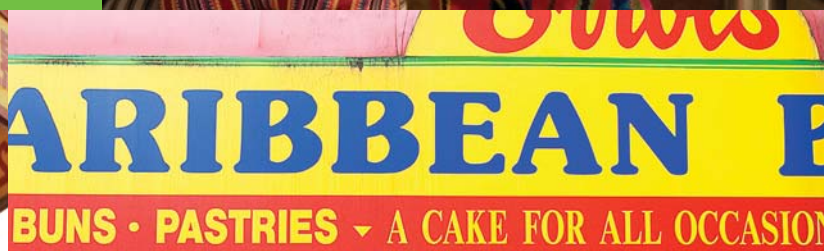
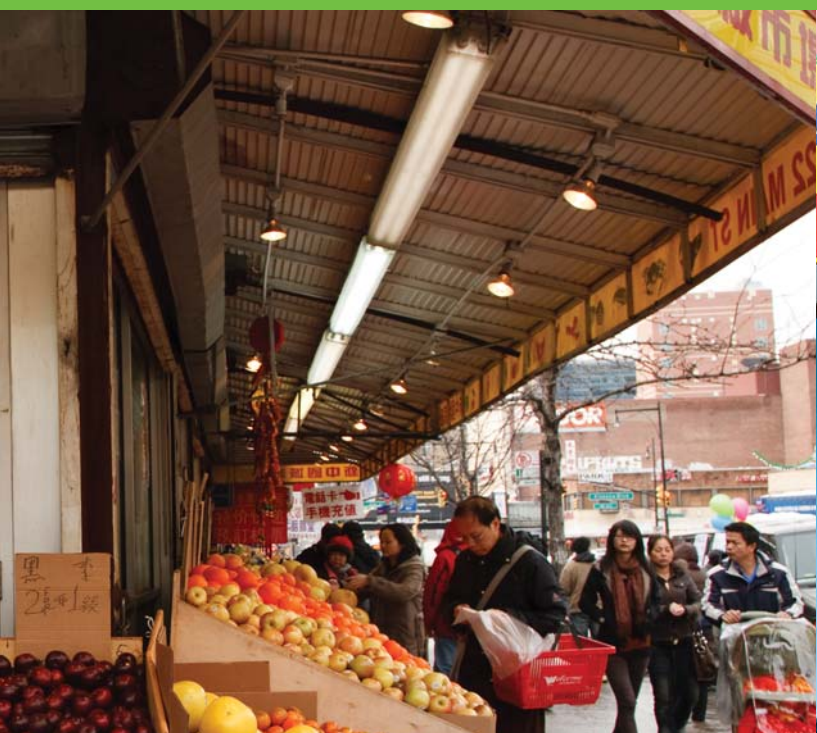




Regulatory Review Panel Report



Michael R. Bloomberg
Mayor

Christine C. Quinn
City Council Speaker

Anthony W. Crowell
Counselor to the Mayor

APRIL
2010



EXECUTIVE SUMMARY

In December 2009, the Regulatory Review Panel submitted a set of recommendations to the Mayor and Council Speaker based on the feedback it received from small business owners in all five boroughs. The recommendations addressed a number of areas that would benefit small business owners and eliminate unnecessary obstacles to small business growth and development by focusing on three core objectives:

- i.* Enhance the rule-making process to spur greater public participation and to encourage more efficient and more effective regulatory outcomes.
- ii.* Provide small businesses with better customer service and more effective enforcement strategies to facilitate greater levels of compliance with agency rules.
- iii.* Provide small business owners with the information and services that they need to facilitate greater levels of compliance with agency rules.

The Mayor and the Council Speaker accepted these recommendations and tasked the Panel to work with the Office of Operations, City agencies, and Council staff to begin implementing them, and to develop other regulatory relief and customer service strategies to facilitate small business development.

i. Enhance the rule-making process to spur greater public participation and to encourage more efficient and more effective regulatory outcomes.

Modernize the Rule-Making Process by Launching an Accessible, Online Platform for All Rule-Making Actions.

All agencies would post their proposed and final rules on a new website called NYC Rules. The site would allow small businesses and the public at large to submit comments on proposed rules electronically and sign up to receive e-newsletters about rule-making activity in the City.

Strengthen the Rule-Making Process by Establishing an Operational and Customer Service Review of Proposed Rules.

The Mayor's Office of Operations would review proposed rules to identify regulatory inefficiencies. Operations would then work with the rule-making agencies to address these inefficiencies before the proposed rules are published and distributed to the public, safeguarding against rules that could potentially slow business growth or hinder economic development. This would be a new function for the office.

ii. Provide small businesses with better customer service and more effective enforcement strategies to facilitate greater levels of compliance with agency rules.

Establish a Business Owner's "Bill of Rights."

The Mayor's Office of Operations would distribute a bill of rights that sets forth clear customer service standards, which would encourage more-constructive interactions between small business owners and agency inspectors. Rather than creating any "substantive" rights, the bill would function largely as a customer service tool.

Develop Innovative Enforcement Strategies That Avoid Automatic Fines and 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. Currently, the Department of Buildings, the Department of Consumer Affairs, the Department of Health and Mental Hygiene, and the Fire Department provide such opportunities for certain “low-risk” rules that do not pose an imminent threat to public health, safety, or well-being. OMB reviewed and approved this concept, pending further details on specific rules.

Teach Businesses How to Avoid Violations.

All agencies would seek to replicate, where applicable, the Department of Consumer Affairs’ annual Business Education Day initiative. On this day, rather than issuing violations, DCA inspectors are deployed to educate businesses on how best to comply with agency rules and prevent fines and penalties.

Standardize Customer Service Training for Agency Inspectors.

The Mayor’s Office of Operations would work with all agencies to establish enhanced training techniques for agency inspectors. These techniques would ensure that small business owners receive better overall customer service during their inspection and encourage more-constructive interactions between small business owners and agency inspectors.

Expand Adjudication Reform Initiatives to Meet the Needs of Small Businesses.

The Administrative Justice Coordinator would work with agencies to facilitate ways for small businesses 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. This reform, which has been successfully implemented in local jurisdictions in states such as New Jersey, will save businesses time and money.

iii. Provide small business owners with the information and services that they need to facilitate greater levels of compliance with agency rules.

Enhance 311 to Meet the Needs of Small Businesses.

The Mayor’s Office of Operations will work to ensure that small business owners can access the resources they need via 311. Such resources will include up-to-date information on regulatory developments at various City agencies.

Distribute Industry-Specific Newsletters and Other Communications to Small Businesses.

The Department of Small Business Services would work with agencies to distribute targeted e-newsletters (e.g., *Restaurant News*) so small businesses can stay on top of regulatory developments that directly impact their operations. The Environmental Control Board currently distributes a modest e-newsletter along these lines.

Develop Plain-Language Guides to Demystify Complex Regulations and Regulatory Processes.

The Mayor's Office of Operations would work with agencies to put small businesses in a better position to understand regulations and regulatory processes, which, in turn, would help reduce unnecessary legal and consulting fees. This initiative would start with regulatory processes that are sources of confusion for many small businesses, such as the process to obtain a sidewalk café license.

Designate Agency Liaisons with the Chambers of Commerce and Industry Groups.

All agencies would have a designated agency liaison to chambers of commerce, providing small businesses with someone with whom they can have an ongoing conversation about regulatory issues.

Expand NYC Business Express to Provide Information on Various Tax Incentive Programs.

The Department of Small Business Services would further enhance NYC Business Express, the City's one-stop online portal for City-issued licenses and permits, with a new feature that would provide information about various tax incentive programs. (Incidentally, shortly after this report was finalized and distributed to members of the Panel, the Department of Small Business Services announced a new tool for NYC Business Express called "Incentive Estimator." The new tool provides business owners with information about their eligibility for more than 44 tax incentive programs, including pro-forma calculations of estimated potential savings.)

Expand Agency Rule-Revision Initiatives.

In light of the above reforms, all agencies should be required to reevaluate their rules with an eye toward eliminating undue costs and burdens and addressing many of the issues that the Panel came across during its feedback sessions with small business

owners. The Department of Buildings, the Department of Health and Mental Hygiene, the Fire Department, and the Taxi and Limousine Commission have already conducted such initiatives and revised their rules to be more “user-friendly.”

Expand Programs for Immigrant Small Business Owners.

The Mayor’s Office of Immigrant Affairs and Department of Small Business Services will expand efforts to assist immigrant-owned small businesses, representing approximately half of the City’s small businesses. The City, which already provides assistance to Latino-owned businesses, will make its materials available for translation to groups representing the City’s other ethnic communities, specifically the Chinese-, Russian- and Korean-American communities.

NEXT STEPS

The Panel will continue to work with City agencies and the City Council to implement and operationalize these recommendations. It will also share its findings and recommendations with other City entities working to enhance customer service for businesses. These entities include the New Business Acceleration Team, a new division within the Mayor’s Office of Special Enforcement charged with helping small businesses open more quickly by expediting the required permits, licenses, and inspections, and the Mayor’s Office of Operations, which Mayor Bloomberg tasked with simplifying the way New Yorkers, including small business owners, access City government.



I. INTRODUCTION

The recession presents unique challenges for the City's more than 220,000 small businesses. In this difficult economic climate, many small businesses struggle to meet their payrolls, pay their bills, and keep their doors open. These struggles are not just a concern for small business owners, but for the City at large, as small businesses employ half of all New Yorkers working in the private sector.

To address the challenges confronting small businesses in these times, Mayor Michael R. Bloomberg and the City Council, led by Council Speaker Christine C. Quinn, have provided business owners with tools to help them gain access to financing, tap into our rich labor market, and more easily navigate the City's rules and permitting procedures.

In addition to these tools, which are described in greater detail on the Department of Small Business Services website, at nyc.gov/sbs, the City has also pursued significant regulatory reform in key areas affecting small businesses. Examples include the New York City Construction Code, the New York City Fire Code, the New York City Health Code, and the Taxi and Limousine Commission Rules.

In 2009, in an effort to further supplement these initiatives, both the Mayor and the Speaker called for a review of our regulatory system. Recognizing their shared goals on this issue, the Office of the Mayor and the City Council agreed to work together on this important initiative and formed the Regulatory Review Panel by local law in July of that year.

Given the vastness of the City's regulatory powers, consistent with its mandate, the Panel focused its work on (1) developing ways to contemporize the rule-making process with particular attention to enhancing public participation and (2) identifying systemic problems with agency rules or rule implementation, as a first phase of activity to be completed by year's end. Accordingly, this report sets forth the Panel's process, findings, and recommendations. It also sets forth the steps to be taken in Phase II of the Panel's work.

II. THE REGULATORY REVIEW PANEL

Local Law 45 of 2009 formally established the Regulatory Review Panel. The Panel reflects the Mayor's and the Council's shared commitment to assisting small businesses with respect to the regulatory environment in which they operate. The Panel is composed of individuals with key insights on the regulatory system and its impact on regulated small businesses. They are listed below:

Chair

Anthony W. Crowell, Counselor to the Mayor

Members

Michael Cardozo, Corporation Counsel

Jeff Kay, Director, Mayor's Office of Operations

Mark Page, Director, Mayor's Office of Management and Budget

Shari Hyman, Director, Mayor's Office of Special Enforcement

Jonathan Mintz, Commissioner, Department of Consumer Affairs

Robert W. Walsh, Commissioner, Department of Small Business Services

Leroy G. Comrie, Jr., City Council Member (Queens, District 27)

James Oddo, City Council Member (Staten Island, District 50)

Principal Staff

Sami Naim, Assistant Counselor to the Mayor

Alexis Offen, Policy Advisor at the Mayor's Office of Operations

Matt Gewolb, Legislative Counsel at the New York City Council

Alix Pustilnik, Deputy Legislative Director at the New York City Council

Kris Sartori, Legislative Counsel at the New York City Council

Steven Tuozzolo, Community Outreach Unit at the New York City Council

III. OVERVIEW OF THE CITY'S RULES AND RULE-MAKING PROCESS

The Rules of the City of New York.

The Rules of the City of New York (RCNY) is the official compilation of the rules and regulations promulgated by City agencies. The RCNY is organized by agency and consists of 71 titles, with several titles reserved for future use. Authorized by referendum on November 8, 1988, the RCNY was compiled and published in July 1991.

Agencies promulgate rules that regulate the behavior of individuals and businesses to further the public interest. Examples of these rules include determining how and when a food establishment license should be issued, suspended, or revoked; setting fees for government licenses and permits; and establishing standards for construction and real estate development that promote environmentally friendly policies. Agencies usually enjoy wide discretion when promulgating rules pursuant to their legal authority. This authority is provided for either generally in the City Charter or more specifically in the Administrative Code.

Because rules and rule making significantly affect both the City's residents and its small businesses, the Mayor and the Speaker resolved to establish the Panel to review and provide recommendations that ensure agencies implement and promulgate rules that promote the City's best interests and purposes without imposing undue costs and burdens that hinder our economic development.

City Administrative Procedure Act.

The City's rule-making procedure, set out in the City Administrative Procedure Act (known as "CAPA"), is found in Chapter 45 of the City Charter, Section 1045. CAPA was designed to increase public participation in drafting new rules and to standardize rule making among City agencies. The standard rule-making procedure occurs in three steps:

1. *Notice of the Public Hearing.* At least 30 days prior to a public hearing or (if earlier) a designated deadline for submission of written comments, an agency must publish notice of a proposed rule or rule change in *The City Record*.¹ The notice must provide:

¹ Pursuant to Section 105(2) of the New York State General Municipal Law, New York City Charter Section 1066, and the City of New York Procurement Policy Board Rules, *The City Record* functions as the official newspaper for the City of New York and includes information regarding public hearings, meetings, property dispositions, procurements, and other official notices.

the proposed rule or rule change (with deletions in brackets and new material underlined or italicized), a brief description of the proposed rule or rule change, and the legal authority for issuing it (collectively known as the “Statement of Basis and Purpose”). An agency must also state the time and place of the public hearing on the proposed rule or rule change. In 2008, CAPA was amended to mandate additional notice regarding a proposed rule or rule change. Specifically, no later than the time an agency sends its notice of public hearing for a proposed rule or rule change to *The City Record* for publication, it must also electronically send the same notice to each City Council Member, each Community Board Chair, members of the news media, and civic organizations.

2. *The Public Hearing.* Members of the public are allowed to comment on the proposed rule or rule change for at least 30 days after it is published in *The City Record*. They may do so by sending comments to the rule-making agency via mail or providing testimony at a public hearing. Other City agencies may also submit comments on the proposed rule or rule change. The rule-making agency is required to consider comments from the public and/or other City agencies.
3. *Notice of Adoption.* After its public hearing, an agency must publish the final rule in *The City Record*. The final rule may include changes reflecting comments submitted by the public or other City agencies. The final rule takes effect 30 days after its publication in *The City Record*.

IV. THE PANEL'S PROCESS

At the Panel's initial meeting in City Hall, Chair Crowell stressed the City's commitment to reviewing the impact that both the rule-making process and the rules themselves have on small businesses and encouraged the other members of the Panel to raise issues for possible review. Chair Crowell also emphasized that the Panel would actively solicit feedback from small businesses and the public at large.

Garnering Public Input.

To ensure that feedback from the public would help shape the Panel's work, the Panel developed the following questions to spark discussion and elicit feedback from business owners and trade associations.

1. Have you participated in providing comment on proposed regulations issued by the agencies that regulate you?
2. Has it ever been unclear or difficult to understand what requirements you or your business must satisfy in order to obtain a specific City license or permit, pass a specific inspection, or otherwise comply with local laws or agency regulations? If so, please identify the agencies and laws/regulations involved, and explain the difficulties or lack of clarity experienced. What specific steps could the City take to make it easier and clearer?
3. In your view, what business interactions with the City are particularly easy or efficient? What makes them easy (e.g., technology used, customer service)? Please identify the specific agencies and regulatory processes involved.
4. Have you ever had to hire a third party, such as an expeditor, to help you navigate any of the City's regulatory processes? If so, in your view, why was this necessary? Please identify the specific agencies and processes involved.
5. Do any of the City licenses or permits your business seeks involve approvals from multiple City agencies? What, if any, are the specific challenges that you have encountered when dealing with multiple agencies for a single permit, license, or regulation? What has the City done, or can the City do, to make the multiagency interactions more efficient?

Outreach Strategy.

The Panel's outreach strategy consisted of the following elements: the Panel held borough-based outreach sessions with small business owners in all five boroughs; the Panel also held industry-focused sessions with industry sectors that have operations that cut across multiple City agencies, specifically the restaurant, event management, theater, and hotel industries; the Panel convened a meeting with good-government groups to solicit their feedback and ideas on the regulatory system in general and the current rule-making process in particular; and lastly, the Panel allowed the public to submit comments by regular and electronic mail. More specifically, the Panel met with:

Chambers of Commerce and Local Economic Development Corporations.

The Panel organized feedback and outreach sessions in conjunction with the Department of Small Business Services, borough chambers of commerce, and local economic development corporations. These sessions offered an opportunity for small business owners of various sizes and from various industries to bring their issues directly to City agency representatives.² The sessions were the most effective mechanism by which the Panel was able to solicit feedback from the public on regulatory issues.

Restaurant Industry.

New York City is often referred to as the "Restaurant Capital of the World." More than 18,000 restaurants employ more than 150,000 workers throughout the five boroughs. The Panel met with representatives from this industry to hear their concerns and to discuss how best to implement and enforce regulations that ensure the public's safety, health, and well-being without imposing undue costs and burdens.

Event Management Industry.

New York City is the premier venue and backdrop for special events, cultural activities, marketing opportunities, and film shoots. These events and activities enliven the City's cultural landscape and contribute millions of dollars to the City's economy. The success of these events also relies heavily on the ability of event managers to obtain multiple permits from a variety of City

² Senior staff from the following agencies attended the Panel's borough sessions: the Department of Buildings, the Department of Consumer Affairs, the Department of Environmental Protection, the Department of Health and Mental Hygiene, the Department of Small Business Services, the Department of Transportation, the Fire Department, the Mayor's Office of Special Enforcement, and the Mayor's Office Community Affairs Unit.

agencies, often in a matter of days. Business owners and staff in this field must work under an array of regulations, many of which overlap with other industry sectors. The Panel met with representatives from local event management firms to discuss the challenges they face when producing large-scale events in the City's parks, streets, and public spaces.

Hotel and Hospitality Industry.

New York City is the number-one tourist destination in the country and a major attraction for tourists from around the world. In 2008, 47 million tourists, including a record 9.8 million international tourists, visited New York and spent over \$50 billion here. The Panel met with local hoteliers to discuss the challenges facing the hospitality industry.

Theater Owners.

New York City is the world's capital for arts and culture. The Panel met with theater owners and operators, producers, and general managers to discuss issues they encounter relating to opening and operating performance spaces, attracting customers, and addressing City regulations generally.

Civic Organizations.

New York City has a unique and robust civic community, fostered by independent, nonpartisan organizations that advocate for open and effective government. The Panel met with representatives from the Association of the Bar of the City of New York, Citizens Union, Common Cause, the New York Public Interest Research Group, and New York University Law School's Institute for Policy Integrity to discuss reforms to the City's rule-making process.

General Public.

The Mayor's Office of Operations, on behalf of the Panel, accepted comments submitted from the public by regular mail and by email at regreview@cityhall.nyc.gov. Moreover, information about the Panel and how to submit comments was made available on the Internet at the websites for the Department of Consumer Affairs, the Department of Small Business Services (including NYC Business Express), and the City Council.

In all, the Panel received input from well over 200 small business owners, industry representatives, and members of the public, all of whom provided valuable insight that helped shape the Panel's recommendations.

V. SUMMARY OF COMMENTS

The feedback the Panel received generally did not call for specific changes to local laws or agency rules. Instead, most of the feedback centered on agency communications and operations and suggested that the City should take a closer look at the way in which existing rules are implemented and enforced. Business owners also suggested that the City reassess the process by which new rules are promulgated—specifically on ways to enhance the rule-making process by promoting greater public awareness and participation. Some business owners referred to certain customer service issues that were specific to their own unique set of circumstances and were not necessarily systemic in nature. In these cases, the Panel promptly tasked agencies to work with these business owners to address and resolve their issues as soon as possible. A summary of the feedback that the Panel received is set forth below.

Streamline and Standardize Inspections.

Enforcement agencies use inspectors to identify whether business owners are operating in compliance with the law for public health, safety, and consumer protection. A number of businesses commented that agency inspectors were professional and helpful to them in understanding compliance requirements. However, other business owners commented that inspectors, either from within a single agency or representing different agencies, often appear to take approaches that are inconsistent with one another, are not as courteous as business owners would expect, conduct inspections in a manner that disrupts business operations, and do not provide constructive explanations of why something constitutes a violation or fail to provide a remedy to avoid violations upon a subsequent inspection. Restaurant owners provided the most commentary on inspectors from the Department of Health and Mental Hygiene and the Fire Department.

Issue Warnings Instead of Violations.

A number of restaurant owners commented that they did not understand why New York City did not adopt the practice of other jurisdictions of offering a warning to businesses for a first offense, as opposed to issuing a violation. They nonetheless acknowledged that it made sense for noncompliance in certain areas to result in a violation, such as for conditions that posed an imminent threat to public health or safety. They also acknowledged the City's efforts to avoid creating a dynamic where excessive discretion could give rise to inconsistency or, in the worst-case scenario, corruption. Nevertheless, restaurant owners requested that the City explore the concept of warnings for low-risk violations.

Enhance 311.

Small business owners in all boroughs were generally complimentary of 311 and its ability to help them get responses from City agencies regarding a variety of questions and concerns. To enhance 311, several businesses suggested reevaluating the training of 311 operators to ensure that they have specialized knowledge of the issues facing small businesses, or can promptly direct callers to those who do have specialized training and knowledge, so that businesses are better able to work with agencies in order to have their concerns addressed quickly and without unnecessary delay.

Make Adjudications More Accessible and Convenient.

Small business owners commented on accessibility to the administrative tribunals of various agencies, particularly the Department of Health and Mental Hygiene. Small business owners from the outer boroughs commented that DOHMH adjudications were available only in Manhattan and that it was inconvenient and time-consuming for them, because often business owners must appear in person at these hearings, taking them away from their businesses. It was suggested that these tribunals evaluate the feasibility of offering adjudications in a variety of remote locations throughout the City, or by other means, such as regular or electronic mail.

Simplify and Automate Renewals for Permits and Licenses.

Many business owners commented that they appreciated the City's efforts to streamline the process to obtain certain licenses or permits, for example, through the use of web-based portals and online tools. However, some business owners thought that the process to renew these permits and licenses could still be enhanced. Businesses cited the Department of Health and Mental Hygiene and its program to automatically renew certain permits and licenses, pending inspection, as a good example of an innovative strategy to address potential renewal mishaps and the disruptive impact they can have on business operations.

Expand Borough-Specific Liaisons.

Small business owners asked that more agencies develop borough-specific liaisons and staff so they would be able to interface with agencies without having to travel long distances across the City. Certain agencies, such as the Department of Parks & Recreation and the Department of Transportation, were singled out for their successful facilitation of relationships with businesses located outside Manhattan through the use of branch offices that deal directly with the local community on a variety of agency projects

and issues. This management structure has proven highly valuable to these agencies' operations and helps ensure that they are able to work with the local small business community to resolve any issues that might arise or explain agency procedures that impact their business operations.

Support Boutique Businesses.

The Panel heard from entrepreneurs who own businesses in new, emerging industries about their struggle to find their place in the regulatory system. A bed-and-breakfast owner in Brooklyn, for example, commented on how her business appears to be subject to a number of rules that govern the restaurant and hospitality industry, but that the application of such rules to her type of business is difficult to understand and sometimes awkward to comply with, given its unique nature. Seeking greater clarity and certainty on regulatory issues and compliance, she asked that agencies be better at responding promptly to the marketplace so that rules keep pace with changing circumstances and conditions.

Expand Real-Time Communications.

Small business owners in all boroughs stated that better communication between agencies and the regulated community could prevent avoidable violations and fines upon inspection. Better communication would also allow business owners to learn more about existing and newly developed rules that apply to their businesses so that they could make timely operational adjustments accordingly.

Reduce the Need for Expeditors.

Many business owners commented that they regularly use expeditors to represent them before City agencies, often at considerable cost. While some businesses said expeditors are helpful because they have technical expertise in administrative policies and procedures, which frees up significant time that businesses would otherwise have to spend coordinating and scheduling meetings with agency staff, others felt that the costs of expeditors hinder business growth and profitability. Indeed, many business owners felt that if the City took steps to make it easier for them to navigate the regulatory agencies (by providing better information online, allowing for more agency business to be conducted online, etc.), it would significantly reduce the need for technical experts and result in a substantial savings. A sounder understanding of the regulatory system, moreover, would help business owners who wish to continue to use expeditors in holding them more accountable, which would also reduce costs.

Expand Language-Access Programs.

It was suggested that the City build upon its initiatives to expand language access and further engage small business owners with limited proficiency in English. Many business owners, particularly in Queens, suggested that the number of violations issued could be reduced through improved communication with the City's diverse ethnic communities. As many small businesses are owned by immigrant entrepreneurs, improving communication with them would greatly benefit the small business community as a whole.

Simplify the Application Process for Place-of-Assembly Permits.

To ensure the public's safety and well-being, the Department of Buildings and the Fire Department require and issue place-of-assembly permits for all premises where 75 or more members of the public gather indoors or 200 or more gather outdoors for recreational, educational, or social purposes, to consume food or drink, or for a number of other similar group activities. Small businesses repeatedly indicated that this area of permitting was a major source of confusion and frustration that often interrupted their ability to open for business, resulting in lost wages for workers and increased operating expenses for business owners. In addition, restaurant owners said that they had no way to follow the status of their place-of-assembly permit applications. They also questioned why renewal inspections were required every year.

Simplify the Application Process for Sidewalk Cafés and Outdoor Heater Permits.

A number of restaurant owners the Panel met with operated sidewalk cafés. Though they acknowledged that the Department of Consumer Affairs has taken steps to simplify the process, they commented that the local law and technical standards governing sidewalk cafés are complex. Business owners stated that they would like the ability to open the sidewalk café component of their businesses earlier than is currently permitted, for example, on a Sunday morning by 10 a.m., instead of noon, as required by the Administrative Code. Further, they expressed their desire to extend the timeline for sidewalk café permit renewals from every two years to every four years, given the length of the renewal process. In addition, they expressed a desire to see the sidewalk café heater permitting process clarified so they can extend the sidewalk café season and earn more revenue from these valuable assets.

Clarify Technical Requirements for Equipment.

Many business owners commented that complying with agency rules can prove to be a challenge when the rules' technical equipment requirements are either unclear or outpaced by

industry standards. For example, members of the restaurant industry stated that they could not determine which outdoor heater models met the Department of Buildings' and the Fire Department's technical specifications; real estate developers indicated that they are eager to embrace emerging green technology but have difficulty getting innovations permitted in a timely manner. Business owners requested that agencies clarify the policy rationales behind their rules and provide greater technical guidance, to ensure greater compliance and reduce the uncertainty business owners face when investing in new equipment. They also requested that agencies stay apprised on ever-changing industry standards and advances to ensure that businesses that embrace modern technology do not face bottlenecks when seeking approvals from agency staff unfamiliar with new equipment or technology.

Expand the Use of Technology While Remaining Sensitive to the “Digital Divide.”

Small business owners repeatedly acknowledged that agencies had made great steps forward with new technology, including online portals, to save them time and money when completing applications and tracking the progress of their requests for permits and licenses. Business owners requested that the City build on this success by making sure that as many agency processes as possible can be accessed through online portals. However, as the City makes itself increasingly accessible by way of the web, it was also pointed out that not all business owners have computer resources readily available to them. Indeed, some business owners asked that the City be sensitive to this digital divide and help those with limited access to modern technology to build their computer capacity and enhance their ability to communicate with government through the Internet.

Although a number of these issues are already being addressed by the City, the feedback the Panel received was nevertheless helpful in ensuring that these initiatives are properly calibrated to address concerns as they are developed and implemented. The feedback on other issues, moreover, helped form the basis for new initiatives.

VI. THE PANEL'S RECOMMENDATIONS

Based on the feedback the Panel received, it became clear that the Panel needed to develop recommendations addressing a number of areas that will benefit small businesses and eliminate unnecessary obstacles that hinder their growth and development. Specifically, the Panel identified three core objectives to guide its work going forward:

- i.* **Enhance the rule-making process to spur greater public participation and to encourage more efficient and more effective regulatory outcomes.**
- ii.* **Provide small businesses with better customer service and more effective enforcement strategies to facilitate greater levels of compliance with agency rules.**
- iii.* **Provide small business owners with the information and services that they need to facilitate greater levels of compliance with agency rules.**

These core objectives served as the foundation for the Panel's recommendations and provided the framework for developing recommendations. Incidentally, because most of the feedback from the outreach sessions touched on systemic process issues, and not the substantive merits of the rules themselves, the Panel addressed systemic issues during the first phase of its review; it will foster a more thorough analysis of specific rules in the second phase of its work.

An explanation of each core objective and details about the corresponding recommendations developed by the Panel follows.

i. Enhance the rule-making process to spur greater public participation and to encourage more efficient and more effective regulatory outcomes.

The rule-making process, set out in the City Administrative Procedure Act (CAPA), was first conceived more than 20 years ago by the 1988 Charter Commission. Since then, however, the process has changed little to reflect changing conditions and circumstances or comport with contemporary customer service and operational principles.

The Panel agreed that strengthening and modernizing CAPA would greatly ease the regulatory burden borne by small businesses. Specifically, the Panel focused on spurring greater public participation in the process so that rules are promulgated in as open and accountable a manner as possible, and strengthening the process to help ensure that agencies are not promulgating inefficient or ineffective rules.

Modernize the Rule-Making Process by Launching an Accessible Online Platform for All Rule-Making Actions.

Currently, CAPA requires that agencies notify the public of a proposed rule or rule change, or the adoption of a new rule, via *The City Record*. In 2008, the City Council amended CAPA to require agencies to supplement publication in *The City Record* with email notification to community boards, the news media, civic organizations, and other stakeholders. While this amendment did promote greater transparency for CAPA, the Panel believes that there is still an opportunity to engage the public further and spur greater participation in the rule-making process. To that end, the Panel has developed a new website called NYC Rules (nyc.gov/nycrules), which will go live in 2010, to better inform the public about proposed new rules by providing another accessible channel for review and comment. Once the website is launched, agencies will be required to post information on proposed new rules and rule changes on NYC Rules for public review. All proposed and recently adopted rules will be searchable by date, agency, and keyword. The public will also be able to submit their comments directly to the rule-making agency via NYC Rules from any home or office computer, as well as from a Blackberry or other mobile device. All agencies, in turn, will accept comments submitted through NYC Rules alongside comments submitted by regular mail or delivered at a public hearing. NYC Rules will also provide the public with general information about CAPA through plain-language guides, process maps, and links to regulatory

resources, such as the complete compendium of the Rules of the City of New York. Lastly, small businesses and the public at large will be able to sign up for an NYC Rules e-newsletter, which will provide periodic updates on City rule-making activity.

Strengthen the Rule-Making Process by Establishing an Operational and Customer Review of Proposed Rules.

Currently, CAPA does not have a procedure in place that subjects proposed new rules to a rigorous operational and customer service analysis. Indeed, while CAPA does provide for a legal analysis of all proposed rules and rule changes (the Law Department must review every proposed rule or rule change to ensure that they are within the delegated authority of the rule-making agency), there is nothing in the process to ensure that proposed rules and rule changes are as efficient and effective as possible and do not impose undue burdens on small businesses and/or the public at large. Accordingly, the Panel recommends that a new regulatory coordination function be established within the Mayor's Office of Operations to work with mayoral agencies to ensure that proposed rules and rule changes are consistent with well-defined and sound operational and customer service principles. All mayoral agencies would be required to consult with the Office of Operations on an operational review of any draft rule or rule change in advance of publication. The Panel believes that this enhancement will help foster a more level playing field for agencies and small businesses, yield better regulatory outcomes, and serve as a significant step toward ensuring greater levels of compliance from and fewer burdens for small businesses and the public at large. Legislation establishing such a procedure is expected to be introduced into the City Council shortly.

Both NYC Rules and the operational and customer service review of proposed rules and rule changes will increase the transparency, accountability, and accessibility of the rule-making process. Indeed, these reforms will facilitate improved regulatory outcomes that meet public policy objectives without creating undue costs and burdens for small businesses. This proactive approach will help to ensure that the Panel's recommendations have an immediate and lasting impact on the regulatory system.

ii. Provide small businesses with better customer service and more effective enforcement strategies to facilitate greater levels of compliance with agency rules.

Establish a Business Owner’s “Bill of Rights.”

The Panel recommends that the City develop a business owner’s bill of rights, similar to the taxi rider’s bill of rights that was developed by the Taxi and Limousine Commission. The bill of rights would, in effect, set forth customer service standards that would apply to all agency inspectors, creating the groundwork for constructive interactions between small business owners and agency inspectors. Legislation establishing such a bill of rights is expected to be introduced shortly in the City Council.

Develop Innovative Enforcement Strategies That Avoid Automatic Fines and Penalties.

To help small businesses during these difficult economic times, the Panel recommends that the Mayor’s Office of Operations and the Administrative Justice Coordinator develop new and innovative strategies to enforce compliance with agency rules by means other than automatic fines or penalties. Such strategies would be especially useful for low-risk violations that do not pose an imminent threat to public health, safety, or well-being. Several large agencies, including the Department of Buildings, the Department of Consumer Affairs, the Department of Mental Health and Hygiene, and the Fire Department, have already adopted such an approach, providing small business owners with an opportunity to cure low-risk violations without having to pay fines or penalties. This approach saves businesses time and money, allowing them to focus on business rather than deal with government. It also fosters a productive relationship between small business owners and City agencies, as opposed to one that may be perceived as a strictly punitive.

Teach Businesses How to Avoid Violations.

Small business owners sought more pre-inspection interaction with City agencies to help them understand applicable legal requirements and avoid costly violations. The Panel recommends that City agencies conduct more educational outreach to stakeholders, on a borough-by-borough basis. The Department of Consumer Affairs (DCA), for example, hosts an annual event called Business Education Day, at which DCA inspectors are

dispatched to retail districts across all five boroughs to educate businesses about key consumer protection laws. Inspectors spend the entire day answering businesses' questions and providing them with information about DCA rules, as opposed to issuing violations of agency rules that they may identify while onsite. These Education Days represent an innovative way to encourage greater levels of compliance, while helping small businesses avoid costly violations. Similarly, every Tuesday evening, in each borough office, the Department of Buildings (DOB) extends its office hours and holds special "homeowner nights." During these sessions, DOB staff offer assistance on an array of issues, including requirements for the correction and removal of violations, amendments to Certificates of Occupancy, and technical guidance relating to the Construction Code and zoning regulations. The Panel notes that similar sessions could be tailored to various sectors of the small business community and recommends that other agencies conduct similar outreach to better forge a positive business environment and facilitate greater levels of compliance, and thus fewer violations, throughout the City.

Standardize Customer Service Training for Agency Inspectors.

The Panel believes it is important to standardize the training of inspectors to the greatest extent possible, to ensure consistent enforcement and interpretation of agency rules. To this end, the Mayor's Office of Operations' Customer Service Group has already developed a comprehensive training program that reinforces the connection between good customer service and greater compliance with agency policies and procedures. Next year, this training will expand to cover cultural sensitivity issues, to help agency employees working on the front lines understand the way their own preconceived notions may be influencing their behavior. The Panel also recommends that in addition to the web-based survey, agencies use 311 to receive business owners' comments on their inspection experiences.

Expand Adjudication Reform to Meet the Needs of Small Businesses.

The Panel recognizes that small business owners have special concerns about the burdens that arise from challenging or contesting notices of violation at City administrative tribunals. These include the time and travel required to appear at hearings and the legal costs involved. To ease this burden, Mayor Bloomberg created the position of the Administrative Justice Coordinator, who is charged with enhancing the professionalism, efficiency, and accountability of the administrative tribunal system. The Panel recommends that the Administrative Justice

Coordinator continue to work with agencies to develop a set of practices and protocols that best facilitate a quick and convenient resolution of adjudicatory matters—specifically, ways that would allow business owners to settle or contest adjudications by mail or telephone or over the Internet—which would save business owners time and money. Moreover, to ensure that this effort is regularly informed by the insight of small business owners, the Panel recommends that the Administrative Justice Coordinator designate a liaison to the City’s various chambers of commerce. The liaison would serve as a mechanism to solicit feedback on identifying adjudication successes and pain points. The liaison would also serve an informational and educational role, helping to clear up misconceptions about adjudication procedures and policies through presentations and question-and-answer sessions.

***iii.* Provide small business owners with the information and services that they need to facilitate greater levels of compliance with agency rules.**

Small business owners stressed the need for greater and easier access to City agencies, their regulations, and their staff. Increasing accessibility at every stage of business development—from opening to operating to expanding—would help small businesses comply with agency rules and avoid costly violations. It would also allow business owners to spend their time developing their businesses, rather than tracking down agency officials or searching for regulatory information.

The Panel discovered that small business owners are not taking full advantage of the many City-led efforts intended to assist local businesses. As the City seeks to expand these efforts, in an effort to spur the local economy and help create and retain jobs, it is critical that small business owners are effectively engaged with the City to achieve shared objectives.

Enhance 311 to Meet the Needs of Small Businesses.

311 plays an enormous role in providing critical information to the City’s businesses. The Panel recommends that the Mayor’s Office of Operations’ Customer Service Group, the Department of Small Business Services, and the Department of Information Technology and Telecommunications work to provide small business owners with easy access to business-specific information, including information about the latest regulatory developments that affect business operations.

Distribute Industry-Specific Newsletters and Other Communications to Small Businesses.

During its outreach sessions, attendees thanked the Panel for bringing together agency representatives and members of the small business community. Indeed, during these meetings many attendees said that the sessions served as a way for them to stay up-to-date on new agency initiatives, programs, and rules. Based on this feedback, the Panel recommends that agencies build upon the success of these outreach sessions by maintaining regular and frequent contact with stakeholders. For example, the Department of Buildings allows individuals to sign up for newsletters and receive regular updates via email. These newsletters, which range from *Department of Building News* to *Inspection and Signoffs News*, provide the public, including small businesses, with critical information in a timely manner. The Panel recommends that other agencies develop newsletters to serve as yet another method of informing the public, industry groups, and chambers of commerce of regulatory developments. The Panel further recommends that agencies merge their mailing lists to ensure that these newsletters reach as many business owners as possible. For example, the restaurant industry is currently regulated by multiple agencies. A new *Restaurant News* newsletter could provide up-to-date information on regulatory developments, helping to facilitate small business owners' understanding of these developments and compliance with them. The Panel encourages such collaborative initiatives to ensure that information is distributed and stakeholders are engaged in a coordinated fashion, and it recommends that the Department of Small Business Services oversee their implementation.

Develop Plain-Language Guides to Demystify Complex Regulations and Regulatory Processes.

Clear and effective communication is essential not only for agencies to carry out their missions and enforce their rules and regulations, but also for regulated entities to understand the impact of rules on their operations. A number of agencies, including the Department of Buildings, the Department of Consumer Affairs, the Department of Transportation and the Taxi and Limousine Commission, have published guides to clarify their rules for the public. These guides make important strides toward conveying information in clear and simple terms, rather than in complex legalese or bureaucratic jargon. The Panel recommends expanding the use of plain-language guides to explain complex interagency regulatory processes, for example, the process to obtain a sidewalk café license. The Panel further

recommends that such guides be published, where applicable, in languages other than English, in order to reach as many New Yorkers as possible. In response to comments received, Panel staffers are developing plain-language guides for the place-of-assembly permitting process as well as for the sidewalk café and outdoor heater permitting process, which will be published in early 2010.

Designate Agency Liaisons with the Chambers of Commerce and Industry Groups.

The Panel believes that the various chambers of commerce offer valuable perspectives on local businesses and can play a significant role in representing their members' interests before the City. Indeed, from the Panel's borough sessions, it was apparent that the chambers of commerce were more keyed in to legislative proposals being considered by the City Council than to specific agency rules and regulations. The Panel recommends that the Department of Small Business Services take a role in fostering a stronger multidimensional relationship between the various local chambers of commerce and City agencies, including the Department of Health and Mental Hygiene, the Department of Buildings, the Department of Consumer Affairs, and the Fire Department. Key components of this stronger relationship should include agency liaisons with the chambers of commerce and regularly scheduled meetings between agencies and the chambers, both serving as mechanisms for small businesses to present their regulatory issues and concerns to agencies.

Expand NYC Business Express to Provide Information on Various Tax Incentive Programs.

NYC Business Express (nyc.gov/businessexpress) is the City's one-stop online tool for license, permit, tax, and incentive information and applications that businesses need, no matter their size or type. Through the website, entrepreneurs and business owners in New York City can access customized, comprehensive, up-to-date information and step-by-step instructions for doing business in New York City in sectors representing more than 92% of the City's businesses. This tool also provides a forum that could help address other small business needs. For example, NYC Business Express should allow small businesses to assess their eligibility for more than 40 city, state, and federal tax incentive programs and initiatives. The Panel recommends that the Department of Small Business Services leverage NYC Business Express to address these and other issues. Moreover, as recommendations stemming from the Panel are implemented, information presented on NYC Business Express will be updated and expanded.

Expand Agency Rule-Revision Initiatives.

As described earlier, certain City agencies are in the process of, or have recently completed, comprehensive revisions of their rules to ensure that regulations continue to serve the public's best interests and purposes. The Panel recommends that, as appropriate, other agencies analyze their rules and regulatory procedures along these same lines, recognizing that not every agency will necessarily engage in the same kind of exhaustive revisions undertaken by the Department of Buildings, the Department of Health and Mental Hygiene, the Fire Department, and the Taxi and Limousine Commission. When conducting such an analysis, agencies should bear in mind the three core objectives set forth in this report. These reassessments should be conducted in partnership with local chambers of commerce or other appropriate organizations who have already agreed to identify regulatory issues and concerns that affect their constituents and to present them to agencies for review and discussion. The Panel recommends that other City agencies conduct similar reviews of their rules and regulatory processes to ensure that they continue to serve the public's best interests and do not impose undue costs and burdens on small businesses.

Expand Programs for Immigrant Small Business Owners.

Approximately half of the City's small businesses are owned by entrepreneurial immigrants from around the world. In June 2009, the Mayor's Office of Immigrant Affairs and the Department of Small Businesses Services unveiled an initiative specifically tailored to help Latino small business owners. This initiative included a financing fair, a full-day seminar on business assistance and government resources, information in Spanish and English available at nyc.gov/latinobusiness, the launch of an online directory on the National Hispanic Business Information Clearinghouse website, and the opening of a new NYC Business Solutions satellite office in Washington Heights. The Panel recommends that the Mayor's Office of Immigrant Affairs and the Department of Small Business Services replicate this strategy to serve the City's other ethnic communities. The Panel will work with both agencies as they develop and execute such an outreach strategy for the City's next-largest immigrant communities. Through these efforts, the City will help a significant number of small businesses tap into existing resources so they can strengthen and grow.

VII. NEXT STEPS

In the first phase of its review, the Panel, guided by public feedback, addressed the underlying factors that appear to produce suboptimal regulatory outcomes, i.e., rules that impose undue costs and burdens on small businesses, consumers, and the public at large. By focusing on the overall regulatory system, the Panel developed recommendations that will prevent inefficient and ineffective rules from being promulgated in the future. Indeed, the recommendations set forth in this report establish procedures that ensure that new agency rules are not promulgated unless they meet the three core customer-service objectives described in Section VI.

Moving into the next phase of its review, the Panel, again guided by public feedback, will address specific existing regulatory and operational issues. In this phase, the Panel will seek to implement and evaluate many of the suggestions made in this initial report. It will also share its findings and recommendations and work with other City entities dedicated to enhancing customer service for businesses. These entities include the New Business Acceleration Team, a new division within the Mayor's Office of Special Enforcement charged with helping small businesses open quickly by expediting the required permits, licenses, and inspections, and the Mayor's Office of Operations, which Mayor Bloomberg tasked with simplifying the way New Yorkers, including small business owners, access City government.

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