Committee on Small Business

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###### **THE COUNCIL OF THE CITY OF NEW YOK**

**Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON SMALL BUSINESS**

**Hon. Mark Gjonaj, Chair**

##### August 13, 2020

**PRECONSIDERED INT. No. \_\_\_:** By Council Members Moya, Gjonaj

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining

**PRECONSIDERED INT. No. \_\_\_:** By Council Member Gjonaj

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to ­­­­­­­­­­­­telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining

**INT. No. 1958:** By Council Members Richards, Lander, Kallos, Moya, Chin, Ampry-Samuel, Gjonaj, and Ayala

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to ­­­­­­­­­­­­reporting on financial assistance received by small businesses impacted by COVID-19

1. **INTRODUCTION**

On August 13, 2020, the Committee on Small Business, chaired by Council Member Mark Gjonaj, will hold a remote hearing on three pieces of legislation: (1) Int. No. 1958 by Council Member Richards, a Local Law in relation to reporting on financial assistance received by small businesses impacted by COVID-19; (2) Preconsidered Int. No \_\_\_, by Council Member Moya, a Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining; and (3) Preconsidered Int No. \_\_\_, by Council Member Gjonaj, a Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining. Those invited to testify include representatives of the Department of Small Business Services (SBS), the Office of Special Enforcement (OSE), third-party food delivery platforms, and small business advocates, chambers of commerce, Business Improvement Districts (BIDs) and other community-based non-profit organizations.

1. **BACKGROUND**

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization (WHO) declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern (PHEIC).[[1]](#footnote-1) As of August 11, 2020, COVID-19 has infected over 20 million people across 213 countries and territories, and has killed over 740,000 people.[[2]](#footnote-2) In the United States alone, there have been over five million infections and over 163,000 deaths.[[3]](#footnote-3) To date, New York has had over 421,000 infections and over 32,000 deaths, many of which took place in our City.[[4]](#footnote-4)

The progressive nature by which the virus spreads has caused governments across the globe to shutdown businesses, schools, religious and cultural institutions, and mandate various levels of social isolation. While this has seemingly helped to limit the spread of the virus, stay-at-home orders have had a catastrophic impact on economic markets, in particular small businesses that thrive from regular contact with their community and neighbors.

**1. The Impact on Restaurants Amid the COVID-19 Crisis**

In New York, Governor Andrew Cuomo issued an executive order – New York State on PAUSE (PAUSE) – that closed all on-site, non-essential businesses, effective March 22, 2020, to help stop the spread of SARS-CoV-2.[[5]](#footnote-5) Restaurants and bars were permitted to operate statewide; however, they were only allowed to make sales through take-out and delivery.[[6]](#footnote-6)

As New Yorkers stayed home to stop the spread of the virus, consumer spending declined in the City. In late March 2020, consumer spending dropped 44 percent year-over-year, according to Mastercard.[[7]](#footnote-7) While restaurants were open for take-out and delivery, they experienced drastic revenue declines. According to an April 2020 report from the New York State Restaurant Association, sales declined 79 percent in the first ten days of April compared to the same period in 2019, and New York State restaurants were expected to lose $3.6 billion in sales revenue in April alone.[[8]](#footnote-8) Just over half (51 percent) of all restaurants had been able to move their operations online, and unemployment rates in this sector skyrocketed, as 80 percent of restaurant workers lost their jobs.[[9]](#footnote-9)

The experiences of individual restaurant owners highlight the challenges the industry faces to remain stable throughout the pandemic. Business for all of June at the Nugget Spot, a restaurant on East 14th Street in Manhattan, equaled “one good Thursday” before the pandemic.[[10]](#footnote-10) Havana Central’s takeout and delivery business in Times Square equaled about three percent of its former revenue.[[11]](#footnote-11) Outdoor dining provided a small boost to the restaurant, as revenue is up to 10 percent of its pre-COVID total.[[12]](#footnote-12) According to Mark Fox, owner of The Ragtrader, a restaurant on 36th Street in the Garment District, 70 percent of his customer base were commuters on their way home from their jobs, 20 percent were tourists, and 10 percent those shopping at retail stores in the area.[[13]](#footnote-13) The timeline of when the City will be able to fully reopen and therefore prompt restaurants to profit from their traditional business models remains uncertain. According to Eater NY writer Tanay Warerkar, “This is definitely a life-altering situation for the restaurant industry in New York and I don’t think things will probably ever go back to the way they were, even though things may normalize to some extent.”[[14]](#footnote-14)

Even as New York City advanced through Governor Cuomo’s phased re-openings, restaurants continued to struggle. As restaurants experienced drastic revenue declines, a majority of restaurant owners have been unable to pay their commercial rents. The Hospitality Alliance surveyed over 500 restaurants, bars, nightclubs, and event venues in NYC about their rent obligations in June. The resulting report found that approximately 80 percent of respondents did not pay their full rent in June, while over 70 percent of landlords did not waive rent payments for restaurants, bars and clubs.[[15]](#footnote-15) The Hospitality Alliance produced another nearly identical survey in July. It found that 83 percent of respondents did not pay their full July rent, up from 80 percent in June, and around 71 percent of landlords did not waive rent payments.[[16]](#footnote-16)

As restaurants continue to face challenges paying their fixed monthly expenses without their pre-COVID revenues, many across the City have closed down. According to an August 2020 report by the City Comptroller, 187,000 of the 758,000 private sector jobs that have been lost in the City through June came from the food services industry.[[17]](#footnote-17) At least 2,800 small businesses closed permanently from March 1st through July 10th, including over 1,280 restaurants.[[18]](#footnote-18) These closures have affected restaurants of all sizes across the City, including Lucky Strike, a Soho “neighborhood institution” and the four-story McDonald’s flagship store in Times Square.[[19]](#footnote-19) Iconic City restaurants that have been in business in their respective neighborhoods for many years have closed permanently: Sarabeth’s on the Upper East Side (20 years), the Copacabana (80 years), kosher deli Jay and Lloyd’s (28 years), La Caridad 78 (52 years) and the Irish Cottage (60 years) are some examples.[[20]](#footnote-20) The outlook is similarly dire if mandatory social distancing measures on restaurants continue. One model suggests that, if the City’s accommodation and food services industry experiences “frequent, blunt lockdowns” in 2021, revenue would be 53 percent lower than the same time period in 2019. Even less severe restrictions would result in a 43% reduction in revenue for the industry as compared with 2019.[[21]](#footnote-21)

As restaurants have shut their doors, the livelihoods they generate for both the restaurant workers and business owners have disappeared. Partnership for New York City predicts that as many as a third of the 230,000 small businesses in NYC may never reopen.[[22]](#footnote-22) The unemployment rate in the City, at 20.4% as of June 2020,[[23]](#footnote-23) was over 16 percentage points higher than the previous June,[[24]](#footnote-24) and may continue to be high even after the pandemic subsides as thousands of restaurants might permanently close. A May 2020 report from the New York City Independent Budget Office projected that a total of 115,000 leisure and hospitality jobs would be lost by October 2020,[[25]](#footnote-25) and that even if distancing restrictions are relaxed, industries with “strong ties to tourism,” such as hospitality, would continue to lose jobs due to a decline in foreign tourists.[[26]](#footnote-26) The Partnership for New York City report classifies an estimated 679,000 accommodation and food service jobs as vulnerable to loss – the most of any sector in the city – 58% coming from small businesses that employ fewer than 100 employees.[[27]](#footnote-27) The closure of City businesses will leave households “struggling to feed their families and pay rent,” [[28]](#footnote-28) and the impact of job loss in the City may disproportionately fall on Black, Hispanic and Asian residents; one report estimates that they hold 40-50% of the total jobs at risk of loss due to the COVID-19 pandemic.[[29]](#footnote-29) The survival of the restaurant industry is essential to ensure the City can have a strong, equitable economic recovery from the financial collapse caused by the pandemic.

In addition to providing employment opportunities to New Yorkers, the restaurant industry generates tens of millions of dollars for the City through tax collection. In Fiscal Year 2019, the City gained over $21.9 million from general sales taxes at restaurants and other eating establishments.[[30]](#footnote-30) Twenty percent of the City’s revenue came from personal income tax, which may be significantly lower in future years than it was in FY19 due to the job losses caused by the closure of many City restaurants.[[31]](#footnote-31)

Restaurants also contribute immensely to the culture of the City. According to Hannah Goldfield, a food critic for The New Yorker, “Restaurants, and the people who work in and around them, are essential to the fabric and the functioning of New York, and of society.”[[32]](#footnote-32) NYC’s 27,000 restaurants span across the City’s boroughs and neighborhoods, delivering a variety of global cuisines that match the City’s diversity.

Until restaurants can reopen to full-capacity indoor seating, they are unlikely to generate the revenue they produced pre-COVID, and therefore government involvement is necessary to help save the restaurant industry. The Partnership for New York City report identifies the accommodation and food services industries as “sectors that will require drastic intervention to survive.”[[33]](#footnote-33) The City’s Open Restaurants program provided a major boost to the restaurant industry. While around 9,700 restaurants are participating in the program, that represents only a third of total restaurants in the city.[[34]](#footnote-34) Even with the city’s expansion of outdoor dining options, however, the number of seated diners at restaurants is down 88% compared to before the pandemic hit New York.[[35]](#footnote-35) As restaurants have been unable to drive revenue through traditional on-premise dining, many have and continue to rely upon delivery for income, therefore engaging in the ever popular third party delivery platforms. Even for the minority of restaurants maintaining revenue through current outdoor dining programs, this income generation will likely cease once the weather becomes cooler, and if predictions of COVID worsening in the winter come true.[[36]](#footnote-36) Consumer spending and restaurant revenue may continue to plummet in the very near future.

**2. Third Party Delivery Platforms**

In contrast to city restaurants, third-party platforms have experienced a surge in food delivery sales during the pandemic. Uber Technologies Inc.’s second-quarter earnings reflected a 103% jump in delivery revenue over the previous year, more than its revenue from ride-hailing for the first time ever.[[37]](#footnote-37) For the same quarter, Grubhub Inc.’s revenue rose 41% and its number of active diners were up 35%.[[38]](#footnote-38) The company’s daily average orders increased by 32% over last year and its gross sales (2.3 billion) rose by 59%.[[39]](#footnote-39) This growth is sustained after promising first quarter 2020 results, about which Grubhub’s CFO Adam Dewitt acknowledged, “COVID-19 has driven a significant uptick in new diners and orders from existing users as most restaurant dining rooms have been temporarily closed nationwide."[[40]](#footnote-40) In a letter to shareholders in July 2020, Grubhub executives wrote that they believed the growth would be long-term: “Given the strength we continue to see in the third quarter, we now believe the pandemic has been less of a temporary demand spike and more of a permanent catalyst putting our business on a higher, sustained trajectory.”[[41]](#footnote-41) One report asserts that, collectively, food delivery sales have doubled through the end of June 2020, as opposed to June of the previous year.[[42]](#footnote-42) A report by the Rewards Network found that 42% of restaurants had added delivery services since March, and 31% planned to continue them.[[43]](#footnote-43) Grubhub has added about 25,000 restaurant partners since May,[[44]](#footnote-44) and its average order size during the second quarter of 2020 increased by 20% versus last year.[[45]](#footnote-45) Similar to Grubhub’s figures, DoorDash’s average order grew to $36 in June, with gains experienced by the other food delivery platforms in May.[[46]](#footnote-46)

For many food delivery platforms, the COVID-19 outbreak has coincided with increased opportunities for growth and diversification. In June, Grubhub was acquired by Just Eat Takeaway in a $7.3 billion deal,[[47]](#footnote-47) and Uber recently bought Postmates for $2.65 billion, which the company claims will make it profitable in 2021.[[48]](#footnote-48) The companies have branched out with new services and high-profile restaurant partners. Uber began offering grocery delivery services this past July,[[49]](#footnote-49) and DoorDash has partnered with CVS to provide delivery of food, groceries and other products, including to the Bronx and Brooklyn.[[50]](#footnote-50) The platforms also gained access to large customer pools and wide advertising reach by partnering with restaurant chains such as Little Caesars Pizza, [[51]](#footnote-51), [[52]](#footnote-52) Buffalo Wild Wings, The Cheesecake Factory and Chipotle, many of which reported a substantial portion of their June sales coming from delivery platforms.[[53]](#footnote-53)

In response to the devastation to the restaurant industry as a result of the pandemic, the Council passed Local Laws 51 and 52, which went into effect in June 2020. These laws prohibited telephone orders that did not result in an actual transaction during the call and limited the amount of fees per order that may be charged by the platforms, respectively. Other jurisdictions have taken similar measures to limit third-party platform fees. The State of New Jersey has limited commission fees to 10 or 20 percent depending on whether the order is delivered by a restaurant worker or a restaurant’s contractor;[[54]](#footnote-54) Philadelphia,[[55]](#footnote-55) Washington D.C.[[56]](#footnote-56) and Portland[[57]](#footnote-57) enacted laws limiting commission fees; and the mayors of Seattle[[58]](#footnote-58)and San Francisco[[59]](#footnote-59) issued emergency orders temporarily capping commission fees at 15 percent (Jersey City at 10 percent)[[60]](#footnote-60). Despite a limit of 10 percent for delivery in Portland, Postmates and Grubhub are reportedly not complying, charging restaurants as high as 30 percent per order.[[61]](#footnote-61) In response to Jersey City’s executive order, Uber Eats reportedly charged customers an additional three dollar fee,[[62]](#footnote-62) and in San Francisco, the company ceased delivery to one lower-income neighborhood.[[63]](#footnote-63)

**3. SBS Loan and Grant Programs**

On March 8, 2020, Mayor de Blasio announced that SBS would create two financial relief programs, the Employee Retention Grant Program and Small Business Continuity Loan Fund, to provide immediate financial relief to small businesses during the COVID-19 crisis.[[64]](#footnote-64) The programs were intended to serve as a stop-gap for businesses before the Federal Small Business Association released a broader federal relief program.[[65]](#footnote-65) To qualify for either the grant or loan program, businesses were required to provide documentation proving that over a two-month period in 2020 their revenues decreased by 25% due to COVID-19.[[66]](#footnote-66) Businesses with fewer than five employees were eligible for the Employee Retention Grant Program, which provided a grant covering up to 40% of a business's payroll for two months, with a maximum amount of $27,000.[[67]](#footnote-67) The Small Business Continuity Loan Fund provided a zero-interest loan to businesses with fewer than 100 employees for up to $75,000.[[68]](#footnote-68)

In total, SBS allocated $60 million for both programs.[[69]](#footnote-69) As of May, SBS had distributed $16.7 million to 293 businesses through the Small Business Continuity Loan Fund of the $20 million allocated to the program.[[70]](#footnote-70) SBS had distributed $23.4 million to 3,200 businesses through the Employee Retention Grant Program of the $40 million allocated to the program.[[71]](#footnote-71)

During the joint Committees on Small Business, and Consumer Affairs and Business Licensing hearing on April 29, 2020, then-SBS Commissioner Gregg Bishop broke down the amount of loans and grants the Administration distributed through the two relief programs. The Commissioner revealed that both programs disproportionately benefitted businesses in Manhattan.[[72]](#footnote-72) According to a July 2020 report from the City Comptroller, only 40 minority or women owned businesses (M/WBEs) applied for the Continuity Loan. Of the 40, only six were approved.[[73]](#footnote-73) Only 48 M/WBEs applied for the Employee Retention Grant Program. Of the 48, only 15 were approved.[[74]](#footnote-74) The Committee would like a further breakdown of the loan and grant programs to investigate what demographics benefitted most from the City’s relief efforts. The Committee is also interested in understanding why the Administration failed to distribute funds equitably.

1. **CONCLUSION**

The Council seeks to gain a better understanding of why SBS failed to distribute loan and grant money equitably across the City. The Council is also interested in hearing from OSE about their experience enforcing Local Laws 51 and 52, and from third-party platforms about how amending these laws will impact their businesses. The Committee will also hear from restaurants about their experience operating in the City during COVID-19, and how the Council can further provide relief to ensure that this sector of the City’s economy remains vibrant.

1. **LEGISLATIVE ANALYSIS**

**Preconsidered Int. No. \_\_\_, A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining**

This bill would amend the conditions in existing law under which third-party food delivery services are prohibited from charging restaurants for telephone orders that did not result in a transaction during the call. Under the existing law, Local Law 51 of 2020, such charges are prohibited only during states of emergency when on-premises dining is prohibited entirely, plus an additional 90 days thereafter. This bill would instead prohibit such charges during states of emergency when restaurants are restricted from operating at maximum indoor occupancy, plus an additional 90 days thereafter.

The bill would take effect immediately after becoming law.

**Preconsidered Int. No \_\_\_, A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining**

This bill would amend an existing law limiting third-party food delivery service fees under certain circumstances. Under the existing law, Local Law 52 of 2020, third-party food delivery services are prohibited from charging restaurants more than 15 percent per order for delivery and more than five percent per order for all other fees during states of emergency when on-premises dining is prohibited entirely, plus an additional 90 days thereafter. This bill would instead limit such fees during states of emergency when restaurants are restricted from operating at maximum indoor occupancy, plus an additional 90 days thereafter. Therefore, as long as such conditions are met, a third-party food delivery service would be required under the bill to limit their fees as follows: if providing a restaurant with a delivery service, the third-party service could charge the restaurant a maximum of 20 percent in fees for an order placed through the platform (15 percent for the provision of delivery services, plus 5 percent for other fees such as marketing, listing, or credit card processing). If not providing the restaurant with a delivery service, the third-party service could charge the restaurant a maximum of 5 percent in fees per order placed through the platform (5 percent for fees that are not for the provision of delivery services, such as marketing, listing, or credit card processing).

As with the existing law, this bill would continue to apply to orders placed through a third-party delivery app, utilizing a third-party delivery service forwarding phone number, or any other order placed through or with the assistance of a third-party delivery service.

This bill would take effect immediately after becoming law.

**Int. No. 1958, A Local Law in relation to reporting on financial assistance received by small businesses impacted by COVID-19**

This bill would require SBS to prepare a report detailing which businesses received a grant or loan from the New York City Employee Retention Program or New York City Small Business Continuity Loan Fund, both created to help small businesses with revenue losses because of the novel coronavirus, COVID-19. The report must include the name, location and amount of grant or loan SBS gave to each business. SBS would be required to submit the report to the Mayor and Speaker of the City Council and make the information publicly available by posting the report on its website. This bill would take effect immediately, but would expire and be repealed once the required report required was submitted.

Preconsidered Int. No.

By Council Member Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 20-847 of the administrative code of the city of New York, as added by local law number 51 for the year 2020, is amended to read as follows:

b. The requirements of this section apply only during a declared emergency and for a period of 90 days after the end of a declared emergency. For the purposes of this section, the term “declared emergency” means the period during which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy otherwise allowable by law.

§ 2. This local law takes effect immediately

SJ

LS #15187

8/6/20 4:30 PM

Preconsidered Int. No.

By Council Members Moya and Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that limits indoor on-premises dining

..Body

Be it enacted by the Council as follows:

Section 1. The definition of “declared emergency” in section 20-845 of the administrative code of the city of New York, as added by local law number 52 for the year 2020, is REPEALED and subdivision c of section 20-846, as added by local law number 52 for the year 2020, is amended to read as follows:

c. The requirements of this section apply only during a declared emergency and for a period of 90 days after the end of a declared emergency. For the purposes of this section, the term “declared emergency” means the period during which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy otherwise allowable by law.

§ 2. This local law takes effect immediately.

SJ

LS #15591

8/6/20 4:00 PM

Int. No. 1958

By Council Members Richards, Lander, Kallos, Moya, Chin, Ampry-Samuel, Gjonaj and Ayala

..Title

A Local Law in relation to reporting on financial assistance received by small businesses impacted by COVID-19

..Body

Be it enacted by the Council as follows:

Section 1. Small business COVID-19 financial assistance report. a. Definitions. For purposes of this local law the following terms have the following meanings:

Employee retention program. The term “employee retention program” means the program created by the mayor in March 2020 to provide grants covering a percentage of payroll for a limited amount of time to certain small businesses experiencing a loss of revenue because of the novel coronavirus, COVID-19.

Small business continuity loan fund. The term “small business continuity loan fund” means the fund created by the mayor to provide zero-interest loans to certain small businesses that experienced decreased sales revenue because of the novel coronavirus, COVID-19.

b. No later than 60 days after the effective date of this local law, the department of small business services shall post on its website and submit to the mayor and speaker of the council a report that details each business that received a grant pursuant to the employee retention program and each business that received a loan pursuant to the small business continuity loan fund. The report shall include, at minimum:

1. The name of the business;

2. The location of the business, including cross streets, ZIP code and neighborhood; and

3. The loan or grant amount the business received.

§ 2. This local law takes effect immediately, and expires and is deemed repealed upon final submission of the report as required by section one of this local law.

JSA

LS #14657

5/13/2020

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