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Small Businesses to NYC: Get Off Our Backs!

The city's crushing burden on job-creating entrepreneurs is getting even heavier.

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Morton Sloan feels besieged. Over the last several years, the Bronx-based entrepreneur has watched the property taxes on the ten Morton Williams supermarkets he runs in the city swell by hundreds of thousands of dollars. Increasingly aggressive city inspectors now linger in those stores for hours, writing costly citations for items that clerks accidentally mislabel. Some of Sloan's suppliers say they'll no longer deliver to New York City because of the Department of Transportation's frequent parking-ticket blitzes. It gets worse: a new Bloomberg-administration program that encourages fruit and vegetable vendors to set up on street corners has left him scrambling to match prices with competitors who don't have to pay rent, utilities, payroll taxes, and various other expenses. And now the city wants to plunk a 60,000-square-foot supermarket into a heavily subsidized new development just blocks from two of his stores. "I've never received a subsidy or asked anything of the city in 35 years, except to be left alone to do business," Sloan says. "But everywhere I look these days, it seems like the city is trying to make life tough for me."

Doing business in Gotham has rarely been easy for the nearly 200,000 small firms that form the backbone of the city's local economy. Virtually everyone who runs a business in New York has long had to deal with uncompromising inspectors, unsympathetic city bureaucracies, and complex regulations, to say nothing of profit-crushing taxes. But over the past few years, small businesses' woes have worsened significantly, say many entrepreneurs and business groups. Taxes, fees, and fines are worse than ever; city departments have stepped up inspections and enforcement; city agencies have stymied efforts to cut red tape; and at a time when the national and city economies are struggling, commissioners have promoted new social policies that have added to businesses' burdens. "In 25 years, this is the worst I've seen things," claims Ramon Murphy, owner of two bodegas and president of the city-based Bodega Association of the United States.

In an election year and in the middle of a serious downturn, the costs of New York's tough-on-business regime have started to grab headlines. Mayor Michael Bloomberg and the City Council have agreed to set up a commission to cut duplicative business regulations, and the administration is rolling out a series of economic initiatives aimed at helping small businesses. But while this (rare) attention to their problems is welcome, business owners say, what the city really needs is lower taxes, far fewer regulations, more manageable fines, and a more responsive bureaucracy. At stake is the health not just of a few small firms but of the city's wider economy. Government-imposed barriers to doing business raise prices, narrow choices, and inhibit job growth for all New Yorkers.

New York City's reputation as a tough place to do business dates from at least the Great Depression, when Mayor Fiorello La Guardia, striving to make Gotham the quintessential New Deal City, imposed new taxes on businesses to fund a rich array of welfare programs. When the Depression eventually gave way to post–World War II prosperity, the taxes stayed in place. Later, with a social agenda as ambitious as La Guardia's, Mayor John Lindsay added a whole series of new business levies, seeking to make 1960s Gotham the shining star of President Lyndon Johnson's Great Society.

New York's fiscal and economic meltdown in the mid-1970s led the city's leaders to make a sobering, if temporary, reassessment of its antibusiness regime, resulting in a few tax cuts. But New York never completely abandoned the big-government precedent that La Guardia and Lindsay had set. Even though the eighties' Wall Street boom produced surplus tax revenues that eased the city's budget problems, the steep recession at the end of the decade brought elevated spending and renewed tax increases. In 1990 alone, Mayor David Dinkins increased city spending 5.2 percent and heaped $859 million in new taxes on firms. (At the same time, the state financed a 6 percent budget boost with $900 million of new business taxes.) City departments also began an aggressive push in the early nineties to increase business fines and violations; many owners saw this as a move to rest the city's ever more swollen budget on their backs.

The burden on businesses was also felt by New York residents and the larger economy. A comprehensive early-nineties study by economists Stephen G. Craig and D. Andrew Austin estimated that high taxes were largely to blame for an outflow of 750,000 to 1 million jobs from the city since the early 1960s. And a 1991 Office of the Comptroller report estimated that the previous year's tax increases on business would cost the city up to 80,000 lost jobs. One reason was lost business to the suburbs, where stores, taxed less, could charge customers less. A study by the city's Consumer Affairs Department found retail prices for basic items in some neighborhoods to be 8 to 10 percent higher than in the suburbs. No wonder 55 percent of New Yorkers in one 1993 survey said that they left the city once a month to shop for everyday items. In fact, the New York City Planning Department figured in 1993 that Gotham had lost 50,000 retail jobs in the outer boroughs alone because New Yorkers were shopping for better prices in the suburbs.

The plight of small business became an issue in the 1993 mayoral race, when candidate Rudy Giuliani called for business tax cuts and rolling back fines and fees. After his election, Giuliani initiated a rare era of tax-cutting, trimming or eliminating more than a dozen business-related taxes—including New York's unique "vault levy" on underground space and the despised commercial occupancy tax, an unprecedented levy on rent dating from the Depression, which he wiped out in the four outer boroughs and for small businesses in Manhattan. Perhaps most significantly, Giuliani also persuaded the state legislature to eliminate the sales tax on clothing purchases of up to $110 (he had unsuccessfully sought a $500 floor), sparking a sharp uptick in retail sales citywide.

But after decades of hikes, Giuliani's reductions were only a light easing of a tax load that the city's Independent Budget Office estimated as 65 percent larger than the big-city average. By the Giuliani era's end, corporate taxes alone took six times more per $100 of taxable income in New York than in America's other big cities. And Giuliani had let several opportunities for bigger cuts go by—most egregiously in his second term, when he refused to kill the rent tax for big Manhattan businesses, hoping to reserve the revenues for a new stadium for the New York Yankees.

Still, the Giuliani years represented gains for small-business owners. They were further encouraged by the 2001 mayoral election, in which voters rejected left-leaning Democratic candidate and former Consumer Affairs Commissioner Mark Green and elected one of the city's most famous business executives, Michael Bloomberg—especially when Bloomberg announced that New York was "open for business."

But business owners would be disappointed, for in dealing with budget problems, Bloomberg's tenure has been more like Dinkins's than Giuliani's. Owners got a glimpse of what was ahead right after Bloomberg took office. With New York and the nation reeling from the post-9/11 budget crisis, the city began vigorously enforcing an obscure 1962 ordinance that limited the inscriptions on a store's awning to its name and phone number. Aggressive inspectors smacked shops with $400 fines, forcing many to replace their awnings at a cost of several thousand dollars. In just a few months, inspectors wrote as many violations as they had the entire previous year, justifying the ticketing frenzy by claiming "a new level of visual clutter in the city," as a buildings-department spokesman put it. Sympathetic media attention and a public outcry prompted the City Council to rewrite the outdated law.

Far harder for Gotham businesses to survive, however, are steep recent tax hikes, especially the mayor's $1.9 billion property-tax increase in 2003—the largest single increase in the city's history, which fell disproportionately on businesses. Combined with aggressive reassessments of the value of buildings over the last eight years, the new levies have virtually doubled the real-estate tax bite in the city, from $8.6 billion in 2002 to $16.1 billion this year—a rate of growth nearly three times the rate of inflation. And businesses pay nearly half of this total, because New York has long taxed commercial properties at nearly eight times the rate it applies to homeowners. (Other big cities average only about 1.7 times.)

"Property taxes have created a huge problem for landlords and for small-business owners who rent," says Bradley Silverbush, a real-estate lawyer at Rosenberg & Estis in Manhattan. "Most landlords now insert clauses into leases saying tenants must pay any increase in real-estate taxes because landlords have been burned by the big increases, but tenants, especially small businesses, can't bear these new taxes either. Their revenues just don't change that much from year to year." These property-tax hikes, moreover, have come on top of sharply rising water and sewer charges—what Councilman David Weprin of Queens has called "backdoor property taxes"—which are up by 63 percent, a half-billion dollars, in eight years.

One result: many more instances of businesses shuttering, owing tens of thousands of dollars in property taxes. Bodyworship, for example, a trendy Lower East Side clothing boutique frequented by celebrities like Britney Spears, shut down last year after accumulating $45,000 in back property taxes, a staggering bill for a tiny store. Over the summer, Silverbush represented a small business that owed $163,000 in back taxes and rents and a landlord slammed with nearly $100,000 in city water charges. Bills like these have helped push up vacancy rates—now projected, by the year's end, to hit 10 percent in Manhattan and 12 to 15 percent in Brooklyn and Queens. That's up from a citywide vacancy rate of less than 5 percent at the end of last year.

The higher taxes are a particularly tough problem for businesses that operate on low margins or have competitors that can make products elsewhere more cheaply. David Zuckerwise, vice president of the Liberty Brass Turning Company in Long Island City, Queens, says that the manufacturer has outsourced about 30 percent of its work overseas in recent years to cut costs—and is now thinking of moving its domestic production outside New York. He's looked at locations in the suburbs, where local costs—notably, commercial property taxes—are substantially lower. "There used to be advantages to being in New York City, like being near your suppliers, that offset the high costs, but those advantages are gone," he says. "The smart move is to get out."

Small firms with narrow profit margins have come to view Mayor Bloomberg as unsympathetic to their plight. The mayor defended his 2003 tax hike by calling the city a "luxury product" that businesses were willing to pay a premium for. While that might have been true of the financial industry from which Bloomberg himself came, far more common are businesses, such as supermarkets, that typically earn only 1 to 2 percent of sales. "You can't raise the price of a can of peas that much to pay for higher taxes and fines," says Nelson Eusebio, who ran a supermarket in Brooklyn for nearly 20 years before closing up shop recently. Eusebio now heads a local association of struggling, mostly Latino, supermarket operators. He estimates that 300 supermarkets have gone out of business in the city since 2000; the Bloomberg administration, in its own study, admits that New York is probably losing $1 billion a year in retail food sales to the suburbs because of a shortage of markets. The city could support up to 100 more supermarkets, the study estimated—but only, notes Eusebio, if they could sell at prices that made them competitive with the suburbs.

Business groups that have tried to make their case to the mayor on taxes say that he just doesn't get it. When members of the Rent Stabilization Association, a group representing small landlords, complained about how the city was squeezing their bottom line, the mayor pointed out how much the value of buildings had gone up since he'd taken office—cold comfort to landlords prevented by rent-control regulations from passing the full effect of rising taxes along to tenants. "It was a baffling response," says Jack Freund, the group's vice president. "We can't run our buildings on value."

New York City's fines, fees, overlapping regulations, and licensing requirements provoke nearly as much ire as taxes do, in part because they often seem capricious and frequently require big investments in time, as well as money, to sort out. The Rent Stabilization Association counts 24 state and city agencies—ranging from the Departments of Building, Aging, Environmental Protection, and Finance to the Human Rights Commission and the Water Board—that small-building owners must deal with. The city's Department of Consumer Affairs requires licenses for 55 different types of businesses—including electronics stores, stores selling secondhand products, billiard parlors, stores that sell scales or measuring devices, storage warehouses, and parking garages. In some cases, an owner needs two licenses from Consumer Affairs, as in the case of a secondhand store that happens to sell electronics.

City agencies cling tenaciously to these requirements, even when they overlap or are outdated, because they're revenue sources, argue business owners. The Rent Stabilization Association spent nearly a decade fighting to reduce the number of city agencies that must inspect a building's boiler every year from three to one. "No one wanted to give up their right to do it," says Freund. When Councilman David

Yassky introduced legislation in 2006 to eliminate the licensing requirement for stores selling secondhand products, the administration blocked him. “I said to the people at Consumer Affairs, ‘Why do we need to license these people selling used furniture?’ ” Yassky recalls. “And the answer I got was: ‘Because we need to know who’s out there.’ I still don’t know why we need to know that, except to generate more revenue for the city.”

One big generator is the Department of Health, which projects 27 percent more revenues from fines this year. Owners say that they’ve already seen the result in a blitz of tickets. Rob Bookman, a Manhattan lawyer who represents restaurants and bars, says that inspectors are spending hours at each premise—and that “nobody walks out with zero violations.” James McBratney, owner of Jimmy Max on Staten Island and president of the local restaurant association, says that he was recently soaking his silverware in a way recommended by the manufacturer when he received a summons for having standing water in his restaurant. “I explained it to the judge, and even brought the manufacturer’s instructions with me, and I was told, ‘Do you expect the manufacturer’s instructions to supersede the laws of the city?. ”

The health department says that it isn’t increasing the violations it writes and that businesses are just complaining more because of the down economy. “There are plenty of health code violations there; we don’t have to search for them,” the department’s assistant commissioner recently said. He also claimed that a practice common in other jurisdictions of issuing warnings before writing fines doesn’t work in New York: the city needs the “hammer” of fines to ensure compliance. Still, industry advocates note that in the last three years, the health department has increased fine revenues 40 percent. Says James Oddo, who represents Staten Island in the City Council: “When you get complaints from a local pizzeria, from Jimmy Max, and the chef at our biggest hotel, you know something’s going on. The inspectors are using zero discretion.”

Inspectors often use obscure and long-unenforced rules and laws to generate tickets, as in the case of inspectors who started ticketing street vendors for stacking soda cans on their carts, using a little-known rule prohibiting pushcart operators from openly displaying food. The City Council finally changed the rule after hearing complaints. “The reality is that [these laws] just function as a means to give out tickets,” Yassky said after investigating vendor grievances.

Businesses have understandably looked with alarm on the city’s latest budget, which projects collecting nearly $900 million in fines and fees this year—a whopping $110 million increase over 2008. The city says that much of the gain will come from an increased number of parking tickets and traffic violations, thanks to a new program of cameras set up at intersections. But that’s hardly consolation to businesses: many of them, especially package-delivery firms, wholesalers, and others that must negotiate the city’s streets every day, have borne the brunt of previous ticketing sprees.

A Short History of Antibusiness New York City

One of the many legacies of New York’s Depression-era mayor, Fiorello La Guardia, is the belief that the city’s business community exists to pay for the ambitious social agendas of Gotham’s political leaders. Successive generations of mayors, City Council members, and commissioners have operated on that assumption, helping make New York one of the country’s most expensive and difficult places to do business.

Among the new taxes that La Guardia imposed in 1934 to finance a growing budget were a local sales tax and an unprecedented tax on gross receipts that firms had to pay for "the privilege of carrying on a business or practicing a profession in the City of New York." The gross-receipts levy was especially unwelcome because it taxed not profits, which had evaporated for many firms during the Depression, but revenues. La Guardia originally called the tax "temporary," but he continually renewed it and also added other business taxes, including the 1938 commercial-occupancy levy, which was a tax on business rents collected in addition to the city's more traditional property taxes.

Neither the waning of the Depression nor the postwar economic boom halted the upward march of business taxes. Between 1945 and 1960, New York increased the "temporary" gross-receipts tax rate fivefold, even though, as the *New York Times* pointed out, it fell "most heavily precisely on those firms that do business on the smallest margin of profit." City officials also showed a diabolical knack for dreaming up business levies that existed nowhere else, like the one imposed on vault space beneath streets (for which firms were already paying a licensing fee). And the city applied its sales tax to more and more products that went untaxed elsewhere, like clothing, so that, by the early 1960s, the *Times* was reporting that merchants on the fringes of the outer boroughs could no longer compete with firms outside the city and were going out of business in droves.

Seeking a national reputation for expanding welfare programs, Mayor John Lindsay matched La Guardia's taxing ardor. He replaced the hated gross-receipts tax with a business tax on profits, which collected some $58 million more from firms each year than its predecessor had; introduced a city income tax that fell heavily on successful small-business owners; and instituted a tax on unincorporated businesses. Over time, he enlarged many of these levies—extending the unincorporated-business tax to the self-employed, expanding the city's sales tax to restaurant meals, and upping the vault tax. A 1976 commission appointed by Lindsay's successor, Abe Beame, estimated that the city lost nearly 100,000 jobs in a decade because of the steep business-profits tax alone. The commission also noted that "the confidence of businessmen in government had been shaken" by the decade of taxation.

But taxes don't tell the full story of government's hostile attitude toward businesses in that era. The 1950s and 1960s were also the beginning of the age of urban renewal, an era of big-government-designed building that continues to this day. Starting in the late 1950s, the city seized and tore down thousands of small businesses, from Italian bakeries to kosher meat markets to Puerto Rican bodegas. In East Harlem alone, authorities took possession of and then razed 1,000 small businesses to make way for a dozen public-housing developments. In a 20-block zone on the West Side, government ejected 250 small firms to build public housing. Hundreds of small-office tenants and some 300 merchants, including a cluster of electronics stores known as Radio Row, were displaced to build the World Trade Center.

In most cases, these firms received little compensation, and the majority simply disappeared. The effort turned many business owners into activists who marched on City Hall to protest their treatment, usually to little avail. Life changed dramatically for owners like Ramon Caro, who operated a restaurant in East Harlem until the government seized it. Tracked down by *New York Times* reporters in 1957, Caro was working as a dishwasher and still awaiting compensation, though the amount awarded to him wouldn't be enough to open a new restaurant. Others with the wherewithal to relocate often faced steep drops in business. As Harry Schichman, who ran a repair shop in East Harlem that he relocated in 1957, told the *Times* after the move, "Carfare I don't even make."

By the 1970s, Lindsay's profligacy had driven New York to the brink of financial ruin and prompted a sharp cutback of not only social programs but also key city services, including police and firefighting. Press reports described crime-ridden Jamaica, Queens, once a bustling shopping district, as "totally deteriorating." When a blackout struck on July 13, 1977, police and fire personnel sat helplessly by as looters pillaged 134 stores and set 44 on fire in Bushwick, Brooklyn. It would be decades before the commercial district recovered.

What saved New York's finances was a late-1970s upturn on Wall Street, producing an economic revival centered on the financial industry, where profits and pay soared. But the Wall Street–led boom also helped foster the notion that New York businesses made so much money that they could afford a much heavier government burden. And so when tax revenues fell in the late 1980s, the result of a Wall Street slump, both the city and the state were quick to respond with new taxes on businesses to make up for the budget shortfalls. The state raised taxes on so-called Subchapter S corporations (the favored way of incorporating for many small firms), and the city enacted a substantial increase in property taxes for commercial establishments.

The early 1990s also saw an uptick in business regulations, especially in rising fines and fees. In 1992, the city's Consumer Affairs Department, led by former Ralph Nader associate Mark Green, boosted by 20 percent the revenues it had collected from fines in fiscal year 1991 and hiked fees for dozens of different business licenses. Firms that failed to obtain the proper license or that labeled items incorrectly were subject to sharply increased fines. Meanwhile, the Department of Sanitation hit firms with a staggering 236,000 violations that year, many for the city's controversial 18-inch rule, which requires merchants to keep not only their sidewalks litter-free, but also the street up to 18 inches from the curb. And the health department doubled fines for first-time restaurant violators and eliminated warning citations, slapping $1,000 tickets on owners for initial violations. "It was pure harassment in many cases for the sake of raising revenues," recalls City Council Minority Leader James Oddo.

And yet that era pales in comparison with what has transpired in the past few years. Is it any wonder the city's small businesses are angry?

Making matters worse, city departments are often slow to respond to calls for help from businesses. Former nightclub operator Paul Seres, who is trying to build a political movement among restaurant, bar, and club owners, complains that the same agencies that will send out an inspector the day after receiving a complaint about a business will be unresponsive when that business calls, trying to correct a problem with the city. Lawyer Steven Barrison recently represented a small businessman and property owner who had pulled down a building on his land but kept getting water bills for it—and threats from the city for not paying them. “The city swore that they were reading a meter on the property,” says Barrison. “It took me two years to get an inspector to come to the site so I could show him there was nothing there, and another two years to get the city to stop sending bills. Meanwhile, this guy is paying me to represent him.”

Business owners have also been frustrated—and confused—by the social agenda of a “businessman mayor” and his commissioners, who seem intent on engineering the city’s culture to their liking, regardless of the cost to small firms. Among other initiatives, the administration has sharply raised cigarette taxes, banned smoking in clubs and restaurants, banned trans fats in restaurants, and forced chain restaurants to post calorie counts on their menus. Some of these initiatives are of dubious value—there’s no scientific evidence, for example, that listing calories has any effect on a person’s food choices—but “it’s another way to extract revenue,” explains Barrison. “I had a franchisee who posted calorie counts, but they were in the wrong place on the signs, according to the inspector, so the owner got hit with a fine.”

Even when the Bloomberg administration has tried to tackle problems in the local business community, the attempted solutions have sometimes sent the wrong message. After the city’s own study backed up reports of a growing supermarket shortage, the administration offered virtually nothing to help struggling stores stay in business, instead debuting a package of tax incentives to lure new stores to New York and licensing new cart vendors to sell fruits and vegetables in underserved areas. The effect has been to worsen the plight of existing supermarkets. The cart vendors are already setting up shop near supermarkets, owners grumble. “The city sees people in line at these new vendor carts and declares the program a success,” says Morton Sloan. “What about the business I’m losing?”

Bloomberg is also seen—for good reason—as a friend to big, sweeping, government-designed economic projects that displace local businesses through eminent domain. He has supported everything from the Atlantic Yards project in Brooklyn to a massive new development in Willets Point, Queens, which would uproot hundreds of firms. Whatever the merits of these individual initiatives (and government’s record of picking winners in business is erratic at best), eminent-domain law as practiced in New York is a virtual death sentence to most small firms. “If government wants to displace a small business in New York and the business doesn’t own its own property, its chances of survival are slim because government pays virtually nothing to these businesses,” says Michael Rikon, an attorney at Goldstein, Goldstein, Rikon & Gottlieb in Manhattan, a firm that specializes in eminent-domain cases. “They come to me to represent them, and I often refer them directly to a bankruptcy lawyer.”

Rikon represented some of the 55 businesses that the city displaced to make way for the *New York Times*’s new tower on Eighth Avenue between 40th and 41st Streets. Some of the displaced firms simply never reopened; others managed to relocate but succumbed soon after, destroyed by the loss of what is often most valuable to a company—its location. One casualty was a theater-district institution, Arnold Hatters, which had been in business for 44 years but closed this June. “I’m positive if I was still in the old location, I’d be weathering this economy,” one of the owners, Mark Rubin, said in an online posting.

“Instead, with three kids and a mortgage, I’m writing the first resume of my life.” His brother and business partner Peter was disillusioned about the experience: “I never used to be political. I voted and figured everything just took care of itself. But then this happened. It’s changed everything for me.”

In the case of the *Times* building, government argued vigorously against merchants’ claims that they should be compensated for the value of their original Times Square locations. “The government tried to keep the compensation as small as possible by actually disputing the businesses’ street-traffic claims,” says Rikon. “It breaks your heart when you see what happens to these businesses.”

New York’s small businesses can take some comfort that their troubles are now receiving election-year attention from city government. In addition to the task force on duplicative regulations set up by the Bloomberg administration and the City Council, the city has also established a temporary forgiveness period for all fines, so that owners can make payments and escape interest and penalties. And the city has begun offering training by the Kauffman Foundation to would-be entrepreneurs. In his campaign ads, Bloomberg also touts a plan to make more loans available to small firms, which often have trouble qualifying for them, and to increase funding for firms to train workers in new jobs as they struggle to survive during the steep recession. He’s also begun arguing for reform of the city’s taxes on unincorporated businesses, which tend to be small firms, though whether these reforms result in an actual reduction in the tax burden is unclear. Heading up many of the administration’s initiatives is Bloomberg’s Commissioner of the Department of Small Business Services, Rob Walsh, a respected former head of the Union Square Business Improvement District.

And despite the anger that many small firms feel toward the administration, no political champion is currently waiting in the wings. Bloomberg’s Democratic opponent in November’s mayoral election, Comptroller Bill Thompson, says that he’s in favor of reforming some business taxes—including the city’s onerous levies on the so-called Subchapter S corporations, whose earnings are taxed through their owners’ personal income—but he has yet to outline how he would do that in the current budget crunch. Thompson, moreover, advocates requiring city firms that receive tax subsidies to pay a “living wage,” even though there’s now substantial research showing that living-wage requirements destroy jobs and raise unemployment levels. Such mandates won’t cut prices or operating costs and won’t increase choices for New Yorkers, but they will delight the unions whose support Thompson seeks.

Still, small-business executives are hoping that the depths of this recession, as well as growing realization in political circles that Wall Street may no longer drive the city’s economy, will eventually produce a more business-friendly attitude in city hall. It’s a long shot, given New York’s long history of anti-small-business attitudes. But the only alternative for many would be to seek their fortune elsewhere. “I’ve thought of opening locations somewhere else, like Jersey,” says McBratney, the restaurant owner. “I wouldn’t be the first.”

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