Testimony Before the New York City Council
Committees on Small Business and
Consumer Affairs and Business Licensing
August 13, 2020

Tech:NYC is a nonprofit coalition of 800 technology companies in New York committed to the city's enduring economic resilience and to ensuring that all New Yorkers can benefit from innovation. Tech:NYC and our members work everyday with government and community partners to foster a dynamic ecosystem so that New York remains the best place in the country to start and grow a technology company.

For these reasons, we are fully invested in maintaining New York as a place that works for the people who live here. Like you, we were here before COVID and we are not leaving. Our mission of attracting technology companies to grow and relocate here is directly linked to the health of the city's cultural institutions, diversity, and restaurant tableau that makes the five boroughs so special. For these reasons, we believe that restaurant survival is vitally important. We do not believe that extending the existing limit on restaurant delivery commissions until 90 days after 100 percent on-premises dining is allowed is a viable strategy for accomplishing this shared goal. We oppose the bills being discussed today and support Int. 1908-2020 remaining in effect at this time.

As several restaurant owners testified to in April, maintaining their own delivery operations and delivery staff is too expensive for individual establishments. Tech:NYC's member companies are committed to using technology and innovation to not just provide these much needed delivery services, but to help local economies survive by making brick and mortar retailers accessible at the touch of a button. Unfortunately, the extension of the existing cap will negatively impact delivery platforms' ability to provide these services and drive business to local restaurants at a time when these restaurants need help the most.

Also, at this time, extending the existing commission caps is premature. Currently there is no public health threshold for when on-premises dining will be permitted, let alone at 100 percent capacity. Without a clear end or at least a standard to meet, codifying this extension could result in a multi-year long cap. Our members are not uniform in size and scale and there is real competition in this market. Some of our members will not be able to weather this pandemic due to the commission cap and two notable mergers in this industry have already occured. Fewer delivery network companies will severely limit the broad range of services and fee structures made available to restaurants from the different delivery platforms that right now, can be tailored to each restaurant's needs.

Of course, we understand the very real challenges that our economy faces during these times, which is why we fear that actions like these will reduce the earning ability for delivery workers. At a time when unemployment rates are at unprecedented levels with no end in sight, delivery network companies provide individuals a low barrier of entry opportunity to earn income. Extended commission rate caps will have the unintended consequence of fewer customer orders and then less pay for these individuals.

Tech:NYC's members also understand their responsibility at this time. For this reason, since COVID began impacting New York, these companies have provided tens of millions of dollars in direct restaurant support and have spent millions more providing free meals to healthcare workers, seniors, school children, and other vulnerable groups. Additionally, before the initial commission cap in May, all of the delivery network companies in our membership froze or reduced commission rates in response to the pandemic, in some cases by as much as 50 percent.

We know this is a partnership and that as a city, we can emerge from this pandemic stronger than before COVID when we commit to working together. We also know that at the federal level, a robust social safety net, rental assistance, and access to more affordable capital would make a significant difference for restaurants while at the state level, commercial rent control would provide a real lifeline in these times. Unfortunately, we also know that these structural changes are unlikely to occur any time soon. For this reason, please consider us a resource to help you address how third party delivery platforms can continue to work collaboratively with businesses and restaurants in New York so they can offer their services to the residents who benefit from them during these uncertain times.

Thank you for your consideration and please do not hesitate to reach out with any questions.

NYC | HOSPITALITY ALLIANCE

Testimony of
The New York City Hospitality Alliance
Before the Committee on Small Business
August 13, 2020

My name is Andrew Rigie, and I am Executive Director of the New York City Hospitality Alliance ("The Alliance") a not-for-profit trade association representing restaurant and nightlife establishments throughout the five boroughs. I want to thank Chair Mark Gjonaj and members of the small business committee for the opportunity to testify on T2020-6438 and T2020-6439.

It is well known that restaurants are vital to the economic and cultural fabric of NYC. However, with the Coronavirus devastating the livelihoods of both small business owners and their employees, it is clear we need ongoing support from the City.

Earlier during the pandemic, the City enacted an incredibly important law capping third party delivery fees by predatory companies like Grubhub/Seamless. While this fee cap was long overdue, it was also extremely timely as restaurants were limited to takeout and delivery by government order, and the exorbitant fees ranging from 15% – 30% + truly threatened their survival in the midst of a crisis.

Now, five months into the pandemic New York City restaurants are still prohibited from serving indoors with no indication when the ban will be lifted, and even then, they won't be permitted to operate at 100% occupancy for quite some time. So, with the original fee cap mandated by Int. 1908B set to expire, it's critically important that the City Council extends the fee cap until at least the time when restaurants are permitted to operate at 100% occupancy, with an eye towards a permanent cap.

Another issue affecting restaurants has been the bogus fees charged by third-party platforms like Grubhub/Seamless. The company has a history of charging restaurants bogus fees for phone call orders even though it is well known that customers often call to make reservations, ask about the status of an order, or other reasons unrelated to ordering food. That's why it was so important that the City Council also passed Int. 1898A back in May. As this law is set to expire, we urge to you to pass T2020-6439 that will continue to prohibit third-party delivery platforms from engaging in these unscrupulous practices during the state of emergency, with an eye towards making the law permanent.

While outdoor dining has been critically important to the nearly 10,000+ participating restaurants citywide, we must remember that outdoor dining is meant to temporarily offset the loss of revenues of not having indoor dining during the warm part of the year. Moreover, over half of eating and drinking establishments in NYC cannot participate in the city's outdoor dining program for various reasons; leaving these small businesses with delivery and pickup services as the only way to stay afloat.

Currently, there is no plan for indoor dining in the works; and with the cold weather fast approaching, outdoor dining will not offer the same opportunities. Delivery sales will be key in offering much-needed stream of revenues to our local restaurants on the later part of the year. This is why capping the delivery fees is not only important, but it is also the right thing to do to help restaurant sustain themselves for the unforeseen future.

NYC | HOSPITALITY ALLIANCE

New York City's restaurants are facing unprecedented challenges and we need to support our small business owners and their employees. The fee cap and prohibiting bogus fee are laws that were passed in May and have proven to be of utmost importance to the survival of our local restaurants, and they must be extended by passing T2020-6438 and T2020-6439.

We urge the City Council to pass this legislation and appreciate your support and consideration. If you have any questions or concerns, I am reachable at arigie@thenycalliance.org

Respectfully submitted,

Andrew Rigie
Executive Director

Dear Committee on Small Business,

Thank you for the opportunity to present my concerns before the council. The Staten Island Skating Pavilion is a family run community facility. For the past 25 years, we have strived to be a neighborhood staple where families can spend quality time, exercise and cultivate lasting friendships! We offer a wide range of ice skating opportunities for both the recreational skater as well as the dedicated, advanced skater & hockey player. We provide a safe haven for children of our community to spend their time in a meaningful way that incorporates exercise and cultivates life long values and skills including teamwork, hard work, dedication and good sportsmanship. Our figure skating program has received many accolades and achievement awards from U.S. Figure Skating Association. We are proud to provide employment to over 75 Staten Islanders and classes & services to over 1000 Staten Islanders annually.

As with many businesses in our community, we have fallen on hard times. To ensure the safety and health of our community, the government placed a pause on the operation of indoor recreational facilities. We have been unable to re-open and provide our services by law for over five months with no clear end in sight. With our opportunity to generate revenue crippled and no virtual alternative possible for our service industry, we have not generated revenue for a half a year. The outlook for our facility to be able to reopen is bleak.

While a pause was placed on our ability to generate revenue, no such limitations were placed on the government's ability to generate revenue through taxes. Our greatest concern is our looming property tax payment which totals $187,977.97 and is due annually. The federal relief for small business did not address huge long-term business concerns nor has it been addressed at the state level. The loan amount allowed to be accessed through the Small Business Continuity Loan Fund is not even sufficient to cover the property tax total let alone all our other increasing payments owed.

How can the state have reasonable expectation of payment when they have refused to allow our facility to operate? In order to be able to reopen, we will need relief for this gargantuan payment. Other properties of equal size in our neighborhood are not being taxed as heftily. Despite many years of discourse with previous local officials, we have not been able to resolve the issue of our property tax. In the past 25 years, never have we faced the challenges and hardships that are presently before us. Now more than ever, we need the help of our elected officials to serve the small businesses of our community!

Committee on Small Businesses, we implore you to generate assistance and relief for our struggling small business so that we can continue to be a part of this wonderful community!

Sincerely,

Sal Tirro
Owner
Staten Island Skating Pavilion

August 13, 2020

Testimony Before the New York City Council
Committees on Small Business and Consumer Affairs and Business Licensing

Dear Councilmembers:

I write to you today on behalf of delivery.com, and our team headquartered in New York. We've lived by the creed "your neighborhood, delivered," since our inception in New York City, over 16 years ago. New York City is not only our home base, but it is where we have a strong concentration of single location restaurant merchants and long standing customers. Local businesses are what drive us, and we're proud to enable online ordering for delivery and pickup of their food to customers. It is not lost on us how critical a role we play in ensuring these businesses weather the COVID-19 pandemic. They are the fabric of our neighborhoods, and our technology platform and tools enable them to generate revenue, create jobs, and provide meals for those who can't leave their homes.

When COVID-19 began to hit, we were first to market with COVID-19 safety training, per CDC and WHO guidelines, via text for restaurant employees. We rapidly built a section on our site with popular health and safety items like gloves, hand sanitizer and bag sealing stickers. We rolled out a blog post, letting customers know they could go contactless, and we quickly built the contactless feature into our product. And then, in April, before there was ever an emergency measure, we lowered our fees.

We lowered our fees to restaurants not because the government told us to, but because it was the right thing to do. We aim to empower local businesses, and we're proud of the service we provide to them and for them. We kept fees low as long as we could, and as long as it remained financially viable for us. The commissions we charge support our operating costs, and enable us to offer menu updates, integrations, brand partnerships, and promotions to keep business coming to our restaurant partners.

The proposal today would hit us when we're down. To prolong the fee cap without any further guidance during this uncertain period may force us to cease our operations. This move does not enable us to support restaurants. This is an attack on us all, in the wake of public outcry after a few actors were reported to have taken advantage of local restaurants. Unfortunately, it is those few who can survive this, and large delivery services will push out the locally based competitors. They will find ways to charge additional fees to merchants and subject them to punitive terms, while our values and the foundation of our product prohibit us.

If merchants don't like how they are treated by certain industry providers, they can and should explore alternative solutions, like delivery.com and others. We encourage restaurants to vote with their feet, and exercise their rights to use other platforms to the extent they feel that they are not being treated with the dignity they deserve. We think the better solution is, and what advocacy groups should be putting their efforts towards, is shifting focus to what can be done to empower local businesses. Examples include, encouraging merchants to turn on pickup ordering, set up their own direct ordering channels, and more.

We don’t believe the solution lies with government regulation. Rather than regulating the industry, we ask you to address any issues that arise with those that perpetrate them, work with the state to provide clarity on when the original order of 50% capacity can go into effect and collaborate with us and others to provide sustainable solutions for the merchants we serve. Only together will we get through this challenging period.

I thank you in advance for your consideration. Please let me know of any questions.

Sincerely,
Jed Kleckner
CEO
delivery.com

To whom it may concern:

My name is Jermaine M. Grey and “Project Spotless in Highbridge” is a New program dedicated to help ex criminal offender with job placement cleaning the community from graffiti and individual block sweeping up. With the help from Bronx Council District this program will represents a second chance for ex criminal offender to come back with a first step opportunity and responsibility for change. My email: mrgreysanitize@gmail.com. My business line: 917 727-1841 feel free to contact me with my potential proposal.

Sincerely,

Jermaine M. Grey

Queens Chamber of Commerce

August 13, 2020

Good afternoon distinguished members of the committee and Chair Gjonaj. My name is Tom Grech and I am the President and CEO of the Queens Chamber of Commerce, proudly testifying today on behalf of our 1,150 member businesses in the great borough of Queens.

Restaurants are a crucial part of the New York City's economy, and the local economies of neighborhoods in all five boroughs. Our restaurants have been devastated by this public health and economic crisis and if we fail to act many of the 25,000 restaurants in New York City, including 6,000 in Queens, will close their doors for good.

Thanks to our frontline heroes and the leadership of our elected officials, we've flattened the curve and made tremendous progress in containing COVID-19. New York's restaurant and bar owners have worked hard and made tremendous sacrifices to keep their staff, customers and communities safe. They pivoted to delivery and take-out only, and more recently to outdoor dining, which has required purchasing PPE for employees and other items to ensure social distancing, and cleaning services.

While these actions were necessary, they came with a cost. Even with outdoor dining, most restaurants can only serve a fraction of the customers they would be able to under normal circumstances — meaning less or no profit and fewer jobs. As for the boost that restaurants depend on from Broadway shows, concerts, sporting events such as the NY Mets and US Open and tourism has been lost too.

At a time when restaurants are facing unprecedented challenges, we need to support them and their employees. It is our responsibility to take steps that will allow our restaurants to continue serving customers and employing New Yorkers.

Even before the pandemic hit, the exuberant delivery fees charged to restaurants by third party platforms had been a crisis to the industry. These platforms charge restaurants delivery fees as high as 30%, eroding already narrow profit margins. While they've created new work for restaurants, they haven't created new profit.

Grubhub and Seamless have also engaged in unscrupulous practices by charging restaurants bogus feels for phone calls that do not result in a transaction, such as customers calling to make a reservation or check on the status of an order.

We cannot allow well-funded corporations to use their market share to exploit small businesses. We applauded the Council in May for capping the fees these delivery services can charge, and strongly support the two pieces of legislation being discussed today. We thank Council Member Moya and Council Member Gjonaj for their leadership on this issue.

Sincerely,

Thomas J. Grech, President & CEO

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Amy Healy
Head of Public Affairs
ahealy@grubhub.com
(908) 305-1400

August 13, 2020

Chairman Gjonaj and members of the Small Business Committee:

Grubhub appreciates the opportunity to provide these comments which outline some of the unintended consequences and unfairness of the fee cap passed by the Council in May. Grubhub maintains a fundamental opposition to government-imposed pricing on private companies. However, it is also important to note that the current fee cap does not apply equally to all competitors and their respective business models.

Unlike our competitors, which are focused on providing restaurants with delivery services, Grubhub is primarily a marketing engine and advertising partner for our independent restaurants. Marketing services selected by restaurants that contract with Grubhub may include search engine marketing and optimization, loyalty and rewards programs, point of sale integration and other services. Grubhub provides these services at scale which allows our independent restaurants to compete against large enterprise chains with massive marketing budgets.

The existing fee cap in New York City is an arbitrary and unsupported cap on the fees that one group of businesses can charge another. But even worse, this particular cap, with an arbitrary split of a 15% cap on delivery and a 5% cap on marketing, is not applied fairly to all competitors and their respective business models.

Under the existing law, companies such as Uber and DoorDash, which are focused on delivery, are allowed to sell their services for 20%, while Grubhub, which provides marketing services to restaurants that self-deliver, is limited to 5% for those restaurants.

Marketing rate caps depress order growth for small independent restaurants relative to chain restaurants. Internal analysis of orders in our sample district shows that a fee cap decreased small independent restaurant orders by 13% relative to enterprise orders. Why? Because when marketing services are reduced, smaller restaurants have a tougher time competing against large chains with nearly limitless marketing budgets and ubiquitous name recognition.

Fee caps also result in increased diner fees -- the impact of which is fewer orders. Fewer orders mean less driver pay since there are fewer opportunities to earn. Grubhub doesn’t decrease driver pay per order as a result of a cap, and 100% of diner tips have always gone

Amy Healy
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directly to our drivers. However, the data show that when diner fees go up, as a result of an artificial cap, diners tip less.

Unfortunately, the Council is tying restaurants' hands, but it doesn't have to be this way. All of us share a common goal: we want small restaurants to grow and prosper. We want delivery workers to continue to make a living wage. Given this common ground, we strongly urge the Council not to extend the fee cap. And in any event, any cap should not bifurcate marketing and delivery services and should allow for flexibility for restaurants to opt in to pay more for more marketing services. For example, when Jersey City instituted a draconian cap, the state of New Jersey stepped in and preempted the city council there by passing a fee cap law that allows restaurants to opt-in to additional advertising and marketing *if the restaurant chooses to do so.* While we do not believe fee caps are appropriate at all and we believe they will still have unintended consequences, at least this structure puts the decision-making in the hands of restaurant owners -- not elected officials.

Again, Grubhub maintains its position in opposition to government imposed pricing, and we believe the current law in New York City is the most legally fraught fee cap in the country. If it is extended in its current form, Grubhub will have no choice but to honor our obligations to our shareholders and seek a remedy in court.

Thank you,

Amy Healy

Amy P. Healy

Memo

TO: Members of the NYC Committee on Small Business
FROM: Mercury Public Affairs on behalf of Grubhub
DATE: August 12, 2020
SUBJECT: NYC Third Party Fee Cap Legislation: A Better, Fairer Proposal

Grubhub has had a very strong relationship with both New York City restaurants and diners for decades. Our employees live, work, breathe, and eat New York City–the greatest food scene in the world–and have for more than twenty years.

At the onset of the COVID crisis in New York, Grubhub donated $250,000 to the Food Bank of New York City to provide emergency food to vulnerable New Yorkers impacted by the economic downturn. Additionally, we created a fund enabling proceeds from our Donate the Change program to go toward charitable organizations that support restaurants and drivers impacted by COVID-19. Since March, Grubhub has raised more than $1 million per month through Donate the Change.

We know that independent restaurants are the lifeblood of our cities, especially New York City. And we know that without restaurants, there is no Grubhub.

During these challenging times, we want to do everything we can to support restaurants, and that includes supporting reasonable legislation that does not discriminate against particular companies for their small business-friendly and flexible business model.

Grubhub believes in offering flexibility to restaurants, and our commission model reflects that. This is why we support a 20% across the board flat fee cap as opposed to the current bifurcated legislative scheme that unfairly discriminates against particular companies.

<u>Supporting a Reasonable Legislative Path Forward</u>

While some third-party delivery platforms have fixed policies with little to no flexibility for restaurants, such as requiring them to use the platform's delivery drivers, Grubhub understands that different restaurants have different needs. While some want delivery logistics support, others use Grubhub exclusively for marketing.

We propose modifying the City's existing fee cap by legislating in a manner similar to Los Angeles County. This legislation does not bifurcate fees, but sets an overall cap. This Los Angeles legislation:

- Establishes an aggregate cap of 20 percent for <u>all fees</u> charged by providers per order
- Limits delivery fees specifically to no more than 15 percent of the purchase price per order
- Differs from the New York City Council legislation in that *within* its proposed 20 percent cap, up to 15 percent can <u>only</u> be applied to delivery services
- Does not discriminate against certain companies within the industry

Unlike the NYC law, the LA legislation does not discriminate against any one particular business model and recognizes that some companies, like Grubhub, don't require restaurants to use third-party delivery workers. Thousands of restaurants utilize Grubhub not for our delivery service, but for our marketing. As a result, the NYC legislation explicitly benefits some platforms while hurting others. For example, if a restaurant uses both Grubhub's platform and a competing platform that requires the restaurant to pay for its delivery service, Grubhub would be limited to a 5 percent fee cap instead of a 20 percent fee cap, for the simple fact that Grubhub is allowing the restaurant to use its own delivery driver.

We strongly feel that any fee-cap legislation should consider differing business models utilized by third-party delivery service platforms, and we urge the NYC Council to consider differing business models in any proposed fee cap legislation. To ignore this fact is to pick winners and losers. We hope that is not the city's

intention, and we look forward to working with you on this issue. Beyond Los Angeles, a dozen other jurisdictions across the country have adopted the same or similar models that protect and help small, independent restaurants without engaging in discriminatory legislative practices, including San Francisco, Washington, D.C., Portland, OR, Seattle and the State of New Jersey.

Grubhub's Commission Model

- **Fee-For-Service:** Grubhub is a marketing engine – connecting hungry diners to great, local restaurants. The Grubhub platform is free for any restaurant owner who wants to join. Grubhub has a fee-for-service model, meaning restaurant owners select the services they want and only pay a commission when Grubhub generates a sale.

- **Delivery Is Optional:** Grubhub charges a 10 percent commission to provide delivery services for restaurants. This commission is optional; a restaurant can do its own delivery. But the costs associated with delivery are not optional. For instance, it costs money to hire drivers, perform driver background checks, and create/update delivery technology. If Grubhub does not provide these services, each individual restaurant owner will still have to pay for them.

- **Restaurant Owners Determine Marketing Budgets:** Grubhub allows restaurants to market themselves and attract diners. Just like Google AdWords, restaurant owners pay more money for more prominent placement and, ideally, more orders. For example, it costs more to be listed as the number one Italian restaurant in a community as opposed to the 20th restaurant. Each restaurant owner determines the right level of marketing for his or her business. The average commission is around 15 percent. Restaurant owners can choose to spend more if they believe it will drive more orders to them.

- **Credit Card Processing and Fraud Protection:** Grubhub charges a standard three percent credit card processing and fraud protection charge. Restaurants will have to pay this processing fee regardless of whether they use Grubhub or not.

We strongly urge the Committee on Small Business to consider this information when discussing the City's fee cap extender and we hope the Committee will support modified legislation that creates an across the board fee cap similar to Los Angeles County, does not discriminate against any one particular company, and helps small, independent restaurants, creating a win-win.

If you have any questions, please contact Amy Healy, Senior Director of Public Affairs at ahealy@grubhub.com, or Jake Dilemani at jdilemani@mercuryllc.com.

In support of extending controls on third-party delivery platforms

Good afternoon. My name is Kathleen Reilly and I am the NYC Government Affairs Coordinator for the New York State Restaurant Association. We are a trade group that represents food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City. But more importantly, nearly five months to the day since stay at home orders were imposed in response to Covid-19, they represent one of the industries hardest-hit by this pandemic.

For five months, these business operators have been prevented from running their dining rooms. They have been, by and large, still expected to pay rent and other expenses they cannot afford. They have applied for PPP loans – some have gotten them, others have not, and most of the money has run out either way. While outdoor dining has become an opportunity for some, others have not been able to participate. A summer of regular thunderstorms, and one tropical storm, has put a damper on the most optimistic goals for the revenue outdoor dining can generate. We are strong advocates for following the reopening guidelines, and have taken great pains to educate operators about how to comply, but some restaurants have lost liquor licenses as a result of customer behavior that is extremely difficult for operators to control on their own. Worst of all, the outlook for the fall and winter is completely uncertain, with no federal compromise on the horizon, no timeline available for when indoor dining can resume, and many staring down the real possibility of having to close permanently. It is in this atmosphere that we have come today to applaud Council Members Gjonaj and Moya, and the Small Business Committee, for introducing and considering these proposals to extend controls on third-party delivery platforms.

To be brief, NYSRA wholeheartedly supports these proposals, and especially, the change that would tie fee caps to any limitation on indoor, on-premise dining. When the initial fee cap was passed, I don't think anyone predicted that NYC would not be allowed to fully follow the phased opening process that has been carried out in the rest of the state, and therefore, no one predicted that lasting bans on indoor dining would be a problem for NYC restaurants to confront. While outdoor dining is absolutely an improvement compared to no on-premise dining at all, and we are so appreciative to the City for making the Open Restaurants program a reality and extending that program into the fall and beyond, it is also a limited opportunity for so many reasons. Between weather, street features that limit eligible space, narrow storefronts, nightly curfews for outdoor seating, and more, it's safe to say that outdoor dining alone cannot make up for the other enormous losses restaurants have suffered at the hands of Covid-19. As long as indoor dining is limited, restaurants continue to suffer, and takeout and delivery continue to be critical business segments for restaurants hoping to survive. For that reason, it's only right to continue the fee caps on the platforms that facilitate this business segment, so long as indoor on-premise dining is limited and for a 90 day transition period thereafter. This is the appropriate indicator to use as a benchmark, especially when we consider the coming autumn and winter months when takeout and delivery will become ever more central to business.

NYSRA also supports extending the law punishing those food delivery platforms that charge fees for phone calls that never resulted in orders. For this particular proposal, we actually think the business practice in question is inappropriate and exploitative all the time, even beyond the circumstances of Covid-19. You have our support for this extension, but we would even more strongly support making this behavior permanently illegal.

In conclusion, the New York State Restaurant Association is appreciative that the Small Business Committee has once again remained attentive to the developing situation for NYC restaurants, and has brought forward the appropriate adjustment for previously passed controls on third party delivery platforms. Especially now, with so much industry relief riding on Federal action, we appreciate your initiative to help in more immediate ways. In these extremely difficult and daunting times for the restaurant industry, it is fortifying to know that members of City Council understand what businesses are going through and are prepared to intervene. Thank you for considering these proposals today, and NYSRA looks forward to being a partner on these issues going forward.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

315 W 36th St., 7th Floor

New York, New York 10018

Adam Farbiarz, CEO of DeliverZero

Testimony to the Committee on Small Business
August 13, 2020

Thank you to the Committee on Small Business for the opportunity to submit written testimony in regard to capping food delivery services' commissions during the COVID-19 pandemic.

My name is Adam Farbiarz, and I am the CEO of DeliverZero, Inc., a service that provides restaurants with reusable takeout containers. The mission of DeliverZero is to reduce the amount of trash created by takeout and delivery orders. We estimate that New Yorkers throw away a billion takeout containers each year. Manufacturing, transporting and disposing of this enormous quantity of containers — which are just used once before disposal — is unsustainably taxing on our environment and our communities.

As a New Yorker, I am acutely aware of this problem, having seen it — and, sadly, contributed to it myself — over many years. That is why I started DeliverZero. I wanted to make a difference.

DeliverZero is a small business, run by only myself and my two partners, with just 27 restaurants currently participating. But we believe we can grow, and radically transform how we order food in our city. We also believe our service is particularly important during the COVID-19 pandemic, as more New Yorkers turn to delivery and takeout.

Unfortunately, however, the current cap on food-delivery commissions imperils our business and our solution to the environmental harms caused by the excessive waste generated by restaurant delivery and takeout.

How DeliverZero Works

DeliverZero gives our restaurant partners reusable takeout containers. The containers are extremely durable and commercial-dishwasher-safe. They are NSF-certified for FDA compliance and meet New York City health code requirements for reusable takeout ware.

Customers use our website (deliverzero.com) to locate restaurants that partner with DeliverZero. Customers order food through our website, which then transmits the order to the appropriate restaurant. The restaurant receives the order on a tablet that DeliverZero provides. The restaurant fills the order using the DeliverZero containers, and delivers the food. The restaurant also accepts from the customer any used containers, which the restaurant washes, sanitizes and reuses.

The containers move freely among all restaurants in the DeliverZero network. A container may start at one restaurant, get delivered to a customer (with food in it), and then get returned to another restaurant. DeliverZero tracks the location of the containers, makes sure customers return them on time (within 6 weeks of receipt, to avoid a charge), and ensures that our partner restaurants have enough containers on hand to fill orders.

DeliverZero makes money by charging a commission. Before the COVID-19 pandemic and the passage of Local Law 2020/52, DeliverZero's typical commission was 10% of the food subtotal. In addition, DeliverZero passed onto the restaurant the credit-card fee charged to DeliverZero by our card processor.

This is an extremely low-profit model. Consider a typical order: $30 of food, a $6 tip, $2.67 in sales tax. For an order of this size, a restaurant might use 3 to 5 DeliverZero containers, depending on the cuisine and the restaurant's menu. Let's say the restaurant uses 4. Each of these containers costs DeliverZero about $3.25.

Thus, DeliverZero, charging a 10% commission before COVID-19, would have earned $3, having made an investment of approximately $13 *in containers alone* — to say nothing of the investments in advertising, web hosting, engineering, and tablets. And then, as invariably happens from time to time, the containers get lost. If even one of these containers gets lost — maybe a customer claims she returned it, but did not; maybe the restaurant breaks it or misplaces it — all of our earnings from this sale would be wiped out.

The Impact of the COVID-19 Commission Cap on DeliverZero

In response to the COVID-19 pandemic, and to support the city's vital restaurant industry, the City Council passed Local Law 2020/52. This legislation barred third-party delivery services — a category that includes DeliverZero — from charging a commission greater than 5%, for non-delivery services, and effectively required these services to absorb credit-card processing fees themselves. These changes have had a devastating impact on DeliverZero.

Consider again the typical order: $30 of food, a $6 tip, $2.67 in sales tax. The restaurant uses 4 DeliverZero containers.

For such an order, DeliverZero, charging a 10% commission before COVID-19, would have earned $3. Now, under Local Law 2020/52, DeliverZero earns 5%, or $1.50 in commission. And DeliverZero now *pays* the restaurant's credit-card processing fee (a fee which the restaurant itself would pay if it received the order directly from the customer). That fee is 2.9% of the order total plus $0.30 per transaction, in this case $1.42. Thus DeliverZero's earnings from this order are $1.50 *minus* $1.42 — just $0.08. Particularly in light of the high cost of reusable containers, this is not a sustainable model.

The Commission Cap Should Not Apply to a Food Delivery Service, such as DeliverZero, that Provides Reusable Containers to Its Restaurant Partners

The City Council is currently considering T2020-6439, which would extend the application of the COVID-19 commission cap. DeliverZero respectfully requests that, when the commission cap is extended, DeliverZero be exempted from the cap. In particular, DeliverZero requests the following change to the definition of "Third-party food delivery service."

> The term "third-party food delivery service" means any website, mobile application or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, no fewer than 20 food service establishments located in the city that are owned and operated by different persons <u>but does not mean a service that supplies reusable containers, in which to package food or beverages whose sale is offered or arranged by such service, to all food service establishments for which the service offers or arranges sales.</u>

This revised definition would exclude DeliverZero, and any similar business that would wish to compete with DeliverZero in the reusable space. It would not apply to major food-delivery companies (e.g., UberEats, Grubhub), as those companies do not supply any, much less all, of their restaurant partners with reusable containers.

This revised definition is warranted for three reasons.

First, DeliverZero's model is far more expensive than those of our competitors. We are not simply a food-delivery service. We provide highly durable, NSF-certified reusable takeout containers to our restaurants — at no cost to the restaurants. Our reusable containers are a significant expense that a barebones 5% commission (and a credit-card fee now paid by DeliverZero) cannot cover.

Second, unlike the major food-delivery companies, DeliverZero has no market power. Preventing an upstart like DeliverZero from charging necessary commissions further entrenches the major companies that dominate this space, insulates them from challenge, and perpetuates the status quo. (The three companies, operating six brands, are: (1) UberEats / Postmates, (2) DoorDash / Caviar, and (3) Grubhub / Seamless.) DeliverZero is a very small and new business.

We have been in operation only since 2019. We currently work with just 27 restaurants and have fewer than 500 customers. If a restaurant does not want to work with us and pay our commissions, they do not have to. By contrast, the companies that dominate this space are cash-rich and can afford to weather the low-commission period of COVID-19. DeliverZero cannot.

Third, DeliverZero is good for the city — and the world. DeliverZero is helping to solve an environmental crisis of waste and emissions. Our service saves restaurants money on packaging costs — they don't need to buy disposables for DeliverZero orders. And by reducing trash we lessen the burden on our city's sanitation system. We believe that New Yorkers are particularly sensitive to these issues and will rally behind us as the go-to way of ordering restaurant delivery and takeout. However, our young business will wither and die, if we are unable to prove it out with a commission structure that is reasonable and sustainable.

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I thank the Committee for the opportunity to offer this testimony. I believe that DeliverZero has tremendous potential to transform our city and to do good. I respectfully ask for the Committee's support in our mission and to exclude reusable-container services such as ours from the COVID-19 commission cap. Thank you for your consideration.

/s/ Adam Farbiarz

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