



April 28, 2020

Dear Chair Gjonaj and Members of the Small Business Committee:

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 and many will not be able to resume normal operations for many months. 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 two bills before this Committee: Int. Nos. 1914 and 1932.

These measures, however, are only a start. Most significantly, our members and clients need rent relief. No one should be profiteering from the crisis, including banks, creditors, large landlords, and corporations. Small businesses and their employees, who are the least able to bear the financial burden of the shutdown, should not be forced to do so. Rent relief is critical for commercial tenants who have no source of income and those who have seen drops in revenue due to government restrictions. The City has the legal authority to suspend rents for commercial tenants impacted by the pandemic and the appropriate government response to it. It can create a mechanism through which small landlords that can demonstrate they need assistance as a consequence of missing revenue apply for it.

Introduction Number 1914: Harassment of Tenants Impacted by COVID-19

Small businesses often find themselves subject to harassment by their landlords. Broadening the definition of harassment to include tenants impacted by COVID-19 or those who receive rent concessions or forbearance during the COVID-19 period demonstrates our commitment to protecting the most vulnerable small business tenants.

While we believe this protection could be made stronger by expanding protections to all commercial tenants, regardless of whether they receive any form of rent concession or forbearance, we also highlight that small business tenants rarely have the resources to exercise their rights under the harassment statute as it entails hiring a lawyer to go to court. In fact, very few commercial tenants have ever filed harassment cases against their landlords.

We recognize that this bill may provide leverage and protection to small business tenants, but we also reiterate that tenants are facing harassment due to their inability to pay rent at this time. Int. No. 1914 does nothing to suspend the obligation to pay rent. Small business tenants need rent relief in addition to these protections.

Introduction Number 1932: Personal Liability Provisions of Leases for Commercial Tenants Impacted by COVID-19

Small businesses signing leases in their entities' names often have little or no assets in their businesses' names, so many small business owners sign personal guaranties to induce

landlords to give them commercial leases. This can put owners at risk of personal financial ruin if they are unable to meet their lease obligations. With the mandated closures, many small business owners are facing this risk right now. We support this legislation, but it must be strengthened to clarify that it expands coverage for the City's small businesses in three ways.

First, the "COVID-19 period" is too short. While businesses may reopen before September 30, 2020 (or the applicable later date as specified in the legislation), the financial ramifications of the virus will last beyond this period. Furthermore, many small businesses and non-profit cultural spaces that rely on public assembly may not be fully operational for long after the COVID-19 period.

Second, the definition of "personal liability provision" is ambiguous and underinclusive and may leave some of USBnyc's most vulnerable members and clients with personal financial exposure. Many commercial leases include guaranty agreements that are executed simultaneously with the leases but that are separate documents, rather than as provisions within the leases themselves. Personal guarantors signing such guaranties must be protected by Int. No. 1932 for the legislation to have its intended effect. Further, many small businesses do not have legal entities and sign leases in the name of a d/b/a or in the business owner's name. These business owners have not signed guaranties, but they face substantial financial risk and should be protected from personal liability where they are unable to pay their rent because of COVID-19.

Lastly, the legislation states that no personal liability provision may be "enforced" during the COVID-19 period, but it is unclear what "enforced" means. As written, this bill may prevent a landlord from suing an individual to enforce a guaranty during the COVID-19 period, but it will not prevent that individual from being personally liable. New York City's small businesses are protecting the public by remaining closed or operating at a reduced capacity right now, but their owners should not face the possibility of long-term legal liability for their mandated closures or reductions once the COVID-19 period has passed.

Our coalition supports Introductions 1914 and 1932 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.

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