

10/28/2021 Small Business Committee

Oversight – Key to NYC Indoor Vaccination Requirements

Councilwoman Brooks-Powers' statement

Good morning everyone. Thank you to Chair Gjonaj for convening this important hearing and for your leadership, as we work to help small businesses navigate an uncertain economic time.

Just yesterday we celebrated the opening of my new district office in Laurelton with a ribbon cutting. We're located on Merrick Boulevard, a major commercial corridor in Southeast Queens, and I've had many conversations with the small business owners along the corridor who have been working hard to make ends meet during the pandemic. This week I spoke to an owner who was expressing serious concerns about how the mandate is keeping customers outside their doors, and making it harder to schedule staff as well.

We've made great improvements in recent weeks, but District 31 is still one of the least vaccinated districts in the City. As long as our numbers remain low, that means more people in our district won't be able to enter the businesses they want to visit.

I'm particularly concerned that outer-borough businesses will bear an unfair burden, because it is easier for people in these areas to leave the city and shop in places that don't have mandates. Now obviously, things will be a little different based on the area – people in Manhattan probably won't want to pay the toll to New Jersey just to avoid the mandate. But my district directly borders Nassau County, and it's very simple to just travel a couple of minutes, cross the county line and take their business elsewhere. And the ramifications for our communities' businesses are obvious.

One option I would like to explore is petitioning the state government to implement a uniform vaccination policy, giving businesses a standard set of guidelines to ensure that everyone is on a level playing field. It'll also encourage people all across the state, not just in the five boroughs, to do the responsible thing for themselves and their communities, and get vaccinated.

I'm eager to hear testimony from SBS today to see how the agency has been handling enforcement of the mandate, and what they've heard from businesses and customers.

TESTIMONY
BY
COMMISSIONER JONNEL DORIS
NEW YORK CITY
DEPARTMENT OF SMALL BUSINESS SERVICES
BEFORE
THE COMMITTEE ON SMALL BUSINESS
OF THE
NEW YORK CITY COUNCIL
FRIDAY, OCTOBER 29, 2021

Good morning, Chair Gjonaj and members of the Committee on Small Business. I am Jonnel Doris, the Commissioner of the New York City Department of Small Business Services (SBS). At SBS, we aim to unlock economic potential and create economic security for all New Yorkers by connecting them to quality jobs, building stronger businesses, and fostering thriving neighborhoods across the five boroughs. I am pleased to testify on the Key to NYC initiative today, along with Jeff Dupee, the Senior Advisor managing the Key to NYC compliance inspection program.

In the Spring of 2020, it became clear that small businesses would be hit especially hard by the economic impacts of COVID. The agency quickly shifted our work to meet these challenges. SBS created a small business recovery plan designed to jumpstart the economy in the short-term, while laying the groundwork for sustainable small business recovery in the long-term. This small business recovery plan, developed in collaboration with business leaders, industry associations, and government partners, was based on four strategies to ensure an equitable, city-wide economic recovery: 1) support business innovation to increase revenue, 2) equip entrepreneurs with tools to adapt and lower operating costs, 3) foster close collaboration with businesses to cut red tape, and 4) promote equitable economic growth while supporting diverse businesses of the future.

As a result, we launched 40 recovery programs, initiatives and campaigns. Our team received more than 74,000 calls to our hotline, visited more than 175 commercial corridors, hosted more than 800 webinars with more than 55,000 attendees, connected more than 6,000 businesses to \$258 million in local, state, federal and philanthropic funding and assisted more than 4,000 businesses in applying for \$305 million in PPP loans. Overall, SBS has helped New York City small businesses access more than half a billion dollars in aid to weather the crisis and build back stronger. And throughout this work we have assisted businesses of all types across the City — with a special focus on supporting small businesses in the hardest hit communities, including vulnerable minority- and immigrant-owned businesses.

But ultimately, no matter what we do to mitigate the economic impacts, this crisis is a health crisis, and we cannot fully recover until COVID-19 is under control. With the increase of the highly contagious delta variant this summer, health experts advised that additional measures were needed to increase vaccination rates in New York City in order to save lives. Health experts have shown time and time again that vaccines are the most effective way to combat COVID. A study by Yale University estimates that by July of 2021, vaccines had already saved more than 8,000 lives in New

York City. To protect businesses and save lives, more vaccinations were and are needed.

On August 3rd the Mayor announced that Key to NYC would require vaccination proof for indoor dining, entertainment, recreation, and fitness. According to health experts, vaccinations protect the public by reducing the spread of COVID-19 and the risk of severe illness and death. Vaccines also protect businesses — reducing the likelihood of closures due to COVID-19 cases among the staff.

Our job at SBS is to help businesses comply with the City's health policies and to offer them education and support. SBS gathered information and feedback from individual businesses, industry groups and leaders, BIDs, merchant associations, and chambers of commerce. With this feedback SBS created industry-specific guidance documents for entertainment, restaurants, and fitness facilities on how best to comply with Key to NYC. To get the word out, the City created a website landing page, launched a \$10 million multi-platform paid media campaign, and deployed hundreds of canvassers to tens of thousands of businesses. Outreach education was particularly focused on neighborhoods that were identified by the Taskforce on Racial Inclusion and Equity (TRIE) as disproportionately impacted by COVID-19. SBS hosted weekly webinars and staffed a hotline with experts

who answered thousands of calls from businesses. The City also took an education first approach with inspections, and provided warnings rather than violations in many cases.

Additionally, the City expanded vaccine incentives to include a \$100 cash option to individuals receiving their first vaccination, and extended the Vaccine Referral Bonus Program to businesses who helped members of their community get protected.

As Key to NYC continues, the data shows overwhelming compliance by businesses across the city. As my colleague will testify, there have been very few inspections that have resulted in violations. And since the initiative was announced, the number of people vaccinated citywide has increased by nine percent -- nearly 800,000 New Yorkers. Today, more than 85% of adult New Yorkers have had at least one dose of the vaccine. These are the numbers that we hope will continue to reduce transmission, save lives, and keep businesses and the economy up and running.

We've also seen similar programs becoming the norm across the country in both the public and private sector. Major cities, private airlines, vacation resorts and individual businesses have all announced vaccination policies to keep their staff and customers safe. Additionally, the federal government

announced there will soon be a vaccination requirement for businesses with more than 100 employees. These policies reflect the fact that mandates work to increase vaccination rates.

SBS will continue to help New York City's many and diverse small businesses to comply with Key to NYC, and all health precautions needed to fight the pandemic and save lives. By listening to businesses and providing relevant education, outreach and support, we are providing the tools necessary to help businesses weather the crisis. And we all hope, as more people are vaccinated, that we will continue to see a decline in COVID-19 rates in the City. As always, thank you for your partnership in helping small businesses get through the pandemic and thank you for the opportunity to speak on this initiative. I welcome any questions you may have.

**New York City Council
Committee on Small Business
October 29, 2021**

Good morning Chair Gjonaj and members of the Committee on Small Business. My name is Jeff Dupee, and I am a Senior Advisor managing the Key To NYC compliance inspection program. Thank you for holding today's hearing and giving Commissioner Doris and me the opportunity to talk about the success of the Key To NYC program.

As Commissioner Doris said, our goal from the inception of this program has been to focus on working with and helping impacted businesses comply with the simple steps required under the Emergency Executive Order. That's why the Mayor gave a nearly 6 week window from the announcement of the program on August 3rd until the start of enforcement on September 13th. During that time, City staff conducted extensive outreach to every corner of the city—with canvassers going door to door to businesses nearly 59,000 times to distribute educational materials in more than a dozen languages and having multiple agencies host dozens of listening sessions and Q&A forums with businesses, BIDs, trade associations, and community groups.

The inspections themselves are designed to be quick and as non-intrusive as possible. Inspectors only need to check for 3 elements: (1) a sign that can be seen from outside, (2) that the business is checking entering customers for vaccine status and corresponding ID, and (3) a written plan that describes how that business is implementing their process. That's it.

We intentionally made the inspection program business-friendly to limit engagement and disruption, with no gotchas or hyper-technical reviews, no secret shoppers or undercover stings as part of the main inspection program, and with opportunities to remedy certain noncompliance before issuing violations.

Inspections are conducted by inspectors from 10 different City agencies, managed by the Mayor's Office. We have been working hard to ensure that inspections are uniform across agencies—and across our city's neighborhoods—through rigorous quality assurance, data analysis, and weekly training sessions with both inspectors and their agency supervisors.

When the inspection phase of the program began, we focused on inspecting as many locations as possible, and did not reinspect any businesses for the first two weeks. This gave businesses found to be noncompliant an extra period to take any remaining steps they needed to become compliant, with inspectors issuing only corrective warnings.

Combined with the six weeks between announcement and enforcement, this adds up to about 2 months of listening, outreach, education, and supportive correction. In fact, more than 10,000 businesses were inspected before a single violation was written.

And—though the executive order is clear that businesses are subject to violation immediately upon a noncompliant inspection—we have, as a matter of policy, been giving businesses a warning upon the first noncompliant inspection.

The goal is not to fine businesses. The goal is to support businesses to successfully implement the requirements of Key To NYC and to let businesses lead the way. New Yorkers want to go where they feel safe, and safe businesses encourage more New Yorkers to get vaccinated—and in turn, more New Yorkers can fully and regularly support our local businesses throughout the 5 boroughs by engaging in activities that make New York City the amazing place it is.

This education and support-first approach has led to an astoundingly high compliance rate. As of this Wednesday, we have inspected 20,843 businesses that offer indoor dining, fitness, or entertainment and have only issued a total of 21 violations—one in the Bronx, two in Brooklyn, 13 in Manhattan, two in Queens, and three in Staten Island. We have found that most businesses that received a warning during their first inspection were then found to be in compliance during subsequent inspections.

I thank you for allowing me the time to give you background on the Key To NYC compliance inspection program and look forward to answering any questions you have.



In regards to the Key to NYC vaccine mandate

Good afternoon. My name is Kathleen Reilly, and I am the NYC Government Affairs Coordinator for the New York State Restaurant Association. We are a trade association representing food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City, and our industry continues to be disproportionately hurt by the lingering impact and losses of the Covid-19 pandemic.

We are here today to discuss the implementation of the Key to NYC vaccine mandate program, and specifically, the challenges that restaurants are experiencing as a result of this mandate. I have heard people in the public sphere assert that checking for vaccine status should be easy, after all, we check IDs to enforce the drinking age already. But remember: not all restaurants have a liquor license. Not all restaurants normally have a host checking people in at the door. Not all restaurants even have servers out on the floor. Furthermore, it's neither new nor politicized that there is a drinking age, and that people must meet it to drink at bars and restaurants. These are all critical differentiators when it comes to enforcing the vaccine mandate.

To see for ourselves what repercussions the restaurant industry now faces from the vaccine mandate, we conducted a survey of operators around the city. The results we saw were striking: over 90% of restaurants report having challenges with their customers, and over 75% reported challenges with their staff. The impact on business was bleak: 76.8% of restaurants reported worse business as a result of the mandates, with 57.6% specifying "much worse." And when it comes inspection time, there is no telling that the inspector from one of 13 agencies knows what they're allowed to ask for. In our survey, of those inspected, about 1 in 5 saw an inspector who asked for the wrong kinds of documents, including staff vaccination records or records of those who dined indoors.

Breaking down the customer challenges even further, we see an astonishing pattern of behavior. Our survey reveals that the following issues are pervasive for restaurants: customers refuse to dine with them after seeing they are enforcing the vaccine mandate (67.2%); customers take extra time at check in and must be persuaded to present proof of vaccine (66.4%); customers cancel future events because of the vaccine mandate (61.6%); customers are hostile towards the host, yelling or swearing at them, (59.2%); customers attempt to bypass the host (51.2%); customers leave negative reviews or online comments because of the vaccine mandate enforcement (42.4%); and finally, customers are physically threatening or violent towards the host (33.6%).

Imagine you are the 20-year-old host at the door to one of these restaurants. How many times would it take for you to be berated, argued with, walked out on, or God forbid, physically threatened before you would have enough? Imagine you are the operator of the restaurant and

try as you might, this keeps happening to your valued staff members who are trying to enforce the industry-specific mandate. Could you stand it?

Circling back to our survey results, we found that 44% of operators had staff members who refused the vaccine and had to be placed on leave. Another 42.4% had to reassign staff to monitor the door, and 39.2% said their staff are spread too thin to easily enforce the mandate. This all comes as a cherry on top for restaurants that entered the summer already understaffed, already spread thin, already forced to cut their operating hours to work with whatever staff they did have. Our restaurant operators are so very tired of being called upon to act as public health enforcers on the front lines of something as divisive as a vaccine mandate.

They also want to know, when does this end? We are an industry that is still struggling hard to get back on its feet and dig out from the debt and losses sustained over the last year and a half. We are an industry whose cost of goods has been rising precariously due to widespread supply chain issues. We are an industry that has still been relying heavily on outdoor dining, which will become even more difficult as colder fall and winter weather come. Meanwhile, our city-wide vaccine rates of adults are extremely high, and our operators have to ask, what will be enough for this administration? We need to have a reasonable threshold in mind (perhaps one that has already been crossed) so that restaurants can have some sense of coming relief. And as long as this program remains in place, we need stronger support from the city, to protect and compensate restaurants who have been paying the price of the city's public health campaign.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

401 New Karner Road

Albany, New York 12205

Lucy Sexton

New Yorkers for Culture & Arts

City Council Committee on Small Business, Key to NYC

Hearing, Oct 29, 2021

Thank you Chair Gjonaj and hardworking members of the City Council. My name is Lucy Sexton and I lead the cultural advocacy coalition New Yorkers for Culture & Arts.

I am here because the Key to NYC mandates fell hard on arts and culture organizations---which includes for profit and non profit small businesses. Culture was the first to close and will be the last to fully reopen. At the end of 2020 NYS reported that culture was the 2nd hardest hit sector, behind gas extraction, which has recovered and ahead of tourism which depends on us to recover.

We have been saying that reopening would mean our expenditures would go up, losing money while our audiences slowly returned. Just as this was starting, we were hit with Key to NYC, which has been devastating economically. It comes

with increased costs for small organizations who are just holding on. These include staff costs for the extra work needed to enforce the vaccine checking, cost of accommodating staff that were allowed to continue working remotely, safety equipment---including new air filters required by the new NYS Heroes mandates, loss of rentals by educational groups and others who are not required to vaccinate, the cost of de-escalation trainings for staff, legal costs as we attempt to insure ourselves against possible fines and lawsuits and to create legally allowable documentation of our safety protocols. The lack of clarity on what we need to do to be in compliance is a huge issue.

A small for profit theater was renting their space to a film crew--a valuable source of income---and they had strict vaccine requirements for anyone in the space. An inspector from the city came to the door. The theater owner asked to see vaccine cards, they did not have them. She said they were not allowed to enter but would talk to them outside. They told her she would be issued a warning for non compliance.

I know that the Key to NYC allows unvaccinated visitors to enter for short periods of time. But a private business has every

right to have stricter safety rules for entry to their space. So if inspectors are not willing to be vaccinated, they need to accept meeting outside the space.

A small dance studio in Coney Island was visited by inspector last week. The owner showed her 10 page safety plan detailing compliance with all aspects of Key to NYC. She was also told she would be issued a warning as she had not filled out the template on the Key to NYC web site. I invite anyone to try and find that template buried on the site. Instead guidelines refer again and again to a written plan, which she had.

We must make clear what is required by businesses, and what is required of inspectors. There is too much room for harassment and unnecessary stress and legal worries.

Finally I want to talk about Mind-Builders in the Bronx, an arts education organization that provides dance and many other art classes for 700 families in THE hardest hit neighborhood in the pandemic. They had the highest COVID death rates, and the lowest vaccine rates. Now they must tell too many of their teen

students that they cannot attend class as their families are too worried about the vaccine to get their teen children vaccinated. These are the families and the children MOST in need of the stress relief, physical and creative outlet, and the extraordinary healing that engagement in the arts provides. At the last testimony on this at City Council in September, the speaker from Mind Builders could not finish her testimony as she was overcome with emotion and tears.

So what has Mind-Builders done: they have conducted seminars and webinars for their parents, educating them in a respectful way and allowing families to have all their questions about the vaccine answered. They have asked the mobile vaccine van to be parked outside the venue as often as possible. Larger dance organizations like Dance Theatre of Harlem are doing their best to continue to provide classes online. But who is paying for all of this?? The small cultural businesses who are already out of money.

When this initiative was announced, the city proudly said they would spend \$10M on a public PR campaign---which was

absolutely needed. But why can the city find another \$10M ---- from the federal relief money which is specifically designated for public safety and relief to hardest hit sectors.

The city should not be requiring culture to execute public health initiative without financial support.

Further, as Mind-Builders illustrates, our cultural organizations are uniquely positioned to help with culturally appropriate education and outreach on the vaccine and public health. We stand ready to partner with the city to keep all of us as safe as possible. I will end by imploring the city to stop punishing small cultural organizations and provide funds to support them in this critical work at this critical time.



**TESTIMONY BEFORE NYC COUNCIL
COMMITTEE ON SMALL BUSINESS
October 29th, 2021**

Good afternoon Chair Gjonaj and Members of the New York City Council. My name is Elizabeth Lusskin and I'm testifying today on behalf of the NYC BID Association, where I serve as a Co-Chair. I am also the Executive Director of the Long Island City BID.

The BID Association represents the 76 Business Improvement Districts throughout the City that serve as stewards of our diverse commercial corridors and neighborhood public spaces. Our mission has always been to support the almost 100,000 local businesses we serve, to keep our neighborhoods clean and safe, and to bring prosperity to our communities. Never has our work been more vital and essential than it has been during the COVID-19 pandemic. We are pleased to present testimony today on street the Key to NYC vaccine mandate program.

Our small businesses and commercial corridors at large have struggled to survive throughout the pandemic. From mandatory closures at the depths of the stay-at-home orders to the slow return to today's "new normal," this has been a challenging time unlike any other. Many of our brick and mortar businesses - big and small – were struggling to survive even before the pandemic, as storefront vacancies had already been on the rise. The sad truth is, it continues to get harder and harder for businesses to make it here, and government mandates – including those related to labor, taxes, red tape, and now public health – continue to pile on.

We support the myriad public health programs enacted to help stop the spread of COVID-19 in order to get our City back on its feet, and the Key to NYC program is certainly the boldest effort yet to encourage vaccination amongst New Yorkers. We fully support the intent of the program yet must raise one overarching concern – that the weight of this mandate falls on our businesses more than anyone else, and is in effect a transfer of public health responsibility to private businesses. It is they who must hire or redeploy existing, limited staff; it is they who have been told to fire long term staff who otherwise have legal exemptions from vaccination; it is they who face confusing and disruptive inspections; it is they who have had to absorb the hostility and sometime aggression of patrons unhappy with the mandate; yet it is they who have to pay stiff fines, even as the noncompliant customer has no punishment.

This mandate has exacerbated an already well-documented worker shortage during the pandemic since businesses have had no choice but to terminate workers who either refused or for whatever reason were unable to obtain a vaccination, and because it makes it harder to hire new workers, who have already balked at being the mask enforcers, and now struggle to be the Key to NYC enforcers. Businesses have also lost income, as they have had to remove indoor seating because it is impossible for them to absorb the requirements of the Key to NYC program. This mandate is also contributing to the ever-rising costs of doing business in NYC.

Imagine the small coffee shop struggling to survive that must now hire an additional person to check vaccination statuses at the door. This city continues to pass the buck of its policy decisions on to businesses, and the smallest businesses feel that weight more than anyone. We've testified at countless Council hearings that our businesses are dying a death by one thousand cuts, and this is yet another one.

We are pleased that the City has taken a warn-first approach to enforcement, with only a small number of fines issued to date. We are concerned, however, about a potential crackdown that could cost individual businesses thousands of dollars in fines. We expect that those having the most difficulty with compliance to be those small businesses in our most vulnerable communities. We urge leniency as enforcement continues.

We certainly hope that this program achieves its goal of helping NYC reach a high vaccination rate. We hope that this mandate can then be repealed as soon as possible so that our businesses can turn back to just that – doing business – and not enforcing the city's public health policies. Thank you very much.



Testimony to City Council Committee on Small Business

Submitted to City Council Committee on Small Business on October 29, 2021

Prepared by Dance/NYC

Presented by: Gregory Youdan, Jr., Research & Advocacy Coordinator

On behalf of Dance/NYC (www.dance.nyc), a service organization that serves over 5,000 individual dance artists, 1,200 dance-making entities, and 500 non-profit dance companies and the many for profit dance businesses based in the metropolitan New York City area, including BIPOC (Black, Indigenous, and Peoples of Color) dance workers, immigrants, and disabled dance workers. Dance/NYC embeds the values of justice, equity, and inclusion into all aspects of its operations and frames the following requests through the lens of those values. Dance/NYC joins colleague advocates working across creative disciplines in thanking you for your leadership during this time and requesting:

- 1. Clearer compliance and oversight guidelines for employers, employees, and patrons of arts and cultural businesses affected by Key to NYC; and**
- 2. Allocation of American Rescue Plan Act funding to arts and cultural businesses toward additional expenses incurred to comply with Key to NYC.**

Dance/NYC expresses its gratitude to the City Councilmembers, City Officials, Mayor's Office and other dedicated workers who have contributed to the recovery of the city's arts and culture sector. Arts and cultural organizations were the first to close at the start of the pandemic, and remain one of the City's hardest-hit sectors. While the public health goals of Key to NYC are laudable, its implementation stands to cause economic hardship to the City's still struggling arts and cultural field. With respect, there are further considerations to be made to Key to NYC guidance and oversight in order for arts and cultural organizations, particularly the hardest-hit small budget organizations, to recover, thrive, and be sustainable.



Since the start of the pandemic, Dance/NYC has been conducting the *Coronavirus Dance Impact Study* (<http://bit.ly/DNYCImpactSurvey>), which is a comprehensive research study on the impact COVID-19 is having on the dance sector. Dance/NYC's Coronavirus Dance Impact Survey found that dance organization, group, and project budgets shrunk by nearly one-third (31% on average) due to earned and contributed revenue losses. 18% of dance organizations, groups, and projects believe that permanent closure is likely or extremely likely; 84% of those facing permanent closure have budgets under \$100K. Separately, Dance/NYC has been tracking organizational closures and is aware of at least 25 organizations and facilities that have permanently closed their doors due to the pandemic; the majority of which includes studio facilities which are primarily small businesses and beacons in their communities. In Dance/NYC *Defining "Small-Budget" Dance Makers in a Changing Dance Ecology* (www.dance.nyc/sbmdmdata2020), we found that 83% of these organizations have existed in NYC for over a decade and 43% have existed for more than 20 years. Infrastructural support to facilitate compliance with Key to NYC is crucial to ensuring the resilience and long-term sustainability of the City's arts and cultural sector.

Arts and cultural businesses fall under two of the three industry categories affected by Key to NYC: fitness regulations for dance studios and schools, and entertainment regulations for theaters and presenting venues. Nearly every business in the arts and culture sector is impacted by mandated guidance and subject to inspection, enforcement, and oversight by the City. Recent feedback from Dance/NYC constituent organizations points to inconsistencies in enforcement from inspectors. While the enforcement effort across City agencies is appreciated, it appears inspectors from various agencies are not coordinated in their compliance requirements and reporting procedures. This is leading to confusion for businesses, specifically regarding required or suggested templates for organizational plans, the structure of warning and fine systems, and the extent of the inspector's scope of responsibility to review paperwork and/or enter a facility to monitor activities. Additionally, some organizations have encountered resistance from inspectors to comply with organizational plans that are stricter than those outlined in Key to NYC, such as requiring proof of vaccination for any and all persons entering a facility for any length of time,



including City inspectors. Equitable enforcement of Key to NYC begins with providing affected organizations with the information and resources they need in clear and accessible ways and carries through the actions of City inspectors responsible for enforcing the mandate.

Noncompliance carries steep fines that small budget arts and cultural organizations still in recovery from extended closures cannot risk incurring, particularly when guidance and enforcement procedures remain unclear. It is essential that Key to NYC enforcement reflect the realities these organizations face in integrating this City mandate into their operational guidance and infrastructure by providing contextualized, comprehensive information to affected businesses. Measures to consider for the Key to NYC website include: 1) descriptive context around the templates, documentation, and actions included in compliance requirements, and 2) transparency around which City agencies will conduct site inspections, including details about their role in and the parameters of the inspection process.

Given the range of organizational size, structure, and budget capacity in the arts and culture sector, each business faces distinct challenges in complying with Key to NYC. Many small budget organizations have incurred significant new expenses directly related to Key to NYC compliance. These include staffing expenses such as: 1) hiring new employees to check vaccination status and monitor points of entry and egress; 2) training all new and existing employees to verify and/or document vaccination status; 3) ensuring all new and existing employees have the resources and information they need to de-escalate potential conflict with patrons over vaccination compliance; and 4) retaining pay for unvaccinated staff members who are not able to work remotely. Operational expenses include: 1) the administrative cost of creating new organizational policies and protocols that comply with Key to NYC mandates and regulations from performing arts unions; 2) upgrading or installing new HVAC components and air filtration systems to comply with the HEROES Act; 3) installing indoor and/or outdoor structures and barriers to facilitate vaccination verification for large numbers of patrons; 4) shifting previously planned in-person programming to virtual formats, or in some cases cancelling programming altogether; and 5) providing reasonable accommodation to unvaccinated patrons through virtual or outdoor programming. Businesses are also facing the possibility of



increased insurance rates and legal expenses to answer potential suits from employees and/or patrons. In addition to these increased expenses, businesses are confronting an ongoing loss of revenue due to decreased attendance to programming, classes, and performances, as well as the loss of rental income due to cancellations from unvaccinated patrons. It is crucial that affected businesses, particularly small budget arts and cultural organizations, have access to City funds to comply with this City mandate. We ask that the City look to American Rescue Plan Act relief funds intended to support the recovery of industries impacted by the pandemic to ensure that arts and cultural businesses survive the implementation of mandatory public health regulations.

The impact of Key to NYC goes far beyond the businesses themselves. For studios and performance venues that provide services to independent artists, the repercussions of organizational interruptions, displacement, and closures are compounded; losing access to these spaces puts the working lives of arts workers and the art itself at risk. These impacts are felt most acutely by artists and organizations led by and primarily serving BIPOC, immigrants, disabled people, and other communities with less access to capital reserves, which in turn stands to exacerbate historical inequities in the field. Providing clearer guidance, equitable enforcement, and funding for businesses to comply with Key to NYC is a concrete investment in both arts and cultural organizations and individual arts workers and is desperately needed to ensure the long-term survival of our City's arts workforce. Implementing these changes to Key to NYC has a twofold benefit: 1) ensuring equitable oversight and enforcement of public health measures to provide clarity and mitigate punitive fines, while 2) directly supporting the financial viability and sustainable longevity of organizations that incur additional expenses for mandated compliance. Taken together, these measures provide much-needed relief during the pandemic and ensure the long-term capacity of arts and cultural spaces to serve arts workers and their communities.

Dance/NYC joins the City's arts and culture sector in asking for the above measures to ensure the longevity of small businesses and arts and cultural organizations that have long been an essential part of the communities in our City. Arts and culture can lead the City's economic



recovery, and financial and logistical support for Key to NYC compliance can help ensure their resilience, growth, and long-term survival.

For Dance/NYC and its constituents, the most urgent priorities are:

- 1. Clearer compliance and oversight guidelines for employers, employees, and patrons of arts and cultural businesses affected by Key to NYC guidance; and**
- 2. Allocation of American Rescue Plan Act funding to arts and cultural businesses toward additional expenses incurred to comply with Key to NYC guidance.**

We thank you in advance for your consideration and commend the City's ongoing efforts to support economic recovery and cultural resilience. Now is the time to act so that arts and cultural businesses, arts workers, and their communities continue to thrive for years to come. We look forward to the opportunity to ensure that New York remains a vibrant capital for arts and cultural organizations to operate and grow sustainably within their communities.

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**New York City Council Committee on Small Business
Key to NYC | October 29, 2021**

Thank you Chair Gjonaj, Speaker Johnson, and members of the City Council for the opportunity to provide testimony about the Key to NYC's impacts on small businesses across the five boroughs.

My name is Nicole Touzien and I am the Executive Director of Dancewave, a Brooklyn-based nonprofit organization and community hub for artists, educators and young visionaries serving 6,000 New Yorkers each year through an expansive portfolio of enriching dance, leadership and career development programs, educator trainings, subsidized studio rentals and incubator space for artists.

After city-mandated closures shuttered the Dancewave Center for six months, Dancewave was one of the first dance organizations to cautiously reopen its doors, carefully following New York Forward reopening guidelines. We spent hundreds of hours working with our Board of Directors, peer organizations, advocacy groups and Operations staff to develop and implement a COVID-19 Organizational Safety Plan. We incurred thousands of dollars in additional expenses to modify our space, support enhanced cleaning, provide PPE to our stakeholders, and to execute health screenings and temperature checks - all of which are still in effect. This investment in time, energy and resources was necessary to ensure the health and safety of our community; however it further disadvantaged our organization's COVID-compromised financial position.

Qualifying as "indoor fitness", Dancewave is compliant with Key to NYC guidelines. As with New York Forward, we spent significant time developing a communications plan, operationalizing the proof of vaccination process, training staff, implementing the program and managing visits by officials to ensure our compliance (we have had at least 5 compliance checks to date). We have done this with minimal guidance and zero financial support at Dancewave's expense.

As an organization promoting inclusivity and restorative practices, Dancewave staff have navigated tense situations and conversations surrounding Key to NYC requirements with diplomacy and grace. We support and prioritize the health, safety and well-being of our community and look forward to a time when we can reinvest 100% of our time and energy to advancing our mission through core programs and services, rather than balancing public health initiatives for which we are untrained and under-resourced.

Given the tremendous labor that New York City's small businesses have been required to provide at their own expense, I urge the Committee to provide funding support commensurate with the losses accrued by the small businesses under Key to NYC, on whom the city's economy relies.

Thank you,
Nicole Touzien, Executive Director

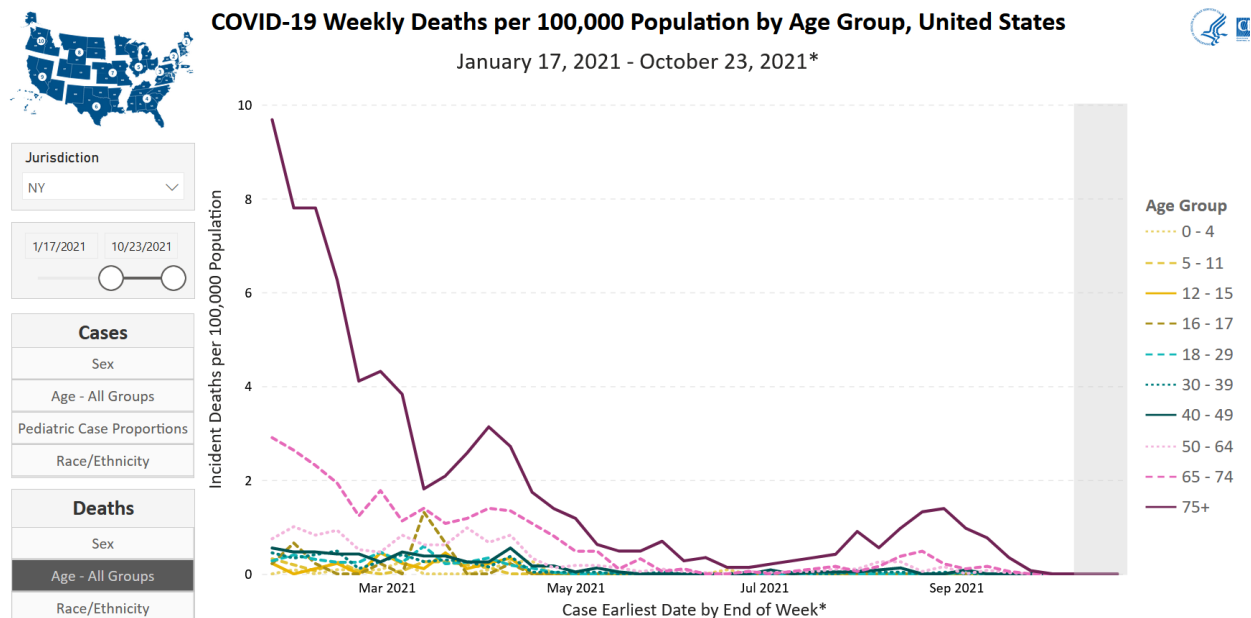
Daniel Gluck
CEO, Museum of Sex
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October 25, 2021

Council Chambers - City Hall NYC
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Your Honor:

- We believe our attendance drop has been significantly exacerbated due to draconian vaccine mandate.
- In addition to a 50% drop in overall attendance due to Covid, and despite a significantly busier city, recent attendance at the Museum of Sex is currently **~10% lower than covid-reopening last year**, an additional 25% drop in attendance from 6 weeks prior (seasonal adjusted rate should be $\geq 0\%$).
- Demographic impact: Our 70% black and Hispanic audience has been reduced to less than 35%.
- Low risk: Death rate of our under 35yo audience has been at lowest point of the year.



- Uncertainty: **NY businesses have not received any targets** from Mayor or administration for infection and death rates required until mandates are removed. This lack of planning causes major levels of uncertainty and inability for businesses to plan and assess the future market.
- In combination with the dismal local tourism (**75% lower than normal**) we are suffering undue hardship. We believe the mandates should not be applied to all groups and ages equally and believe our black and Hispanic communities are unduly affected.

Alternatives such as proof of negative testing, low fever, masks, etc. should be considered to allow patronage of businesses and alleviate our hardships.

I declare under penalty of perjury under the laws of the State of New York that the above is true and correct.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Gluck', written in a cursive style.

Dan Gluck



The following was submitted by Music Workers Alliance to be considered as part of the testimony delivered in connection with the Friday, October 29th at 10:00 a.m. public hearing the City Council Committee on Small Business is holding to address oversight of the Key to NYC vaccination and safety guidance. Key to NYC mandates vaccinations for patrons and employees of businesses conducting indoor fitness, dining, and entertainment activities. The mandate is having a broad impact on arts workers and arts organizations.

There is an egregious lack of medical exemption for entertainment venues with “New York’s Key to the City” vaccine requirements. This policy makes it impossible for artists and musicians who **cannot get** a vaccine to work. Those who perform live to earn an income put the owner of the entertainment establishment at risk for a considerable fine (which increases with each infraction) if they allow an unvaccinated individual to perform. It also makes it impossible for these individuals to get other entry level jobs to replace this lost income, since most of those other jobs are in the service/entertainment industry as well. This basically takes away the livelihood of some of the people who are already most vulnerable.

One Person’s Story.

I am a bass player, native to NYC and pre-pandemic I was very active around the city as well as on various touring circuits.

Are They Able to Work Even Though They Can’t Get Vaccinated? Yes.

I have two conditions that are byproducts of having untreated Lyme Disease for a long time, and those conditions make vaccination (of all kinds, it would be ill advised for me to get the flu shot, for instance) risky for me. The first is called Mast Cell Activation Syndrome (MCAS), which is basically a blood cell disease wherein your mast cells react to benign or no stimuli. This means that even though I have no “real” allergies, I have anaphylactic reactions (heart palpitations, hives, inability to breath etc) to various foods, environmental toxins (like mold), high heat and even stress. I manage it by eating a very restrictive diet and taking two antihistamines twice a day. Beyond making it hard to find something to eat on the road, it has never interfered with my career. The other condition is called Acute Neutropenia, and it basically means that I have developed a deficit of the white blood cells that create antibodies. That condition has affected my work life more directly. I get pneumonia and the flu often and easily, for instance, which can make playing large concerts and flying on airplanes a concern, but I’ve always been able (and allowed) to manage it in my own way- it’s never directly interfered with work.

No One-Size-Fits-All Protocols for those with Chronic Illness.

My doctor is pro vaccine and also thinks I shouldn't get the vaccine, and that's based on years of collecting very intimate data about my specific case. I happen to have a combination of risk factors that make it very risky and possibly pointless to get the vaccine (high risk of anaphylaxis from the shot, low likelihood of developing antibodies due to Neutropenia, meaning I would have the worst possible reaction and maybe not even get the immunity). A huge issue with the mandate is that there aren't really one-size-fits all protocols for chronic illnesses. Some people with MCAS can get vaccinated, others can't. For this reason, the CDC does not consider MCAS to be a contraindication because they cannot say holistically that ALL people with MCAS categorically cannot get the shot. Similarly, even though all experts agree that people with MCAS need to be vaccinated in a facility where they can be injected with adrenaline and/or epinephrine in case they go into anaphylactic shock, many specialists think MCAS patients should still get vaccinated because, in their estimation, anaphylaxis is more treatable than COVID-19. However, because of my specific case (and hey- because I think I have a right to not have to choose between not working anymore and going into anaphylactic shock and then being injected with adrenaline for a treatment that probably won't even work for me), I've decided that that's not the road I'm going to go down.

No Way to Apply for a Medical Exemption for the Vaccine Mandate.

The issue with countries, cities, etc, creating medical policies is that the exemptions would also have to happen at the city or federal level and that just doesn't work because chronic illnesses are usually somewhat unique to the person afflicted with them.

The Vaccine Mandate requires them to disclose their medical condition constantly

A large part of my concern (that I don't think people understand the severity of) is that, because this mandate puts the onus on the person who can't get vaccinated to explain their situation, I have had to disclose to my colleagues and employers what my (theoretically private) medical status is. This onus, mandate or no mandate, has actively lost me work because people now see me as either a threat to their health or a threat to their gig because they think it's too risky to hire me if I get sick. It is worth noting that no one ever asked me about these things pre-Covid even though it was an identical risk level for me then. This information I have to give (plus way more on the legal end of things whenever I want to do a gig now) is exhausting and unnecessary.

Vaccine Mandate Clashes with ADA Compliance

The reality of my situation is that, because of the mandate, I've had to become an expert on my own medical condition as well as the ADA (Americans with Disabilities Act), EEOC Guidelines, the CDC and title VII of the Civil Rights Act of 1964. I have been able to use this information to advocate for myself at venues but constantly explaining how these laws function is an enormous time suck that has completely overtaken my life, and as I said above, having to constantly disclose my disabilities has certainly lost me work. Forcing people with disabilities to disclose specific information about their disability actually does violate the ADA. I know most venues in NYC are generally not ADA compliant anyway, but saying for instance "you have to provide a doctor's note" is trickier than you would expect. That note basically can only say "my patient cannot be vaccinated". Revealing the information that I am willingly giving up to you all here is

considered excessive because it may cause the employer to further discriminate against the employee. Normalizing a negative test as an entry option is a net good for EVERYONE and would save me the hours I spend every day working as my own lawyer.

ADA Compliance Guidance from the city is insufficient.

One thing to mention is that the city did roll out guidelines on how workplaces can be ADA compliant in the wake of the vax mandate- however they did not list masks or negative tests as an option/none of their front-facing suggestions can really be applied to live music. The City gives an example that demonstrates how it is “impossible” to create a reasonable accommodation at a concert, they don’t outline how such accommodations affect the risk of being fined:

https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/KeyToNYC_FactSheet-Business.pdf

What is an alternate solution to a vaccine mandate that would work for this person?

Negative tests and masks are an easy option!

How to best support people who can’t get vaccinated for medical reasons?

I think the best way to support people in my position would be to advocate for venues to require either a vax card or a negative PCR test. I don’t think this is a big ask and my personal opinion is that everyone should be getting regular testing anyway, since breakthrough cases are so common. Since vaccinated people can still contract and spread COVID, my experience has largely been that many people have stopped getting tested and/or wearing a mask and that’s a situation that’s dangerous not just for me, but for everyone.



National Association of Theatre Owners • New York State

311 West 43rd Street, Suite 301, New York, NY 10036 • 212-493-4097

October 27, 2021

Hon. Mark Gjonaj
Chairman
Committee on Small Business
New York City Council
1478 Williamsbridge Road
Bronx, NY 10461

Re: T2021-8030 Oversight - Key to NYC

Dear Chairman Gjonaj:

I hope that you and your family are doing well during this difficult time. On behalf of the movie theatre trade association, NATO, Theatre Owners of New York State, Inc. ("NATO"), thank you for the opportunity to submit written testimony regarding the "Key to NYC" vaccination initiative. NATO supports the Key to NYC, because the best way to put the pandemic behind us all is to promote vaccination. However, NATO would like there to be a sunset provision on this proof of vaccination requirement based upon clear public health metrics.

As you may know, the past twenty months were dreadful for the movie theatres in New York City, and across the country. On March 17, 2020, theatres in the City were ordered closed by the Governor, and remained closed until March 5, 2021, when the Governor allowed New York City theatres to reopen at 25% capacity. That's fifty straight weeks without a film showing in a theatre in the City. During these fifty weeks without a single customer, the theatres continued to pay their rent, and paid City inspection fees, such as \$92,000 for Department of Buildings elevator and escalator inspections. Unlike restaurants or bars, the theatres could not set up their product outside, or offer it to go. The capacity limits became 33% on April 26th, and then were lifted altogether on May 19th.

It is worth pointing out that the closure of New York City theatres also resulted in a ripple effect throughout the movie theatre industry. With both New York City and Los Angeles theatres ordered closed, which collectively represent almost 20% of the nation's ticket sales, studios chose to either delay new releases, stream them for at home viewing, or screen them simultaneously in both theaters and homes. That left theatres in other markets without new features, or without audiences. Now that the theatres are back without capacity limits, new releases are on the horizon. Major family friendly films like "Clifford the Big Red Dog" and "Encanto" are coming in November, along with expected blockbusters like Marvel's "The Eternals", "Matrix 4", and a new "Ghostbusters" movie. Unfortunately, New York City attendance is still down 70% by comparison to 2019.



Despite these struggles, theatres were largely unsuccessful in receiving financial assistance at the federal, State, or City levels. The “Save Our Stages” language in the federal stimulus package only helped privately held independent theatres that met the following criteria: have fewer than 500 employees, function only domestically, and operate in 10 or fewer states. Unfortunately, the Alamo Drafthouse, AMC, Cinemark, Cinepolis, National Amusements, Reading Cinemas USA, and Regal theatres in the City are excluded from this federal assistance. All told, that means that over half of the theatres in the City received zero assistance from the federal stimulus, and even those that received federal assistance are still struggling to stay afloat.

As we head into the holiday season, NATO is hopeful to put this painful pandemic in the past. NATO members implemented [CinemaSafe guidelines](#), to meet or exceed the various federal, State and local COVID-19 requirements on ventilation, masks, cleanings and social distancing. To date, there is no known instance of COVID-19 transmission in a movie theatre because of these protocols.

In addition to implementing COVID-19 mitigation measures like those in the CinemaSafe guidelines, NATO supports the Key to NYC initiative. Simply put, NATO believes that vaccination is good for public health to fight this pandemic, and any efforts to fight the pandemic are good for business. We want people being vaccinated to bring an end to this pandemic, and we want people seeing films in theatres. If the former helps the latter, and prevents further disruption to business, we are supportive.

That is why the movie theatres teamed up with the Mayor’s Office on the “Vax to the Movies” campaign. We want to thank Mayor de Blasio for his leadership on this effort. Additionally, we want to thank Commissioner Tisch at DoITT and Josh Sidis at the Vaccine Command Center, as well as their hard-working teams, for their guidance and availability surrounding many questions about the implementation of the Key to NYC, and the Vax to the Movies campaign.

Because of this collaboration, vaccination buses, vans, and tents at movie theatres helped administer 1,734 doses of COVID-19 vaccines over two weekends. Now that it appears that the Pfizer vaccine will be approved under an emergency use authorization for children ages 5-11, the theatres hope to further promote vaccination at theatres later this Fall. So, if you have yet to receive a safe, free and very effective vaccine, please come on down to one of the participating theatres for a vaccine, a \$100 gift card, and enjoy a movie and some popcorn.

Why does NATO support Key to NYC and promote Vax to the Movies? Because the vaccine is safe, it’s free, and it’s effective. And, it is the best way to bring an end to this pandemic. With an end to the pandemic, we can all move forward, and fully bring business back.

Despite our wholehearted support for the Key to NYC, and the Vax to the Movies campaign, though, we do think that at a certain point both efforts should sunset. Although less than initially

expected, there still is a burden on businesses like theatres, who are responsible for checking vaccination status at the door. Additionally, thousands of unvaccinated patrons were turned away at the door, and that lead to lost revenue. Currently, 85% of adults are vaccinated in NYC. Once vaccination rates among adults, and children ages 5-17, reach an acceptable level as determined by public health officials, we would like the Key to NYC requirements relaxed. Perhaps that vaccination rate can also be assessed along with other public health metrics, such as spot positivity, new hospitalizations, and the rate of transmission? Doing so would provide a clear signal to the business community of a hopeful conclusion of not just the Key to NYC, but also of the pandemic itself.

Thank you very much for your time and the opportunity to submit this written testimony. I am happy to answer any questions.

Sincerely,



Robert Sunshine
Executive Director

CC:

Councilman Perkins
Councilman Dinowitz
Councilwoman Rosenthal
Councilwoman Brooks-Powers
Councilman Levin
Councilman Rodriguez

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
oversight ☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Kathleen Kelly

Address: Albany

I represent: NYS Restaurant Assn

Address: 409 New Karner Rd.

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**THE COUNCIL
THE CITY OF NEW YORK**

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☐ in favor ☐ in opposition

Date: 10/29/21

(PLEASE PRINT)

Name: LUCY SEXTON

Address: 160 6th Ave

I represent: NEW YORKERS FOR CULTURE

Address: same

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**THE COUNCIL
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Name: Tonnel Davis

Address: 1 Liberty Plaza

I represent: SBS

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

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☐ in favor ☐ in opposition

Date: 10/29/2021

(PLEASE PRINT)

Name: Jeff Dupée

Address: 241 Ocean Pkwy

I represent: Mayor's Office

Address: _____

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