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Saving Manhattan Small Business: A Roadmap for Recovery

This report addresses the ways in which local government can play a key role in supporting and strengthening our small business sector, especially our storefronts. Recent stories from Harlem illustrate the challenges that storefronts are facing. I know of a barber shop and a nail salon that were thriving before the pandemic, but now face financial difficulties. The owners have turned repeatedly to government for assistance but, despite the promises of assistance, no specific program offered met their needs due to eligibility requirements. In another story, an East Side hair salon faced such difficulty this past year that even with an understanding landlord willing to reduce the rent to $100 a month the shop owner opted to close due to the loss of customers. The pandemic continues to exacerbate chronic struggles small businesses face, making the recommendations from my 2019 Small Business Task Force especially relevant.

Following the October 2018 hearing on the City Council Small Business Jobs Survival Act, I convened small business owners, real estate professionals, Community Board members, zoning experts, tenant advocacy groups, lawyers, former NYC Department of Small Business Services Commissioner Gregg Bishop, and New York State Senator Brian Kavanagh. Seeking new solutions to protect the local small businesses essential to the character and identity of neighborhoods, the Task Force proposed how the City could reduce burdens on shop owners:

- *Instituting a loan fund program;*
- *Ensuring all businesses have a commercial lease with clear renewal provisions;*
- *Codifying a commercial tenants' bill of rights; and*
- *Facilitating neighborhood business assistance programs.*

The Task Force's first recommendation, to collect data on empty storefronts from landlords and publish the information in a city-sponsored database, is already on the road to implementation.

The pandemic spurred the City toward more innovative approaches to helping storefront businesses. The expanded sidewalk and roadway dining options created by the Open Restaurants program has been a lifeline for restaurants; more than 5,000 restaurants in Manhattan alone have *participated. Even so, those restaurants are earning far less than they need to survive long term. The hardships posed by the pandemic run through these stories. City government has shown that it can create solutions to the challenges faced by small businesses. But in order to protect and grow storefront businesses at much greater scale, government assistance needs to have more flexible eligibility requirements, a willingness to innovate, and a fine grained approach to targeting assistance.*

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COVID-19 Recovery Bond Program

To help businesses recover from the pandemic, New York City must use the creative financial tools it has leveraged following previous disasters, such as the Liberty Bond Program, which worked to rebuild Lower Manhattan after 9/11.

In July 2002, the federal government authorized $1.6 billion in tax-exempt financing for multi-family rental projects below Canal Street. The New York City Housing Development Corporation and the New York State Housing Finance Agency were each responsible for an $800 million fund created by selling Liberty Bonds. Because the interest was not subject to federal, state, or city taxes, purchasers found the bonds attractive.

New York City should work with New York State to create a COVID-19 Recovery Bond Program in the same vein. The funds raised from the bond issuance would provide affordable financing for small businesses that have operated through the pandemic, and it would fund the reopening of businesses forced to close during the pandemic. The triple tax-exempt status of the bonds along with the goal of bringing back the old normal would encourage investment and help quickly raise funds.

Low-cost financing allows small businesses to reinvest in their storefronts, continue paying staff and suppliers, and maintain a healthy small business community. Payments should be tied to revenue rather than flat monthly fees. Businesses should be able to pay what they can afford to pay so that these loans do not become burdensome. Even with a flexible payment plan, the businesses should be able to pay back their loans considerably more quickly than the Lower Manhattan developers who had to wait years for construction to finish and revenue to begin flowing.

This program would provide a path to bring back businesses and jobs lost to this crisis. Many long-term businesses had successful business models destroyed by an unforeseen situation, through no fault of their own. Bringing these entrepreneurs back into their communities is a necessary part of the recovery strategy and would be an effective way to fill the storefront vacancies visible all across Manhattan.

Lending to businesses that have proven themselves resilient enough to make it through the worst of the pandemic as well as to those entrepreneurs with a proven business model from before the pandemic would reduce the risk for the City and State. The economic activity generated from bringing businesses back and improving those that remain should offset some of the risk as well.

Commercial Lease Reforms

The pandemic has increased storefront vacancies across Manhattan, and has forced many business owners to attempt to renegotiate their leases. This presents an opportunity for policy makers to finally pass commercial lease reforms that protect the small business community.

Although most reform legislation could not apply retroactively to existing contracts, as entrepreneurs refill New York City's storefronts, the City must take steps to ensure all commercial tenants are afforded the same rights and protections through reforming the commercial lease creation and renewal process, simplifying the process for tenants and landlords.

A key part of commercial lease reform is the creation of leases that clarify what each party is responsible for during occupancy, providing a clear path to recourse if a party violates their contractual obligations. The lease renewal process is currently a burden on tenants, whose business and livelihood are tied to their space, leaving them in a poor negotiating position from the outset. The task force recommended a structure for the commercial lease renewal process to provide a fair negotiation framework for all parties and help reduce the number of vacant storefronts in New York City.

One issue highlighted during task force meetings was the number of storefronters who operate without a formal lease, especially in immigrant communities. A March 2019 series of interviews, focus groups, and a survey of nearly 100 immigrant small business owners from the Lower East Side, Chinatown, Jackson Heights, and Kingsbridge found that 19% did not have a lease in their name.[1] The Association for Neighborhood and Housing Development, in partnership with the Immigrant Cultural Corridor Initiative, conducted the research.

Without a formal contract detailing the relationship and responsibilities of the tenant and the landlord, the tenant begins any discussion with the landlord at a precarious disadvantage. The small business owner operates on a month-to-month or week-to-week basis with little certainty of their future, making it difficult to invest in their own business. These tenants can be evicted without notice and are not afforded many of the basic rights other commercial tenants enjoy.

The task force raised concerns that requiring a contractual agreement may harm undocumented immigrants' stability. Many undocumented immigrants start small

[1] Afridi, L., & Drogaris, D. (2019, March 6). The Forgotten Tenants: New York City's Immigrant Small Business Owners (Rep.). Retrieved
https://anhd.org/report/forgotten-tenants-new-york-citys-immigrant-small-business-owners

businesses, unable to find work elsewhere, and those who succeed provide a steady source of income for family and friends. Requiring written rent agreements may make it less likely for landlords to rent to these entrepreneurs for fear of becoming liable for doing business with undocumented immigrants. An additional concern is that formal leases would make this population more vulnerable to unethical U.S. Immigration and Customs Enforcement raids. However, there is no requirement that a lease must be recorded with the New York City Register.

Once the initial lease is in place, small business owners still have to worry about renewing their lease. According to the U.S. Small Business Administration, about 50% of American businesses with employees do not survive five years, and an additional 16% close during the following five years. The standard lease length in retail is 3-5 years,[2] meaning the stores that last long enough to renew their lease have generally proven they can stay in business.

Yet even successful small businesses can find extending their lease to be a difficult, if not impossible task, forcing them to close their doors only to watch their old storefront sit vacant for years. The task force identified three common reasons why storefronts become vacant and then remain so. First is a lack of communication between landlord and tenant. There are many commercial tenants who cannot contact their landlord or never receive a response. The second is timing. Commercial tenants and landlords either wait too long to begin negotiating or run out of time to come to an agreement. The third reason is landlords overestimating the market for their commercial spaces.

Ensuring open communication between the landlord and tenant increases lease renewals. Recently, small business owners have reached out to their landlords in the hopes of restructuring their rent or payments as the pandemic has left most businesses struggling. Many reports indicate that tenants are unable to reach their landlord. The City should require landlords and tenants to share up-to-date contact information. Any time a phone number, mailing or email address, or even a fax number is changed, the other party must be notified. This is a basic best practice that would not burden good-faith landlords and tenants.

Formalizing the commercial lease renewal process provides a fair framework for negotiations and sufficient notice for both parties to begin looking for alternative partners. The task force proposed that no sooner than 150 days and no later than 121 days before the expiration of the lease, the landlord must provide a lease extension proposal or notify the tenant that their lease is ending and the landlord does not wish to extend. In doing so, they begin the “negotiation period.” The City should require both the

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[2] United States Small Business Administration Office of Advocacy. Frequently Asked Questions, June 2016. www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

landlord and tenant to respond to negotiation inquiries and offers within a reasonable amount of time during the negotiation period. This creates an even playing field where neither party can be ignored and encourages clear communication without forcing the prohibitive costs of mediation or arbitration on the landlord, tenant, or City. With the set negotiation period and communication guidelines, parties who act in good faith should have ample time to negotiate a new lease or find another partner.

Still, there are many landlords who keep their storefront vacant in the hopes of landing a "white whale" tenant, a chain store or successful boutique business with strong credit rating. These landlords overvalue their storefront or believe any loss they take in the short term will be outweighed once they secure a national chain as a tenant. This strategy is harmful for several reasons. There is an economic opportunity loss to both the landlord and small businesses that could operate in that space. Vacant storefronts can also detract from surrounding businesses or other properties.

To mitigate this trend, the City should provide commercial tenants with the option to extend their existing lease for a period no longer than one year if no agreement can be reached during the negotiation period. During this time period, the landlord and tenant would be free to explore the open market as well as continue negotiations. This timeframe would allow both parties to either adjust their negotiating positions or have the time to find new arrangements without damaging each other's business.

If the landlord finds a new tenant, the original tenant would have no less than 90 days before they must vacate the premises. This is not onerous for the landlord or new business; new tenants generally need time to put together plans for the new space and prepare to move in. In most cases, newly signed leases do not begin immediately. This time frame allows the original tenant more time to find a new location and sell off inventory that they may otherwise have to abandon at a total loss.

Some task force members expressed concern that landlords would attempt to game this system by adjusting the length of extended leases. Shortening leases by 90 days would ensure the guaranteed duration of tenancy remains the same despite this new structure. However, there is already a trend toward shorter leases, and 90 days is not a significant amount of time over the total duration of the lease. The benefit of the grace period is in the security it provides tenants at the end of their lease and the ability to plan accordingly. Knowing with certainty when their lease is ending allows the small business to find a new location and offload inventory.

Vacancy Database

The task force's first piece of legislation, requiring the City create a database of empty storefront properties, is mandated by Local Law 157, which I co-sponsored with Speaker Corey Johnson and Council Member Helen Rosenthal. Passed in 2019, the law requires property owners to report vacancy information for commercial spaces on the second floor and below to the NYC Department of Finance.

This database, whose implementation has been delayed by COVID, will make accessible much-needed data on exactly where and when vacancies occurred. DOF had until August 23, 2020 to gather information from property owners but extended the deadline to October 1, 2020 due to the COVID-19 pandemic. Consequently, the original release deadline for the dataset (February 23, 2021) has been pushed back and is under review.

The dataset will include address-level data on vacant storefronts. Additional information such as median and average total duration of leases, size of rentable floor area per premise, and rent will be published at the census-tract level. DOF is responsible for updating this information annually and issuing fines to landlords who do not comply with the law. The database will discern vacancy trends throughout the city, spot areas where vacancies are rapidly increasing, and help identify specific property owners and managers who demonstrate a pattern of forcing out small businesses.

Small business owners will be able to take advantage of the database. Vacancy data identifies new storefronts to start a business in or expand into. The same data supports business owners who are negotiating new leases because it provides information on alternative locations in the same neighborhood with the same customer base and reduces the business' reliance on staying in the same spot.

Landlords who fail to submit vacancy information or submit false information will be subject to a fine worth up to 3% of their property's actual assessed value. While there has been much discussion about an additional tax on vacant storefronts or a high registration fee, these penalties would be detrimental by encouraging landlords to conceal vacancy information. Landlords in cities that have financial penalties for vacant storefronts, such as San Francisco and San Antonio, claim the space is active and that they are using it for storage. Legally, this would classify as personal use, and it would be a difficult practice to prevent. The end result is a corrupted dataset that hurts City efforts to help storefronters. Moreover, there are landlords acting in good faith who would be unfairly penalized, especially in times of recession.

This database is especially relevant after my recent survey discovering a 78% increase in Broadway storefront vacancies from 2017-2020. To provide a better picture of the struggle facing small businesses during the COVID-19 crisis, I recreated a storefront vacancy survey I first conducted in 2017. Three years ago, my staff and I walked 244 blocks of Broadway, from the Battery to Inwood, and found 188 street-level vacancies. In August 2020, we walked the same stretch, counting 335 street-level vacant storefronts, a 78% increase in vacancies.

Broadway passes through a diverse cross-section of Manhattan's neighborhoods: small retail strips, commercial districts, corporate towers, blocks of chain stores, the Theater and Garment Districts, areas dominated by two major universities, and the Lower Manhattan financial and residential district. While high rates of turnover and vacancy have been a concern for years along Broadway, the alarming 78% increase in vacancies since 2017 reflects a well-documented pattern of relentlessly rising rents as well as the pandemic that has forced the closure of thousands of businesses, large and small.

This won't be the first time the City has intervened to curb vacancies. In 2012, as a City Council member, I passed zoning protections for small storefront businesses on the Upper West Side as the expansion of national chains-- particularly banks and chain drugstores-- came to dominate many blocks along Broadway, Amsterdam Avenue, and Columbus Avenue on the Upper West Side.

These zoning reforms have stabilized the number of storefronts and prevented the displacement of existing businesses by block-long chain stores, as demonstrated in the City Council's 2017 report "Planning for Retail Diversity: Supporting NYC's Neighborhood Businesses," which found that vacancies on the protected blocks were lower, and there was a higher rate of business retention than on streets without protections. The overall number of active storefronts on Amsterdam and Columbus Avenues remained constant at 503. On Broadway, however, where the City only applied storefront-sizing restrictions on banks and residential lobbies, the number of storefronts declined from 471 to 453 as small businesses were replaced with chains like CVS and Marshalls. Amsterdam and Columbus maintained a 9% vacancy rate during this period, while Broadway vacancies increased from 7% to 9%.[3]

[3] The New York City Council, Mark-Viverito, Melissa. Planning For Retail Diversity: Supporting NYC's Neighborhood Businesses, Dec. 2017.
council.nyc.gov/land-use/wp-content/uploads/sites/53/2017/12/NYC-Council-Planning-For-Retail-Diversity.pdf.

Commercial Tenants' Bill of Rights

As New York City recovers from the pandemic and the vacancies eventually begin to fill, ensuring small businesses have basic protections is crucial, so the City should codify a commercial tenants' bill of rights. Commercial tenants' rights are largely limited to rights detailed in their leases. Beyond the protection from harassment, there are few rights guaranteed by law. Tenants who can afford real estate brokers and legal representation are far more protected than those who cannot, and as small businesses continue to struggle, fewer will have the resources for such outside assistance.

This bill should ensure prospective tenants are provided important information relating to the property and space prior to signing a lease. Landlords should be required to provide a copy of the Certificate of Occupancy, a history of repairs and construction, the building's status concerning the Americans with Disabilities Act compliance, and a history of any violations pertaining to the property. This is basic information every landlord in New York City has available that can help small business owners assess the risk of their investment.

The bill of rights should further require landlords to provide a breakdown of the agreed-upon rent. The breakdown should include an accounting of any "passed-on" costs such as utilities, property tax, commercial rent tax, and business improvement district fees.

The bill of rights should require landlords to notify tenants at least 90 days in advance of any increases in rent. This practice would prevent landlords from price gouging small businesses until they are forced to vacate the premises. It also provides a small business with the necessary time to find a new location if there is a legitimate rent hike that the business cannot afford. A similar practice should be applied to non-criminal breaches in a lease. Landlords should notify tenants of these breaches but provide them the time necessary to comply.

This legislation would create transparency and facilitate decision making. Providing entrepreneurs with these documents and protections would reduce the risk that comes with starting and operating a small business without harming real estate owners.

Neighborhood Business Assistance Programs

Business owners have less time than ever before. The first ones to clock in and the last ones to clock out, they are attempting to keep their business afloat while being understaffed, struggling for revenue, and trying to prevent the spread of COVID. City agencies are not allowing walk-ins, nor are most banks, consultants, accountants, or other sources of assistance. We need to meet them where they are, safely in their communities or with up-to-date, easy-to-use online resources.

Small business owners' interactions with the government tend to revolve around inspections, fines, and taxes. Oftentimes, this causes a reluctance to reach out to government agencies and officials for help or services. Moreover, storefronters work long hours. They do not have the time to wade through government websites and brochures to find the services they could use nor do they have the time to visit government agencies in person.

We have to meet them where they are. To that end, New York City must partner with non-profit organizations, Community Boards, business associations, and other stakeholders to bring services to small businesses. The City must make its many resources available in an effective way. The City should work with partners to connect small businesses to pro bono services and professionals that can assist with legal issues, financial literacy and planning, and establishing and maintaining an online presence.

Small business owners often do not have access to appropriate legal advice or representation. However, thousands of lawyers in New York City provide hours of pro bono legal services every year. The City should facilitate lawyers connecting with businesses in their neighborhoods to take advantage of this resource.

For the small business owners who lack training in financial planning or literacy, the City should provide free workshops that teach the basics of accounting, inventory management, and financial planning. There are some nonprofits that work to connect small businesses with financial planners who offer their services for free as well as free online systems that can help small business owners on a day-to-day basis. The City should actively maintain a resource webpage that can help connect businesses that need more than just training to these experienced community partners.

In the modern economy, every small business needs to carefully manage their online presence. A few bad reviews on Yelp can sink a restaurant. Without a website, young New Yorkers may not know a business exists. Wrong addresses on Google can send customers to another borough. Small businesses need to be trained to manage these situations. The City should provide guides and workshops to help walk business owners through the process.

Conclusion

Storefronters need help. Many traditional difficulties, like finding and keeping a place to do business, have grown steadily worse for decades only to become monumental challenges with the onset of COVID-19. If we do not act now, we will see more and more storefronts go empty as small businesses struggle to compete with Amazon, national pharmacies, and chain stores. To level the playing field, the City needs to provide greater support to shore up neighborhood businesses.

Through loan funds, the City can help small business owners weather storms and invest in their businesses even if they lack the high-credit scores of the international corporations they are competing with. Legislation that helps small businesses stay in their spaces is long overdue. These proposals will ensure small businesses have the opportunity to negotiate a new lease while giving them the time and ability to find alternative solutions. At the same time, a tenants' bill of rights would ensure a standard level of protections for all small business owners, regardless of whether they have the funds for legal fees. Through local business support programs, the City can show small businesses how to adapt to the digital economy and connect to legal and financial experts. The City can get feedback from businesses about their difficulties and respond more quickly.

We need to act as a partner to small businesses and address the mounting challenges they face, or the small business landscape New York City is known for will cease to exist.

Manhattan Borough President's Small Business Task Force

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