

TESTIMONY

BY

FIRST DEPUTY COMMISSIONER

JACKIE MALLON

NEW YORK CITY

DEPARTMENT OF SMALL BUSINESS SERVICES

BEFORE

THE COMMITTEE ON SMALL BUSINESS

OF THE

NEW YORK CITY COUNCIL

THURSDAY, JUNE 27, 2019

Good afternoon **Chair Gjonaj** and members of the Committee on Small Business. My name is Jackie Mallon, and I am the First Deputy Commissioner at the New York City Department of Small Businesses Services (“SBS”). At SBS, we aim to unlock economic potential and create economic security for all New Yorkers by connecting them to quality jobs, building stronger businesses, and fostering thriving neighborhoods across the five boroughs. I am joined by my colleague, Steven Picker, the Executive Director of our food service industry partnership.

Restaurants are a critical component of New York City’s small business community. New York City is home to over 20,000 restaurants and they employ over 270,000 New Yorkers. The landscape of this industry is continually evolving and SBS aims to help business owners be nimble in adapting to changing markets conditions. To assist restaurant owners, SBS offers many resources that help them start, operate, and grow. Our services to support restaurants include our **Government Navigation** and **Compliance Advisory** services, which help restaurant owners navigate the regulatory process and ensure that they are in compliance with the regulations necessary to maintain public health and safety. To date, Compliance Advisors have provided more than **2,600 on-site consultations** for restaurants, helping these businesses avoid common violations before their inspections. We also help restaurant owners access capital, hire new employees, and fund employee training through our **NYC Business Solutions Centers**. On an average annual basis, SBS helps open roughly 500 restaurants, fill nearly 3,000 open positions at restaurants, and connect about 100 restaurants to around \$4 million in financing.

To help neighborhood businesses thrive in their communities, SBS provides eligible business owners with legal services on topics including lease negotiations, formalizing oral lease agreements, and landlord harassment through our **Commercial Lease Assistance Program**. Of the more than 300 businesses served through the program, more than 25% are accommodation and food service establishments. To help neighborhood businesses adapt to changing market conditions, SBS runs the **Love Your Local** grant program; to date we have awarded grant funding to forty small businesses, including many restaurants. Through Love Your Local, SBS is aiming to identify common challenges that are impacting the profitability of small businesses so that we can develop and test new business services to support the growth and retention of longstanding business across the five boroughs.

SBS also works directly with the restaurant industry through our **NYC Food & Beverage Industry Partnership**, which is made up of over thirty New York City restaurant industry leaders, key professional associations, and community-based organizations that focus on skills training. The partnership allows us to work directly with the industry on priority issues impacting both employers and workers to support the growth of the sector. Key priorities include helping restaurants navigate the regulatory environment, addressing the demand for skilled workers, and providing support to adapt to the rising costs of doing business in the city. Of the major challenges elevated by the industry, members of the partnership cited the recruitment of skilled employees as one of the most important. After executing a pilot last year, SBS has refined our line cook apprenticeship program, now called **First Course NYC**, to further incorporate employer feedback and enhance pre-apprenticeship training.

Our industry partners have also raised concerns about the cost of utilizing delivery service applications and their impact on profit margins. However, many have also reported the positive impact these platforms can have on their business in terms of driving volume of delivery orders. The increasing consumer adoption and costs of these applications are changing market conditions for restaurants. SBS is committed to working with industry and the Council to examine solutions and services that will assist restaurants in adapting to these new technologies and patterns of consumer behavior. We know that this is a complicated issue and look forward to learning more from our industry stakeholders and continuing this conversation with the City Council. Thank you and I am happy to answer any questions.



Testimony: Oversight - The Changing Market for Food Delivery

June 27, 2019

Council Member Mark Gjonaj
Chair – Committee on Small Business
New York City Council
250 Broadway, Suite 1847
New York, NY 10007

Dear Committee Chair Gjonaj and Committee Members,

My name is Jennie Romer, and I'm here on behalf of UPSTREAM, a national non-profit organization working to spark innovative solutions to plastic pollution.

New York City has one of the best food scenes of any city in the world. You can literally stroll down the block or type a few keystrokes into your phone and order almost anything. So much of the world's cuisine is at your fingertips and food delivery companies put it all within your reach in 30 minutes or less. There's so much to choose from and it's so convenient.

But all this convenience comes with a cost. Think about all the single-use products involved when you order takeout food to your home or office. All the throw-away plastic cutlery and napkins and all this stuff you don't actually need, not to mention the bags and single-use containers that come as a matter of course.

Now think about these same actions repeated millions of times a day by millions of people living in New York - day after day - year after year. The city currently spends more than \$600 million each year to manage unwanted packaging,¹ not to mention the street cleaning and storm drain management costs to deal with single-use items, much of it foodware. In addition to the plastic pollution and disposal costs, **every time we toss a single-use item, we're also throwing away all the natural resources - the trees, the oil, the water and the energy - that it took to make and transport that product into our hands.**

Yet there's a better way than throw-away. Imagine that when you sit down to eat at a restaurant - whether its McDonalds or Shake Shack or the next fast-casual cafe - you're served on real plates with real cups and cutlery. When you're grabbing a cup of coffee to go, it comes in a reusable cup that you can drop off at any coffee shop in the city when you're getting your next one. Imagine all the restaurants and food delivery businesses using reusable to-go containers that are part of a community-wide system run by innovative new businesses.

Sound pie-in-the sky? The really great news is that this is happening right now. **All over the world, businesses, institutions, and communities are saying no to disposable packaging and designing reuse systems that are convenient, sustainable and more fun than the old**

¹ <https://sustainablebrands.com/read/waste-not/packaging-and-paper-waste-costs-nyc-600-million-annually>

throw-away model. And we could make it happen right here.

I want to share a couple of stories to paint the picture about what the future could look like:

- In Portland, Oregon, an innovative company called GoBox provides a reusable to-go container service that serves much of the downtown area, including food trucks and this company has a franchise in the SF Bay Area as well.
- In Durham, North Carolina, entrepreneurs and citizens came together to create GreenToGo, which provides a similar service but also includes grocery stores that serve prepared food.
- In Zurich, Switzerland, a company called Recircle provides reusable to-go cups and a variety of reusable containers to restaurants and grocery stores and uses a simple deposit-return system to get them back.

There are many more examples of companies and communities developing these kinds of services all over the world. In most of these examples, reuse companies contract directly with the restaurants and food service providers to deliver a specified amount of reusable to-go cups and containers each day, and to pick up dirty ones for sterilizing in a commercial dishwashing facility.

It's a similar process to how restaurants contract with laundering services for fresh linens delivered and dirty ones picked up each day. Instead of ordering a specified amount of single-use containers to be delivered by a vendor, restaurants could order their to-go products from a reuse company. The reuse companies in business today have a variety of business models they use to make the cost comparable to single-use disposables. **At its core, these businesses are about making reuse as convenient as single-use - or nearly so - for the consumer, and also for the restaurants.**

We know there are obstacles to scaling these ideas in New York City, but we would like to sketch a possible roadmap for policies and projects to consider to help us get there.

The Roadmap

1. **"Opt-in" for disposables in food delivery:** Right now, many if not most restaurants automatically add in disposable cutlery and napkins for delivery orders, even though most people have cutlery and napkins at home or their office - so nearly all of it goes to waste. But we can make that a thing of the past. Council Member Van Bramer has a bill to have food delivery companies provide an "opt-in" feature if customers want cutlery and napkins in the order.
2. **"Throw-away-free" sit-down dining:** While we recognize that this isn't directly about food-delivery per-se, sit-down dining is where the throw-away experience starts. Take the fast food or the trendy fast-casual dining experience, where you sit down at a restaurant for a delicious meal, but you end throwing away a pile of garbage away when you're done. Or how about when you're sitting down at a coffee shop, and even though they have real mugs behind the counter, everyone is drinking out of throw-away cups with plastic lids. If we're going to get single-use out of food delivery, we need to start with the low-hanging fruit and that means getting it out of sit-down dining. Fortunately, several communities in the San Francisco Bay area have just passed foodware ordinances making sit-down dining throw-away-free. And San Francisco and other Bay Area jurisdictions are considering similar ordinances, while similar policy conversations are occurring in Los Angeles, Seattle, and Boston. UPSTREAM helped develop the ordinances in Berkeley and San Francisco, and

we have a model ordinance and are happy to work with Councilmembers on iterating a version for NYC. We see it as the next progression for plastic pollution policy beyond plastic bag, foam and straw bans.

3. **Innovation labs to bring entrepreneurs, city officials and investors together to help reusable to-go businesses develop and scale.** In order to bring reuse into NYC's to-go and food delivery scene, reuse companies will need to provide services to restaurants and venues across the city. UPSTREAM is developing an innovation lab to jumpstart the process, and we would love to have Councilmembers and the Department of Sanitation involved.
4. **Make the reuse option mandatory.** If customers are going to be charged for using disposables for take-out food and beverages, then the businesses should provide a reusable alternative to enable customers to avoid the charge. This makes sense of the goal is to change the way food service delivers food and beverages to customers. And that is the goal - take-out food retailers should be encouraged to find a way to provide customers with the food and beverages they purchase without the single-use packaging.
5. **Ban teflon-type chemicals for disposable to-go containers.** Unfortunately, many disposable to-go containers - especially the "compostable" paper fiberware containers that are replacing Styrofoam - are coated or blended with toxic grease-resistant coatings containing perfluorinated chemicals (or PFAS for short). These are called "forever chemicals" as they may never disappear in the environment. They cause widespread drinking water contamination, and contaminate crops and foods grown in compost where this packaging ends up. PFAS chemicals have been proven to be carcinogenic and mess with our endocrine system, which is causing decreased fertility, obesity, diabetes, and all kinds of other developmental and chronic illnesses as they build up in our bodies. Fortunately, there are safer grease-resistant chemicals, and the foodware ordinance also has language to ban the toxic ones. Many communities are passing or considering ordinances to do this around the world.

What about Compostables?

Most people think that when a throw-away container is made from brown paper and says "compostable" on it, that it must be better for the environment, but unfortunately, the science shows that the opposite is true. **The Oregon Department of Environment Quality commissioned an exhaustive report that found that disposable compostable foodware has a larger environmental footprint than non-compostable disposables.**² From the report:

- "Most compostable materials require more fossil energy use, release more greenhouse gases, or result in more toxic chemicals than their non-compostable counterparts, mostly due to how they're made. What materials are made of, and how they're made, is more significant than whether they're composted vs. landfilled.
- "Composting" and "compostable" are not the same idea. Composting is a beneficial treatment option for organic wastes, but "compostable" is not a guarantee of low impact.
- Not all certified compostable packaging fully composts in all compost facilities.
- Some compostable packaging may burden compost facility operators with higher costs and generate finished compost product contaminated with pieces of uncomposted waste.
- Further, most compostable plastic packaging does not degrade in marine environments."

² <https://www.oregon.gov/deq/FilterDocs/compostable.pdf> - "In the majority of these comparisons, making and using compostable materials (and composting them) was found to result in higher environmental impacts than either using non-compostable materials, or using compostable materials and treating them via recycling, landfilling or incineration...As such, DEQ recommends against using compostability as a blanket design or procurement criteria."

The good news is that the science shows reuse wins every time. Once a reusable product is washed and reused a certain number of times, the environmental benefits start stacking up.

Why Throw-Away-Free

The throw-away lifestyle that has been marketed to consumers and businesses is at the root of plastic pollution here and around the globe. Simply eliminating the plastic and using alternatives like paper, fiber-based materials, or bioplastics creates other significant environmental and human health impacts, like depletion of forests, increased carbon emissions, toxic exposure, and greater water and energy use. The problem isn't simply plastic. It's our reliance on single-use products and packaging that are designed to be used immediately and then thrown away. We know the change isn't going to come from individuals bringing a bag full of reusable containers everywhere. We need businesses, institutions, communities and tastemakers to become change agents for real and reusable over throw-away. And we need to start now.

Together with your help, we can make NYC throw-away-free.



**TESTIMONY FROM THE ASSOCIATION FOR A BETTER NEW YORK BEFORE
THE COMMITTEE ON SMALL BUSINESS**

June 27, 2019

Good afternoon and thank you for the opportunity to testify regarding the changing market for food delivery. As you may know, the Association for a Better New York (ABNY) is a 48-year old civic organization that promotes the effective cooperation of public and private sectors to improve the quality of life for all New Yorkers.

The food and restaurant industry are increasingly important to the New York City economy. The Center for Urban Future recently cited that over the past 10 years, it is our 2nd fastest growing industry, up 115,000 employees since 2009. Additionally, the number of restaurants in NYC increased by 1,574 between 2013 and 2017 according to Department of Health records. Not only are restaurants and bars an increasing employer, our food establishments are a substantial draw and reason to come to New York City, with nearly ¼ of receipts at bars and restaurants coming from both domestic and international tourists.

Therefore we applaud the administration and the City Council for focusing on the issues surrounding the industry to ensure that these jobs - which are a critical part of the economic development ladder - are a sustainable and respectful means of employment. We also appreciate that the administration and the council strive to provide our City's small businesses, owners and managers, workers and customers with a sound and rational regulatory framework that is protective of New Yorkers while providing employers an opportunity to innovate and thrive.

The oversight of food sector delivery apps – like other technologies in traditional New York sectors – has provided a significant level of disruption, as well as a significant level of opportunity. The introduction of these services two decades ago has, in many ways, levelled old playing fields of “location, location, location” driving the successes of businesses – particularly those with a heavy proportion of deliveries, and introduced new playing fields of ratings and visibility on the app itself.

It has increased the ease of food delivery, which has affected the way restaurants are starting and growing in New York City. In a 2018 USA Today article, The NPD Group quoted that in New York City over the last 5 years, revenue from deliveries jumped 20% while the over number of deliveries increased 10%, indicating a more profitable growth model for restaurants that deliver.

In the same article, Wesley Wobles, creator of Pinky's Space was quoted as saying “When we signed up with GrubHub, that changed everything for the business. Our first day online, our business tripled.”

With any level of growth this significant in a short period of time, we would expect that the demand market may change faster or slower than the supply chain, causing “growing pains” in an industry. And we applaud the City Council for shining a light on the issues to ensure a quick resolution. However, we urge the City Council to allow ample time and accommodations for the private sector partners to address the issues it spotlights, prior to introducing any legislation or mandates that may fix a solution to a specific time or set of circumstances.

Particularly in the dash-tech industries where tech companies will service traditionally strong sectors of the New York City economy (such as fin-tech, fashion-tech, or food-tech) we want to maintain an inviting environment for companies to start here. The same Center for Urban Future report cites that with the addition of 63,000 jobs to the NYC economy, Tech is the fastest growing higher wage industry in New York City. Therefore, we hope that any discussions resulting from today would encourage economic development for all workers in our city.

Thank you again for the opportunity to testify.



Regarding the impact of third-party delivery platforms on the restaurant industry

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, representing food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and have advocated on behalf of our members for over 80 years. Our members are one of the largest and most widely impacted constituencies in the City, as nearly every agency regulates some aspect of this industry. To ensure the continued viability of the restaurant industry, New York City must prioritize regulations that enable these hardworking New Yorkers to continue earning their livelihoods.

Today, I am here to speak about the impact of third-party delivery platforms on the restaurant industry. First and foremost, we want to acknowledge that the modern restaurant industry has come to rely heavily on delivery as a means of getting food to customers. We know that third-party delivery platforms have taken on a major role in this model, and oftentimes it is practical for restaurants to work with delivery platforms, rather than hire their own delivery workers. With this in mind, we want to advocate for a mutually beneficial relationship between restaurants and delivery platforms, and to ensure that clarity, fairness, and profitability are all able to coexist in this relationship.

We are hopeful today that restaurants will all fully embrace the opportunity to share their experiences with third-party delivery platforms, so we can have a more complete understanding of the status quo. Anecdotally, we know that restaurants have various types of fee structures, may have a presence on more than one delivery platform, and may have mixed experiences using them. Before we begin to suggest any improvements for the relationship between restaurants and these platforms, we want to hear a number of firsthand accounts.

That being said, one issue that came to our attention earlier this year had to do with fees being mistakenly charged on phone calls that were not orders. Based on the experience of one of our board members, we learned that some phone calls, typically those lasting longer than about 45 seconds, were being improperly classified as orders. In fact, they were all sorts of calls, including questions about the menu, making a reservation, or other inquiries. Unfortunately, the only way to verify whether or not a call was actually an order is to check back through the phone call log, which is a time-consuming task. That being said, we urge all restaurants who use third-party delivery platforms to do this kind of audit, so we can understand how widespread this issue truly is. We suspect that this problem is simply the product of a mistaken procedure, and we'd like to work together to find a good solution. We also hope to hear more from both restaurants and delivery platforms on this topic, because as of now we are working off of limited information from a few cases.

In conclusion, the New York State Restaurant Association is committed to a profitable and cooperative relationship between restaurants and third-party delivery platforms. We hope that this hearing will provide the opportunity to gather more information about the status quo. From there, we plan to be active and collaborative participants in making this relationship the best it can be. We appreciate your attention today, and applaud your focus on these crucial and interconnected industries. We look forward to continued efforts to create a clear, fair and flourishing business environment for all New Yorkers.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

315 W 36th St., 7th Floor

New York, New York 10018

**Testimony of Mr. Joel Berg
Chief Executive Officer, Hunger Free America**

For Hearing on “The Changing Market for Food Delivery”

Before the New York City Council Committee on Small Business General

June 27, 2019

I am Joel Berg, Chief Executive Officer of Hunger Free America, a nationwide direct service and advocacy organization based in New York City. I thank the committee for holding this hearing.

Background on Still Sky-High Food Insecurity and Food Deserts in New York City

Hunger Free America’s 2018 New York City and State report on hunger, based on our analysis of federal food insecurity data, found:

- In New York City, the number of people living in food insecure households – unable to afford an adequate supply of food – decreased by 22 percent during the past six years, declining from 1.4 million people between 2012-2014 to 1.09 million between 2015-2017; however, the number is still 22 percent higher than the level before the recession of 0.892 million between 2005-2007, and one in eight city residents still struggles against hunger. We must not accept mass deprivation in the wealthiest nation in world history as any sort of “new normal”. Hunger is unacceptable in any society, but it’s particularly outrageous in a nation as wealthy as the United States or in a city as wealthy as New York.
- Between 2015-2017, 12.8 percent of the city’s overall population suffered from food insecurity, including 18 percent of all children, 8.9 percent of all employed adults, and 10.9 percent of all seniors.
- The Bronx remains New York City’s hungriest borough overall with more than one in four Bronx residents (26 percent) experiencing food insecurity, including the highest rates of hunger among children, working adults and senior citizens; more than 37 percent of all children, nearly 17 percent of working adults, and almost 24 percent of seniors throughout the borough experience food insecurity.
- The number of children living in food insecure households in New York City is not decreasing as quickly as the overall number of food insecure people. While the number of

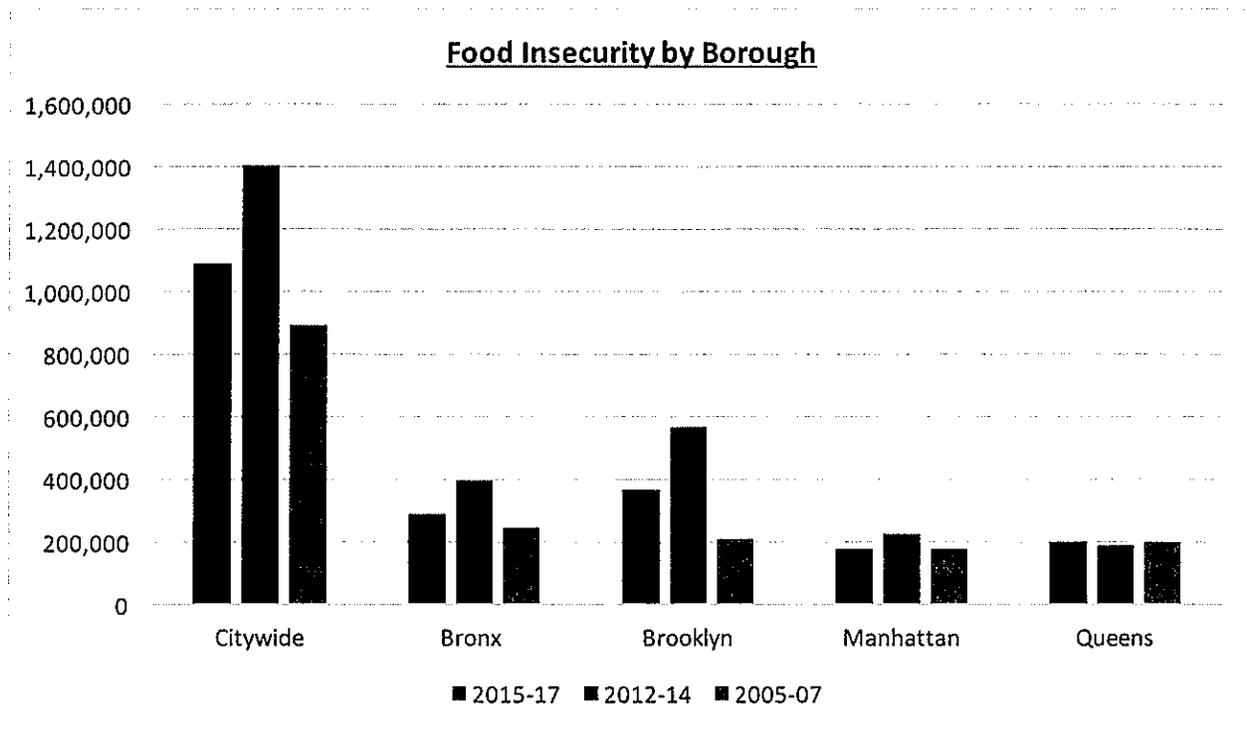
food insecure individuals in New York City decreased by 22 percent from 2012-2014 to 2015-2017, the number of food insecure children (324,432 in 2015-2017) fell by only 16 percent. Conversely, the number of food insecure working adults (351,912 in 2015-2017) experienced a larger drop of 26 percent in the same time period, likely due to the minimum wage increase.

- While food insecurity among working adults is in decline throughout New York City, most likely due to minimum wage increases, the area is still facing a “working hungry epidemic.” The number of adults working but still struggling against hunger between 2015-2017 was 351,912 in New York City, 666,852 in New York State, and 692,937 in the New York Metropolitan region.

Table 1 – Food Insecurity in New York City

	NYC Citywide	Bronx	Brooklyn	Manhattan	Queens
2015-17	1,090,936 (12.8%)	290,469 (26.3%)	368,799 (11.5%)	180,326 (11.3%)	202,417 (8.7%)
2012-14	1,403,496 (16.9%)	396,326 (29.6%)	569,659 (20.3%)	227,261 (13.6%)	192,416 (8.4%)
2005-07	892,214 (12.1%)	246,128 (20.6%)	211,988 (9.5%)	179,016 (13.5%)	200,366 (8.8%)

Figure 1 – Overall Food Insecurity by Borough



Even if people could afford nutritious food, it is often simply unavailable in their neighborhoods. Low-income neighborhoods where it is difficult to find fresh and healthy food are increasingly referred to as “food deserts”. The report “Measuring Food Deserts in New York City’s Low-Income Neighborhoods” (Cynthia Gordon, Marnie Purciel-Hill, Nirupa R. Ghai, Leslie Kaufman, Regina Graham, Gretchen Van Wye) also found that the highest concentrations of food deserts are “within East and Central Harlem and North and Central Brooklyn—areas with the highest proportions of Black residents and the lowest median income.”

For a community to have good nutrition, four things must happen: food must be affordable; food must be physically available; individuals and families must have enough education to know how to eat healthier; and they must have the facilities necessary to prepare their meals. If you don’t have all four legs of this table, the table will collapse. Yet all too often projects only focus on one of the four legs. Many programs provide nutritional education by lecturing people that they should eat better, but don’t make food more available nor more affordable, therefore they are destined to fail in meeting their goals. Sometimes food is brought into low-income neighborhoods but at prices too high for most people to afford: that won’t work either. The only way to truly succeed is to focus on all four aspects of this problem at once.

Online SNAP Pilot Project

In April of 2018, the U.S. Department of Agriculture (USDA) announced a joint pilot project between their department and select food retailers to allow – for the first time ever – low-income

families to use their Supplemental Nutrition Assistance Program benefits (SNAP for short, formerly called Food Stamps) to order groceries online and then have them delivered to their doors. This pilot program is beginning in New York City and will eventually be rolled-out to other cities and states.

The pilot will test both online ordering and payment: SNAP participants will be able to use their benefits to purchase eligible food items, but will not be able to use SNAP benefits to pay for any delivery charges. If the prices for products and deliveries in this pilot project are affordable to SNAP recipients, then this project can completely revolutionize food access for low-income Americans by making it much easier for them to obtain healthy food. This effort is particularly important because so many low-income Americans are disabled, elderly, or live in neighborhoods without easy access to healthy food at prices they can afford. If this project works as intended and is effectively rolled out to the rest of the nation, including rural areas, it has the potential to eventually wipe out food deserts in America. This would be a monumental achievement and we thank USDA and the food retailers for taking this historic step.

We strongly urge families who are in New York City who currently receive SNAP benefits to check the retailers' websites and see if the prices, selection of food products, and delivery fees work for them; if so we urge them to test out these new avenues of food purchasing. We will be in close communication with low-income New Yorkers to obtain their feedback on how well this pilot is working for them.

Testimony from Grubhub
Sami Naim, Director of Public Policy
before the New York City Council, Small Business Committee
Oversight Hearing re: Delivery Industry
June 27, 2019

Good afternoon Chair Gjonaj and members of the Small Business Committee. Thank you for the opportunity to testify before you today about how we help restaurants attract new diners and grow their business. My name is Sami Naim and I am the Director of the Public Policy for Grubhub, though some of you may be more familiar with our brand Seamless. I am joined today by Kevin Kearns, Senior Vice President of our Restaurant Network.

As you may know, we have been operating in New York since 1999 and employ nearly **400** people on three floors across the street from Bryant Park. Our employees literally live, work, breathe, and eat New York. We have driven billions of dollars of revenue to local restaurants and \$1 billion in tips to delivery workers.

I would like to provide you with a few specifics on how we operate.

1. **Our marketing platform levels the playing field for independent restaurants.** We help drive more orders to these restaurants than they could attract on their own by providing access to our network of 20 million diners. Here in New York, 90% of the restaurants on our platform are independent restaurants which don't necessarily have the financial resources, expertise or scale to advertise on or offline, all of which is necessary to compete with larger chains. Our *multilingual* Restaurant Success Team works with restaurants, many who are non native-speaking, to ensure they get the most out of Grubhub. From designing a restaurant's menu, to sending photographers out to take pictures of food, to collaborating on promotions - we work with restaurants to craft strategies to attract new customers, generate additional orders, and earn more revenue.
2. **Restaurants are getting more orders through our platform.** Restaurants who contract with us see a **20%** increase in takeout orders and a **30%** increase in takeout revenue. The impact is even greater for smaller restaurants, which see a **50%** increase in takeout revenue. In fact, restaurants that use our platform make six times more monthly revenue than restaurants not on the platform.
3. **Restaurants are making more money year-over-year using our platform.** Since 2014, restaurants are getting *more* orders with *larger* overall ticket prices though our platform on a year-over-year basis. In other words, not only are restaurants getting more orders, but each order is getting bigger as well. This *translates into* increased incremental revenue that more than offsets a negotiated commission.

4. **Restaurants attract new customers using our platform.** I'm sure you have seen our ubiquitous Seamless "How New York Eats" ads on subways or taxis, or our Grubhub TV spots. That's not by accident. In the past three years alone, we have spent more than **\$150 million** aimed at attracting more diners onto our platform, including coupons, discounts, and promotional codes that ultimately mean **more customers** for restaurants. As one restaurant owner in the Upper East Side recently shared with us: "I consider the fees that Grubhub charges for their service as my marketing budget without having to outlay funds that I do not have in order to be able to compete."
5. **There is no cost for restaurants to join our marketplace.** There are no startup fees, subscription fees, equipment fees, long-term commitments, or cancellation fees for restaurants working with us. On our platform, restaurants can decide whether they self-deliver, do pick-up only or use our delivery service. And ultimately, we only make money when a restaurant makes money.
6. **We are an active part of the New York community, and we give back.** Our platform and diners have helped enable the donation of \$9 million dollars since September of last year. These donations have gone to charitable organizations benefiting the communities we serve including, charitable organizations such as: NYC Kids Rise, No Kid Hungry and the James Beard Foundation Women's Leadership Program. Additionally, we have championed the cause of increasing the number of women-led restaurants through our RestaurantHer initiative.

Underlying all of this is our overall company mission - **to be a true partner for restaurants**. We provide them with the tools to attract, retain, and maintain loyal, profitable customers. We are the marketing, technology and - in some cases - the logistical partners that allow restaurants to focus on what they do best: making great food.

We have been in business for 20 years and worked with tens of thousands of restaurants. We feel that restaurants cited in recent news reports are in the minority. That said, we are available to work with them through any issues they may have with our platform. And we will stay to the end of this hearing to hear and engage with each and every one of them.

As for the other restaurants on this platform, many of whom want to tell a different story, they let us know that they would like to attend this hearing but cannot for reasons I'm sure the committee would appreciate - it's in the middle of the lunch rush. However, we feel it would greatly benefit the committee to hear directly from them, and are happy to help facilitate that connection.

Thank you for allowing us to testify. Grubhub is committed to work with this committee and industry stakeholders to ensure the continued success of restaurants in New York City. We are happy to answer any questions you may have.

###

**NEW YORK CITY COUNCIL
COMMITTEE ON SMALL BUSINESS**

Thursday, June 27, 2019

Oversight hearing on the changing market for food delivery

Written Testimony for Noelle Tan, Uber Technologies Inc.¹

Uber Eats welcomes a conversation with the New York City Council on the topic of food delivery services.

Over the past several years, the process of food delivery has evolved significantly. What used to be a simple relationship among a consumer, food establishment, and a delivery person now also includes app based technology and major national corporations.

Because of the growing complexity of the food delivery business, we appreciate this opportunity to explain the brief history of Uber Eats and how our business currently operates in New York.

Uber Eats began operating in April 2015 as a small operation that quickly delivered meals in midtown Manhattan. By April the following year, the business had grown to partner with more than 100 businesses, and was operating from early in the morning through late at night. Currently, Uber Eats serves customers in all five boroughs with delivery options from thousands of restaurants, eateries, delis, and other food establishments across the city.

One of the reasons why we have been able to grow our business successfully in New York is because we value our restaurant partners, and we demonstrate that through a quick and transparent onboarding process.

When a restaurant or other food establishment is interested in partnering with Uber Eats, a member of our team will walk the restaurant contact through the basic options included in our partnership: using their own delivery workers, using Uber Eats delivery partners, or a combination of both, and explain to them the difference between each option. Once the restaurant partner has determined which delivery method they prefer, we share them on a brief, plain language contract which outlines the costs, and upon agreement get them up and running on our app quickly.

¹ Uber Technologies, Inc., is the parent of Rasier, LLC, a technology company that licenses a smartphone application, which includes a driver application and a rider application ("Uber App"). Rasier, LLC holds a TNC license in New Jersey under the number TNC-001-19.

We are committed to no hidden fees to restaurants. We don't charge for credit card processing, and we don't charge higher rates for lead generation. Our model is straightforward and transparent from the beginning. Restaurants can choose to pay a 15% fee and use their own delivery workers or pay a 30% fee to use Uber Eats delivery partners.

We provide our restaurant partners with the necessary hardware and software to manage their operations through data, and have Eats experts on hand to troubleshoot any issues the partner experiences in real time.

We understand that restaurants small and large are adapting to the changing landscape of food delivery across the city, and our goal at Uber Eats is to make that process as transparent and fair as possible so that they can continue to grow their customer base and prosper.

From: Tribeca's Kitchen, Andreas Koutsoudakis, Member
To: New York City Council
Date: June 27, 2019
Re: Oversight Hearing – The Changing market for Food Delivery

Dear Members of the City Council,

I'm here today on behalf of Tribeca's Kitchen, a local diner where you'll find my father 6-7 days a week for 10-12 hours a day. I can't tell you how many emails, calls and in-store visits we get from tech companies offering some new app or product that is positioned as a "no monthly fee" service. In reality, I wish it was a monthly fee because the 20-30% commission model just doesn't work in a positive way for our businesses. These marketing machines are backed by resources NO small business can ever obtain, and thus, our customers are forever hijacked with no end in sight in terms of what they can do to change our entire local restaurant industry.

The more they grow, the more market share they gain, and the more power these 3rd party companies will continue to have to UNILATERALLY DICTATE what the terms of our relationship with them will be – whether we like it or not. It's already at a destructive level, but YOU – our elected Council Members and Mayor – have an opportunity to think about the forgotten "LITTLE GUYS" – the small business owner who lives or dies with their business. That's all they have, and if they lose, so do the other LITTLE GUYS - their employees; so does our city and so does OUR CHARACTER as a unique and creative bustling city. If you remove all the one-off small business restaurants from our great city, will NYC be the NYC people expect and know it to be? That's an absolute no.

Think long and hard about what you can do to help our local businesses. They need a strong backing – STRONG ENOUGH to have a level playing field with these behemoth venture capital backed marketing machines that are taking over our restaurants and drastically changing our entire restaurant industry. Our City Council MUST be OUR BACKING. Right now, backing and support of small businesses by our City Council is non-existent and that's not okay.

In closing, I ask that all our City Council members and Mayor DeBlasio start thinking about short-term and long-term impact policies and ways to support our communities and the small businesses in them. They may not be huge political wins overnight, and they may never even be realized during your term. That doesn't mean they are not crucial to our city's successful future. You may not be able to solve a problem head-on, but maybe you can help in other ways. Get creative. Figure it out.

Thank you for your time, and my testimony was helpful to your understanding of what is happening right now.

Andreas Koutsoudakis



Good afternoon Councilmembers and participants in today's Committee Hearing:

Thank you, Chairman Gjonaj and Councilmembers for inviting me to testify on this important matter. I appreciate the opportunity to share my comments. While official duties elsewhere in the Region prevent me from physically being here in person, I would like to express my deep thanks for allowing our federal agency to participate.

As SBA Regional Administrator overseeing agency operations in New York, New Jersey, Puerto Rico and the U.S. Virgin Islands, I am committed to the priority of ensuring small business owners and entrepreneurs see SBA as the go-to resource for counseling and funding opportunities, no matter what stage of the lifecycle their business is in.

Together with our lending and resource partners across the Five Boroughs and in communities across New York and the Atlantic Region, we can continue to help drive our economy.

Productively collaborating on initiatives to help the New York City Small Business community is a testament to the productive, bipartisan relationship I've developed with Councilman Gjonaj.

What impresses me most is that Councilman Gjonaj understands, like I am hopeful every member of this committee and the entire Council does, that small businesses and hard-working entrepreneurs are the lifeblood of our economy. Those are more than just words; it's the truth.

One of my colleagues in Washington recently asked if anyone could go one day without a dozen small businesses impacting your life. What about just one?

If you try answering those questions yourself, the answer is a resounding 'no.' Small business is woven into the fabric of the United States and the City of New York.

Small businesses are everywhere. Your dry cleaners, the independent coffeehouse you frequent, your doctor and dentist's offices and your favorite local restaurant are undoubtedly small businesses just to identify a few.

With SBA's participation in this hearing and our collaborative work with the Committee, it marks the first time that the City Council and federal government are working together to assist the New York City small business community. It's a much-needed step in the right direction – and, quite frankly, what small business owners deserve.

But what is a small business?

A small business is defined by the federal government as any commercial venture with 500 or fewer employees. These type of companies make up over 99% of all businesses across the nation, while microbusinesses, or those with less than 20 employees, constitute close to 90 percent of them.

And the New York restaurant industry is a mosaic of thousands of small businesses. It is an economic engine that revvs on what the National Restaurant Association estimates to be the daily operations and revenues of over 24,000 restaurants across the City of New York's 12 Congressional Districts.

That immense number of small businesses encapsulates 48.3% of **all** New York State restaurants. By the numbers, almost half of the Empire State's restaurant establishments, small businesses by definition, are located right here in the Five Boroughs.

What's more, these numbers consist of both the table and limited service segments of the restaurant industry.

While small businesses like restaurants do not need to register with the SBA to operate, the figures quoted above are the most accurate number of small business-sized restaurants in the City that we have. Strangely, these figures are not from the city or any local government entity – but a restaurant industry group.

Why, you might ask? Because neither the City of New York nor the Department of Small Business Services require restaurants to register with the City in order to operate, so no exact count is possible.

Nevertheless, the SBA stands ready, willing and able to assist small business owners and entrepreneurs grow their ventures and create jobs by providing resources and tools like access to capital. It is a proven, time-tested way to create a blueprint for an economy built to last.

SBA achieves this through several methods, but specifically access to capital – from the smallest needs in microlending to substantial debt and equity investment capital. We also power small business owners to know of opportunities in Federal contracting; access to entrepreneurial education; and disaster assistance. In fact, we help build a more supportive environment for entrepreneurship and innovation day in and day out.

We are not a federal regulatory agency like our colleagues at the Justice or Commerce Departments, but rather an advocacy agency that supports our small business community.

In fact, the SBA Office of Advocacy and our Regional Advocate regularly meets with small business owners of every industry you can think of to hear their frustrations of overlapping laws and excessive government regulations. They are always eager to listen and help to the extent of the law by bringing small business owners and governments to the table to talk and help local commerce thrive.

Our federal agency consistently acts to better support the efforts of entrepreneurs which spur job creation, drive competitiveness and innovation, and strengthen national economic growth.

Since FY 2011, the SBA has guaranteed 870 7(a) loans totaling more than \$353 million to New York City small businesses in the restaurant industry. That includes \$50 million in SBA guaranteed loans from last year to present, or just over 14% of the total numbers over an 8-year period of time.

7(a) loans are our agency's primary program for providing financial assistance to small business. They enable small business owners and entrepreneurs to reduce risk and enable easier access to capital. The type of 7(a) loan dictates the SBA guarantee percentage and maximum loan amount.

Those figures are impressive. And they've helped hundreds if not thousands of small business owners start, grow and expand in the past few years here in the city.

But the SBA also assists businesses, and individuals, in disaster recovery. Here in the City, the most recent large scale activity of this function came after Hurricane Sandy battered the shoreline and decimated many communities – but we have SBA Disaster personnel in Kings County even today providing aid and assistance to victims of an April apartment fire in Brooklyn that displaced a large amount of residents.

In both cases, SBA and our Office of Disaster Assistance were right on the ground helping affected homeowners and small business owners recover.

We do this by offering low-interest long term disaster recovery loans to replace real estate, personal property, machinery & equipment, inventory and business assets that had been damaged or destroyed by the declared disaster.

Specifically in the aftermath of Hurricane Sandy, 122 restaurants in the affected area received \$21.125 million in affordable, timely and accessible financial assistance from the U.S. Small Business Administration.

Like any agreement an individual or entity enters with the United States, the federal government is the primary debtor for repayment. Our SBA-backed loans get repaid first.

And that is one of our agency's prime interests here – ensuring our SBA-backed loans can be repaid in the face of higher and higher, borderline outrageous, fees tacked on to the cost of doing business in New York City by third party companies.

However, the hidden costs of doing business in America's most populous city are shameful. Many of them are imposed by Mayor DeBlasio and his Administration without foresight or thought but rather on a whim or for political expedience.

That is not a way to govern.

The City Preliminary Budget, for example, that was proposed by Mayor DeBlasio earlier this year sought a \$3 billion increase in expenditures in making up the \$92.2 billion fiscal document for FY 2020. It also represents a 23% hike in spending since Mayor DeBlasio took office – and is a budget that is larger than the individual budgets of 46 States of the Union.

In addition to property taxes, where does that money come from? I am not a city finance specialist, but have spoken to hundreds of small business owners, the archetypical mom and pops, who see it coming from their bottom line.

Fines slapped on small mom and pop stores, often on a whim, are just quick revenue raisers to pay for an ever-expanding and expensive municipal government.

Earlier this year, the City Council rightly took action to stem a City Hall scheme by passing the Awning Act after an overzealous Building Department began a panic among the small business community issuing tickets in the amounts ranging between \$4,000 and \$8,000 for each case of supposed improper store signage violations.

That's not a way to govern, do business, or lead.

In a recent *New York Daily News* Op-Ed, one of your City Council colleagues, Councilman Justin Brannan from South Brooklyn joined a New York State Senator and the Brooklyn Chamber of Commerce President rightly saying that New York City businesses were “on the brink.” They could not have been more correct.

Technology companies, such as the topic of this hearing appertaining to food delivery apps such as GrubHub, UberEats, DoorDash, Postmates and Cavier, to name a few, taking advantage of small businesses are of similar concern and correlate with that hypothesis. Using of this technology is an immensely added cost of doing business in America's largest city.

It is incumbent on local government and municipalities to stand up for their economic engine and take the appropriate and necessary steps to ensure their small business community

remains whole, not prayed upon by predatory companies and third party vendors. Fairness is key. Stories like one of these apps taking \$10,000 in erroneous fees from just one restaurant over several months shows something may be wrong.

Just as obtaining capital and financing is the requirement to show the viability of a small business, as it is needed for a myriad of reasons – growth, new equipment, staff, investment opportunities and so forth– its counterpoint is revenue from its operations; the money from the goods and services purchased by the general public.

When revenue is significantly lowered due to artificial factors, such as predatory delivery-related expenses controlled by a third party vendor, the downward spiraling of the economics of running a restaurant, dining establishment or bar in the City of New York sadly, and unfortunately, continues.

Food-delivery apps, the subject of today's Committee hearing, are supposed to help small business owners and entrepreneurs market their product and themselves to new customers and eaters every second of every day. That at least was their intent.

They were envisioned to be a supplementation of the classical small business or restaurant model – an added bonus, if you will, for restaurateurs, chefs, foodies and consumers alike who utilize them, connecting good food with the very people looking for it, 24/7.

Again, that was their intent. However, today, it's far from the case. These third-party companies charge a user fee on both ends – to the consumer utilizing them as well as the small business offering their goods through their service. A valid point shared by small restaurants is that these companies are taking too much from their bottom line in an already overly regulated and taxed business atmosphere.

Small business margins in the restaurant industry are very slim. The overwhelming majority who have approached the SBA at meetings and through our district offices have spoken about exorbitant fees – from a \$10-15 dollar connection fee where an app user calls a restaurant or bar through the delivery app on their cell phone, perhaps for information or to see if special arrangements can be made, but orders nothing...to monthly user fees plus an additional \$1 to \$1.15 charged to a restaurant for a customer making a reservation through an app like OpenTable. That's not even mentioning API integration fees for any third party software integration which is often an addition fees of hundreds of dollars placed upon a small business owner.

While neither the SBA nor I will not provide commentary or speculate on the business models of these technology companies or applications, we will, however, take the side of over-burdened, over-taxed and over-regulated small business owners who operate in the nation's largest city. And we will stand with our small business owners and entrepreneurs.

These 25,000 New York City restauranteurs – who employ over 330,500 according to the National Restaurant Association – also happen to face a hostile, unjust business atmosphere chock full of fines and red-tape negatively impacting their bottom line day in and day out. But that is a topic for another day and another hearing you can hold.

According to a recent Gallup poll, online food-delivery companies have a market share of 84% of United States adults ordering delivery or takeout at least one time a month. Put in terms of Census data, that is about 84% of 284 million people, aged 18 and above. Councilmembers, that is an immense number – one potentially reaching an anti-trust threshold that could be considered by the Justice Department.

As a federal Cabinet-level agency, it is the SBA's position that small business owners need to be informed about the costs and risks associated with all fiscal options and decisions in terms of business operations, especially when it comes to fees or interest rates.

These figures, be it user fees, prepayment, processing, delivery, or so on should be provided up front with an entrepreneur so they can assess whether it is in their best interest to utilize the service charging them. And third-party vendors should not be preying upon their customers who then must pass the cost on to consumers.

No industry organization or complimentary government group we know of is privy to the exact fee structure utilized by restaurants using third party delivery apps.

From conversations with small businesses who have reached out to our agency due to their negative applications to their bottom line, it appears as if the fees charged by third party technology apps may vary from business to business. It is indeed worrisome that there is no set pricing standard, but instead an ad hoc one, negatively affecting mom and pop stores throughout the diverse neighborhoods that make up the City of New York.

What we do know anecdotally, however, is that overly burdensome fees cut heavily into small business' margins yet, as indicated previously these apps' delivery model has become so widespread that restaurants more or less have to participate in them to stay relevant, noticeable and accessible to patrons.

And the fees and rising costs of doing business in New York City do not need to be attributable solely to delivery apps. Overzealous local government seeking to raise revenue often penalizes companies for simply operating and keeping their doors open, hurting job creators who add heavily to our local, regional and nation economy.

And while many food retailers' struggle, especially in the City of New York where they are faced with sky-high rents, astronomical real estate prices if they are looking to buy - even with the help of a SBA-backed 504 loan, new minimum wage requirements, supposed groundbreaking employee leave laws, dwindling foot traffic due to new traffic patterns and

outdated Moses-era planning, small businesses now have to contend with third party technology apps charging non-uniform fees for unspecified usage of their product.

We've heard it time and again from entrepreneurs: it's a brave new world out there.

The New York City restaurant industry is known worldwide for its flexibility. But these predatory fees are placing an undue hardship on small businesses – from the textbook mom and pop single storefront operations to slightly larger small businesses with a handful of locations employing several dozen workers or more – from Staten Island and the Bronx to Queens, Brooklyn and Manhattan.

That is why it will be refreshing to hear from a spate of small business owners themselves today speaking about their own experiences with this technology.

But let me be clear: outrageous fees charged by food delivery apps are akin to predatory lending. Not only is it costly and pervasive in the industry, but they set their users up for failure, burdening them with high user fees for even the simplest of things. These fees prey on small business owners seeking to expand their restaurant's reach and add to their daily cost of doing business.

It is incumbent on this body to determine if this passes the smell test in your municipality.

All of these stressors that small businesses face operating in the City of New York are worsened by the predatory fees charged by food delivery apps.

Therefore, it's no surprise that the first quarter of 2019 marked the 12th consecutive quarter of shrinking year-over-year traffic for the broader restaurant industry. That's not me coming up with that figure, that's the *Wall Street Journal* publishing statistics from U.S. restaurant tracker firm MillerPulse.

The issue of fees charged by technology companies to small business for use of their food delivery application is one that should be scrutinized by local government and I applaud Chairman Gjonaj and this Committee for doing so.

I stand ready and willing to partnering with the Council, Speaker Johnson, Chairman Gjonaj and individual Councilmembers to achieve a goal - offer a more small business-friendly environment and assist the mom and pop small businesses, including those in the restaurant and hospitality industry, thrive.

Also, if you would like to work on an issue, partner together or take advantage of the programs, training or mentoring provided through our resource partners for your district, please do not hesitate to reach out to me in my office. The SBA Regional Office is headquartered a block and a half away at 26 Federal Plaza.

Thank you.

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THE CITY OF NEW YORK**

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 in favor in opposition

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I represent: NYC FC 70

Address: _____

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Name: Isaiah Weprin

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I represent: Association for a Better New York

Address: 115 Broadway

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Name: Noelle Tan

Address: _____

I represent: Uber Eats

Address: _____

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Date: 6/27/19

(PLEASE PRINT)

Name: RYAN FALKNER

Address: 111 LAWRENCE ST #5J BROOKLYN NY 11201

I represent: Portal (small business)

Address: 675 Hudson St Fl 3N 10014

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Date: 6/27/19

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Name: Gregory Frank

Address: 370 Lexington Ave, 1706, M, NY 10017

I represent: Frank LLP

Address: (same)

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I intend to appear and speak on Int. No. n/a Res. No. n/a

in favor in opposition

Date: 10/27/19

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Name: Jennie Romer

Address: PO Box 48, NY, NY 10159

I represent: UPSTREAM

Address: PO Box 1352 - Damariscotta, ME 04543

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Name: Jackie Mallon,

Address: _____

I represent: NYC Dept of Small Business Services

Address: 110 William Street, New York NY

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in favor in opposition

Date: _____

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Name: Stalen Pickler

Address: _____

I represent: NYC Dept of Small Business Services

Address: 110 William Street New York, NY

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Robert Guarino

Address: 630 9th Ave Suite 803

I represent: 5 Napkin Burger

Address: 630 9th Ave Suite 803

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I intend to appear and speak on Int. No. Third party delivery Res. No. _____

in favor in opposition

Date: 6/27/19

(PLEASE PRINT)

Name: Kathleen Reilly

Address: 315 W 30th St NY, NY

I represent: New York State Restaurant Assn.

Address: " "

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ANDREW RIGIE

Address: _____

I represent: NEW YORK CITY HOSPITALITY ALLIANCE

Address: 65 W 55th St, #203A NY, NY 10019

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Appearance Card

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Name: James Cukuncic

Address: _____

I represent: Technology Medica

Address: _____

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Name: Robert Bookman

Address: 325 Broadway, NYC

I represent: M.C. Hospital Alliance

Address: _____

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Date: 6-27-19

(PLEASE PRINT)

Name: Kevin Heavens

Address: 1508 Portwine Ct, Littleton, CO 80120

I represent: GrubHub

Address: Chicago, IL

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Date: JUNE 27

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Name: SAMI NAIM

Address: 1065 AVE. OF AMERICAS

I represent: GRUBHUB / SEAMLESS

Address: _____

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Date: 6/27/19

(PLEASE PRINT)

Name: US Small Business Administration

Address: Regional Administrator

I represent: Steve Bulger

Address: Regional Communications Director Matt Coleman

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Name: Joel Berg

Address: 1 Plaza Street Brooklyn

I represent: Hunger Free America

Address: 50 Broad St. NY, NY

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(PLEASE PRINT)

Name: Andreas Koutsoudakis

Address: 90 Broad St, 10th Fl, NY, NY 10004

I represent: Tribeca's Kitchen

Address: 200 Church St, NY, NY 10013

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Name: Marco Chirico

Address: 345 Union Street

I represent: Enoteca On Court

Address: 347 Court St Brooklyn

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