

November 2011



red tape **REPORT**

Reducing Red Tape So Our
**Small Businesses Can
Grow & Create Jobs**



Office of

Bill de Blasio

PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Background

New York City's 190,000 small businesses¹ are engines of job creation. The city's small businesses have an outsized impact on job growth, adding jobs through start-ups and expansions at twice the rate of large companies.² With unemployment at a stagnant 8.8%³ and the middle class in decline, it is critical that government help small firms thrive and grow.

In recent years, there have been numerous City efforts to ease the burden of fines and bureaucratic red tape on small businesses. While some of these efforts have been successful, others remain incomplete. In no area is this more apparent than in the issuance and adjudication of fines, especially those for low-risk violations. Too often, the city's small business owners are subjected to unnecessary fines they can ill afford, forcing them to choose between straining their balance sheets by giving up hard-earned revenue or shuttering their doors for a day to go and fight the bureaucracy.

The Bloomberg Administration continues to reap record revenue by fining small businesses for easily corrected, first-time violations. In the current fiscal year, for example, the Department of Consumer Affairs anticipates collecting an unprecedented \$10.2 million in fines from businesses, up from \$6.8 million in 2009.⁴

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Research by the Small Business Administration at the federal level shows that small businesses bear a disproportionate cost of complying with regulation compared with larger companies.⁵ City agencies can alleviate this condition—or they can worsen it. Constituent cases investigated by Public Advocate Bill de Blasio reveal a sharp need for the City to improve its enforcement of first-time violations and to make it easier and less expensive for small businesses to comply with the law—while continuing to protect consumers.

¹ <http://mycrains.crainsnewyork.com/cityfacts/2011/small-business/number-of-small-businesses#ixzz1duNgfmij>

² <http://www.labor.ny.gov/stats/PDFs/enys0810.pdf>

³ <http://www.docstoc.com/docs/103630673/NYSDOL-November-17-2011-Job-Numbers-Report>

⁴ http://council.nyc.gov/html/budget/PDFs/2012/dept_consumeraffairs.pdf, page 4

⁵ <http://archive.sba.gov/advo/research/rs264tot.pdf>

By improving the adjudication process at City agencies, developing better classification system to distinguish high- and low-priority violations, and offering business owners an opportunity to cure violations, the City can cut substantial red tape and reduce costs for both small businesses and taxpayers.

Helping Small Businesses Cut Through Red Tape: A Mixed Picture

Following months of deliberation and study, and after hearing hundreds of hours of testimony, the Citywide Regulatory Review Panel made a number of thoughtful recommendations in 2010 that would have meaningfully reduced burdens on the city's small businesses. Acting on those recommendations, the Bloomberg Administration and City Council announced a host of reforms, including a business owners' Bill of Rights and the launch of an interactive website that allows businesses to comment on proposed new rules and learn how to comply with existing laws.⁶

Unfortunately, some City agencies have been slow to heed the Panel's advice and fully enact the recommendations as promised, to the detriment of small businesses.⁷ Several City agencies that oversee small businesses do not allow owners to contest violations by phone, mail or online—requiring an in-person trip to lower Manhattan. Agencies in many cases allow businesses to settle fines without appearing in person, making it less time consuming for

2010 Proposals

Two incomplete reforms announced following the recommendations of the Citywide Regulatory Review Panel include:

Expand adjudication reform initiatives to meet the need of small businesses

The Administrative Justice Coordinator would work with agencies to facilitate ways for small business owners to avoid having to appear in person before administrative tribunals, such as by settling or contesting violations by mail or telephone or over the Internet.

Develop innovative enforcement strategies that avoid automatic Fines & penalties.

The Administrative Justice Coordinator would work with all agencies to ensure that small businesses are provided with an opportunity to cure certain violations without having to automatically pay a penalty or fine.

⁶ http://www.nyc.gov/html/nycrules/downloads/pdf/regulatory_review_panel_report.pdf

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businesses to pay fines than to contest them—even if they feel the fine was issued in error. Similarly, reforms to allow businesses to fix low-risk violations before incurring a fine are uneven across agencies—with some not yet having begun to fulfill a 2010 promise by the Bloomberg Administration to “ensure small businesses are provided with an opportunity to cure certain violations without having to automatically pay a penalty.”

Mandatory In-Person Hearings: An Expensive Headache

While agencies like the Environmental Control Board,⁸ the Department of Transportation, and the Department of Health and Mental Hygiene have reformed their adjudication process so allow businesses to contest violations online, many agencies that oversee small businesses continue to require cumbersome in-person hearings. The Department of Consumer Affairs continues to require business owners to appear and submit evidence in person when contest a fine. For businesses uptown and in the outer-boroughs and those without a large staff, the in-person hearing represents a substantial cost and inconvenience. Business owners must choose between closing shop for a day to contest a fine in person or paying a fine they may not deserve. Providing alternatives to mandatory in-person hearings will save both taxpayers and businesses money, and make it easier to do business and comply with the law.

⁸ http://www.nyc.gov/html/ecb/html/respond/one-click_form.shtml

Spotlight on Small Business

Mr. Cajamarca opened a neighborhood services and technology store, *Jilguero Multiservices*, along Irving Avenue in Brooklyn six months ago. Mr. Cajamarca, who is a member of Small Business United—a project of Make the Road NY—is the sole employee and speaks limited English. His business grosses \$120 per day. Two months after opening, the store was robbed, and Mr. Cajamarca was forced to pay \$200 to purchase a replacement cash register. While the stolen register had been programmed to print his business's information on receipts, the replacement register was not—a fact of which Mr. Cajamarca was not aware. During an October inspection, DCA fined Mr. Cajamarca \$250 for failing to print the name of his business on receipts. As soon as it was brought to his attention, Mr. Cajamarca immediately fixed the violation—but he now faces a choice between losing a day's revenue to attend a DCA hearing or paying the fine.

Ability to Fix First-Time, Low-Risk Violations

The Department of Consumer Affairs helpfully assembles its regulations into easily-understood guides, explaining what business owners are required to do depending on the type of business they own. At regular Business Education Days, DCA invites owners and managers to learn about existing laws and how to avoid penalties at sites around the city. But when it comes to educating owners on-site in their own stores, there is room for improvement. Businesses in contact with Public Advocate Bill de Blasio's office reported that inspectors immediately issue fines rather than giving an opportunity to quickly correct low-risk Consumer Affairs violations such as location of signage and display of store information on receipts. Despite DCA's efforts to inform business owners of their obligations,⁹ many owners remain unaware that they are not in compliance until an inspector calls it to their attention.

Inspectors from the Department of Consumer Affairs will often not issue fines if only a single violation was found at a business, according to testimony by DCA Commissioner Jonathan Mintz before the City Council. While this practice alleviates some of the burden on small businesses, complaints received by the

⁹ <http://www.nyc.gov/html/dca/html/law/law.shtml#highlights>

Public Advocate de Blasio's Constituent Services hotline indicate the need for a broader opportunity to cure low-risk, first-time offenses before incurring an immediate fine. Businesses report that recent inspections have resulted in fines for violations never before called to their attention—including the size and placement of signage, the inclusion of a store's address on printed receipts and the manner in which return policies are displayed. This pattern is consistent with an enforcement approach focused on maximizing revenue, but it is not the only way to promote compliance with the law and protect consumers.



Spotlight on Small Business

Owners of a family-run grocery store in Flatbush, Brooklyn thought they were going above and beyond what the law required by printing their return policy on every receipt, but regulations require return policies to be posted on signs next to each cash register. During an August inspection, the store was unexpectedly hit with three \$250 fines—one for each of the cash registers lacking a return policy sign. It was the first time the owners had been cited for the violation.

Solutions:

If fully enacted, the reforms promised by the Bloomberg Administration in 2010 would have significantly eased the burden of City regulation on small businesses at a time when the jobs they create are more important than ever. City agencies need to reduce the time and expense required to comply with basic laws so that businesses—especially struggling small businesses outside the main Manhattan business districts—can thrive and expand. In order to streamline regulations and assist NYC small businesses, the Public Advocate recommends the Bloomberg Administration:

- 1 Upgrade the adjudication process at all City agencies overseeing small businesses to allow owners to contest violations online, by phone or by mail.**
- 2 Develop a tiered classification system for small business violations at agencies that do not yet distinguish between severe and low-risk violations in their enforcement and fine schedules.** The Department of Consumer Affairs lacks such a system, which would encourage businesses to focus on those violations most harmful to consumers, and enable inspectors to issue an opportunity to quickly fix specific low-risk violations.
- 3 Offer business owners an opportunity to cure first-time, low-risk violations before incurring an immediate penalty.** If such a system already exists at an agency either as a rule or informally in practice, departments should promulgate that system to businesses. The Bloomberg Administration should consider implementing this practice on an industry-specific basis. In order to protect consumers, violations that directly affect the cost of items or health and safety should continue to incur immediate penalties. In addition, any inspections resulting from a consumer complaint should not be given an opportunity to cure. Agencies should maintain records of any previous notice given to businesses regarding a low-risk violation, so that repeat offenses are handled appropriately.

These common-sense solutions will help ensure small businesses are not strangled by red tape; and instead receive the cooperation and assistance they need to create jobs and put New Yorkers back to work.



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