

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON SMALL BUSINESS

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April 9, 2021
Start: 11:05 a.m.
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HELD AT: Remote Hearing, Virtual Room 2

B E F O R E: Mark Gjonaj
Chairperson

COUNCIL MEMBERS: Mark Gjonaj
Stephen T. Levin
Bill Perkins
Ydanis Rodriguez
Helen K. Rosenthal
Ben Kallos
Selvena Brooks-Powers

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

Blaise Backer
Deputy Commissioner for Neighborhood
Development Division of the Department
Small Business Services

Amna Malik
Assistant Commissioner of Business
Operations and Regulatory Reform
Small Business Services

Phil Monaco
Executive Director of Accessibility
Mayor's Office for People with
Disabilities

Ed Friedman
Policy and Intergovernmental Affairs
Coordinator
Mayor's Office for People with
Disabilities

Wellington Chen

Jessica Walker

Kathleen Reilly

@

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SERGEANT AT ARMS: PC recording is up.

3

SERGEANT AT ARMS: Cloud recording is

4

started.

5

SERGEANT AT ARMS: Backup is rolling.

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SERGEANT AT ARMS: Mr. Bradley, thank

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you.

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SERGEANT AT ARMS: Good afternoon and

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welcome to today's New York City Council's hearing on

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Small Businesses. At this time will all panelists

11

please turn on your videos. To minimize disruption,

12

please place all electronic devices on vibrate or

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silent mode. If you wish to submit a testimony you

14

may do so at testimony@council.nyc.gov. Again, that

15

is testimony@council.nyc.gov. Thank you for your

16

cooperation. You may begin, Chair.

17

CHAIRPERSON GJONAJ: Thank you, Sergeant.

18

Good morning. I am Council Member Mark Gjonaj, chair

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of the Committee on Small Business and I'd like to

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welcome you to our hearing today on two bills, Intros

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2097 and 2110 that will help increase awareness and

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financial resources for small business owners to

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comply with Title 3 of the Americans with

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Disabilities Act. In 1990 George Bush signed into

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law the Americans with Disabilities Act, commonly

1 known as the ADA, a historic piece of civil rights
2 legislation that prohibits discrimination against
3 individuals under Title 3 of the ADA. Businesses
4 that provide goods or services to the public are
5 required to construct or adjust the physical space,
6 policies, and procedures to ensure that people with
7 disabilities have full and equal enjoyment of those
8 goods and services. New York State human rights law
9 and New York City human rights law further expanding
10 the protections the ADA offers to individuals with
11 disabilities, including offering protections for
12 certain temporary disabilities not covered under the
13 ADA. Perhaps because small businesses are unaware of
14 the regulations that they must comply with, but
15 because business owners do not have the financial
16 wherewithal to pay for the ADA alterations to their
17 spaces, independently owned businesses have had
18 difficulties complying with aspects of ADA.

19 According to Wellington Chen, executive director of
20 the Chinatown BID, the old and narrow sidewalks in
21 Chinatown and language access challenge has made it
22 difficult for local immigrant business owners to
23 comply with the ADA regulation. Adhering to ADA
24 requirements may be especially challenging for
25

1 business owners lacking experience or educational
2 resources about the ADA. ADA standards can be found
3 in a number of places, including the federal statute,
4 federal regulations implementing the law, technical
5 manuals in the Department of Justice settlement
6 agreement. The average small business owner may
7 simply not have the knowledge of the legal system to
8 understand the various regulations with which they
9 must comply. Because certain small businesses may
10 not be in compliance with all aspects of the ADA,
11 many small businesses have been vulnerable to
12 lawsuits for noncompliance. Attorneys will sometimes
13 file lawsuits because hundreds of small business
14 owners and the plaintiffs' attorneys typically seek
15 to settle these cases where they're able to recover
16 legal fees. In 2016 the average settlement for the
17 ADA [inaudible] lawsuits was \$16,000, a significant
18 unexpected cost for a small business owner. Those
19 attorneys can make a significant amount of money
20 through these lawsuits. The number of lawsuits
21 against small businesses for noncompliance for Title
22 3 of the ADA has drastically risen in recent years.
23 According to testimony submitted by the lawsuit
24 [inaudible] alliance New York is second in the nation
25

1 in terms of the ADA noncompliance lawsuits. In New
2 York State the number of cases increased from 543
3 cases in 2016 to over 2600 in 2019. In 2020 despite
4 the many businesses being closed due to COVID-19
5 pandemic, plaintiffs' attorneys still filed 2238 such
6 suits in the New York federal courts. Nationally,
7 over 11,000 cases were filed in January of 2021, the
8 highest number of cases ever filed in a single month.
9 I was glad to see in November of 2019 that SBS, the
10 Mayor's Office for People with Disabilities, the New
11 York City BID Association, and public policies
12 [inaudible] empowering accessibility, an online
13 resource guide to enable small business owners to
14 more easily understand their obligations under the
15 ADA. Empowering accessibility offers resources
16 tailored to new and existing businesses and
17 information on how to deal with the ADA [inaudible].
18 Nonetheless, these bills we're hearing in the
19 committee today will offer further necessary
20 protections for small business owners which will help
21 ensure that they are both aware of the regulations
22 that they must comply with and have the city
23 introduce resources to make the necessary ADA
24 alterations. With that said, I'd like to thank my
25

1 chief of staff, Reggie Johnson, legislative aide
2 Austin Sackler, our legislative counsel, Stephanie
3 Jones, our policy analyst Noah Meixler, financial
4 analyst Alia Ali, for their hard work in preparing
5 for this hearing. I'd like to acknowledge that we
6 have been joined by Council Member Kallos, Council
7 Member Rosenthal, Council Member Brooks-Powers, I
8 think this is her first hearing, ah, in Small
9 Business and I'm excited to have her, and I'm sure
10 we'll be joined by other colleagues as the hearing
11 continues. I want to turn it over to Council Member
12 Kallos, who is the prime sponsor of the legislation
13 we're hearing today to deliver an opening statement.
14 Council Member.

16 COUNCIL MEMBER KALLOS: Thank you, Chair
17 Gjonaj, for your leadership on small businesses, ah,
18 since before the pandemic and ever more so since
19 then. The blight of empty storefronts has only
20 gotten worse since the pandemic and we need to do
21 everything we can to help them retrofit for
22 accessibility and public health to welcome more
23 customers with disabilities while securing lower
24 rents. It's a win-win-win for small business owners,
25 customers, customers susceptible to coronavirus or

1 with disabilities, and even landlords. Mom and pop
2 stores are the small businesses that make New York
3 City great, but have remained inaccessible to 1
4 million residents and 7 million tourists with
5 disabilities. These mom and pop storefronts have
6 been the target of Americans with Disabilities Act
7 lawsuits filed, growing year over year, both
8 nationally and locally. Recent reporting shows that
9 the number of such cases in New York surged more than
10 300%, from 543 in 2016, to 2338 last year. A number
11 of these cases were filed by frequent flier serial
12 litigants who specialize in these types of drive-by
13 lawsuits. Small businesses are particularly
14 vulnerable to these types of suits because they have
15 less income to spend making ADA alterations to their
16 spaces and less to spend on legal counsel. The worst
17 part is that many of these lawsuits are settled,
18 costing mom and pop owners the money they could have
19 spent staying open or making the accessibility
20 improvements that are rarely required by these
21 settlements or even, or ever happen. The first bill,
22 Introduction 2097, would create an accessibility fund
23 for small businesses. The fund would make grants and
24 loans of up to \$250,000 available to any small
25

1 business, 100 employees or less, for the purposes of
2 renovating existing storefronts to become ADA
3 compliant. The grants or low-interest loans would be
4 made available to either the building owner or the
5 storefront lessee. In either case, the commissioner
6 could require an agreement between the landlord and
7 tenant to a decrease in rent in proportion to the
8 size of the grant in return for these permanent
9 improvements. In the second bill, Introduction 2010,
10 would provide training and education to small
11 businesses on compliance with the Americans with
12 Disabilities Act. The bill would make available
13 information for all small businesses on various
14 requirements under the ADA and would update whenever
15 there are any changes to the current guidelines. The
16 bill would also help business owners complete a
17 detailed survey of their commercial property or
18 business website to determine improvements suggested
19 or required in accordance with the ADA. Both bills
20 would help to curb the onslaught of vexatious
21 litigation against the most vulnerable business
22 owners. It's good to see Wellington Chen of the
23 Chinatown Partnership, whom I joined along with Aging
24 Chair Margaret Chin, to discuss innovations to make
25

1 businesses in Chinatown accessible. I hope that this
2 legislation would help. Again, I want to thank our
3 small business chair, Mark Gjonaj, for hearing these
4 two important bills. I'd also like to thank Victor
5 Calise, commissioner of the Mayor's Office for People
6 with Disabilities for working with me on this program
7 since I was elected. Together we can open up the
8 best parts of our city for everyone. One piece I'm
9 curious about whether we can, ah, I'm looking for
10 improvements to this legislation. One question is
11 whether or not we could add a right to renewal in
12 addition to reduction in rent as part of this. Ah, I
13 also want to recognize that I, I do see our Council
14 Member Helen Rosenthal, who is a leader on, ah,
15 disabilities legislation, ah, has passed so much, and
16 it's always a pleasure to work with her on this and
17 everything else. And finally, I'd like to thank a
18 former colleague, Council Member Andy Cohen, for his
19 work on these bills while he was at the council. Ah,
20 we actually had a, a, we actually had to fight over
21 who got which bill. Ah, but either way I'm gonna be
22 proud to help carry these bills over the bench line.
23 Thank you.

1
2 CHAIRPERSON GJONAJ: Thank you, Council
3 Member, um, for that, ah, opening statement. And
4 you're absolutely right. This is about not only
5 protecting small businesses, but also protecting and
6 enriching the lives of those that are disabled. So
7 I'm grateful to you for this, ah, legislation that
8 you've proposed and this hearing. Now let me turn it
9 over to, um, Stephanie Jones, for some procedural
10 items.

11 COMMITTEE COUNSEL: Thank you, Chair.
12 I'm Stephanie Jones, counsel to the Committee on
13 Small Business, and I'll be moderating this hearing.
14 Before we begin, I'd like to remind everyone that you
15 will be on mute until you are called on testify, at
16 which point you will be unmuted by the host. During
17 the hearing I will be calling on panelists to
18 testify. Please listen for your name to be called,
19 and I will periodically be announcing who the next
20 panelist will be. At this hearing we'll be inviting
21 testimony from the Department of Small Business
22 Services and the Mayor's Office for People with
23 Disabilities, followed by testimony from members of
24 the public. During the hearing, if council members
25 would like ask a question of the administration or a

1 specific panelist, please use the Zoom raise hand
2 function and I will call on you in order. For all
3 panelists, when called to testify, please state your
4 name and the organization you represent, if any. We
5 will now call represents of the administration to
6 testify. We will be hearing testimony from Blaise
7 Backer, deputy commissioner for the Neighborhood
8 Development Division of the Department of Small
9 Business Services. We will also be joined for
10 questions by the following representatives from the
11 administration - Amna Malik, assistant commissioner
12 of business operations and regulatory reform from the
13 Department of Small Business Services, Phil Monaco,
14 executive director of accessibility at the Mayor's
15 Office for People with Disabilities, and Ed Friedman,
16 policy and intergovernmental affairs coordinator for
17 the Mayor's Office for People with Disabilities. At
18 this time I will administer the affirmation.

19 Administration panelists, do you affirm to tell the
20 truth, the whole truth, and nothing but the truth
21 before this committee and to respond honestly to
22 council member questions? Deputy Commissioner
23 Backer?
24

25 DEPUTY COMMISSIONER BACKER: I do.

2 COMMITTEE COUNSEL: Thank you. Assistant
3 Commissioner Malik?

4 ASSISTANT COMMISSIONER MALIK: I do.

5 COMMITTEE COUNSEL: Executive Director
6 Monaco?

7 EXECUTIVE DIRECTOR MONACO: I do.

8 COMMITTEE COUNSEL: And Mr. Friedman?

9 MR. FRIEDMAN: I do.

10 COMMITTEE COUNSEL: Thank you. At this
11 time I'd like to invite Deputy Commissioner Backer to
12 present his testimony.

13 DEPUTY DIRECTOR BAKER: Thank you. Good
14 morning, Chair Gjonaj and members of the Committee of
15 Small Businesses, ah, on Small Businesses and City
16 Council. I am Michael Blaise Backer, deputy
17 commissioner for neighborhood development at the New
18 York City Department of Small Business Services. I
19 am joined by my colleague, Assistant Commissioner
20 Amna Malik, and from the Mayor's Office for People
21 with Disabilities Edward Friedman and Phil Monaco.
22 At SBS we aim to unlock economic potential and create
23 economic security for all New Yorkers by connecting
24 them to quality jobs, building stronger businesses,
25 and fostering thriving neighborhoods across the five

1
2 boroughs. I am pleased to testify on the proposed
3 bills, Introductions 2097 and 2110, and SBS's efforts
4 to support small businesses in creating greater
5 access to the disability community and navigating
6 accessibility compliance issues. New York City's
7 small businesses collectively create a vital and
8 essential infrastructure for the people that inhabit
9 [inaudible] the city. This includes the roughly 1
10 million New Yorkers who have a self-disclosed
11 disability and the approximately 7 to 9 million
12 tourists with disabilities who visit New York City
13 each year. Creating access to our small businesses
14 is essential to equity for people with disabilities,
15 who have faced centuries of physical and attitudinal
16 barriers. It is also essential for thriving
17 businesses and building stronger communities, of
18 which the disability community is an integral part.
19 In 1990 the landmark Americans with Disabilities Act
20 was passed and since then we have come a long way,
21 but there is still work to be done. At SBS we
22 recognize the need to provide adequate access for
23 people with disabilities and the challenges that
24 small businesses face when meeting their legal
25 obligations under federal, state, and local law. In

1 2019 SBS provided resources through the Avenue NYC
2 Grant Program to the NYC BID Association and Public
3 Policy Lab, and partnered with MOPD to provide
4 support to small businesses, to the small business
5 community. The goal of the project was to create
6 greater access to the city's small businesses by
7 supporting better understanding of and compliance
8 with accessibility requirements, leading to fewer
9 penalties for New York City businesses. The
10 stakeholders took a deep dive in the compliance
11 requirements and mapped out the different challenges
12 that a business owner may potentially face. The
13 result was the creation of the Empowering
14 Accessibility Report and the launch of a digital
15 resource platform at www.businessaccessibility.NYC.
16 These resources provide information for all business
17 owners, whether they are in the process of opening a
18 business, operating an existing business, or
19 responding to an accessibility issue. The digital
20 platform includes information on the benefits of
21 making a business accessible, physical and digital
22 accessibility standards, the risk of inaccessibility
23 lawsuits, and additional resources. It also includes
24 step-by-step navigation materials for businesses
25

1 translated into 12 languages. Additionally, in 2019
2 MOPD and SBS conducted an in-person and digital
3 accessibility training for representatives from BIDs
4 across the city to highlight the Empowering
5 Accessibility tools and ensure that BIDs are aware of
6 accessibility obligations with supporting the
7 neighborhood businesses. The premise of this work
8 and the resources created are in line with the spirit
9 of Intro 2010, 2110, sorry. SBS compliance advisors
10 meet with businesses regularly to address various
11 compliance questions and needs. Intro 2110 would
12 build on these existing education and training
13 efforts. With regards to Introduction 2097, the city
14 is firmly committed to providing small businesses
15 with information to help them better understand their
16 legal obligations under the ADA and related laws. We
17 look forward to a continued conversation with the
18 council on how to ensure that small businesses are
19 supported as they seek to comply with their
20 accessibility mandates. SBS believes increased
21 accessibility is not only a civil right, but also
22 makes good business sense. The disability community
23 must have access to the small businesses and
24 restaurants that play a critical role in our economy
25

1
2 and cultural life. We also believe that any business
3 that is fully inclusive of people with disabilities
4 at the consumer and employment levels has an
5 increased return on investment for themselves and the
6 city. Educating small business owners about
7 accessibility mandates so that they are inclusive for
8 all New Yorkers and visitors with disabilities is
9 vitally important. The city remains firmly committed
10 to providing educational materials that inform
11 business owners on the laws requiring accessibility
12 for people with disabilities. We look forward to
13 working with the council and the business and
14 disability communities to ensure that New York City
15 is accessible to all. Thank you for the opportunity
16 to testify today and we are happy to answer any
17 questions.

18 COMMITTEE COUNSEL: Thank you. I'll now
19 turn it over to questions from Chair Gjonaj.
20 Panelists, please stay unmuted if possible during
21 this question and answer period. Thank you. Chair?

22 CHAIRPERSON GJONAJ: Thank you,
23 Stephanie. Ah, thank you very much for the
24 testimony, ah, Deputy Commissioner Backer. You've
25 indicated that the resources that you provided are in

1 several languages, which is always a barrier. Um,
2 how else can SBS help further educate our small
3 businesses on ADA compliance?
4

5 DEPUTY DIRECTOR BAKER: Yeah, well thanks
6 for the questions. Ah, you know, we, you know,
7 again, we're thankful for your interest in this, in
8 this issue. It's one that certainly SBS takes quite
9 seriously and, and as you touched on, um, in your
10 opening statement and that I touched on, on this,
11 this resource that we've created with the BIDs, you
12 know, really was a step in that direction. So we of
13 course at SBS have our, um, you know, our small
14 business advocates and our compliance advisors, um,
15 as well as our small business hotline that we created
16 in response to the pandemic. And, and those are
17 really, you know, the first touch point for many
18 businesses to reach us. Um, they obviously, many
19 know of the MOPD and might reach out to them
20 directly. But certainly we take, you know, take the
21 kind of the first hit in, in sort of ensuring that
22 businesses know of this issue, that they know what
23 their, um, requirements are, and, and again, we
24 [inaudible] direct them to, um, the, ah,
25 businessaccessibility.nyc website because it is quite

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2 comprehensive and provides, again, as you touched on
3 the, you know, the, sort of these resources in 12
4 languages. Um, and, and of course, ah, you know, I
5 see Wellington on here. You know, Wellington was a
6 key, um, you know, he, not only the BID Association
7 as a whole, but he himself, um, and the Chinatown BID
8 along with, um, two other colleagues of his, um, ah,
9 Michael Brady [inaudible] Third Avenue in the Bronx,
10 um, and Marcus [inaudible] in Park Slope, Fifth
11 Avenue, essentially served as kind of guinea pigs as,
12 as, as they collaborated in creating these resources
13 to ensure that this was a tool that was usable that
14 really incorporated, ah, the input of its, ah, the
15 disability community as well as small business owners
16 and the BIDs themselves. So, um, they kind of tested
17 it. Ah, we refined it, um, and, and I think we're
18 really happy with how it turned out and, and
19 essentially we continue to ensure the bids are aware
20 of it and use it as a resource when they're out in
21 their communities talking to businesses.

22 CHAIRPERSON GJONAJ: Thank you, Deputy
23 Commissioner. Ah, Intro 2097 would require the city
24 to provide a program that provides loans and grants,
25 in-kind services or in-kind materials to small

1 businesses who have 100 employees or less to make
2 their properties more accessible, and loans and
3 grants up to a total of \$250,000 to participants. Is
4 that enough, in your experience and, um, [inaudible]?

5
6 DEPUTY DIRECTOR BAKER: The, the \$250,000
7 amount? Is that what you're asking?

8 CHAIRPERSON GJONAJ: Yes.

9 DEPUTY DIRECTOR BAKER: Um, you know, I,
10 I think, um, you know, the range, the cost range
11 certainly to make ADA improvements I think is, ah,
12 you know, probably as, as dramatic and considerable
13 as any, any renovations, ah, a business might make to
14 their property, so I don't have a, you know, I don't
15 really know, um, what sort of the average cost might
16 be to make those improvements. Um, ah, I would say,
17 you know, again, as you know, right, the storefront
18 might, you know, just have to put in a ramp or, or,
19 you know, widen its entryway, or it might need to put
20 in, sort of make more substantial improvements. So
21 I, I think the range is, is considerable. Um, I
22 mean, to me I think \$250,000 for accessibility alone,
23 um, sounds, um, considerably quite high. I think,
24 you know, from, from our experience, um, um, you
25 know, a business might be spending that amount of

2 money certainly in a build-out but, ah, I don't think
3 the majority of those complaints are going
4 specifically to ADA accessibility.

5 CHAIRPERSON GJONAJ: Thank you, ah,
6 Deputy. Um, those loans helping the storefronts and,
7 ah, accessibility, are they personally guaranteed by
8 the small business owner?

9 DEPUTY COMMISSIONER BACKER: Um, which
10 loans, I'm sorry?

11 CHAIRPERSON GJONAJ: The \$250,000 up to
12 loan. Is that a personal guarantee by the small
13 business owner?

14 DEPUTY COMMISSIONER BACKER: So the, the
15 loans as discussed in the, in the bill?

16 CHAIRPERSON GJONAJ: But we currently
17 have storefront loans, correct, and that's part of
18 the program that we have at, ah, to invest in
19 accessibility.

20 DEPUTY COMMISSIONER BACKER: So you're
21 talking about that.

22 CHAIRPERSON GJONAJ: Those loans in
23 general...

24 DEPUTY COMMISSIONER BACKER: Sorry.
25

1 COMMITTEE ON SMALL BUSINESS 23
2 CHAIRPERSON GJONAJ: ...[inaudible] or
3 not?

4 DEPUTY COMMISSIONER BACKER: Um, I'm
5 going to, I'm not entirely sure what the, the loans
6 that are already in place, of course there's sort of
7 a wide variety of loans and, and CDFIs that we work
8 with to make, um, you know, make financing available
9 to small businesses. Um, my colleague, Amna Malik,
10 um, may have a better answer for you. Amna?

11 ASSISTANT COMMISSIONER MALIK: Hi, thank
12 you for the question. Um, the LMI storefront loan
13 program does, um, have a personal guarantee. Um, but
14 for, we're open to working with council to understand
15 the needs and think about what the loan that's being
16 proposed and what small businesses need to think
17 about how we can, um, prepare that.

18 CHAIRPERSON GJONAJ: Thank you, Assistant
19 Commissioner. That's my concern, ah, Deputy Backer,
20 that the loan, the loans that would be provided here
21 will come with personal guarantees to these
22 struggling small businesses, ah, and coming out of
23 this pandemic and crisis, ah, burdening our small
24 businesses with additional loans that have to be paid
25 with interest on top of that with personal guarantees

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2 CHAIRPERSON GJONAJ: But the reason we
3 don't want to give a small business another reason
4 not to comply [inaudible] it's hard enough to stay in
5 business, let alone putting more, ah, debt that they
6 would be personally guaranteed for, a personal
7 guarantee, put their homes and other assets, ah, in
8 the businesses that are currently struggling, as we
9 are aware, ah, as Council Member Kallos mentioned
10 earlier in this testimony, in his opening statement
11 of the number of vacancies. Our businesses are
12 struggling. Small businesses, micro businesses, mom
13 and pop shops, our commercial corridors will never be
14 the same again. Ah, we've accepted that, and
15 whatever that new reality will be we'll just have to
16 work, ah, to shape it into a more productive, ah,
17 shopping experience. So my concerns, ah, are those
18 that I hear from our small businesses that taking on
19 further debt which, um, puts their liabilities on
20 other assets is a huge concern for them in this
21 [inaudible]. So I, I look forward to working with
22 you on that.

23 DEPUTY COMMISSIONER BACKER: I
24 understand. Thank you.

1 COMMITTEE ON SMALL BUSINESS 26
2 CHAIRPERSON GJONAJ: Does SBS help small
3 businesses when they are sued, ah, for ADA
4 noncompliance? Ah, I know that you have in-house
5 legal services. Ah, is there anything that you
6 currently do for those businesses when they are sued?

7 DEPUTY COMMISSIONER BACKER: So while we
8 do have legal services to help businesses, it's not,
9 it's certainly not around litigation, right? So
10 something like our Commercial Lease Assistance
11 Program, we have, you know, um, you know, legal
12 assistance on contracts essentially to provide that
13 kind of assistance and, and it's worth noting that in
14 the Commercial Lease Assistance Program there is
15 mention both in our guide, um, and, um, you know,
16 around these issues. So if, if a business is having
17 this type of challenge with a landlord and their
18 lease, um, then this is something that they can
19 address there. When it comes to litigation itself, I
20 mean, that of course is, you know, is a, something
21 that's happening between private parties and
22 essentially there's some powering accessibility tool
23 on the website that was created was, was kind of with
24 that in mind, that the city, we are not, right, we
25 are not the enforcement entity since this is a

1
2 federal law. We are not party to the lawsuit and,
3 and, and it's not, um, it's not typical that we'd be
4 involved in that, ah, litigation anyway. So what our
5 recommendation, and so if you go this website, ah,
6 businessaccessibility.nyc it walks a business
7 through, um, the five or six, five or six steps that
8 they should take immediately upon receiving notice of
9 litigation so that they can respond quickly, they can
10 inform their insurance company, um, they can get
11 private counsel, um, and, and again this is in 12
12 languages, but, you know, it really kinds of provide
13 the, those, the steps they should take, um, in, in
14 order to, you know, not ignore the lawsuit, um, for
15 sure but also to, ah, take steps, ah, necessary, ah,
16 to address the situation.

17 CHAIRPERSON GJONAJ: Thank you. That's
18 actually the concern. Ah, first they're not aware of
19 the, ah, ADA compliance. They find out, typically in
20 New York City we find out that we're not in
21 compliance with some form of violation, ah, but in
22 this regard we're, they're finding out through a
23 lawsuit, which would mean that they would have to
24 hire their own attorneys to first defend or respond
25 to the, ah, lawsuit, and then seek to make either the

1
2 necessary, um, improvements to their establishment
3 and settle the lawsuit, money which they don't have,
4 especially in this climate. As you heard in my, ah,
5 opening statement that, ah, New York, New York is
6 second in the country with lawsuits involving ADA
7 compliance, and just alone in January of 2021 1100
8 Title 3 ADA-related cases were filed, the highest
9 number of cases ever in a single month. I'm
10 concerned, ah, as you also heard from Council Member
11 Kallos that the, these small businesses, which are
12 struggling today and certainly would love to comply
13 with ADA compliance and open up their, ah, stores and
14 providing the services and products that, oh, I think
15 you quoted a million New Yorkers, ah, that currently
16 are disabled, ah, let alone, ah, tourists. I'd
17 rather open up the opportunity to do additional
18 business, and we welcome any business. How do we get
19 ahead of this.

20 DEPUTY COMMISSIONER BACKER: You, it's,
21 it's a good question, and I, you know, I really, you
22 know, personally and, and certainly our agency in the
23 city share your concern in this. I, I, um, you know,
24 as much as, um, you know, we've all been aware for,
25 of the ADA for a long time since it was passed into

1 law. Certainly, you know, I give a lot of credit to
2 the BID community certainly in bringing this to our
3 attention, um, around sort of, you know, some of the
4 lawsuits that were occurring and, and, and it's a
5 tough issue. It's something we, we definitely want
6 to continue to work with you on that I, I, you know,
7 that's why, you know, we, you know, SBS made this
8 grant to the BID Association to fund exactly the
9 resource that they told us they needed, right, and
10 so, um, our thought here is that since, as you said,
11 building awareness is really so critical to this,
12 sort of business knows about their responsibilities
13 both, you know, while they're opening, while they're
14 operating, if they, if they face a lawsuit, so, you
15 know, building awareness among small businesses is
16 really critical with this. So I think that resource
17 [inaudible] accessibility and [inaudible] is
18 something we could continue to push, work with the
19 council to push our BIDs, our chambers, our other
20 community partners so that, you know, that there is
21 the awareness and that there is the ability to
22 comply, ah, with ADA before there are, um, before
23 there's private litigation.
24
25

2 CHAIRPERSON GJONAJ: Um, Stephanie, are
3 any of the colleagues looking to ask questions of
4 Deputy Commissioner Backer?

5 COMMITTEE COUNSEL: At this time I don't
6 see any hands, hands raised.

7 CHAIRPERSON GJONAJ: [inaudible] that off
8 Rosenthal. Council Member Rosenthal, and I know
9 that, ah, you worked really hard on this. Ah, Deputy
10 Commissioner, you know, when we look, do you, can you
11 explain the difference between the compliance under
12 the federal, city, and state ADA requirements, or at
13 least the city versus the state, and then the federal
14 requirements? Are they more stringent than the city?

15 DEPUTY COMMISSIONER BACKER: You know,
16 that, there's probably, I'm gonna ask, ah, Ed
17 Friedman, um, to step in and help me with that one.

18 MR. FRIEDMAN: Right. Thank you, Chair
19 Gjonaj for the question. So as you noted, there are
20 different layers. And there's the federal ADA,
21 there's the state human rights law, the city human
22 rights law, and also the city's building code. So in
23 many ways the, the city and state laws do go above
24 the ADA requirements. The interesting thing with
25 regards to these lawsuits is Chapter 11 of the

1 building code is only triggered when work is being
2 done, whereas the ADA has barrier removal
3 requirements that, um, require the business to
4 continually remove barriers, even if there's no work
5 being done. Ah, so there are differences, ah, with
6 the various standards, but they all work in tandem
7 to, ah, make sure that, um, businesses are complaint
8 with accessibility mandates.
9

10 CHAIRPERSON GJONAJ: Thank you, Mr.
11 Friedman. Um, do we offer a time to cure on these
12 violations of noncompliance when we are aware? Do we
13 give these small businesses an opportunity to
14 correct, um, before there's even a lawsuit, or this,
15 ah, do they receive a fine and a violation when
16 they're not compliant?

17 DEPUTY COMMISSIONER BACKER: Do you want
18 to go ahead, Ed?

19 MR. FRIEDMAN: Sure. Um, thank you, ah,
20 Chair Gjonaj. So if you're referring to the ADA,
21 there is no notice and cure, ah, provision right now
22 as, ah, Commissioner Backer noted. We don't enforce
23 the ADA so that is a matter between, ah, the
24 Department of Justice and the person making the
25 complaint. Ah, with regards to the building code,

1
2 um, if the work is being done and, ah, the, there is,
3 it triggers Chapter 11 of the building code that
4 there is a potential fines, but that's different than
5 the ADA.

6 CHAIRPERSON GJONAJ: Thank you. Maybe,
7 um, Phil Monaco can answer that, ah, for the
8 building's [inaudible]. Are we giving small business
9 an opportunity to cure and correct, or when you
10 realize that there is a violation noncompliance of
11 ADA, ah, is it, ah, associated with a violation and a
12 fine?

13 DEPUTY COMMISSIONER BACKER: Well, Phil
14 is also in MOPD, but I don't know, Phil, if you had
15 another stab at that.

16 EXECUTIVE DIRECTOR MONACO: Well, I, I
17 was, I was just gonna reemphasize what Ed said.
18 That's, that's correct. So when it's triggered the
19 building department will, ah, come in and the
20 potential violation, um, you know, it's definitely
21 possible on the Chapter 11. So that's the only major
22 difference as far as enforcement goes.

23 CHAIRPERSON GJONAJ: Does anybody know
24 what those fines are for, ah, noncompliance of
25 something such as a, a ramp or a step or a storefront

1
2 that doesn't have the width of a door, ah, to comply
3 or [inaudible]. Do you know what the structure of
4 those fines and what those violations area?

5 EXECUTIVE DIRECTOR MONACO: Ah, even
6 though I did work at DOB for a while, it's been a few
7 years. So I'd be hesitant to, ah, to say. They do
8 vary. That's what I would say. But DOB would
9 probably be better prepared to answer that question.

10 CHAIRPERSON GJONAJ: Do we have anybody
11 from DOB with us, Stephanie?

12 ED FRIEDMAN: We do not.

13 CHAIRPERSON GJONAJ: I'd be interested to
14 know what those fines are. I just, I'm thinking the
15 worst picture possible. Not only, ah, are these small
16 businesses being hit with lawsuits, um, that will
17 require settlement, um, but then in addition the work
18 that needs to be done to comply, and in addition to
19 that a fine from the City of New York and the
20 Department of Buildings were not [inaudible] to begin
21 with.

22 MR. FRIEDMAN: I just want to clarify,
23 Chair, that, again, the fines that you're referring
24 to regarding the city would be if the work is being
25

1 done, ah, with the building code. They're not the
2 same as the ADA, um, situations.
3

4 CHAIRPERSON GJONAJ: Thank you for that
5 clarification.

6 DEPUTY COMMISSIONER BACKER: And it could
7 be worth also noting, Chair Gjonaj, that certainly
8 with something like Open Restaurants, right, a
9 program that certainly the city's...

10 CHAIRPERSON GJONAJ: Yeah.

11 DEPUTY COMMISSIONER BACKER: ...been
12 working on to help, um, you know, the businesses
13 recover from the pandemic, that we, we, no fines have
14 been issued on that. There has been very much
15 exactly what you're, you're mentioning essentially,
16 ah, a warning and an educational process, um, and no,
17 no fines have been issued at this point under that
18 program for ADA issues.

19 CHAIRPERSON GJONAJ: You brought up a
20 great point on the open, ah, streets and sidewalks
21 for in particular our restaurant industry. Um, when
22 they submit their drawings do they have to be ADA
23 compliant? Is that part of the requirement? I
24 think, ah, Deputy.

1
2 DEPUTY COMMISSIONER BACKER: Sorry, I, I
3 mute instinctively and then I can't unmute. Um,
4 sorry. So, ah, well, Ed, you're welcome to jump in
5 here, but, yeah, again, you know, there is the
6 requirement that they're compliant. But at this
7 point, um, the way the Open Restaurants is working it
8 was more of a self-certification process. They are
9 not sort of submitting drawings, as might be typical
10 under the previous, I mean, a sidewalk cafe, ah,
11 regimen. So they are, um, you know, complying with
12 sort of the, the requirements as outlined by DOT, ah,
13 on their website and so they, they need to sort of
14 pre, ah, certifying that they're following those,
15 and, and Ed, I don't know if you want to.

16 MR. FRIEDMAN: Yeah, I'll jump in as well
17 to say, so, yes, there are accessibility requirements
18 and, and we do, um, have a fact sheet on our website
19 that anyone can take a look at, ah, with those, um,
20 standards in place.

21 CHAIRPERSON GJONAJ: Are you aware of any
22 lawsuits that have been filed against restaurants
23 that have participated in the, ah, Open Streets
24 Program?

2 DEPUTY COMMISSIONER BACKER: I'm not
3 aware of any.

4 CHAIRPERSON GJONAJ: That would be
5 interesting.

6 MR. FRIEDMAN: I am not either.

7 CHAIRPERSON GJONAJ: Ah, I want to thank
8 you, um, for participating. I have one last question
9 and I don't know if there's anyone here from
10 Landmarks that can answer?

11 DEPUTY COMMISSIONER BACKER: Um, I might
12 be able to, there isn't, but I might be able to
13 handle it.

14 CHAIRPERSON GJONAJ: Do we know that
15 landmarks, um, those properties that are, ah, that
16 have the status of a landmark repairs, ah, and
17 alterations are not that easily, easily achieved,
18 that requires a process before you can even begin the
19 work. Um, I've heard of issues with landmarks not
20 approving or delaying and further creating a bigger
21 liability on these small businesses. When we think
22 of, you know, landmarks we don't often think of a
23 storefront [inaudible] is a part of the landmark
24 process and perhaps the material that's needed, ah,
25 or the, the size, ah, could not allow them to comply

1 as well as the approval of [inaudible]. Do you know
2 of any such issues, ah, Deputy?

3
4 DEPUTY COMMISSIONER BACKER: Well, so,
5 you know, it's, it's a good question and I, and I,
6 even though they couldn't be here today, I, you know,
7 have a decent understanding of, of how this works,
8 and I think there is, ah, some misinformation at
9 times about the Landmarks law and, and complying with
10 it, and, and I'm sure Wellington could answer this
11 question, too, when it's his turn, as he sits on the
12 commission. Um, but, you know, LPC believes historic
13 buildings can and should be made accessible to all
14 and the commission has a long history of approving
15 alterations to make historic buildings accessible.
16 Um, so, you know, through careful planning and
17 sensitive design there's, you know, a way to
18 eliminate the physical barriers in entry and use of
19 the building, but still complying with the Landmarks
20 law. So, um, I do know in 2019, um, LPC made some
21 adjustments to their rules to make approvals of these
22 things a little more streamlined and done at the
23 staff level. Um, so I, the, the numbers I have here
24 is that, um, you know, between 2015 and 2021, um,
25 that LPC reviewed 209 applications at the staff level

1
2 for alterations to provide barrier-free access, um,
3 and all, um, all applications, ah, were, um,
4 completed and approved at the staff level review and
5 then in addition the full commission has reviewed 142
6 applications and voted to approve all of them.

7 CHAIRPERSON GJONAJ: Thank you for that
8 information.

9 DEPUTY COMMISSIONER BACKER: Sure.

10 CHAIRPERSON GJONAJ: Ah, do you know what
11 the time delay is for the approval process? You
12 mentioned 142 have actually gone through the full
13 process.

14 DEPUTY COMMISSIONER BACKER: Um, I don't
15 know the specifics on time. But, again, I, you know,
16 I think that's why, ah, LPC was doing in 2019 was
17 attempting to shorten the time essentially by
18 allowing more of these, ah, applications be, to be
19 reviewed by staff instead of at the full commission
20 level. So, ah, our goal there is, you know,
21 certainly to streamline, um, these types of processes
22 while still, um, ensuring compliance with both
23 Landmarks as well as ADA.

24

25

2 CHAIRPERSON GJONAJ: Um, I believe we
3 have a question from, ah, Council Member Brooks-
4 Powers. Is that correct, ah, Stephanie?

5 COUNCIL MEMBER BROOKS-POWERS: Yes, thank
6 you.

7 DEPUTY COMMISSIONER BACKER: Hi.

8 COUNCIL MEMBER BROOKS-POWERS: Hi. Good,
9 um, morning to you. I just had two really brief
10 questions. Um, I just wanted to understand, um,
11 better if SBS had been working collaboratively, um,
12 with the Mayor's Office for People with Disabilities,
13 um, just in terms of the education piece, making sure
14 that, um, it is first and, um, just making sure that
15 we are looking to work collaboratively in this space.
16 So that's the first question.

17 DEPUTY COMMISSIONER BACKER: Sure, yeah.
18 I'm happy to take that. Um, yeah, I, I, you know, I
19 can say I've gotten to know Ed quite well because we
20 do work quite closely with MOPD and so, um, you know,
21 I can touch on this in my testimony, but, um,
22 essentially the grant that, that my team and
23 Neighborhood Development provided to the BID
24 Association and Public Policy Lab, um, essentially we
25 received an application for the grant outlining this

1 need. We pulled in MOPD to ensure they had a seat at
2 the table so that these, these materials, they're on
3 businessaccessibility.nyc, were created
4 collaboratively, so we had, you know, the business
5 community and their voice, we had the BIDs as well as
6 the MOPD, ah, at the table in creating them. So not
7 only do the materials really represent, you know,
8 sort of that collaboration, um, then also we got, um,
9 the former, um, general counsel of MOPD has done a
10 training for not only, um, members of SBS's staff,
11 um, the compliance advisors and the small business
12 advocates, but also for, um, all of the BIDs, um, so
13 that everyone was aware of these resources and knew,
14 you know, knew how to speak about them if and when
15 asked and so they could proactively, um, help with
16 businesses comply. Did you have another question?

18 COUNCIL MEMBER BROOKS-POWERS: I did. I
19 was trying to get back [inaudible] thank you. And,
20 um, you know, thank you, Chair for also, um, talking
21 about the, the status, the state of our small
22 businesses, um, and just being someone who's super
23 sensitive to small businesses as well as, um, our
24 M/WBEs as well. I just wanted to understand a little
25 bit more in terms of the outreach that has been, um,

1 done in those spaces, um, as well as your exploring
2 this, ah, this change, and what the impact is gonna
3 be on them. Um, I'd like to understand in light of
4 the current pandemic, 'cause I know in particular in
5 my district, for example, really devastated by the
6 pandemic and we've seen some closures already. Is
7 this gonna bring any, um, the implementation of this,
8 how, how is it going to impact those businesses?

10 DEPUTY COMMISSIONER BACKER: Um, I'm
11 sorry, I may have missed the first part of your
12 question, but when you said spaces you're talking
13 about...

14 COUNCIL MEMBER BROOKS-POWERS: Like for
15 the accessibility, like in terms of the collaboration
16 that you speak of.

17 DEPUTY COMMISSIONER BACKER: OK.

18 COUNCIL MEMBER BROOKS-POWERS: Um, and I
19 know you mentioned that you've worked with like BIDs
20 and, um, some of the merchants, but I want to know
21 more pointedly in terms of like the M/WBES, um, and
22 small businesses, especially in outer boroughs, like
23 what has that level of engagement been?

24 DEPUTY COMMISSIONER BACKER: Sure, sorry.
25 So, yeah, thank you. Um, so, yeah, of course, you

1 know, SBS as, as with many of the agencies have had
2 to respond to the pandemic and move some of services
3 and programs, um, to, to an online or virtual format,
4 um, so, ah, a couple of things. Obviously, you know,
5 we've set up the small business hotline that
6 certainly all businesses can access, um, and we've,
7 we've moved our, some of our compliance advisor work,
8 um, to a virtual, so businesses, um, can have virtual
9 compliance consultations to ensure that they area,
10 um, you know, not only aware of what their
11 requirements are under, you know, ADA or, or other
12 regulations and, and rules, um, but also they could
13 be aware of, right, M/WBE certification or any number
14 of, of services and programs SBS offers. I think,
15 um, in your particular district, um, you know, a good
16 example where we worked quite closely with, um, with
17 REMA, the Rockaways Merchant Association and RDRC, so
18 while they're not a BID, they are, we, you know, we
19 more or less treat them, they're both grantees of
20 ours. We, we, we just recently made, um, you know, I
21 think they're in their second of a three-year grant
22 for both organizations as well as we made a recent
23 COVID recovery grant to both organizations. So, you
24 know, we work closely with them as well as RBA, ah,
25

1
2 further on the peninsula, you know, essentially serve
3 that, you know, they are in the field when we can't
4 be, right, and they have access to all of this
5 information and, and they are, you know, as part of
6 our, as grantees of ours they essentially participate
7 in a monthly training, a cohort-based training where
8 they are learning kind of repeatedly all of the
9 services that SBS offers and other agencies offer, so
10 that they can make those connections and make those
11 referrals to us.

12 CHAIRPERSON GJONAJ: Thank you.

13 COUNCIL MEMBER BROOKS-POWERS: No,
14 that's, sorry. I was gonna say that's great. Thank
15 you. I'm glad that you are connecting with REMA, um,
16 and hope that you're also connecting with groups such
17 as like Morrell's and, um, the Black Resource
18 Network, um, that are also doing some great work on
19 the ground in the outer boroughs as well, so I
20 definitely encourage you to, um, if you have not
21 already worked with those partners...

22 DEPUTY COMMISSIONER BACKER: Definitely.

23 COUNCIL MEMBER BROOKS-POWERS:
24 ...[inaudible] you do.
25

1 COMMITTEE ON SMALL BUSINESS 44
2 DEPUTY COMMISSIONER BACKER: Yeah, well,
3 we'll be, I'll be sure to, um, you know, ah, look.
4 There's, there's a lot of organizations that we work
5 with, but I'll make sure that, um, those are on our,
6 our outreach list, and if not we'll, we'll make sure
7 you can help us make a connection. Thank you.

8 CHAIRPERSON GJONAJ: Thank you, Council
9 Member, ah, Powers for not only the question but also
10 groups, ah, that SBS can further work and educate and
11 help [inaudible]. I see that we've been joined by
12 Council Member Rodriguez and Council Member Perkins.
13 I don't have any more questions, so I'm going to turn
14 it over to the committee counsel. I'm not sure if
15 the other member have any questions for the
16 administration.

17 COMMITTEE COUNSEL: Thank you, Chair.
18 Um, seeing no council member hands raised, I will now
19 turn to public testimony. Ah, council members who
20 have questions for a particular panelist should use
21 the Zoom raise hand function and I will call on you
22 after the panelist has completed their testimony. I
23 would like to now welcome Wellington Chen, followed
24 by Jessica Walker, and then Kathleen Reilly.
25 Wellington?

2 WELLINGTON CHEN: Good morning. Can you
3 hear me?

4 COMMITTEE COUNSEL: Yes, we can hear you.

5 WELLINGTON CHEN: Good morning, ah, Chair
6 Gjonaj, members of the New York City Council. My
7 name is Wellington Chen and I'm testifying today on
8 behalf of the New York City BID Association. I'm
9 also the executive director of the Chinatown
10 Partnership, and thank you for holding this hearing
11 today. The BID Association represents all the 76
12 individual BIDs through the city that serves as
13 stewards of our diverse commercial corridors and
14 neighborhood public spaces. Our mission has always
15 been to support the almost 100,000 local businesses
16 we serve, to keep our neighborhoods clean and safe,
17 and to bring prosperities, ah, prosperity to our
18 communities. Never has our work been more vital and
19 essential than it has been during the COVID-19
20 pandemic. We are pleased to present the testimony
21 today on behalf of the, of Accessibility for Small
22 Business. The NYC BID Association has been working
23 on this issue for years in attempt to help small
24 businesses to comply with ADA requirements. As you
25 know, many small businesses are either unaware of the

1
2 ADA requirements or unable to bear the cost of
3 upgrading their facilities to meet the necessary
4 standard. There have, there have been several costly
5 lawsuits against businesses that have been, that have
6 hurt small businesses that simply do not know how or
7 are not able to comply with this law. We do
8 appreciate the importance of accessibility and want
9 to help find solution to this challenge. The
10 Department of Small Business Services, SBS, has
11 always been a great partner to us and small
12 businesses on this issue. Several years ago we
13 worked with SBS and Public Policy Lab to produce a
14 report on this issue and to create a website that
15 would help small businesses to understand and comply
16 with the relevant laws. That website, as mentioned
17 before, businessaccessibility.nyc, is still live and
18 available today with information in multiple
19 languages. Ah, however, we do recognize that it's
20 not enough to tackle this, ah, important issue alone
21 and why we appreciate the City Council is trying to
22 help. We generally support both bills being
23 considered today, Intro 2097 and 2110. Ah, Intro
24 2097 will require the city to establish the types of
25 financial programs that will actually help small

1 businesses and property owners to undergo the costly
2 construction projects needed to reach ADA compliance.
3 However, it may be difficult to get landlords and
4 tenant to agree on a rent reduction in order to
5 receive a grant. Often we see the costs and
6 responsibility of such projects put entirely onto
7 tenants. Intro 2110 will require SBS to continue and
8 build upon their work to educate businesses about
9 this law and the need for compliance. However, it is
10 very critical to reach businesses with education
11 before they sign a lease. Many problems arise when a
12 business signs a lease, not realizing the storefront
13 is not compliant and the cost of coming into
14 compliance. We certainly support the intents of both
15 of these bills and thank Council Member Kallos for
16 introducing them. We look forward to working with
17 the City Council, SBS, and property owners and
18 tenants to help resolve these issues moving forward.
19 Thank you for the opportunity to testify.

21 CHAIRPERSON GJONAJ: Mr. Chen, I want to
22 thank you for your hard work and commitment to small
23 businesses and the 76 BIDs throughout New York City.
24 I'm grateful to you, as they are and our small
25 businesses are. Thank you for working so hard on

1
2 this issue. It's not often discussed or talked
3 about. So I'm grateful to you for helping educate
4 and bring awareness, ah, to all those that are in
5 business and must be complaint. So I'm looking
6 forward to working with you.

7 WELLINGTON CHEN: Thank you, thank you
8 very much.

9 COMMITTEE COUNSEL: Thank you,
10 Wellington. Next we'll be hearing from Jessica
11 Walker, followed by Kathleen Reilly. Jessica.

12 JESSICA WALKER: Hi, good morning. Ah, I
13 am Jessica Walker, the president and CEO of the
14 Manhattan Chamber of Commerce. We're a nonprofit
15 organization that represents and supports the
16 business community across the borough. And, as you
17 can imagine, our current focus is squarely on
18 accelerating New York City's economic recovery in the
19 wake of COVID-19. Ah, to that end I do want to thank
20 you for holding a hearing on this important topic.
21 Ah, and before I, I jump in I just wanted to, ah, say
22 hello to all council members, but especially to the
23 new council member, Brooks-Powers. Ah, I look
24 forward to working with you. Um, so ADA laws are
25 absolutely critical, um, but they are absolutely

1
2 being abused by lawyers who are trying to make a easy
3 buck, and most of the complaints that we're seeing,
4 ah, against businesses right now are not driven by
5 advocates but by lawyers. And this is actually
6 reminiscent, ah, I'm sure the people on this
7 committee will remember the, the accessory signage
8 issue we saw a few years ago when people were calling
9 311 to complain about signs being out of compliance
10 all of a sudden. And of course many people believed
11 that that sudden spike in calls was driven by the
12 sign makers who were looking to boost their
13 businesses. Um, we think that the same type of
14 thing, ah, is happening here. Um, unfortunately,
15 building owners often bury, ah, in the commercial
16 leases that the ADA liability falls squarely on their
17 business, the business tenants. And so we have seen
18 firsthand, one of our small business members found
19 this out the hard way. He was forced, it's a
20 boutique flower shop, um, so, you know, they do good,
21 they do pretty well in terms of revenue, but, um, you
22 know, this is certainly not a multi-million-dollar
23 business. Ah, and they were forced to retain a
24 lawyer, a very costly lawyer, ah, one that he pretty
25 much probably couldn't afford, to address one of

1
2 these complaints, and it really did almost put, put
3 him out of business. Um, I think the two bills being
4 considered are well intentioned, but may not be
5 workable for a few reasons. But, um, I do think that
6 something that was mentioned is really critical, and
7 that is that there should be a cure period where
8 business owners are notified and given the time to
9 correct the issue. Um, I think that's, that's really
10 key. And short of that, 'cause I do understand that
11 there, ah, you were talking about who has
12 jurisdiction here, but short of that perhaps the
13 Department of Consumer Affairs and Workforce
14 Protections, ah, could be allowed to mediate some of
15 these complaints. I think that that would be hopeful
16 in terms of, ah, disincentivizing lawyers from making
17 excessive complaints, ah, but all the while, of
18 course, making sure that our city is more accessible,
19 which I think is the goal for, for everyone here.
20 Um, what we obviously do not want is for small
21 businesses to have to close because the costs of, of,
22 you know, getting towards accessibility is so great.
23 Ah, so happy to, to chat more about that. Ah, but,
24 again, this is an important issue and, and I
25 appreciate you taking it up today. Thank you.

1 COMMITTEE ON SMALL BUSINESS 51
2 CHAIRPERSON GJONAJ: Thank you, Ms.
3 Walker, and thank you personally for all the work,
4 the relationship that we have. I think there's a lot
5 more to do especially around this [inaudible]
6 protecting those businesses and protecting, ah, those
7 that, ah, [inaudible] had disabilities [inaudible]
8 quality of life that they should enjoy and benefit
9 from. So thank you.

10 COMMITTEE COUNSEL: Thank you, Jessica.
11 Go ahead, Chair, sorry.

12 CHAIRPERSON GJONAJ: No, ah, Jessica,
13 you, you said that maybe these bills don't go far
14 enough. Is there any thoughts, ah, as to what we can
15 do and that's why these hearings are so important.
16 Ah, anything specific that resonates with you that we
17 can help shape this into a better law, or something
18 that we may not be aware of?

19 JESSICA WALKER: Well, I, I think, you
20 know, the fund in particular, it doesn't take away
21 that disincentive. You're, you're creating a fund to
22 pay the lawyers, so it's not gonna, you know, the
23 excessive, ah, complaints, which are not coming from
24 the right place, it's just, ah, it's not gonna fix
25 the problem and, ah, you know, it, it alleviates, it

1
2 takes that, the burden off of the small business
3 owner, but then it puts it on taxpayers, and so it's
4 not really solving the problem. I really do think
5 that, that moving towards a cure period is where we
6 want to get to, because, um, we do want the streets
7 to be accessible. We do want a city that is
8 accessible. Ah, but like I said, it has to be done
9 in a way that's it's not, um, harming small
10 businesses who have to pay lawyer fees. It's just
11 not productive.

12 CHAIRPERSON GJONAJ: Anything else that
13 you can, ah, add to that, Jessica?

14 JESSICA WALKER: Um, well, like I said, I
15 do think that there might be ways to, to mediate, ah,
16 you know, I'm happy to also, you know, I'm learning
17 more about the issue myself. So if we do need to go
18 the federal government to, to advocate for change,
19 I'm always happy to, to be a part of that. But, ah,
20 but I do think that this is a real threat, um, and
21 particularly, you know, once we do come out of COVID,
22 where we're gonna see a lot of businesses with, with
23 a lot of debt, ah, that if this does start up again,
24 ah, with all of these complaints it could be a real,
25 a really big problem.

1
2 CHAIRPERSON GJONAJ: So we talk about if
3 you are fortunate enough to be a small business that
4 survived the pandemic and crisis now you can have the
5 final nail in your coffin, which could be a lawsuit,
6 as you heard in my opening statement, ah, the average
7 of is a \$16,000 settlement, ah, that these businesses
8 just don't have.

9 JESSICA WALKER: They don't have it.

10 CHAIRPERSON GJONAJ: Ah, in addition, in
11 addition to the money that they would need to
12 actually do the work so that their establishments
13 are in compliance. Um, I [inaudible] maybe a cap on
14 the attorney fees would be the way to do that...

15 JESSICA WALKER: Ah, you know...

16 CHAIRPERSON GJONAJ: ...[inaudible]
17 incentive.

18 JESSICA WALKER: I, I don't know. You
19 know, I, I don't know if that's possible, um, or what
20 that would require, but I do think that, again, that
21 disincentive, um, you know, maybe that is a way to,
22 something to look at.

23 CHAIRPERSON GJONAJ: Thank you. I'm
24 looking forward to speaking to you and continue this
25 conversation.

2 JESSICA WALKER: Thank you.

3 CHAIRPERSON GJONAJ: God bless you for
4 the work that you're doing, Jessica.

5 COMMITTEE COUNSEL: Thank you, Jessica.
6 And last we'll be calling Kathleen Reilly. Kathleen.

7 KATHLEEN REILLY: Hi everyone. Good
8 afternoon. I'm Kathleen Reilly with the New York
9 State Restaurant Association. Um, and thank you so
10 much to the Small Business Committee, Chair Gjonaj,
11 for holding today's hearing and to Council Member
12 Kallos and cosponsors for sponsoring Intros 2097 and
13 2110. Um, overall the legislation has our support.
14 Accessibility and the ADA compliance are so important
15 to us and to the city, and helping businesses meet
16 that standard through education and resources is a
17 helpful way for the city to get involved. On the
18 resources front, the legislation provides for some
19 combination of grants, loans, and in-kind materials
20 and services. From our [inaudible] respective grants
21 and in-kind services and materials would be more
22 preferable and loans would be less preferable. As
23 I'm sure you all know due to COVID restaurant
24 operators are on very precarious financial footing.
25 Many are already taking out significant debt trying

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2 to survive. So whether that's government debt, debt
3 to a landlord, personal debt, it's a very common
4 situation for our operators, and as Council Member
5 Gjonaj, ah, very correctly pointed out earlier,
6 personally guaranteed loans in particular are very
7 risky for operators to take on at this time. So with
8 that in mind we'd hope that this program could be
9 funded in such a way that grants and in-kind
10 offerings are widely available, um, and, and loans
11 would be, ah, sort of the [inaudible] resort. Um, on
12 the final point of that, of that first piece which
13 may require a landlord and tenant to agree to a rent
14 decrease as a condition for receiving assistance from
15 the city, um, as it was previously mentioned we are,
16 we totally agree. We see the intent and we see the
17 rationale that the city is paying for a permanent
18 upgrade to the storefront. It would presumably raise
19 the value of that storefront to the property owner.
20 But if the lease agreement places the onus on the
21 tenant to make that kind of improvement or maintain
22 that kind of, ah, accessibility then the various
23 incentives just might not play out as intended. So a
24 landlord might not feel inclined to lower the rent
25 and then if that prevents the improvement from taking

1
2 place then that's an issue, um, especially in the
3 current sort of shaky rental landscape that we're
4 seeing. Tenants may owe significant back rent or
5 they may have very recently established a new lower
6 rent lease. Um, both of those cases may make it so
7 that a landlord does not want to lower it again. So
8 we're uncertain about how that particular requirement
9 could play out. Of course, for our restaurant
10 operators lower rent is good for them, um, but we
11 just want to flag that as a point that could
12 potentially be a stumbling block, and if we do see
13 landlords frequently blocking upgrades because they
14 don't want to lower the rent we would like to
15 prioritize getting the accessibility upgrade done
16 [inaudible]. On the education front, we're very
17 supportive of increasing the efforts of SBS to inform
18 restaurants and all small businesses about ADA
19 compliance and specifically to tailor those materials
20 to businesses who are in the midst of lawsuits.
21 Everyone has already mentioned them, the sort of
22 nuisance lawsuits [inaudible] actually coming from,
23 ah, ADA advocates are very prevalent. Um, and in
24 that vein we are also aware of certain cutting edge
25 or mostly untested areas of ADA litigation, ah, one

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2 example being businesses being sued because their
3 gift cards don't have Braille. Um, so it's not that
4 we can necessarily expect SBS to give authoritative
5 answers on those topics. But, um, we would ask that
6 they stay current on the frontiers of ADA litigation
7 so that they're best positioned to educate
8 restaurants about obligations and potential risks
9 there. So, to wrap up, we are very supportive of the
10 intent. We're very supportive of any city effort to
11 help improve accessibility and improve businesses'
12 ability to comply with the ADA requirements. Um, and
13 we are looking forward to an ongoing collaboration on
14 this topic with all of you. Thank you.

15 CHAIRPERSON GJONAJ: Kathleen, thank you
16 for the work that we've done together and your
17 partnership. I'm grateful to your input and
18 contribution. Do you see, if you know your industry,
19 ah, has been a target of these lawsuits, have you
20 heard any of the horror stories that I've been
21 exposed to?

22 KATHLEEN REILLY: Absolutely. I mean, I,
23 I don't have specific, um, examples off the top of my
24 head, just because the horror of COVID has been so
25 much more recent and fresh. But definitely pre-COVID

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2 especially, um, we would hear about people being hit
3 with these nuisance lawsuits frequently, and the most
4 recent ones, like the example I gave, um, earlier
5 were areas that are less obvious, like things with,
6 things about a ramp or physical, ah, accommodations,
7 I think people have a better sense of and were
8 familiar with it. Um, but things around, ah, gift
9 cards or definitely digital accommodations is a big
10 one that have been, some people have been hit with in
11 the last few years. Um, so I think that those are
12 areas where people that do need a lot more education
13 because the complaints are happening and we want to
14 protect people, as well as make sure, of course, that
15 their, their facilities are accessible to everyone.

16 CHAIRPERSON GJONAJ: Elaborate on the
17 digital. Ah, I'm not following.

18 KATHLEEN REILLY: Um, so like your
19 website has to be accessible. So I think that
20 includes, um, for example, there's software that
21 reads things out loud for someone who may be visually
22 impaired. So it, basically like if your, if your
23 back end infrastructure did not accommodate tools
24 that would make a website accessible, um, then you
25 could run into an issue there. But, as I'm sure you

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2 would imagine, a lot of small business operators, um,
3 make their own website. They're maybe not very
4 sophisticated. So that's, I think, where you were
5 seeing a lot of friction because they, they weren't
6 aware or didn't have the wherewithal to get their web
7 pages up to snuff. So we were, we were hearing
8 about, um, complaints within that vein.

9 CHAIRPERSON GJONAJ: So you were saying
10 you heard of complaints of a lawsuit that was filed
11 because a website was not accessible to those that
12 suffered from visual or hearing impaired?

13 KATHLEEN REILLY: Yes. Yes, absolutely.

14 CHAIRPERSON GJONAJ: [inaudible] aware of
15 that. That's why these hearings are so important and
16 participants and industries and stakeholders mean so
17 much. Now we'll have to look at that as well. I was
18 not aware of that, or that lawsuit. Thank you, thank
19 you, Kathleen. We'll have to circle back to you on
20 that one.

21 KATHLEEN REILLY: [inaudible].

22 COMMITTEE COUNSEL: Thank you so much,
23 Kathleen. If we have inadvertently missed anyone who
24 is registered to testify today and is yet to be
25 called, please use the Zoom hand raise function and

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2 you will be called on in the order that your hand was
3 raised. I will now turn it over to Chair Gjonaj to
4 offer any closing remarks. Chair.

5 CHAIRPERSON GJONAJ: Thank you, Ms.

6 Jones, and, ah, I want to thank all those that, ah,
7 participated in today's hearing. Certainly I learned
8 more, ah, and I'll continue to do more research,
9 working with the council staff and, ah, the committee
10 and council to determine what actions should be taken
11 as we look back at this bill and make it one, ah,
12 helps benefit society as a whole, protecting those
13 with disabilities as well as our small businesses,
14 and making sure that they just don't become a target
15 of lawsuits that are income-generating for attorneys.
16 So I am grateful. Thank you all, and again, thank
17 you, ah, Ms. Jones for the excellent work and to all
18 those that testified. This hearing is now [gavel].

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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 May 31, 2021