

## TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK TO THE COMMITTEE ON SMALL BUSINESS AND THE COMMITTEE ON CONSUMER AFFAIRS & BUSINESS LICENSING OF THE NEW YORK CITY COUNCIL REGARDING INTRO NOS. 1914, 1916, 1932 AND T 2020-6107, AS PART OF THE COVID-19 PACKAGE

April 29, 2020

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association. Founded in 1896, REBNY represents commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. REBNY strongly supports policies that expand the local economy, grow and improve the City's housing stock, and create greater opportunities for all New Yorkers. Thank you to the City Council for the opportunity to provide our perspective regarding COVID-19 related legislation.

As we know, very few industries have been shielded from the economic downturn brought by COVID-19, including the real estate industry. As a result, it is essential that every proposal put forth by all levels of government as well as the private sector emphasizes collaboration to find solutions and does not prioritize one constituency over another.

Unfortunately, many of the bills in this package upend the organic solutions that businesses and property owners are engaging in during these trying times, and artificially select winners or losers when almost all parties need relief. It does not appear that the bills being proposed in the package take that into account.

REBNY appreciates the importance of issues surrounding the hospitality industry and the current state of food delivery services that will be discussed today. REBNY would like to provide comments on the below legislation and share our questions and concerns.

**BILL:** Intro No. 1914-2020

**SUBJECT:** Harassment of commercial tenants impacted by COVID-19.

**SPONSORS:** Council Members Adams, Kallos, Van Bramer, Chin, Louis, Ayala and Speaker Johnson

Intro 1914 makes threatening a commercial tenant based on their status as a COVID-19 impacted business or person a form of harassment punishable by a civil penalty of \$10,000 to \$50,000.

REBNY agrees wholeheartedly with the Council that protecting tenants from the harassment of any kind, notably during the COVID-19 crisis, should be a priority.

In general, it is important to clearly define what harassment means when most of the normal ways our society interacts with each other have changed. REBNY has concerns surrounding

how Intro 1914 will affect the conversations that are already happening between tenants and owners organically that could lead to solutions on rent relief. Notably, if either side of those conversations is now fearful that such conversations could be misconstrued as harassment, needed relief for commercial tenants could be lost. For example, since the business owner and the building owner can no longer meet at the business, is it considered harassment for the building owner to send more than one inquiry to the business owner's home address?

REBNY also has concerns about how a building owner will understand what constitutes a COVID-19 impacted business. As written, there does not seem to be a contingency on how long a tenant could claim protected status relative to the COVID-19 disaster declaration, theoretically allowing for the protected class to be claimed well after the end of the current pandemic.

Additionally, extending the protected class to also cover businesses who have received a rent concession or forbearance for any rent owed raises questions and concerns. As written, there is no clarity on what would occur if a tenant who has claimed protected status, for example, does not pay rent on a future unit under a different lease.

**BILL:** Intro No. 1916-2020

**SUBJECT:** Requiring the Department of Consumer Affairs and Worker Protection to waive and refund all fees related to sidewalk cafe licenses that are due on or after January 1, 2020, until December 31, 2020.

**SPONSORS:** Council Members Cohen, Chin, Powers, Yeger, Louis, Ayala

Intro 1916 requires the Department of Consumer Affairs and Worker Protection to waive and refund all fees related to sidewalk cafe licenses that are due on or after January 1, 2020 until December 31, 2020.

REBNY supports this commonsense legislation. With so many restaurants, bars and other establishments in the hospitality industry ordered to close resulting in dire financial losses, regulatory relief is necessary now more than ever.

In addition, small, independent store owners are absorbing the costs associated with paid sick leave and obtaining approvals for licenses. The Health Department increased fine revenues by 40% in 2018 and even this year's reined in executive city budget plans on fine increases.

REBNY encourages the Council to evaluate government processes that in normal times can be frustrating. These include the myriad of permits and authorizations needed by a plethora of government agencies that may have lapsed or may require renewals, such as gas authorization from the Department of Buildings. Some consideration should also be given to the potentially necessary pre-opening inspections, such as the ones from DOH and FDNY, that normally would occur pre-operational start after a prolonged closure, and how best to expedite those necessary actions.

REBNY looks forward to reviewing other proposals that would provide targeted relief so that businesses can re-open and the entrepreneurship that marks this city can find new ways to thrive.

**BILL:** Intro No. 1932-2020

**SUBJECT:** Personal liability provisions of leases for commercial tenants impacted by COVID-19.

**SPONSORS:** Council Members Rivera, Kallos, Van Bramer, Rosenthal, Chin, Ayala and Speaker Johnson

Intro 1932 prohibits the enforcement of personal liability provisions in commercial leases or rental agreements involving a COVID-19 impacted tenant where the default or other trigger event happened during the COVID-19 state of emergency. Threatening to or attempting to enforce such a provision would also be considered a form of harassment.

REBNY is opposed to Intro 1932 for legal and practical reasons. At a time when the City should be finding ways to work together with the private sector to provide relief to all small businesses and workers, we cannot afford to pick winners and losers as it pertains to commercial lease contracts and other contractual agreements between two parties.

This legislation proposes the seemingly impermissible, unilateral amendment of existing, valid contracts. It is not clear that the City Council has the authority to do this. We should instead focus on solutions that would benefit everyone including collaborative support for business interruption support, rent relief and commercial mortgage forbearance from Congress.

Additionally, 3,342 New York City condominium and cooperative properties, including HDFCs, contain retail space. Retail spaces in condominium and cooperative buildings are fundamental to the financial viability of these residences, as they keep homes affordable by offsetting costs that would otherwise be paid for by the building's tenants. The Council must consider how this bill impacts over 100,000 households that depend on this rent revenue to keep their homes affordable.

**BILL:** T2020-6107

**SUBJECT:** Guidance on license and permit renewal deadline extensions.

**SPONSORS:** Council Member Matteo

T2020-6107 requires the Mayor to publish guidance online listing all city licenses and permits covered by section four of his Emergency Executive Order Number 107 issued on April 14, 2020. This bill also requires the Mayor publish guidance on renewal procedures and dates for such licenses and permits no later than 14 days before the state of emergency ends, with no renewal deadlines until 90 days after the emergency has ended.

REBNY supports T2020-6107. With small business relief necessary, providing additional extensions of deadlines as well as guidance that will help small businesses navigate city

licenses and permits is a critical function that only government can provide in this difficult economic time.

### *CONCLUSION*

As we work to address reopening our economy while prioritizing the health and safety of all New Yorkers, we need to support proposals and actions that embrace collaboration. Additionally, we must understand that most small businesses and industries across our City need real and immediate financial relief. Establishing programs that postpone or eliminate obligations in one part of the City's ecosystem without recognizing the realistic consequences for New Yorkers is irresponsible.

Many of the proposals fall short of understanding this reality. REBNY is ready and willing to work with the Council and appropriate City agencies to find solutions that balance relief for both small businesses and workers, the obligations of property owners, and the needs of tenants.

Thank you for the time and consideration of these points.

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