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2
3 THE CITY OF NEW YORK
4 DEPARTMENT OF SMALL BUSINESS SERVICES

5 PUBLIC HEARING
6 PURSUANT TO LOCAL LAW 142 OF 2013

7
8 110 William Street, 4th Floor
9 New York, New York 10038

10 May 29, 2015
11 10:00 a.m.

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18 Reported By:
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Department of Small Business Services Public Hearing
May 29, 2015

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A P P E A R A N C E S:

ANDREW I. SCHWARTZ,
Deputy Commissioner and General Counsel

ANTHONY DELLOLIO,
Deputy General Counsel

Also Present:

Staff

Public

Department of Small Business Services Public Hearing
May 29, 2015

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S P E A K E R S:

Paul J. Kremer, Dart Container Corporation

Robert Jackson, Restaurant Action Alliance

Marc Shapiro, United Sales Concepts

Robert Beagan, Bronx Paper Products, Inc.

Sunder Luthra, Victory Foods

Astrid Portillo, Mi Pequeño El Salvador Restaurant

Manuel Fajardo, Deli & Coffee Corp.

Interpreter: Leyda Flores

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MR. SCHWARTZ: All right. Good morning, everybody here. Andy Schwartz. I'm Deputy Commissioner for the New York City Department of Small Business Services. I'm here today with Deputy Counsel Tony Dellolio for the Agency as well as some other representatives. This morning we're having this public hearing pursuant to Local Law 142 of 2013. The New York City Department of Small Business Services is proposing a rule that sets forth the procedure by which New York City businesses may apply for the financial hardship waiver from the City's prohibition on using certain polystyrene items. Notice of the public hearing appeared in the City Record on April 28th.

Local Law 142 amended Section 16-324 of the New York City Administrative Code and establishes a prohibition on the use of polystyrene single-service articles and polystyrene loose-fill packaging in New York City. It establishes violations and penalties for businesses that continue to use these items in contravention of the law.

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Local Law 142 also provides that any nonprofit corporation, regardless of its income, at any food service establishment, mobile food commissary or store that had a gross income under \$500,000 per location on their annual tax filing for the most recent tax year, is not part of a chain food service establishment, may request from the Commissioner of the Department of Small Business Services, in a manner and form established by the Commissioner, a financial hardship waiver of the requirements of this section. Such waiver requests may apply to one or more single-service articles possessed, sold or offered for use by any such nonprofit corporation or food service establishment and the Commissioner shall, after consultation with the New York City Department of Sanitation Commissioner, grant such waiver if the nonprofit corporation or food establishment proves: One, that there's no comparable alternative product not composed of expanded polystyrene that would cost the same as or less than a

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2 single-service article composed of expanded
3 polystyrene; and two, that the purchase or
4 use of an alternative product not composed of
5 expanded polystyrene would create an undue
6 financial hardship. Such financial hardship
7 waivers shall be valid for twelve months,
8 shall be renewable upon application to the
9 DSBS Commissioner. A pending application for
10 a financial hardship waiver shall be a
11 defense to any notice of violation issued
12 pursuant to Section 16-329 of the New York
13 City Administrative Code to which such
14 pending application relates and such notice
15 of violation would be dismissed.

16 So for the hearing today, people
17 are given up to three minutes to testify.
18 Given that we don't have a large crowd at
19 this point, it will be all right if people go
20 over that a bit. You could also submit
21 written comments to the Agency here at 110
22 William Street by the end of today. So we've
23 had several people sign up to speak. We'll
24 take them in order. You can come up to the
25 podium here and give the stenographer your

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name, please, and organization.

And we'll started with Paul Kremer.

MR. KREMER: Good morning. My name is Paul Kremer. I'm here today as counsel for Dart Container Corporation. Dart is the largest manufacturer of expanded polystyrene single-service containers in the country. It provides low-cost, high-functional, and popular foam products to hundreds of small businesses in New York City, many of whom will qualify for waivers under this program.

The proposed waiver application rules are burdensome and invasive. If waivers cannot be obtained easily, these businesses will suffer real damage to their bottom lines, which will translate into lost jobs, lost tax revenue for the City, and eventually, lost businesses. Like most small businesses, restaurant users of Dart products do not have lawyers, compliance departments, economists or tax accountants on staff. They cannot easily compile pricing data for products they do not use, estimate with precision their expected profit margins for

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the year or provide at a moment's notice, as the proposed rules require, any and all additional information requested by SBS.

Local Law 142 provides a waiver for any business earning less than \$500,000 per year if that business will suffer undue financial hardship from the increased cost of foam alternatives. The proposed rules go beyond that (inaudible) to require also that businesses show a 5-percent increase in operating costs or a 5-percent reduction in net profit. But to a small business with razor-thin margins, something less than 5 percent can still be a crippling hardship. Moreover, there's no reason to require small-business owners to give up their privacy. These rules require businesses to share their entire tax return with SBS simply to show that their above-the-line revenues fall below a certain threshold. A simple statement to that effect can serve the same purpose.

Rather than subjecting small businesses to these burdens, SBS could simply

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2 ask businesses to fill out a form stating
3 that they earn less than \$500,000 per year,
4 that they use foam products because other
5 options are more expensive and that they
6 expect to suffer financial hardship if their
7 food-packaging costs increase. The rules
8 should also be amended to provide a
9 meaningful and immediate right to appeal and
10 to require SBS to explain its reasons for
11 denying any application. Many of these small
12 businesses operate on such narrow margins,
13 that waiting one year to reapply can force
14 them out of business (inaudible).

15 Finally, the rules should clarify
16 that wholesale and retail outlets will not be
17 penalized for selling foam products to small
18 businesses that have waivers. I have
19 submitted full written comments as well and I
20 would respectfully requests that those
21 comments be incorporated into the public
22 record in their entirety. Thank you for your
23 consideration.

24 MR. SCHWARTZ: Thank you. Can we
25 get a copy?

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MR. KREMER: (Handing).

MR. SCHWARTZ: Next on the list would be Robert Jackson. I don't know if he's ready, or we'll come back to him.

Council Member Jackson, are you ready?

MR. JACKSON: Yes, sir.

MR. SCHWARTZ: Super.

MR. JACKSON: Thank you. Time frame is three minutes?

MR. SCHWARTZ: Three minutes. You can go over.

MR. JACKSON: I'm going to set my stopwatch so I know exactly what I'm doing. I'm looking for a mic for this.

So good morning, everyone. My name is Robert Jackson and I'm the President of the Restaurant Action Alliance NYC and formerly served as a 4-term elected member of the City Council of New York. And I'm submitting these comments because I'm very concerned that the New York City Department of Small Business Services proposed waiver rules developed pursuant to Local Law 142

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setting forth the procedures by which New York City businesses may apply for financial hardship waivers are unduly burdensome and if adopted as is will cause severe financial hardship to eligible businesses.

The Restaurant Action Alliance NYC is a coalition of minority residents and owners of restaurants in New York City. The alliance was formed in 2013 because many restaurant owners correctly perceived the financial harm the ban on foam would have on their livelihood. The members of the Restaurant Action Alliance are proud to contribute to New York City and its economy by employing New York City residents, paying their New York City taxes, supporting local food and beverage producers and distributors, and offering New York City -- New Yorkers convenient and high-quality meals.

Members of the alliance work very hard to make sure their businesses are serving an excellent product to their customers, and with the high costs of food, labor, rent, and at times struggle to make

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ends meet. This is why the waiver rules, which will prevent owners to continue to use foam, are so important. We do not want the proposed rules to be adopted because the rules make it extremely difficult for eligible businesses to apply for a waiver.

I was on the City Council when Local Law 142 was passed in December of 2013. The law intended for waivers to be freely granted to qualify businesses defined as businesses with less than \$500,000 in annual income. Because we do not want small minority businesses to shut their doors, lay off employees or lose profit, Department of Small Business Services must make sure the adopted rules help eligible businesses, not hinder them. As a council member renowned as president of Restaurant Action Alliance NYC, I understand that any avoidable harm to a small business bottom line causes that business owner undue financial hardship.

Local Law 142 was specifically designed to ensure that a waiver process existed to avoid undue financial hardship to

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restaurants and the proposed rules unto it; simply put, the requirements for obtaining a waiver to be made less burdensome. We want to encourage eligible businesses to apply, not discourage them. DSBS should simplify the waiver process.

We recommend that the proposed rules be changed in the following manner: One, Department of Small Business Services should presume undue financial hardship if a restaurant owner can attest to being a small-business owner with less than \$500,000 in annual income. This can be accomplished with a simple checklist on a form rather than an open-ended application process requiring extensive submissions and detailed explanations. Two, a restaurant should be able to attest to its income rather than be required to submit a tax return. Three, a restaurant should not be required to provide Small Business Services with the cost of alternate products versus foam. Small Businesses is in a much better position to maintain that information than a

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2 small-business owner, as it is well-known
3 that alternates to foam are substantially
4 more expensive. Four, a restaurant should be
5 able to check off the harm of a form prepared
6 by DSBS rather than explain the 5-percent
7 reduction in annual profit or layoffs or
8 provide a detailed explanation for hardship.
9 Small Business Services should, of course,
10 take all reasonable steps to ensure that
11 these waivers are available online, on paper
12 delivered to Small Businesses and by other
13 means and in multiple languages to ensure
14 that small businesses are not disadvantaged
15 in their ability to access a waiver
16 application in the first instant. Although
17 most of the restaurant owners in Restaurant
18 Action Alliance would qualify for a waiver,
19 the proposed rules place so many requirements
20 on the owners of small businesses who need to
21 spend their time managing their business and
22 do not have the time or capacity to complete
23 a complicated, burdensome waiver process.
24 Also, Small Business Services, if they deny
25 an applicant, they should state why and

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2 provide for an appeals process. A business
3 owner is entitled to know why Small Business
4 Services does not deem them eligible for a
5 waiver. And Local Law 142 was adopted with a
6 waiver process in place to prevent small
7 businesses from being penalized by the ban on
8 soft foam. The proposed rules penalize small
9 businesses by making the waiver process
10 extremely burdensome and should be changed to
11 accommodate the eligible business owners so
12 they can continue to thrive and contribute to
13 our great New York City economy.

14 Finally, a waiver for restaurants
15 that buy and use foam is not enough. The
16 stores that sell this important product to
17 alliance members may not qualify for waivers
18 on their own, meaning that a restaurant with
19 a waiver may still be out of luck. Small
20 Business Services should clarify that a
21 waiver entitles a restaurant owner to
22 purchase foam products from its usual
23 suppliers so restaurants and their suppliers
24 can continue to work together to bring
25 affordable food items to New York City

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2 residents.

3 And I thank you for giving me the
4 opportunity on behalf of the Restaurant
5 Action Alliance.

6 MR. SCHWARTZ: Thank you,
7 Mr. Jackson, for your comments.

8 Next person signed up to speak is
9 Marc Shapiro. Is he here?

10 MR. SHAPIRO: Yes. I'm not sure if
11 this is the appropriate forum. Mine was more
12 question-oriented as opposed to comments, so
13 I'm not sure if I should submit them.

14 MR. SCHWARTZ: If you have
15 questions you want to submit, you can do
16 that. Today it is to listen to comments, not
17 really to respond.

18 MR. SHAPIRO: Then I'll submit them
19 in writing because there's a lot of concerns
20 I have. I represent --

21 MR. SCHWARTZ: You may want to come
22 up and put that on the record.

23 MR. SHAPIRO: First off, thank you
24 for the time. And thank you to my industry
25 colleagues. I think they spoke very well as

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2 to the concerns here.

3 As a representative in food service
4 products and disposable packaging, we
5 represent both foam products as well as the
6 alternates that have been suggested.

7 My questions, which I'll submit,
8 are questions that we face on a daily basis,
9 not only from all of our restaurants that we
10 call on, but the suppliers to those
11 restaurants, and some of them are in this
12 room right now. And those questions range
13 anywhere from the ambiguity of the law
14 because there is quite a lot. If it was just
15 two people asking questions I would say no,
16 it's pretty concise, but everyone's asking
17 the same questions; does this qualify, does
18 this qualify, does this qualify? I'll give
19 you a perfect example, the packer processors,
20 people that pack food products in a wholesale
21 fashion, sell it to end users in the city who
22 then put it on the shelf as a retail -- for
23 purchasing; if they use the foam product, do
24 they qualify under this law -- excuse me,
25 under this exemption? We have a very famous

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customer, an end-user customer that's one of the prides in New York, and that's Junior's Cheesecake. Junior's Cheesecake packs their cakes on what we call foam cake circles to keep the freshness of the product, to keep it sustained. Because they're based in New York City, does that mean that when they sell their cakes into other establishments or even their own establishment, are they going to be penalized? I don't know of a real great alternative for a foam cake circle.

So there's a lot of questions like that that are maybe more specific, but we incur them every single day. So that's, again, what I wanted to present. And I thank you for your time.

MR. SCHWARTZ: Thank you. Robert Beagan.

MR. BEAGAN: Yes. Thank you for the time today. My name is Robert Beagan, Director of Marketing for Borax Paper Products, and we're a Bronx-based distributor. I just want to put a couple questions on the record. I submitted these

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online. We do have some pressing customers looking for answers.

I'm just going to read these three and look for a reply in the future: Will distributors continue to be able to stock polystyrene products? If not, please explain how a waiver will work for businesses that are exempt if their supplier cannot stock products? If not (inaudible) are exempt and businesses under \$500,000 in revenue are exempt, should we as a New York City-based distributor be exempt in being able to sell exempt businesses polystyrene products? And my last question, what are our responsibilities as a New York-based distributor compared to a distributor not based in New York City? As the law is written, New York City-based distributors would be at a competitive disadvantage not being able to stock polystyrene products to businesses that are either exempt from the ban or are not sanctioned by the law. Please explain our responsibilities as a New York-based distributor assigned to exempt

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business and businesses out of state.

Thank you for your time.

MR. SCHWARTZ: Thank you.

The next speaker signed up is
Sunder Luthra.

MR. LUTHRA: Good morning,
everybody, and thank you. My name is Sunder
Luthra and I'm from Victory Food Service in
the Bronx. We are a distributor of paper
goods primarily and everything else that is
used in a restaurant. And we sell not only
to the five boroughs but to New Jersey,
Connecticut, as well as customers who are not
affected by this proposed ban. Some of our
customers include not-for-profit
organizations and those who qualify to use
the product under the hardship waivers. So
we have some questions such as, will we be,
as a distributor, allowed to stock the
product? If we are not allowed to stock the
product, then our customers from out of the
boroughs will go to alternate distributors
and the customers who are within the five
boroughs who are allowed to use the product,

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2 who will be supplying them the product? And
3 we also have a cash-and-carry location where
4 customers come in from all over the place;
5 New Jersey, Connecticut, Upstate, Long
6 Island. How will we be able to supply them?
7 If we tell them that we do not carry foam
8 products because of this proposed rule, then
9 they may stop coming to us. We have about
10 120 employees in one location, 50 employees
11 in the other location, so we could be at a
12 great disadvantage. Thank you.

13 MR. SCHWARTZ: Thank you. Is there
14 anybody else here now that would like to
15 testify at this time?

16 (No response.)

17 MR. SCHWARTZ: Time is now 10:21.
18 We will take an adjournment and either wait
19 further for folks coming in to testify or
20 we'll close the record at that point. But
21 we'll adjourn now until at least 11:00.
22 Thank you.

23 (Whereupon, the hearing is
24 adjourned at 10:21 a.m. and resumes at
25 11:02 a.m.)

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MR. SCHWARTZ: Good morning. The time is now 11:02 on May 29th, 2015. We are continuing the hearing under Local Law 142 on the waiver for polystyrene products.

And the next speaker who signed up is Astrid Portillo.

MS. PORTILLO: Hello. My name is Astrid Portillo. I'm the owner of Mi Pequeño El Salvador Restaurant located in Jackson Heights, New York, Queens. We sell (inaudible) Salvadorian food and we've been in business over 25 years. Since my mother opened the restaurant, we've been using foam products. Our business consists of 35 percent of takeouts and deliveries. We rely on foam products because it keeps the food hot and most importantly, because it's the cheapest in the market. I have not found another product that is as cheap as the foam product and it's perfect with my packaging system. I've been fighting the foam-product ban since 2013. I was very excited when the City Council gave us a chance to recycle the product instead of banning it. What got me

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upset was that nothing was done. And then I receive a letter saying that on July 2015, all restaurants have to stop using foam products. To me, this law is unfair because the ones that suffer the most are small business, like me. As I mentioned before, there is nothing out there that is cheap and effective as the foam products. The other product, for example, plastic, costs \$50 more for a box and brings less quantity. Because I'm going to put more money into buying a different product that is very expensive, I'm going to have to let one of my workers go or cut down on their hours.

We need a solution, a solution that is easy for us to do. Thank you.

MR. SCHWARTZ: Thank you. Next speaker signed up is -- forgive me on the pronunciation -- Manuel Fajardo.

MS. FLORES: I'm going to translate for him.

MR. SCHWARTZ: Okay. And please speak slowly for the stenographer.

MR. FAJARDO: Good morning to

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everybody. I come from Jamaica, Queens. I'm the owner of Deli & Coffee. I'm here today because I do not agree with the Styrofoam law or what they want to change. Right now I don't agree with what they want to change because the Styrofoam material is a lot more cheaper than other materials. If they change it, the change will cost me \$50 extra more.

MS. FLORES: How about he talks in English as much as he can and if there's something you don't understand I can help you, because I don't want to change what he says that much.

MR. FAJARDO: Styrofoam is cheaper. We spend on each box \$50. But if they have change it -- we have to pay \$50 for each box. For the plastic one, it costs more money so it's going to be -- we have to spend more money because we have like 13 employees. So we have to cut it down, we have to let them go, because we cannot pay that kind of money because that's a lot.

MS. FLORES: He wants to say a word. The idea he wants to say is -- I think

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2 the word he used is exception, but I don't
3 think that's the right word, that the
4 exception for the small business to be
5 simplified, to be easier, not as complicated
6 as it would be to have, like, certain items
7 to be, like, a list. He wants it to be easy,
8 not complicated, especially for small
9 businesses like him, that they are not
10 currently completely fluent in English, to be
11 also bilingual or trilingual or how many
12 languages they need. All these changes will
13 definitely affect his employees if they don't
14 agree to have an exemption. They will have
15 to let go -- he will have to let go three or
16 four employees from his actual employee list
17 because of the cost so he wants it to be less
18 time consuming also because they work a lot
19 of hours, so they don't have that much time
20 to go back and forth to fill in applications
21 and other paperwork to qualify for the
22 exemption. I don't know if exemption is the
23 right word.

24 MR. DELLOLIO: The waiver.

25 MS. FLORES: The waiver, thank you.

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2 He's been in business for ten years and
3 they've been using that material for all the
4 time. They work around from 12 to 13, 14
5 hours depending on how the day is, and
6 including their employees. They have been in
7 business for ten years, like he said, but the
8 economy also is not as productive as it has
9 been before, so that forced them to work many
10 more hours a day, forced them to be changing
11 a lot of things to keep the business open for
12 the public. That's it.

13 MR. SCHWARTZ: Thank you both.

14 Is there anybody else here that
15 wants to testify at this time?

16 (No response.)

17 MR. SCHWARTZ: Seeing no one, we
18 are going to take one more adjournment and
19 we'll be closing the hearing at noon but
20 we'll wait until that time to see if anybody
21 else wishes to testify. Thank you.

22 (Whereupon, the hearing is
23 adjourned at 11:10 a.m. and resumes at
24 11:45 a.m.)

25 MR. SCHWARTZ: Good morning once

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2 again. Time now is 11:45. Is there anybody
3 here who wishes to testify on the proposed
4 rule?

5 (No response.)

6 MR. SCHWARTZ: Seeing no one at
7 this point, we will officially close the
8 record at noon. We're going to remain here
9 for the next 15 minutes in case someone
10 wishes to testify. Thank you.

11 (Whereupon, the hearing is
12 adjourned at 11:45 a.m. and resumes at
13 12:00 p.m.)

14 MR. SCHWARTZ: Good morning. It is
15 now 12:00 noon. We're back on the record.
16 Is there anyone else who wishes to testify on
17 the proposed rule?

18 (No response.)

19 MR. SCHWARTZ: Seeing no one, we
20 will conclude the hearing. The City will
21 take into account the comments received today
22 in promulgating final rule. And thank you
23 all for your participation.

24 (Time noted: 12:00 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

I, DANIELLE CAVANAGH, a Notary
Public within and for the State of New York,
do hereby certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such
proceedings.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of June 2015.



DANIELLE CAVANAGH

**Department of Small Business Services Public Hearing
May 29, 2015**

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