erika Adams, “I Am Preparing For This Possibility of Going Bankrupt and Belly Up”, April 30, 2020, *Eater*, available at: <https://ny.eater.com/2020/4/30/21242840/gabriel-stulman-restaurants-nyc-city-council-legislature-coronavirus>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

departments and agencies have made it difficult for businesses to navigate and, as discussed, there have been numerous limitations to the government programs that are further compounded by the technological and language barriers that some small business owners also face. This comes on top of the other issues that small businesses have to navigate during this crisis range from trying to make rent and payroll, paying delivery commissions, finding suppliers and moving retail online, and securing bank loans.

IV. LEGISLATIVE ANALYSIS

Int. No. 1898-A

This bill would prohibit any third-party delivery service from charging restaurants for telephone orders that do not result in an actual transaction during the call.

The prohibition would apply only to periods when a state of emergency is in effect in the city and restaurants are prohibited from offering food for consumption on-premises, plus an additional 90 days thereafter. Violations would be subject to civil penalties of up to \$500 per restaurant per day. The bill would take effect on the same date that Int. No. 1908-B would take effect.

Int. No. 1908-B

This bill would restrict the fees that third-party food delivery services may charge restaurants during states of emergency when restaurants are prohibited from offering food for consumption on-premises, plus an additional 90 days thereafter. During such time periods, third-party delivery services would be prohibited from charging more than a 15 percent fee to a restaurant per order for providing delivery services, and more than a 5 percent fee to a restaurant per order for all other types of charges. Therefore, a third-party delivery service that provides its own delivery service to a restaurant could charge the restaurant a maximum 20 percent fee for an order placed through the platform (15 percent for the provision of delivery services, plus 5 percent for other fees such as marketing, listing, or credit card processing). A restaurant that does not utilize the delivery service of a third-party platform can be charged no more than a 5 percent fee per order placed through the platform.

Included in these limits would be orders placed through a third-party delivery app, utilizing a third-party delivery service forwarding phone number, or any other order placed through or with the assistance of a third-party delivery service.

Violations of the prohibitions in this bill would be subject to civil penalties of up to \$1,000 per restaurant per day. The Corporation Counsel would be empowered to enforce the bill's provisions by instituting civil action against third-party delivery services in violation, and by conducting investigations pursuant to such civil action.

This bill would take effect seven days after becoming law.

Int. No. 1914-A

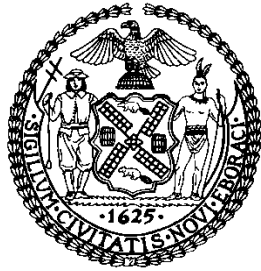
This bill provides additional commercial tenant protections in the law by making threatening a commercial tenant based on their status as a COVID-19 impacted business or person a form of harassment punishable by a civil penalty of \$10,000 to \$50,000.

Nothing in this bill is intended to limit any of the rights or obligations of landlords or commercial tenants under the existing harassment law as set forth in chapter 9 of title 22 of the Administrative Code, including but not limited to (1) the right of a landlord to terminate a tenancy, refuse to renew or extend a lease or other rental agreement, or reenter and repossess property under section 22-902(b) and (2) the obligation of a commercial tenant to continue paying rent owed under section 22-903(b).

Int. No. 1932-A

This bill would temporarily prohibit the enforcement of personal liability provisions in commercial leases or rental agreements involving a COVID-19 impacted tenant. This would apply to businesses that were impacted by mandated closures and service limitations in the Governor's Executive Orders. Specifically, it covers (1) businesses that were required to stop serving food or beverages on-premises (restaurants and bars); (2) businesses that were required to cease operations altogether (gyms, fitness centers, movie theaters); (3) retail businesses that were required to close and/or subject to in-person restrictions; and (4) businesses that were required to close to the public (barbershops, hair salons, tattoo or piercing parlors and related personal care services). Threatening to or attempting to enforce such a provision would also be considered a form of harassment.

(The following is the text of the Fiscal Impact Statement for Int. No. 1898-A:)



**THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT**

**PROPOSED INT. NO. 1898-A
COMMITTEE: Small Business**

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining.

Sponsors: By Council Members Gjonaj, Moya, Constantinides, Brannan, Rosenthal, Gibson, Perkins, Louis, Ayala, Lander, Chin, Koslowitz and Rivera.

SUMMARY OF LEGISLATION: Proposed Int. No. 1898-A would amend the administrative code of the city of New York, relating to fees charged by third-party food delivery services, as proposed in introduction number 1908-B for the year 2020, by adding a new definition of “telephone order”. During a declared emergency and for a period of 90 days after the end of a declared emergency, no third-party food delivery service could charge a commission from a food service establishment for a telephone order that does not result in an actual transaction during such telephone call. Violations would be subject to a civil penalty not to exceed \$500 per violation, and would accrue on a daily basis for each day and for each food service establishment charged a fee in violation. A proceeding to recover any civil penalty authorized would be brought in any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings. The Corporation Counsel would be empowered to enforce the bill’s provisions by instituting civil action against third-party delivery services in violation, and by conducting investigations pursuant to such civil action.

EFFECTIVE DATE: This local law would take effect on the same date that a local law for the year 2020 amending the administrative code of the city of New York, relating to fees charged by third-party food delivery services, as proposed in introduction number 1908-B for the year 2020, would take effect.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2022

FISCAL IMPACT STATEMENT:

	Effective FY21	FY Succeeding Effective FY22	Full Fiscal Impact FY22
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is anticipated that there would be no impact on revenues resulting from the enactment of this legislation because full compliance is anticipated.

IMPACT ON EXPENDITURES: It is anticipated that there would be no fiscal impact on expenditures resulting from the enactment of this legislation because the agencies responsible for carrying out its requirements would be able to use existing resources.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
Mayor’s Office of Legislative Affairs

ESTIMATE PREPARED BY: Aliya Ali, Principal Financial Analyst

ESTIMATE REVIEWED BY: Noah Brick, Assistant Counsel
Nathan Toth, Deputy Director
Crilhien Francisco, Unit Head

LEGISLATIVE HISTORY: This legislation was introduced to the Council on February 27, 2020 as Int. No. 1898 and was referred to the Committee on Small Business (Committee). A hearing was held by the Committee on April 29, 2020, and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Int. No. 1898-A, will be voted on by the Committee at a hearing on May 13, 2020. Upon successful vote by the Committee, Proposed Int. No. 1898-A will be submitted to the full Council for a vote on May 13, 2020.

DATE PREPARED: May 6, 2020.

(For text of Int. Nos. 1908-B, 1914-A, and 1932-A and their Fiscal Impact Statements, please see the Report of the Committee on Small Business for Int. Nos. 1908-B, 1914-A, and 1932-A, respectively, printed in these Minutes; for text of Int. No. 1898-A, please see below)

Accordingly, this Committee recommends the adoption of Int. Nos. 1898-A, 1908-B, 1914-A, and 1932-A.

(The following is the text of Int. No. 1898-A:)

Int. No. 1898-A

By Council Members Gjonaj, Moya, Constantinides, Brannan, Rosenthal, Gibson, Perkins, Louis, Ayala, Lander, Chin, Koslowitz, Rivera, Ampry-Samuel, Vallone, Lancman, Holden, Kallos and Menchaca.

A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining

Be it enacted by the Council as follows:

Section 1. Section 20-845 of the administrative code of the city of New York, as added by a local law for the year 2020 amending the administrative code of the city of New York, relating to fees charged by third-party food delivery services, as proposed in introduction number 1908-B for the year 2020, is amended by adding a new definition of “telephone order” in alphabetical order to read as follows:

Telephone order. The term “telephone order” means an order placed by a customer to a food service establishment through a telephone call forwarded by a call system provided by a third-party food delivery service.

§ 2. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-847 to read as follows:

§ 20-847 Telephone orders. a. No third-party food delivery service may charge any fee from a food service establishment for a telephone order if a telephone call between such establishment and a customer does not result in an actual transaction during such telephone call.

b. The requirements of this section apply only during a declared emergency and for a period of 90 days after the end of a declared emergency.

§ 3. Subdivision a of section 20-848 of the administrative code of the city of New York, as added by a local law for the year 2020 amending the administrative code of the city of New York, relating to fees charged by third-party food delivery services, as proposed in introduction number 1908-B for the year 2020, is amended to read as follows:

a. Any person that violates any provision of [this subchapter] *section 20-846* or any rule promulgated pursuant [to this subchapter] *thereto* shall be subject to a civil penalty that shall not exceed \$1,000 per violation. *Any person that violates any provision of section 20-847 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed \$500 per violation.* Violations under this subchapter shall accrue on a daily basis for each day and for each food service establishment charged a fee in violation of this subchapter or any rule promulgated pursuant to this subchapter. A proceeding to recover any civil penalty authorized pursuant to this subchapter may be brought in any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

§ 4. This local law takes effect on the same date that a local law for the year 2020 amending the administrative code of the city of New York, relating to fees charged by third-party food delivery services, as proposed in introduction number 1908-B for the year 2020, takes effect.

MARK GJONAJ, *Chairperson*; STEPHEN T. LEVIN, BILL PERKINS, YDANIS A. RODRIGUEZ, HELEN K. ROSENTHAL; Committee on Small Business, May 13, 2020 (Remote Hearing). *Other Council Members Attending: Council Members Adams, Chin, Yeger and Moya.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for Int. No. 1908-B

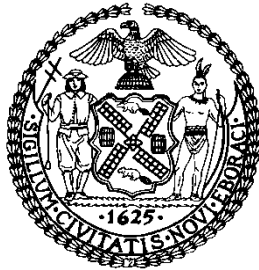
Report of the Committee on Small Business in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining.

The Committee on Small Business to which the annexed proposed amended local law was referred on February 27, 2020 (Minutes, page 677), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Small Business for Int. No. 1898-A printed in these Minutes)

The following is the text of the Fiscal Impact Statement for Int. No. 1908-B:



**THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT**

PROPOSED INT. NO. 1908-B

COMMITTEE: Small Business

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining

Sponsors: By Council Members Moya, Gjonaj, Kallos, Brannan, Rosenthal, Gibson, Ayala, Van Bramer, Rivera, Cohen, Perkins, Louis, Lander, Chin and Koslowitz

SUMMARY OF LEGISLATION: Proposed Int. No. 1908-B would restrict the fees that certain third-party food delivery services, entities that provide restaurants with online order and delivery services, may charge restaurants during states of emergency when restaurants are prohibited from offering food for consumption on-premises, plus an additional 90 days thereafter. During such time periods, third-party delivery services would be prohibited from charging more than a 15 percent fee for providing delivery services to a restaurant, and more than a 5 percent fee for all other types of charges. Violations of these prohibitions would be subject to a civil penalty not to exceed \$1,000 per violation, which would accrue on a daily basis for each day and for each food service establishment charged a fee in violation. A proceeding to recover any civil penalty authorized would be brought in any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings. The Corporation Counsel would be empowered to enforce the bill’s provisions by instituting civil action against third-party delivery services in violation, and by conducting investigations pursuant to such civil action.

EFFECTIVE DATE: This local law would take effect seven days after it becomes law.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2021

FISCAL IMPACT STATEMENT:

	Effective FY20	FY Succeeding Effective FY21	Full Fiscal Impact FY21
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is anticipated that there would be no impact on revenues resulting from the enactment of this legislation as we expect full compliance.

IMPACT ON EXPENDITURES: It is estimated that there would be no fiscal impact on expenditures resulting from the enactment of this legislation as existing resources can be used for proceedings if required.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
Mayor’s Office of Legislative Affairs

ESTIMATE PREPARED BY: Aliya Ali, Principal Financial Analyst

ESTIMATE REVIEWED BY: Stephanie Ruiz, Assistant Counsel
Nathan Toth, Deputy Director
Cirlhien Francisco, Unit Head

LEGISLATIVE HISTORY: This legislation was introduced to the Council on February 27, 2020 as Int. No. 1908, and was referred to the Committee on Small Business (Committee). A hearing was held by the Committee on April 29 2020, and the legislation was laid over. The legislation was subsequently amended twice and the most recently amended version, Proposed Int. No. 1908-B, will be voted on by the Committee at a hearing on May 13, 2020. Upon successful vote by the Committee, Proposed Int. No. 1908-B will be submitted to the full Council for a vote on May 13, 2020.

DATE PREPARED: May 6, 2020.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1908-B:)

Int. No. 1908-B

By Council Members Moya, Gjonaj, Kallos, Brannan, Rosenthal, Gibson, Ayala, Van Bramer, Rivera, Cohen, Perkins, Louis, Lander, Chin, Koslowitz, Ampry-Samuel, Powers, Vallone, Lancman, Constantinides, Holden and Menchaca.

A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 22 to read as follows:

*SUBCHAPTER 22
THIRD-PARTY FOOD DELIVERY SERVICES*

§ 20-845 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Declared emergency. The term “declared emergency” means the period during which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from providing food for consumption on-premises.

Delivery fee. The term “delivery fee” means a fee charged by a third-party food delivery service for providing a food service establishment with a service that delivers food from such establishment to customers. The term does not include any other fee that may be charged by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food service establishment on the third-party food delivery service platform or fees related to processing the online order.

Food service establishment. The term “food service establishment” has the same meaning as provided in subdivision s of section 81.03 of the health code of the city of New York.

Online order. The term “online order” means any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery service, including a telephone order.

Purchase price. The term “purchase price” means the total price of the items contained in an online order that are listed on the menu of the food service establishment where such order is placed. Such term does not include taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

Third-party food delivery service. The term “third-party food delivery service” means any website, mobile application or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, no fewer than 20 food service establishments located in the city that are owned and operated by different persons.

§ 20-846 Fee limits during declared emergencies. a. It shall be unlawful for a third-party food delivery service to charge a food service establishment a delivery fee that totals more than 15% of the purchase price of each online order.

b. It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee or fees other than a delivery fee for the use of their service greater than 5% of the purchase price of each online order. Any fees or other charges from a third-party food delivery service to a food service establishment beyond such maximum 5% fee per order, and a delivery fee collected pursuant to subdivision a of this section, are unlawful.

c. The requirements of this section apply only during a declared emergency and for a period of 90 days after the end of a declared emergency.

§ 20-848 Penalties and enforcement. a. Any person that violates any provision of this subchapter or any rule promulgated pursuant to this subchapter shall be subject to a civil penalty that shall not exceed \$1,000 per violation. Violations under this subchapter shall accrue on a daily basis for each day and for each food service establishment charged a fee in violation of this subchapter or any rule promulgated pursuant to this subchapter. A proceeding to recover any civil penalty authorized pursuant to this subchapter may be brought in any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

b. A civil action may be brought by the corporation counsel on behalf of the city in any court of competent jurisdiction to recover any or all of the following:

- 1. Any civil penalty authorized pursuant to this section;*
- 2. Injunctive relief to restrain or enjoin any activity in violation of this section;*
- 3. Restitution of an amount not to exceed the amount of fees collected by a third-party food delivery service that exceeded the maximum amounts permitted pursuant to this subchapter;*
- 4. attorneys' fees and costs, and such other remedies as a court may deem appropriate.*

c. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

§ 2. This local law takes effect seven days after it becomes law.

MARK GJONAJ, *Chairperson*; STEPHEN T. LEVIN, BILL PERKINS, YDANIS A. RODRIGUEZ, HELEN K. ROSENTHAL; Committee on Small Business, May 13, 2020 (Remote Hearing). *Other Council Members Attending: Council Members Adams, Chin, Yeger and Moya.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for Int. No. 1914-A

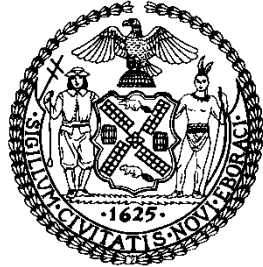
Report of the Committee on Small Business in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to harassment of commercial tenants impacted by COVID-19.

The Committee on Small Business to which the annexed proposed amended local law was referred on April 22, 2020 (Minutes, page 824), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Small Business for Int. No. 1898-A printed in these Minutes)

The following is the text of the Fiscal Impact Statement for Int. No. 1914-A:



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
 LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INT. NO. 1914-A

COMMITTEE: Small Business

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to harassment of commercial tenants impacted by COVID-19

Sponsors: By Council Members Adams, the Speaker (Council Member Johnson), Kallos, Van Bramer, Chin, Louis, Ayala, Levin, Lander, Koslowitz and The Public Advocate (Mr. Williams)

SUMMARY OF LEGISLATION: Proposed Int. No. 1914-A would prohibit the harassment of a commercial tenant based on the commercial tenant’s status as a person or business impacted by COVID-19, or based on the commercial tenant’s receipt of a rent concession or forbearance for any rent owed during the COVID-19 period.

EFFECTIVE DATE: This local law would take effect immediately.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2021

FISCAL IMPACT STATEMENT:

	Effective FY20	FY Succeeding Effective FY21	Full Fiscal Impact FY21
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is anticipated that there would be no impact on revenues resulting from the enactment of this legislation.

IMPACT ON EXPENDITURES: It is estimated that there would be no fiscal impact on expenditures resulting from the enactment of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
Mayor's Office of Legislative Affairs

ESTIMATE PREPARED BY: Aliya Ali, Principal Financial Analyst

ESTIMATE REVIEWED BY: Stephanie Ruiz, Assistant Counsel
Nathan Toth, Deputy Director
Crielhien Francisco, Unit Head

LEGISLATIVE HISTORY: This legislation was introduced to the Council on April 22, 2020 as Int. No. 1914, and was referred to the Committee on Small Business. A joint hearing was held by the Committee on Small Business and the Committee on Consumer Affairs and Business Licensing on April 29 2020, and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Int. No. 1914-A, will be voted on by the Committee on Small Business at a hearing on May 13, 2020. Upon successful vote by the Committee on Small Business, Proposed Int. No. 1914-A will be submitted to the full Council for a vote on May 13, 2020.

DATE PREPARED: May 7, 2020.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1914-A:)

Int. No. 1914-A

By Council Members Adams, the Speaker (Council Member Johnson), Kallos, Van Bramer, Chin, Louis, Ayala, Levin, Lander, Koslowitz, Rosenthal, Lancman, Constantinides, Menchaca and the Public Advocate (Mr. Williams).

A Local Law to amend the administrative code of the city of New York, in relation to harassment of commercial tenants impacted by COVID-19

Be it enacted by the Council as follows:

Section 1. Paragraph 11 of subdivision a of section 22-902 of the administrative code of the city of New York, as added by local law number 185 for the year 2019, is amended to read as follows:

11. threatening a commercial tenant based on (i) such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence[,] or status as a victim of sex offenses or stalking, or (ii) *the commercial tenant's status as a person or business impacted by COVID-19, or the commercial tenant's receipt of a rent concession or forbearance for any rent owed during the COVID-19 period; provided that for the purposes of this paragraph:*

(a) *the term "COVID-19 period" means March 7, 2020 through the later of (i) the end of the first month that commences after the expiration of the moratorium on enforcement of evictions of any tenant, residential or commercial, set forth in executive order number 202.8, as issued by the governor on March 20, 2020 and extended thereafter, (ii) the end of the first month that commences after the expiration of the moratorium on certain residential evictions set forth in section 4024 of the coronavirus aid, relief, and economic security, or CARES, act and any subsequent amendments to such section or (iii) September 30, 2020, inclusive;*

(b) *the term "impacted by COVID-19" means a person who has experienced one or more of the following situations:*

(1) such person was diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis; provided that for the purposes of this subparagraph, the term “COVID-19” means the 2019 novel coronavirus or 2019-nCoV;

(2) a member of such person’s household was diagnosed with COVID-19;

(3) such person was providing care for a family member or a member of such person’s household who was diagnosed with COVID-19;

(4) a member of such person’s household for whom such person had primary caregiving responsibility was unable to attend school or another facility that was closed as a direct result of the COVID-19 state disaster emergency and such school or facility care was required for the person to work; provided that for the purposes of this subparagraph, the term “COVID-19 state disaster emergency” means the state disaster emergency declared by the governor in executive order number 202 issued on March 7, 2020;

(5) such person was unable to reach their place of business because of a quarantine imposed as a direct result of the COVID-19 state disaster emergency or because such person was advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(6) such person became primarily responsible for providing financial support for the household of such person because the previous head of the household died as a direct result of COVID-19;

(7) such person’s business is closed as a direct result of the COVID-19 state disaster emergency; and

(c) a business is “impacted by COVID-19” if (i) it was subject to seating, occupancy or on-premises service limitations pursuant to an executive order issue by the governor or mayor during the COVID-19 period or (ii) its revenues during any three-month period within the COVID-19 period were less than 50 percent of its revenues for the same three-month period in 2019 or less than 50 percent of its aggregate revenues for the months of December 2019, January 2020, and February 2020 and such revenue loss was the direct result of the COVID-19 state disaster emergency. A revenue loss shall be deemed to be the direct result of the COVID-19 state disaster emergency when such disaster emergency was the proximate cause of such revenue loss;

§ 2. This local law takes effect immediately.

MARK GJONAJ, *Chairperson*; STEPHEN T. LEVIN, BILL PERKINS, YDANIS A. RODRIGUEZ, HELEN K. ROSENTHAL; Committee on Small Business, May 13, 2020 (Remote Hearing). *Other Council Members Attending: Council Members Adams, Chin, Yeger and Moya.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for Int. No. 1932-A

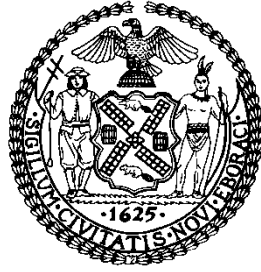
Report of the Committee on Small Business in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to personal liability provisions of leases for commercial tenants impacted by COVID-19.

The Committee on Small Business to which the annexed proposed amended local law was referred on April 22, 2020 (Minutes, page 853), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Small Business for Int. No. 1898-A printed in these Minutes)

The following is the text of the Fiscal Impact Statement for Int. No. 1932-A:



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
 LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INT. NO. 1932-A
COMMITTEE: Small Business

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to personal liability provisions of leases for commercial tenants impacted by COVID-19

Sponsors: By Council Members Rivera, the Speaker (Council Member Johnson), Kallos, Van Bramer, Rosenthal, Chin, Ayala, Levin, Lander and Koslowitz

SUMMARY OF LEGISLATION: Proposed Int. No. 1932-A would temporarily suspend personal liability for the payment of rent, utility expenses or taxes owed of a commercial tenant and charges relating to routine building maintenance if the tenant was impacted by COVID-19. A commercial tenant would be classified as having been impacted by COVID-19 if the tenant was required to cease serving patrons food or beverage for on-premises consumption, the tenant was a non-essential retail establishment, or the tenant was required to close to members of the public under an executive order issued by the governor.

EFFECTIVE DATE: This local law would take effect immediately.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2021

FISCAL IMPACT STATEMENT:

	Effective FY20	FY Succeeding Effective FY21	Full Fiscal Impact FY21
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is anticipated that there would be no impact on revenues resulting from the enactment of this legislation.

IMPACT ON EXPENDITURES: It is estimated that there would be no fiscal impact on expenditures resulting from the enactment of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
 Mayor’s Office of Legislative Affairs

ESTIMATE PREPARED BY: Aliya Ali, Principal Financial Analyst

ESTIMATE REVIEWED BY: Stephanie Ruiz, Assistant Counsel
Nathan Toth, Deputy Director
Cirilhen Francisco, Unit Head

LEGISLATIVE HISTORY: This legislation was introduced to the Council on April 22, 2020 as Int. No. 1932, and was referred to the Committee on Small Business. A joint hearing was held by the Committee on Small Business and Committee on Consumer Affairs and Business Licensing on April 29 2020, and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Int. No. 1932-A, will be voted on by the Committee on Small Business at a hearing on May 13, 2020. Upon successful vote by the Committee on Small Business, Proposed Int. No. 1932-A will be submitted to the full Council for a vote on May 13, 2020.

DATE PREPARED: May 7, 2020.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1932-A:)

Int. No. 1932-A

By Council Member Rivera, the Speaker (Council Member Johnson), Kallos, Van Bramer, Rosenthal, Chin, Ayala, Levin, Lander, Koslowitz, Louis, Vallone, Lancman, Constantinides and Menchaca.

A Local Law to amend the administrative code of the city of New York, in relation to personal liability provisions of leases for commercial tenants impacted by COVID-19

Be it enacted by the Council as follows:

Section 1. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1005 to read as follows:

§ 22-1005. Personal liability provisions in commercial leases. A provision in a commercial lease or other rental agreement involving real property located within the city that provides for one or more natural persons who are not the tenant under such agreement to become, upon the occurrence of a default or other event, wholly or partially personally liable for payment of rent, utility expenses or taxes owed by the tenant under such agreement, or fees and charges relating to routine building maintenance owed by the tenant under such agreement, shall not be enforceable against such natural persons if the conditions of paragraph 1 and 2 are satisfied:

1. The tenant satisfies the conditions of subparagraph (a), (b) or (c):

(a) The tenant was required to cease serving patrons food or beverage for on-premises consumption or to cease operation under executive order number 202.3 issued by the governor on March 16, 2020;

(b) The tenant was a non-essential retail establishment subject to in-person limitations under guidance issued by the New York state department of economic development pursuant to executive order number 202.6 issued by the governor on March 18, 2020; or

(c) The tenant was required to close to members of the public under executive order number 202.7 issued by the governor on March 19, 2020.

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

§ 2. Subdivision a of section 22-902 of the administrative code of the city of New York, as amended by local law number 185 for the year 2019, is amended to read as follows:

a. A landlord shall not engage in commercial tenant harassment. Except as provided in subdivision b of this section, commercial tenant harassment is any act or omission by or on behalf of a landlord that (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property, and (ii) includes one or more of the following:

1. using force against or making express or implied threats that force will be used against a commercial tenant or such tenant's invitee;
2. causing repeated interruptions or discontinuances of one or more essential services;
3. causing an interruption or discontinuance of an essential service for an extended period of time;
4. causing an interruption or discontinuance of an essential service where such interruption or discontinuance substantially interferes with a commercial tenant's business;
5. repeatedly commencing frivolous court proceedings against a commercial tenant;
6. removing from a covered property any personal property belonging to a commercial tenant or such tenant's invitee;
7. removing the door at the entrance to a covered property occupied by a commercial tenant; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the commercial tenant occupying the covered property;
8. preventing a commercial tenant or such tenant's invitee from entering a covered property occupied by such tenant;
9. substantially interfering with a commercial tenant's business by commencing unnecessary construction or repairs on or near covered property; [or]
10. engaging in any other repeated or enduring acts or omissions that substantially interfere with the operation of a commercial tenant's business;
11. threatening a commercial tenant based on such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking;
12. requesting identifying documentation that would disclose the citizenship status of a commercial tenant, an invitee of a commercial tenant or any person seeking entry to the covered property in order to patronize such commercial tenant; [or]
13. unreasonably refusing to cooperate with a tenant's permitted repairs or construction activities[.]; or
14. *attempting to enforce a personal liability provision that the landlord knows or reasonably should know is not enforceable pursuant to section 22-1005 of the code.*

§ 3. This local law takes effect immediately.

MARK GJONAJ, *Chairperson*; STEPHEN T. LEVIN, BILL PERKINS, YDANIS A. RODRIGUEZ, HELEN K. ROSENTHAL; Committee on Small Business, May 13, 2020 (Remote Hearing). *Other Council Members Attending: Council Members Adams, Chin, Yeger and Moya*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

GENERAL ORDER CALENDAR

There were no additional items on the General Order Calendar section of these Minutes.

**ROLL CALL ON GENERAL ORDERS FOR THE DAY
(Items Coupled on General Order Calendar)**

- (1) **Int 1898-A -** Telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining.
- (2) **Int 1908-B -** Fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining.
- (3) **Int 1914-A -** Harassment of commercial tenants impacted by COVID-19.
- (4) **Int 1916-A -** Waiver and refund of certain sidewalk cafe revocable consent fees.
- (5) **Int 1932-A -** Personal liability provisions of leases for commercial tenants impacted by COVID-19.
- (6) **Int 1936-A -** Amending the definition of harassment to include threats based on a person having been impacted by COVID-19.
- (7) **Int 1940-A -** License, permit, consent and registration renewal extensions, and requiring at least 45 days notice for renewal.

The Majority Leader and Acting President Pro Tempore (Council Member Cumbo) put the question whether the Council would agree with and adopt such reports which were decided in the **affirmative** by the following vote:

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Borelli, Brannan, Cabrera, Chin, Cohen, Constantinides, Cornegy, Deutsch, Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Holden, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Perkins, Powers, Reynoso, Richards, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Ulrich, Vallone, Van Bramer, Yeger, the Minority Leader (Council Member Matteo), the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **50**.

The General Order vote recorded for this Stated Meeting was 50-0-0 as shown above with the exception of the votes for the following legislative items:

The following was the vote recorded for **Int. No. 1898-A:**

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Brannan, Cabrera, Chin, Cohen, Constantinides, Cornegy, Deutsch, Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Holden, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Perkins, Powers, Reynoso, Richards, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Ulrich, Vallone, Van Bramer, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **47**.

Negative – Borelli, Yeger, and the Minority Leader (Council Member Matteo) – **3**.

The following was the vote recorded for **Int. No. 1908-B:**

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Brannan, Cabrera, Chin, Cohen, Constantinides, Cornegy, Deutsch, Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Holden, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Perkins, Powers, Reynoso, Richards, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Vallone, Van Bramer, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **46**.

Negative – Borelli, Ulrich, Yeger, and the Minority Leader (Council Member Matteo) – **4**.

The following was the vote recorded for **Int. No. 1914-A:**

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Brannan, Cabrera, Chin, Cohen, Constantinides, Cornegy, Deutsch, Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Holden, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Perkins, Powers, Reynoso, Richards, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Vallone, Van Bramer, Yeger, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **47**.

Negative – Borelli, Ulrich, and the Minority Leader (Council Member Matteo) – **3**.

The following was the vote recorded for **Int. No. 1932-A**:

Affirmative – Adams, Ampy-Samuel, Ayala, Barron, Brannan, Cabrera, Chin, Cohen, Constantinides, Cornegy, Diaz, Dromm, Eugene, Gibson, Gjonaj, Holden, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Perkins, Powers, Reynoso, Richards, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Vallone, Van Bramer, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **44**.

Negative – Borelli, Deutsch, Grodenchik, Ulrich, Yeger, and the Minority Leader (Council Member Matteo) – **6**.

The following was the vote recorded for **Int. No. 1936-A**:

Affirmative – Adams, Ampy-Samuel, Ayala, Barron, Brannan, Cabrera, Chin, Cohen, Constantinides, Cornegy, Deutsch, Diaz, Dromm, Eugene, Gibson, Gjonaj, Holden, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Perkins, Powers, Reynoso, Richards, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Ulrich, Vallone, Van Bramer, Yeger, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **47**.

Negative – Borelli, Grodenchik, and the Minority Leader (Council Member Matteo) – **3**.

The following Introductions were sent to the Mayor for his consideration and approval:

Int. Nos. 1898-A, 1908-B, 1914-A, 1916-A, 1932-A, 1936-A, and 1940-A.

INTRODUCTION AND READING OF BILLS

Res. No. 1320

Resolution calling upon the United States Department of Agriculture to expand the number of retailers that are permitted in the Supplemental Nutrition Assistance Program online purchasing program to ensure vulnerable communities in New York City can safely access healthy food.

By Council Members Cohen, Chin, Kallos and Yeger.

Whereas, The Supplemental Nutritional Assistance Program (SNAP), also commonly referred to as “food stamps”, is a federal entitlement program that provides financial assistance to applicants for their purchase of healthy food; and

Whereas, The benefits allow participants to purchase food at grocery and convenience stores, as well as some farmers’ markets and coops; and

Whereas, The program aims to support people’s ability to purchase healthy food items; and

Whereas, In New York City, more than 19 percent of the population, or 1.7 million people, rely on SNAP benefits; and

Whereas, However, financial assistance is only part of the issue when it comes to accessing healthy food; and

Whereas, More than four percent of the American population live more than a mile away from a supermarket, placing them in what is referred to as a “food desert”; and

Whereas, In New York City, where the population relies heavily on public transport to get around, this makes travelling far for groceries even more difficult; and

Whereas, In addition to being in healthy-food deserts, these same communities are also often teeming with a plethora of fast-food and other high-calorie food options; and

Whereas, This situation has been referred to as a “food swamp” or “grocery gap” and describes an area in which residents will, for example, find it much easier to buy a can of grape soda rather than a bunch of grapes; and

Whereas, In New York City, predominately Black communities and neighborhoods with low-socioeconomic status tend to have significantly lower rates of healthy food options when compared to areas with whiter and more affluent communities; and

Whereas, Furthermore, researchers have found that Adult Type-2 Diabetes in New York City is more than two and a half times more prevalent, and Type-1 Diabetes one and a half times more prevalent, than communities without fast food establishments; and

Whereas, The links between overall health, obesity rates and ready access to affordable, healthy food is well documented; and

Whereas, Ensuring that more people can afford nutritional food is the main objective of SNAP; and

Whereas, This is why the United States Department of Agriculture (USDA), who are responsible for administering SNAP, developed a pilot program to allow SNAP participants to use their benefits on grocery delivery; and

Whereas, At the moment, New York state is part of the pilot program, which began in 2016, and New Yorkers using SNAP can order groceries and have them delivered using Walmart, Amazon, and ShopRite; and

Whereas, According to the USDA, the purpose of the pilot was “to address the needs of the elderly and disabled, who often cannot easily go out to shop. It will also be beneficial for those that lack consistent access to transportation or live in areas considered to be food deserts”; and

Whereas, Allowing SNAP users to utilize grocery delivery has been beneficial, but the small list of approved providers limits users’ shopping choices; and

Whereas, There are also complications with the current list of providers; and

Whereas, For example, SNAP users who order from Amazon and Amazon Direct can have their orders delivered, but they will need to pick-up their orders in person if they place an order through Whole Foods, even though Amazon also owns Whole Foods; and

Whereas, Meanwhile, Instacart, the country's largest grocery delivery platform, is not part of SNAP; and

Whereas, During the COVID-19 emergency, when people are being asked to stay home and severely limit the amount of time they are outside of their homes, grocery delivery has become crucial; and

Whereas, SNAP users are now at an additional disadvantage because so few grocery delivery platforms accept their SNAP benefits; now, therefore, be it

Resolved, That the United States Department of Agriculture expand the number of retailers that are permitted in the Supplemental Nutrition Assistance Program online purchasing program to ensure vulnerable communities in New York City can safely access healthy food.

Referred to the Committee on General Welfare.

Int. No. 1937

By Council Members Dromm and Kallos.

A Local Law to amend the New York city charter, in relation to expanding the collection of certain demographic data by city agencies

Be it enacted by the Council as follows:

Section 1. Subdivisions i, j and k of section 15 of the New York city charter, as amended by local law number 76 for the year 2018, are amended to read as follows:

i. 1. [The department of social services, the administration for children's services, the department of homeless services, the department of health and mental hygiene, the department for the aging, the department for youth and community development, the department of education and any other agencies designated by the mayor] *Any agency* that directly or by contract [collect] *collects* demographic information via form documents from city residents [seeking social services] shall provide all [such] persons [seeking such services] *completing such form documents* with a standardized, anonymous and voluntary demographics information survey form that contains questions regarding ancestry and languages spoken.

2. The questions shall include options allowing respondents to select from:

(a) at least the top 30 largest ancestry groups and languages spoken in the city of New York based on data from the United States census bureau; and

(b) "other," with an option to write in a response.

3. Such survey form shall be created by the office of operations and office of immigrant affairs, or such offices or agencies as may be designated by the mayor, and may be updated as deemed necessary by those agencies based on changing demographics.

4. Beginning no later than six months after the effective date of the local law that added this subdivision, and annually thereafter, the office of operations, or the office or agency designated by the mayor, shall conduct a review of all forms issued by the agencies described in paragraph 1 of this subdivision [and any other agencies so designated by the mayor] that[:] collect demographic information [addressing the questions contained on the survey form, are completed by persons seeking services and contain content and/or language in relation to collecting such information that is within the administering city agency's authority to edit or amend] *from city residents*. The office of operations, or the office or agency designated by the mayor, shall submit to the council, within 60 days of such review, a [list of] *report listing* all forms reviewed [and all forms eligible for updating and for forms not eligible for updating an explanation of why such forms are not eligible for updating, and

indicate which forms shall be updated.] *and indicating whether each such form is within the administering city agency's authority to edit or amend. A form shall be considered to be within the administering city agency's authority to edit or amend if there is no law or court order prohibiting amendment of such form. If a form is not within the administering city agency's authority to edit or amend, the report shall identify the law or court order that prohibits such amendment, whether there is any waiver that would permit amendment of such form, and, if so, any efforts made to obtain such a waiver.* When [practicable, when] such forms are updated they shall request voluntary responses to questions about ancestry and languages spoken. All forms identified as [eligible for updating] *within the administering city agency's authority to edit or amend* during the review required pursuant to this paragraph shall be updated to invite responses to questions about ancestry and languages spoken no later than five years from the effective date of the local law that added this subdivision. All forms not [eligible for updating] *within the administering city agency's authority to edit or amend* shall be provided in conjunction with the standardized, anonymous and voluntary demographics information survey form as established by paragraph 1 of subdivision i of this section, *provided that, if there is any waiver that would permit such form to be amended, the administering city agency shall apply for such waiver, and, if such waiver is granted, such form shall be updated to invite responses to questions about ancestry and languages spoken.*

5. Beginning no later than 18 months after the effective date of the local law that added this subdivision, and annually thereafter, the office of operations, or the office or agency designated by the mayor, shall make available to the public data for the prior fiscal year that includes but is not limited to the total number of individuals who have identified their ancestry or languages spoken on the survey form described in paragraph 1 of this subdivision and any forms updated pursuant to paragraph 4 of this subdivision, disaggregated by response option, agency and program. Such data shall be made available to the public through the single web portal provided for in section 23-502 of the administrative code.

6. Each agency that provides the survey form required pursuant to paragraph 1 of this subdivision shall evaluate its provision of services in consideration of the data collected pursuant to this subdivision and the office of operations, or the office or agency designated by the mayor, shall submit to the council a report on any new or modified services developed by any agencies based on such data. Such report shall be submitted no earlier than 18 months after the effective date of the local law that added this paragraph.

7. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information respecting students and families serviced by the New York city department of education. If any category requested contains between 1 and 5, or allows another category to be narrowed to between 1 and 5, the number shall be replaced with a symbol.

j. 1. [The department of social services, the administration for children's services, the department of homeless services, the department of health and mental hygiene, the department for the aging, the department for youth and community development, the department of education and any other agencies designated by the mayor] *Any agency that directly or by contract [collect] collects demographic information via form documents from city residents [seeking social services] shall provide all persons [seeking such services] completing such form documents with a standardized, anonymous and voluntary demographic information survey form that contains an option for multiracial ancestry or ethnic origin. Such survey form shall be created by the office of operations and office of immigrant affairs, or such offices or agencies as may be designated by the mayor, and may be updated as deemed necessary by those agencies based on changing demographics.*

2. Beginning no later than six months after the effective date of the local law that added this subdivision, and annually thereafter, the office of operations, or an office or agency designated by the mayor, shall conduct a review of all forms issued by the agencies described in paragraph 1 of this subdivision [and any other agencies so designated by the mayor] that[:] collect demographic information [addressing the questions contained on the survey form, are completed by persons seeking services and contain content and/or language in relation to collecting such information that is within the administering city agency's authority to edit or amend] *from city residents.* The office of operations, or the office or agency designated by the mayor, shall submit to the council, within 60 days of such review, a [list of] *report listing* all forms reviewed [and all forms eligible for updating, and for forms not eligible for updating an explanation of why such forms are not eligible for updating, and

indicate which forms shall be updated.] *and indicating whether each such form is within the administering city agency's authority to edit or amend. A form shall be considered to be within the administering city agency's authority to edit or amend if there is no law or court order prohibiting amendment of such form. If a form is not within the administering city agency's authority to edit or amend, the report shall identify the law or court order that prohibits such amendment, whether there is any waiver that would permit amendment of such form, and, if so, any efforts made to obtain such a waiver.* When [practicable, the office of operations, or the office or agency designated by the mayor, shall ensure that when] such forms are updated they shall request voluntary responses to questions about multiracial ancestry or ethnic origin. All forms identified as [eligible for updating] *within the administering city agency's authority to edit or amend* during the review required pursuant to this paragraph shall be updated to invite responses to questions about multiracial ancestry or ethnic origin no later than five years from the effective date of the local law that added this subdivision. All forms not [eligible for updating] *within the administering city agency's authority to edit or amend* shall be provided in conjunction with the standardized, anonymous and voluntary demographics information survey form as established by paragraph 1 of subdivision j of this section, *provided that, if there is any waiver that would permit such form to be amended, the administering city agency shall apply for such waiver, and, if such waiver is granted, such form shall be updated to invite responses to questions about multiracial ancestry or ethnic origin.*

3. Beginning no later than 18 months after the effective date of the local law that added this subdivision, and annually thereafter, the office of operations, or the office or agency designated by the mayor, shall make available to the public data for the prior fiscal year that includes but is not limited to the total number of individuals who have identified their multiracial ancestry or ethnic origin on the survey form described in paragraph 1 of this subdivision and any forms updated pursuant to paragraph 4 of this subdivision, disaggregated by response option, agency and program. Such data shall be made available to the public through the single web portal provided for in section 23-502 of the administrative code.

4. Each agency that provides the survey form required pursuant to paragraph 1 of this subdivision shall evaluate its provision of services in consideration of the data collected pursuant to this subdivision and the office of operations, or the office or agency designated by the mayor, shall submit to the council a report on any new or modified services developed by any agencies based on such data. Such report shall be submitted no earlier than 18 months after the effective date of the local law that added this paragraph.

5. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information respecting students and families serviced by the New York city department of education. If any category requested contains between 1 and 5, or allows another category to be narrowed to between 1 and 5, the number shall be replaced with a symbol.

k. 1. [The department of social services, the administration for children's services, the department of homeless services, the department of health and mental hygiene, the department for the aging, the department for youth and community development, the department of education and any other agencies designated by the mayor] *Any agency* that directly or by contract [collect] *collects* demographic information via form documents from city residents [seeking social services] shall provide all persons [seeking such services] *completing such form documents* who are either at least 14 years old or identify as the heads of their own households with a standardized, anonymous and voluntary demographics information survey form that contains questions regarding sexual orientation, including heterosexual, lesbian, gay, bisexual or asexual status or other, with an option to write in a response and gender identity, including transgender, cisgender or intersex status or other, with an option to write in a response.

2. Such survey form shall be created by the office of operations and office of immigrant affairs, or such offices or agencies as may be designated by the mayor, and may be updated as deemed necessary by those agencies based on changing demographics.

3. (a) No later than 60 days after the effective date of the local law that added this subdivision, the office of operations shall submit to the mayor and the speaker of the city council a plan to provide a mandatory training program and develop a manual for agency staff on how to [invite] *encourage* persons served by such agencies to complete the [survey] *questions described in paragraph 1 of this subdivision on the survey form described in*

paragraph 1 of this subdivision and any forms updated pursuant to paragraph 4 of this subdivision. Such training and manual shall include, but not be limited to, the following:

- [(a)] (1) an overview of the categories of sexual orientation and gender identity;*
- [(b)] (2) providing constituents the option of completing the [survey] questions in a private space and filling out any paperwork without oral guidance from city agency staff;*
- [(c)] (3) explaining to constituents that completing the [survey] questions is voluntary;*
- [(d)] (4) explaining to constituents that any data collected from such [survey] questions will not be connected to the individual specifically; and*
- [(e)] (5) discussions regarding addressing constituents by their self-identified gender.*

(b) No later than 90 days after the effective date of the local law that added this subparagraph, the office of operations shall submit to the mayor and the speaker of the city council the mandatory training program and manual developed pursuant to subparagraph (a) of this paragraph.

4. Beginning no later than six months after the effective date of the local law that added this subdivision, and annually thereafter, the office of operations, or an office or agency designated by the mayor, shall conduct a review of all forms issued by the agencies described in paragraph 1 of this subdivision [and any other agencies so designated by the mayor] that[:] collect demographic information [addressing the questions contained on the survey form, are completed by persons seeking services and contain content and/or language in relation to collecting such information that is within the administering city agency's authority to edit or amend] *from city residents*. The office of operations, or the office or agency designated by the mayor, shall submit to the council, within 60 days of such review, a [list of] *report listing* all forms reviewed [and all forms eligible for updating, and for forms not eligible for updating an explanation of why such forms are not eligible for updating, and indicate which forms shall be updated.] *and indicating whether each such form is within the administering city agency's authority to edit or amend. A form shall be considered to be within the administering city agency's authority to edit or amend if there is no law or court order prohibiting amendment of such form. If a form is not within the administering city agency's authority to edit or amend, the report shall identify the law or court order that prohibits such amendment, whether there is any waiver that would permit amendment of such form, and, if so, any efforts made to obtain such a waiver.* When [practicable, when] such forms are updated they shall request voluntary responses to questions about sexual orientation, including heterosexual, lesbian, gay, bisexual or asexual status, or other; gender identity, including transgender, cisgender and intersex status or other; and the gender pronoun or pronouns that an individual identifies with and that others should use when talking to or about that individual. All forms identified as [eligible for updating] *within the administering city agency's authority to edit or amend* during the review required pursuant to this paragraph shall be updated to invite responses to questions about sexual orientation, gender identity and the gender pronoun or pronouns that an individual identifies with and that others should use when talking to or about that individual no later than five years from the effective date of the local law that added this subdivision. All forms not [eligible for updating] *within the administering city agency's authority to edit or amend* shall be provided in conjunction with the standardized, anonymous and voluntary demographics information survey form as established by paragraph 1 of subdivision k of this section, *provided that, if there is any waiver that would permit such form to be amended, the administering city agency shall apply for such waiver, and, if such waiver is granted, such form shall be updated to invite responses to questions about sexual orientation, gender identity and the gender pronoun or pronouns that an individual identifies with and that others should use when talking to or about that individual.*

5. Beginning no later than 18 months after the effective date of the local law that added this subdivision, and annually thereafter, the office of operations, or the office or agency designated by the mayor, shall make available to the public data for the prior fiscal year that includes but is not limited to the total number of individuals who have identified their sexual orientation or gender identity on the survey form described in paragraph 1 of this subdivision and any forms updated pursuant to paragraph 4 of this subdivision, disaggregated by response option, agency and program. Such data shall be made available to the public through the single web portal provided for in section 23-502 of the administrative code.

6. Each agency that provides the survey form required pursuant to paragraph 1 of this subdivision shall evaluate its provision of services in consideration of the data collected pursuant to this local law and the office

of operations shall submit to the council a report on any new or modified services developed by any agencies based on such data. Such report shall be submitted no earlier than 18 months after the effective date of the local law that added this paragraph.

7. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information respecting students and families serviced by the New York city department of education. If any category requested contains between 1 and 5, or allows another category to be narrowed to between 1 and 5, the number shall be replaced with a symbol.

§ 2. This local law takes effect 90 days after becoming law.

Referred to the Committee on Education.

Int. No. 1938

By Council Members Holden and Yeger.

A Local Law to amend the administrative code of the city of New York, in relation to requiring towing companies to remove debris from the scene of an accident

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 20-518 of the administrative code of the city of New York is amended by adding a new paragraph 6 to read as follows:

6. A towing company that removes a vehicle from the scene of a vehicular accident shall remove all debris deposited upon the roadway by such vehicle. A towing company that removes a vehicle from the scene of a vehicular accident at the direction of the police department pursuant to this section shall not charge for such removal of debris from the roadway except to the extent authorized by the commissioner by rule.

§ 2. This local law takes effect immediately.

Referred to the Committee on Consumer Affairs and Business Licensing.

Res. No. 1321

Resolution calling upon the State Legislature to pass, and Governor to sign, A.03269 and S.02490, requiring putrescible and non-putrescible waste to be covered by a hard tarp when transported by rail.

By Council Members Holden and Yeger.

Whereas, New York City (City) has no active sanitary landfills, no construction and demolition debris landfills, no traditional incinerators, and very limited waste-to-energy resource recovery facilities, necessitating that most refuse be exported from the City for disposal; and

Whereas, New York City's 2006 Comprehensive Solid Waste Management Plan initiated a shift from truck based methods of long haul waste export to freight and marine based transport alternatives, in order to reduce the environmental impacts of long haul truck carting; and

Whereas, In 2019, the City produced over 3.2 million tons of refuse, approximately 75 percent of which was sent to landfill; and

Whereas, The City produces approximately 1,400 tons of dewatered biosolids, which is treated sewage sludge, reclaimed from the wastewater treatment process, every day; and

Whereas, Approximately 89 percent of the biosolids produced within New York State are sent to landfills within state bounds; and

Whereas, Despite requirements necessitating that municipal solid waste shipped via rail be transported in sealed containers, complaints about odor management and refuse blowing onto properties persist in adjacent route communities; and

Whereas, Putrescible waste, defined as solid wastes that contain organic matter having the tendency to decompose and form malodorous by-products, have the potential to attract vermin when improperly secured; and

Whereas, Requiring putrescible and non-putrescible waste to be covered by a hard tarp when transported by rail, as per legislation A.03269, and S.02490, introduced by Assembly Member Brian Barnwell and State Senator Joseph Addabbo, has the potential to better contain odor and loose refuse, resulting in fewer disturbances to communities through which this waste transits; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the State Legislature to pass, and Governor to sign, A.03269 and S.02490, requiring putrescible and non-putrescible waste to be covered by a hard tarp when transported by rail.

Referred to the Committee on Environmental Protection.

Int. No. 1939

By Council Members Maisel, Kallos, Chin, Yeger and Powers.

A Local Law to amend the administrative code of the city of New York and the New York city building code, in relation to requiring standby power for nursing homes, adult homes, enriched housing and certain assisted living facilities

Be it enacted by the Council as follows:

Section 1. Article 315 of chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new section 28-315.12 to read as follows:

28-315.12 Standby power for nursing homes, adult homes, enriched housing and assisted living facilities. *By January 1, 2024, I-1, I-2 and R-2 occupancies that are nursing homes, adult homes, enriched housing and assisted living facilities, other than those excluded by exception pursuant to section 426.1 of the New York city building code, shall comply with the retroactive requirements of section 426.2.2 of the New York city building code.*

§ 2. Chapter 4 of the New York city building code is amended by adding a new section BC 426 to read as follows:

**SECTION BC 426
NURSING HOMES, ADULT HOMES, ENRICHED HOUSING
AND ASSISTED LIVING FACILITIES**

426.1 General. *The provisions of Section 426.2 apply to I-1, I-2 and R-2 occupancies that are nursing homes, adult homes, enriched housing and assisted living facilities.*

Exception: *This section does not apply to alcohol and drug abuse rehabilitation centers, halfway houses, congregate care facilities and social rehabilitation facilities.*

426.2 Standby power. *Nursing homes, adult homes, enriched housing and assisted living facilities shall be provided with standby power systems capable of providing power for at least 72 hours for the standby power loads specified in Section 426.2.1.*

426.2.1 Standby power loads. *The following loads are classified as standby power loads:*

1. *In buildings having more than one occupied floor, at least one elevator serving all floors, or one elevator per bank where different banks serve different portions of the building;*
2. *Air conditioning, cooling, and heating systems sufficient to maintain temperature and humidity in accordance with Section 1204 in at least one common space which can accommodate all occupants of such facility or in all spaces used by occupants of such facility for sleeping purposes;*
3. *Refrigerators and freezers located in the facility; and*
4. *Lighting in all hallways.*

426.2.2 Retroactive provision. *Section 426.2 shall be retroactive and shall apply to all buildings in existence on the effective date of this provision and such buildings shall achieve compliance no later than January 1, 2024.*

§ 3. Section 2702.2 of the New York city building code is amended by adding a new section 2702.2.21 to read as follows:

2702.2.21 Nursing homes, adult homes, enriched housing and assisted living facilities. *Standby power shall be provided in I-1, I-2 or R-2 occupancies that are nursing homes, adult homes, enriched housing and assisted living facilities, other than those excluded by exception pursuant to Section 426.1, in accordance with Section 426.2.*

§ 4. This local law takes effect immediately.

Referred to the Committee on Housing and Buildings.

Preconsidered Int. No. 1940-A

By Council Members Matteo, Yeger, Rosenthal, Lancman, Holden, Kallos and Menchaca.

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

Be it enacted by the Council as follows:

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

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

§ 2. This local law takes effect immediately.

Adopted by the Council (preconsidered and amended by the Committee on Consumer Affairs and Business Licensing).

Preconsidered Int. No. 1941

By Council Members Miller, Borelli, Yeger, Kallos, Menchaca, Chin, Brannan, Maisel, Van Bramer, Cabrera, Koslowitz, Rodriguez, Gibson, Rose, Powers the Public Advocate (Mr. Williams).

A Local Law to amend the administrative code of the city of New York, in relation to requiring health insurance coverage for surviving family members of municipal employees who died as a result of a complication related to the coronavirus disease, COVID-19

Be it enacted by the Council as follows:

Section 1. Subparagraph (i) of paragraph (2) of subdivision b of section 12-126 of the administrative code of the city of New York, as amended by local law number 32 for the year 2020, is amended to read as follows:

(i) Where the death of a city employee is or was the natural and proximate result of an accident or injury sustained while in the performance of duty, or where accidental death benefits have been awarded in connection with a qualifying World Trade Center condition as defined in paragraph (a) of subdivision 36 of section 2 of the retirement and social security law, *or where the death of a city employee is or was the natural and proximate result of a complication related to the coronavirus disease, COVID 19*, the surviving spouse or domestic partner, until he or she dies, and the children under the age of [nineteen] 19 years and any such child who is enrolled on a full-time basis in a program of undergraduate study in an accredited degree-granting institution of higher education until such child completes his or her educational program or reaches the age of [twenty-six] 26 years, whichever comes first, shall be afforded the right to health insurance coverage, and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act, as is provided for city employees, city retirees and their dependents as set forth in paragraph [one] (1) of this subdivision. Provided, however, and notwithstanding any other provision of law to the contrary, and solely for the purposes of this subparagraph, a member otherwise covered by this subparagraph shall be deemed to have died as the natural and proximate result of an accident or injury sustained while in the performance of duty upon which his or her membership is based, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty

pursuant to Title 10 of the United States Code, with the armed forces of the United States or to service in the uniformed services pursuant to Chapter 43 of Title 38 of the United States Code, and such member died while on active duty or service in the uniformed services on or after [June fourteenth, two thousand five] *June 14, 2005* while serving on such active military duty or in the uniformed services. For purposes of this subparagraph, “city employee” shall include employees of the board of education.

§ 2. This local law is effective immediately; provided, however, that the health insurance coverage granted by section one of this local law shall be provided to the surviving spouse or domestic partner and children of any city employee who died prior to the effective date of this local law and shall commence prospectively on such effective date; and provided further that the amendments made to subparagraph (i) of paragraph (2) of subdivision b of section 12-126 of the administrative code of the city of New York shall not affect the continuation of health insurance coverage awarded prior to the effective date of this local law.

Referred to the Committee on Civil Service and Labor (preconsidered but laid over by the Committee on Civil Service and Labor).

Preconsidered Res. No. 1322

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation automatically classifying the deaths of all municipal employees who died from COVID-19 as line-of-duty deaths.

By Council Members Miller, Borelli, Yeger, Kallos, Chin, Brannan, Maisel, Van Bramer, Cabrera, Koslowitz, Rodriguez, Menchaca, Gibson, Rose, Powers and the Public Advocate (Mr. Williams).

Whereas, In 2019 and 2020, the disease COVID-19, also known as coronavirus, spread rapidly worldwide, leading the President of the United States to declare a national emergency, and the World Health Organization to declare the outbreak a global pandemic; and

Whereas, The impact of the coronavirus pandemic has been especially severe in the State of New York, which reports nearly 300,000 confirmed COVID-19 cases and 17,638 confirmed COVID-19 fatalities as of April 28, 2020, constituting roughly one-third of all confirmed coronavirus cases in the United States; and

Whereas, According to the New York City Department of Health and Mental Hygiene, New York City reports 11,820 confirmed COVID-19 deaths and 5,395 probable COVID-19 deaths, as of April 27, 2020; and

Whereas, New York City is highly reliant on a large staff of municipal employees that totals over 325,000 workers; and

Whereas, Many municipal workers in New York City, including police officers, firefighters, emergency medical services personnel, sanitation workers, healthcare workers, and teachers are essential workers whose occupational responsibilities preclude working from home; and

Whereas, During the COVID-19 pandemic, these workers face heightened risk and exposure to COVID-19 as a result of the nature of their positions; and

Whereas, An April 22, 2020 article in the *New York Times* reports that at least 209 City workers had died due to coronavirus at the time of publication, including 63 employees of the Department of Education, 33 employees of City hospitals, and 31 New York Police Department employees; and

Whereas, A line-of-duty death refers to a death that resulted from and is attributable to one’s employment; and

Whereas, For individuals whose death is classified as a line-of-duty death, additional benefits are provided to their surviving family, such as increased pension and health coverage; and

Whereas, As of April 29, 2020, a municipal employee’s death as a result of COVID-19 is only classified as a line-of-duty death if the employee’s surviving family members can prove that the individual more likely than not contracted COVID-19 while on duty; and

Whereas, Classifying the deaths of all municipal workers who have died from COVID-19 as line-of-duty deaths would grant additional benefits and resources to families of the deceased, and would alleviate the burden of having to prove a family member's death was directly attributable to their work; and

Whereas, Classifying the deaths of municipal workers who have died from COVID-19 as line-of-duty deaths would also serve as a form of recognition for the sacrifices of municipal employees who lost their lives while serving their government and community during a time of crisis; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, legislation automatically classifying the deaths of all municipal employees who died from COVID-19 as line-of-duty-deaths.

Referred to the Committee on Civil Service and Labor (preconsidered but laid over by the Committee on Civil Service and Labor).

Int. No. 1942

By Council Members Powers, Reynoso, Rosenthal, Lander, Levin, Constantinides, Rivera, Kallos, Menchaca, Chin, Ayala, Van Bramer and Vallone (by request of the Manhattan Borough President).

A Local Law to amend the administrative code of the city of New York, in relation to organic waste drop off sites

Be it enacted by the Council as follows:

Section 1. Title 16 of the administrative code of the city of New York is amended by adding a new section 16-308.1 to read as follows:

§ 16-308.1 Organic waste drop off sites. a. The commissioner shall ensure that at least three drop off sites for food waste and yard waste are established and operational in each community district no later than June 1, 2021. Each such site shall have a minimum of 20 hours available per week for residents to drop off food waste and yard waste, and shall be located in a geographic area that is easily accessible, including for persons with disabilities, and in close proximity to public transportation. Notice of a site's hours of operation shall be clearly displayed on such site and on the department's website.

b. The commissioner shall make available on the department's website information about each of the drop off sites, including its address, contact information, hours of operation and services provided.

c. The commissioner, in consultation with any agencies identified by the mayor, shall establish and engage in outreach and education efforts to inform residents about the drop off sites, including their locations, contact information, hours of operation and the services they provide.

d. The commissioner shall, beginning January 1, 2022 and every six months thereafter, submit a report to the mayor and the speaker of the council regarding the operation of the drop off sites established pursuant to this section. Such report shall include, but not be limited to, the following information for the prior six-month period, disaggregated by drop off site: (i) the amount of material collected at such site; (ii) the number of individuals utilizing such site; (iii) the number of full-time and part-time staff persons working at such site, if any; and (iv) where the food waste and yard waste collected at such site was sent.

§ 2. This local law takes effect immediately.

Referred to the Committee on Sanitation and Solid Waste Management.

Int. No. 1943

By Council Members Reynoso, Lander, Powers, Rosenthal, Levin, Constantinides, Rivera, Kallos, Menchaca, Chin and Ayala (by request of the Manhattan Borough President).

A Local Law to amend the administrative code of the city of New York, in relation to community recycling centers

Be it enacted by the Council as follows:

Section 1. Title 16 of the administrative code of the city of New York is amended by adding a new section 16-315.1 to read as follows:

§ 16-315.1 Community recycling centers. a. The commissioner shall ensure that at least three community recycling centers are established and operational in each community district by no later than June 1, 2021. Each such center shall have a minimum of 20 hours available per week for drop offs and be located in a geographic area that is easily accessible, including for persons with disabilities, and in close proximity to public transportation. Notice of a center's hours of operation shall be clearly displayed on such center and on the department's website.

b. Each community recycling center shall accept inorganic material that is not collected curbside but that can be recycled or reused. Any food waste or yard waste drop off or collection site otherwise provided for by local law may also be co-located within such recycling centers. Each community recycling center shall also accept hazardous material, as practicable and as defined by the department, that should not be disposed of curbside waste.

c. The commissioner shall make available on the department's website information about each of the community recycling centers, including its address, contact information, hours of operation and services provided.

d. The commissioner, in consultation with any agencies identified by the mayor, shall establish and engage in outreach and education efforts to inform residents about the community recycling centers, including their locations, contact information, hours of operation and the services they provide.

e. The commissioner shall, beginning January 1, 2022 and every six months thereafter, submit a report to the mayor and the speaker of the council regarding the operation of the community recycling centers established pursuant to this section. Such report shall include, but not be limited to, the following information for the prior six-month period, disaggregated by center: (i) the number of individuals utilizing such center; (ii) the material collected at each such center, disaggregated by material type; (iii) the number of full-time and part-time staff persons working at such center; (iv) where each type of material is sent; and (v) any education programs offered to the public.

§ 2. This local law takes effect immediately.

Referred to the Committee on Sanitation and Solid Waste Management.

Int. No. 1944

By Council Members Rivera, Kallos, Chin and Yeger.

A Local Law in relation to requiring the creation and distribution of a guide regarding changes in the policies and procedures of the department of social services/human resources administration due to COVID-19

Be it enacted by the Council as follows:

Section 1. Definitions. For purposes of this local law, the term “department” means the department of social services/human resources administration.

§ 2. Guide regarding changes due to COVID-19. The department shall create a guide to inform clients of the department about all changes in the policies and procedures of the department due to the new coronavirus disease, COVID-19. Such guide shall include information in English and each of the designated citywide languages, as defined in section 23-1101 of the administrative code of the city of New York, regarding applications for cash assistance, policies regarding appointment cancellation and any other changes in the department’s policies and procedures. No later than 30 days after the effective date of this local law, such guide shall be made available on the department’s website and shall be mailed to each client of the department.

§ 3. This local law takes effect immediately.

Referred to the Committee on General Welfare.

Preconsidered L.U. No. 662

By Council Member Salamanca:

Application Number 20205412 HAM (266 West 96th Street) submitted by the New York City Department of Housing Preservation and Development pursuant to section 576-a(2) of the New York State Private Housing Finance Law for the disposition city-owned property located at 266 West 96th Street (Block 1243, Lot 57), Borough of Manhattan, Council District 6, Community District 7.

Referred to the Committee on Land Use and the Subcommittee of Landmarks, Public Sitings and Dispositions (preconsidered but laid over by the Subcommittee of Landmarks, Public Sitings and Dispositions).

NEW YORK CITY COUNCIL

A N N O U N C E M E N T S

**NEW YORK CITY COUNCIL
FISCAL YEAR 2021
EXECUTIVE BUDGET HEARINGS**

Please be advised of the following scheduled Council Agency Hearings relative to the *Proposed Executive Expense, Revenue, Capital & Contract Budgets & CD-XLVI & CD-XLVII Programs for the Fiscal Year 2021* to be held remotely as follows:

Thursday, May 14, 2020

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00 – 12:00	Police	Public Safety
1:30 – 3:00	Aging	Aging
3:30 – 5:00	Sanitation	Sanitation & Solid Waste Management

Friday, May 15, 2020

[Committee on Health](#) jointly with the [Committee on Hospitals](#)

Mark Levine, Chairperson
Carlina Rivera, Chairperson

Oversight - NYC's Plan for COVID-19 Testing and Contact Tracing.

Remote Hearing.....10:00 a.m.

Monday, May 18, 2020

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00 – 12:30	Human Resources Administration and Homeless Services	General Welfare
12:30 – 1:00	Office of Civil Justice (Human Resources Administration)	General Welfare jointly with Justice System
1:30 – 3:00	Youth and Community Development	Youth Services
3:30 – 5:00	Parks and Recreation	Parks and Recreation

Tuesday, May 19, 2020

[Committee on Criminal Justice](#) jointly with the
[Committee on Justice System](#)

Keith Powers, Chairperson
Rory Lancman, Chairperson

Oversight - COVID-19 in City Jails and Juvenile Detention Centers.

Preconsidered Int ____ - By Council Member Powers - **A Local Law** to amend the New York City charter, in relation to adding a new section creating a local conditional release commission.

Remote Hearing.....1:00 p.m.

Wednesday, May 20, 2020

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00 – 11:30	Small Business Services	Small Business
12:00 – 1:30	Citywide Administrative Services	Governmental Operations
2:00 – 2:45	Criminal Justice Coordinator	Justice System
3:00 – 4:15	District Attorneys	Justice System jointly with Public Safety
4:30 – 5:00	Legal Aid	Justice System

Thursday, May 21, 2020

Time	Agency Testifying	Finance Committee jointly with Council Committee
9:30 – 11:00	Immigrant Affairs	Immigration
Begins 11:30*	Public	Finance jointly with Subcommittee on Capital Budget

Friday, May 22, 2020

★ **Addition**

[Committee on Public Safety](#)

Donovan Richards, Jr., Chairperson

Oversight - NYPD Enforcement of Social Distancing.

Remote Hearing.....11:00 a.m.

Tuesday, May 26, 2020

[Committee on Consumer Affairs & Business Licensing](#) jointly with the Andrew Cohen, Chairperson
[Committee on Resiliency and Waterfronts](#)..... Justin Brannan, Chairperson
Oversight – Consolidated Edison’s Summer Preparations and the City’s Cooling Needs.
 Remote Hearing.....10:30 a.m.

Wednesday, May 27, 2020

★ **Addition**
[Subcommittee on Landmarks, Public Sitings and Dispositions](#) Adrienne Adams, Chairperson
See Land Use Calendar
 Remote Hearing.....10:30 a.m.

★ **Addition**
[Committee on Land Use](#) Rafael Salamanca, Jr., Chairperson
All items reported out of the Subcommittees
AND SUCH OTHER BUSINESS AS MAY BE NECESSARY
 Remote Hearing.....12:30 p.m.

Thursday, May 28, 2020

Stated Council Meeting.....Agenda – 1:30 p.m.

Members of the public can sign up to testify at virtual public hearings via Zoom Web and/or via Phone at least 24 hours in advance of hearing. Written testimony may be submitted up to 72 hours after hearing has been adjourned.

For questions about accessibility or to request additional accommodations at the May 21st Public Hearing, please contact swerts@council.nyc.gov or nbenjamin@council.nyc.gov or (212) 788-6936 at least three (3) business days before the hearing.

During the Communication from the Speaker segment of this Meeting, the Speaker (Council Member Johnson) acknowledged that May is Asian-American and Pacific Islander Heritage Month when the rich history and achievements of the APPI community are celebrated. He noted that there had been a rise in significant discrimination and harassment against Asian New Yorkers during the pandemic. The Speaker (Council Member Johnson) assured every Asian-American New Yorker that the Council stood with their community. He reiterated that the fear of COVID-19 should not be used as an excuse for harassment or discrimination of any kind especially against Asian New Yorkers.

Whereupon on motion of the Speaker (Council Member Johnson), the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) adjourned these virtual proceedings to meet again for the Stated Meeting on May 28, 2020.

MICHAEL M. McSWEENEY, City Clerk
Clerk of the Council