

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON SMALL BUSINESS

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B E F O R E: MARK GJONAJ  
Chairperson

COUNCIL MEMBERS: Diana Ayala  
Stephen T. Levin  
Bill Perkins  
Carlina Rivera

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

Jackie Mallon, First Deputy Commissioner, New York City Small Business Services

Steven Pinker, Executive Director of Food Service Industry Partnership, New York City Small Business Services

Andrew Rigie, Executive Director, New NYC Hospitality Alliance, Food and Beverage Hospitality Council & Chair of New York City Nightlife Advisory Board

Robert Bookman, Attorney & Appointee on Health Department Advisory Board & Appointee to Nightlife Advisory Board

Kathleen Riley, New York City's Admin Relations Coordinator, New York State Restaurant Association

Frank La Corte, Podama (sic) Restaurant East Midtown Partnership BID Uptown

Peter Fahey, Saint Pat's Bar & Grill

Peter Fitzpatrick, Allied Management

Jim Quint, Duncan Brands

[sound check] [pause] [gavel]

CHAIRPERSON GJONAJ: Good afternoon. I am Council Member Mark Gjonaj, Chair of the Committee of Small Business, and I'd like to welcome you to our hearing on the restaurant industry, the very important restaurant industry. Thank you for making time for us today. Mom and pop restaurants are beloved institutions in neighborhoods across the city whether it's a diner, a pizzeria, a local café or a quick service restaurant, the news we share these places and the hospitality of the people that run them and enable individuals and families to form memories and bonds of affection that span generations, but recent years have not been kind to the local entrepreneurs who are small business owners many of which are Minority and Women Owned Businesses. Rents have skyrocketed [coughs] lower costs—labor costs have nearly doubled, and new policies have upended a regulatory climate that has not been particularly stable to begin with. According to data from the Federal Reserve, first service restaurants in New York City have shed roughly 2,000 jobs over the last two years. Just last year iconic institutions such as Casa Mia to TF Fratz (sic) and

Carmuda (sic) Café all closed their doors. The Department of Social Service operates a number of programs that are designed to facilitate not only the growth and development of food service establishments, but also steers developers and aspiring entrepreneurs. I'm excited to learn from the perspective, experience and data provided by SBS, the roughly 24,000 restaurants New York served as an important entry point into the labor force for thousands of individuals including myself. In fact, 1 in 3 people get their first job in the restaurant industry. Restaurants are a major draw for tourists and provide nourishment for New Yorkers. I'd like to see city agencies doing everything in their power and everything that works so that this sector can expand rather than stagnate or be run out of town by over-regulation and taxation. Regulations like the Fair Work Week package passed in 2017 are actually hurting the very people they intended to serve. These mandates on small businesses while well intended are overly restricted and financially burdensome while adversely affect the day-to-day operations. We can agree that the concept of providing two weeks advance schedule notice helps employees. However, additional

rules that penalize small business owners forcing them to pay fines or premium pay for employee looking to fill a shift actually prevent their shifts from ever being filled. This means fewer hours for employees who want to make extra money, and an increased workload on those employees on shift while understaffed. I'd like to thank the committee staff, Counsel Irene Valosky; Policy Analyst Michael Kurtz; as well as my Chief of Chief Reggie Johnson; and my Legislative Director Durban Zimbali for making this hearing possible. Finally, I'd like to recognize the Committee Chair-committee members that are here with me, Council Member Ayala and others that will be joining us. Thank you for being here. Our first panel SBS Jackie Mallon and Stephen Pinker. Can we swear you in?

DEPUTY COMMISSIONER MALLON: Yes.

LEGAL COUNSEL: Do you affirm to tell the truth, the whole truth, and nothing but the truth in your testimony before this committee, and to respond honestly to Council Member questions?

DEPUTY COMMISSIONER MALLON: I do.

LEGAL COUNSEL: Thank you.

Is this working? I can't tell. Yes so good to go?

CHAIRPERSON GJONAJ: Good.

DEPUTY COMMISSIONER MALLON: Alright.

Good afternoon Chair Gjonaj and members of the Committee on Business. My name is Jackie Mallon and I'm the First Deputy Commissioner of the New York City Small Business Services. At SBS we aim to unlock economic potential and create economic security for all New Yorkers by connecting them to quality jobs, moving stronger and fostering thriving neighborhoods across the five boroughs. I'm joined by my colleagues Steven Pinker, the Executive Director of Food Service Industry Partnership. Today I'm pleased to testify on our support of the New York City restaurant industry. There are well over 20,000 restaurants in the New York City employing over 270,000 New Yorkers. Restaurants are present in almost neighborhood and are essential to our city's identity. To assist restaurant owners, SBS offers many resources that help them start, operate and grown. Our services to support restaurants include our Client Management and Compliance Advisory Services, which help restaurant owners navigate the

regulatory process and ensure they're in compliance with regulations necessary to maintain public health and safety. We also help restaurants owners access capital, hire new employees and fund employee training through NYC Business Solution Centers. On an average annual basis, SBS helps open up roughly 500 restaurants, fill nearly 3,000 open positions at restaurants and connect about 100 restaurants through around \$4 million in financing. SBS also works directly with the industry—restaurants industry through our industry partnership known as the NYC Food and Beverage Industry Partnership, which is made up of 30 New Yorker restaurants industry leaders, key professional associations and community based organizations that focus on skills training. The partnership allows us to work directly with the industry on priority issues impacting both employers and workers to support the growth of the industry. Key priorities include helping restaurants navigate the regulatory environment addressing the demand for skilled workers, and providing support to adapt to the rising costs of doing business in—in the city. While protecting public health and safety is essential, we know that government regulations are

sometimes not totally clear or straight forward for business owners. This is particular true for restaurant operators who typically interact with multiple regulatory agencies. One of the first efforts to address the regulatory concerns of business was the Small Business First Initiative launched in 2015. The Mayor's multi-agency effort including DOHMH, FDNY, DCA, DOB and DSNY helps businesses understand comply with city regulations, reduces the regulatory burden on businesses and ensure equal access to city support for all business owners. We developed SBS 30 commitments based on the feedback from hundreds of business owners. Some of examples of the ways we would help business save time and money include: Creating an online portal where businesses can see all their interactions with the city; launching a first of its kind compliance consultation program; streamlining regulatory agency processes. The NYC Business Portals had more than 70,000 accounts created with a monthly average of more than 100,000 new visitors since launching. To provide direct support to businesses, SBS cross-trained new staff called Compliance Advisors in the regulatory requirements of



various agencies. Armed with this information, these compliance advisors were able to complete more than 2,600 on-site consultations for restaurants helping these building owners to avoid common violations before their inspections. SBS has also worked with agencies and Council to streamline time consuming and costly processes for businesses. This past year we worked with the Council to establish Local Law 195, which consolidates processes for fire suppression systems, fire alarms systems and fire protection plans so we will have the purview of the FDNY—FDNY. Prior to the implementation of this Local Law, the approval process for these systems required restaurants to engage with both DOB and FDNY. These processes change—changes will reduce the cost and the administrative burden on businesses saving both time and money without compromising public health and safety. SBS looks forward to continuing our work with agencies and the Council to make it easier for businesses to comply with rules and regulations. Restaurants are also currently undergoing an unprecedented labor shorter—shortage. Members of our industry partnership cited equipment and skilled employees as one of the most important challenges for

the industry, and to address this data we launched Stage NYC, a three-month program connecting Out of School Out of Work youth with rewarding careers in the New York City restaurant industry. The program was designed to help make the restaurant sector's growing demand for qualified culinary employees while creating new career pathways for New Yorkers. Participants paid on-the-job training with an industry partner, and this hands-on experience allows participants to gain all the tools needed for success in the growing restaurant industry. We are now refining the program based on lessons learned from the initial pilot and plan to launch another cohort early this summer. In addition, through SBS' customized training program, we provide funds to restaurants and other businesses to offset the cost of training for their current staff so that they can advance to higher paying jobs. SBS also hosts businesses adopting changing local trends—trends such as shift neighborhood demographics. For example, we're changing markets made pot landmarks to speculator harass existing commercial tenants, SBS provides free legal services through our Commercial Lease Assistance Program. Businesses including

restraints can work one-on-one with attorneys to review lease renewal terms, negotiate with their landlord, and even prepare court papers and motions when litigation cannot be avoided. Restaurants have raised concerns with adapting to new mandates and increased costs. In recent years, New York City has been on the forefront of providing essential basic protections to workers. Since the start of this Administration, the city has given workers and private employers the right to paid sick leave and required private employers to provide employees with sexual harassment prevention training, and information and most recently Mayor de Blasio paid personal time, making New York City the first nation-in the nation to offer personal time off for workers. This comes along with mandates from the state including paid family leave and an increase minimum wage of \$15.00 for businesses within 11 or more employees. While SBS fully supports the expansion of these critical order protections, we have also heard from restaurant owners who are struggling to adapt. To assist, SBS offers business education resources to help businesses to assess their costs, reduce unnecessary expenses and increase their revenue.

This allows businesses to prepare for different forms of business interruption and on expenses—expenses. SBS also helps longstanding companies adjust to changing work and commissions with Love Your Local. Through this program businesses receive extra business advice, and if eligible, grants to up to \$90,000 for adaptation. These programs allow us to test and analyze business interventions with the hope of scaling effective solutions. As you can see, SBS is an advocate for restaurants and we are committed to ensure their success in New York City. We are unique among our peer agencies as our role is to serve as a resource to all business owners and workers no matter where their—where they come from or what barriers they face. We look forward to learning more about the issues with us interfacing, and work to address to them. Thank you and I am now happy to answer your questions.

CHAIRPERSON GJONAJ: Thank you. So, let me begin by addressing the 900-pound gorilla in the room [laughter] and to ensure you are well versed in our—I think we'll be celebrating our one-year anniversary soon.

DEPUTY COMMISSIONER MALLON:

[interposing] Sure. This is true.

CHAIRPERSON GJONAJ: It's almost—it is over a year ago that I requested from SBS the 6,000 rules and regulations that I'm aware of that exist. We—SB1 was created just for that one purpose, to review the 6,000 rules and regulations, decide or decipher which are outdated or to dive us in (sic) and streamline and make it an east to read and follow trans-transparent way so our small businesses have a fighting chance. It's one year later since my request. It is four years since the formation of SB1, which I believe now is more—has cost taxpayers more than \$30 million, and the last fact that I was seeing, SB1 was able to modify 80 regulations, which means they made them more complicated instead of getting rid of them. Can you please update me--

DEPUTY COMMISSIONER MALLON: [interposing]

Sure. Sorry.

CHAIRPERSON GJONAJ: --on when that will be when I as Chair of Small Business, when will I receive the 6,000 rules and regulations. When will we create a format which has mom and business owners? We'll know what was that to comply with? Why we'll

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2 find that the hard way, which is normally through a  
3 violation that requires them to pay a hefty fine?

4 DEPUTY COMMISSIONER MALLON: Good?

5 CHAIRPERSON GJONAJ: Yep.

6 DEPUTY COMMISSIONER MALLON: Okay, so we  
7 always disagree a little bit on the number. We say  
8 5,300, you say 6,000 or whatever reminder.

9 CHAIRPERSON GJONAJ: [interposing] Well,  
10 okay. We follow up--

11 DEPUTY COMMISSIONER MALLON:  
12 [interposing] A reminder, they do not all apply to  
13 businesses.

14 CHAIRPERSON GJONAJ: Right.

15 DEPUTY COMMISSIONER MALLON: That--that  
16 completes out of--of rules for both businesses and--and  
17 the restaurants.

18 CHAIRPERSON GJONAJ: [interposing] But  
19 that's a number that just sort of make it

20 DEPUTY COMMISSIONER MALLON:  
21 [interposing] I know.

22 CHAIRPERSON GJONAJ: --okay, Commission,  
23 divide it from the Comptroller's Office and that's  
24 the number that I was given. Until I see them, we  
25

can't even decide whether there's 5,300 or 6,000 and that.

DEPUTY COMMISSIONER MALLON: [interposing]

Un-understood, understood and-and SB1 we're-the-we're-well intentioned. SB1 was not to eliminate rules per se. Part of it was a review, and you're right, we are going to fight 80 rules that impacted business and made modifications, and those are in play. In addition, we've-as I said in my testimony, we launched the-the Business Portal where you can-everybody can get online and-and easily figure out all the different rules and regulations. In fact, your-your interactions aggregated for you when you open up accounts. So, it's been, you know, improved a lot in terms of transparency, compliance advisors I talked about in my testimony. We've talked about in the past. They are available to all businesses. They go out pre-inspection, work with the business and sort of walk through their situation, advise them on what they should change so that they are not going to be in violation. Violations have-have come down during this administration. We talked about that as well in the past, and so the list of-of 6,000 rules I-I like it sounds like you're requesting that I

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2 deliver you those, and is that right in like a-a  
3 package?

4 CHAIRPERSON GJONAJ: I'll take them on  
5 any format that's possible just so I can count them  
6 myself and--

7 DEPUTY COMMISSIONER MALLON: [interposing]  
8 Yes.

9 CHAIRPERSON GJONAJ: --help understand  
10 what everyday small businesses have to go through or  
11 what they should be going through, and making it a  
12 lot easier for them by perhaps--and again, I go back  
13 to not a single rule was removed from the books. It  
14 took me almost a year or nine months to argue that  
15 the outdated signage laws that date back to 1961  
16 where our small businesses were receiving fines  
17 between \$5,000 to \$20,000 on a sign that's been up  
18 for decades that the city turned a blind eye to. And  
19 overnight a lot of enforcement, and very  
20 sophisticated group were using 311 as a weapon  
21 virtually putting these small businesses out of  
22 business over an outdated law that should have been  
23 revised decades ago.

24 DEPUTY COMMISSIONER MALLON: Uh-hm. And--  
25



CHAIRPERSON GJONAJ: And just so--just so you know, the law required no more than 12 foot of trip. It does--it didn't even allow for phone number to be included. So, in the last 50+ years--more than 60 years. They are now marketing and the perception of marketing has changed so much, and yet that one rule where thousands were literally forced out of business over the years. They could not possibly pay the fee, hire the architect that was needed, and have a new sign installed. It was unfair. SBS should have been at the forefront on that, and never picked up the issue.

DEPUTY COMMISSIONER MALLON: Uh-hm, uh-hm. Well, you know, we've had this conversation, and we really appreciate the Council's passing the law, and we look forward to--to working together on its implementation and getting the word out. Rules are in place to ensure that the public is safe and--and healthy and the quality of life is maintained, and I think through SB1 we--we have made a lot of improvements. Clarity--one of the--we talked to over 500 business owners when we put together the--the 30 commitments, and the--essentially, the number one thing that--that frustrated them more than anything

was: I don't understand the rules. It's not transparent. It's not clear. I don't and so many of the things that we've put in place I think are addressing those points. If you been on—if you've been on the NYC Business Portal yourself, you—I mean if you want to find the rules actually for businesses, that's an excellent way for you to do it because you can easily go through and it—and—and use the tool--

CHAIRPERSON GJONAJ: [interposing] I use it (sic)

DEPUTY COMMISSIONER MALLON: Yeah, I—I--

CHAIRPERSON GJONAJ: [interposing] Some—some agency or agencies with the patterns and--

DEPUTY COMMISSIONER MALLON:  
[interposing] No, we just put in here the type of business that you're—that you're wanting to investigate. It all pops out for you, and I must say it's—it's a digital tool. It should always evolve and—and get better as—as we get—we're using it and we're learning it or not, but I think it's pretty excellent. I want to stand on that one for sure in terms of transparency and—and clarity, which is a lot of what this is about.

CHAIRPERSON GJONAJ: Well, we'll have to have a special hearing on easy transparent at another day.

DEPUTY COMMISSIONER MALLON: [laughs]

CHAIRPERSON GJONAJ: As recently as 2000- and January 2019, several of our restaurants have closed.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: And I have roughly 30 that I'm aware of including a diner in very own district the Pelham Bay Diner there after 47 years closed up its doors, and it wasn't rent. It was the over-burdens, the regulations, taxation and the inability to compete that first amount. What is SBS going to do as these businesses make decisions that they can no longer compete, no longer satisfy the needs of the employees and government, and we've done a great job of pegging employers against employers. And all the employers that I have been speaking to the last year they are connected to the same-- connected. I need a happy employee. I want my--

DEPUTY COMMISSIONER MALLON: [interposing]  
Right.

2 CHAIRPERSON GJONAJ: --employees to be  
3 happy. I just--my dire mind doesn't support  
4 satisfying the employees and government.

5 DEPUTY COMMISSIONER MALLON: Uh-hm.

6 CHAIRPERSON GJONAJ: And I can't fight  
7 government. I don't have the resources. How do we  
8 respond to a small business owner who says: I want  
9 to do right. I want my employees to be able to earn  
10 a decent living, be happy to come to work. They'll  
11 provide better services. There would be less  
12 turnover. They're advancing my place of business. I  
13 just can't do it, and regulation is their number one  
14 concern that prevents them from focusing on the needs  
15 of their employees. What can we do to build healthy-  
16 -

17 DEPUTY COMMISSIONER MALLON: [interposing]  
18 So, it sounds like--like--like you and we agree, and we  
19 support all of the--all of the policies that are in  
20 place to--to support workers and their financial  
21 stability and protections and so forth, and that's  
22 what we hear from businesses as well. As I said, we  
23 have through SB1 and other measures we have  
24 instituted lots of reform and refining of processes  
25 and all kinds of things that are intended to make it

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2 much clear on how to do businesses. [coughs]

3 Violations have gone down during this Administration.

4 I don't--

5 CHAIRPERSON GJONAJ: [interposing] What's

6 the--

7 DEPUTY COMMISSIONER MALLON:

8 [interposing] Can you hear? What's that?

9 CHAIRPERSON GJONAJ: What's the--what's

10 the violations have gone down? Do you mean the

11 number or violations have gone down--

12 DEPUTY COMMISSIONER MALLON: [interposing]

13 Yes.

14 CHAIRPERSON GJONAJ: --or the actual

15 income that is derived from violations?

16 DEPUTY COMMISSIONER MALLON: Well, really

17 both.

18 CHAIRPERSON GJONAJ: What are those

19 numbers?

20 DEPUTY COMMISSIONER MALLON: I do not

21 have the numbers off the top of my head.

22 CHAIRPERSON GJONAJ: Can we request those

23 numbers [background comments] because I-I--there are

24 going to be plenty of this exercise today-- (sic)

25

2 DEPUTY COMMISSIONER MALLON:

3 [interposing] I'm already--

4 CHAIRPERSON GJONAJ: --on their first --on  
5 their own experiences that after here--that they're  
6 trying to do, which speaks to the next--

7 DEPUTY COMMISSIONER MALLON: [interposing]  
8 Yes.

9 CHAIRPERSON GJONAJ: --but, right, when  
10 you say what is that we can do, there are many that  
11 are lined up here today to testify--

12 DEPUTY COMMISSIONER MALLON: Uh-hm.

13 CHAIRPERSON GJONAJ: --and I can't help  
14 but complement them because they're speaking to the  
15 many others that are afraid to attempt a hearing that  
16 have talked to me off record, that have talked to me  
17 on background, that are afraid to appear at a hearing  
18 to be heard because of the fear of retaliation from  
19 this city--

20 DEPUTY COMMISSIONER MALLON: Uh-hm.

21 CHAIRPERSON GJONAJ: --for fear, and  
22 there's a real belief that if they are hurt that  
23 miraculously the Department of Health will appear,  
24 the Department of Buildings and a number of city  
25 agencies after establishments issuing more violation

and summonses. That's not the government we're supposed to have. If we're going to force the grip, and we're going to consider our small businesses as a partner that helped this city thrive. That should be a challenge that I would imagine SBS would want to meet on head first.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: So, you-and pleas allow elaborate on that or you know me on this. (sic)

DEPUTY COMMISSIONER MALLON: [laughs]

CHAIRPERSON GJONAJ: What is it that you're willing to do to let these small businesses know on record that you're going to be retaliated against?

DEPUTY COMMISSIONER MALLON: Uh-hm. On record is not my impression that they're-that is the way that and I mean-and I just want to remind you and everyone we're not a regulatory agency, right. That is not us. We're the Department of Small Business Services, and so my knowledge is-is what it is. My understanding is of the way that-that inspections occur is really on a risk basis right. So, if somebody has-has had violations, they are more likely to get inspected more frequently. Theirs is no one

that's being targeted. It's—it's merely a function of what has happened before, and as I said earlier, we have instituted some programs, and some—some mazing changes to the processes to try to make it easier. Compliance advisors are available to every business in the city. They can call and make an appointment. We will be on site. We will take a loo. We have across-agency knowledge of—of the most common violations. We provide advice, and advisors (sic) are, in fact, avoided through that process. So, it encouraged everyone that's here to—to call us, tell you fellow business owners we are, you know, here to try to address that.

CHAIRPERSON GJONAJ: The failure of Compliance's advice.

DEPUTY COMMISSIONER MALLON: Yeah.

CHAIRPERSON GJONAJ: The specific—the—the belief that if they speak up, that they will be attacked and targeted.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: My understanding is that you're not a regulatory agency.

DEPUTY COMMISSIONER MALLON: That's correct.



CHAIRPERSON GJONAJ: But you're—I would imagine you care for the wellbeing of our small businesses.

DEPUTY COMMISSIONER MALLON: I do.

CHAIRPERSON GJONAJ: And if this is a belief that our small business owners truly in their heart believe that if they complain, they will be targeted as an establishment or an industry, that's what SBS I would imagine would want our small business community to be--

DEPUTY COMMISSIONER MALLON: [interposing] It's more a regulatory reason. I'm pretty sure. I don't think anybody would fault that.

CHAIRPERSON GJONAJ: This a common--this is a common belief. What can we do to help reinforce the notion that they will not be under attack? That they will--? Because they spoke up, they will not become a target?

DEPUTY COMMISSIONER MALLON: We could certainly convene members of the--the various agencies and--and have discussions. You know, I--I just--it is my firm belief that the--there is no system of retaliation against small businesses in the--in the city with our regulatory agencies. I think they are

trying to—to regulate so that the public is—is safe and stays healthy and quality of life is maintained, and I think that it—that their enforcement is founded on the basis of risks, perceived risks. That is my understanding, but I am more than happy to participate in, to—to convene other partners at other agencies to bring people together and have open discussion about it.

CHAIRPERSON GJONAJ: I'll give—I'm going to give you a perfect example.

DEPUTY COMMISSIONER MALLON: Yes.

CHAIRPERSON GJONAJ: The initiative by this administration on clear curbs, and it's more to probably—I would imagine that it appeared on the books: No parking from 7:00 a.m. to 10:00 a.m. No parking from 4:00 p.m. to 7:00 p.m. Where? Just the red initial (sic) corridors. It was a para-program but it wound up being a disaster.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: Those small businesses were being forced out of business, and I met with them literally crying saying that I cannot pay my bills. What this has done to my business model is completely undermined. I serve coffee. If

I can't have cars pull up to my establishment and park seven blocks away, they're not coming in for my donut or coffee. They're going to my competitor. So, please come in and join me. Let's make sure that we make a presentation to DOT and explain what this program is doing. Oh, no, I can't do that because if I do, the Department of Health will come and visit me right after. Places were abandoned. I listened. I said no. I assured that won't happen. No, it's set. Councilman, I know—I know that they're going to come after me, and they'll look into my place of business and they'll issue me more violations that I can't afford. That was their response.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: I never felt more uncomfortable than that moment having a woman cry who is willing to state to me about what has happened, but unwilling to address the agency for fear.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: And that was 90 owned-woman-owned business an immigrant family that were working in that business that their parents, children, everyone that's it. That's just abated.

DEPUTY COMMISSIONER MALLON: Uh-hm.

2 CHAIRPERSON GJONAJ: Just to survive. I  
3 did my best to convince her. They need to know what  
4 more can we do to assure them that you don't have to  
5 fear that government doesn't have a pair of scissors  
6 on one hand and a hammer on the other--

7 DEPUTY COMMISSIONER MALLON: Uh-hm.

8 CHAIRPERSON GJONAJ: --and that's your  
9 destiny. Should you speak up as Small Business  
10 Services? We need to develop a platform that these  
11 business owners can be heard, and alleviated these  
12 concerns of retaliation.

13 DEPUTY COMMISSIONER MALLON: Uh-hm.

14 CHAIRPERSON GJONAJ: Can I get a  
15 commitment from you that would be--that in the future  
16 we'll do our part to let them know that they can be--  
17 that they can speak up?

18 DEPUTY COMMISSIONER MALLON: Absolutely,  
19 I'd be--we were--we would be happy to work together to--  
20 to ensure that people are--are not fearful that the--  
21 that the agencies are--are--the agencies with  
22 retaliations like that, but it's my firm belief that  
23 they are not and we will do whatever we can to work  
24 together to--to assuage people of that people.

2 CHAIRPERSON GJONAJ: And that includes  
3 the people in this room that maybe are afraid to use  
4 the--the names of their locations.

5 DEPUTY COMMISSIONER MALLON: Yes.  
6 Understood.

7 CHAIRPERSON GJONAJ: And that in the  
8 coming--coming weeks and months they are targeted.

9 DEPUTY COMMISSIONER MALLON: Uh-hm.

10 CHAIRPERSON GJONAJ: We have to revisit  
11 or some day we'll be fighting with them standing  
12 shoulder to shoulder pushing back to show them the  
13 most democratic city in the world--

14 DEPUTY COMMISSIONER MALLON: Yep.

15 CHAIRPERSON GJONAJ: --shouldn't be  
16 attacking its small businesses, but making them a  
17 partner or embrace them as the partners that we need  
18 to.

19 DEPUTY COMMISSIONER MALLON: Yeah, and as  
20 I said, you have our--my full commitment and in the  
21 meantime, before we can get the message out of scale,  
22 we have client managers available. They should feel  
23 free to contact our--our folks, and if the situation  
24 message was invasive, they would get involved and--and  
25 do whatever they can in the meantime.

CHAIRPERSON GJONAJ: And you—you also mentioned this ability where we can bring in the various agencies to walk through a place of business to avoid non-compliance with regulation, or welcome these out. Is there any focus on the most common violations? And I'll go back to that memory. It's not the 6,000 or the 5,300 regulations. We're focused on the most common--

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: --which means that you can have a walk-through which ever agencies, the very next day, an agency can walk in, and the violation can be issued. Where's the trust factor? I want to comply. I want to make sure that I'm—all the rules and regulations I'm adhering to. I am more than happy to take time to sit with you and let my make establishment to make sure that I'm in full compliance, and that still find themselves out of compliance. This is their feedback. So, we're not doing enough. It's at best scratching the surface, but there is not protections for us to say hey in good faith working with them assuring them if their walk-throughs are complying (sic), and we give you a clean bill of health, that may be the next if of that

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2 if an inspector walks in that that violation should  
3 not come with a dollar amount.

4 DEPUTY COMMISSIONER MALLON: Uh-hm.

5 CHAIRPERSON GJONAJ: Give me time to cure  
6 it. That would be embracing the small businesses  
7 that are—that want to comply.

8 DEPUTY COMMISSIONER MALLON: Uh-hm.  
9 [applause] And—and that is true in—in many cases and,  
10 you know, we can work together to evaluate other than  
11 census where that can—you can take case as well.

12 CHAIRPERSON GJONAJ: Well, that's a  
13 commitment I—I hope that we can work on.

14 DEPUTY COMMISSIONER MALLON:  
15 [interposing] Yeah, no doubt.

16 CHAIRPERSON GJONAJ: You mentioned the  
17 science advisors, and--

18 DEPUTY COMMISSIONER MALLON: Yes.

19 CHAIRPERSON GJONAJ: --and I just found--  
20 how often does the Hospitality Council meet?

21 DEPUTY COMMISSIONER MALLON: Or our  
22 agency partnership? Is that what you mean?

23 CHAIRPERSON GJONAJ: Um--

24 DEPUTY COMMISSIONER MALLON: Yeah, I  
25 think that's what you mean.

CHAIRPERSON GJONAJ: The Hospitality  
Council--

DEPUTY COMMISSIONER MALLON: [interposing]  
I didn't put kind of plans advisors in the--in the  
partnership together. That's right. I'm sorry.

CHAIRPERSON GJONAJ: So, you just  
announced that the New York City Food and Beverage  
Hospital Council on September 2016.

DEPUTY COMMISSIONER MALLON: Yes.

CHAIRPERSON GJONAJ: Which includes more  
than 30 leaders and experts in the hospitality  
industry across the city. Members in this really--  
recent meeting of the Hospitality Council--

DEPUTY COMMISSIONER MALLON: [interposing]  
I feel there is something--I feel there is something  
with them. (sic)

CHAIRPERSON GJONAJ: --and what were the  
biggest takeaways from that meeting?

STEVEN PINKER: [interposing] About two  
months ago.

CHAIRPERSON GJONAJ: Two months ago.

DEPUTY COMMISSIONER MALLON: About--about  
two months ago.



CHAIRPERSON GJONAJ: And how many meetings have you had since the September 2016?

DEPUTY COMMISSIONER MALLON: I will say roughly six or seven. I can get back to you more specifically with the whole group and they--sometimes they just inform us, and so sometimes it's--It's stated one-on-one with a few businesses, but the whole group probably quarterly--like essentially quarterly. I would have to look back.

CHAIRPERSON GJONAJ: What are the biggest takeaways from those meetings?

DEPUTY COMMISSIONER MALLON: The--the--in general, the--the and I'll let you jump in as well.

CHAIRPERSON GJONAJ: Sure.

DEPUTY COMMISSIONER MALLON: The--as--as I said in my testimony key priorities were the unprecedented labor shortage for in particular skilled workers, navigating the regulatory then. What can we do? What more can we do? What else can we change? And the--the rising costs, what--what can we do to mitigate those together? What solutions are--are going to be most effective? Where are the pain points or that kind of thing? Steven you want to--?

STEVEN PINKER: Sure, sure. As someone who like you grew—grew up with this industry, I owned a restaurant for almost 20 years in the West Village. Closed it in June of 2016. So, I'm really, really well aware of the difficulties of operating a business must less a food service establishment a restaurant in the city. I engage in daily conversation with one operator or another, and as Jackie just mentioned, it's labor, the difficulty of closing the skills gap, leaving the labor shortage. It's being able to keep up with the changing landscape, and a lot of the work that I've seen—I've been with SBS now eight months and a lot of the work that I see being done there, and that I am working towards has to do with assisting businesses to navigate the changing landscape. That includes rising costs. That includes how the—the market in the city is changing, and it's—it's a problem. This has always been an incredibly difficult business, incredibly difficult to keep up with on the day-to-day, and incredibly difficult to keep up with on the day-to-day plus keeping in touch and—and understanding all the rules and regulations that need to be adhered here. That in my interactions with

people like yours, everybody—all operators want to. They—they want to do so for the protection of their workers. They want to do so for the protection of their customers, and obviously at the end of the day, the protection of their businesses.

CHAIRPERSON GJONAJ: So, what have we done in hearing the concerns specific to our— obviously the labor pool is a variable the changes--

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: --and matching up employer with employees, only a port of that. What have we done to address the other concerns?

DEPUTY COMMISSIONER MALLON: Which is it has the lag usually a little bit.

DEPUTY COMMISSIONER MALLON: The concerns other than meaning the labor?

CHAIRPERSON GJONAJ: That's right. Got it.

STEVEN PINKER: Would you like to address that?

DEPUTY COMMISSIONER MALLON: Yeah, sure. We worker to—I want to just it's in my testimony, but we did work together to put together a-a-a program called Stage NYC, which is a-a sort of an

apprenticeship like program that takes Out of School  
Out of Work youth, and gives them some—send up from  
training and then puts them in the back of the  
restaurant so they can learn a skill and start their  
culinary career. So that needed back. We also spent  
a considerable amount of time hearing about one  
solution that the industry is very in favor of and  
that's making modification to the—the rules that  
would allow for a surcharge, and we need—talked about  
that a lot. That's one solution. It's one way of—of  
maybe generating more revenue to—to deal with rising  
costs, we brought it to—to the Administration and our  
partners, and ultimately the Administration  
ministration determined it wasn't good for consumers,  
and so that is not a solution that we're going to be  
able to move forward with, and we're—we're working  
through other methods of—but look. What's another  
example of like a—a—a program that is intended to try  
to get under what the cost—the—how to combat changing  
market conditions and figure out with real life  
examples how to scale solutions that could be  
available to others.

CHAIRPERSON GJONAJ: So, I just want to  
go back.

DEPUTY COMMISSIONER MALLON: I figured you would.

CHAIRPERSON GJONAJ: You—you were—you heard the stakeholders?

DEPUTY COMMISSIONER MALLON: Yep.

CHAIRPERSON GJONAJ: You went to the administration?

DEPUTY COMMISSIONER MALLON: Yep.

CHAIRPERSON GJONAJ: You presented their case, and the feedback--

DEPUTY COMMISSIONER MALLON: [interposing] Together we did in—in parts, but yeah.

CHAIRPERSON GJONAJ: --and the feedback was not—doesn't have the best interest of consumers.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: Why would those businesses come back again if we couldn't even help deliver on issue that's been everything--

DEPUTY COMMISSIONER MALLON: [interposing] Because I said it's—that's one solution, which, you know, I understand--

CHAIRPERSON GJONAJ: [interposing] It's one of the—the most simplest of them all.

2           DEPUTY COMMISSIONER MALLON: I-it's-it's  
3 clearly not simple. Smile, Steve and, you know,  
4 there-we have a series of issues that we're trying to  
5 work. It makes a lot more sense in my opinion to  
6 continue to work together than it--than it does not to  
7 because like, you know, it's a complex set of  
8 problems, and--and so it's not always one thing that  
9 is going to be the thing.

10           CHAIRPERSON GJONAJ: Yeah, whatever and  
11 that's the problem. It's not one bit. It's not one  
12 regulation. It's not one mandate. It's when we put  
13 it all together. So, whether it be an--and I have one  
14 I want to iterate, and I don't think you want to hear  
15 otherwise from any of these employers. They really  
16 want happy employees.

17           DEPUTY COMMISSIONER MALLON: Right,  
18 that's--it's very consistent with what we hear as  
19 well.

20           CHAIRPERSON GJONAJ: And let's look at  
21 the last few years.

22           DEPUTY COMMISSIONER MALLON: Yeah.

23           CHAIRPERSON GJONAJ: Health insurance.

24           DEPUTY COMMISSIONER MALLON: Uh-hm.  
25

2 CHAIRPERSON GJONAJ: Paid family leave,  
3 sick leave, vacations, minimum wage increases. These  
4 are all wonderful things. I'm not—and you won't get  
5 the pushback from the employers that want to provide  
6 these protections to their employees. You just can't  
7 do that plus real estate taxes, water and sewer,  
8 violations, and the bottom lines don't sustain it.  
9 So, I look and there are these variables, the rules  
10 and regulations, which we make, we undress, we  
11 penalize. To them there I would imagine to be the  
12 easiest challenge but, you know, let's reduce the  
13 fees. Let's remove some of these fines.

14 DEPUTY COMMISSIONER MALLON: Uh-hm.

15 CHAIRPERSON GJONAJ: And the  
16 Administration came back with not in the best  
17 interest of consumers.

18 DEPUTY COMMISSIONER MALLON: Yeah, well  
19 that's not exactly apples to apples what you just  
20 said, but because that wouldn't be—that's on—they're  
21 asking for a reduction in fine in that case.

22 CHAIRPERSON GJONAJ: I'm sorry.

23 DEPUTY COMMISSIONER MALLON: They're not—  
24 this—this—this particular solution is not about  
25 reducing fines.

CHAIRPERSON GJONAJ: Hm, taking them all together is probably they asked for, but--

DEPUTY COMMISSIONER MALLON: Not exactly. So, as I said, fines-fines have gone down in this administration. We've implemented a number of things that are--are intended and I think successfully make the rules transparent. We've tried proactively ensure that people are on site helping business, but I'm not suggesting that we're done. There's, you know, it's--it's an ever-evolving process, and the world changes, technology changes, things change, and we are committed to continuing to work together to try to continually make it better and make it easier.

CHAIRPERSON GJONAJ: Thank you. Before we get into this I just want to acknowledge--

DEPUTY COMMISSIONER MALLON: Yes.

CHAIRPERSON GJONAJ: --that we've been joined by Council Member Rivera and Perkins. I'm going to open up to my colleagues with any questions that they may have. Council Member Ayala.

COUNCIL MEMBER AYALA: Can I go first? Thank you. Good afternoon.

DEPUTY COMMISSIONER MALLON: Good afternoon.



COUNCIL MEMBER AYALA: I wonder out of all the new mandates that have been implemented in the last few years if there is a specific mandate that bothers the restaurant owners the most because they want that, you know, you're consistently hearing about.

DEPUTY COMMISSIONER MALLON: I'll go first and then if you want to chime in. No, not a--not a specific I think and I would agree with--with the Chair. Most of what we're hearing is--I don't know if it's really important and--and our workers are super important. They make or break our--our success particularly in a restaurant. It so people intensive, but in general costs are difficult, and--and the pace at which that some of these costs have been rising is a little bit, you know, quicker than might be comfortable if that's--would you display or something specific?

STEVEN PINKER: No, I completely agree.

COUNCIL MEMBER AYALA: So, does SBS--does SBS have a mechanism to track the number of employees that maybe were let go as a result of these new policies?

2 DEPUTY COMMISSIONER MALLON: Not like a  
3 real time tool. You know, typically they rely on-on  
4 data that is collected through the federal  
5 government.

6 COUNCIL MEMBER AYALA: Okay.

7 DEPUTY COMMISSIONER MALLON: Which has a  
8 lag usually a little bit.

9 COUNCIL MEMBER AYALA: Do you track the  
10 number of businesses that have been forced out as a  
11 result of eventual increases?

12 DEPUTY COMMISSIONER MALLON: I'm sorry.

13 COUNCIL MEMBER AYALA: Do you-do you  
14 also-do you track the number of businesses that have  
15 been forced out of business due to rental increases?

16 DEPUTY COMMISSIONER MALLON: There is not  
17 a reliable dataset. We are actually looking at that  
18 as the Administration better ways of-of collecting  
19 the-the much needed evidence.

20 COUNCIL MEMBER AYALA: And then I think  
21 it's helpful because it will allow us to see where  
22 exactly which communities that are more impacted and-  
23 and where we need to-to be channeling our-our-our  
24 resources. So, I-I would look for it to for further  
25 conversation about that.

2 DEPUTY COMMISSIONER MALLON: Agreed.

3 COUNCIL MEMBER AYALA: Since the--since  
4 the institution of the--the lard (sic) reading has  
5 there--has there been a decrease in the number of  
6 food-born illnesses?

7 DEPUTY COMMISSIONER MALLON: I honestly--  
8 don't--

9 COUNCIL MEMBER AYALA: [interposing] Has  
10 they applied it?

11 DEPUTY COMMISSIONER MALLON: --I don't  
12 know the answer off the top of my head. What I do  
13 know is that the--the percentage of--of letter grades  
14 that A has gone up severely in the last couple of  
15 year, but I don't know. I could certainly get back  
16 to you. That's something that the Department of  
17 Health would know.

18 COUNCIL MEMBER AYALA: No, I--I was  
19 looking--I actually was reading on a briefing and I  
20 noted that there are 26,955 restaurants in New York  
21 City. Of that number, just 2,434 are in the Bronx  
22 comparable to Brooklyn where we have 67,000;  
23 Manhattan, you know, over 10,000; over 6,000 in  
24 Queens. What do you attribute that to?

2 DEPUTY COMMISSIONER MALLON: In part I  
3 would—that's sort aligned with the like the  
4 distribution of population across the boroughs I  
5 think. Do you have the number there?

6 STEVEN PINKER: The breakdown.

7 CHAIRPERSON MILLER: Yeah, like there are  
8 a fewer people in the Bronx than there are in Queens  
9 and Brooklyn and so there are fewer restaurants. So,  
10 it's sort of my off-the-cuff answer, but yeah, that's  
11 been like—yeah.

12 COUNCIL MEMBER AYALA: Yeah.

13 DEPUTY COMMISSIONER MALLON: Yeah, I  
14 think there's a relationship between the—the—the  
15 population size and the number of businesses and  
16 restaurants, and the number of businesses in the  
17 Bronx in general is lower than Queens and Brooklyn.

18 COUNCIL MEMBER AYALA: Okay. My-my  
19 follow-up question. So, as part of our questions I  
20 asked, we were—the information that we received I had  
21 a question and I said that actually the way that I  
22 read it, it implies that the Bread Kitchen, which is—  
23 it's more distance in—in my district is an incubator  
24 business. It's affiliated somehow with NYCHA, and I  
25 have never heard that before. It's been in my—in my

district for over five years, and I've never heard about there being some sort of connection between the New York City Housing Authority, the residents and the Hot Bread Kitchen. On the contrary, I think people would argue that there isn't--there--that--that the--the Hot Bread Kitchen isn't doing enough to recruit members of the immediate community.

DEPUTY COMMISSIONER MALLON: Uh-hm.

COUNCIL MEMBER AYALA: So, I'm a little bit kind of confused by that.

DEPUTY COMMISSIONER MALLON:

[interposing] I can tell you--I can tell you a little bit about the--the--what I think. I haven't seen what you're saying, but I can tell you a little bit about what you--it might be referring to. We in partnership with NYCHA run a--run a program called Food Business Pathways, which is--which is targeting NYCHA residents who have had some level of informal food business to join the program and, you know, get the business education so that they can move turning it into formal business. Did I say formal just before? And it was--it's an informal business. Now, we're going to turn it into a formal business, and you help them get licensed and--and then some of them are also given

time at food incubators so they can access the commercial kitchen-kitchens there to develop their product and Hot Bread Kitchen is one of the purchase event-incubators.

COUNCIL MEMBER AYALA: Is it the new program, though?

DEPUTY COMMISSIONER MALLON: It's the 3 years I think about-about-about 300 NYCHA residents have-have completed it, and about two-thirds of those guys-of those folks have gotten through the part where they got their licenses and so forth, and then as far as we know, all of them are-are operating their businesses.

COUNCIL MEMBER AYALA: I would be really interested in learning more about that--

DEPUTY COMMISSIONER MALLON:  
[interposing] Okay.

COUNCIL MEMBER AYALA: --because I will tell you that I go to every resident association meeting, FECAP (sic) meeting. I have never-I've met with Hot Bread Kitchen, and I have never, ever, ever heard of this program, and so I'd be curious to know when it was started? How many community residents

actually participated and graduated from the program.  
How many of them came from that neighborhood?

DEPUTY COMMISSIONER MALLON: Uh-hm, uh-hm. Yeah, that wouldn't. I'd be more than happy to follow-up. I'd be delighted actually to--

COUNCIL MEMBER AYALA: [interposing] I'd appreciate that.

DEPUTY COMMISSIONER MALLON: --to especially find out about that. Not-not a problem.

COUNCIL MEMBER AYALA: Thank you.

DEPUTY COMMISSIONER MALLON: Sure.

CHAIRPERSON GJONAJ: Thank you. Just to reiterate once again the [coughing] stats are 50% of small businesses never make it to year 5. In the restaurants industry, it's actually 80% never make it to year 5. The obstacles that they have to overcome are tremendous, and I believe Council Member Rivera has a question.

COUNCIL MEMBER RIVERA: I do. Thank you so much. Actually let me--yeah. SO, thank you for being here. Thank you for your testimony.

DEPUTY COMMISSIONER MALLON: Thank you.

COUNCIL MEMBER RIVERA: I love restaurants. Let me just go on the record.

[laughter] I live in a very restaurant rich district. I represent East Village. I was just in a restaurants last night in Kips Bay on Third Avenue called My Friend Duke, a new restaurant and the owner was undergoing—I think they were one of your maybe compliance advisors.

DEPUTY COMMISSIONER MALLON: Uh-hm.

COUNCIL MEMBER RIVERA: So, you pay 100 bucks and they come in and kind of give a—an inspection without it being an official inspection so you could make sure you're dotting your I's and crossing your T's.

DEPUTY COMMISSIONER MALLON: Uh-hm.

That—that doesn't—that's—that's a simply a program, but we don't—there's no faces with our—our program.

MALE SPEAKER: So far.

DEPUTY COMMISSIONER MALLON: Yeah.

COUNCIL MEMBER RIVERA: Because they're do it. (sic) To be fair, they're absolutely right. It's great.

DEPUTY COMMISSIONER MALLON: Yeah.

[laughter]

COUNCIL MEMBER RIVERA: They're—they're it.



2 DEPUTY COMMISSIONER MALLON: You can push  
3 it.

4 COUNCIL MEMBER RIVERA: But I'm—I'm  
5 getting—I'm getting to why I'm asking this.

6 DEPUTY COMMISSIONER MALLON: sure.

7 COUNCIL MEMBER RIVERA: I know that as my  
8 husband has a couple of cafes and it's incredibly  
9 difficult even then to survive and he's had to pivot  
10 and he's closed the café and just even witnessing  
11 that and-and how emotionally and financially draining  
12 it is. So, I commend all of, you know, restaurant  
13 business owners because it's so hard in New York  
14 City, and we care about property and payroll, right?  
15 Like those are the two of the most difficult things  
16 to do within New York City, but it's also navigating  
17 city bureaucracy and lead paint. And so, you said it  
18 yourself just a few minutes ago that it's really hard  
19 to navigate, and in your testimony this regulatory  
20 environment. And so, with all of the violations  
21 that you could potentially get, and even for someone  
22 who is really on it. Maybe they have most of the  
23 businesses, you know, a few little things could  
24 result in a B for example and I know that I'm kind of  
25 talking about DOH a little bit, but it could and t

hat kind of could really adversely impact your business. So, my question to you is in terms of some of the violations that are issued to small businesses, is there—have you not revisited or discussed or considered? You know, potentially adding some of these violations where instead warnings could be issued and—and periods where they can cure the issue could be allotted before they're actually issued a fine?

DEPUTY COMMISSIONER MALLON: Yeah, there—there are many cases where that is true, and there have been some changes during this Administration, but we are, as we said earlier, we talked earlier about this this very happy to continue to—to review and see where else we can find instances where that would be appropriate.

CHAIRPERSON GJONAJ: I just think—I don't—I'm not aware of any violations that are not associated with a fine.

DEPUTY COMMISSIONER MALLON: I'm reasonably certain that —

CHAIRPERSON GJONAJ: [interposing] signs

DEPUTY COMMISSIONER MALLON: --signs for—at—at—at through DCA.

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2 CHAIRPERSON GJONAJ: That's the one that  
3 we took a year.

4 DEPUTY COMMISSIONER MALLON: No, no, no,  
5 no.

6 CHAIRPERSON GJONAJ: It took--

7 DEPUTY COMMISSIONER MALLON:  
8 [interposing] No, no, no. There's--there's signs  
9 associated with consumer awareness in your--in your  
10 establishment.

11 CHAIRPERSON GJONAJ: Where I was. (sic)

12 DEPUTY COMMISSIONER MALLON: Yeah, those  
13 are all curable, and--and--and again, I--

14 CHAIRPERSON GJONAJ: [interposing] You  
15 may hit a pile, of course, each day. (sic)

16 DEPUTY COMMISSIONER MALLON: --am not a  
17 regulatory--what's that? Yeah. Things like that.

18 CHAIRPERSON GJONAJ: There comes that  
19 little pile of about 20-wide roll, 10 feet high to  
20 have all of the proper notices and written in  
21 different languages, but that's it. Okay, then we go  
22 on.

23 DEPUTY COMMISSIONER MALLON: All of the  
24 consumer protections tools that are--that are  
25 necessary, and I also--my other--and again I'm--you've

got to forgive me. I'm not an expert on regulation, but my understanding is also for DOH is a point system, and it-it, you can under certain number of points that you get, you have the opportunity to cure after the first-before the first violation. But there could be more opportunities to put those kinds of-of solutions in place, and we are happy to work together to try to get that.

COUNCIL MEMBER RIVERA: I mean there's so much opportunity. I mean there's people in this room that can tell you countless examples of-of just being able to get a little bit more time to take care of it. I mean not everyone is an expert on this regulatory environment, but just imagine the between trying to make sure that you pay your staff, and you have the-you know, you're delivering amazing quality. It is a lot considering that there are hundreds and hundreds of violations that could potentially be issued to you. That could actually lead to your business closing in probably a month in this city. So, I-I ask that if there--and I hope that we can all work together--if there are violations in which--in which a warning could go out first or there's a longer cure period--

2 DEPUTY COMMISSIONER MALLON: Uh-hm.

3 COUNCIL MEMBER RIVERA: --I'd really,  
4 really be advocating for that, and I hope that we can  
5 work with some of the people in this room.

6 DEPUTY COMMISSIONER MALLON: Yep, and  
7 would be—we are definitely committed to working  
8 together on that for sure.

9 COUNCIL MEMBER RIVERA: Thank you, Mr.  
10 Chair.

11 CHAIRPERSON GJONAJ: It's a great point,  
12 Councilwoman, and I guess the—if it's violations that  
13 are risking consumers' health and safety, obviously,  
14 we want to make sure that no one—no one is health and  
15 safety is at risk.

16 DEPUTY COMMISSIONER MALLON: Yep.

17 COUNCIL MEMBER RIVERA: Most of these  
18 violations aren't an eminent danger to someone's  
19 health and safety.

20 DEPUTY COMMISSIONER MALLON: I'm going  
21 to—I—I actually think the—the top 10 violations for  
22 restaurants are—are things like having to vermin and  
23 food surfaces and things like that. So, which I'm  
24 pretty happy about myself as a consumer.

2 CHAIRPERSON GJONAJ: And to the  
3 Councilwoman's point where most of our small business  
4 restaurant owners are making the donuts--

5 DEPUTY COMMISSIONER MALLON: Absolutely.

6 CHAIRPERSON GJONAJ: --selling the  
7 donuts, delivering the donuts, having them understand  
8 the rules and regulations and navigate in the  
9 compliance end of it is not feasible for them.  
10 Though their accountants do the A-trap (sic) person.  
11 They're doing their own payroll on top of the so know  
12 that they can keep their business going.

13 DEPUTY COMMISSIONER MALLON: Uh-hm.

14 CHAIRPERSON GJONAJ: I think it's-it's  
15 upon us to come up with ways to allow them to focus  
16 on their business, and that's they're model without  
17 having to worry about the scissors or the hammer,  
18 which is also the definition that those business  
19 owners have given government.

20 DEPUTY COMMISSIONER MALLON: Understood.

21 CHAIRPERSON GJONAJ: We will continued  
22 the questions with we understand that 80% of  
23 restaurants will never make it to year 5. What has  
24 the Hospitality Council done to change those  
25 startling numbers?

DEPUTY COMMISSIONER MALLON: So, I'm going to start and then--and then I'm going to-- So, with many of the things that we do as an agency, we start with the--with the industry and like hear from them, and I said before, the key priorities we identified with industry partnership or the ones I spoke of earlier, but as an agency we are never, you know, happy to hear about business folding. We're-- we're with you. We don't want that to happen, and many of the services that we are offering are intended to try to get ahead of that. So, let's visit education, access to financing, help with commercial leases. All of those things are intended to keep businesses healthy before they get to that including restaurants, of course, until they get to that point. Did you want to--?

STEVEN PINKER: Yeah, I only want to say that it's the large restaurant groups that tend to be--tend to have better infrastructure, tend to be able to foresee issues before they come up, be able to stay ahead of all these things. It's--it's the education that I think we're working on in the department to try and help for small businesses. The business that are so involved in the day-to-day, but

it's much, much more difficult for them to do that— that thinking ahead to see what's come down the pipe, to stay on top of all the regulations, and it's that education and that working with them that's of the utmost importance, and we get a lot of our information not only in what their specific needs are, but to understand how it works best for the larger restaurant groups, and how we can translate that information, and get it out to the industry at large.

CHAIRPERSON GJONAJ: Then how do we have metrics for success in the terms of the Hospitality Council? What metrics have we set up where to gauge our accomplishments?

STEVEN PINKER: I think we're starting to work on that.

CHAIRPERSON GJONAJ: Which was started in 2016?

STEVEN PINKER: Before my tenure, but I completely understand it.

DEPUTY COMMISSIONER MALLON: Yeah, and— and so a lot of the-the focus and with our industry partners in general because if you—you may or may or



may not remember. They are born out of the Mayor's Career Pathways strategy.

CHAIRPERSON GJONAJ: Uh-hm.

DEPUTY COMMISSIONER MALLON: And so as of--of what we're trying to do is--is deal with the labor shortage. That is one of the key things and we believe our--our approach is like not in terms of like people trained or enter jobs that you can count, but more about industry partnerships are more about like what can we systemically to make longer last change? Like why? Wouldn't it be good in the future if employers were well connected to institutions that train people and they--institutions that train people have a really handle on, you know, what--what's required in order to--to succeed in the job and--and they could just sort of work together like without out us so--

CHAIRPERSON GJONAJ: I want an answer.

So, I come from out where there's a small business--

DEPUTY COMMISSIONER MALLON: [interposing]

Yeah.

CHAIRPERSON GJONAJ: --whether it be one business or another, they're all the same difference. The problem with the labor is not that we don't have

the pool to draw from, but if you're--the restaurant that you're working for probably brings a closed before it even gets up off the ground, draws people away from that industry. So, why would I start working as a chef or a cook when it's probable that restaurant will be closed. 80% never make it to year 5. I remember the statistics that it would never make it to year 1--

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: --where you find yourself unemployed. Some businesses close in the first three months. That's after six months of construction, waiting for the liquefier to come and give your approvals while you're paying your rent, and making sure that you have a soft opening if you're fortunate to plan for one. The problem is not that we don't have the men and women that would be willing to enter, but they've been burned so many times.

DEPUTY COMMISSIONER MALLON: Yeah I mean I'm not sure I would agree with you there, but--

CHAIRPERSON GJONAJ: Okay. [laughter]

DEPUTY COMMISSIONER MALLON: --I just wouldn't.

CHAIRPERSON GJONAJ: I don't know. Would you start a job that probably you'd be laid off within the first year? You tell me.

DEPUTY COMMISSIONER MALLON: [laughs] I think the--they from what we can tell and what we're hearing that the people don't have the skill levels that is required, and that is a definite gap and that is, you know, an important problem that we're trying to work together within the industry to solve. They--they need skilled people.

CHAIRPERSON GJONAJ: Skills are developed. These are whether it's a fast food restaurant or a full service restaurant, you begin somewhere and you hope that they're going to evolve and move up within the positions and titles and that also means salaries.

DEPUTY COMMISSIONER MALLON: Yes, that is true.

CHAIRPERSON GJONAJ: My only experience, I started off as a delivery person at \$6.00 a day plus tip. From there I went dishwasher, kitchen, pizza, and eventually became the manager, but before I was 16.

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: That's ho it's supposed to be. If that pizzeria would have closed, within a short period of time I would never have been able to advance, and if I would have been [coughs]-- lost that employment opportunity, sure it's I wouldn't have gone to another pizzeria. That's the labor problem. The skillset that you're referring to are you saying that we don't have enough out there for waiters and waitresses and chefs and short order chefs--

DEPUTY COMMISSIONER MALLON:  
[interposing] I'm not saying that.

CHAIRPERSON GJONAJ: --and I don't agree with you.

DEPUTY COMMISSIONER MALLON: I'm saying that your industry is reporting to us. I-I didn't-I'm not-that is not my coming-literally what the group of-of folks that work with us on this have said. There is--there is a shortage of so that we cannot find people to fill these positions that can do the job in the way we need them to, which is not-it's not the only industry that is-that is facing this-this sort of issue. So, tell me.

CHAIRPERSON GJONAJ: Let's say that--do you recall what skills they were referring to? Is it across the board?

DEPUTY COMMISSIONER MALLON: I think they would say across the board, but the focus of Stage NYC was on line cooks in particular.

CHAIRPERSON GJONAJ: Okay. Thank you. Do any of you have any other questions for the departments? No.

COUNCIL MEMBER PERKINS: Did she say that this was language?

STEVEN PINKER: No, line cooks.

COUNCIL MEMBER PERKINS: Oh, line cooks.

STEVEN PINKER: Correct.

COUNCIL MEMBER PERKINS: Yeah.

CHAIRPERSON GJONAJ: I'm looking forward to having you back. I'm sure someone is going to remain here from SBS so as to hear--

DEPUTY COMMISSIONER MALLON: [interposing] They'll be here.

CHAIRPERSON GJONAJ: -- the testimony of some of the advocates that are going to passionately explain what they're faced with day in and day out, and I would hope that we can actually work on being

proactive to their needs instead of reactive. If-if we understand the hurdles that they have to overcome day in and day out, one of the major concerns is well, if I'm not even aware of the current rules and regulations, but I'm supposed to be complying, who's tracking what is working its way through government now? How do we give them the notices that maybe you should be aware that there's a proposal as one of the small businesses brought to my attention, as they know the fear that it would actually become legislation. Are we looking at potentially having 401(k)s and pension plans for our, yeah, minimum wage earners? Is that the next step? Man, if there's nothing left on the table besides coming with jobs that no one should try to push them aside and say, develop other skillsets that would create a vacancy as they advance--

DEPUTY COMMISSIONER MALLON: Uh-hm.

CHAIRPERSON GJONAJ: --and they said I hope you don't say that too loud because someone may hear you, and next week we'll have another bill or potential legislation to look at, and a hearing that this where the fast food industry is going now. Every employee deserves a pension a 401(k) and we're

going to make sure that they don't seek advancement, the should.—they should be comfortable where they are, and they say no I don't think that's where I would like to go, but I'm still of the belief that we inspire employees to become employers as they develop these special skills, and the response from the chef was: How would I do that and make a decent salary, and they sleep well at night? I don't have to worry about what's coming down the pipeline. I couldn't respond to it. Thank you for your time.

DEPUTY COMMISSIONER MALLON: Thank you very much.

STEVEN PINKER: Thank you.

DEPUTY COMMISSIONER MALLON: Look forward to working together. [background comments]

CHAIRPERSON GJONAJ: So, our first panel of advocates is panel 2 Andrew Rigie, Robert Beckerman and Kathleen Wiley. [background comments/pause] So, in no particular order, right. Whatever you agree to. Please introduce your name. If you're specific to an establishment or a ministry, please indicate which.

ANDREW RIGIE: Good afternoon. My name is Andrew Rigie. I am the Executive Director of the

New York City Hospitality Alliance. We are a not-for-profit trade association that represents thousands of restaurants and high life status means throughout the five boroughs. I am also a member of the Food and Beverage Hospitality Council through the Department of Small Business Services that you have referenced as well as the Chair of the City's Nightlife Advisory Board. So, again, thanks for having this hearing and I appreciate the comments and support for restaurant industry. It's funny you mentioned all the signs needing a whole wall, but they need a hall for all the signs that have to be posted throughout the establishment. So, contrary to what a lot of people maybe in the public as well as in government think, the restaurant industry is not thriving. As a matter of fact, it's going through a very challenging and transformational time. The large number of empty storefronts through probably all of your districts really hit this home. It's really down to the onslaught of expensive and complicated government mandates that have been relentless over the years. Just the recent labor mandates a long for restaurants in New York City include a doubling of the tip wage in near three



years. We've had six consecutive annual minimum wage increases, a \$300 increase to the minimum weekly rate for salary-salaried employees, paid sick leave, higher taxes, insurance, paid sick leave and all the compliance costs plus-plus there's also the fact that these increase put upward pressure on the wages of all the other employees. So, if I was making, you know, \$15.00 an hour, and then, you know, I demanded for a two-year site, and then a more entry level person comes in, and automatically gets \$15.00 an hour, well, guess what? I have more experience having more of a tenure. I am going to need \$17.00 or \$18.00. So it's not just the base wages. It really impacts wages as a whole, and between 2010 and 2015 employment growth averaged about 6.5% of first service in New York City restaurants. But in the last three years since all of these cost increases, we've seen a mass of slow-down. It appears that by the end of 2018, we'll have less than 1% growth in our industry here in the city. Now, that's the worst since the Great Recession, and the decline frankly is directly related in part to the pressures in rising costs. Between 2012 and 2015 the growth in full service—I'm sorry—full liquor and beer and win

licenses was nearly 23%. Today, annual growth has plummeted to the low single digits. In a recent survey conducted by my organization, 75% of restaurants respondents said that they will reduce employee hours in 2019, and almost 50% indicated that they would eliminate jobs as a result of mandates. Now, eliminated employment growth at limited service restaurants is very similar. The Health Department, in the early 2000s there were about \$12 million in annual fines. It has skyrocketed up to almost over \$50 million back in 2012. It's dropped to about 30, but that's still \$20 million almost more than it used to be when we weren't having any food board in this epidemic or outbreak. So, while we really appreciate today's hearing, you know, thank you for holding it, you know, I think a lot in the industry are sick are sick and tired about talking about it. They're frustrated and they demand reform, and we hope some of the suggestions today will lead to that. So, really quickly I'm going to read off a few different proposals we think that the Council could act on swiftly that would really help businesses, and then we can certainly work together on some others, but (1) you need to pass Intro 823. That's the

restaurants surcharge bill that was referenced earlier. I can tell you as a member of the Food and Beverage Council certainly workforce training is critically important, but the one issue that has continued to dome up is allowing restaurants the option to pass a clearly disclosed surcharge on their menus. This practice is allowed everywhere throughout the rest of New York State, and the country and in progressive cities: Seattle, Los Angeles you name it. (2) We need to eliminate the unjust and inequitable commercial rent tax that's levied on thousands of businesses south of 96<sup>th</sup> Street in Manhattan. Council Member Garodnick had passed some legislation several years ago, and now following that, Council Member Powers has recently introduced legislation to further reform the Commercial Rent Tax. (3) Most commercial tenants they pay a portion of their landlord's property tax. If we want to help preserve small businesses especially if real estate, you know, prices continue to stay so high, we could give a tax credit on the portion of the property tax that commercial tenants are playing-paying. That would be a significant savings. We all know that restaurants are very labor

intensive. There's lots of discussions in other industries frankly. Maybe that don't need it, but those that definitely need intensive credits are the restaurant industry. We hire people from all walks of life. You don't need a college degree. You don't need much experience. You just need the will to work hard, and I think that the city could help offset employing more people if we give some sort of tax break to them, which would eliminate the unfair need with the excise tax. It's only imposed on businesses in New York City. It's about twice of what it is in New York City than anywhere elsewhere in the state. As Council Member Rivera mentioned earlier, we should be looking at the fines and violations that are issued under the Bloomberg Administration and Speaker Quinn at the time, the city was required to review all of the violations issued to restaurants and other small businesses. Unfortunately, they came back and it was just the low hanging fruit, the sign violations, but there are countless other violations in the code that aren't eminent hazards to the public that certainly deserve to have a cure period or a warning, and the list goes on. You know, we said we can support businesses. Scaffolding reform we need.

We need to reform the letter grade adjudication process and we can do this now whether it's through rule making, or whether it's through legislation, but we need to stop just talking about it, and we really need to get down to rule making and legislation.

It's great to say that we love our city's restaurant industry, but if we really loved them, we'd want to support them, and we need to take action, and these proposals are ways to do that. Thank you.

ROBERT BOOKMAN: Good afternoon. My name is Robert Bookman. I'm an attorney in the city of New York. I came from city government. It's hard to believe over 30 some odd years ago went into private practice. I-I am an expert in small business regulatory work in the city of New York. I've been a friend of this Council literally for decades. I am your appointee on the Health Department Advisory Board so I will talk a little bit about that. I am your appointee on the Nightlife Advisory Board, and I am counsel to the Trade Association, New York City Hospitality Alliance. Prior to that I founded the New York Nightlife Association, which existed for many years when there was actually a night life in New York. It's-it's great to hear and-and I don't mean

to underestimate it, Mr. Chairman. It's great to hear what your opening statement was, but it's time for the Council not just to talk the talk, but to walk the walk and it's time for this Council just like it is for Congress in Washington to recognize it as an independent body that could pass legislation. It doesn't need the approval of the Executive. In this case the Mayor and can even, God forbid, override a veto, if they so choose. If there are too many laws and regulations on the books, and there are, you have the power to change that. You don't need to work with them. You don't need their permission. You could pass legislation, and there was an attempt to do that. In the last year of the Bloomberg Administration we were at the forefront of working with the Council at least in passing a law that Bloomberg Administration went along kicking and screaming that required the six city agencies that deal most directly with small businesses, Consumer Affairs, Health Department, Buildings Department, et cetera—to come up with a list in six months of every rule and regulation that could have an opportunity to cure and warning period that would not impact public health and safety. And unfortunately, the

1 timing is such that they delayed it beyond the  
2 deadline you gave them. So, it was December of the  
3 last of that Council and of the Bloomberg  
4 Administration when they came back with their list,  
5 and all that was on it was signs-in-source sign  
6 violations. Not a single one. Not a single sidewalk  
7 café violation because your planters grew over the  
8 summer. So, it's not 32 inches high rather than 30  
9 inches high, and you got a summons, you know, for  
10 that. A true story or a sidewalk newsstand that got  
11 a summons—a violation because it didn't have its  
12 refund policy sign. When is the last time you  
13 brought something back to a sidewalk newsstand, and  
14 need to know what their refund policy was? So, that  
15 was all they came back with, and one prominent  
16 elected official at the time, Public Advocate Bill de  
17 Blasio, excoriated the Council, and the  
18 Administration while he was, you know, running for,  
19 you know, for Mayor saying this was simply window  
20 dressing that we need to get to the root of the real  
21 violations that need warnings and an opportunity to  
22 cure. You passed the legislation because something  
23 is better than nothing, and believe it or not, I  
24 think it was over \$10 million a year that the city  
25

was collecting at that time just in nonsense sign violations that nobody reads anyway. And the, we looked excitedly for when Public Advocate de Blasio became Mayor de Blasio and five years plus latter, we're still looking for that legislation that he promised to get rid of hundreds of--of rules and regulations that could be handled with an opportunity to cure and a warning. Government's first responsibility, when at the Council of Consumer Affairs, we believe our responsibility was educating both the consumer and the business, and when we got the--we got the business to comply with something, we considered that a victory back then. Little did I know that years later, a victory would only be if they grabbed money from the business. That's considered a victory in their monthly reports now, how much money and fines did we bring in. One of the council members talked about the Health Department. Since I'm on that Advisory Board, when we meet quarterly the first thing we get is a beautiful color printout of the top 10 Health Department violations. If you don't have it, you should. I'd be happy to get it to you. It's--I don't need to give it to you from the last two years because it's the same one



effectively every quarter. There are 10 violations that are the top 10 violations year in and year out. They account for 75% of all the Health Department violation are these 10. A third of all the Health Department violations in that top 10 are what are considered minor violations what they call general violations. They're not health and safety related, and every time I say to them at the Advisory Board there's some disconnected. You guys come to these hearings, you come to these meetings, you talk about how great you do with outreach, and programs. They've got lots of programs helping small business with this program and that program. We go to you for 100 bucks and we teach you how to do it. Well, something is going on here. Either all the restaurants owners are idiots, or there's something with the way you train your inspectors, and there's something with these rules that year in and year and year out it's the same 10 violations. They're the top 10. Maybe they're not possible to comply with for example in the city of New York. You know, for example, one of them is—we found potential access for vermin. Not saying they found vermin. That's a different story. Obviously, that's a problem. There

isn't a restaurant in the city of New York and an old building that doesn't have a crack somewhere that's not a potential access for vermin. So, you don't need to be rocket science to understand that that's going to be the top 10 violations every year that you're hitting people for fines. The—by the way to answer your question about letter grades. In New York letter grades was never designed in my opinion to combat a crisis in food-borne illness from restaurants because there's never been a crisis from food-borne illness in New York City restaurants. We are the darling of the world our food scene. It always has been. God willing, it always will be. It's never—it was a way to get more money, and it worked because as Andrew said, we went from about \$10 million a year in fines before the letter grades, over \$50 million a year in fines. The same restaurant industry, the same no problem with—with foodborne illness. The truth of the matter is most foodborne illnesses, you can't tell where it comes from, and when you can, it's not from a restaurant. It's from—it's from your house. It's—it's from a street vendor. It's from your cat walking across your—your counter at home. That's where most

1 foodborne illnesses come from. Since it take 48  
2 hours it's really hard-hard to track. The Health  
3 Department will admit that. So, that's not what it's  
4 about. So, now they want to take credit because of  
5 legislation forced on them by the Council that fines  
6 have gone down to \$30 million. You know, I was, you  
7 know, I was pre-law and a law student, and I wasn't  
8 very good in math, but that's three time \$10 million  
9 when in the beginning of the Bloomberg Administration  
10 we had a world famous, you know, restaurant industry  
11 that nobody was getting sick at. So, I'm not  
12 impressed that they're saying fines are lower now.  
13 Lower from when? Yeah, lower from unbelievably  
14 historic highs when over \$100 million a year in the  
15 Bloomberg Administration because as we know, he was  
16 very pro big business. He didn't care that much  
17 about the little small business all that much, and he  
18 truly believed that fines were a way to get  
19 compliance not education. And so, they are taking  
20 credit that 5 or 6 years later they are still way  
21 higher than it was, but less than this unbelievable  
22 ridiculous high. You know, I-to me that's not a, you  
23 know, a great, you know, a great record. I was  
24 shocked that he said-they said \$30 million so far in  
25

small business first, and you still don't have a list of violations, you know, rules and regulations or a list of which ones can be eliminated. You know, give me a million dollars. I'll get it here in 90 days or [laughs] you know, it's not that hard. It's only that's hard when you don't want the Council to have a list of it, and you don't want to go work with them on which rules and regulations are necessary, and again, you have the power. A lot of these laws are laws that you guys passed or you passed it with authority for the agencies to promulgate regulations pursuant to that. You can—you could change that tomorrow. Another quick example. I'm sorry, you know. We could talk—I mean we should all day long on this. I've been doing this forever. You pass—you pass a—a law and in that law it creates a fine, and you state what the minimum and the maximum should be from that fine. Some are—so first time violation between a \$100 and \$500. Okay, a typical example. What they have done now through rule making and just in policy at ECB, you know, where—which is the largest court in the country based on volume of cases of they do, they've taken—they've taken the minimum away. They said it's \$200 to \$500. So, wait a

minute. You hire an attorney. We go there. We're trying to argue for a legal term. It's called ramones (sp?) I don't know if any of you know what that legal term is. It's to use this expressions for, you know, we tried out best. We cured the violation, you know, give us break and the DOJ says yes I agree, \$200. Wait. Where did the \$200 come from? The minimum fine is \$100. Oh, we were told the minimum we can—we can assess is \$200. They are overruling your legislation by changing the minimum. You can't get away with that. What legislative body would let the regulatory agency get away with that, but you—but you do. Pass Intro 823. It's the last thing I want to say. The only jurisdiction in the country where a restaurant can't put a clearly disclosed surcharge on its menu meeting all Consumer Affairs requirements as far as size of print, location, proximity on the message—on—the boards. Wherever there's prices, we are the only jurisdiction in the United States where we don't have as restaurant owners the opportunity if we so choose to do that on our—on our menus while airlines do it in the city, taxis do it in the city. Surcharges are a way of life today, hotels. It's a way of your

telephone bills, my God, your cable bills, surcharges are not only required by government sometimes, but they-they're never prohibited as long as the consumer prior to, you know, ordering understand that because of increased costs, because of increased labor costs, we need an across-the-board 5% surcharge on all our menu prices and there is-and it's a 1974 Consumer Affairs rule, which prohibits it from the time where menus were these big books that were printed once a year. There was this temporary spike in beef charges then. I'm not that old. This was after I came to-before to the Consumer Affairs, and so restaurants, you know, because of the spike in beef charges were giving people a bill, and back then their \$3.00 steak was \$3.50-you know 50 cents, and so they passed this rule. Fast forward to now. It-it's nonsense. They-they dragged us along for two years in that committee saying they were going to take care of it. They didn't take care of it. We went to the Council. Legislation was introduced by Council Members Borelli, Espinal, Cornegy, Koslowitz. They're all co-sponsors. We had a hearing and nobody said boo at the hearing, you know. Last August it's scheduled for a vote, and all of a sudden we're being attacked

by the Mayor and-and the Mayor's affiliates that we are attacking the progressive agenda by letting consumers know that all of these costs that they have been putting on us come with the cost to the consumer that it's not a magic wand. I tell clients all the time I'm a lawyer. I'm not a magician. I can't make things disappear. So, I tell-I say that to government as well. You raise our costs, we got to collect it some way. It's-it's either raising costs or on the consumer, which they don't want people to know about or it's reducing profits, which people the margin says it's limiting more. They can't do it, and that's why you're having a lot of closed doors. Thank you.

KATHLEEN RILEY: I think I'm don't. Good afternoon, everyone. My name is Kathleen Riley, and I'm New York City's Admin Coordinator for the New York State Restaurant Association. Where to assist, I represent student labor establishment in New York City and throughout New York State, and we're largest hospitality trade association in the state of New York. We've advocated on behalf of our members for more than 80 years, and our members represent one of the most-largest and most impacted constituencies in

the city as nearly every agency regulate some aspect of the restaurant industry. I'm here today to voice my industry support for lease renewal protections, which are currently proposed in the Small Business Jobs Survival Act, and to express concern over the unintended consequences of the Mayor's proposal to mandate paid time off for private businesses. First, I will address the need for lease renewal protections. New York City is facing a problem that is two-fold: Beloved neighborhood staples are forced to close either because their leases are not renewed by the landlord through no fault of the tenant or any extending circumstance or the lease can be renewed by adding possible increase in rent. We applaud Councilman Rodriguez and the numerous co-sponsors for introducing 737 2018 more commonly known as the Small Business Job Survival Act to address this problem. The Small Business Job Survival Act or SBJSA, if that's actually clear to say. I'm not sure. The SBJSA would provide commercial tenants with new protections including recourse to arbitration in the face of often challenging lease renewal process. The legislation would provide a fair and level playing field for landlords and tenants alike, and they would



encourage reasonable lease trends and rent determinations. The SBJSA provides a detailed list of criteria to be considered for setting the rent in stark contrast to the current situation in which landlords can ask for any amount of rent without any authority to reign them in. The SBJSA also prohibits landlords from refusing to renew a lease without cause. It details the scenarios that constitute cause for careless (sic) landlords to explain and prove the cause to the tenant allows the tenant to challenge the cause if it's dubious. At the end of the day, the legislation would provide leverage to the current legal leverage list. It's a bad (sic) need of protection for small businesses and could literally be the difference between an untimely shuttering of doors or 10 more years of the neighborhood staple. Subsequently, I would like to address a looming concern for the future of this industry, which is the Mayor's proposal to mandate paid time off for private businesses. In the State of the City Address, Mayor de Blasio requested legislation that would require private businesses with more than five employees to offer 10 days of paid time off per year. Unfortunately, the

restaurant industry is in no position to shoulder yet another mandated increase in the worker compensation. As it stands, businesses are struggling to accommodate the recent minimum wage hike and the majority of businesses, as Andrew referenced in his survey, the majority of businesses report some combination of cutting worker hours, cutting jobs and raising menu prices. The restaurants industry notoriously operates on razor thin margins and these businesses do not have that thousands of extra dollars in the budget to pay workers on days off. This point of fact that thousands of dollars in additional costs could literally shut down small businesses is something that the Council has acknowledged in the past as recently as earlier this month when they passed arming that. We urge this committee to take the same consideration when in the impact of mandated paid time off. At the end of the day, a paid time off mandate is likely to hurt the very workers it would hope to help as restaurant owners would be forced to cut even more hours and jobs to try to stay in business. Many workers currently in the restaurant base have chosen this profession for the flexibility it provides. So, it

would be deeply ironic for these same folks to lose their jobs in the name of government mandated worker flexibility. In conclusion, the New York State Restaurant Association supports the Small Business Job Survival Act as an important piece of legislation that will guarantee a much fairer lease renewal process, and we caution the committee against the negative effects of the paid time off mandate. Above all else, we hope to continue to work in conjunction with this committee to accomplish common sense regulations that benefit the entire business community, owners, workers and the city of New York. Thank you.

CHAIRPERSON GJONAJ: Thank you. I have a simple question for all three of you if you don't mind answering. Your outlet for 2019, do you anticipate expansion or further slow down with more closures?

ANDREW RIGIE: Well, closures. Basically, exactly what our report showed is people are panicking right now. They are cutting hours and they're laying people off. I hear more and more people saying, you know, they're just trying to make it through another year. So, over the next two years

I expect more of shakeup, more vacant storefronts and, you know, we can't just rely on people continuing to open up restaurants and employing people.

ROBERT BOOKMAN: As you look at licensed worker, my bread butter. So, I'm the canary in the coal mine. I can tell you for sure a slow down and it's not just a slowdown, and it's not just a number or places that have a Health Department permit. It's the type of places and how many people they employ and what they make there. So, we're clearly seeing starting last year and continuing now, it is the number of what we call fine dining, but where there's waiters and waitresses, where they make good money. Our survey shows the average is \$27 an hour in the city of New York between the tip wage and tips. Those restaurants are going out of business being replaced by fast casual. So, it's the same Health Department permit. So—so numbers they often tell you the truth, but those people make minimum wage in fast casual where you stand on line at the salad place. There's no tips. Those—those people are not going to be able to get, you know—go to Broadway when they come to New York to work three shifts a week, you

know be—you know and so they can become the next Broadway star. You can't do that in a fast casual. So be careful with the three-card monte with oh, the number of spaces that have Health Department permits, you know, the same or growing. It's the quality, you know, and the types of employment is changing dramatically, and it's not for the better.

CHAIRPERSON GJONAJ: Kathleen.

KATHLEEN: RILEY: I would agree, and to, you know, elaborate on your point about fast casual, it's not just minimum wage workers. It's also kiosks so--

CHAIRPERSON GJONAJ: Which leads me to my next question. Tell me about the—besides the areas that have all been presented where regulation enforcement, the aids and the bottom line is not being able to substantiate businesses staying open. The Grub Hub model, the secret, the silent partner--

ANDREW RIGIE: It's not what--

CHAIRPERSON GJONAJ: --and what is often referred to.

ANDREW RIGIE: Yeah, I mean those companies are basically almost taking--

CHAIRPERSON GJONAJ: [interposing] I know that—I know this particular Grub Hub, but this is whole--it didn't work.

ROBERT BOOKMAN: Yeah. No, these things is over years, you know a lot of restaurants rely on the income that's generated through these—this delivery platform, you know, just to cover the operating costs, but they've increased the percentage that they take for each order so high that there is no profit. You need the money to come in to run the operations, but the amount of money you're actually making for each delivery after they take out their service fee is, you know, close to nothing. So, it's a huge challenge. They're basically like a partner in their delivery service, and these days restaurants are trying to generate revenue any single way they can. So, if they weren't using delivery, they may try to do it, and if they try to do it, they're going to be paying these huge fees.

ANDREW RIGIE: In New York, it's--

ROBERT BOOKMAN: I'm impressed the you're aware of the—of that issue, quite frankly, and we could use some Council help speaking to the state because there are two state issues involved here.

2 We've never with the Attorney General's Office  
3 because there's been a huge concentration in this  
4 industry. It's to the point where it looks and  
5 smells and tastes like a monopoly, and sure enough  
6 their percentages have been going up since they've  
7 become a monopoly.

8 CHAIRPERSON GJONAJ: I understand the  
9 percentage is as high as 30+ percent on gross sales--

10 ROBERT BOOKMAN: [interposing] That's  
11 right.

12 CHAIRPERSON GJONAJ: Is that correct?

13 ROBERT BOOKMAN: That's right, and it's--  
14 and not--all they are is a platform. They're not even  
15 doing the delivery.

16 CHAIRPERSON GJONAJ: So, just the numbers  
17 there.

18 ROBERT BOOKMAN: [interposing] I mean it  
19 should be a block, you know, you know.

20 CHAIRPERSON GJONAJ: Just use the numbers  
21 that were provided earlier and the possibility and  
22 what we've seen from 2012 and last year's equivalents  
23 to those numbers there are no longer sustainable.

24 ROBERT BOOKMAN: What the-what restaurant  
25 owners would tell us is we can't live with them, but

we're afraid to live without them because a lot of our customers that come into the restaurant also call through them and if we—if they can't get deliveries through them, we may not see them, the once or twice a week that they may have come into the restaurant, but, you know, there's the state liquor law, which a lot of these restaurants have that says that if you participated in a percentage of revenues, you're considered a partner and you must be on the liquor license. So, I said to the State Liquor Authority, how could we allow these delivery services to get away with this--

CHAIRPERSON GJONAJ: Uh-hm.

ROBERT BOOKMAN: --when one-half percent investor has to be on the liquor license and these guys are in my-my right and my left pocket.

CHAIRPERSON GJONAJ: I don't think they're going on any liquor licenses.

ROBERT BOOKMAN: Yeah. [laughter]

KATHLEEN RILEY: Our—our members I think would—would say that they're in a similar position where you sort of can't live with them, you can't live without them. They—they charge fees that are always getting higher, but they're a really important



part of the district restaurants system as well. So-

-

CHAIRPERSON GJONAJ: Have you see any  
benefits to the Hospitality Council?

ANDREW RIGIE: [laughter] That was great  
of you.

CHAIRPERSON GJONAJ: It was intended.  
[laughter] You are speaking a lot about it.

ANDREW RIGIE: No, I-I will say the one  
issues has been the surcharge issue from day one.  
It's been clear that this is the most important  
priority issue of everyone on that Council. I should  
say the majority of people on that Council, and they  
feel that they've just been drug-dragged along, and  
nothing has happened at all, and then clearly at the  
last minute on the eve of passing legislation, the  
fact that mayor would come in with his people and  
undermine the whole entire process, is even more  
disturbing. You know, I know both the members that  
spoke were on the prior panel. I know they're  
working hard and they want to try to help us with  
some of the workforce issues, but again, clearly the  
main issue that so many people on that Council want  
the city to address, they have not. So, I'd say the

estimation of a lot of those people they would say  
no.

CHAIRPERSON GJONAJ: My last question for  
you because have so many that are going to testify,  
and I hope you sit to hear some of that testimony  
because they're going to share some unique personal  
experiences. If you had to rate the top three issues  
that restaurants are facing that we could make a  
change on today, but actually considering the fact of  
whether they stay in business or not or maybe.

ANDREW RIGIE: Again, I-I hear that you  
have control.

CHAIRPERSON GJONAJ: We have control of  
it.

ROBERT BOOKMAN: Yeah, (1) I say, you  
know, the restaurant surcharge issue. That's very  
important to a lot of restaurants. (2) Doing  
something with property tax. Obviously they are  
going to be going up, but the property tax is  
something that you can clearly assist with, and then  
(3) would be the violations, long cure periods and  
warnings for non-eminent public hazard.

CHAIRPERSON GJONAJ: And then there's  
some of the real estate taxes. You know about water

2 and the sewer is the same thing. Real estate taxes,  
3 and water and sewer.

4 ROBERT BOOKMAN: The commercial rent tax,  
5 which we could get rid of finally. You know, those  
6 taxes as well. Taxes that you have control over.  
7 The-- you know, the liquor tax. It's only \$4 or  
8 \$500, but there's no reason for it. It's, you know,  
9 the New York City charges heavily.

10 ANDREW RIGIE: More exactly it's taxes  
11 and reg--

12 ROBERT BOOKMAN: Regulations and let us--  
13 let--

14 CHAIRPERSON GJONAJ: [interposing] And  
15 the surcharges.

16 ANDREW RIGIE: [interposing] And let us--  
17 let us--and let us, and let us get rid of the  
18 surcharges, and there's one other thing on taxes,  
19 too. There's something on a federal level that's  
20 going to fight tax to credit, which is very familiar.  
21 So, without getting into what it is (sic) the city  
22 has taken the position that it is not an allowable  
23 subtraction on your city return, which many  
24 accountants and businesses are questioning. So, if  
25 it could be allowed on a city return as an allowable

subtraction, you know, that can be a significant amount of money that could help businesses, and again going back to your point earlier, you know, it's kind of like death by a thousand cuts. It's not just one issue. It's collectively how these issues impact you, and there's not one solution. So, I think we need a comprehensive package of bills, and stand good (sic) just because people come out to these hearings, but, you know, they—they need action and that's why we thank you for having today's hearing.

CHAIRPERSON GJONAJ: I want to thank you, and I promise you that your testimony is not going to fall on deaf ears. You have partners that are willing to see this to the very end because the lives and the businesses that are out there are dependent on some change in there. Actually, now operating on a negative with the hopes that the tides will turn for as long as they can.

ROBERT BOOKMAN: A critical industry. I'll—Can I—I'll finish up on quick story similar to yours. The former president of our associations Will and Carmine's Restaurant opened up one in Washington because he won't open up any more restaurants in New York any more. It's too—it's too—too burdensome, and

he held—and at the opening he had a—he had dishwasher, a guy he hired as a dishwasher. He was, you know, not a young guy. He came up to him and said, Mr. Bank, I want to thank you for this job. I want you to know that five years from now when we have our celebration, you will come to me and say, John, you're the best dishwasher I ever hired, and he said, John, if in five years that's true and you're still washing dishes then I failed you, and that's our industry.

CHAIRPERSON GJONAJ: Thank you.

[background comments] Panel Number 3 and I apologize and thank you for your patience. Frank La Corte, James Malios, Peter Fahey and Peter Fitzpatrick. [background comments/pause] [coughing] So, in no particular order. When you do introduce yourself by name if you care to, please indicate what establishment or industry you're with.

JAMES MALIOS: [off mic] Sure. My name is James Malios. I am partner in at 2 West Shelter in New York, and with the Council for—Council for Restaurants in Cantidori. (sic) [off mic] The volume from the portal that we share, salad the business that we're with this in New York, but thanks.

FRANK LACORTE: And I'm also with East Midtown Partnership BID Uptown. So, Uptown from here at least. Okay, so, I'm doing some of these things and I—I understand how the sausage is made much like you do know how our sausage is made like I always like the way the sausage is made, but it's called the next life and I get it. I'm not exactly always popular with my friends in the business community because I've advocated for that limit to credit is okay as long as you can share with the back and front of the house. I was on the—I probably—as well spoken about that—not well spoken certainly, but I was spoken about it as anyone. I billed a couple of cranes to find out. So, I'm—what I'm going to tell I'm coming from that position where I'm not a shield. No one is like propping me up here and I talk to you about stuff. You can look me up online. You'll find tons of—a ton of stuff. We opened our last restaurant and opened in the Hamptons because I thought like New York was too hard, and I've lived here my whole life. I drive two hours to Robo restaurant in Suffolk because New York City was too hard and too difficult. Couldn't deal—I made sure there was money to do it, and also low pitch. Right,

it's like a Row House out with Patrick Swayze, if you've ever—if you've ever seen a Patrick Swayze movie. So, I'm not saying it's preach there, but think about it. Podama (sp?) has tried 30 years in New York so that the storied restaurants in New York, and decision was go to Suffolk. Okay, and so I put that in the perspective. It, you know, Lacey went even—alright. So, there's two or three items I think matter, and I want to paint them for you. You until you walk Lexington and down in the '70s and '80s. It's like Detroit up there. Alright, it's the Upper East Side, and it's like Detroit down Lexington. Okay, there's nothing there. The storefronts vacant everywhere. The first thing on the paperwork in the bureaucracy—I'm—I'm actually an attorney and I still keep my license. I practice in appointment law. I studied like an unbelievable amount of time on the paperwork. I get it so not all city paper because they all—they got a lawyer and what they've got—no I guess not really. So, if I was to give you a piece of advice on the paperwork is making it one form once a year. We always meet with our staff once a year. We have them re-sign paperwork for the state, one form once a year. We can do that. Rolling forms on

a constant basis all it does is—I spent all my other—  
not all but I'd say 12% or 10% of my time to it.  
Okay, and I'm an attorney. So, forget, I mean I  
can't imagine other people right. Second, the  
surcharge. I'd like to talk about a support—  
hopefully not of my time, but—Alright, so you guys  
know that the Federal Law says—Federal Law says that  
if you don't take the tip credit, you can share tips  
to the front and back of the house. Right, that's  
how Cali and all those other states do it, right.  
The way I see the surcharge is it allows us to  
basically do that much the way they do in Miami and  
other cities where the surcharge effectively because  
the tip, right. If you go to anyone in Miami, not  
just hotels it's 20–20% of the bill. That's it. Okay.  
Now, when we go through the classes of people that  
this is beneficial for in terms of the businesses,  
clients and the employees. First, I want to correct  
you in the way that I do these trainings programs. I  
was like a—I was laughing. I said is that joke that  
they're talking with—they're talking—I talked to  
that—to the Chavez Administration every year because  
I've been trying to get the CEO for three years, and  
I paid FDYN like \$10,000 and because the FD-I can't



something with the DOB. The fact that they're talking about a training program is a joke. There are no cooks. I'll put it into perspective with a fact. This is a fact. When we opened in 2011, I did a post for a cook on Craig's List. I get like 60 applications. Now, I get like maybe 10, and I've been paying above minimum wage for years. Maybe 10 and 5 of those are like I worked in Hale and Hearty. Okay, and not offense against Hale and Hearty, but like that doesn't work in a—in an upscale dining establishment. There are no cooks. Now part of the reason is my parents and my grandmother came to this country, they knew some English. They worked in the kitchens. Okay, that was a steady labor flow for us. I—I-I know more people in restaurants jobs like I do in in white collar jobs, okay. But right now the students are going to be Uber drivers. They will be Lyft drivers. They're not organizations. You train all you want, man, and there are no—there is so little labor. So, the only way for us to do this is ask any restaurant person, and restaurant person. The biggest problem is I cannot get people. The biggest problem. So, what's the best way to get people? Well, should only have to pay them better,

right. So, by the surcharge what I can then do is take that and distribute it amongst all my employees with-with-upon merit, on seniority without regard for the-the artificial nature of the tip pool, and I want to ask-you should ask yourselves this question, and I want every City Councilperson to ask themselves this question: When you've gone out and you've tipped, have you ever tipped because the food was good? Have you ever tipped because it came on time? Have you ever tipped as my mother says because the bathrooms are clean? My mom is like obsessed with the bathrooms. Okay, it's like her whole thing. Well, then that's it. Then we get to those people that get it. It went to the front of the house, the servers. So that your care for participated in. It is a creating an economic disparity, and do understand that it will defeat itself? You know. Okay, good. So, it's equitable for the workers, and then I guess and the client is paying more and it's a joke. I mean whatever. I'll-if you submit be quiet, I'll be quiet. So, I'll just spare the part about the clients but, you know, what they are having, it's being paid for. Don't worry about what the-the tax on the-the 20% where they-they-they don't think we're

going to raise prices the other way? I mean to get it—it's not. They're—they're even. So, it's ridiculous. [background comments]

PETER FAHEY: My name is Peter Fahey and Pete Fitzpatrick, Saint Pat's Bar & Grill today. We're located at 22 West 46<sup>th</sup> Street. So, today just basically we're going to talk about we've got 28 staff working underneath us. Out of those 28, 9 of them are kitchen, alright. We were—as you said all of the small businesses are suffering at the moment for being labor mandates, sales tax, property tax, et cetera, et cetera. Basically, where we suffer most is on our street between—on 46<sup>th</sup> between 5<sup>th</sup> and 6<sup>th</sup> on the corner of 46<sup>th</sup> and 6<sup>th</sup> there's an alignment of trucks, between 13 trucks there every morning from 5:00 a.m. to roughly 1:00 to 2:00 p.m. every day. Now I see them more when I go in there, they be fighting on the corner of the streets to get the right spot to get the—the best spot to selling their goods or whatnot. Now, these guys do they have food—food certificate permits? Do they have—they have no standing—allocated standing points. I mean it's just—it's crazy. It's absolutely crazy and we'd like—You know, to the corner the same line is

[coughs] wages. They have like, you know, whatnot. What else? The garbage control, the city bins, garbage city bins. Okay, and they're filling the garbage city bins with their own garbage after their day's work. They're leaving the streets in an absolute mess. There's no control of them whatsoever, you know. That's basically my point on that.

PETER FITZPATRICK: So, my name is Pete Fitzpatrick and I represent Allied Management and fortunately for me most of these guys back here are partners of mine in one form or another. We've got—a midsize restaurant group called Allied and there's about 11 restaurants we have, but mostly pubs or smaller, and the thing that we need is we've developing over—and it's—first of all, it's—it's great that you guys up there, you know, you were delivery men. You're on the route. You guys understand what we're banging our heads on the damn wall about all the time. Just to reiterate what this gentleman was saying, to us it was like a kick in the pants. I mean we are back of the house. Here's that things lets out in real life. So you have a party. You have a Christmas party. You have a \$2,000

Christmas party. You take an 18% tip against that.

The people who did the—the vast majority of the work are the kitchen guys. They brought the buffet. They put the chafing dishes. They brought stuff up, they brought the staff down. They break—we can't include them in the tipping process. So, now you're given an 18% tip to the front of the house. Come on. I mean that should be some thing that's left to us because that's how you keep good staff. You throw them a few dollars. It's a Christmas—we can't do it any more.

The front of the house knows that we are—the mandate is we can't do it. They'll jump on us. So, you took that—that was taken away from us, but what—what we need from the city, we're talking with the—the people from the Council before—not the Council. Whoever these guys were. It was a circle. We need partners with the city. We can't have and survive a hostile environment with DOB with the Department of Health. We've partnered up with a lot of our, you now, AFI, the food guys, Budweiser, Heineken. They've cut—we—we look at the partners. We have to help each other. Pete has 18 food trucks on the block. We could survive the minimum wage. It's okay. We'll work through it, we'll figure it out. We can't—he can't

have a lunch. That's the Brazil block, 46<sup>th</sup> Street. I think there's been four restaurants closed on that bloc. I mean are you kidding. We didn't know who to talk who. Who the hell do we go to and say, hey, listen, we got 18 food trucks. What's going on? How many meals or are permanent? We don't know. I got—there's John Doherty from 35<sup>th</sup> Street. He's been waiting since—I got to tell you I think is it October?

JOHN DOHERTY: [off mic] September.

PETER FITZPATRICK: September to get his gas turned on. We had a fire. You know what you need to turn on gas, a flashlight and a wrist to go like this. That's it. We can't get it done. Frankie here we're talking a couple minutes ago about in a big rush to blame the landlords with the increase in rent, increases in rent, whatever is true. When you get a new lease, it's nightmare because they can start from anywhere. Okay. Since four years ago, there were—he's got 75% of the real estate tax increase, the base increase. I'm not positive but the real estate tax in that building the last four or five years have went from about \$114,000 to what are we are now?

MALE SPEAKER: [off mic] 142.

PETER FITZPATRICK: \$142. He's got 75% of that pickup. You guys could do the math, and forget it. I mean this is crushing. Paul Barbay from Hurley's has been waiting on a-on a C of for how many years.

PAUL BARBAY: [off mic] Three years.

PETER FITZPATRICK: For three years in May. We've-we-he hired a company called Melrose. We have another excellent company called RPO. These are professional expeditors. They know City Hall. They know the DOB. They still can't get anything done. Four years he's been waiting. Nick. Here's something that's going to make you-you-you folks up there crazy. This never happened before. Nick applied for a liquor license in a place we have on Restaurant Row. Now you know you have to go through all that-the community board and all that stuff, and then it gets kicked up to the state. So, years ago, three or four years ago, we would have the restaurants finished, completed, built out, done and then kind of wait around for two or three, maybe four weeks for the license. He applied for his license it was October 3<sup>rd</sup>. He got it a week before

Thanksgiving, okay. That's from Albany. We—we—we put—we put plan for approval in the 10<sup>th</sup> of October. Nothing. Zero. Nothing. I mean we don't even know who to talk to. Who can—is there something like we had an advocate somebody could say what's going on? Can they push it? So, what do we do for advocates? We get Melrose a big time expensive expediter. RPO another big time expediter. We even hired the Walter Borman & Associates and then you expedite it for Rock Center. He still doesn't have the gas on. So, you told the employees before—how many employees did you have to let go, John? I don't even know.

JOHN DOHERTY: Seven.

PETER FITZPATRICK: Seven employees he had to let go. You know, we didn't want to let any of them go. They got kids going to college. They got things to do. We can't hold onto them. So, it was all, and again it was all back-of the-house stuff because you could put a million heaters in the place and keep the bar open, but if you don't have gas, you can't—you can't turn a pilot on. So, that's—that's the part we all have—we all have problems that are similar but they're also dissimilar and we need a partnership with the Council, with you, gentlemen and



ladies up there, and there's got to be a way we can move these things along. I mean God forgive me to talk about graft. I mean if somebody came in and said listen, I'll take care of this all. I'll him like 10 grand just to get it done. This is the thing, nothing is happening. You can't move anything forward. You can't get anything through. It goes to an abyss and we really--Paul just told me today I think. Did you just kind of get a C of O?

JOHN DOHERTY: Reapproved.

PETER FITZPATRICK: Do we have the--yeah, this wasn't even resealed. This was a re-approval. He got a--the other thing you guys know and this isn't over. I can keep going on, the ADA. These ADA claims are outrageous and here's the problem. Here's how you know that this all--yeah, it's all--it's ambulance chasing because when they come at us this is the way the whole trajectory goes: We get something from a lawyer that says: You got ADA violations and they'll list them. Okay. Then it goes into a horse trade. They want 200 grand. We say well, we'll give you, you know, we'll give you 10. They'll say well, we want 150 and you give them 15, but this the way it goes. As soon as they get

paid do you think that those lawyers follow up whether those ADA things were cured? A player. It's a shakedown. We would be happier if you guys from the city or DOB would come and say, listen, this is what you've got to do. Fine us. We owe money because if we're in violation, we're in violation and we're okay. I don't need clown from 33<sup>rd</sup> Street to come up and bang me [laughter] for-for-for 15 grand just to pay a client if he's taking half. It's such a--it's such a shakedown, it's not even funny, and that's pretty much--I apologize for getting emotional on you gentlemen and gentlemen and ladies, but we're--we are under serious, serious, serious pressure and I could see within these guys here. I mean there's--there's three or four of these places that might be here like after Saint Patty's Day. We're that close, and the reason we did this, the reason we're all--like we were saying before everybody here is either an immigrant or a son or daughter of an immigrant. You know, we're happy to do this work. You know, we're happy to do it for Bev. You were saying before we don't want to do HR. We can't. We don't want to have--we don't want to be, you know, the guy--the guys who go down to the city and file this

stuff. What do you call them? The expediters.

That's what—we can't do that. We're here to do food and bev and we're happy to do food and bev, and we're happy to give you a great restaurant and a great experience and a great meal in a clean place that you could eat off the floor. Another thing, too. Wait and I'm be out of your hair, folks. The guys from McHale's so what they got was they got a—we had a—a big leak on the roof of the building and what happens is the roof kind of drops some stuff, some plaster or sheetrock on the morning we just happened to get a Board of Health inspection, which was okay. They gave us a B—an A—and A—a B—a B with and A pending on the—on the grades right. We went and we them complied and we did everything we were supposed to do. We haven't seen anybody since. So, if you go on the website, if you go on any those places, we're still sitting with a B and we're good to go. Just send us somebody to inspect it. That's all we want. If it's not right then—then tell us. You can't sit on these things. Nick Verses has been waiting for the Building Department to get their act together since October. October, November, December, January. Did you pay your February month yet? \$10,000 month.

It's 50 grand. He's out. That's where you got to start. The second you buy a pub or a restaurant, you got to start opening. You got to get moving because you go debt service or rent that's piling on you. He's \$50,000 behind the 8 Ball. He hasn't even flipped one hamburger on the grill there. That's the problem. We need a partnership with you folks in the Council and the departments in the city. We need to work together because we're all in this together. These are taxes that we get from the city comes from us. The employment we get from the city comes from us. Payroll tax comes—we're happy. That's part of being in New York. We get it, but we cannot be banging our head against DOB, Board of Health, Con-Ed. We—that's what's killing us. I'm not sure if it's over-regulation or just apathy. I don't really know what the heck is going on down there, but we can't through, and with a state agency you guys know. When a state agency comes in 2 or 3 or four months ahead of the city agency, that's a problem, but we could walk here. That's it. Alright. Thank you.

PETER FAHEY: Okay, getting back to the tip credit, we need to keep the tip credit. If we don't keep the tip credit, where do we get the front-

of-house staff. Front of house are making good money. They're making upwards of \$25 to \$30 an hour. I have a restaurant on Restaurant Row called Bourbon Street on my front-of-house staff on Broadway they're doing shows, they're auditions. They're all time paid workers. They're all working 20 to 30 hours a week. If they're not making \$30 an hour, they are not going to stay in the restaurant business. They are going to go out and drive an Uber car. So, we should be allowed to take care of the back of house. We're not allowed to do that. Our wait staff if directed would give a portion of their tips to the back of house because they understand how important it is for the back of house to do their job correctly because back of house performing correctly is enhancing front of house. [background comments] So, that makes the difference. If we have to pay our front of house \$15.00 an hour as opposed to the \$10.00 we are paying now, we're taking a \$5.00 tip credit that would—with the hours that we're operating front of the house, would probably cost us about \$250,000 extra in payroll plus payroll taxes. We can't afford that would put me out of business right now. If I have to come up with another \$250,000 a

year, that puts me out of business. With credit in the years, we need it to stay, and we need to be aiming to take care of the back of house better. Like as Peter mentioned when we do parties at Christmas time the month November and month of December we do a lot of parties. We do \$6 or \$7,000 dollars parties with 18%, we should be able to kick some of that back to the back of house. The minimum wage went up to \$15.00 an hour. My dishwasher gets \$15.00 an hour. My porter who is sweeping the floor gets \$15.000 an hour. My cook was on \$15.00 an hour. He's not on \$15.00 an hour any more. He's on \$17.00, he's on \$19.00, he's on \$20.00 an hour. They all went up salary because everyone got bumped up. It wasn't just the minimum wage that got bumped up. The people that were there before they were making \$16.00 an hour \$15.00 an hour. They went up to \$18.00, \$19.00, \$20.00 and like it's hard. It's right across the board. So, I mean the dun to preserve the tip credit reduction.

CHAIRPERSON GJONAJ: Thank you, gentlemen. I do want to follow up with some of your issues. I'm going to give you my card. I want to know about the C of O, the gas, and the other issues

that you are faced with that are preventing you from opening up [applause] and—and I promise I will do that. I want you to know that your testimony is going to be—I can't be on everything. I wish I had a magic wand to make all of our problems go away, but we're going to prioritize your needs and come up with a format that we can challenge the issues that you're faced with. I'm hoping that we can start a proactive approach versus a reactive. We should for restaurants to close down before we figure out how to make it right, and that proactive partnership that you're referring to is what you would want from government. So, I promise you that I will be focused on that with my colleagues that sit on this committee that you won't be forgotten, and we're going to get ahead of the problems and not try to correct them when they happen.

FRANK LA CORTE: Instead of non-sense training programs and ridiculous things that don't matter in the real world and they've used that money and hire people to actually help us in the DOB like they're supposed to and get to a decision maker. I've had SBA people push something halfway to the DOB and the DOB basically said F you, right or told me to

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2 buzz off and then they dropped it. I spent all that  
3 money on people to help us so we had to hire  
4 expediters for \$30,000. Instead, you know, just do  
5 it that way. Drop all those programs. They're a  
6 waste of money.

7 CHAIRPERSON GJONAJ: Thank you.

8 FRANK LA CORTE: It's just like we were  
9 saying before it's--

10 CHAIRPERSON GJONAJ: Thank you.

11 FRANK LA CORTE: --a partnership  
12 mentality. If we could get that from you guys at the  
13 Council and from the--the city agencies, well then  
14 we'd be good. We'd be okay, but we--we definitely  
15 need a partnership. We need a working partnership.

16 CHAIRPERSON GJONAJ: I agree

17 FRANK LA CORTE: And thank you very much  
18 and I really appreciate your time.

19 CHAIRPERSON GJONAJ: Thank you for being  
20 here, and making a statement. [background comments]  
21 Hold on.

22 COUNCIL MEMBER PERKINS: [off mic] I want  
23 to ask a question.

24 FRANK LA CORTE: Yes, sir.  
25



COUNCIL MEMBER PERKINS: [off mic] So, during your partnership have you [coughs] asked about that partnership?

FRANK LA CORTE: I—I would love to. I would—I don't know--

COUNCIL MEMBER PERKINS: [interposing] You ask, you ask them.

FRANK LA CORTE: I don't know who to ask.

COUNCIL MEMBER PERKINS: I think you--

FRANK LA CORTE: Wait a second yes.

PETER FITZPATRICK: But a lot of these problems, too, Councilman. A lot of these problems, too, like the restaurant business in New York for years chugged along. We chugged along on volume. We chugged along because the city's business things were good, and now we're—we went from like—and it's, now it's partially due to wages, partially due to a whole lot of—we went from 60-70 miles an hour down to zero. It seems like that, and now we're all—we're all running around saying what the hell is going on? Like the profits are—why anybody would be new and go into this business. I've been in the—I've been in the—I opened my first restaurant in Manhattan in '82. So, I've being doing it for a long time. I've never

seen-but there's such a contentious attitude between DOB and the Board of Health. I mean it's almost like they-you-you actually go-before about when you were saying and I never thought about it that way that the retaliatory nature of some of the stuff, but everybody is afraid. The first thing we're saying is to hang the meter. Should we go? You don't want to say I don't want to say I don't know if we want to go. Do we want to go? Maybe we'll go and we want to say where the pubs are. Maybe we'll go. We might. Well, I'll be vague, but it's almost as if-it's almost as if they come in

CHAIRPERSON GJONAJ: And if you're out of place, not get a fine?

PETER FITZPATRICK: Very rarely. They're going to find something, and generally they're going to find something that isn't enough to change you're A from a B. They will clock for something. You figure- let's say you have-I'm just guessing, your Board of Health guy paid \$100 or \$150 a day or whatever he's getting. He's going to come out. You know they got to feel like they got to make the balance, they got a pay amount. They're to pay him back for the same amount if you-that's the way we

feel. I know it's probably not true, but that's the way we feel.

CHAIRPERSON GJONAJ: We have different inspectors coming up with different scenarios where an inspector comes in and says no this is wrong. You correct it. Another inspector comes in and says, it's good.

PETER FITZPATRICK: [interposing] I know. [background comments] I know. That actually happened. That actually that story that's—that's—that's very specific and I'll tell you I can guarantee everybody here would agree with me, the ADA stuff oh, my God, you're like a loud line. They're talking, you know, college trigonometry to me, and I—I like I didn't—I'm an Algebra guy from high school. I don't even know. Just give the metes and bounds as the city. We'll be—this is one of the things we will be happy for you guys to handle. You know, come out and tell us what we need to do. What was the best and can you do it? If we dropped the ball, that's okay. We just got to get these lawyers off the side of our neck. They're looking for \$200,000 because who's Ranny? His limped. His ramp is—the pits on the ramp it's supposed to go I believe Frankie said—

FRANK LA CORTE: [interposing] Another inch.

PETER FITZPATRICK: --a foot. Yeah. His pits--we measured the--the thing. [laughs]

CHAIRPERSON GJONAJ: Okay, I've been in there.

PETER FITZPATRICK: See, it's short. I mean and they come out with the--the numbers. It's not listen, we're going to--we're going to make you behave. We're going to fine you \$1,000 or \$500 because your ramp is--get a new ramp. That's what you guys would do. That's okay. Instead it was \$200,000.

PETER FITZPATRICK: You know, that's how hard you press in the--in the Health Department violation hearing. In other words, I cannot go in and say if someone issues a new violation and I can prove that that structure and that setup had been the same for six years, I cannot argue the precedent should apply in assessing this inspector's--

CHAIRPERSON GJONAJ: [interposing] That this deserves attention.

PETER FITZPATRICK: So, that's probably--probably what you were saying before with the interpretation on the Board of Health guys.

FRANK LA CORTE: Because we can't argue precedent in any way, it's a constant moving target of compliance.

CHAIRPERSON GJONAJ: Right.

FRANK LA CORTE: Depending on--so all you need is one person to say one thing. Then all of a sudden that becomes effectively code.

CHAIRPERSON GJONAJ: The issue there or offense is after being in business for 30 years received a violation that the sink was too far from the cappuccino machine--

FRANK LA CORTE: [interposing] Yeah, I can say--

CHAIRPERSON GJONAJ: --that was too close to the floor.

FRANK LA CORTE: [interposing] Yes, that was my problem.

CHAIRPERSON GJONAJ: So, to correct the sink being closer to the coffee machine the Cappuccino machine--

FRANK LA CORTE:--correct.

CHAIRPERSON GJONAJ: --quoted another violation that it was too close to the door.

FRANK LA CORTE: [interposing] I had the same problem as you. That's why I know the precedent of the argument. Because I walked in to the--to the Health Department and I said, for--for the better part of 30 years for the building and the six years that I've been here no one has said that there's a problem with this sink issue. This one person comes and makes issue argument and, you know, I cannot--I cannot make that argument. We cannot make that argument.

CHAIRPERSON GJONAJ: Thank you, gentlemen. Thank you. I have these cards for you.

FRANK LA CORTE: Thank you.

CHAIRPERSON GJONAJ: And we have one final person testifying Jim Quint. [background comments] Thank you for bringing that. [background comments]

JIM QUINT: Good afternoon Chair Gjonaj, Council Member Perkins. My name is Jim Quint. I represent Duncan Brands. Thank you for the opportunity to testify about the hardships that Duncan Brands franchisees face as small business owners in the restaurant industry. As you know, Duncan is the largest storefront operator in New York City. They have over 630 locations and provide over

12,500 jobs, but these are not corporate owned stores. Contrary to public—to the misconception, they're a network of small business owners who have chosen to franchise with Duncan Brands. These are franchisees who are no different than the thousands of other small business owners across the city. They're responsible for the day-to-day operation of their businesses, hiring and retaining workers, and managing their own finances. They are the people who take out the loans, assume the debt and all of the responsibility that comes with running a small business. Over the years the cost of rent and supplies and maintenance and other costs have graced with inflation, but these are—are expected cost increases that they can, you know, plan for. Unfortunately, we hear a lot of comments from elected officials about wanting to help small businesses grow and create jobs. You know, the single largest increase in their budgets has been a flurry of new regulations, rules and laws that seek to micro-manage their day-to-day operations and end up increasing their costs. They impose new fines. They create new administrative hurdles, which all cost these business owners money. Often under the guise of very

intentioned public policy pursuits, these regulations have little like they—little or no—not effect but the new rules actually threaten the way that people do business, and one of the—over the years you’ve seen goth New York City and New York State, which both of you gentlemen have experience in on both the city and state government. We’ve seen a dramatic increase in the minimum wage, newly imposed paid sick leave laws, scheduling rules, many labeling changes, increased delivery fines, and we have new organics recovery requirements in New York City for commercial businesses. All of these days—all of these things raise the cost of doing business. One of the things in particular that I want to talk about and I only have two things that I want to raise. I don’t want to take up too much of your time, but the first thing is so-called Fair Work Week Laws. These were passed in 2017. It was a package to provide advance notice of scheduling to employees and create protections against lost hours. These laws have actually led to less hours and less opportunity for many employees looking to pick up additional hours when seeking to fill a shift left open by someone who calls out sick or otherwise. This adversely affects both the



employees and the small business owners throughout New York City, and let me just run off a few things that the Fair Work Week Laws have impacted. Number 1. It makes it harder for small business owners to provide their employees with flexible scheduling and additional shifts when requested due to the imposition of penalties, which the Council at the time called a premium pay. Since employees do not have to provide at least two weeks notice before calling out nor do they ever because you don't know that you're going to be sick or have an emergency or have to take care of a loved one with two weeks notice. You find out 24 hours ahead of time. That doesn't matter in the law. The law says that if you call out, and someone wants to replace you, the person they replace you with has to be paid a premium, and that adds to the cost of doing business. It harms employees who value their flexibility and part time work by preventing them from picking up additional hours. If I want additional hours, I have to make sure that I'm swapping out a shift with someone, and that's always possible for things to do. Not all the employees are going to know each other and even if they do, they won't know when some shift

is open. So people who are looking to get extra hours don't have that opportunity often times. It also reduces the quality of customer service. Right. So, if somebody calls out and the restaurant owner can't actually get someone else in to fill that shift, or they don't want to have to pay this premium pay, they're going to leave that shift open. Now you have a full shift that is under-staffed and the customers that are coming in are not getting the customer service that they deserve and rely upon, and those-those shift workers are now forced to actually work two or three times as hard just to maintain that same level of work. It's stifles business growth. It prevents further investment by small business owners. I can't tell you how many times I hear from folks that they're concerned about expanding their business because they don't know what next is going to come from the government. The other-the other costs of-of supplies and-and maintenance and all the other-the-whatever it is they have to purchase, they-they can kind of forecast that, but when government comes in and decides that they're going to put these new restrictions on business owners, there's no way for them to know that that's coming. And it also

creates a cottage industry for plaintiffs' attorneys by opening up small businesses to costly litigation under the guise of protecting employees. Some of the previous people who testified talked about this problem and it is indeed a very serious problem and a very costly undertaking for small business owners who have very limited profit margins, and-and struggle everyday to maintain their businesses. The last thing I want to talk about is the organics recovery pilot expansion. The New York City Council passed a law in 2013 to create a commercial organics recovery program for stadiums, arenas, hotels, you know, large entities like catering halls and the like. They have to have over 7,000 square feet of space or over—depending on where they were. It might have been 15,000 square feet of space or if they were a chain, it had to be two or more that had more than 8,000 square feet of space. But in the law they set it up that the Sanitation Commission was obligated to determine whether there is sufficient capacity within a 100 mile radius of the city to process this organic waste that is being generated. Now, in addition, the Commissioner is supposed to determine whether the cost of processing the organic waste is competitive

with the cost of disposing of the organic waste in a landfill that is up to 100 miles away. Okay, note that, up to 100 miles away. So, as organic waste processing capacity increases within the region then the Commissioner is able to phase in the requirement of increasing the number of commercial enterprises to source separate the organic waste. While this latter clause allows for the Expansions Program, the city Department of Sanitation has not conducted or provided the results of a study on sufficient capacity. The department also chose to impose commercial organics recovery on all food service establishments that are part of a chain with 100 plus locations within the city confines, within the five boroughs. This expansion doesn't take into account the amount of organic material that's actually generated by each location. The cost incurred by the small business owners to hire carters to find a carter that actually will accepted an--and pick up the organic waste, or anything regarded to the--the size of the store, the ability for them to put different containers that are required back of house, and mind you this is all back of house, not front house because I think people have a tough enough time

figuring out the—the overall, you know, recycling process, but we're getting there, and so one of the things that we call on you, too, is please like we think the New York City Council should call on the Department of Sanitation to revisit—to revise the expansion of this commercial organics recovery program, and make it something that is—that is efficient and for lack of a better word doable.

CHAIRPERSON GJONAJ: Jim, what is the cost for some of the Duncan's—to comply with the organic recycling.

JIM QUINT: It's TBD. Alright, so this is new to the—to the—it goes into effect on February 15<sup>th</sup> and we'll find out what the costs are, but the costs are going to increase because now you have to have not just a—you don't have to just have a recycling pickup. Along with your normal garbage, you'll have to have recycling. You'll have to have normal garbage and then you'll have to have organic waste recovery pickup. So, just imagine it's, you know, it's just adding another—it's adding another piece to that—that—that pie.

COUNCIL MEMBER PERKINS: Is is—it's—it's compounding costs?

JIM QUINT: Yes.

COUNCIL MEMBER PERKINS: Is it--

JIM QUINT: [interposing] So, with that-- because that--everybody. Oh, it will be measurable. We just don't know yet because it hasn't started. It starts on February 15<sup>th</sup>.

CHAIRPERSON GJONAJ: So, aren't they making contract agreements now because I'm sure they're set or is picking up the commercial carting is not going to be equipped to--

JIM QUINT: Correct, but we don't yet have a full list of who was approved by the Business Integrity Commission to collect organic waste and not every entity that collects, you know, normal waste and recyclable material, it's also--

CHAIRPERSON GJONAJ: Required.

JIM QUINT: Not--not even required. Able, willing.

CHAIRPERSON GJONAJ: This goes into effect when?

JIM QUINT: February 15<sup>th</sup>.

CHAIRPERSON GJONAJ: What was at the seat of that (sic) besides getting rid of the whole program on that?

JIM QUINT: No, no, no. Everybody and—  
and we understand the need and the intent of the law  
and the expansion. There's no question about that,  
but the approach hasn't been one that is doable  
though it—that it's—it's going to be very difficult  
for people to comply. It's going to be very costly.  
If you have a business that has—is a—is a 400-square  
foot kiosk or a walk-up window like you have down the  
street here on Courtland, there's nowhere to put an  
extra bin. There's nowhere to turn inside the place.  
I mean you—you—you are very limited in your space and  
your capacity. Aside from that, they're not  
generating a lot of waste, but they still will have  
to put everything that isn't organic material to the  
side, and figure out how to get someone to come and  
collect it every week, every, you know, three times a  
week, whatever that requirement will be.

CHAIRPERSON GJONAJ: And you're going to  
be required to sort through your organics or is this  
going to be beans versus everything else or lines?

JIM QUINT: [interposing] Organics  
material will go in on, but it has to be source  
separated from everything else.

CHAIRPERSON GJONAJ: Well, you guys should be very careful with this because this could be imposed on the restaurants across the board sooner or later and--

JIM QUINT: Well, that's the concern, right. So, they-if they're-if they're expanding this into an arena where they're not taking into account the amount organic material that's generated by a particular business, that's telling you something. It's-and-and we get it. The overall goal is laudable. It's just the approach is-is-it doesn't--

CHAIRPERSON GJONAJ: [interposing] So, this will also contribute to congestion problems I'm going to guess because if these trucks have to make their way from one neighborhood to another neighborhood, certainly you're not going to get capacity. I don't imagine we're going to have a tremendous amount of volume of organic recyclables. Is this an idea--

JIM QUINT: [interposing] You're adding another truck or you're adding a larger truck depending on-I'm not a Sanitation expert but however that works out, we-I would ask you to ask the



Sanitation Department what the pickup requirements are.

CHAIRPERSON GJONAJ: We have our work cut out for us, Council Member.

COUNCIL MEMBER PERKINS: Sounds like they can save the room. (sic)

CHAIRPERSON GJONAJ: And as far as the Fair Work—the Fair Work Week predictable scheduling, what's the number of employees that are needed?

JIM QUINT: It's not necessarily the number of employees, but you have to have your—if you're in a—a business that's 30 or more establishments across the country. So, they—they're specifically talking about chain restaurants.

CHAIRPERSON GJONAJ: So, if you have less than five employees you--

JIM QUINT: [interposing] Wait. No, it's 15 or more.

CHAIRPERSON GJONAJ: 15 or more employees, which if you're going to stress long-term there, you're certainly a--

JIM QUINT: But again, you have to have 30 or more across the country. That's—that's another stipulation. It's, you know, the—the gentleman who is

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2 talking about owning a place on 42<sup>nd</sup>, he's not  
3 required to give that 2-weeks advance notice. You  
4 know, that's not—it's—it's a different entity.  
5 CHAIRPERSON GJONAJ: So, we have some  
6 work to look at that as well. So, regardless of how  
7 many units owned just because you are a franchise  
8 operation--  
9 JIM QUINT: Yes sir.  
10 CHAIRPERSON GJONAJ: --with more than 30  
11 locations in the nation--  
12 JIM QUINT: Yes sir.  
13 CHAIRPERSON GJONAJ: --you would have to  
14 comply?  
15 JIM QUINT: Right, and with the  
16 Sanitation rule it's if you have 100 more within the  
17 city.  
18 CHAIRPERSON GJONAJ: I think it certainly  
19 has that.  
20 JIM QUINT: Yeah.  
21 CHAIRPERSON GJONAJ: Why between 230 and  
22 100?  
23 JIM QUINT: I don't know. I didn't write  
24 it. I don't know. [laughter]  
25

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2 CHAIRPERSON GJONAJ: Before my time and  
3 before I think your time as well, correct the  
4 organics and the Council Members.

5 JIM QUINT: [interposing] Yes.

6 CHAIRPERSON GJONAJ: That's way--

7 JIM QUINT: [interposing] Okay before  
8 that.

9 CHAIRPERSON GJONAJ: Thank you, Jim.

10 JIM QUINT: Thank you very much.

11 CHAIRPERSON GJONAJ: [gavel] This will  
12 conclude today's hearing. I want to thank you all  
13 for your time and your testimony. [background  
14 comments/pause]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date February 26, 2019