

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2020**

No. 100

Introduced by Council Members Borelli, Cumbo, Powers, Koslowitz, Cornegy, Kallos, Constantinides, Chin and Rose.

A LOCAL LAW

In relation to allowing food service establishments to charge a COVID-19 recovery charge

Be it enacted by the Council as follows:

Section 1. Temporary COVID-19 recovery charge. a. Definitions. For purposes of this subchapter, the following terms have the following meanings:

COVID-19. The term “COVID-19” means the disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Food service establishment. The term “food service establishment” has the same meaning as set forth in section 81.03 of the health code of the city of New York, except that it does not include pushcarts, stands, vehicles, or a food service establishment that is part of a chain with 15 or more locations nationally doing business under the same name and offering for sale substantially the same menu items.

Stated price. The term “stated price” means the amount that a consumer owes for an individual listed item. The term “stated price” does not include any additional charge that was not included in the pricing of an individual listed item.

Surcharge. The term “surcharge” means a charge imposed in addition to the stated price of individual listed items. The term “surcharge” does not include tax, gratuity, tip or a charge for the

administration of a banquet, special function, or package deal pursuant to section 146-2.19 of subpart 146-2 of part 146 of subchapter B of chapter II of title 12 of the compilation of codes, rules and regulations of the state of New York.

b. A food service establishment may impose a surcharge of no more than 10% of a consumer's total bill, to be known as the "COVID-19 Recovery Charge."

c. The COVID-19 recovery charge may be imposed for on-premises dining only. Such surcharge may be imposed for indoor or outdoor dining but may not be imposed for takeout or delivery orders.

d. A food service establishment that imposes the COVID-19 recovery charge must conspicuously disclose the amount of such surcharge to a prospective consumer before any item is ordered by placing it at the bottom of each menu page supplied to the consumer. If no menus are used, the disclosure must be placed wherever food and beverage choices are listed. The disclosure must be:

1. Written;
2. Explicit that the COVID-19 recovery charge is a surcharge, not a gratuity for employees;
3. Clear and conspicuous;
4. Included on each page of any document, whether in paper or electronic format, that lists prices for the consumer, including but not limited to any paper or electronic menu;
5. In English, as well as in any other language used in the document upon which the surcharge is disclosed, unless such language is used solely in the names of items; and
6. In a font size similar to surrounding text.

e. A final consumer bill, and receipt if a receipt is provided, shall disclose the COVID-19 recovery charge and the total dollar amount attributable to such surcharge.

f. A food service establishment shall not give the COVID-19 recovery charge any other name, and shall reference such charge as the “COVID-19 Recovery Charge” on all disclosures required by this section, except that such charge may be referred to as the “COVID Charge” on any final consumer bill or receipt.

g. A food service establishment may not impose the COVID-19 recovery charge in addition to a charge for the administration of a banquet, special function, or package deal pursuant to section 146-2.19 of subpart 146-2 of part 146 of subchapter B of chapter II of title 12 of the compilation of codes, rules and regulations of the state of New York.

h. The provisions of this section apply only during the period in which a state disaster emergency has been declared by the governor of the state of New York in response to the outbreak of COVID-19, such declaration is in effect in the city and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy, and for a period of 90 days thereafter.

i. The department of consumer and worker protection may promulgate such rules as are necessary to carry out the provisions of this subchapter, including, but not limited to, rules related to the form and manner of disclosures related to the COVID-19 recovery charge.

j. Enforcement. The violation of this subchapter, or any rule promulgated thereunder, shall be punishable by payment of a civil penalty in the amount of \$50 to \$350.

§ 2. This local law takes effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 16, 2020 and returned unsigned by the Mayor on October 16, 2020.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 100 of 2020, Council Int. No. 823-B of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.