Testimony of Deputy Commissioner Amit S. Bagga
New York City Department of Consumer Affairs

Before the
New York City Council Committee on Small Business

Hearing on
Introduction 1499, 1501, 1507, 1508, 1515, 1516, 1521, and 1526, in relation to penalty mitigation programs

April 24, 2017

Introduction

Good afternoon, Chairman Cornegy, and members of the committee. My name is Amit S. Bagga, and I am the Deputy Commissioner for External Affairs at the New York City Department of Consumer Affairs ("DCA"). I am joined today by several colleagues from the agency, as well as representatives from sister City agencies. I would like to thank the committee for the opportunity to offer testimony about a package of bills that proposes forgiving fines for violations of the law in exchange for the implementation of an assortment of public policy initiatives.

DCA commends the Council's attention to the needs of small businesses and welcomes the conversation about how to ease their regulatory burdens. The de Blasio administration, and DCA in particular, share the Council's overall goal of making life easier for small businesses in New York City, and we are pleased to have the opportunity to once again present to you the many proactive steps we have undertaken to do so, as well as offer some additional ideas for how we might continue to do so.

Following an overview of our efforts to reduce burdens on small businesses, we will share with you our concerns about the Penalty Mitigation Programs, which we are concerned might have negative unintended consequences and might not ultimately achieve what is intended.

Fine Reduction and Easing Burdens on Small Businesses

Since Mayor de Blasio has taken office, we have very aggressively reduced small business fines and invested millions in translation, outreach, and education. We are proud to report that compared to the prior administration's last year in office, when DCA assessed more than $32 million in small business patrol fines, we have now reduced those fines by *more than 50 percent.* This unprecedented scope of reduction represents DCA's steadfast commitment under this Administration to prioritizing education, outreach, training, and robust implementation of Cure Laws whenever possible.

We know that the average brick-and-mortar, mom-and-pop store in New York City needs as much support as possible to thrive, and we make it *our* business to ensure that these stores *stay* in business. Since January 2014, we have conducted hundreds of legal and informational trainings,

and significantly enhanced our customer service capabilities through our expanded licensing center at 42 Broadway.

DCA has also prioritized helping immigrant business owners, who are estimated to be two-thirds of all small business owners in New York City, meaning that language access is a critical component of our work. To this end, DCA has made its materials available in as many as 26 different languages, and routinely ensures that industry-specific information is available in languages commonly spoken by proprietors in a given industry. DCA staff speak approximately 20 different languages and the majority of our non-subway print and radio advertising dollars are dedicated to advertising in local and foreign-language media, as we know that such outlets are where many business owners get their news.

We have also been a pioneer agency within City government when it comes to revamping our processes and procedures to ease burdens on small businesses. In early 2014, we were the first agency to require all of our inspectors to carry with them laminated cards featuring 16 languages that business owners could simply point to in order to have their inspection conducted in that language, using telephonic translation. Additionally, we have made approximately 40 of our most commonly-used inspector checklists available on our website in plain language and in as many as 12 additional languages for businesses to easily access.

This level of accessibility is further enhanced by our signature "Business Education Days" program. On these days, DCA staff hit the streets, going door-to-door along commercial corridors across the five boroughs, to talk to business owners directly about their individual concerns, provide information, and go through questions they may have about their compliance on the spot. During these visits, no violations are issued and no fines are assessed. Since 2014, DCA has visited thousands of businesses across the city to educate owners about general retail and tobacco laws, Paid Sick Leave, the increase in the minimum wage, among the many laws that we enforce. Just last year, DCA visited 14 different neighborhoods, including Flatbush Avenue in Bedford-Stuyvesant, 116th Street in East Harlem, East Tremont Avenue in Throgs Neck, Forest Avenue in North Westerleigh, and Steinway Street in Astoria.

In 2014, we created the position of Business Compliance Counsel. This agency attorney is dedicated almost exclusively to providing licensees with information on legal compliance. In addition to being able to ask questions directly to our Business Compliance Counsel, proprietors can also access a live representative through our online "Live Chat" services, which have served more than 41,000 business owners since January 2014.

In addition to these initiatives, the City's Department of Small Business Services ("SBS") provides free compliance consultations with guidance on how to avoid common violations from various agencies, including the Departments of Health, Environmental Protection, Sanitation, Fire, Buildings, and, of course, Consumer Affairs. To date, the program has served more than 1,000 businesses.

Compliance Advisors are trained to understand regulatory requirements across multiple agencies. They are available to visit businesses and provide an on-site consultation to help a new or existing businesses understand how to comply with some of the City's most prevalent regulatory

requirements. Advisors can also help if you've already received a violation by providing guidance on what the violation is for and how it can be resolved.

Additionally, as part of the compliance consultation, business owners receive a customized checklist highlighting the most common violations they might have. Compliance Advisors conduct their consultations not only in English, but also Mandarin, Cantonese, Fuzhou, Spanish and Russian. Notably, these compliance consultations do not result in agency enforcement, making them particularly valuable for business owners.

As I mentioned a few moments ago, DCA has reduced small business fines by more than 50 percent since the beginning of this Administration. These efforts have largely been made possible as a result of DCA choosing to issue warnings for many different types of first-time violations, and also are a result of our successful implementation of the Cure Law, a joint initiative of the Council and the Mayor's Office of Operations.

The Cure Law made dozens of types of first-time violations "curable." DCA's successful implementation of this law, which includes a process that is *extremely* easy for businesses to follow, has saved local businesses millions of dollars in fines, and likely additional millions in saved time, energy, and hassle. Our partner agencies utilize similar cure policies with an emphasis on incentivizing correction versus assessing punitive penalties.

Penalty Mitigation Legislative Package – Overview

With respect to the package of bills we're here to discuss today, it is our view that while the stated public policy goals are laudable, taken together, we are concerned this package could undermine important consumer and worker protection laws passed by this Council in ways that outweigh the potential public policy benefits. These laws include the landmark Paid Sick Leave Law and our Consumer Protection Law. Diminishing DCA's ability to effectively enforce these laws could weaken many key protections this Council has enacted and would pose significant challenges for implementation, in addition to likely being cost-prohibitive.

Introduction 1499 ("1499") would require DCA, as well as and the Departments of Housing Preservation & Development ("HPD"), Sanitation ("DSNY"), and Buildings ("DOB"), to conduct a review of all violations we issue, tell the Mayor and the Council which ones should be eligible for a "Penalty Mitigation Program," and explain why violations left off this list were not included. Introductions 1501, 1515, 1521, and 1526 allow for a waiver of fines for violations that are related to scanner accuracy, signage, or recordkeeping in exchange for providing bathroom access to the public, the installation of energy efficiency measures, donation of organic waste, or donation of excess food, respectively. Introduction 1516 requires SBS to develop a program that would allow businesses to ask for a compliance consultation, and give them opportunity to fix any violations found during the consultation, thus avoiding fines, which is a function SBS already performs, as I've noted. Introduction 1508 allows for waiver of fines related to recordkeeping violations if businesses attend a compliance course that would be designed by DCA.

Implementation Concerns

We have several concerns about the feasibility of implementation of this legislative package. A major concern is that the proposed Penalty Mitigation Programs conflict with, and in many cases, could be more burdensome than, existing processes available to businesses under the Cure Law.

Currently, the Cure Law process is very straightforward for a business owner. After receiving a "curable" violation, an owner simply signs a letter stating that they will fix the violation within 30 days, and, as a result, they are relieved of any fine burden. Expanding the Cure Law to cover additional violations is an initiative the Administration is eager to work with the Council on.

In contrast, we believe the Penalty Mitigation Programs proposed by the package would likely be extremely challenging to implement and could also be more complicated for small businesses to navigate. First, the creation of these programs would require the development and implementation of a *completely new and separate* administrative process, one that cannot use existing resources. After receiving a violation, business owners would likely first have to appear before the Office of Administrative Trials and Hearings ("OATH"). If OATH finds a business owner guilty of the violation, an Administrative Law Judge would then have to determine, based on a City agency's testimony and data, whether or not the violation is eligible to have any associated fines forgiven under a Penalty Mitigation Program. Then, pursuant to an OATH determination, a business owner would have to come back to the appropriate agency to request to participate in a Penalty Mitigation Program. Businesses could only enter into a regulatory agreement with the City, if they are, in fact, eligible. Based on the nature of the agreement, businesses would be required to make capital improvements or undertake other time-consuming work to demonstrate compliance, which would cost them far more money than simply paying fines that are as low as $25, and not likely to be more than $250. Lastly, businesses would be subject to future inspection, which could lead to a whole host of challenges for them if they found they were unable to comply with the agreement. It is unclear as to how this process would be easier on businesses, especially compared to the existing "cure" process.

It should be noted that the broad expansion of compliance assessments required by the bills far exceeds the resources we have today. Our small corps of 35 inspectors is responsible for inspecting more than tens of thousands of brick-and-mortar businesses annually for compliance with important consumer protection and licensing laws. Our inspectors ensure that businesses such as tax preparers, pawn brokers, used car dealers, employment agencies, all known for engaging in consumer harm, are not defrauding consumers. Given their critical mandate, it would be challenging to expect that our inspectors could also assess restrooms for their level of "public accessibility," for example.

We will now take a moment to discuss the bill of greatest concern to us, Introduction 1508; provisions of which would allow fines associated with "record keeping" violations to be easily forgiven.

Recordkeeping Concerns – Introduction 1508

While one might presume that record keeping is a pesky, onerous task for a busy and hardworking business owner, it is in fact an analysis of records – whether they're missing, inaccurate, accurate, complete, or falsified – that enables DCA to determine whether or not egregious consumer or worker harm has occurred.

Analyzing records allows DCA to reconstruct past events or transactions to determine whether underlying laws were, in fact, broken. Easing the requirements for record keeping would be particularly problematic in certain licensing and labor law areas where record keeping is integral to our ability to enforce the law.

DCA does not typically fine businesses for "clerical errors" with respect to records. In cases of "missing" records, which is a common issue in the towing industry, widely known to be among the most egregious when it comes to consumer fraud, we have often found that the fact that the records are missing is not simply an "honest mistake," but rather evidence that deceptive or predatory practices are being concealed.

In the Paid Sick Leave context, a review of records is critical to enabling us to determine whether or not employees have been robbed of their right to take sick time. As you are aware, the passage and implementation of the Paid Sick Leave Law are signature accomplishments for both the Council and the Administration. It is almost exclusively through a review of *existing records* that we are able to determine whether or not an employer is out of compliance. For example, because of an analysis of employee records, we were able to secure $380,000 in worker restitution – nearly three-and-a-half times more than the fines we assessed – for approximately 2,400 CVS employees who were denied access to paid sick leave. This case, along with the large majority of cases we bring based on record keeping violations, came not as the result of the records showing "clerical errors" or simply being "incomplete," but rather because the information *in* the existing records showed clear non-compliance. In the CVS case, and in many others, the issue is not that the businesses didn't know how to keep their records and need training on how to do so; the issue is that records were kept and that the kept records demonstrated that the businesses have not followed the law.

Importantly, many records that are routinely kept by businesses help to demonstrate compliance not only with City laws, but also with state and federal laws. In several cases, the payroll records being reviewed by our investigators for paid sick leave compliance are the very same records other agencies review for compliance with payment of the minimum wage and overtime wages. Because the absence or falsification of such records would render an employer subject to punitive action by state or federal authorities, undermining the importance of record keeping via City law is likely to only hurt, not help, businesses in our city.

In the consumer protection context, it is worth noting that in the used car and process server industries, both of which we license, record keeping is a critical tool that enables us to determine whether or not consumers have been sold sometimes dangerous cars at high interest rates through predatory and deceptive practices, or whether or not individuals who are supposed to be "served"

with legal documents actually received them. Based on our many years of enforcement experience, we believe that the legislative proposals before us today ease record keeping requirements in a manner that could unintentionally have an adverse impact on consumers and workers.

There are very important reasons for why record keeping violations were not previously included in the Cure Law, and we hope that the examples we have provided are illustrative of that.

Linking Penalty Mitigation and Specific Policies: Key Challenges

While we appreciate the Council's intent with this package to ease burdens on small businesses – again, a commitment that the Administration deeply shares – we are concerned these bills link fine forgiveness to the implementation of unrelated policy initiatives.

The central purpose of having penalties in consumer, worker, and environmental protection laws is to establish an important (but not overly punitive) incentive to comply with these laws. We are concerned that allowing fines for one category to be waived in exchange for unrelated behavior, such as potentially exchanging the failure to provide Paid Sick Leave for public restroom access, might not result in a "cure" of the original issue and fundamentally undermines the original purpose of the violations. We are concerned these proposals could inadvertently supplant existing policies identified as priorities by the Council, thus sending mixed signals to businesses how they must comply with existing laws.

Conclusion

We would like to reiterate that we appreciate both the value of the public policy goals the Council is seeking to accomplish, as well as your goal of reducing burdens on small businesses. Under Mayor de Blasio's leadership, we have been quite successful in reducing a large variety of burdens that small business owners might face— and we broadly agree that more can be done.

We are eager to work closely with the Council on ways in which we can further make life easier for our city's small businesses, such as expanding the Cure Law, as a start. DCA already has a list of approximately 20 different violation types we would seek to make "curable;" we'd very much welcome the opportunity to discuss those with the Council in the near future.

While we believe an expansion of the Cure Law would ultimately help businesses, we are concerned that implementation of the Penalty Mitigation Programs proposed by this legislative package will not do so. As a result, we also do not believe these programs are likely to result in the realization of the public policy goals the Council has identified. Additionally, we remain concerned about the ways in which the bills could undermine important consumer protection, worker protection, and environmental protection laws that the Council has prioritized, and we do not believe that the implementation of these bills would be feasible.

Thank you for the opportunity to testify today; we look forward to working closely with you on this, and other, issues. My colleagues and I will be happy to answer questions. Before we do our

colleague from HPD, Anne Marie Santiago, will provide testimony on Introductions 1507 and 1518.

Testimony of Molly Hartman,
Senior Advisor for Food Policy, Office of the Deputy Mayor for Health and Human Services
Before the New York City Council Committee on Small Business

April 24, 2017

Good morning, Chair Cornegy and members of the committee. I am Molly Hartman, Senior Advisor for Food Policy, and I work for the Director of Food Policy within the Office of the Deputy Mayor for Health and Human Services. I am joined today by representatives from the Department of Sanitation and the Department of Consumer Affairs. Thank you for this opportunity to speak about the critical issue of wasted food, and the de Blasio administration's efforts to send zero waste to landfills by 2030, as outlined in OneNYC.

Commitment to addressing food waste

Food plays a critical role in promoting a more sustainable, healthy, and equitable city. And we have an important role to play as a leader in building a better food system for New York City, where we all have access to nutritious food and where we limit the impact the food has on the environment. As you know, the issue of food waste and loss is gaining attention at the national and local level. We are working with our partners to build on this energy and make real progress. OneNYC made ambitious commitments to create a more equitable and sustainable city. Our goal to send zero waste to landfill by 2030 is an essential piece of this. Diverting organic material from landfill is essential to cut greenhouse gas emissions from the waste sector. Furthermore, the effort of our partners to recover edible food from businesses across the city is a crucial component of the food supply for the city's food pantries and community kitchens.

Today, I would like to speak about the work that the administration is already doing to make progress on reducing food waste in New York City.

Households and businesses in New York City discard approximately 1.5 million tons of food waste each year, equating to roughly a quarter of the City's waste stream. Approximately 700,000 tons of this is residential and 815,000 tons of this is commercial. In recent years, the Department of Sanitation and partners have been steadily increasing the diversion rate of residential organic waste by expanding curbside collection services and through the NYC Compost Program and neighborhood drop-offs.

With the implementation of new organics collections rules for food service establishments, vendors, food manufacturers, and wholesalers that went into place last July, the city has significantly expanded its outreach and education to encourage compliance and participation by small businesses.

The Department has created materials and trainings to assist businesses in complying with requirements, and to encourage additional waste prevention efforts. To help businesses avoid violations and improve recycling, DSNY offers free trainings for business owners and employees, building management companies, and chambers/associations. There are also videos of these trainings available on YouTube.

In advance of the rules going into place last year, the Mayor's Office of Sustainability in partnership with the Department of Sanitation led a Zero Waste Challenge. 39 business locations participated from a variety of sectors including arenas, restaurants, hotels, building owners & commercial tenants, schools, TV productions, caterers, and food wholesalers. Participants committed to divert 50% of their total waste from landfill and incineration. The program offered free technical assistance and support in donating their leftover food to food recovery organizations; it encouraged businesses to utilize best

practices in food source reduction, handling food, and engaging in creative waste reduction techniques such as using all of the parts of the fruits and vegetables in dishes they serve.

Food Recovery Efforts

While our primary goal must be to prevent food waste from occurring in the first place, recovering wholesome and nutritious food for human consumption supports our emergency food providers and puts food on the table for New Yorkers in need. The Department of Sanitation, the Human Resources Administration, and my colleagues in the Mayor's Office work with our partners in the nonprofit sector that collect edible food that would otherwise go to waste and distribute it to food pantries, shelters, community kitchens, and other emergency food programs. If a food businesss wants to donate their food, they can contact a food recovery organization such as City Harvest, Food Bank for New York City, ample harvest dot org, Rescuing Leftover Cuisine, or a local shelter or social services provider, to arrange for their food to be picked up for donation. The Department of Sanitation's DonateNYC website has a directory that can help a business find local organizations that accept donated goods, including food. And the Health Department's website has information to help businesses donate healthy food. With the NYC Food Assistance Collaborative, we are working with City Harvest and others to better understand where this food should be going, and supporting the emergency food network in increasing its capacity to accept donated food and better serve their communities.

CONCLUSION

While the administration shares the Council's goals under Intros 1521 and 1526 to promote food recovery for donation and reducing the environmental impact of our food system, we believe that waiving penalties for recycling infractions undermines the broader zero waste policy goals the city is trying to achieve.

We also have concerns that these bills pose real implementation challenges, with potentially limited impact on reducing food waste. We also question whether the small size of the penalties that could be waived would be sufficient incentive for participation in these programs.

We share your goals to reduce food waste in New York City, and are eager to work with you to strengthen the existing food donation programs in the city and successfully encourage greater participation in these programs. Thank you for the opportunity to testify. We are happy to answer any questions that you may have at this time.

Department of
Housing Preservation
& Development

Testimony of the Department of Housing Preservation and Development
to the New York City Council Committee on Small Business
Hearing: Int. No. 1507 in relation to the creation of an on-site compliance consultation program for multiple dwellings;and Int. No. 1518, in relation to waiving civil penalties for housing maintenance code violations where an owner made a good faith effort to correct such violations;

Good morning, Chairman Cornegy and members of the Small Buildings Committee. My name is Ann Marie Santiago, and I am Assistant Deputy Commissioner of the Office of Enforcement and Neighborhood Services. I appreciate the opportunity to testify regarding Intro Nos. 1507 and 1518, which are related to mitigation of HPD civil penalties.

Before us today are a number of bills that would allow property owners an opportunity to correct violations in exchange for mitigating penalties. HPD appreciates the Council's intent to seek compliance through penalty mitigationin certain circumstances. While this may be an issue that property owners have when an immediate penalty is assessed based upon the issuance of the violation, HPD penalties must be affirmatively sought by the agency in Housing Court and can already be mitigated along the lines envisioned by the Council.

Let me take a minute to explain how our current penalty process works. HPD violations do not result in an immediate penalty upon issuance of the violation. All violations have a legal compliance period provided during which time the civil penalties do not accrue, except for heat and hot water violations which must be corrected immediately. For example, in the case of non-hazardous violations, property owners have 90 days to correct the condition from the date the owner is assumed to receive the Notice of Violation, plus an additional 14 days to certify correction of the violation. Property owners also have an opportunity to seek a postponement of the correction and certification dates of the violations based on criteria including the inability to gain access to finish work timely.

The system that HPD uses for adjudicating civil penalties is established by the state Civil Court Act, which established a Housing Part of the Civil Court to hear such claims. The City's Housing Maintenance Code Section 27-2116 also states that HPD may bring an action for civil penalties in Housing Court, and sets forth a list of various appropriate factors that would mitigate the civil penalty claim. HPD has the ability to settle civil penalties for less than the maximum penalty given mitigating circumstances, and the Court has the authority to issue a judgment for less than the maximum penaltyif the matter goes to trial. Every HPD settlement of civil penalties in court is subject to Comptroller's approval. HPD does seek correction of all violations when the agency initiates comprehensive litigation and also seeks civil penalties on the most serious violations. HPD's primary goal in housing court is to obtain compliance with the correction of the conditions. We seek appropriate civil penalties as warranted, both as a penalty for past non-compliance and as a deterrent against future failure to correct violations. When HPD does seek civil penalties related to violations, property owners can pursue appropriate arguments in Court to mitigate those penalties if they believe that a settlement offer does not adequately account for extenuating circumstances. Judges review all relevant arguments from a property owner about the mitigation of penalties when there is a trial in Housing Court.

The Housing Maintenance Code already requires HPD to offer assistance to owners who request it and an extension of time to complete repairs. HPD also offers owners assistance through the Division of Neighborhood Preservation (DNP), which provides services to help property owners who are trying to comply

with Housing Maintenance Code issues to meet these challenges. DNP offers the following services: one-on-one counseling, assistance with violations removal and correction, landlord tenant mediation, and referrals for loans and grants. HPD supports education and training for owners through our Office of Neighborhood Strategies, which include Owners Nights, Owner Resources Fairs, educational classes on lead based paint (in coordination with the Department of Health) and general property management. Any property owner can receive assistance from HPD in a number of ways if they simply seek us out by coming into our borough offices or contacting DNP. We will continue to try contact property owners to let them know about existing programs. We also continually try to reach out to property owners in order to keep them informed about changes to the law or important HPD processes.

HPD's *ABCs of Housing*, which is widely known as a tenants' document, also provides important information for owners. This document highlights the most important compliance requirements in the Housing Maintenance Code and provides referrals to available resources. HPD keeps its website updated with recent changes and conducts appropriate owner outreach to include this information.

In sum, we believe that HPD already has sufficient processes in place under current law and practice which achieve the Council's intent of Intros 1507 and 1518. At a time of federal funding uncertainty, it is important that we partner with the Council to ensure that we do not add unnecessary and costly requirements on HPD code enforcement.

We look forward to continuing our work with the Council to identify and move forward to make New York City housing safe. Thank you for the opportunity to testify today and we are happy to answer any questions you may have. I will now turn to the Mayor's Office of Sustainability to speak about Intros. 1504 and 1515.

TESTIMONY OF THE MAYOR'S OFFICE OF SUSTAINABILITY
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON SMALL BUSINESS

April 24, 2017

INTRODUCTION

Good morning, Chair Cornegy and members of the committee. I am Jenna Tatum, Senior Policy Advisor for Buildings and Energy Efficiency in the Mayor's Office of Sustainability (MOS). Thank you for this opportunity to speak about energy efficiency programs for multiple dwellings, energy efficiency planning for businesses, and the de Blasio administration's efforts to reduce New York City's greenhouse gas emissions 80 percent by 2050.

The de Blasio administration is taking aggressive action to improve energy efficiency and reduce fossil fuel use in buildings. This work requires, and currently includes, the partnership of building owners, community members, and businesses alluded to in Intro 1504 and Intro 1515. Today, I would like to speak about two programs that already exist that accomplish much of what the administration believes 1504 and 1515 seek to do: The NYC Retrofit Accelerator and Community Retrofit NYC.

The NYC Retrofit Accelerator

The NYC Retrofit Accelerator program offers free, personalized advisory services for building owners and operators to streamline the process of making energy efficiency improvements that will reduce operating costs, enhance resident comfort, and improve our environment. The NYC Mayor's Office of Sustainability launched the Retrofit Accelerator as part of New York City's commitment to 80x50. The Retrofit Accelerator's Efficiency Advisors serve as trusted experts who help buildings make energy efficiency improvements. This assistance includes: Working with buildings one-on-one to understand their needs; Connecting buildings with qualified contractors; Finding cash incentives and financing to help pay for upgrades; Training building staff so buildings run efficiently for years to come; And providing ongoing technical guidance for projects, from initial project evaluation to completion. Since launching in September 2015, the Retrofit Accelerator has engaged with owners and operators of over 3,800 buildings, with projects already in construction or complete in nearly 500 buildings. This represents significant progress toward the objectives of Intro 1504 and 1515 to improve energy efficiency in our buildings.

Community Retrofit NYC

The second program within MOS is Community Retrofit NYC, a complementary program to the NYC Retrofit Accelerator specifically for small and mid-sized multifamily buildings located in central Brooklyn and southern Queens. MOS created Community Retrofit NYC to provide free advisory services for owners and operators of these buildings to make energy and water improvements that will realize cost savings, address health and electric grid vulnerabilities, and help preserve affordable housing in neighborhoods facing upward pressures on rent. Community Retrofit NYC works with community boards, elected officials, and civic groups to develop trust and build a pipeline of New Yorkers who can benefit from its advisory services—similar to the goals outlined in Intro 1504. Additionally, Community Retrofit NYC also identifies candidates that could benefit from the low and no-cost financing and technical support for energy efficiency and water conservation improvements through the NYC Department of Housing Preservation and Development's Green Housing Preservation Program (GHPP) as part of New York City's commitment to preserve housing affordability. Since launching just over a year ago, Community Retrofit NYC has engaged over 300 building owners.

CONCLUSION

In summary, the Mayor's Office of Sustainability shares your goals to reduce New York City's carbon footprint and improve energy efficiency for dwellings and businesses. Furthermore, MOS appreciates the Council's intent in these bills, however, MOS believes that our current programs address the goals described in the bills. Additionally, the size of penalties that could theoretically be waived would very likely be insufficient to incentivize owners to make significant energy or water efficiency improvements. Thank you for this opportunity to testify. Lastly, we will have Molly Hartman from the Mayor's Office of Food Policy discuss Intros. 1521 and 1526.

a better balance
the work and family legal center

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Testimony before the New York City Council Small Business Committee
April 24, 2017

Submitted by Sherry Leiwant, Co-President, and Molly Weston Williamson, Staff Attorney
A Better Balance

Thank you for the opportunity to submit this testimony. A Better Balance is a legal non-profit that helps working men and women care for themselves and their families without compromising their economic security through policy advocacy, outreach, and direct legal services. Our organization was at the forefront of drafting and advocating for the New York City Earned Sick Time Act and now advises and represents workers, particularly low-income workers, whose rights under the Act have been violated. We write today because of the potential impact of the bills presented at this hearing on enforcement of the Earned Sick Time Act and other important labor protections.

While it is our understanding that the bills considered today are intended to apply only to civil penalties payable to the city, we are concerned that they might be misread to imply that monetary amounts payable to workers or, for that matter, to consumers or other individuals. For example, N.Y.C. Administrative Code § 20-924(d) describes the remedies available to workers under the Earned Sick Time Act as "penalties." To prevent any potential misinterpretation, we strongly suggest adding language to each of the bills proposed today, including Intro-1499, to affirmatively state that only civil penalties payable to the city or a city agency may be waived through penalty mitigation programs.

Intro-1499 charges the heads of various city departments, including the commissioner of the Department of Consumer Affairs with "by rule, creat[ing] a list of such violations for which civil penalties may be waived if the individual receiving such violation participates in a penalty mitigation program[.]" The bill does not specify whether only penalties that are explicitly subject to a penalty mitigation program by statute (such as the one proposed in Intro-1508) may be or should be included in this list or whether other civil penalties may or should be included. We suggest that language be added to clarify this point. In addition, the bill does not currently specify any criteria by which the various commissioners should select civil penalties for inclusion on their respective lists. We suggest setting explicit criteria by which the commissioners should determine which civil penalties payable to the city or their agencies should be included in their lists for submission to the mayor and the council.

Intro-1508 would create a specific penalty mitigation program for violations related to record keeping requirements. At present, under Rules of the City of New York § 7-13(g), a violation of the record keeping requirements under the Earned Sick Time Act generates an inference regarding the information that would be contained in such records that can be helpful to workers in enforcing their rights. We suggest adding language to clarify that participation in a penalty mitigation program regarding a record keeping violation would have no impact on this or any other similar inference.

Similarly, the Department of Consumer Affairs has explicit powers under the city charter to conduct investigations on its own initiative of violations of the Earned Sick Time Act. To ensure that these powers are not inadvertently curtailed, we suggest adding language specifying that nothing in the bill shall prohibit the Department from conducting an investigation on its own initiative based on a violation of a record keeping requirement.

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Testimony of Benjamin Dulchin Before the New York City Council Committee on Small Business Concerning Civil Penalty Mitigation Program

April 24th, 2017

Good Morning. Thank you Chair Cornegy and members of the Committee on Small Business for the opportunity to testify.

My name is Benjamin Dulchin and I am the Executive Director of the Association for Neighborhood and Housing Development (ANHD). ANHD is a membership organization of NYC- neighborhood based housing and economic development groups- CDCs, affordable housing developers, supportive housing providers, community organizers, and economic development service providers. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers. We have nearly 100 members throughout the five boroughs who have developed over 100,000 units of affordable housing in the past 25 years alone.

ANHD is strongly opposed to the ten bills in the Committee on Small Business that have the potential to give housing and commercial landlords a pass on civil penalties and fines (Int 1499-2017, Int 1501-2017, Int 1504-2017, Int 1507-2017, Int 1508-2017, Int 1515-2017, Int 1516-2017, Int 1518-2017, Int 1521-2017, and Int 1526-2017.) New Yorkers across the City have been facing a displacement crisis due to rising rents and landlord harassment, and one of the most common tools of displacement is disinvestment and neglect. Landlords who want to clear out a building often know that one way to do it is to let the building fall into disrepair, as the fines they might face are modest compared to the value of just one vacant apartment.

These bills will give City agencies wide-reaching authority to waive or reduce landlords' civil penalties or fines for actions and behavior that we have fought to declare both illegal and harmful. It would mean that HPD, DOB, DSNY, FDNY, DCA, and DOHMH violations would go uncorrected and unpunished. Intros 1499, 1507, and 1518 would weaken code enforcement at a time when tenants are facing severe displacement pressure.

Each of these bills provides new tools that could allow landlords who fail to properly maintain or run their buildings to escape accountability. Together, they weaken the interests of tenants, both residential and commercial, in place of the interests of negligent landlords.

ANHD is concerned that the opening created by these bills could have a negative impact on commercial tenants across New York City. ANHD is committed to strengthening the needs of communities citywide and sees small businesses as integral to the fabric of New York's neighborhoods. ANHD convenes **United for Small Business NYC (USBNYC)**, a coalition that includes community organizations from across New York City to protect New York's small

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businesses and non-residential tenants from the threat of displacement, with a particular focus on owner-operated, low-income, minority and immigrant-run businesses that serve low-income, immigrant, and minority communities. USBNYC knows that commercial tenants in low income neighborhoods and communities of color often face the same displacement pressures as residential tenants, and are impacted by the same dangerous behavior of unscrupulous landlords looking to flip units for a profit. Additionally, small business tenants are often the same residential tenants who will face the brunt of the impacts of this legislation.

As advocates of our communities, we have and continue to fight for all residential and small businesses tenants' right to safe, decent and affordable places to thrive and operate. This package of legislation undermines of the many years of work that has been done to prevent dangerous and unlawful behavior by landlords, strengthen tenants' rights, protect our local small businesses, expand the City's code enforcement, and ensure worker safety and consumer rights.

We oppose this package of legislation and look forward to working with Council to craft legislation that is truly beneficial for small businesses while protecting both residential and commercial tenants.

Brooklyn Legal Services

Legal Services NYC

TESTIMONY OF LEGAL SERVICES NYC REGARDING DECREASED CIVIL PENALTIES FOR HOUSING MAINTENANCE CODE VIOLATIONS IN MULTIPLE DWELLINGS

(INT. NOS. 1499, 1504, 1507, and 1518)
New York City Committee on Small Business
April 24, 2017

My name is Jessica Reed and I am a staff attorney in the Housing Unit of Brooklyn Legal Services. I speak on behalf of Legal Services NYC, the National Organization of Legal Services Workers, and the Local 2320 of the UAW. Thank you for the opportunity to give testimony before the New York City Committee on Small Business.

Legal Services NYC fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. For nearly 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, access to high-quality education, health care, family stability, and income and economic security. LSNYC is the largest civil legal services provider in the country, with deep roots in all of the communities we serve. Our neighborhood-based offices and outreach sites across all five boroughs help more than 80,000 New Yorkers annually.

LSNYC prevents evictions, saves homes from foreclosure, and preserves thousands of subsidized and rent-regulated housing units. We tackle consumer scams and help those in need to obtain critical state and federal benefits. We protect the rights of low-income students and ensure that children with special needs have access to meaningful education. We help vulnerable New Yorkers, including people who are elderly or disabled and those with HIV, gain and keep public health insurance and other benefits. We secure safety and financial stability for survivors of domestic violence, including adjusting immigration status to put these survivors and their families on the path to citizenship. We fight for the rights of veterans and those who are LGBTQ. LSNYC addresses the underlying causes of our clients' problems through all forms of advocacy, including litigation and legislative reform. We partner with scores of community based organizations, elected officials, public agencies and the courts to maximize our effectiveness. Our work fights discrimination and helps break down barriers that trap low-income New Yorkers in poverty.

We thank the City Council for holding this hearing pertaining to Intros 1499, 1504, 1507, and 1518. We strongly oppose these bills, each of which would deleteriously affect HPD's code enforcement in multiple dwellings. These bills create opportunities for landlords to avoid paying overdue fines, and to have new fines waived. They unfairly benefit noncompliant landlords and

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undermine code enforcement while tenants struggle to live with conditions that are hazardous to their health and safety. Unfortunately, the current process that tenants must endure to demand repairs already fails to motivate their landlords. Tenants need stricter enforcement and stronger deterrents, not additional means for their landlords to evade civil penalties.

In our experience representing tenants, many of whom have lived in unsafe and unhealthy apartments for years on end and have requested repairs for just as long, a majority of landlords ignore the threat or imposition of civil penalties. These tenants struggle with unimaginable conditions such as no heat or hot water in the dead of winter, no window panes to keep out the snow and rain, and black mold that causes or exacerbates lung disease. New York City's rising rental costs keep tenants tethered to their unsafe homes and the current threat of penalties proves to be woefully inadequate to motivate most landlords to repair their buildings. With fewer penalties, recalcitrant landlords will be even less inclined to restore New York City's housing stock so that New Yorkers can live in safe and healthy homes. Reducing or entirely removing these penalties disincentivizes landlords from beginning—much less completing—necessary repairs.

For too long, tenants have struggled to obtain repairs and services through HP proceedings and calls to 311, only to find the landlord ignore HPD's recording of violations and threat of civil penalties. In this frustrating position, tenants often become discouraged and demoralized, resigning themselves to living with uninhabitable conditions that endanger the health of their families. Tenants often have to appear multiple times in court, missing work each time, merely to obtain a judicial order directing the landlord to make repairs. When, as frequently happens, the landlord violates the order, the tenant must then return to court to seek civil penalties. Often this second phase of the case becomes an even longer saga, with the proceeding adjourned multiple times at the landlord's request. Even when attorneys advocate for tenants, the delays remain. One tenant that I represented had been pleading with her landlord for years to exterminate the rats that ran through her basement apartment and ate food from her pantry. In her desperation, she took to killing the rats that scurried along her walls with a drill. On a particularly sweltering August afternoon, I once watched an HP hearing for contempt of a court order to provide heat in a case that had been commenced two Decembers prior. In our experience, at the end of this long process, the court often declines to impose penalties, or imposes only a minimal sanction, no matter how long after the original deadline the repairs are finally completed. The chronic delays and minimal penalties send a clear signal to landlords that they can ignore court orders with impunity, and they send a painful signal to tenants that their concerns are not taken seriously.

Recently, LSNYC has been working with tenants at 3971 Gouverneur, a building owned by the now-deceased Harry Silverstein, currently listed as the #1 worst landlord on the public advocate's list. Tenants in this building have had to contend with serious conditions, which Silverstein refused to repair for years. Currently, there are 357 open violations, including 242 Class "B" and 69 class "C" violations.

HPD commenced a comprehensive case against Mr. Silverstein in May of 2016. Then, Harry Silverstein died and the case was stalled while his son, Eric Silverstein, sorted out the estate. During that time, none of the conditions was being addressed. HPD determined that Eric Silverstein appeared to be committed to doing the repairs in the building. In March 2017, nearly

one year after the commencement of its comprehensive HP action where no repairs had been completed, HPD settled for $30,000 in civil penalties (with a provision that if the landlord failed to pay that amount, it would result in entry of a judgment in the amount of $300,000). This example illustrates the leniency with which HPD and the courts currently treat even the worst landlords – the Council should be looking for ways to strengthen the City's enforcement policies, not to weaken them.

Intro 1518 sets forth defenses to the imposition of civil penalties that are already contained in Section 27-2115(k) (3) of the Housing Maintenance Code. It is unclear what purpose is served by duplicating these provisions, except to further encourage landlords to evade penalties by falsely accusing their tenants of refusing access for the repairs they desperately seek. Intros 1499 and 1507 create a system that allows landlords to evade penalties by requesting a "consultation" with HPD. Such bills appear based on the false premise that landlords do not already know that leaky ceilings, peeling paint and mold constitute Housing Maintenance Code violations without being personally informed by HPD. LSNYC's advocates believe, in contrast, that stricter and more uniform imposition of penalties, rather than more lenience and evasion, are the best way to preserve the City's housing stock.

We thank the City Council and look forward to working with the Committee to address these serious issues.

Respectfully submitted,
Jessica Reed

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TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON SMALL BUSINESS

April 24, 2017

Thank you Chairperson Cornegy, and members of the Committee on Small Business, for the opportunity to provide testimony today.

This testimony is submitted on behalf of The Legal Aid Society. The Society is the oldest and largest program in the nation providing direct legal services to low-income families and individuals. The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits, foreclosure prevention, immigration, domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law.

Introduction

This is the first time that I have testified before this committee. Generally, most of my testimony highlights the severe lack of affordable housing in New York City and struggles of tenants to remain in their homes when faced with increasing landlord harassment and increasing rents. Additionally, because the business of multifamily residential real estate is the largest business we have in New York, it is unusual that the Small Business Committee would consider bills that regulate this type of business.

New York City is the midst of an ever deepening affordable housing crisis. One result of this crisis is that with a low vacancy rate, tenants have no place to go if they lose their apartments. In other cities with high vacancy rates, when landlords fail to repair apartments, tenants leave. The market works as landlords who fail to provide a safe and decent place to live cannot charge high rents unless they repair conditions in the apartments. However, in New York City, if a tenant leaves as a result of a landlord breaching the warranty of habitability, there are many New Yorkers who will line up to take that tenant's place as the threat of homelessness is ever present and very real. Additionally because of loopholes in the rent laws, landlords receive a windfall every time that an apartment becomes vacant. The incentive to harass tenants out of their homes has only increased over the last decade. While The Legal Aid Society has appeared before this council to support many bills that attempt to address the struggles that tenants face, many of those bills remain in their committees and have yet to receive votes. Today, this committee considers bills that would provide landlords who fail to keep their buildings in good conditions with loopholes to avoid paying civil penalties. Thus, The Legal Aid Society opposes Introductions 1499, 1507, 1518.

Introductions 1499, 1507 and 1518

We have been assured that the purpose of these bills is to provide good landlords an opportunity to repair non-hazardous violations placed in their buildings without having to face the severe civil penalties issued when landlords fail to address such violations[1]. If the purpose of these bills is to limit the penalty mitigation program to non-hazardous conditions, the bills fail to make that clear. Indeed, Introduction 1499 requires the Department of Housing and Preservation Development to submit a report to the Council with a list of conditions that are eligible for civil waiver and a report justifying the decision to exclude any condition from the list. Surely if the intent of the civil waiver process was only to include non-hazardous conditions, the Council would not require HPD to go through the exhaustive process of justifying the exclusion of every hazardous and immediate hazardous conditions when they were never intended to be part of the waiver

[1] The civil penalties for non-hazardous violations are between 10 to 50 dollars for each violation. The only exception is the failure to post certain notices which can be up to 250 dollars. However, landlords receive 90 days to address non-hazardous violations and it would seem likely that a landlord could post the required notice in the three month period to avoid the penalty of $250.

process. The only way to read this provision is that the Council's intent is to encourage HPD to place conditions of every level on the civil penalty waiver list. This interpretation is supported by the language of Introduction 1507 which defines eligible violation as those set forth by the department as part of the process required by Introduction 1499 and those that are non-hazardous. As currently drafted, Introduction 1507 would allow a landlord to request an on-site compliance consultation after violations are placed by the department on the building. One might think that a violation would inform a landlord of whether the dwelling is in compliance with the code and he would not need the agency to return to the building and complete another inspection to reiterate that the violations placed should be corrected. Additionally, the bill makes clear that if an existing condition is not identified during the inspection and a violation is placed on such a condition within 60 days after such consultation, the civil penalties for such violation shall be waived. In other words, if a tenant does not provide access during a consultation, perhaps because of lack of notice or because of an inability to reschedule doctors' appointments or lose a day of pay by staying home to provide access, any condition in that tenant's apartment that existed during the consultation must wait two months to be reported, otherwise it is preempted by the consultation process. This is a blanket immunity for landlords in exchange for nothing.

Additionally, while our clients struggle with issues around repairs and access every day, these bills do not start to address the problems that tenants face and instead seems to be providing a solution to a problem that does not exist. We would ask the Council to address the real problems faced by our clients before seeking to allow landlords who flout the law to avoid the penalties of such flouting.

We have a client, Ms. O, who we represented in an HP action. Ms. O is a Section 8 recipient who has lived in her apartment for 33 years. Because the landlord has refused to do repairs, Ms. O has been given the choice of leaving her home and hoping to find a new apartment with her voucher or losing her Section 8 benefits. Either choice has the risk that she will eventually become homeless. Her current rent is only $996 and under the rent stabilization laws, if she left, her landlord could receive a forty percent eviction bonus when the longevity increase is included. Ms. O's apartment is in terrible condition. She has an ongoing leak in the bathroom and kitchen ceiling that has existed for nearly a decade. Although the landlord has patched the leak from time to time. the leak always returns. She

has mold because of the leaks. There is a mice infestation. Many of her kitchen cabinets and counters are missing. The floor in the hallway is sinking and buckles when any weight is put on it. Her bathroom window frame is completely rotted. Although we signed a stipulation with the landlord to provide access, on the access dates, the super simply inspected the apartment. Thereafter the super came by unannounced to conduct the repairs. When Ms. O could, she provided access. But on some of the days, she had medical appointments that could not be rescheduled. When she refused access on those days, the super responded by failing to complete the repairs. In court, the landlord argued that the tenant had refused reasonable access. The court, ignoring the landlords failure to follow the regulation requiring notice of entry, chastised our client for not being accommodating. Ms. O is an example of what low-income New York tenants face every day as they seek to hold their landlords accountable for failing to provide them with a basic human right, the right to live in a safe and habitable apartment. We believe the Council's time would be better spent on solving this problem rather than providing landlords with loopholes in the housing maintenance code.

We strongly oppose these bills and the message it sends to New York City landlords and tenants.

Conclusion

Thank you for the opportunity to testify before this committee on these important issues.

Respectfully submitted,

Ellen Davidson, Esq.
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LEGAL

SERVICES

INCORPORATED

TESTIMONY CONCERNING

INTRO 1504-2017, IN RELATION TO THE CREATION OF AN ENERGY EFFICIENCY PROGRAM FOR MULTIPLE DWELLINGS.

AND

INTRO 1507-2017, IN RELATION TO THE CREATION OF AN ON-SITE COMPLIANCE CONSULTATION PROGRAM FOR MULTIPLE DWELLINGS.

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL'S
COMMITTEE ON SMALL BUSINESS

PRESENTED BY:

MICHAEL GRINTHAL
SUPERVISING ATTORNEY
MFY LEGAL SERVICES, INC.

APRIL 24, 2017

MFY LEGAL SERVICES, INC.,
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Introduction

MFY Legal Services, Inc. envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy and bringing impact litigation. We assist more than 20,000 New Yorkers each year.

Specifically, MFY's Housing Project annually serves thousands of tenants, many of whom are long-term, rent regulated tenants.

Intro 1507-2017

This bill would allow a landlord to request a "compliance consultation" from the Department of Housing Preservation and Development (HPD) to identify code violations and correct them within 60 days, in exchange for which HPD would waive all liability for civil penalties during that 60-day period. MFY understands that this bill seeks to encourage landlords to proactively identify and correct conditions in their buildings, and we support that goal in principle. We also support the bill's incorporation of both carrot and stick, in the form of doubled penalties if a landlord fails to take advantage of the 60-day period to correct violations. This is an important step towards curbing inevitable abuses of the compliance consultation program.

Unfortunately, the threat of increased penalties would not be enough to prevent landlords from manipulating the compliance consultation program. Further, the bill as written would endanger tenants by delaying the correction of hazardous and immediately hazardous violations. Finally, MFY questions whether lack of expert consultation is truly a significant barrier to landlords' correction of violations.

Landlords should not be able to request compliance consultations (and the accompanying immunity from civil penalties) after violations have already been placed. A landlord that has received a notice of violation does not need a consultation to confirm the existence of the violation. Rather, landlords would inevitably make use of this provision as a get-out-of-jail-free card to shield themselves from penalties and extend the statutory time to correct hazardous and immediately hazardous conditions, with no benefit to the City or to tenants. When a landlord has ignored tenant complaints of visible violations, it needs stronger incentives to make repairs, not an expert consultation to confirm what it has already been shown.

The bill currently allows HPD to designate any violation – including hazardous (class B) and immediately hazardous (class C) violations – as "eligible" for the compliance consultation program, and makes all non-hazardous (class A) violations automatically eligible. Hazardous and immediately hazardous violations should be categorically excluded from eligibility. It is simply too dangerous to delay correction of these violations. No tenant should ever have the experience of calling HPD to report a lack of heat, a cascading water leak, or a ceiling collapse, only to be told that the landlord need not correct the condition for 60 days. As written, this bill would create temporary lawless zones in which tenants would have no immediate recourse for conditions that threaten their health and safety.

Nor should all non-hazardous violations be eligible. Landlords do not need expert consultation to determine that peeling paint, cracked plaster, missing apartment numbers, or blown lightbulbs should be repaired. Landlords are already responsible for retaining expert workers to assess their buildings and identify potential code violations. Indeed, they benefit from tax-deductions for the expense of doing so. The vast majority of violations are placed in response to tenant complaints, meaning that most violations are already obvious and identifiable. It is doubtful that landlords' failure to correct these violations is actually caused by lack of understanding or awareness in any but a very few imaginable circumstances. If the goal of the bill is to help landlords identify potential violations of which they might otherwise be unaware, then the bill should provide express, detailed guidance to HPD in targeting only easy-to-miss violations or violations of a bureaucratic nature such as wrongly posted notices.

Finally, the bill should limit the frequency with which landlords can request compliance consultations. Currently the bill limits consultations for already-placed violations to every five years. The same limit should apply to all consultations.

MFY does support the bill's application of doubled penalties for violations that are not corrected within the 60-day grace period. This is a necessary condition to help ensure that landlords will make use of the grace period to correct violations. Given the importance of this provision, MFY urges that the application of double penalties be made mandatory and nonwaivable by HPD. The City's experiences with widespread J-51 and 421-a fraud show that it does not work to give landlords immediate, guaranteed benefits up front in exchange for uncertain enforcement down the line.

Intro 1504-2017

This bill would allow landlords to mitigate civil penalties when they correct violations by making energy-efficient improvements. MFY supports the principle and goal of increased energy efficiency. MFY strongly supports the bill's prohibition on the use of such improvements as grounds for rent increases such as major capital improvements under rent regulation. This provision is crucial to ensuring that tenants benefit from – or at least do not bear the cost of – increased efficiency and savings. MFY urges that this provision be amended to clarify that improvements under this program cannot be used as a basis for removal of any dwelling unit from rent regulation on the grounds of "substantial rehabilitation" under the Rent Stabilization Code. This amendment, while minor, would further the bill's goal.

Conclusion

While MFY supports the principle of encouraging landlords to be proactive in identifying and correcting violations, MFY believes that Intro 1507, as written, is overbroad and would dangerously expand the time for landlords to correct hazardous and immediately hazardous violations, while putting tenants in unsafe situations. MFY supports Intro 1504's goal of encouraging energy efficiency, but believes the bill needs strengthening to ensure that building improvements do not lead to deregulation and loss of affordable housing.

TENANTS & NEIGHBORS
THE STATEWIDE CENTER OF POWER FOR TENANTS

FOR THE RECORD

Katie Goldstein, Executive Director

New York State Tenants & Neighbors

Testimony as Prepared

April 24, 2017

New York City Council Committee on Small Businesses

Re: Int 1499-2017, Int 1501-2017, Int 1504-2017, Int 1507-2017, Int 1508-2017, Int 1515-2017, Int 1516-2017, Int 1518-2017, Int 1521-2017, and Int 1526-2017

Good afternoon. Thank you for the opportunity to submit testimony today.

My name is Katie Goldstein and I am the Executive Director for New York State Tenants & Neighbors Information Service and New York State Tenants & Neighbors Coalition, two affiliate organizations that share a common mission: to build a powerful and unified statewide organization that empowers and educates tenants; preserves affordable housing, livable neighborhoods, and diverse communities; and strengthen tenant protections. The Information Service organizes tenants in at-risk rent regulated and subsidized buildings, helping them preserve their homes as affordable housing, and organizes administrative reform campaigns. The Coalition is a 501c4 membership organization that does legislative organizing to address the underlying causes of loss of affordability. Our membership organization has over 3,000 dues-paying members.

Tenants & Neighbors organizes in rent-regulated, Mitchell-Lama, and project-based Section 8 developments citywide. In the buildings where we organize, the story is the same. Low and moderate income tenants in New York City are regularly experiencing the pressures of displacement. Rents are climbing and tenants are concerned that they will not be able to afford to stay in their homes and communities.

Tenants & Neighbors is testifying today to oppose the pro-landlord package of bills that is in front of the New York City Council Committee on Small Businesses. These bills will give City agencies wide-reaching authority to waive or reduce landlords' civil penalties or fines for actions and behavior that we have fought to declare both illegal and harmful. It would mean that countless HPD, DOB DSNY FDNY, DCA, and

DOHMH violations would go uncorrected and unpunished. Tenants deserve strengthened protections by the New York City Council, and these bills would weaken New York City tenant protections. We are asking the City Council to withdraw these bills in the interest of the tenants of New York.

Each of these bills provides devastating new tools that allow landlords who fail to properly maintain or run their buildings to escape accountability. Together, they jeopardize the interests of tenants, both residential and commercial, in place of the interests of negligent landlords. This is a "Landlord Pass On Penalties" package, with the cost passed on to our residential tenants. There are many critical pro-tenant legislative packages, such as the Stand for Tenant Safety bills that should be the Council's priority.

We look forward to working continuing our work with the Council to find real solutions to the affordable housing crisis and to restrict those actors who are contributing to the crisis with increased oversight.

Thank you very much for the opportunity to testify today.

Brooklyn Chamber of Commerce

The Brooklyn Alliance

April 24, 2017

Written testimony submitted by the Brooklyn Chamber of Commerce to the NYC Council Committee on Small Business regarding the package of bills being reviewed today.

Good Afternoon Chair Cornegy, other members of the NYC Council Committee on Small Business and guests. I'm Melissa Chapman, Senior Vice President for Public Affairs at the Brooklyn Chamber of Commerce; and I'm delivering testimony on behalf of Andrew Hoan, President and CEO of the Brooklyn Chamber.

With over 2,100 active members, the Brooklyn Chamber is the largest Chamber of Commerce in New York State. We promote economic development across the borough of Brooklyn, as well as advocate on behalf of our member businesses. The Brooklyn Alliance is the not-for-profit economic development affiliate of the Brooklyn Chamber, which works to address the needs of businesses through direct assistance programs.

As the leading voice of the Brooklyn business community, we applaud the NYC Council's Committee on Small Businesses for proposing a package of forward-thinking bills that seeks to reduce the burden of civil penalties on small businesses and providing them with alternatives to correct compliance issues. In our 2016 Member Issues Survey, 21 percent of respondents expressed that government regulations, fines and violations represented a significant obstacle to doing business. For the past five years these issues have emerged in the top 10 list of obstacles to doing business. Therefore, this hearing is very timely and will enhance the experience of doing business in our city. That being said, we wanted to highlight our position on some of the bills being proposed.

Int. 1499 would require commissioners of housing preservation and development, buildings, sanitation and consumer affairs to create a list of violations for which civil penalties may be waived through a penalty mitigation program. This represents an important expansion of the provisions outlined here today, since its implementation would take a broader look at areas in each agency where civil penalties could potentially be mitigated. Similarly, the on-site compliance consultation program being proposed in Int. 1507 and Int. 1516 would take a proactive approach in agencies working with business owners to help identify, and present possible solutions for compliance issues in an effort to correct them. Currently both Int. 1507 and Int. 1516 gives a 60 day time frame for the business owner to correct all issues after the onsite consultation. We would suggest that in cases where there are a lot of issues in single or multiple dwellings, that consideration be given to a 90 to 120 day extension, to give small business owners enough time to make corrections.

We are particularly supportive of Int. 1504 and Int. 1515 which seeks to have agencies create an energy efficiency program for individual businesses, and multiple dwellings. This legislation presents yet another option to have civil penalties waived or reduced; can create energy savings for businesses in the long run, and helps to create corporate social responsibility as it relates to sustainable energy consumption.

Int. 1521 and 1526 gives restaurants and other food establishments an option to waive civil penalties by donating or recycling organic waste; and also donating left over food. This measure creates a benefit to business owners, not-for-profit organizations, and the city's hungry population. However, many food establishments may be uneasy about such an arrangement, because of liability concerns. In order for reduce such concerns and increase program participation, it may be helpful to include protections for business owners should frivolous claims be directed at them, in Int. 1526.

Brooklyn Chamber of Commerce

The Brooklyn Alliance

Also we would encourage extensive training of agency inspectors, so that they will be well equipped to offer the alternatives contained in this package of bills; as opposed to being more inclined to issue violations that will create added burden for businesses.

Thank you for the opportunity to testify in this matter.

AH/mc

NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING

Hearing of the New York City Council Committee on Small Business
NYSAFAH Testimony on Int. 1504, Int. 1499, Int. 1507, Int. 1518 – April 24, 2017

The New York State Association for Affordable Housing (NYSAFAH) thanks the Committee for the opportunity to submit comments on the below referenced legislation heard at its April 24th hearing. NYSAFAH commends the Council for introducing legislation that seeks to improve the experience of building managers by offering creative solutions to reduce fines and violations for good actor landlords.

We wish to propose the following feedback and recommendations, but overall thank the bills' sponsors for taking these important steps.

Int. 1504

NYSAFAH supports the concept of a tradeoff whereby civil penalties are waived or reduced through energy efficiency measures. However, the legislation caps the amount at $3,000. This investment in energy reduction may make a marked difference in smaller buildings, but in larger multifamily units, such as those developed and managed by NYSAFAH members, it may greatly limit the types of energy efficiency measures an owner may be able to undertake.

NYSAFAH proposes amending the legislation so that there is a per-unit sliding scale that calculates the reductions one could be awarded for these green investments. This way, there is the same incentive and same benefit for larger buildings to participate as there are for smaller developments. We feel this would lead to greater buy-in to the option, and therefore greater investments in the energy reduction measures that benefit us all.

Int. 1499

NYSAFAH supports the spirit of this legislation and endorses the idea of a penalty mitigation program for the Departments of Housing Preservation & Development, Consumer Affairs, Sanitation and Buildings.

We propose taking this idea and expanding it to other agencies. For example, important additional agencies to include are the New York City Fire Department (FDNY) and New York City Department of Environmental Protection (DEP). In the example of the FDNY, there are penalties that may be issued which are due to no fault of the owner and which would be ideal candidates for the penalty mitigation program. As one example, a tenant may set off a common area fire alarm while cooking. If the FDNY arrives and, in the absence of a fire, deems this a false alarm, the owner may be issued a monetary fine.

There are numerous examples of these types of fines and penalties that extend beyond the four agencies identified in this bill. NYSAFAH looks forward to working with the Council on this legislation moving forward to ensure its good efforts in this area are all-encompassing.

Int. 1507

NYSAFAH supports the intent of this legislation but recommends improvements. As currently written, the legislation calls for 60 days to correct all violations found during the compliance check, or a doubling of penalties shall be imposed. We believe there should be a scale that allows for more time based on the number and/or type of violation issued. Sixty days to correct a handful of minor violations may be sufficient time, but if the violations are much greater in number or complexity, there should be a mechanism for weighing these variables and allowing a longer time frame. This would ensure owners aren't punished with the heftier fines despite good faith efforts to correct the violations found in the compliance check.

We thank the sponsors for considering this suggestion, and for introducing this common sense legislation.

Int. 1518

NYSAFAH supports this bill. We thank the sponsors for recognizing the logistical issues that hamper the ability of good actor managers from correcting violations, despite robust attempts to do so.

Contact: Patrick Boyle, Policy Director patrick@nysafah.org (646) 473-1209

THOMAS McC. SOUTHER, BOARD CHAIR
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Brooklyn Legal Services Corporation A
SHRIVER TYLER MACCRATE CENTER FOR JUSTICE

April 24, 2017 at 1:00 PM, Meeting of the Committee on Small Business
Testimony of Joanna Laine, Staff Attorney at Brooklyn Legal Services Corporation A

Good afternoon, Chair Cornegy and members of the Committee. Thank you for the opportunity to testify today. My name is Joanna Laine and I am a tenants' rights lawyer at Brooklyn Legal Services Corporation A. I am testifying in opposition to Intros. No. 1499, 1504, 1507, and 1518 as they apply to the Department of Housing Preservation and Development.

As my colleagues have described, there is currently a crisis for small businesses in New York City, but there is *not* a crisis for landlords in New York City. Allowing landlords additional opportunities to avoid penalties imposed by HPD would be a major step back for the City's tenants, and it is also unnecessary, because it is already very rare for HPD penalties to be enforced against landlords.

To avoid duplicating my colleagues' testimony, I'd like to tell the story of one building that I've worked on that illustrates the ways in which landlords are already able to avoid paying civil penalties imposed by HPD. This building is in Williamsburg, and my clients are low-income tenants who have been living in poor conditions for years. As of today, the building has 179 open violations of the Housing Maintenance Code and Multiple Dwelling Law, many of which date back for years or even decades and were never enforced by HPD. Notably, my clients have been living without cooking gas for more than a year – since February 2016.

In September 2016, we sued the landlord in Housing Court seeking the enforcement of civil penalties and an immediate correction of all violations affecting our clients, especially the lack of cooking gas. In November 2016, HPD also brought a comprehensive case in Housing Court against the landlord. HPD agreed to settle that case for a fraction of the civil penalties that it was entitled to—a mere $15,000 of a potential $250,000 in violations—in exchange for the landlord's agreement to restore cooking gas service by January 9, 2017. January 9th has come and gone, and our clients are still without cooking gas.

As this example illustrates, HPD's civil penalties are, more often than not, never enforced or collected.[1] Thus, the current process for enforcing civil penalties against landlords is not too harsh, but rather too lenient. So many of New York City's tenants are struggling against poor apartment conditions and harassment, and Intros. No. 1499, 1504, 1507, and 1518 would only increase their plight.

[1] In November 2016, Comptroller Scott Stringer issued an audit report finding that HPD fails to collect 97 percent of settlements and judgments, leaving tens of millions of dollars in fines go uncollected—and this doesn't even account for the civil penalties for which HPD doesn't even sue. *See* Press Release dated November 17, 2016, "Comptroller Stringer Audit: Tens of Millions of Dollars in Fines from Bad Landlords Go Uncollected," *available at* http://comptroller.nyc.gov/newsroom/comptroller-stringer-audit-tens-of-millions-of-dollars-in-fines-from-bad-landlords-go-uncollected/; "Audit Report on the Department of Housing Preservation and Development's Efforts to Collect Money Judgments," November 17, 2016, *available at* http://comptroller.nyc.gov/wp-content/uploads/documents/MJ16-063A.pdf .

☐ 260 BROADWAY, SUITE 2, BROOKLYN NY 11211 ☐ 619 THROOP AVENUE, 3RD FLOOR, BROOKLYN NY 11216 ☐ 1455 MYRTLE AVENUE, 2ND FLOOR, BROOKLYN NY 11237
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Appearance Card

I intend to appear and speak on Int. No. 1499 Res. No. _____

☐ in favor ☒ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Joanna Laine

Address: 260 Broadway, Suite 2 Brooklyn NY 11211

I represent: Brooklyn Legal Services Corp. A

Address: same as above

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Appearance Card

I intend to appear and speak on Int. No. 1499 Res. No. _____

☐ in favor ☑ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Rachel Nager

Address: 619 Throop Ave, 3rd FL, Brooklyn, 11216

I represent: ~~Brooklyn Legal Services~~ Brooklyn Legal Services

Address: 619 Throop Ave, 3rd FL, Corp. A Brooklyn, 11216

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I intend to appear and speak on Int. No. 1499 Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Molly Weston Williamson

Address: _____

I represent: A Better Balance

Address: 80 Maiden Lane, Suite 606, NY, NY 10038

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Appearance Card

I intend to appear and speak on Int. No. 1499, 1507, 1518 Res. No. _____

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: SAM CHIERA

Address: 27 ORCHARD ST. APT 1

I represent: BROOKLYN LEGAL SERVICES CORPORATION A

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. 1499

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: Benjamin Dulchin

Address: 50 Broad St.

I represent: ANHD

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. Small Biz Package Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Melissa Chapman

Address: 2515 Glenwood Rd, Brooklyn NY 11210

I represent: Brooklyn Chamber of Commerce

Address: 335 Adams St., Ste 2700 Brooklyn NY 11201

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Appearance Card

I intend to appear and speak on Int. No. 1516 1515 1499 Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Assistant Chief Thomas McKavanagh

Address: 9 Metrotech Plaza

I represent: FDNY

Address: Same

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Appearance Card

I intend to appear and speak on Int. No. 1499, 1504, 1507, 1518 Res. No. _____

☐ in favor ☑ in opposition

Date: 4-24-17

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Name: Jessica Reed

Address: 900 Fulton Street BK 11238

I represent: Legal Services NYC

Address: 105 Court Street BK 11201

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☐ in favor ☐ in opposition

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Name: Amit Bagga

Address: _____

I represent: Dept of Consumer Affairs

Address: _____

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Anne Marie Santiago

Address: _____

I represent: HPD

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 1521 | 1526 Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Molly Harman

Address: _____

I represent: office of the deputy mayor for health and human services

Address: _____

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I intend to appear and speak on Int. No. 1504 & 1515 Res. No. _____

☑ in favor ☐ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Jenna Tatum

Address: 253 Broadway, 14th Fl, NYC

I represent: NYC Mayor's office of Sustainability

Address: 1254 Amsterdam Ave

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Appearance Card

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☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Lorine Schiff

Address: 253 Deputy Commissioner, 1 Ave

I represent: WE DO HAVE for Environmental Justice

Address: 1854 Amsterdam Ave

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I intend to appear and speak on Int. No. 1504, 1507 Res. No. _____

☐ in favor ☒ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: MICHAEL GRINTHAL

Address: 299 BWAY 4TH FL 10007

I represent: MFY LGL SVCS.

Address: SAME

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☐ in favor ☒ in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: ELLEN DAVIDSON

Address: _____

I represent: The Legal Aid Society

Address: 199 Water St, 3rd fl NY NY 10038

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