

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES
Of the
COMMITTEE ON SMALL BUSINESS

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JULY 29, 2021
Start: 11:05 A.M.
Recess: 11:17 A.M.

HELD AT: COUNCIL CHAMBERS - CITY

B E F O R E: CHAIR MARK GJONAJ

COUNCIL MEMBERS: MARK GJONAJ
FRANCISCO MOYA
YDANIS RODRIGUEZ
STEVEN LEVIN
HELEN ROSENTHAL
BILL PERKINS
SELVENA BROOKS-POWERS
ERIC DINOWITZ

A P P E A R A N C E S (CONTINUED)

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3 SGT. AT ARMS: Sound check for the
4 Committee on Small Business being recorded by Israel
5 Martinez, July 29, 2021. Taking place in City
6 Council Chambers.

7 CHAIR GJONAJ: Good morning. I'm Council
8 Member Mark Gjonaj, Chair of the Committee on Small
9 Business. I'd like to welcome you to our vote today
10 on four Bills. Proposed Intros 2333A, 2335A, 2356A,
11 and 2359A which seek to accelerate the recovery of
12 the restaurant industry and ensure restaurants can
13 succeed in the post-COVID market place. Even before
14 the pandemic, owning and operating a restaurant in
15 the city was challenging. 80 percent of restaurants
16 typically go out of business within the first five
17 years of opening. Between labor and inventory costs,
18 government regulations, and steep competition,
19 operating a restaurant a profit can be extremely
20 challenging, and yet, before the pandemic, tens of
21 thousands of New Yorkers still chose this line of
22 investment and work. The pandemic and the resulting
23 restrictions on in-person dining while certainly
24 necessary for public health, dealt a devastating blow
25 to restaurant owners. Restaurants were forced to

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2 survive on depleted revenues and reinvent business
3 models while adopting to safety protocols while
4 third-party platforms, which had previously accounted
5 for a small percentage of orders was suddenly the
6 lifeline for many restaurants. To ensure restaurants
7 could survive throughout the pandemic, this committee
8 passed Local Law 51 and 52 of 2020 which prevent
9 platforms from erroneously charging restaurants for
10 phone orders that did not occur and capped the fees
11 that the platform could charge restaurants. This
12 committee then extended both of these laws through
13 the passage of the Local Law 87 and 88. As the city
14 has reopened and the dark days of the pandemic are
15 hopefully behind us, the restaurant industry will
16 begin to recover. Certain consumer habits may
17 remain, however, that will make it more difficult for
18 restaurants to succeed. Mainly consumers who become
19 accustomed to ordering on third-party platforms that
20 charge a substantial fee per order for the marketing
21 and delivery service they provide, may continue to
22 use these platforms. According to Scott Duke
23 Commonairs (SP?), a professor at Harvard Business
24 School, I quote, "People have gotten much more used
25 to ordering food and other products through delivery

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2 service. Some of that will decline once it's safe to
3 do things in person, of course, but new habit
4 formation is powerful". A New York State Restaurant
5 Association survey from March 2021 found that among
6 restaurant owners in New York whose off-premise
7 business increased compared to pre-COVID levels, over
8 65 percent say their higher off-premise sales made up
9 less than 30 percent of their loss sales. Intro 2359
10 will extend the cap on fees for six months to give
11 the restaurant industry more time to recover from the
12 damage caused by the pandemic. The rise of third-
13 party platforms is also apparent from their corporate
14 strategies. Uber acquired the delivery service
15 Postmates, in November of 2020 and in December of
16 2020, DoorDash made its public market debut. The
17 DoorDash stock rose 86 percent during its initial
18 public offering, one of the biggest IPOs of 2020 at a
19 time when over 110,000 restaurants were closing
20 across the country, including over 5,000 in New York
21 City. The platforms were experiencing a dramatic
22 increase in profits. This committee has conducted
23 three oversight hearing this legislative session on
24 the rise of third-party delivery platforms in the
25 city. During these hearings, small businesses and

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2 advocates have highlighted issues with these
3 platforms including listing restaurants on their
4 platforms without permission, high commission fees
5 and the use of app generated phone numbers to charge
6 even more commission often when an order didn't take
7 place. I am especially proud of my Bill that we're
8 voting on today. Intros 2333, 2335, and 2356. Intro
9 2333 will prevent the platforms from adding
10 restaurants to their platform without the explicit
11 agreement of a restaurant owner. The platform's
12 practice of adding restaurants without the owner's
13 consent robs and deprives the restaurant owner of the
14 decision of rather they want to contact with a
15 platform. This practice is wrong, and the platforms
16 have even acknowledged this practice is bad for
17 diners, drivers, and restaurants. The other two
18 Bills, Intros 2335 and 2356 will provide essential
19 protections to ensure restaurants are not erroneously
20 charged for phone orders that did not result in an
21 actual transaction and will require the platforms to
22 list an establishment's direct telephone number so
23 consumers can directly contact a restaurant without
24 the restaurant being charged by a platform. The
25 package of Bill we're voting on today will ensure

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2 that restaurants have the tools that they need to
3 succeed in the post-COVID world. I am one of the
4 most pro-business Council Member and believe in the
5 free market; however, regulation and belligerent
6 behavior of the third-party platforms is necessary.
7 We must give the hardworking restaurant owners in
8 this city a fighting chance to survive, especially
9 with the increase in COVID cases and the Delta
10 variant which could mean again that restaurants could
11 be looking at closure to in-dining. As the Chair of
12 this committee, it has been my top priority to ensure
13 that mom and pop shops, our micro-businesses remain
14 the backbone of the city's economy. From suspending
15 personal guarantees on small business leases to
16 current government fines and rules and regulations,
17 it has been an honor to serve the hardworking small
18 business owner of this city. With that said, I'd
19 like to thank my Chief of Staff, Reggie Johnson
20 (SP?); Austin Sacrum (SP?), my Legislative Aide; our
21 Legislative Counsel, Stephanie Jones (SP?); Policy
22 Analyst, Noah Mikeslur (SP?); the Speaker for his
23 hard work and commitment to this very important issue
24 and our small business, and the Financial Analyst,
25 Alia Ali (SP?) for all their hard work in preparing

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2 for this hearing. I'd also like to thank Deputy
3 Director, Rachel Cordero (SP?) from the Council's
4 Legislative Division whose been working on this for
5 many of weeks and months. I'd like to turn it over
6 to Council Member Moya to deliver a statement on this
7 Bill, proposed Introduction 2359. Council Member.

8 CM MOYA: Thank you. Thank you very
9 much, Chair Gjonaj, and I thank you to my colleagues
10 for allowing me the opportunity to speak on this
11 Bill. The restaurant industry and its workers have
12 been an essential pillar of our economy. They
13 represent thousands of jobs given to New Yorkers. We
14 have the opportunity and the responsibility to
15 protect our mom-and-pop shops and ensure that they
16 can survive, and not enable billion-dollar companies
17 and their investors to continue getting richer at the
18 expense of our restaurants. Let me highlight some of
19 the things that we heard from the restaurants during
20 the previous hearings when they were referring to the
21 third-party apps. One restaurant owner said they
22 know what they're doing. They've been finding ways
23 to take advantage of their role in the restaurant eco
24 system. Others have said these are not companies
25 that act in good faith. They are predatory and

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2 parasitic. The cap helps us survive, putting the
3 caps gives us a fighting chance to survive. We urge
4 you to save us by permanently capping third-party
5 delivery fees which will be very important as
6 restaurants try to recover from the pandemic and long
7 into the future. For far too long there's been an
8 imbalance of power between these third-party food
9 delivery services and restaurants. These businesses
10 should not have to be pressured into accepting these
11 fees in order to remain viable and competitive.

12 Allowing the temporary cap to expire would completely
13 handicap the recovery of so many businesses that are
14 just starting to get back on their feet. As one of
15 the greatest cities in the world, we need to stand by
16 our small business owners each and every day, and I
17 just want to thank all my colleagues for joining me
18 in helping to vote to pass Intro 2359 and not allow
19 the temporary cap to expire. Thank you so much,
20 Chair Gjonaj for all of the great work that you have
21 done in spearheading this effort throughout our
22 recovery and staff, to Speaker Johnson, to Jason
23 Goldman and to my Chief of Staff, Megan Teddio (SP?).
24 Thank you so much, Chair.

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2 CHAIR GJONAJ: Thank you, Council
3 Member. Unless anyone else has an opening statement
4 you'd like to make, clerk, please call the roll.

5 COMMITTEE CLERK: Thank you. Good
6 morning. William Martin, Committee Clerk, roll call
7 vote, Committee on Small Business. All items are
8 coupled. Chair Gjonaj.

9 CHAIR GJONAJ: I vote I.

10 COMMITTEE CLERK: Rodriguez.

11 CM RODRIGUEZ: I vote I.

12 COMMITTEE CLERK: Rodriguez votes I.
13 Levin.

14 CM LEVIN: I on all.

15 COMMITTEE CLERK: Council Member Levin
16 votes I on all. Rosenthal.

17 CM ROSENTHAL: With congratulations and
18 gratitude to the Bill sponsors and to the Chair, we
19 really have to go after these third-party apps that
20 are really destroying so many of our small business
21 and the delivery workers, so I really appreciate the
22 time and attention you all have put into this Bill.
23 Thank you. I vote I on all.

24 COMMITTEE CLERK: Perkins.

25 CM PERKINS: I on all.

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2 COMMITTEE CLERK: Perkins votes I on all.
3 Thank you. Brooks-Powers.

4 CM BROOKS-POWERS: Permission to explain
5 my vote? I just want to congratulate Chair Gjonaj
6 for all of the work that's been put behind this
7 package of Bills that would be helpful and supportive
8 of our small business, especially as someone who
9 represents a district that has so many small
10 businesses that are a cornerstone to our local
11 economy, and I vote I on all. Thank you.

12 COMMITTEE CLERK: Dinowitz.

13 CM DINOWITZ: I on all.

14 COMMITTEE CLERK: By a vote of 7 in the
15 affirmative, zero in the negative, and no
16 abstentions, all items have been adopted by
17 committee. Mr. Chair, that is a full committee.

18 CHAIR GJONAJ: Thank you. This concludes
19 today's vote and hearing.

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date August 1, 2021