NEW YORK BUILDING CONGRESS 100 YEARS

September 17, 2021

**Testimony by the New York Building Congress before the New York City Council's Committee on Small Business on Intro 1796-2019 and Intro 2299-2021**

Chair Gjonaj and members of the City Council Committee on Small Business, thank you for the opportunity to provide testimony regarding Intro's 1796-2019 and 2299-2021, which would establish a system of commercial rent registration and regulations for lease agreements for storefront premises, respectively. While we appreciate the intent of the bills, to protect small businesses and provide them predictability in the leasing process, we do not believe these legislative proposals are the appropriate mechanism to achieve that goal and feel that the City of New York does not have legal jurisdiction over this matter. Should these bills progress, it will have disastrous consequences for the commercial real estate industry and be subjected to numerous legal challenges.

We applaud the City Council for their efforts to support the needs of small businesses and all those that operate commercial establishments covered by this proposal, however these proposals make a veiled attempt to villainize property owners as the preliminary culprit for the challenges that these businesses face. In Intro 1796, the Council is implying that the glut of vacancies across New York City is driven by landlords who prefer to withhold leasing space while they strategically wait for the opportunity to land a credit-tenant who can pay a higher rent. This is simply misguided and fails to consider the myriad of factors that drive vacancies and that vacancy rates between five and 10 percent is indicative of a healthy corridor. As noted in the Department of City Planning's *Assessing Storefront Vacancy in NYC* report from 2019, "vacancy rates are volatile, vary from neighborhood to neighborhood and street to street, and cannot be explained by any single factor." In the last decade alone, new regulations and market forces have placed significant burdens on small businesses, including rising property taxes, e-commerce and local consumer spending patterns, to name a few. It cannot be understated that rent is not the single driving force behind the crisis that afflicts small businesses.

These bills could also disincentivize landlords from making major investments to their properties. Commercial construction represents a considerable portion of the economy of New York City, as evidenced in the Building Congress' *Retail Snapshot* report. Between 2015 and 2018, construction starts for non-residential projects totaled $81 billion for both public and private sector projects, representing thousands of jobs. Beginning in 2016, however, renovations and alterations began to outpace new starts within the retail construction space, when 64 percent of all retail construction was for alterations and renovations. Additionally, a recent report by the State Comptroller's Office found our industry was the fastest-growing sector from 2011-19 with a 43.5-percent jump in jobs. All of that was brought to a grinding halt when the pandemic began; most of that decade of progress has been nearly wiped away.

Before March 2020, the building industry in New York City was thriving, however, as a result of the pandemic, the industry suffered a loss of over 70,000 direct and indirect jobs and $5 billion in wages. As proposed, Intros 1796 and 2299 would impose tremendous harm to the economy of the city during an already challenging period when the construction and commercial real estate industries are still looking to get back on their feet after suffering tremendously during the last 18 months.

Next, while the bill provides direction to the Commercial Rent Guidelines Board on factors that must be considered as part of its analysis, the reality of determining appropriate rents for a given space is a much more complex process with hundreds of factors that must be examined. It would be overly simplistic to believe that taxes, vacancy rate and operating costs are the only factors that influence rents; a prospective tenant and owner must also consider neighborhood character, distance to public transportation, foot traffic, storage capacity, elevator size and use restrictions (freight vs. passenger only), street frontage, ceiling heights and co-tenancy, among many others. It is also inaccurate to attempt to label commercial spaces in a uniform manner; no two commercial spaces of the same size and general character are the same for the purposes of calculating rent. While the bill does provide a mechanism for an owner to apply for an adjustment in the initial rent, in practice, thousands of petitions to examine individual spaces would lead to a gridlock in determining appropriate rents in a timely manner and will limit the ability for property owners to make independent decisions.

Should Intro 1796 pass, one unintended consequence we believe is possible is that large, well-capitalized businesses would be given a tremendous advantage in the leasing process when competing against tradition mom-and-pop stores. By setting a ceiling on rents, landlords could be more inclined to rent their premises to businesses that have the capacity to enter into longer-term leases or take on significant capital investments on their own rather than have the landlord provide tenant improvements.

Lastly, the City of New York does not have the authority to implement commercial rent control, thus limiting landlord rights regarding use and occupancy of their private spaces. The concept of regulating private leasing activity is several decades in the making with numerous blue-ribbon committees being formed dating as far back as Mayor Ed Koch. Time and time again, it has been found that it is unconstitutional for the City to implement such regulations as it is not granted under its Charter mandate and cannot be supported through its health and welfare powers.

Neither the City Charter, the Municipal Home Rule Law nor the State Constitution support the City unilaterally imposing rules to enact commercial rent regulation. In 1945, the State enacted a commercial rent regulation regime and it was permitted to expire on December 31, 1963 as per the sunset provisions in that legislation. By legislating in this area, the State has set the unmistakable precedent that it is of State concern to regulate commercial rents and that only the State has the authority to do so. Further, over the course of numerous court rulings, it has been made clear that the State Legislature is the sole authority that can provide for the enactment of such rules by way of the preemption doctrine. See Albany Area Builders Association v. Town of Guilderland, 74 N.Y.2d 372, 377.

The New York Building Congress opposes Intros 1796 and 2299 and we urge the City Council to examine the diverse range of issues that affect retail corridors and drive vacancies. Regulations that are overly inflexible or that prescribe the incorrect solution could lead to increased vacancies and other unintended consequences across the economy of the city, including for our small businesses. Thank you for your time and consideration.