

April 28, 2020

Dear Chair Cohen and Members of the Committee on Consumer Affairs & Business Licensing:

United for Small Business NYC (“USBnyc”) is a coalition of community organizations across New York City fighting to protect small businesses and non-residential tenants from the threat of displacement, with a focus on owner-operated, minority-run businesses that serve low-income and minority communities. The threat of displacement to New York City’s small businesses and non-profits has been exacerbated by the COVID-19 crisis.

Our members and clients (small businesses, sole proprietorships, cooperatives, street vendors, and non-profits who provide goods and services to the public) are seeing a catastrophic drop in income, up to 100 percent. Because of this, we need swift action to protect small businesses and non-residential tenants from displacement and closure. We applaud the relief package introduced by Speaker Corey Johnson and Members of the Council, including one bill before this committee: Intro 1912-2020.

The extensions proposed by Intro 1912 of the current eviction moratorium address a growing concern of small businesses regarding their ability to continue occupying their commercial spaces due to the economic devastation caused by the coronavirus pandemic. While this policy offers some relief for small businesses attempting to survive through this crisis, the relief is only temporary. Without further legislation or government action, once the moratorium is over, small businesses will be liable for back rent owed during the periods they were closed due to the virus with no projection that their revenues will be restored to pre-pandemic levels, let alone increase beyond those levels to cover this additional debt. The legislature should not presume that property owners will, at their own discretion, agree to suspend or reduce payments of rent.

We would like to highlight three concerns we hope the Council will take into consideration as this bill proceeds through the legislative process, in order to strengthen the effect of this bill and include all small businesses it intends to protect.

First, many small businesses in the City rent workspaces under license agreements which tend to include provisions allowing licensors to terminate agreements after one late payment and enter the space to take possession of the business’ belongings, essentially conducting an eviction that would otherwise be illegal if the business was a residential tenant. Unfortunately, if a property owner or licensor of commercial space decides to exercise their contractual right to re-enter and take possession when a licensee defaults, Intro 1912 would not apply as there is no court-ordered warrant of eviction in this situation.

Secondly, the protected party under this bill should more clearly include commercial tenants who are named personally on a lease or rental agreement. Sometimes small business owners do not name their business as the tenant on a commercial lease (typically because they had not formed a legal entity by the time the lease was executed, they could not afford to form a legal entity, or the property owner preferred to name the business owner personally as the tenant). As a result, if the property owner files an eviction proceeding against the small business tenant, the named respondent is a natural person. Under this bill, if the protected party is not a named business, it must fall within the definitions under § 3(b)(1). To prevent any confusion for commercial tenants named personally under their lease agreements, language should be added to ensure this bill applies to such tenants.

Finally, pursuant to § 3(a) of the bill, the second moratorium extension would not apply to a tenant who has “effectively waived” its opportunity to show the court that it has suffered substantial loss of income due to the coronavirus. This exception can be an issue (and lead to more litigation) for commercial tenants who were improperly served, corporate tenants who were unable to get representation in court, or tenants who otherwise were unable to appear in court.

Our coalition supports Intro 1912 and the Council’s intent to provide some relief to the City’s most vulnerable small business owners and their employees. However, the small business community should not be expected to continue paying rent without income in a city where commerce has come to a halt. We urge the Council to take additional measures of rent relief are necessary to ensure small businesses are as prepared for the long-term economic effects of the virus as possible. The City should exercise its power under the State Home Rule Law to do so¹.

Sincerely,

United for Small Business NYC

- Association for Neighborhood & Housing Development
- Brooklyn Legal Services Corporation A
- Chhaya CDC
- Cooper Square Committee
- Municipal Arts Society of New York
- NYC Artist Coalition
- NYC Network of Worker Cooperatives
- Street Vendor Project, Urban Justice Center
- TakeRoot Justice
- Volunteers of Legal Service
- Women’s Housing and Economic Development Corporation

¹ See New York State Constitution, Article IX. The powers of local governments to act in their own jurisdiction are meant to be construed broadly by the courts. N.Y. Mun. Home Rule L. § 51 (providing that home rule powers “shall be liberally construed”); N.Y. Stat. Local Gov. § 20(5) (same). Article IX authorizes local governments to adopt local laws in a wide range of fields including the government, protection, order, conduct, safety, health and well-being of persons or property within the locality. N.Y. Const. art. IX, § 2(c)(ii)(10); Municipal Home Rule Law § 10(1)(ii)(a)(12); N.Y. City Charter § 28(a). In addition to the Home Rule powers enumerated above and granted by the Constitution and specific State statutes, municipalities have police powers.

Legislation which has for its object the promotion of the public welfare and safety, falls within the scope of the police power and must be submitted to even though it imposes restraints and burdens on the individual.

People v. Ortiz, 479 NYS2d 613, 620 (2nd Dept 1984). The police power has been defined generally as the power to regulate persons and property for the purpose of securing the public health, safety, welfare, comfort, peace and prosperity of the municipality and its inhabitants. *Village of Carthage v. Frederick*, 122 N.Y. 268 (1890) (affirming local law imposing responsibilities on owners of real property in its limits). In New York State, it is as old as cities themselves. Further, it is “a proper exercise of the City’s police power to regulate ... businesses in the public interest,” *Short Stop Industrial Catering*, 127 Misc.2d 363, 366 (Sup. Ct. N.Y. Co 1985), and there is no exclusion for the regulation of real estate businesses.