

Committee on Small Business
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THE COUNCIL OF THE CITY OF NEW YORK

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COMMITTEE ON SMALL BUSINESS
Hon. Mark Gjonaj, Chair

Regulatory Burdens on Small Businesses

December 10, 2021

I. Introduction

On December 10, 2021, the Committee on Small Business, chaired by Council Member Mark Gjonaj, will hold a remote oversight hearing on “Regulatory Burdens on Small Businesses”. Those invited to testify include the Department of Small Business Services (SBS), small business advocates, chambers of commerce, Business Improvement Districts and other members of the public.

II. Background

1. Red Tape and Taxes

New York City’s small businesses have long struggled to remain in compliance with the many regulations and requirements necessary to lawfully conduct business in the City. As illustrated below, City agencies that regulate small businesses issue tens of thousands of violations each year.¹ While many of these agencies do not exclusively regulate small businesses—for example, the Department of Buildings regulates residential buildings and construction sites—many regularly interact with small businesses and have a significant number of laws and rules that apply to them.

Violations Issued Each Fiscal Year

Agency	Violation definition	Fiscal Year 2013²	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020
Health	ECB violations	N/A ³	N/A	26,850	28,916	34,973	68,228	38,339	21,452

¹ N.Y.C. Mayor’s Office of Operations, Mayor’s Management Reports Fiscal Year 2015 through Preliminary Fiscal Year 2021, <https://www1.nyc.gov/site/operations/performance/mmr.page>.

² The City’s fiscal year begins on July 1 and ends June 30. For example, “FY13” covers the period from July 1, 2012 through June 30, 2013.

³ In FY19, the City changed the information reported regarding violations. “All summonses issued” was changed to ‘ECB violations received at the Office of Administrative Trials and Hearings’ and the data for that indicator was revised for FY2015 through FY2019 to show only ECB violations and no longer includes Department of Health and Mental Hygiene Tribunal summonses.

	received at OATH								
Sanitation	Violations issued for dirty sidewalks	28,690	39,975	49,828	64,693	65,272	55,913	59,904	56,844
Transportation	Total violations issued	27,382	33,843	34,266	67,065	46,285	48,937	50,315	39,828
Consumer Affairs	Total summonses issued	23,326	19,888	11,923	14,291	15,971	15,152	16,338	11,020
Environmental Protection	Total violations issued	13,262	14,077	15,284	14,753	16,149	12,851	21,394	19,839
Buildings	DOB violations issued	65,189	82,753	65,215	61,393	89,430	79,422	80,874	96,969

In response to the continued out-cry from small businesses on the need for regulatory relief, on February 20, 2020, Mayor de Blasio announced that the City would allow small business owners an opportunity to address select violations within a specified time frame in lieu of paying a penalty for the violation.⁴ The proposed relief was limited to a list of seventy-five violations that fall within the jurisdiction of the Department of Buildings, Department of Environmental Protection, Department of Transportation, and Department of Consumer and Worker Protection. Notably, the Department of Health and Mental Hygiene, which issues violations to restaurants, was not included. In addition to allowing businesses to correct the issue by allowing for cure periods, the Administration also proposed eliminating fines associated with first time violations for a subset of the seventy-five violations, but did not include the reduction of any subsequent fines.

Business owners from across the five boroughs have made clear that the City’s complicated and diffuse regulatory scheme was often difficult to understand, ever changing, and draconian in

⁴ N.Y.C. Mayor Bill de Blasio, Press Release, February 20, 2020, <https://www1.nyc.gov/office-of-the-mayor/news/090-20/fix-it-don-t-fine-it-city-expands-relief-small-businesses#/0>.

their penalty schemes. In March of 2016, Comptroller Scott Stringer released the Red Tape Commission Report, a survey of over 300 entrepreneurs in a range of different sectors across the five boroughs.⁵ Businesses were asked to identify their single greatest frustration with City government, and over 20 percent of businesses cited fines and inspections, the most common complaint among those surveyed.⁶ Over 18 percent of businesses cited agency response times, and over 17 percent cited high taxes and fees.⁷

Speaking about the immediate need for regulatory reform in a February 21, 2021 New York Post article, Andrew Rigie, Director of the New York City Hospitality Alliance, stated that even “[w]hile cracking down on quality of life issues, the city must be more forgiving when it comes to slapping businesses with penalties and fines for minor infractions.”⁸ In 2020, the Alliance released a “Policy Blueprint for Reimagining and Rebuilding the NYC Restaurant and Nightlife Industry After Covid-19” which, among other recommendations, included a recommendation that the City shift enforcement so that “inspectors educate businesses first, by explaining why a violation exists and how to correct and prevent it.”⁹ The blueprint continues stating that the “goal should be to reduce fines, increase education and compliance, and provide a warning or cure period before a fine is levied for any violations that do not pose an imminent hazard to the public.”¹⁰

⁵ “Red Tape Commission” New York City Comptroller Scott Stringer, available at:

<https://comptroller.nyc.gov/services/for-businesses/red-tape-commission/overview/>

⁶ “Red Tape Commission: 60 Ways To Cut Red Tape And Help Small Businesses Grow” New York City Comptroller Scott Stringer, March 29, 2016, available at: <https://comptroller.nyc.gov/reports/red-tape-commission-60-ways-to-cut-red-tape-and-help-small-businesses-grow/>

⁷ *Id.*

⁸ Gabrielle Fonrouge, Nolan Hicks, and Reuven Fenton, *New York City businesses are barely hanging on*, N.Y. Post, February 21, 2021, <https://nypost.com/2021/02/21/nyc-businesses-are-barely-hanging-on-amid-covid-19/>.

⁹ N.Y.C. Hospitality Alliance, Reimagining a Rebuilding NYC Hospitality, <https://thenycalliance.org/information/updated-9-point-mitigation-and-support-plan>.

¹⁰ N.Y.C. Hospitality Alliance, Reimagining a Rebuilding NYC Hospitality, <https://thenycalliance.org/information/updated-9-point-mitigation-and-support-plan>.

To cut red tape and reduce the fines small businesses must pay for violations, the Committee on Small Business enacted Local Law 80 of 2021, which reduces or waives financial penalties for over 100 sanitation, health, transportation, consumer affairs, noise control and buildings violations; allows small businesses to often fix a violation before paying a hefty fine; and for certain violations, eliminates fines on a first offense.¹¹ In addition, the Council enacted Local Law 81 of 2021, sponsored by Mark Gjonaj, the Chair of this Committee, which created an amnesty program that waives interest on penalties imposed by the Environmental Control Board, eliminates penalties for defaulting and offers significant discounts on base penalties for money paid during the amnesty period if judgement is paid during the established amnesty period. For judgments issued during the pandemic (on or after March 7, 2020), a person could receive a 75% discount on base penalties and interest could be waived. For judgments issued before that date, the person could receive a 25% discount and interest could be waived if they pay during the amnesty period. Default penalties are also waived.¹²

2. COVID-19-Related Burdens

a. Key to NYC

To curb the spread of COVID-19, the City has implemented a number of public health precautions that have impacted small businesses. On August 16, 2021, Mayor de Blasio announced the “Key to NYC” vaccination mandate. The mandate, which went into effect the next day, requires individuals 12 and older to show proof that they have received at least one dose of a COVID-19

¹¹ <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4805925&GUID=2C7D9F71-D49E-499E-A21F-F6A9D5C76B90&Options=Advanced&Search>

¹² <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4805924&GUID=326291CC-1EB4-4286-A7F0-BA0F0B92C87E&Options=Advanced&Search>

vaccine¹³ to enter indoor dining establishments,¹⁴ indoor fitness establishments,¹⁵ and indoor entertainment venues.¹⁶¹⁷ Under the mandate, staff working at any of these locations are also required to show they have received at least one dose of a COVID-19 vaccine. Staff working at a covered business can request a reasonable accommodation from the Key to NYC mandatory vaccination requirement.¹⁸ The New York City Commission on Human Rights (the “Commission”) has provided a few examples of reasonable accommodations that employers could consider granting for employees, including allowing the employees to work remotely, perform job duties outside or isolated from other employees or customers, or permitting them to take a leave of absence.¹⁹ For City residents to prove their vaccination status, they can show any of the following documents:

- CDC Vaccination Card, or a photo or photocopy of the card
- “NYC Vaccination Record or other official immunization record from within or outside the U.S., including from [a] health care provider. A photo or photocopy of this card is also acceptable.”
- NYC COVID Safe App;
- CLEAR Health Pass; or

¹³ Individuals can get a dose of any COVID-19 vaccines authorized for emergency use by the Federal Drug Administration (FDA) or World Health Organization (WHO)

¹⁴ Included restaurants are defined as restaurants, catering halls, event spaces, hotel banquet rooms, bars, nightclubs, cafeterias, grocery stores with indoor dining, coffee shops and fast food or quick service with indoor dining

¹⁵ Indoor Fitness is defined as gyms, fitness centers, fitness classes, pools, indoor studios and dance studios

¹⁶ Entertainment venues are defined as movie theaters, music and concert venues, museums, aquariums and zoos, professional sports arenas, indoor stadiums, convention centers, exhibition halls, performing arts theaters, bowling alleys, arcades, pool and billiard halls, recreational game centers, adult entertainment and indoor play areas

¹⁷ Emergency Executive Order 250, Mayor Bill de Blasio, September 24, 2021, available at: <https://www1.nyc.gov/office-of-the-mayor/news/250-001/emergency-executive-order-250>

¹⁸ “An Overview of the Key to NYC Vaccine Mandate Program” October 6, 2021, available at: <https://www.jdsupra.com/legalnews/an-overview-of-the-key-to-nyc-vaccine-4137170/>

¹⁹ “An Overview of the Key to NYC Vaccine Mandate Program” October 6, 2021, available at: <https://www.jdsupra.com/legalnews/an-overview-of-the-key-to-nyc-vaccine-4137170/>

- Excelsior Pass (or Excelsior Pass Plus)²⁰

Employees working in dining, fitness, and entertainment establishments are tasked with ensuring compliance with the Key to NYC mandate. Businesses must check the vaccination statuses of all staff and customers aged 12 and older, but must do so equitably and in accordance with the City’s Human Rights Law.²¹ Individuals 12 and older who are unable to provide proof of their vaccination status are unable to enter the establishment, unless they are entering to use the bathroom or “for another reason that will take a small amount of time (for example, less than 10 minutes).”²² If a venue has both indoor and outdoor sections, individuals only need to show proof of vaccination to enter the indoor area.²³ Businesses covered by Key to NYC are also required to post a sign that notifies employees and patrons about the vaccination requirement.²⁴ Businesses must also have a written record that describes how they will verify proof of vaccination for staff and patrons.²⁵ The record must be available on-site for review by City inspectors. An establishment

²⁰ “Vaccination Proof for Indoor Activities (Key to NYC)” NYC Health, available at:

<https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page>

²¹ See “Guidance for Businesses on Equitable Implementation of Key to NYC”, NYC Commission on Human Rights, September 8, 2020, available at:

https://www1.nyc.gov/assets/cchr/downloads/pdf/KeyToNYC_FactSheetBusiness-English.pdf (For example, business owners cannot “[s]crutinize proof of vaccination more closely when it is provided by people of a particular race, national origin, or religion based on the perception that people in those groups are less likely to be vaccinated”; or “[r]efuse to accept certain types of valid proof of vaccination, such as official immunization records from countries outside the United States or photographs of CDC vaccination cards”; and “[i]f a customer is unable to show proof of vaccination due to a disability, [employees] must engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible.”)

²² “KEY TO NYC: REQUIRING COVID-19 VACCINATION FOR INDOOR ENTERTAINMENT, RECREATION, DINING AND FITNESS SETTINGS,” Counsel to the Mayor, October 15, 2021, available at:

<https://www1.nyc.gov/assets/counseltothemayor/downloads/Key-to-NYC-FAQ.pdf>

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

found to be non-compliant with the mandate can be subject to a fine of \$1,000, with repeated violations potentially leading to increased fine amounts.²⁶

The Key to NYC mandate took effect on August 17, 2021, and the City began checking businesses' compliance on September 13, 2021.²⁷ As of October 3, 2021, City inspectors had conducted over 21,000 inspections. During that time the City issued fewer than 5,800 warnings, and only 10 businesses received violations.²⁸ On October 13, a month after enforcement of the mandate began, the Mayor claimed the mandate had been successful.²⁹ According to the Mayor, from September 13 through October 13, the overall vaccination rate increased by 9 percentage points in the City.

The Key to NYC mandate has the potential to boost revenue for businesses covered by the mandate, as City residents worried about contracting the virus in public spaces are ensured everyone around them are vaccinated. For example, older City residents and immunocompromised City residents may have greater confidence joining a gym or going to the movie theatre given the decreased risk of those around them having the COVID-19 virus. According to Andrew Rigie of the NYC Hospitality Alliance, "I've heard from some [business owners] where their customers say, 'You know what, I'm finally more comfortable to go eat indoors now because of this vaccine requirement.'"³⁰

²⁶ "KEY TO NYC: REQUIRING COVID-19 VACCINATION FOR INDOOR ENTERTAINMENT, RECREATION, DINING AND FITNESS SETTINGS," Counsel to the Mayor, October 15, 2021, available at:

<https://www1.nyc.gov/assets/counseltothemayor/downloads/Key-to-NYC-FAQ.pdf>

²⁷ *Id.*

²⁸ SHANT SHAHRIGIAN, "Just 10 violations so far under NYC's vaccine mandate for businesses" NY Daily News, October 3, 2021, available at: <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-vaccine-mandate-indoor-dining-bill-de-blasio-20211003-f2zejcrrizgnlhs55g6pqvvgg5u-story.html>

²⁹ "Vax Rate Increased Since 'Key to NYC' Mandate Went Into Effect Last Month: de Blasio" NBC News, October 13, 2021, available at: <https://www.nbcnewyork.com/news/local/vax-rate-increased-since-key-to-nyc-mandate-went-into-effect-last-month-de-blasio/3320602/>

³⁰ CAROLINE LEWIS, "Mayor De Blasio Offers Businesses New Guidance On 'Key to NYC' Vaccine Mandate But Some Outstanding Questions Remain", Gothamist, August 31, 2021, available at:

Nonetheless, certain business owners are fearful the mandate could lead to a decrease in revenue. In neighborhoods in the City with lower vaccination rates, certain business owners are fearful that the mandate will lead to depressed revenue. For example, in Borough Park, Brooklyn, just over 52 percent of City residents have received the first dose of the vaccine, and in Far Rockaway, Queens, just over 55 percent of City residents have received the first does of the vaccine.³¹ Accordingly, in these neighborhoods, covered businesses cannot allow 48 percent and 45 percent of local residents, respectively, to patronize their establishments.

In Borough Park, restaurant owners fear negative repercussions for complying with the City mandate. According to the owner of a kosher pizzeria in Borough Park, he will “100%” lose customers if his restaurants starts asking residents for proof of vaccination.³² According to the business owner, “if we open up the store and put up the sign, nobody’s going to walk in.”³³ Massimo Felici, who owns a restaurant in Staten Island, predicts the vaccine mandate will impact his earnings: “It’s gonna [sic] hurt my business for me to lose customers, to lose relationships with customers. We’re a neighborhood restaurant.”³⁴

The uncertainty of whether the mandate will negatively impact business owners’ revenues may be enhanced by the unclear timeline on how long the mandate will be in effect. Mainly,

<https://gothamist.com/news/mayor-de-blasio-offers-businesses-new-guidance-key-nyc-vaccine-mandate-some-outstanding-questions-remain>

³¹ "Vaccinations by ZIP Code", NYC Health, Updated October 2021, available at:

<https://www1.nyc.gov/site/doh/covid/covid-19-data-vaccines.page>

³² Lauren Hakimi, “Kosher restaurants fear losing customers over NYC vaccine mandate,” Jewish Chronicle, September 13, 2021, available at: <https://jewishchronicle.timesofisrael.com/kosher-restaurants-fear-losing-customers-over-nyc-vaccine-mandate/>

³³ *Id.*

³⁴ Victoria Manna, “City issued thousands of warnings since indoor vaccine mandate took effect,” NY1, Updated September 20, 2021, available at: https://www.ny1.com/nyc/all-boroughs/news/2021/09/20/some-restaurants-say-enforcing-nyc-vaccine-mandate-has-hurt-them-financially?cid=id-app15_m-share_s-web_cmp-app_launch_august2020_c-producer_posts_po-organic

business owners have not been updated on whether the mandate will exist in perpetuity, or whether it will be a shorter-term policy to increase vaccination rates in the City.

b. Expansion of Key to NYC

On December 14, 2021, the Mayor announced that the Key to NYC program will require children aged 5-11 to show proof of one vaccination dose to gain entry into the covered venues.³⁵ The Mayor also announced that starting on December 27, New Yorkers 12 and older will be required to show proof of two vaccine doses, instead of one as part of the Key to NYC mandate.³⁶

The expansion of the Key to NYC mandate may further hamper the recovery of covered establishments. Mainly, tourists visiting New York City from other countries may not be able to access vaccines for their children before arriving in New York. According to the Hospitality Alliance:

“Public health and safety is paramount, but Mayor de Blasio’s announced expansions to the Key to NYC vaccine mandate pose additional challenges for an already beleaguered restaurant industry in need of tourism support and revenues this holiday season...U.S. families visiting New York City for scheduled holiday vacations may not be able to meet the vaccination requirements for children or themselves in time, and children aged 5-11 across the globe aren’t universally authorized to get vaccinated.”³⁷

Accordingly, restaurants may have to turn away families who have not had the opportunity in their home countries to vaccinate their children.

3. Street Vending

³⁵ “Mayor de Blasio Announces Vaccine Mandate for Private Sector Workers, and Major Expansions to Nation-Leading “Key to NYC” Program”, City of New York, December 6, 2021, available at: <https://www1.nyc.gov/office-of-the-mayor/news/807-21/mayor-de-blasio-vaccine-mandate-private-sector-workers-major-expansions-to>

³⁶ “Mayor de Blasio Announces Vaccine Mandate for Private Sector Workers, and Major Expansions to Nation-Leading “Key to NYC” Program”, City of New York, December 6, 2021, available at: <https://www1.nyc.gov/office-of-the-mayor/news/807-21/mayor-de-blasio-vaccine-mandate-private-sector-workers-major-expansions-to>

³⁷ Jennifer Millman and Andrew Siff, “NYC Expands Vaccine Mandate to Whole Private Sector, Ups Dose Proof to 2 and Adds Kids 5-11” NBC, December 7, 2021, available at: <https://www.nbcnewyork.com/news/coronavirus/nyc-mulls-tougher-vaccine-mandate-amid-covid-19-surge/3434858/>

Although a valuable contribution to the commercial fabric of this City, street vending can conflict with the operations of brick-and-mortar businesses. At the hearing for Local Law 18 of 2021, which expanded the availability of food vending permits, businesses and their representatives testified to the challenges posed by nearby street vending. Testimony from business owners and representatives, such as the Partnership for New York City and the NYC BID Association, cited increased pedestrian and vehicular traffic congestion, blocking access to brick-and-mortar businesses, the emission of smoke and odors and unfair competition with small business owners who pay rent and real estate taxes, which are not paid by street vendors.³⁸ Many witnesses also testified to a lack of enforcement of street vendor restrictions.³⁹ Local Law 18 of 2021 aims to streamline and strengthen enforcement of street vending rules, while also expanding opportunity to vend legally. Further, some have unfavorably compared the cost of a sidewalk café consent with the low costs associated with street vending in the City.⁴⁰

III. CONCLUSION

As the legislative session will conclude at the end of December, the Committee seeks to engage with the Administration on outstanding burdens that impact small businesses that could be reduced next session. The Committee will hear from business advocates about difficulties complying with the various regulations enforced by City agencies, and where further regulatory reform could be useful in the future.

³⁸ NYC Council, Committee on Consumer Affairs and Business Licensing Hearing, April 11, 2019, Hearing Testimony, available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=7167908&GUID=A00261F4-2571-4CC4-B64A-A2D550454F47>.

³⁹ See *id.* at pp. 18, 37-38

⁴⁰ *Id.* at p. 47.