

**Testimony of Emily W. Newman, Acting Director of the Mayor's Office of Operations
Before the New York City Council Committees on Governmental Operations and Small Business
Proposed Int. 1213-A - In relation to replacing certain fines with warnings or opportunities to cure
December 12, 2013**

Good morning Chairs Brewer and Reyna and members of the Committees on Governmental Operations and Small Business. My name is Emily Newman, and I am the Acting Director of the Mayor's Office of Operations ("Operations"). I am joined today by colleagues from DCA, DSNY and DEP. On behalf of the Administration, I would like to thank you for this opportunity to testify about the City Council's proposed bill in relation to replacing certain fines with warnings or opportunities to cure.

As part of a larger effort to make it easier for businesses to open and operate in our City, the City Council passed Local Law 35 earlier this year, requiring a retrospective review of the violations issued by the Department of Buildings (DOB), Department of Consumers Affairs (DCA), Department of Health and Mental Health (DOHMH), Department of Transportation (DOT), Department of Environmental Protection (DEP), Fire Department (FDNY), and Department of Sanitation (DSNY). The purpose of this review was to help businesses avoid onerous penalties for their first infraction by identifying violations for which each agency could implement a cure period or other ameliorative action prior to the imposition of a penalty or fine. Operations partnered with these agencies to conduct the analysis. We also worked with the New Business Acceleration Team (NBAT) and the Mayor's Office of Immigrant Affairs (MOIA) to gather stakeholder feedback. Over the course of seven meetings in all five boroughs, the Administration met with over 80 individuals, representing business and property owners, elected officials, community boards, chambers of commerce, Business Improvement Districts and other industry groups. The concerns raised ranged from violation severity to confusion over their requirements. We also heard that interactions with NBAT, which educates business owners prior to inspections, were beneficial. All of this feedback was considered throughout the analysis.

To fulfill the mandate of Local Law 35, 2,986 violations were reviewed. The analysis focused on violations that do not pose imminent threats to public health or safety, that have the potential to be corrected ("cured"), that are issued to businesses operating with the required permits and licenses, and

where the opportunity to cure would not remove an important element of deterrence. The Administration issued a report recommending that 83 violations, issued by four agencies - DEP, DCA, DOHMH, and DSNY - could adopt cure periods. The other three agencies reviewed – DOB, DOT and FDNY – already issue 223 violations with cure periods. Because so much of what DOB and DOT regulate relates to public health and safety, no additional cure periods were recommended. All of FDNY's violation types are curable, unless they are deemed criminally hazardous, and so no further FDNY changes were recommended. Had the recommended cure periods been in place in FY 2013, respondents would have had the opportunity to cure more than 65,000 infractions without a financial penalty – a significant cost savings for business and property owners of approximately \$3.8M.

The Administration has made a number of efforts to help businesses open and operate in the City, and supports the implementation of cure periods for many first offenses. When properly administered, cure periods can build awareness of agency regulations while decreasing costs to business and property owners. I would, however, like to highlight some considerations that are key to implementing cure periods in the most effective way, and are essential to our support of this bill.

DSNY Recycling Violations

Working together with the Council, the Administration has made significant advancements to DSNY's recycling program, which has been in place since the early 1990s. Recycling is a major component of the City's integrated solid waste management system and critical to the City's long-term solid waste management, policy and planning strategies. This year alone, DSNY advanced its recycling program significantly by designating rigid plastics as recyclables for DSNY pick-up, commenced a residential organic waste collection pilot in certain neighborhoods across the City, and recently rolled out its first installment of new public space recycling receptacles on the City's public streets. DSNY is committed to expanding and maximizing recycling. For DSNY to continue in its efforts, it needs the help and cooperation of all New Yorkers. Education and enforcement are key components to ensure that all New Yorkers comply with the recycling laws. The report issued by the Administration identified a number of violations that could support cure periods, focusing on offenses that could easily be cured (such as

signage) or used to provide property owners of buildings with fewer than nine units a chance to learn recycling rules. The Administration's report identifies that a \$0 first violation with a cure period is acceptable, however, only if the second violation is increased to \$250. Raising the second violation to \$250 puts residents on notice that the City is serious about its commitment to increase recycling participation, and that everyone is responsible for complying with the City's recycling laws that have been in place for almost 25 years. The bill does not increase the second violation and without this change, we cannot support the bill as it stands.

DCA Violations

DCA has made significant efforts to foster compliance with consumer protection laws through extensive outreach and education including: creating plain language inspection checklists identifying exactly what inspectors look for and making them available online and in the DCA Licensing Center, creating a comprehensive online Business Toolbox providing all the laws and rules licensees need to know, along with information about required signs, forms, model receipts, contracts, and violations, launching online Live Chat functionality so that business owners can ask questions of DCA staff during business hours, instituting Business Education Days during which DCA staff visits every retail business in neighborhoods throughout the City to point out potential violations without actually writing violations, responding to requests for interpretation services, and hosting evening Open House events for specific industries to review laws and licensing requirements and discuss enforcement issues.

We want to ensure that when a violation is cured, it is treated as a first violation. Offering a cure only as part of a no penalty settlement of a violation will deter future violations while protecting the City's consumers. With that approach the submission of the cure constitutes an admission of failure to comply with the law and if there are future violations of the same provisions, the violation will be identified as a second offense. The Administration is also concerned about the point at which a respondent may submit proof of compliance. As written, the bill permits the respondent to submit a cure in advance of a hearing as part of a settlement, as well as at a hearing. This may encourage respondents to adjudicate the case

and then submit a cure only if it appears they are going to be found guilty. That approach is not only counter to the purpose of the legislation, but may also burden DCA's adjudication tribunal.

I'd also like to clarify that cure periods for industries which traditionally prey upon immigrant populations and individuals and families with low incomes, and could impact persons with disabilities, were not included in the Administration's report and we will not support their inclusion in this bill. The sections dealing with immigration service providers should be removed from the bill. Industries with a high track record of illegal conduct directed to low incomes consumers – such as used car dealers and tax preparers – should not have an opportunity to cure all violations. For these types of businesses, the opportunity to cure should be restricted to signage violations for which evidence of a cure can be presented. Stoopline stand violations should also be removed from the bill, as stoopline stands use public sidewalk space and cause ADA concerns if not properly monitored.

Rules

I'd also like to note that the bill identifies a number of rules for which a cure would be made available. Revision of these rules, which we support, should be done through rulemaking rather than within this bill. My office can work with the relevant agencies to help move changes through the rule making process.

Implementation Considerations

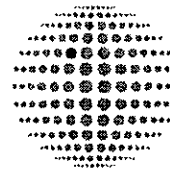
Finally, although we are supportive of implementing cure periods, I want to call out some significant operational hurdles that will have to be addressed in order to implement these changes. Sanitation Supervisors, the staff at DSNY who currently issue paper tickets, do not have access to handheld computer systems used to issue notices of violations in the field, as is used by Sanitation Police and Enforcement Agents. This handheld system automatically issues a repeat violator ticket to a respondent based on information received from ECB. Without these tools in the field, Sanitation Supervisors cannot issue formal warnings or repeat violator summonses. For DSNY to implement these changes, all Supervisors would need handhelds, an effort that will take time to implement. DCA has

similar concerns. They would need time to make changes to their database system, which was not configured to include cure periods. Their inspectors will also need handhelds to transmit information from the field. DCA anticipates substantial costs to implement these changes.

In sum, the Administration agrees that the goals of this legislation are important but is not in agreement with the legislation as it stands. We welcome the opportunity to work with the Council staff to make changes to the bill.

I am now available to answer any questions you may have.

Thank you.



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**TESTIMONY BEFORE THE COMMITTEE ON SMALL BUSINESS & THE COMMITTEE
ON GOVERNMENTAL OPERATIONS OF THE NEW YORK CITY COUNCIL**

THURSDAY, DECEMBER 12, 2013

**VICTOR WONG
DIRECTOR, BUSINESS OUTREACH**

Good morning/afternoon. My name is Victor Wong and I am the Director of Business Outreach at the Partnership for New York City. Over the past six months, we have been working to develop GoBizNYC, a coalition of small business groups representing over 25,000 small businesses across the five boroughs – that’s more than one in ten of all our city’s small businesses. Our supporters include prominent small business leaders as well as chambers of commerce, local development corporations, industry associations, and community-based organizations.

I have met with many small business owners in my outreach efforts and their biggest complaint by far has been the high level of fines. New York City’s punitive regulatory environment adds to the already high cost of doing business here and makes many of these entrepreneurs feel unwelcome despite their significant contribution to the city’s communities and local economy.

Of the city’s 220,000 businesses, nearly 89%, or 200,000, have fewer than 20 employees. Furthermore, half of the owners of these small businesses are immigrants, meaning many of them are relatively recent arrivals, do not necessarily speak English, and are unfamiliar with the city’s complex regulatory environment. All of the business owners I have met have expressed their eagerness to fully comply with the law. After all, given that many of them operate on razor-thin margins, they need to keep business costs low and want to avoid unexpected fines.

However, unexpected fines are exactly what many small business owners are getting. The current policy seems to expect these entrepreneurs to already know and comply with the hundreds of regulations that apply to their particular businesses. As a result, many small business owners are given expensive fines for violating obscure laws. This has built up a substantial amount of friction between the city and the small business community. That’s why many small business owners feel the city is more interested in

raising fine revenue in the short-term instead of working with them to ensure that their businesses survive, thrive, and remain a reliable source of tax revenue in the long-term.

The proposed local law is an important first step toward ensuring that the city shifts to a policy of education and compliance by giving small business owners the opportunity to learn about and then correct certain first-time, minor, non-health violations before being penalized. We support the proposed law, which will begin to reduce friction between the city and the small business community. In fact, the analysis that preceded this proposal incorporated the feedback of many small business groups and leaders from our GoBizNYC network. We encourage this type of engagement and hope that the city will continue to be more open and responsive to the needs of its small business owners.

Of course, more remains to be done to support New York City's small businesses and make it easier for them to navigate and comply with city regulations. We propose that the Council consider establishing a working group to do a regular analysis of which violations deserve a cure period and also which regulations could be consolidated or even eliminated. The inspection process needs to be more open and transparent so that when business owners receive a notice of violation, they understand exactly what they have done incorrectly and how to correct it. It is also important to ensure that the information about the regulations they need to comply with is easily accessible and comprehensible.

These are just a few of the many ways to make the city more small business friendly. Small businesses will always be an important part of the city's economy and the city needs to do whatever it can to help them make it here. We appreciate the work you are doing on behalf of this community and we look forward to collaborating with you to tackle the challenges that remain. Thank you.



Thursday, December 12th, 2013

Testimony Respectfully Submitted to New York City Council Committee on Governmental Operations jointly with the Committee on Small Business by James Dean Ellis, Manager of Neighborhood Economic Development Initiatives at the Brooklyn Chamber of Commerce in Support of replacing certain fines with warnings or opportunities to cure.

Hon. Gail A. Brewer, Chair, Governmental Operations Committee
Hon. Diana Reyna, Chair, Small Business Committee

Good Morning Chairs Brewer and Reyna, members of the New York City Council Committee on Governmental Operations/Small Business and guests.

I'm James Dean Ellis and I serve as the Manager of Neighborhood Economic Development Initiatives at the Brooklyn Chamber of Commerce (BCC). I stand before you on behalf of Carlo A. Scissura, Esq., President and CEO of BCC, in support of replacing certain fines with warnings or opportunities to cure.

The BCC is a membership based business assistance organization, which represents the interests of nearly 1,500 member businesses as well as businesses across the borough of Brooklyn. The Brooklyn Alliance is the not-for-profit economic development organization of the Chamber, which works to address the needs of businesses through direct business assistance programs.

Small businesses are important to a healthy economy as they improve quality of life in the communities, within which they serve, help to close the unemployment gap and are a source of revenue for government, thus contributing directly to economic development. However, business owners are being inundated with fines and fees from various city agencies without clear understanding of how they can be good corporate citizens and avoid costs associated with non-compliance. As such, we applaud your efforts in facilitating this hearing to discuss ways in which the New York City Council can work with businesses to reduce the burden associated with fines.

In April of this year, the BCC highlighted the plight of excessive fines and regulations in *The NYC Mayoral Forum Candidates Issues Book*, which we presented to all of the mayoral candidates in the race at that time. In this report, it was estimated that the NYC Department of Consumer Affairs earns up to \$10 million in revenue each year from collecting fines. There are reports of businesses being fined \$500 fine for lacking certain smoking related signage; and \$100 for having a chalkboard opened in the 'A' position instead of closed leaning up against the storefront.

In addition, every year the Brooklyn Chamber surveys its membership to examine common issues faced by the Brooklyn business community. This data is then compiled and forms the basis of our legislative agenda, which we present to elected officials at the state and federal levels during our lobbying trips.



**Brooklyn Chamber
of Commerce**

Within this survey, respondents are asked to rank the top 10 obstacles to growth and this issue (fines/regulations) has consistently remained in the top 10. In 2012, it ranked at number 9, with 37% of respondents stating it was a problem.

By replacing fines with warnings/opportunities to cure the working relationship between government and small businesses can be improved; and the perception that government is not there to help, but to only collect money and deplete businesses of this valuable resource, can be changed.

Again, we applaud the efforts of both committees in hosting today's hearing and we sincerely hope that legislation is enacted to provide relief from burdensome fines, which ultimately poses a threat to the continued revitalization of New York City.

**THE COUNCIL
THE CITY OF NEW YORK**

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in favor in opposition

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(PLEASE PRINT)

Name: Emily W. Newman

Address: _____

I represent: Mayor's Office of Operations

Address: 253 Broadway 10th Floor

**THE COUNCIL
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Appearance Card

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: James Ellis

Address: _____

I represent: Brooklyn Chamber of Commerce

Address: 335 Adams St #270

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in favor in opposition

Date: _____

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Name: Robert Bookman

Address: 325 Broadway NYC

I represent: NYC Hospitality Alliance

Address: _____

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Name: Peter Bruland

Address: _____

I represent: Department of Consumer Affairs

Address: 47 Broadway 8th Floor

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Name: Marla Tipper, General Council

Address: ~~37th Street~~

I represent: NYC Department of Consumer Affairs

Address: 42 Broadway, 6th Floor

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Appearance Card

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 in favor in opposition

Date: 12/12/13

(PLEASE PRINT)

Name: Victor Wang

Address: One Battery Park Plaza, NY, NY 10004

I represent: Partnership for New York City / Go Biz NYC

Address: One Battery Park Plaza, NY, NY 10004

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