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# THE COUNCIL OF THE CITY OF NEW YORK

**COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON CONSUMER AND WORKER PROTECTION**

**Hon. Marjorie Velázquez, *Chair***

**March 29, 2023**

**INTRODUCTION NO. 813:** By Council Members Holden, Velázquez, Salamanca, Feliz, Riley, Dinowitz, Narcisse, Paladino, Hanks, Carr, Louis, Abreu, Williams, Farías, Brannan, Stevens, Menin, Sanchez, Schulman, Joseph, Yeger, Brooks-Powers, Kagan, Borelli, Ariola and Vernikov

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to establishing exemptions for third-party food delivery services from the limits on fees charged by such services on food service establishments

**INTRODUCTION NO. 891:** By Council Members Salamanca and Velázquez

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to allowing charitable organizations to conduct games of chance at professional sporting venues

**INTRODUCTION NO. 818:** By Council Members Brewer, Hanif, Restler, Hudson, Joseph and Abreu

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of consumer and worker protection to implement an outreach and education campaign regarding the Temporary Schedule Change Act

# INTRODUCTION

On March 29, 2023, the Committee on Consumer and Worker Protection, chaired by Council Member Marjorie Velázquez, will hear Introduction Number 813 (“Int. No. 813”), related to establishing exemptions for third-party food delivery services from the limits on fees charged by such services on food service establishments, Introduction Number 891 (“Int. No. 891”), related to allowing charitable organizations to conduct games of chance at professional sporting venues, and Introduction Number 818 (“Int. No. 818”), related to requiring the department of consumer and worker protection to implement an outreach and education campaign regarding the Temporary Schedule Change Act. Those invited to testify include representatives from the Department of Consumer and Worker Protection (DCWP), third-party delivery platforms, the restaurant and hospitality industry, sports venue operators, worker rights advocates, unions, business groups and chambers of commerce.

# BACKGROUND

## **New York City’s Restaurant Industry**

New York City is a mecca for acclaimed and diverse food options, with eateries serving cuisine from more than 150 different countries.[[1]](#footnote-2) The restaurant industry is a major segment of the City’s economy as well as a vital source of employment. Prior to the COVID-19 pandemic, there were more than 23,600 food establishments in New York City that made nearly $27 billion in taxable sales annually.[[2]](#footnote-3) In 2019, the industry accounted for one in every 12 private sector positions, supporting around 317,800 jobs and paying $10.7 billion in total wages citywide.[[3]](#footnote-4)

Just like the food they offer, the City’s food and restaurant industry includes a range of business models, comprised of small mom-and-pop establishments, street vendors, Michelin-starred fine dining restaurants, and everything in-between. Eighty percent of the City’s restaurants are “small,” with fewer than 20 employees, while only one percent have more than 500 workers.[[4]](#footnote-5) As of 2022, nearly 3,500 of the City’s food establishments were locations of national chains.[[5]](#footnote-6) With such a diverse food landscape within such a small geographic area, it is no wonder that New York City is consistently ranked as one of the culinary capitals of the world.[[6]](#footnote-7)

Even before the pandemic, the costs to operate a restaurant in the City, including rent, labor and inventory, were high, leaving little room for added costs like platform commission fees.[[7]](#footnote-8) The onset of the pandemic only worsened conditions for restaurants. According to Partnership for New York City, 5,000 eateries have closed in New York City since the start of the pandemic.[[8]](#footnote-9) While the restaurant industry begins to rebound, according to the 2023 “New York City State of Restaurants” report released by TouchBistro, the profit margins of full service restaurants in New York City fell almost a full percentage point and remain lower than the national average.[[9]](#footnote-10) This is due in part to rising costs. Average menu prices in the City have increased 16 percent to offset a 45 percent increase in food costs from 2022 to 2023.[[10]](#footnote-11)

## **Food Delivery in New York City**

Before the COVID-19 pandemic, online food delivery services were becoming an increasingly popular way for consumers to dine. Online restaurant orders grew 23 percent annually from 2013 to 2017.[[11]](#footnote-12) According to a 2017 Department of Transportation (DOT) report, 55 percent of New Yorkers ordered take-out a few times per month.[[12]](#footnote-13) City residents spend around $773.70 per year on food delivery, which is more money than residents of any other U.S. city.[[13]](#footnote-14) The frequency with which New Yorkers order take-out is a consequence of the culture and cityscape of New York. There are over 23,000 eateries in NYC, the most of any city in the country.[[14]](#footnote-15) Fewer than half of New York City residents own cars, which may also contribute to the relatively high use of delivery services in NYC.[[15]](#footnote-16)

Within the food delivery marketplace, companies have adopted different business models that aim to either help restaurants increase their sales, or process and make deliveries. Third-party delivery services such as Grubhub, and its subsidiary Seamless, act as a software and marketing service that aggregate restaurants and create listings from which consumers can place orders. Historically, restaurants partnering with Grubhub commonly managed their own fleet of couriers.[[16]](#footnote-17) These software-based businesses market to restaurants by arguing they generate incremental orders, therefore increasing a restaurant’s profitability,[[17]](#footnote-18) and by replacing a restaurant’s antiquated phone-ordering system with a more efficient web and mobile platform that is integrated with their kitchen workflow.[[18]](#footnote-19)

Third-party food delivery services, such as Uber Eats and DoorDash, similarly offer marketing and software options, but also manage the delivery of the food from the restaurant to the customer. Through hiring independent contractors, these platforms have a fleet of couriers typically paid a per-trip payment to deliver the food. In addition to offering software and marketing services, these companies handle the logistics of delivering the food, which includes the hiring and paying of couriers and shift planning.[[19]](#footnote-20) These companies help solve the “last-mile” problem, the last mile of transportation of a product being the most complicated and costliest part of getting a product to a consumer.[[20]](#footnote-21)

The three major third-party delivery platforms utilize different commission models to remain profitable in this competitive marketplace. Grubhub currently accounts for about 35 percent of marketplace sales in New York City.[[21]](#footnote-22) Prior to the Council’s passage of Local Law 52 of 2020, Grubhub charged restaurants a 10 percent fee for all orders delivered by a Grubhub courier,[[22]](#footnote-23) and charged restaurants higher commissions in exchange for increased visibility on their platform.[[23]](#footnote-24) DoorDash accounts for 25 percent of meal delivery sales in NYC, but is the largest and fastest-growing nationally.[[24]](#footnote-25) DoorDash charges restaurants promotion fees, marketing fees, and subscription fees.[[25]](#footnote-26) Similar to Grubhub, DoorDash charged restaurants a commission fee “in exchange for promoting and featuring the Merchant…on the DoorDash platform,” and for all orders delivered by DoorDash couriers (known as “Dashers”).[[26]](#footnote-27) Uber Eats, which is the market leader locally, accounts for 40 percent of marketplace sales in NYC.[[27]](#footnote-28) Prior to the commission fee cap, Uber Eats charged restaurants a 30 percent fee for orders delivered by Uber couriers,[[28]](#footnote-29) and a 15 percent fee for orders made on the Uber Eats website but delivered by a restaurant’s delivery worker.[[29]](#footnote-30)

## **Food Delivery and the COVID-19 Pandemic**

When COVID-19 lockdowns were in place across the country, many restaurants turned to take-out and delivery due to restricted dine-in options. Governor Cuomo’s Executive Order 202.6 limited restaurants to take-out and delivery only, leading restaurants to join third-party delivery platforms to maintain business.[[30]](#footnote-31) The de Blasio administration issued a COVID-19 related guidance sheet for business owners on March 16, 2020 advising restaurants and food services to join food delivery platforms.[[31]](#footnote-32) Accordingly, many restaurants not previously on delivery platforms joined them for the first time. During an interview with MarketWatch, Grubhub CEO Matt Maloney stated that the pandemic caused the platform to receive “10 to 15 times our usual new restaurant leads. This interest has led to four to five times more new restaurant go-lives compared to our previous record-breaking day.”[[32]](#footnote-33)

The COVID-19 pandemic drove rapid and significant growth in the use of food delivery. According to analysts from Morgan Stanley, the increase in use of food delivery that was projected to take years occurred in a few months.[[33]](#footnote-34) As a result, the major food delivery platforms doubled their revenue and profit: they generated $50.6 billion in sales in 2020, more than double the $22.7 billion in sales generated in 2019 and posted profits of $5.5 billion in April to September 2020, compared to $2.5 billion during the same months in 2019.[[34]](#footnote-35) One study estimates that 69 percent of the year over year growth in third-party delivery companies’ revenue was caused by the pandemic.[[35]](#footnote-36)

While restaurants made a greater percentage of their earnings through delivery sales during the pandemic, the increase in off-premises sales did not compensate for the loss of in-person dining. Indeed, Grubhub CEO Maloney acknowledged that restaurants could not survive on deliveries alone during the pandemic, stating that “The industry isn’t large enough for all restaurants to survive just on delivery, but they can survive for a matter of weeks potentially.”[[36]](#footnote-37) According to a NYS Restaurant Association survey from March 2021, among restaurant owners in New York whose off-premise business increased compared to pre-COVID levels, over 65 percent say their higher off-premises sales made up less than 30 percent of their lost on-premises sales.[[37]](#footnote-38)

Even though most COVID-19 restrictions have been lifted and City residents are able to dine-in at restaurants, the shift in consumer behavior may linger. Over 65 percent of consumers in the United States are more likely to purchase take-out from a restaurant now than before the pandemic, and over 50 percent of consumers say that take-out and delivery are essential to the way they now live.[[38]](#footnote-39) According to Scott Duke Kominers, an associate professor at Harvard Business School, “People have gotten much more used to ordering food and other products through delivery services. Some of that will decline once it's safe to do things in person, of course… But new habit formation is powerful.”[[39]](#footnote-40) Uber CEO Dara Khosrowshahi similarly expected Uber Eats to experience a small decline in new customers as COVID-19 restrictions are lifted, however, he acknowledged “it looks like the habit [of consumers ordering food on Uber Eats] is sticking.”[[40]](#footnote-41)

## **Issues With Third-Party Platform Commission Fees**

City restaurateurs have consistently expressed difficulty remaining financially profitable while contracting with third-party delivery services, even before dine-in restrictions associated with COVID-19. The City Council has conducted six hearings on the rise of third-party delivery platforms in the City since 2019.[[41]](#footnote-42) During these hearings, restaurateurs and their advocates highlighted high commission fees as one of the major issues restaurants experience using these platforms.[[42]](#footnote-43) At the Council’s first hearing on the issue in June 2019, a representative from the federal government’s Small Business Administration (SBA) described the fees as “predatory” and testified that they had heard it “time and again from entrepreneurs. […] The New York City restaurant industry is known worldwide for its flexibility, but these predatory fees are placing an undue hardship on small businesses.”[[43]](#footnote-44) He went to describe the fees as “ad hoc [sic],” and said it “worries the SBA that there’s no pricing standard.”[[44]](#footnote-45) Despite their high fees, the platforms are so popular with consumers that the restaurants “more or less need to participate in them in order to stay relevant, stay noticeable, and be accessible to patrons.”[[45]](#footnote-46)

Restaurateurs consistently echoed the sentiment expressed by the SBA at the Council’s June 2019 hearing. A Hospitality Alliance survey of 300 restaurants in February 2020 found that 90 percent said the Grubhub/Seamless’s commission fees were “unreasonable,” and over 60 percent were “barely profitable” on their Grubhub/Seamless orders.[[46]](#footnote-47) In the Council’s hearing on July 1, 2021, restaurateurs lauded the then-current temporary cap, testifying, “Many restaurants would not have survived without this legislation,”[[47]](#footnote-48) and asking for it to be made permanent.[[48]](#footnote-49) One restaurateur underscored the fact that “everybody” uses the platforms and that he does not feel he has a choice but to participate, despite “working for free during the pandemic [because of low profit margins]”.[[49]](#footnote-50) Trade associations like the New York State Restaurant Association[[50]](#footnote-51) and the Hospitality Alliance[[51]](#footnote-52) affirmed the need for a permanent cap, calling the food delivery platform industry, “unchecked.”[[52]](#footnote-53)

## **Regulating Fees Charged by Third-Party Delivery Platforms**

In response to the financial devastation of the COVID-19 pandemic, and restaurants’ near-total reliance on delivery to continue operating, the Council passed Local Law 52 of 2020, which temporarily capped the fees third-party platforms could charge restaurants. The Local Law prohibited the platforms from charging restaurants more than 15 percent per order for delivery and more than 5 percent per order for all other fees. The Council extended the cap on delivery fees charged by third party platforms through the passage of Local Law 88 of 2020 and Local Law 94 of 2021. Under the temporary caps, third-party platform profits actually increased.[[53]](#footnote-54) With the knowledge that fee caps would not have a detrimental effect on the third-party platforms, and the desire to ensure the survival of restaurants that are so crucial to the welfare of communities and local economies, the Council made the fee caps permanent with the passage of Local Law 103 of 2021.

Some jurisdictions that limited third-party platform fees at the height of the pandemic subsequently dropped their fee cap or allowed their temporary program to expire while others have also made the fee caps permanent.[[54]](#footnote-55) Denver, Las Vegas, and San Jose each enacted a temporary fee cap, which since expired with no plans for a permanent cap, for example.[[55]](#footnote-56) On January 4, 2023, the Portland City Council approved a permanent commission fee cap of 15 percent for delivery services, which would take effect following the expiration of the city’s temporary program.[[56]](#footnote-57) The fee cap does not apply to third-party platforms that “offer, in a clear and transparent manner, all restaurants the option to obtain delivery service for a total fee, commission, or charge not to exceed 15 percent of the purchase price per order, without requiring the purchase of additional services.”[[57]](#footnote-58) On June 22, 2021, the San Francisco Board of Supervisors voted unanimously to pass a permanent fee cap on the amount that platforms can charge restaurants, which would prohibit the platform from charging over 15 percent per order on delivery fees.[[58]](#footnote-59) As described below, San Francisco has subsequently adopted the model advanced in Int. No. 813.

The fee caps have been challenged by the third-party delivery platforms. Two prominent third-party platforms sued the city of San Francisco claiming the permanent cap unconstitutionally disrupts the contracts between platforms and restaurants.[[59]](#footnote-60) In exchange for dropping the lawsuit, on July 28, 2022, the Board agreed to amend the city ordinance by allowing delivery companies to charge restaurants more for additional services like marketing, advertising and search engine optimization. The amendment paved the way for a tiered pricing model, which would establish a minimum 15 percent commission fee.[[60]](#footnote-61) In September 2021, Grubhub, DoorDash, and UberEats sued New York City claiming the permanent fee caps are government overreach that will harm businesses.[[61]](#footnote-62) This litigation is ongoing.

There is some evidence that the tiered pricing model implemented in other jurisdictions has resulted in fee rates reverting to their pre-cap levels. In D.C., the Council unanimously passed a bill that established a minimum 15 percent commission fee, and allowed third-party delivery services to charge additional fees for opt-in services like marketing.[[62]](#footnote-63) Days after the law went into effect, DoorDash and UberEats notified D.C. restaurant owners that their platforms will reinstate higher rates unless the restaurant chooses to downgrade to their basic plan.[[63]](#footnote-64) The basic plan is expected to reach fewer customers and limit the restaurant’s delivery area.[[64]](#footnote-65) D.C. restaurant owners who choose to maintain their current service could pay a 30 percent commission rate for local delivery services, and a 55 percent commission rate for service that includes nationwide shipping.[[65]](#footnote-66) Restaurant owners fear that the platforms will penalize them for downgrading to the basic plan by reducing the number of orders they receive.[[66]](#footnote-67)

Fee caps continue to be debated around the country, with Alameda County in California, which includes Oakland and Berkeley, recently adopting a permanent cap. This came despite threats from UberEats to end their service there if the caps go into effect.[[67]](#footnote-68)

## **The Impact of Caps on Third-Party Delivery Fees**

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Given the recent emergence of third-party delivery platforms, and the even more recent implementation of caps on fees charged by such companies, there is little empirical data regarding the impacts that fee caps might have on the restaurant industry, third-party delivery platforms, and delivery workers. Proponents of fee caps claim they are critical to protecting restaurants, which operate with notoriously thin margins and are still struggling to recover from the pandemic. Opponents claim that fee caps drive delivery companies to change their prices and services, which ultimately hurt the very restaurants they are intended to help.

Recognizing the lack of data, Local Law 103 of 2021—which made permanent New York City’s cap on third-party delivery fees—included a reporting requirement. The law requires DCWP to submit a report to the Mayor and the Speaker of the Council every two years, beginning no later than September 30, 2023, recommending the maintenance or adjustment of the cap on fees by looking at factors such as the effect of the cap on third-party food delivery services and food service establishments; whether the cap affects delivery workers’ wages and working conditions; the products provided by third-party food delivery services for listing, processing and marketing; and figures related to the bill’s subchapter such as the number of complaints and violations, total amount of penalties imposed and the amount of restitution recovered.

## **Games of Chance in New York City**

Charitable gaming—which authorizes bingo, bell jar sales, Las Vegas nights, and raffles—is overseen by the New York State Gaming Commission. For years, statewide charitable gaming laws limited the operation of such games by prohibiting conduct outside of the organization’s premises, limiting potential earnings, and requiring the exclusive use of cash payments.[[68]](#footnote-69) Criticism over these restrictions date back to 1976 when the former director of the City Consumer Affairs Department, Elinor Guggenheimer, expressed concerns about the cap on winnings and the limits to venues that could host such games.[[69]](#footnote-70)

In 1976, upon modification to the New York State Constitution, the New York City Council passed a bill that would permit controlled operations of games of chance as a means to fundraise for charitable organizations.[[70]](#footnote-71) The “Las Vegas Nights” bill was intended to legalize games of chance conducted by religious or charitable organizations to raise funds for their operation. The legislation licensed operators of such games and set financial limitations on individual bets and potential winnings.[[71]](#footnote-72) The aim was to decriminalize gaming for the exclusive financial benefit of organizations who require fundraising for their operation.

In 2017, New York State enacted the Charitable Gaming Act, which authorized internet and mobile purchases of raffle tickets.[[72]](#footnote-73) The legislature’s intent to modernize the charitable gaming industry led the New York State Gaming Commission to adopt new regulations that loosened restrictions on charitable gaming and expanded opportunities for raising funds.

The regulations adopted by the New York State Gaming Commission opened the door for professional sports organizations to conduct games of chance for charitable purposes at a professional sports venue or online.[[73]](#footnote-74) The new regulations paved the way for sports venues, like the UBS Arena, which is home to the New York Islanders, to conduct 50/50 raffles.[[74]](#footnote-75) Such raffles donate 50 percent of the proceeds to one ticket holder, and the other 50 percent of the proceeds benefit local charities in the community. The City has not amended its local law related to charitable games of chance for decades, which prevents sports venues like Yankee Stadium from participating in such games.

## **Temporary Schedule Change Law**

In 2018, the Council enacted a local law to protect employees who seek temporary changes to their work schedules for personal events and certain other schedule changes.[[75]](#footnote-76) The law requires employers to accommodate a temporary change to the work schedule two times within a calendar year relating to an employee’s “personal event.” It allows workers to request such changes without fear of retaliation, and requires that employers respond immediately to an employee’s request and follow up with a written request within 14 days, unless the employee failed to put the request in writing. Each schedule change may not exceed one business day; however, an employer may permit an employee to use two business days for one request. A “personal event” includes needing to provide care to a relative or care recipient; needing to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or an employee’s care recipient is a party; or any event that qualifies for the use of safe time or sick time pursuant to the city’s Earned Safe and Sick Time Act.[[76]](#footnote-77)

“Safe time” includes the need to take leave from work due to an employee or the family member of an employee having been the victim of a family offense matter, human trafficking, a sexual offense, stalking; to enroll a child in a new school, or to obtain social services or legal help due to having been the victim of such an event.[[77]](#footnote-78) “Sick time” includes the need to take leave from work due to an employee’s health condition, a family member’s health condition, a public health emergency causing the closure of the employee’s place of business, or a public health emergency causing the closure of the school or childcare provider for a child for whom the employee is responsible.[[78]](#footnote-79)

By allowing for the possibility of two days a year of flexibility in employees’ work schedules for a few specified exemptions, the law helps workers meet their caregiving and legal responsibilities. It also offers assistance to employees who may be facing last-minute acute health emergencies or who need resources after having been the victim of a crime (especially those relating to domestic violence), as well as other situations that may occur without adequate notice.[[79]](#footnote-80)

The law is enforced by the Department of Consumer and Worker Protections’ Office of Labor Policy & Standards, and requires the director to make notices for employers to put in the workplace or at any job site informing employees of their right to temporary changes to their work schedule.[[80]](#footnote-81) This requirement is limited in scope and does not include any mandated outreach to employees who may not know about their rights.

# BILL ANALYSIS

# Int. 813 — A Local Law to amend the administrative code of the city of New York, in relation to establishing exemptions for third-party food delivery services from the limits on fees charged by such services on food service establishments

# Int. 813 would amend section 20-563.3 of the Administrative Code, which contains the fee caps for third-party food delivery services. Under the bill, the fee caps would no longer be in effect as long as the third-party food delivery service offers restaurants the option to receive delivery services for the capped price (15% of the cost of an order), as well as the option to be listed with the third-party food delivery service for a fee consistent with the caps. In other words, the bill would allow platforms such as Seamless and UberEats to charge restaurants higher fees as long as there is an option for restaurants to be listed on the platform for 5% of the cost of their orders or less, and as long as delivery fees remain as an option at no more than 15% of the cost of an order.

# The bill would also amend the reporting requirement on the operation of the fee caps to include reporting on the effect of the exemption to third-party delivery service fee caps on food delivery services and food service establishments. This would include the effect of the exemption on the revenue of third-party food delivery services and the effect on the marketing and revenue of food service establishments. It would also include reporting on whether such an exemption to the third-party delivery service fee caps affects wages and working conditions for persons who deliver for third-party delivery services.

# This bill would take effect 120 days after it becomes law.

1. **Int. 891 — A Local Law to amend the administrative code of the city of New York, in relation to allowing charitable organizations to conduct games of chance at professional sporting venues**

Section 1 of the bill would amend section 20-435 of the Administrative Code by adding a new subdivision 12, which would set forth the definition of “sports venue.” “Sports venue” would be defined as a building, structure, or place in which professional sporting competitions are held.

Section 2 of the bill would amend subdivisions 5, 6, 7 and 8 of section 20-436 of the Administrative Code. Subdivision 5 would permit sports venues to conduct games of chance during professional and collegiate sporting competitions. Additionally, subdivision 5 would lift the cap on the sum or value of the prize awarded for games of chance conducted during professional or collegiate sporting competitions at sports venues. Subdivision 6 would permit games of chance conducted during professional and collegiate sporting events at sports venues to exceed the aggregate one-thousand-dollar prize cap. Subdivision 7 would lift any restriction on the management or operation of games of chance conducted during professional and collegiate sporting competitions at sports venues. Subdivision 8 would permit remuneration for participation in the management or operation of games of chance conducted during professional and collegiate sporting competitions at sports venues.

Section 3 of the bill would repeal subdivision 2 of section 20-441 of the Administrative Code to permit the sale of all alcoholic beverages during the administration of games of chance.

Section 4 of the bill would amend section 20-443 of the Administrative Code by lifting the restriction on the frequency of games of chance conducted for professional and collegiate sporting competitions at sports venues.

Section 5 of the bill would amend subdivisions 1, 2, 3 and 4 of section 20-444 of the Administrative Code. Subdivision 1 would allow an authorized organization affiliated with a sports venue to contract with a licensed third-party to operate or conduct a game of chance with an active member of the organization on site. Subdivision 2 would permit the use of equipment for games of chance at sports venues to be supplied by a licensed third-party contractor. Subdivision 3 would permit the certification, under oath, of the persons holding, operating or conducting such game be a licensed third-party contracted by the authorized organization affiliated with a sports venue. Subdivision 4 would permit the licensed third-party contracted by the authorized organization affiliated with a sports venue to be compensated, inclusive of all operation costs of the game or games of chance, with a portion of the prize not to exceed 15 percent of the daily gross of the games of chance.

Section 6 of the bill would amend section 20-445 of the Administrative Code by lifting restrictions on advertising games of chance conducted during professional and collegiate sporting competitions at sports venues.

This bill would take effect immediately.

1. **Int. 818 — A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of consumer and worker protection to implement an outreach and education campaign regarding the Temporary Schedule Change Act**

This bill would establish a yearly outreach campaign to inform employers and employees of their rights related to the Temporary Schedule Change Act. It would require DCWP to develop and distribute written and electronic materials containing information related to the Temporary Schedule Change Act and implement a media campaign to inform the public about their rights pursuant to the Temporary Schedule Change Act.

This bill would take effect immediately.

Int. No. 813

By Council Members Holden, Velázquez, Salamanca, Feliz, Riley, Dinowitz, Narcisse, Paladino, Hanks, Carr, Louis, Abreu, Williams, Farías, Stevens, Menin, Sanchez, Schulman, Joseph, Yeger, Brooks-Powers, Brannan, Kagan, Borelli, Ariola and Vernikov

..Title

A Local Law to amend the administrative code of the city of New York, in relation to establishing exemptions for third-party food delivery services from the limits on fees charged by such services on food service establishments

..Body

Be it enacted by the Council as follows:

           Section 1. Section 20-563.3 of the administrative code of the city of New York, as added by local law number 103 for the year 2021, is amended to read as follows:

a. It shall be unlawful for a third-party food delivery service to charge a food service establishment a delivery fee that totals more than 15% of the purchase price of each online order.

b. It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee or fees, other than a delivery fee and a transaction fee, for the use of their service that totals more than 5% of the purchase price of each online order.

c. It shall be unlawful for a third-party food delivery service to charge a food service establishment a transaction fee that totals more than 3% of the purchase price of each online order, provided however that a third-party food delivery service may charge a food service establishment a transaction fee of more than 3% of the purchase price of an online order if: (i) such transaction fee is charged to the food service establishment in the same amount as the charge imposed upon the third-party food delivery service for such online order, and (ii) such third-party food delivery service can provide proof of such charge imposed upon it to both the department and the relevant food service establishment upon request.

d. Subdivisions a, b and c of this section shall not apply to a third-party food delivery service that provides a food service establishment with: (i) the option to obtain delivery services for a fee consistent with the cap on fees as set forth in subdivisions a, b and c of this section, and (ii) the option to be listed on the third-party food delivery service platform for a fee consistent with the caps on fees as set forth in subdivisions b and c of this section.

e. No later than September 30, 2023, and every two years thereafter, the commissioner shall submit to the speaker of the council and the mayor a report on the fee cap pursuant to this section, which shall include but not be limited to recommendations related to either the maintenance or adjustment of the fee cap as set forth in this section, in consideration of factors from the immediately preceding two years, such as:

1. The effect of the cap as set forth in subdivisions a, b and c of this section and the effect of the exemption as set forth in subdivision d of this section on third-party food delivery services and food service establishments, including, but not limited to, the effect on the revenue of third-party food delivery services and the effect on the marketing and revenue of food service establishments;

2. Whether [the cap] such cap or such exemption affects wages and working conditions for persons who deliver food or beverages for third-party food delivery services;

3. Products that third-party food delivery services offer to food service establishments for listing, processing and marketing;

4. The number of complaints made to the department related to the alleged violations of this subchapter and the number of violations issued under this subchapter;

5. The total amount of penalties imposed as a result of violations of this subchapter; and

6. The amount of restitution recovered on behalf of food service establishments pursuant to this subchapter.

§ 2. This local law takes effect 120 days after it becomes law, except that the commissioner of consumer and worker protection shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

Int. No. 891

By Council Members Salamanca and Velázquez

..Title

A Local Law to amend the administrative code of the city of New York, in relation to allowing charitable organizations to conduct games of chance at professional sporting venues

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-435 of the administrative code of the city of New York is amended by adding a new subdivision 12 to read as follows:

12. “Sports venue” shall mean a building, structure, or place in which professional sporting competitions are held.

§ 2. Section 20-436 of the administrative code of the city of New York is amended to read as follows:

§ 20-436 Conduct of games of chance. 1. No person, firm, association, corporation or organization, other than a licensee under the provisions of this subchapter, shall conduct such game or shall lease or otherwise make available for conducting games of chance a hall or other premises for any consideration whatsoever, direct or indirect, except as provided in section 20-437 of this subchapter.

2. No game of chance shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on the basis of a percentage of the receipts or net profits derived from the operation of such game.

3. No authorized organization licensed under the provisions of this subchapter shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of games of chance from other than a supplier licensed by the board or from another authorized organization.

4. The entire net proceeds of any game of chance and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.

5. [No] Except as otherwise provided in this section, no prize shall exceed the sum or value of one hundred dollars in any operation or conducting of a single game of chance as defined in section 20-435 of this subchapter. No single wager shall exceed ten dollars. Sports venues may conduct games of chance during professional and collegiate sporting competitions, from two hours before the beginning of play until the end of play, with no limitation on the sum or value of the prize for such game of chance.

6. [No] Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no series of prizes on any one occasion of games of chance shall aggregate more than one thousand dollars as defined in section 20-435 of this subchapter.

7. [No] Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no person except a bona fide member of any such organization, its auxiliary or affiliated organization, shall participate in the management or operation of such game, as set forth in section 20-444 of this subchapter.

8. [No] Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no person shall receive any remuneration for participating in the management or operation of any such game.

9. The unauthorized conduct of a game of chance shall constitute and be punishable as a misdemeanor.

§ 3. Section 20-441 of the administrative code of the city of New York is amended to read as follows:

§ 20-441 Control and supervision; suspension of licenses; inspection of premises; rulemaking. 1. The department shall have and exercise rigid control and close supervision over all games of chance conducted under such license, to the end that the same are fairly conducted in accordance with the provisions of such license, the provisions of the rules and regulations promulgated by the board and the provisions of this subchapter, and the department and the board shall have the power and authority to temporarily suspend any license issued by the department pending a hearing and, after notice and hearing, the department and the board may suspend or revoke same, and additionally, impose a fine not exceeding one thousand dollars for violation of any such provisions, and the department and the board shall have the right of entry, by their respective officers and agents, at all times into any premises where any game of chance is being conducted or where it is intended that any such game shall be conducted, or where any equipment being used or intended to be used in the conduct thereof is found, for the purpose of inspecting the same. An agent of the department shall make an on-site inspection during the conduct of all games of chance licensed pursuant to this subchapter.

[2. Service of alcoholic beverages. Subject to the applicable provisions of the alcoholic beverage control law, beer may be offered for sale during the conduct of games of chance but the offering of all other alcoholic beverages is prohibited.

3.] 2. The commissioner of the department may promulgate such rules and regulations as deemed necessary for the proper implementation and enforcement of this subchapter and which are not inconsistent with those rules and regulations promulgated by the board.

§ 4. Section 20-443 of the administrative code of the city of New York is amended to read as follows:

§ 20-443 Frequency of games. [No] Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no game or games of chance shall be conducted under any license issued under this subchapter more often than twelve times in any calendar year. Games shall be conducted only between the hours of noon and midnight on Monday, Tuesday, Wednesday, Thursday, and Sunday; and between the hours of noon on Friday and two a.m. Saturday; and between the hours of noon on Saturday and two a.m. Sunday. The two a.m. closing period shall also apply to a legal holiday. Notwithstanding the foregoing provisions of this section no games of chance shall be conducted on Easter Sunday, Christmas Day, New Year's Eve, and the days of Rosh Hashanah and Yom Kippur.

§ 5. Section 20-444 of the administrative code of the city of New York is amended to read as follows:

§ 20-444 Persons operating and conducting games; equipment; expenses; compensation. [No] 1. Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no person shall hold, operate or conduct any games of chance under any license issued under this subchapter except an active member of the authorized organization to which the license is issued, and no person shall assist in the holding, operating or conducting of any game of chance under such license except such an active member or a member of an organization or association which is an auxiliary to the licensee or a member of an organization or association of which such licensee is an auxiliary or member of an organization or association which is affiliated with the licensee by being, with it, auxiliary to another organization or association. [No] An authorized organization affiliated with a sports venue may contract a licensed third-party to operate or conduct a game of chance, so long as an active member of the organization is on site.

2. Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no game of chance shall be conducted with any equipment except such as shall be owned or leased by the authorized organization so licensed or used without payment of any compensation therefore by the licensee. An authorized organization affiliated with a sports venue that contracts a licensed third-party to operate or conduct a game of chance may utilize equipment supplied by such third-party operator.

3. At least two officers, directors, trustees or clergy of the authorized organization shall upon request certify, under oath, that the persons assisting in holding, operating or conducting any game of chance are bona fide members of such authorized organization, auxiliary or affiliated organization, or a licensed third party contracted by the authorized organization to hold, operate or conduct a game of chance at a sports venue during a professional or collegiate sporting competition. Upon request by the department, any such person involved in such games of chance shall certify that he or she has no criminal record.

4. No items of expense shall be incurred or paid in connection with the conducting of any game of chance pursuant to any license issued under this subchapter except those that are reasonable and are necessarily expended for games of chance supplies and equipment, prizes, stated rental if any, bookkeeping or accounting services according to a schedule of compensation prescribed by the board, janitorial services and utility supplies if any, license fees, and the cost of bus transportation, if authorized by such department. A licensed third party contracted to operate or conduct a game of chance on behalf of an authorized organization affiliated with a sports venue may be compensated, inclusive of all operation costs of the game or games of chance, with a portion of the prize, not to exceed 15 percent of the daily gross of the games of chance.

§ 6. Section 20-445 of the administrative code of the city of New York is amended to read as follows:

§ 20-445 Charge for admission and participation; amount of prizes; award of prizes. [Not] Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no more than two dollars shall be charged by any licensee for admission to any room or place in which any game or games of chance are to be conducted under any license issued under this subchapter. The department may in its discretion fix a minimum fee. Every winner shall be determined and every prize shall be awarded and delivered within the same calendar day as that upon which the game was played. No alcoholic beverage shall be offered or given as a prize in any game of chance.

§ 7. Section 20-446 of the administrative code of the city of New York is amended to read as follows:

§ 20-446 Advertising games. [No] Except for games of chance conducted during professional and collegiate sporting competitions at sports venues, no game of chance conducted or to be conducted in this city shall be advertised as to its location, the time when it is to be or has been played, or the prizes awarded or to be awarded, or transportation facilities to be provided to such game, by means of newspapers, radio, television or sound trucks or by means of billboards, posters or handbills or any other means addressed to the general public, except that one sign not exceeding sixty square feet in area may be displayed on or adjacent to the premises owned or occupied by a licensed authorized organization, and when an organization is licensed to conduct games of chance on premises of an authorized games of chance lessor, one additional such sign may be displayed on or adjacent to the premises in which the games are to be conducted. Additional signs may be displayed throughout sports venues for games of chance conducted within the premises during professional and collegiate sporting competitions. Additional signs may be displayed upon any fire fighting equipment belonging to any licensee, which is a volunteer fire company, or upon any first-aid or rescue squad equipment belonging to any licensee, which is a first-aid or rescue squad, in and throughout the community or communities served by such volunteer fire company or such first-aid or rescue squad, as the case may be.

§ 8. This local law takes effect immediately.

Int. No. 818

By Council Members Brewer, Hanif, Restler, Hudson, Joseph and Abreu

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of consumer and worker protection to implement an outreach and education campaign regarding the Temporary Schedule Change Act

..Body

Be it enacted by the Council as follows:

Section 1. Subchapter 6 of chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-1264 to read as follows:

§ 20-1264 Education and outreach. a. No later than September 1, 2023, and annually thereafter, the department shall conduct an outreach campaign to inform employers and employees about the rights of employees pursuant to this subchapter.

1. The department shall develop and distribute to employers written and electronic materials containing information related to this subchapter. Employers shall distribute written and electronic materials created by the department directly to their employees in both electronic and print format.

2. The department shall implement a media campaign to inform the public about their rights as employees pursuant to this subchapter. Such media campaign shall be available on the internet, television, radio, and in print.

b. The materials and media campaign required by this section shall be made available in English and the designated citywide languages as provided in section 23-1101.

§ 2. This local law takes effect immediately.

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