



TESTIMONY OF THE VOLUNTEERS OF LEGAL SERVICE
MICROENTERPRISE PROJECT
INT. NOS. 1914 & 1932

May 1, 2020

Dear Chair Gjonaj & Members of the Committee on Small Business:

We, the Microenterprise Project Team at Volunteers of Legal Service, write to provide testimony in support of two bills currently pending before the Committee on Small Business: Int. Nos. 1914 and 1932. This testimony is in addition to the testimony submitted to the Committee on behalf of the members of the United for Small Business NYC (“USBnyc”) coalition, which we join in full and incorporate by reference herein.

Volunteers of Legal Service (“VOLS”) was established in 1984 to fill a void in legal services left by severe federal budgetary cuts. We serve and assist the most vulnerable members of the community with some of the most pressing legal issues in multiple facets of their lives. In particular, the VOLS Microenterprise Project provides a wide range of legal services—entity formation, commercial lease negotiation, and intellectual property protection, to name a few—to New York City’s small businesses. Since its inception, the Microenterprise Project has worked tirelessly to ensure that the needs of New York City’s small businesses are met through advocacy, community outreach, and direct representation. The majority of our clients are low-income women, immigrants, or people of color. Now, more than ever, small businesses require immediate relief to help them respond to and survive the devastating impact of the COVID-19 pandemic.

As you are aware, the COVID-19 pandemic has created myriad challenges for New York City’s small businesses, which threaten their very existence. That brick-and-mortar convenience store on the corner of your block, that immigrant-owned bakery you frequent on your way to work, and many of the small businesses that contribute to the uniqueness and diversity that define the City of New York, may not be there once the pandemic has subsided. Indeed, closure of all non-essential businesses has provoked substantial decreases in revenue, leaving small businesses unable to meet financial obligations and pushing them to the brink of permanent closure. Moreover, the devastating financial impact of the COVID-19 pandemic threatens to place small business owners, many of whom have personally guaranteed the debts and obligations of their businesses, on the verge of bankruptcy and lifelong financial setback. To ensure our clients, the most vulnerable small businesses in the City, do not succumb to the financial distress caused by this pandemic, they **need substantial government action in the form of rent relief.**

To illustrate the very real and detrimental impact of the COVID-19 pandemic on all of New York City’s small businesses, we share with you the challenges that our clients—

small businesses operating in diverse industries across all five boroughs of New York—have confirmed that they are currently struggling to address¹:

- **88% of our clients reported decreases in revenue as a result of the COVID-19 pandemic;**
- **57% of our clients reported that their businesses were completely closed as a result of government orders;**
- **67% of our clients reported that they were having difficulty paying or had missed payments of employees' salaries;**
- **86% of our clients reported having difficulties meeting financial obligations;**
- **40% of our clients with commercial leases indicated that they had already missed commercial rent payments, and 89% indicated that they anticipated missing commercial rent payments in the future;**
- **90% of those who had initiated conversations with their commercial landlords about the possibility of receiving a rent abatement, deferment, or cancellation for the period of the pandemic were either still negotiating, received no response, or received a negative response;**
- **33% of our clients with outstanding loans indicated that they had already missed commercial loan payments, and 90% indicated that they anticipated missing commercial loan payments in the future.**

These staggering numbers reflect the challenges faced by all of New York City's small businesses and demonstrate just how dire the need is for small business relief. It is beyond dispute that small businesses are the backbone of the American economy, and yet, existing relief does not go nearly far enough to save New York City small businesses from the detrimental effects of the COVID-19 pandemic. As Chair Gjonaj observed at the hearing for Int. Nos. 1914 and 1932, on April 29, 2020, New York City has spent substantially more on its parades than its small businesses. This is unquestionably insufficient, particularly in light of the fact that small businesses generate billions of dollars in sales and payroll taxes for the City of New York. We support Int. Nos. 1914 and 1932, and encourage the Council to adopt these measures as part of its efforts to provide New York City small businesses with the relief they need and deserve.

Although Int. Nos. 1914 and 1932 represent a step in the right direction, we share the concerns articulated by the USBnyc coalition. Small businesses are often subjected to commercial tenant harassment and while broadening the definition of harassment to include tenants impacted by the COVID-19 pandemic is helpful, it is not enough to protect our clients from unreasonable landlords, as the burden falls on victims of harassment to file a lawsuit on their own to seek enforcement of the harassment law. Moreover, because small business owners often personally guarantee the commercial rent obligations of the business, it is necessary to render these agreements unenforceable as to defaults occurring during the period of the COVID-19 pandemic. But the proposed legislation language must ensure the following amendments prior to enactment in order to meet its purpose and avoid unintended consequences:

¹ Data obtained from a VOLS survey of 51 small businesses located throughout New York City in April 2020.

1. With respect to Int. No. 1932, the “COVID-19 period” is too short to provide small businesses with the meaningful support that they need and deserve;
2. With respect to Int. No. 1932, the definition of “personal liability provision” is ambiguous, under-inclusive, and could lead to unnecessary litigation producing unforeseeable and unintended results. These obligations most often occur within personal guarantees, a separate contract from the lease or rental agreement; and
3. With respect to both Int. Nos. 1914 and 1932, neither bill provides for much-needed rent forgiveness to offset the revenue decreases associated with the widespread closure of non-essential businesses while rental and other obligations continue.

These and other issues identified in USBnyc’s testimony must be addressed prior to the enactment of the legislation in order to ensure that New York City small businesses are given the relief and protection that they so desperately need and deserve. If the legislation is not enacted and these issues are not addressed, we have no doubt that many of New York City’s small businesses will face permanent closure, and many small business owners will be pushed into bankruptcy. This is an outcome that neither we—the People of the City of New York—nor the New York City Council should allow.

We call upon the City Council to do all that is necessary to **save our small businesses**, including by enacting Int. Nos. 1914 and 1932, as well as rent relief legislation for the period of the COVID-19 pandemic. The Council has the authority to do so under Article IX of the New York State Constitution and the New York Municipal Home Rule Law.² Moreover, with respect to Int. No. 1932 and any proposed legislation regarding rent relief, the Council may, within the bounds of both the United States Constitution and the New York State Constitution, regulate the payment of commercial rent in response to the existing public health crisis.³ We look forward to the Council’s swift action in adopting measures to protect New York City’s small businesses from the devastating effects of the COVID-19 pandemic.

Respectfully,

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² See N.Y. CONST. art. IX; N.Y. MUN. HOME RULE L. § 10 *et seq.*

³ In *Twentieth Century Associates v. Waldman*, the Court of Appeals of New York sustained a New York state law retroactively limiting commercial rent in response to the declared public emergency resulting from World War II and rejected challenges to the law based on Article I § 10 of the U.S. Constitution and the Fourteenth Amendment. 294 N.Y. 571, 582 (1945). The Court held that “[t]he principle is firmly established today that all contracts are subject to the police power of the State, and, when emergency arises and the public welfare requires modification of private contractual obligations in the public interest, the question is not whether ‘legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end.’” *Id.* at 580.