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Monday, November 1, 2021

Testimony to City Council Committee on Small Business

By Dance/NYC

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On behalf of Dance/NYC (www.dance.nyc), a service organization that serves over 5,000 individual dance artists, 1,200 dance-making entities, and 500 non-profit dance companies and the many for profit dance businesses based in the metropolitan New York City area, including BIPOC (Black, Indigenous, and Peoples of Color) dance workers, immigrants, and disabled dance workers. Dance/NYC embeds the values of justice, equity, and inclusion into all aspects of its operations and frames the following requests through the lens of those values. Dance/NYC joins colleague advocates working across creative disciplines in thanking you for your leadership during this time and requesting:

1. Clearer compliance and oversight guidelines for employers, employees, and patrons of arts and cultural businesses affected by Key to NYC; and
2. Allocation of American Rescue Plan Act funding to arts and cultural businesses toward additional expenses incurred to comply with Key to NYC.

Dance/NYC expresses its gratitude to the City Councilmembers, City Officials, Mayor's Office and other dedicated workers who have contributed to the recovery of the city's arts and culture sector. Arts and cultural organizations were the first to close at the start of the pandemic, and remain one of the City's hardest-hit sectors. While the public health goals of Key to NYC are laudable, its implementation stands to cause economic hardship to the City's still struggling arts and cultural field. With respect, there are further considerations to be made to Key to NYC guidance and oversight in order for arts and cultural organizations, particularly the hardest-hit small budget organizations, to recover, thrive, and be sustainable.

Since the start of the pandemic, Dance/NYC has been conducting the Coronavirus Dance Impact Study (<http://bit.ly/DNYCImpactSurvey>), which is a comprehensive research study on the impact COVID-19 is having on the dance sector. Dance/NYC's Coronavirus Dance Impact Survey found that dance organization, group, and project budgets shrunk by nearly one-third (31% on average) due to earned and contributed revenue losses. 18% of dance organizations, groups, and projects believe that permanent closure is likely or extremely likely; 84% of those facing permanent closure have budgets under \$100K. Separately, Dance/NYC has been tracking organizational closures and is aware of at least 25 organizations and facilities that have permanently closed their doors due to the pandemic; the majority of which includes studio facilities which are primarily small businesses and beacons in their communities. In Dance/NYC Defining "Small-Budget" Dance Makers in a Changing Dance Ecology (www.dance.nyc/sbmdmdata2020), we found that 83% of these organizations have existed in NYC for over a decade and 43% have existed for more than 20 years. Infrastructural support to facilitate compliance with Key to NYC is crucial to ensuring the resilience and long-term sustainability of the City's arts and cultural sector.

Arts and cultural businesses fall under two of the three industry categories affected by Key to NYC: fitness regulations for dance studios and schools, and entertainment regulations for theaters and presenting venues. Nearly every business in the arts and culture sector is impacted by mandated guidance and subject to inspection, enforcement, and oversight by the City. Recent feedback from Dance/NYC constituent organizations points to inconsistencies in enforcement from inspectors. While the enforcement effort across City agencies is appreciated, it appears inspectors from various agencies are not coordinated in their compliance requirements and reporting procedures. This is leading to confusion for businesses, specifically regarding required or suggested templates for organizational plans, the structure of warning and fine systems, and the extent of the inspector's scope of responsibility to review paperwork and/or enter a facility to monitor activities. Additionally, some organizations have encountered resistance from inspectors to comply with organizational plans that are stricter than those outlined in Key to NYC, such as requiring proof of vaccination for any and all persons entering a facility for any length of time, including City inspectors. Equitable enforcement of Key to NYC begins with providing affected organizations with the information and resources they need in clear and accessible ways and carries through the actions of City inspectors responsible for enforcing the mandate. Noncompliance carries steep fines that small budget arts and cultural organizations still in recovery from extended closures cannot risk incurring, particularly when guidance and enforcement procedures remain unclear. It is essential that Key to NYC enforcement reflect the realities these organizations face in integrating this City mandate into their operational guidance and infrastructure by providing contextualized, comprehensive information to affected businesses. Measures to consider for the Key to NYC website include: 1) descriptive context around the templates, documentation, and actions included in compliance requirements, and 2) transparency around which City agencies will conduct site inspections, including details about their role in and the parameters of the inspection process.

Given the range of organizational size, structure, and budget capacity in the arts and culture sector, each business faces distinct challenges in complying with Key to NYC. Many small budget organizations have incurred significant new expenses directly related to Key to NYC compliance. These include staffing expenses such as: 1) hiring new employees to check vaccination status and monitor points of entry and egress; 2) training all new and existing employees to verify and/or document vaccination status; 3) ensuring all new and existing employees have the resources and information they need to de-escalate potential conflict with patrons over vaccination compliance; and 4) retaining pay for unvaccinated staff members who are not able to work remotely. Operational expenses include: 1) the administrative cost of creating new organizational policies and protocols that comply with Key to NYC mandates and regulations from performing arts unions; 2) upgrading or installing new HVAC components and air filtration systems to comply with the HEROES Act; 3) installing indoor and/or outdoor structures and barriers to facilitate vaccination verification for large numbers of patrons; 4) shifting previously planned in-person programming to virtual formats, or in some cases cancelling programming altogether; and 5) providing reasonable accommodation to unvaccinated patrons through virtual or outdoor programming. Businesses are also facing the possibility of increased insurance rates and legal expenses to answer potential suits from employees and/or patrons. In addition to these increased expenses, businesses are confronting an ongoing loss of revenue due to decreased attendance to programming, classes, and performances, as well as the loss of rental income due to cancellations from unvaccinated patrons. It is crucial that affected businesses, particularly small budget arts and cultural organizations, have access to City funds to comply with this City mandate. We ask that the City look to American Rescue Plan Act relief funds intended to support the recovery of industries impacted by the pandemic to ensure that arts and cultural businesses survive the implementation of mandatory public health regulations.

The impact of Key to NYC goes far beyond the businesses themselves. For studios and performance venues that provide services to

independent artists, the repercussions of organizational interruptions, displacement, and closures are compounded; losing access to these spaces puts the working lives of arts workers and the art itself at risk. These impacts are felt most acutely by artists and organizations led by and primarily serving BIPOC, immigrants, disabled people, and other communities with less access to capital reserves, which in turn stands to exacerbate historical inequities in the field. Providing clearer guidance, equitable enforcement, and funding for businesses to comply with Key to NYC is a concrete investment in both arts and cultural organizations and individual arts workers and is desperately needed to ensure the long-term survival of our City's arts workforce. Implementing these changes to Key to NYC has a twofold benefit: 1) ensuring equitable oversight and enforcement of public health measures to provide clarity and mitigate punitive fines, while 2) directly supporting the financial viability and sustainable longevity of organizations that incur additional expenses for mandated compliance. Taken together, these measures provide much-needed relief during the pandemic and ensure the long-term capacity of arts and cultural spaces to serve arts workers and their communities.

Dance/NYC joins the City's arts and culture sector in asking for the above measures to ensure the longevity of small businesses and arts and cultural organizations that have long been an essential part of the communities in our City. Arts and culture can lead the City's economic recovery, and financial and logistical support for Key to NYC compliance can help ensure their resilience, growth, and long-term survival.

For Dance/NYC and its constituents, the most urgent priorities are:

1. Clearer compliance and oversight guidelines for employers, employees, and patrons of arts and cultural businesses affected by Key to NYC guidance; and
2. Allocation of American Rescue Plan Act funding to arts and cultural businesses toward additional expenses incurred to comply with Key to NYC guidance.

We thank you in advance for your consideration and commend the City's ongoing efforts to support economic recovery and cultural resilience. Now is the time to act so that arts and cultural businesses, arts workers, and their communities continue to thrive for years to come. We look forward to the opportunity to ensure that New York remains a vibrant capital for arts and cultural organizations to operate and grow sustainably within their communities.

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[< back](#)

[previous listing](#) • [next listing](#)