

**Testimony of Acting Commissioner Sandra Abeles  
New York City Department of Consumer and Worker Protection**

**Before the Committee on  
Consumer Affairs and Business Licensing**

**Hearing on  
Protections for Delivery Workers and  
Introductions 2163, 2288, 2289, 2294, 2296, 2298, 2311**

**June 8, 2021**

**Introduction**

Good afternoon Chair Ayala and members of the Committee on Consumer Affairs and Business Licensing. I am Sandra Abeles, Acting Commissioner of the Department of Consumer and Worker Protection, or DCWP and I am joined today by Steven Ettannani, our agency's Executive Director of External Affairs. We are also joined by our colleagues from the Department of Transportation (DOT), Vincent Maniscalco, Assistant Commissioner of Highway Inspections and Quality Assurance, and Miranda Alquist, Assistant Director of Legislative Affairs. Chair Ayala it is a pleasure to see you again, and I look forward to working with you and members of the committee on these significant issues impacting New York's delivery workers.

I have been with the agency since 2014, and prior to stepping into my current role, served as the First Deputy Commissioner. Before joining DCWP, I worked at the New York State Department of Labor enforcing labor standards and ensuring the health and safety of public employees, and at the Attorney General's office in the Civil Rights Bureau protecting our immigrant communities from fraud.

That's why I joined DCWP, because I consider our mission of protecting consumers and workers, an essential part of ensuring equity and justice in our city. The agency licenses about 59,000 businesses and individuals in approximately 50 different categories. We enforce consumer protection, business licensing, and workplace laws that serve New Yorkers throughout the City and offer programming that increases access in our city to free financial services for New Yorkers.

**Protecting New Yorkers**

DCWP's Office of Labor Policy and Standards (OLPS) enforces our city's workplace protections, including NYC's Paid Safe and Sick Leave and Fair Workweek laws, and administers the Freelance Isn't Free Act to protect freelancers' right to get paid, as well as conducts vital education and outreach to workers and businesses on their rights and responsibilities.

Throughout the pandemic, DCWP received thousands of complaints and inquiries about workers' rights in New York City. We have investigated and brought successful enforcement

actions against employers that violated the rights of essential workers, even up to the point of illegal firings. We have also adapted throughout the pandemic to focus our available tools and resources on the most pressing concerns for workers, including providing referrals on critical economic support, developing new resources to help workers navigate reopening, and prioritizing swift resolution of complaints to ensure workers can access their sick leave and receive any compensation to which they are entitled.

Another major step our city is taking to protect our city's workers is the passage and implementation of ground-breaking "just cause" protections for tens of thousands of essential workers in our fast-food industry. For too long, workers in this industry have faced arbitrary firings, at times dismissed for no reason at all. Just cause, as a new frontier in workers' rights, will bring greater stability and equity to our city's fast-food workers by ensuring there are disciplinary processes in place before a worker is terminated.

## **Legislation**

Turing toward the legislation at hand today, I would like to take a moment to recognize the incredible efforts and sacrifices made by delivery workers during one of the most difficult times in this city's history. Delivery workers helped carry this city through an unprecedented, ongoing public health crisis. When many of us were isolated in our homes or caring for loved ones, delivery workers were among the essential workers who kept going to work every day ensuring that New Yorkers could have access to meals and other goods without having to leave home. And, while many industries shrank, the number of workers doing deliveries through third-party apps has increased. To that end, DCWP supports protections for these workers. We have worked closely with the partners that Council has engaged with and are always encouraged to see that workers' rights are at the forefront of conversations in the city. We look forward to working with Council on these important bills to ensure they will provide meaningful protections to app-based delivery workers while also making sure they are enforceable once passed.

### *Introduction 2288 – Insulated Food Delivery Bags*

Introduction 2288, which requires a third-party food delivery service to provide insulated food delivery bags for each of its bicycle operators at the company's expense, would be under the purview of DOT. The Administration supports the intent of this legislation to reduce financial burdens on workers and to ensure food is properly stored.

Delivery cyclists are under significant pressure when traveling far and fast throughout the city to deliver our food. Improving their working conditions also enhances safety on the city's streets, helping keep these cyclists and all New Yorkers safe.

### *Introduction 2298 – Bathroom Access for Delivery Workers*

Introduction 2298 would require food service establishments that utilize delivery workers to provide those workers with access to the toilet facilities, provided that in doing so there is no risk to health and safety standards. The Administration supports the intent of this legislation which is consistent with existing employee rights to bathroom access under the federal Occupational

Safety and Health Act, and extends similar protections to app-based delivery workers. There will likely be challenges in enforcement when determining whether a violation has occurred based on information offered by the worker or the business. Therefore, it will be a priority to develop clear and understandable standards for workers and businesses and for the agency to be able to assess violations. Ultimately, our city's delivery workers deserve a right to bathroom access.

*Introductions 2289 – Maximum Distance and Other Travel Restrictions for Delivery Workers*

Introduction 2289 would allow a third-party delivery worker to specify to their food delivery service the maximum distance the worker will travel and their restrictions on traveling over bridges or through tunnels. This bill directly addresses a significant safety concern of workers, and we support its intent.

*Introduction 2294 – Study of Third-Party Delivery Worker Conditions and Determining a Minimum pay per Trip*

Introduction 2294 would require DCWP to commission a study of working conditions for third-party delivery workers, as well as determining minimum per trip payments for these workers to be established by rule. While DCWP does not have information on the inner workings of the industry or staff required to develop minimum pay rates, we look forward to discussing how this would work with Council and other stakeholders to ensure it translates into real benefits for delivery workers.

*Introduction 2296 – Standards of Payment and Navigational Resources*

Introduction 2296 would require DCWP to establish standards for payment for third-party delivery workers and establish a program to provide real time assistance to delivery workers in disputes with third-party service platforms. DCWP supports the intent of this legislation to ensure delivery workers are properly paid and looks forward to working with Council on this bill.

These bills establish a new administrative framework, with a significant investment, for this group of workers. Currently, DCWP lacks the expertise to effectively regulate this industry, which operates through a highly sophisticated and constantly changing technology. Additionally, the industry itself continues to adapt very quickly to the market demand for delivery services in the midst of the pandemic, which could mean they are also capable of evading regulations if enforcement is not carefully constructed.

To address these concerns, the agency will need to work closely with Council and stakeholders representing our city's delivery workers, restaurants, and other industry experts. Similar to other laws the City has implemented, stakeholders can assist the agency in understanding how this industry operates and help develop standards of protection for delivery workers. And, these stakeholders could work with the agency to develop recommendations on an ongoing basis, to ensure that we as a city are taking necessary steps in the short term to protect workers, while we analyze these technology platforms, and also set the most appropriate standards for the industry.

The structure for Introduction 2294 provides an example of what this approach could look like, ensuring DCWP can gather the needed expertise to set up enforceable standards that are

responsive to working conditions in this fast-changing industry and allowing the city to protect and enhance the rights of these delivery workers for years to come.

#### *Introduction 2163 – Restaurant Surcharge*

This legislation would permit restaurants to impose a surcharge of up to 15%, in addition to the stated price of individual items, provided that a restaurant appropriately discloses the surcharge to its consumers and provides their tipped workers with an hourly cash wage that is not less than the minimum wage set by the State for New York City.

The Administration supports the intent of this bill, and we look forward to further discussing with the Council. DCWP has long advocated for an end to the State’s two-tiered wage system. Ultimately, to cure the serious equity gaps in current wage and hour law, action must be taken by the State to eliminate the two-tiered wage system for tipped workers, which is why we have called on the Governor many times to eliminate this system for restaurant workers.

#### *Introduction 2311*

Lastly, Introduction 2311 would require third-party delivery apps to share customer information with the restaurants with whom those customers are placing orders. Unfortunately, this legislation was only recently added to today’s agenda and the Administration is still reviewing its language and impact.

A final concern with implementing any new enforcement contemplated in these bills, is our current work implementing Just Cause protections and other new offices. We will certainly need additional resources to ensure we implement any new mandates effectively though it is too soon to tell exactly what resources would be required.

### **Conclusion**

We welcome the Council’s efforts to improve the lives of vulnerable workers in our City. At the present time, when many employers are experiencing a labor shortage, we hope that these efforts and our continued partnership can demonstrate that we must increase wages and improve benefits so that these workers can continue to be a part of the economic recovery in New York City.

This Administration has continuously advocated alongside thousands of workers, for a \$15 minimum wage, and groundbreaking legislation, such as “just cause” protections, which bring stability to the lives of so many essential workers. This also includes our agency’s priority to bring the city’s Consumer Protection Law into the 21st century, Introduction 1622, with commonsense penalties to protect consumers from predatory corporations, and tools to protect consumers conducting transactions over the internet and in languages other than English.

As always, we value the Council as our partner in ensuring that workers’ rights are a priority for the City, with sound and resourced protections for our workers. Effective enforcement, whether on behalf of consumers or workers, depends on a well calibrated regulatory structure that deters the most harmful activity, so that breaking the law in our city is not just a cost of doing business.

Thank you for the opportunity to testify and I look forward to any questions you may have.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK  
**Jumaane D. Williams**

---

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS  
TO THE COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING**

**JUNE 8, 2021**

Good morning, my name is Jumaane Williams and I am the Public Advocate for the City of New York. I want to thank Chair Diana Ayala and the Committee on Consumer Affairs and Business Licensing for holding this important hearing on protection for delivery workers.

Throughout the pandemic, delivery workers have put their health and safety at risk to keep New Yorkers fed. When dining-in at restaurants was either prohibited or operating at a limited capacity, their work was responsible for sustaining restaurant operations and helping small businesses survive. Yet this essential work has not been met with needed improvements in working conditions or compensation. Instead, harmful conditions in the industry have been exacerbated. Exploitative practices from third-party delivery companies, mistreatment from restaurants, and bicycle thefts have all been on the rise over the past year. Given that the vast majority of the estimated 80,000 delivery workers are Latinx, Indigenous, Asian, and Black immigrants, this issue must be seen through the lens of racial and immigrant justice in addition to a labor rights one.

Incredibly, in the midst of difficult conditions, delivery workers have come together to develop solutions and advocate for their implementation. I am grateful to Los Deliveristas Unidos for leading the campaign that has resulted in these bills being heard today. As we have seen with recent efforts on the State level that failed to include workers' voices in the policymaking process, any legislation to reform the delivery industry that doesn't center the experiences of those who are directly impacted will inevitably fail to meet their needs.

I am in strong support of Intros. [2163](#) (Reynoso), [2288](#) (Brannan), [2289](#) (Brannan), [2294](#) (Lander), [2296](#) (Menchaca), and [2311](#) (Powers), which would create much needed comprehensive industry-wide reform if passed. I am also proud to be the co-prime sponsor on Council Member Rivera's [Intro. 2198](#), which would require restaurants to allow bathroom access to delivery workers that are delivering their food and/or beverages. Shamefully, despite these



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK  
**Jumaane D. Williams**

---

workers playing an integral role in restaurant operations, a number of restaurants have regularly prohibited them from using their toilet facilities. This issue has resulted in workers losing hours of work trying to find alternate bathrooms. The City must act to end this affront to basic dignity in the workplace.

I urge the Committee to advance [Intro. 2198](#) and the entire package of legislation being heard today. Further, I encourage the Council to continue to direct attention to the delivery industry this session in order to address issues that are not included in this package such as bicycle theft and protection from inclement weather. Thank you for your time and consideration.



### **In regards to Intros 2311, 2298, and 2163**

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 association representing food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City, and our industry continues to be disproportionately hurt by the lingering impact and losses of the Covid-19 pandemic.

The pandemic has exacerbated so many dynamics in the restaurant industry, and in particular, restaurants' relationships with food delivery platforms have grown all the more important over the last 16 months. When our city eateries were closed for on-premise dining, then limited to outdoor dining, then strictly capacity-restricted for indoor dining, restaurants relied upon takeout and delivery orders to keep any amount of cashflow coming. Takeout and delivery sales could not make up for the losses sustained from pandemic limitations – in a survey we conducted in partnership with the National Restaurant Association earlier this year, we found that increased takeout and delivery orders made up for under 30% of lost on-premise business for most restaurant operators. Yet, restaurants were still forced to rely on takeout and delivery in order for their businesses to survive until the reopening. In many cases, that placed restaurant operators in a difficult, “can't live with it, can't live without it” position towards the food delivery platforms.

Thankfully, New York City Council took the responsible step last spring to set some boundaries on the fee structures these delivery platforms were charging restaurants, correctly noting that restaurant operators were effectively hamstrung by the pandemic restrictions coupled with exploitative fees from these platforms. With fee caps in place, one facet of the relationship between restaurants and delivery platforms was put in check.

However, in regards to customer data for third party food delivery orders, there is still an exploitative dynamic in play. We are so appreciative to Council Members Powers and the cosponsors for bringing Intro 2311 forward today for consideration, and recognizing that this dynamic needs to change. As things currently stand, third party food delivery platforms control the customer data for orders they facilitate. That may sound simple enough, but what it means is that restaurants are kept at arm's length from their customers, even repeat customers, even their regulars, because platforms do not share critical information like phone number, order history, or email address with the restaurant operators.

Restaurants work hard to cultivate lasting relationships with their customers and their community. They need to be able to reach out directly to their customers, whether to give an update on an order, or offer a promotion. Restaurants, and their quality food and beverage, keep customers coming back to delivery platforms, but then only the platforms are able to form relationships with

diners, and that is not right. The New York State Restaurant Association supports the solution offered in Intro 2311, which would give restaurant operators access to customer data about their own customers, and stop the gate keeping by third party platforms. This is a reform that our members have been asking for, and we believe it is an important step in leveling the playing field for restaurants operating in a market heavily influenced by these delivery platforms.

We will also briefly address two other Intros considered at today's hearing, Intros 2298 and 2163. Intro 2298 would require restaurants to allow delivery workers to use their restrooms, provided access to the restroom does not take delivery workers through the back of house or food preparation or storage areas or pose some other safety or sanitation risk. We fully support this measure, and wholeheartedly want delivery workers to have access to restaurant bathrooms when they are picking up food orders. This legislation was thoughtfully written to allow for those important safety exceptions, and we feel it sufficiently balances restaurants' need to maintain sanitation standards and delivery workers' need to have bathroom access.

In regards to Intro 2163, which would allow restaurants to implement a surcharge of up to 15%, but only if the restaurant ceases to accept the tip credit, our sense is that this would not constitute a practical option for the majority of our members. Surcharges in general have proven fairly unpopular for our members' customer base, so many are hesitant to institute a surcharge in the first place. Tying participation in a surcharge model to a restaurant giving up their tip credit makes it all the less useful of a model for our membership.

In conclusion, the New York State Restaurant Association is so appreciative that City Council and this Committee are turning some necessary attention toward the relationship between restaurants and food delivery platforms, and considering some of these other Intros today. We are wholeheartedly supportive of Intro 2311, giving restaurants access to customer data about their own customers, and Intro 2298, which gives delivery workers access to bathrooms when they are picking up food orders from restaurants. We do not feel that Intro 2163 creates a particularly useful opportunity for restaurants. In the coming months, as the restaurant industry begins to dig itself out of the hole caused by Covid-19, we look forward to continuing the conversation on cultivating an environment where NYC businesses can survive, recover, and ultimately, thrive.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

315 W 36<sup>th</sup> St., 7<sup>th</sup> Floor

New York, New York 10018

---



**Testimony of Jeffrey Garcia  
Executive Director  
NYS Latino Restaurant Bar & Lounge Association**

*Before the*

**New York City Council  
Committee on Consumer Affairs & Business Licensing  
June 8, 2021**

*Concerning*

**Int. 2163: COVID-19 Recovery Surcharge**

Thank you, Chairwoman Ayala and the rest of the committee members, for the opportunity to submit testimony.

My name is Jeffrey Garcia and I serve as the President of the New York State Latino Restaurant Bar & Lounge Association (NYSLRBLA), which represents the interests of hundreds of minority and immigrant-owned restaurants and nightlife establishments throughout New York City.

While there are several bills being heard as part of today's hearing, I would like to focus my testimony on Intro. 2163, which "would allow restaurants to impose a "Food Service Establishment Surcharge" of up to 15 percent of a customer's total bill, as long as restaurants pay their tipped workers a cash wage that is not less than the City's minimum wage of \$15 per hour."

The restaurant and nightlife industry in New York City has just begun to enter a recovery phase after 15 months of devastating economic impacts due to COVID-19. Local Law 100 passed in 2020, allowed restaurants to charge up to a 10% "recovery surcharge" for all on-premises dining. This important measure has been a tremendous lifeline for many restaurants and nightlife establishments who have chosen to participate in this program. In fact, we have heard from several of our members that this additional surcharge has allowed them to retain staff and, in some cases, hire additional personnel where needed.

Unfortunately, Intro. 2163 seeks to repeal Local Law 100 and in its place, create a narrowly tailored program that only applies to restaurants and nightlife establishments that have eliminated the tipped wage model. The Council needs to understand that this approach is not a "one size fits all" model that every

restaurant in New York City can take advantage of and by eliminating restaurants who do not adopt this payroll method, you are essentially removing a critical source of additional revenue that many of them have come to rely on.

The reality is that a majority of restaurants in today's post-pandemic world simply cannot eliminate the tipped wage model because the numbers are just not sustainable. If restaurants were forced into a cash wage model it would likely result in unintended consequences in the form of reduced income for workers and increased prices for our customers – both of which are counterproductive to the recovery of New York City's hospitality industry.

We look forward to working with the Council to address the serious concerns NYSLRBLA has with Intro. 2163.

Thank you.

## Testimony of the New York City Hospitality Alliance Before the Committee on Small Business

June 8<sup>th</sup>, 2021

My name is Andrew Rigie, and I am Executive Director of the New York City Hospitality Alliance (“The Alliance”), a not-for-profit trade association representing restaurants and nightlife establishments throughout the five boroughs.

The following is our testimony on:

- [Int. 2311](#), in relation to data on orders placed through third-party food delivery services.
- [Int. 2298](#), in relation to requiring food service establishments to provide toilet facility access to food delivery workers.
- [Int. 2163](#), in relation to allowing a food service establishment surcharge, and to repeal local law number 100 for the year 2020, relating to a COVID-19 recovery charge.

[Int. 2311](#): We strongly support this legislation requiring third-party delivery companies to provide restaurants with the data of customers who place food orders from their business through such platforms. Data includes: customer name, telephone number, e-mail address, delivery address of the online order, and the contents of the online order. Restaurants deserve the legal right to have access to their own customer data that their customers provide when placing an order.

This legislation is so important because it removes a major barrier certain third-party delivery companies place between restaurants and their customers. By giving restaurants access to their own customer data, it enables them to directly manage their relationships with their customers, offer them deals, market to them, and more. It’s good for restaurants and for consumers.

When third-party delivery companies prevent restaurants from having access to their own customer data, it makes small businesses reliant, and at the mercy of mega-sized delivery companies with their high fees and sometimes unsavory business practices. Restaurants feel unable to leave the delivery platforms because then they will lose access to their own customers, and then the third-party delivery companies will market competitor restaurants to their customers using the data.

This is groundbreaking legislation that the City of New York must lead on to empower our local restaurants. We only ask that it be amended to also require third-party reservation platforms to also provide restaurants with their customer data to address a similar power dynamic and create a fairer and more equitable marketplace.

We also urge the City Council, while addressing matters related to third-party delivery, to enact the critically important permanent cap on third-party delivery fees because the temporary cap will expire after the pandemic.

[Int. 2298](#): First, when restaurants were shut down due to Covid-19 in March of 2020 and were limited to delivery and takeout only, people working delivery for third-party companies became even more essential to support restaurants and keep our city’s food supply chain going.

Unfortunately, New York City's failure to create a network of public restrooms means that said workers – and the public at large – must rely on restaurants and other local businesses to use their facilities.

Based on snap poll data we collected, the vast majority of restaurant respondents from a couple hundred establishments said they allow third-party delivery workers to use their restrooms (*and would support a law requiring such a policy*). However, we've heard from delivery workers and their representatives that some establishments prohibit them from using their toilet facility. So, while we have concerns about the precedent established by the City Council introducing legislation creating a law requiring that restaurants provide such service to independent contractors of third-party companies, we believe that providing toilet facility access to third-party food delivery workers who have been so essential is a common courtesy. *When you have to go, you have to go!* Therefore, we support Int. 2298, subject to these two amendments:

1. All first-time violators must be provided with a warning to food service establishments before a violation and fine is issued.
2. Food service establishments must be permitted to develop their own policies for non-employee, third-party delivery workers to use their restrooms, such as set the number of workers who may wait inside the business or at the restroom door at one time, require the large, insulated delivery bags to be left in a secure place, etc.

Int. 2163: We are concerned that the City Council has introduced legislation to repeal the emergency COVID-19 recovery charge enacted to help restaurants during the crisis, which is scheduled to expire when the crisis is over, while simultaneously seeking to implement a law they claim restaurants could utilize, without addressing restaurant industry concerns about its development and feasibility.

Thus, the quid pro quo required in this bill, a surcharge in exchange for overruling the State tip wage laws (*which, we question the City's legal authority to do*) will not be widely utilized because as proposed it creates unrealistic operational and financial challenges for struggling neighborhood restaurants. The tradeoff in this proposal – a 15% surcharge for not taking the *tip credit*, which equals a 50% increase in labor costs for *food service workers*, plus additional expenses - doesn't add up for most restaurants that want to use a surcharge business model. The math just does not work for us.

However, there are many reasons to allow restaurants to apply a clearly disclosed surcharge in the amount that meets their business needs without referencing the *tip credit*, as is permitted around the rest of the state and country in lieu of increasing menu prices. For example, the surcharge can help offset vendor and credit cards fees, support increased wages, benefits, and more. But for the business model to work restaurants generally need to use a 3-8% surcharge and utilize the *tip credit*, or an 18-25% surcharge in which case they would not take the *tip credit*. In all scenarios, a restaurant must of course comply with all disclosure, wage and tax laws and requirements. We urge the City Council to amend this legislation to reflect these operational needs or withdraw it.

Thank you for your consideration of our comments.

Respectfully submitted,

Andrew Rigie  
Executive Director  
NYC Hospitality Alliance



# Transport Workers Union of America, AFL-CIO

**John Samuelson**  
International President

**Alex Garcia**  
International Executive  
Vice President

**Jerome Lafragola**  
International  
Secretary-Treasurer

**Curtis Tate**  
International Administrative  
Vice President

**Mike Mayes**  
International Administrative  
Vice President

**"AMERICA'S FIGHTING DEMOCRATIC UNION"**

## VICE PRESIDENTS

Delisa Brown  
Willie Brown  
Dale Danker  
John Feltz  
Debra Hagan  
Tom Lenane  
Thom McDaniel  
Benyoel Morgan  
Gary Peterson  
Andre Sutton  
Tony Utano  
James Whalen

## EXECUTIVE COUNCIL

John Chiarello  
LaTonya Crisp  
Richard Davis  
Derick Echevarria  
Tim Hughes  
Horace Marves  
J.P. Patafio  
Kevin Smith

## EXECUTIVE BOARD

Bedennia Barnes  
Carlos Bernabel  
Richard Boehm  
Constance Bradley  
Dino Centrone  
Greg Cosey  
Brian DeLucia  
Grigoriy Dunichev  
Cassandra Gilbert  
Victor Gonzalez  
Amy Griffin  
Patrick Howard  
Theotis James  
Vanessa Jones  
Shirley Martin  
Michael Massoni  
Jeffrey Mitchell  
Gus Mohgrabi  
Lyn Montgomery  
Paul Navarro  
Emmanuel Parajos  
John Parrott  
Earl Phillips  
Brian Pollitt  
Dan Rivera  
Richard Rocco  
Peter Rosconi  
Gary Schaible  
Jenny Schar  
Christina Scott  
Armando Serrano  
Robert Taylor III  
Donald Yates

## Committee on Consumer Affairs and Business Licensing Testimony June 9, 2021

Chairperson Ayala, my name is Angelo Cucuzza and I am the Organizing Director of the Transport Workers Union of America (TWU,) speaking on behalf of our 150,000 members across the country.

I am submitting this testimony in full support of *Los Deliveristas Unidos* and all NYC app-based food delivery workers. Our Union leadership stands alongside these workers and their demands for dignity and respect while providing an essential service to both their customers and the restaurants who feed our city. These food delivery workers have worked tirelessly with many of your Council colleagues to see introduction of a series of bills targeting the services they provide and TWU seeks to ensure that these bills – or any other bills the food delivery workers support in the future – see their way to the full Council floor for a vote as soon as possible.

Of particular interest to our labor organization is Int. 2298-2021 which seeks to require food establishments to provide toilet facility access to delivery workers. It is almost absurd that in 2021 there would be a need for such a mandate...and there is absolutely no reason why this bill should not be passed unanimously by the Council. It is ridiculous, that in an almost post-pandemic world, we have members of NYC Community Boards, like CB 7 on the Upper West Side of Manhattan, refusing to support such a bill for fear of upsetting restaurant owners who take for granted the services food delivery workers provide to them and their "beloved" customers! When you have NYC Community Boards out there who refuse to support such rights as food delivery workers using a restaurant toilet, we have succumbed to a society that places a caste-like distinction of workers taking us back centuries. We also allow the app companies to continue their hands-off approach to those they employ and take advantage of.

TWU members, whether a NYC bikeshare mechanic, an airline baggage handler like myself or a subway train operator, are not unlike food delivery workers. We are **ALL** essential and as a result, we expect restaurant owners to value the services being provided by app-based food delivery workers. They risked their lives working throughout the pandemic to feed New Yorkers and they continue to do so as business bounce back. The least restaurant owners and staff can do is allow them to use the bathroom when picking up food they will deliver on their behalf! As a lifelong Brooklyn resident, I am imploring you to not waste another day in delaying full council introduction and passage of Int. 2298, the bathroom usage bill, along with bills 2288, 2289, 2294, 2296, 2163 and 2311.

Its time to respect these workers demands over basic human needs and not treat them as if we can survive without them. We cannot! And would be hard pressed to do so without them.

Respectfully,

*Angelo Cucuzza*

Angelo Cucuzza  
Director of Organizing  
TWU of America AFL-CIO  
[ACucuzza@twu.org](mailto:ACucuzza@twu.org)  
*(929) 366-6386 - mobile*



## **Comments Relative to T2021-7645 Oversight - Protections for Delivery Workers David London, Head of U.S. East Government Relations**

Dear Council Chair Ayala and Members of the Committee on Consumer Affairs and Business Licensing:

My name is David London and I am Head of Government Relations, U.S. East, at DoorDash. We are a third party delivery network company whose mission is to grow and empower local economies, including in New York City. We do that by partnering with thousands of local restaurants throughout New York City for online ordering, takeout, delivery, and marketing services. We also empower New Yorkers from all walks of life to earn money when, where, and how they choose by delivering meals and other essentials to their communities.

We offer the following comments as you consider a series of bills that would impact our relationship with New York business owners, workers, and consumers. We support several of these proposals (in some cases with amendments), though we are concerned that others would have a negative impact on New Yorkers.

### **Our commitment to our community**

We believe in investing in and supporting the communities in which we operate, from small towns to the biggest city in America.

We have taken that responsibility especially seriously during the pandemic. As cities and states issued guidance restricting the operations of restaurants and other businesses during the pandemic, delivery and pickup services became critical to reducing person-to-person contact while ensuring residents had access to food and the other essentials they needed.

Here in New York City, since the start of the pandemic, we have expanded initiatives to support restaurants, delivery workers and community members. With our mission to empower local communities, over the past year DoorDash connected with local nonprofits and associations to roll out the following programs:

### **Supporting Dashers**

- We hosted events with local community partners across the five boroughs in order to distribute thousands of masks, hand sanitizer and other resources to Dashers and community members. These events are an extension of our continued effort to provide free PPE -- including hand sanitizer, masks, and gloves -- to all Dashers completely free of charge.
- We provided financial assistance to eligible Dashers diagnosed with COVID-19 or who were advised to quarantine by a medical or public health professional.



- We partnered with Doctor On Demand, one of the nation's leading healthcare platforms, to provide Dashers with access to online risk assessments for COVID-19, and ensure eligible couriers can access a virtual urgent care visit for just \$4. We also partnered on a webinar to ensure Dashers had information about the COVID-19 vaccine.

### **Supporting Small Businesses**

- Last fall, as part of our response to the pandemic and commitment to the communities we serve, we partnered with the New York City Hospitality Alliance to offer \$500,000 in grants to help New York City restaurants keep their doors open during the winter months.
- We also provided \$350,000 to ROAR/Robinhood for restaurant worker relief.
- In March 2021, we launched our Main Street Strong Accelerator with 25 New York City-based restaurants. The program helps women and underrepresented local entrepreneurs gain access to the capital and other tools they need to sustain and grow their business.

### **Supporting the Community**

- We expanded our Project DASH initiative to fuel deliveries of meals, groceries, household goods, and school supplies to communities in need. Created in 2018, Project DASH provides local organizations access to the DoorDash logistics platform to tackle community issues. Over the course of the pandemic DoorDash delivered over 13 million meals to communities in need, including over 1.2 million meals to underserved communities in New York City.
- Through our partnership with Gay Men's Health Crisis (GMHC) ( we are delivering free bags of groceries to GMHC clients living with HIV/AIDS.
- Since vaccines became available, DoorDash has donated over \$3 million in gift cards to bolster local outreach and encourage community vaccination efforts across the country. Most recently we partnered with the White House to distribute \$2 million in gift cards for NACHC and Direct Relief. This donation will support vaccine outreach and participation at an estimated 1,000 local community health centers across the country over the next few weeks.

### **Perspective on legislation under consideration**

We are committed to working with the Council to continue to support our community of merchants, consumers, and Dashers.

Earlier this year we had the pleasure of meeting with Councilmembers Brannan, Menchaca and Rivera along with representatives from the Workers Justice Project Los Deliveristas Unidos (LDU) to discuss and address specific concerns. We discussed issues related to:

- Access to restrooms and rest spaces in restaurants
- Pay transparency and access
- Access to live customer support in different languages



We made a lot of progress in our meetings but there is more work to be done and we look forward to continuing the dialogue with all parties going forward as we attempt to address the concerns of LDU and other Dashers across New York City. We thank Councilmembers Brannan, Menchaca and Rivera for their tireless leadership on this most important issue.

Regarding delivery partners, it is important to note that, nationally, more than 90% of Dashers deliver fewer than 10 hours a week and on average, Dashers deliver for fewer than 4 hours per week. Nationally, on average Dashers earn over \$25 per hour they're on a job, including 100% of their tips. Dashers in New York City earn even more on average and, in October 2020, Dashers earned an average of over \$33 per hour they were on a job in Manhattan.

We recognize that the ability to earn any income, particularly at this time, is important to these parents, students, retirees, small business owners, and others who need supplemental income from time to time. DoorDash is constantly working to support Dashers and improve working conditions for all delivery workers, which is why last year we announced an industry-leading series of initiatives focused on strengthening safety measures, expanding restroom access, and protecting earnings. We appreciate the Council's shared interest in addressing challenges facing delivery workers in the City and would like to provide the following comments on legislation related to these initiatives that currently sit before you:

#### Int 2298-2021 - Restroom Access

Providing restroom access to delivery workers is complementary to DoorDash's ongoing efforts to ensure that all Dashers have clean, safe places to use the restroom in New York while dashing. Last year, we announced that nearly two hundred restaurant locations across New York City had agreed to make their restrooms available to Dashers whenever they are picking up an order. Dashers see this guidance in their app when picking up orders at those locations.

We strongly support this bill. We also appreciate the bill sponsor's efforts to balance restroom access with ensuring restaurant operations are not disrupted. Restroom access is an important issue for many throughout New York City and this is a valuable step forward.

#### Int 2288-2021 - Insulated Delivery Bags

We truly appreciate the efforts by the Council on this legislation and believe with a few amendments we can be supportive. These amendments include providing companies with additional flexibility to implement the bill's requirements and ensuring that delivery workers actually use the bags made available through this legislation so that deliveries are carried out in a safe manner.



Currently, DoorDash provides a complimentary hot bag to each Dasher when they onboard and makes additional bags available at cost to ensure that they are accessible to Dashers.

DoorDash has also invested in specific initiatives to help improve the safety and experience of bike-based Dashers.

- We have invested in products that help Dashers on bikes get directions to their destination via bike lanes using the mapping app of their choice.
- We work hard to only connect Dashers on bikes with deliveries that are bike-friendly.
- We are in contact with the NYC Department of Transportation and other stakeholders to identify ways to help make safer streets a reality for bikers.
- Dashers who participate in our partnership for discounted e-bike rentals receive a hot bag backpack to make Dashing by bike safer and easier.
- We are actively engaging in conversations with potential partners with the goal of offering New York City Dashers access to discounted bike maintenance and services.
- We are members of the 25x25 coalition, led by Transportation Alternatives, which calls for 25 percent of space for cars to be converted into space for people by 2025.

#### Int 2296-2021 - Payment Access Standards

Similar to Int 2288, we believe with a few changes we could be supportive of this legislation. At DoorDash, we support efforts to ensure that all delivery workers can easily access their pay. All Dashers are paid weekly and without fees by default, and have options to cash out daily if desired. In addition, DasherDirect allows Dashers to not only cash out daily and without fees, but also provides access to a prepaid card and other offers which support unbanked and underbanked Dashers.

As written, the legislation would prohibit delivery workers from being offered optional benefits and services -- like same day cash out -- that include any additional transaction fees. The legislation should be amended to ensure that these options can continue to be offered as long as fee-free payment options are otherwise available.

DoorDash goes further to help Dashers protect their earnings in a number of ways, including by providing occupational accident insurance in the event a Dasher is injured on the job and partnering with companies to provide Dashers with discounted access to e-bikes.

#### Int 2311-2021 - Data on orders placed through third-party food delivery services

While DoorDash is committed to empowering our restaurant partners to reach new customers and drive sales, we have significant concerns about any legislation that would endanger customer privacy. Int 2311 is an assault on consumer privacy that other jurisdictions have previously considered and rejected. It would force delivery platforms to



proactively share customers' confidential information--including name, telephone number, email, and delivery address--with restaurants for each order placed through the platform. Troublingly, platforms would be forced to share this information without the consent of the customer and without any effective safeguards in place to ensure that restaurants are protecting this sensitive data. In fact, many restaurants are not able to invest in the resources necessary to keep data secure from modern threats. Moreover, there are no limits on how restaurants can use the data or how long it may be stored and customers are provided with zero recourse to address issues that may arise after their data is shared.

Importantly, DoorDash already offers various products that allow restaurants to maintain a closer relationship with the customer while still offering delivery from Dashers. For example, with DoorDash Storefront and Drive, customers place orders directly with restaurants online or through an app and use Dashers to complete delivery. These are ideal tools for restaurants that want to interact directly with customers and still make use of the delivery service DoorDash provides, and allows customers to decide who they share their information with. Merchants may also elect for self-delivery options, upon which they are provided additional information related to the customer that is necessary to complete the order. Thus, merchants are already provided options through DoorDash's platform to facilitate a closer relationship with their customer base without unnecessarily compromising customer privacy.

\* \* \*

In closing, platforms like DoorDash serve as a vital source of supplemental income for millions of workers across the country who choose app-based work because of the flexibility and independence it provides. The Dashers who use our platform choose to do so because the platform allows them to work when, where, and how they want. We are committed to supporting Dashers and their rights and access to flexibility and independence.

DoorDash is proud of our commitment to our community, our Merchants, our Customers and our Dashers. We know that this is only the beginning and that solving these, and other, complex challenges will require partnership between DoorDash, policymakers, and other stakeholders. We look forward to creating a stronger, brighter, and more vibrant future for our community.

Thank you for the opportunity to provide this written testimony and we welcome the opportunity to work with the Committee and bill sponsors moving forward.



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

June 7, 2021

Chairperson Diana Ayala  
Committee on Consumer Affairs and Business Licensing,  
250 Broadway, Suite 1880  
New York, NY 10007

Councilmember Keith Powers  
250 Broadway, Suite 1815  
New York, NY 10007  
Dear Chairperson Ayala,

Grubhub strongly opposes Int. 2311 (Powers), which would require third-party food delivery services to share certain customer information with restaurants with whom that customer is placing a food or beverage order. The restaurant fulfilling the customer's order would be permitted to retain that information, and the third-party food delivery service could not prevent the restaurant from marketing to the customer using that information.

This data sharing mandate is concerning on several fronts. First, many businesses go to great lengths to protect user data by avoiding any data sharing. Under the proposed bill, third-party food delivery services would be forced to provide consumer data to be shared with food service establishments for little or no benefit to the consumer. Consumers who utilize a platform do not expect their information to be shared with any food service establishment that they order from, nor do these consumers necessarily want to receive communications from every restaurant they order from.

Second, the bill places consumer information at risk. Any food service establishment would automatically have access to this information and would be entitled to receive it, even if the establishment does not have adequate security processes in place to protect that data. This would undercut the privacy rights of New York City consumers, as they would have no rights to access, delete, or opt-out of sales of their personal information from these food service establishments that lack the resources to comply with data privacy regulations.

Finally, the bill would undoubtedly lead to a proliferation of unsolicited and unwanted spam from merchants. The bill would require delivery platforms to share contact information provided by consumers to the delivery platform, and such data is not traditionally collected by restaurants in the analog world. The forced dissemination of such information will no doubt lead to unsolicited calls and text messages, email spam, and junk mail.

For these reasons and more, we are respectfully opposed to Int. 2311. Thank you for your consideration of our concerns.



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

Sincerely,

Amy Healy  
Head of Public Affairs

**New York City Council**  
**Committee on Consumer Affairs and Business Licensing**

Tuesday, June 8, 2021

Committee Hearing on Intros 2288, 2289, 2294, 2296, 2298, and 2311

*Testimony for Uber Technologies, Inc.<sup>1</sup>*

---

---

Uber Eats welcomes a conversation with the New York City Council on the topic of third party food delivery, with a specific focus on delivery workers. Over the past several years, the process of food delivery has evolved significantly. What used to be a simple relationship between a consumer, food establishment, and delivery person now also includes app-based technology and major national corporations. And since March 2020, when COVID-19 hit New York City, the industry grew even more rapidly. Restaurants ceased indoor dining, consumers began ordering more and more delivery, and delivery workers were quickly deemed essential by the State.

While many of us were able to work from home, and conduct meetings and other business over zoom and the telephone, delivery workers were not, and as the delivery business grew, workers were spending more and more time traversing the city - many of them in cars, but thousands more on bikes. Over the last several months, we have heard more about the growing safety and quality of life concerns that exist in the industry, and I would like to thank the Council Members who introduced these bills as it is clear the ideas came after consultation with workers and groups like the Workers Justice Project, who represent the group of bicycle couriers called Los Deliveristas.

Uber Eats is largely supportive of many of the bills we are discussing today. We hope that Intro 2298, which would require food service establishments to provide bathroom access passes quickly. These workers, many of whom are riding around the city for hours at a time, often outside of the communities in which they live, should be afforded the basic right to access the restroom at restaurants from which they are delivering food. Intro 2288, which would require companies like Uber Eats to provide delivery workers with an insulated bag is also a no-brainer, and benefits our business as much as it is an essential item for workers who are carrying food that restaurants that needs to stay either warm or cold, depending on preparation. And Intro 2296, which would require app companies to provide prompt payments at no charge to delivery workers is crucial. In fact, Uber Eats already offers weekly payouts to workers at no charge. We are largely supportive of each of these bills, and have already met with the Council to voice that support, and offer suggestions on how they could be strengthened.

---

<sup>1</sup> Uber Technologies, Inc. is the parent of Portier, LLC which operates the Uber Eatsapp.

We are also largely supportive of the intent of Intro 2289, which would allow delivery workers to set parameters around distances and routes for trips. We believe that workers should be able to control where they travel to, and decline trips they don't wish to accept without penalty. However, we believe a better option to achieve the same goal would be to require app companies to provide that information up front. When a worker is sent a trip, included in that "offer card" should be the location of the restaurant, the delivery location and the route up front so that a worker can review the specifics and then accept or decline. By making these changes, companies would quickly and easily be able to implement the solution, instead of creating a new and complicated process, and it also means that delivery workers won't potentially miss out on a lucrative trip because their trip parameters prevent them from even seeing the offer.

We do have major concerns with two pieces of legislation that are being heard today. Intro 2311, which would require companies to share consumer data with restaurants raises significant privacy concerns for us. This bill as written would not give consumers the option to opt out of their information being shared, and also puts no requirements on restaurants on what they can do with that data. Uber has invested significantly in data security, and has an established data security and privacy program that is subject to strict laws such as the EU's GDPR and California's CCPA, but New York State does not have any similar data protection laws in place. This means that the restaurants that receive this data would not be subject to any such data protection requirements, and the proposal itself (1) forbids us from imposing any kind of data use limitations or data security requirements on the restaurants, and (2) neglects to impose any such limitations or requirements on the businesses. All of this would put our users' data at much greater risk. We understand the intent of the bill, which is to allow restaurants to market directly to their consumers and to gain data about who their customers are, but a different way of achieving similar goals could be to prohibit app companies from preventing restaurants from including flyers and other direct marketing in the bags being delivered to their consumers. This way customers are receiving information on how to order directly from a restaurant and can choose to do that if they wish, but their data privacy isn't being compromised. Additionally, there could be a requirement that companies provide data and trends to restaurants on a regular basis, with information like *in general* where their customers live, what types of orders are placed when, and other data points in a format that would be useful to restaurants, but doesn't provide personally identifiable information. We would welcome the opportunity to hear from restaurants what type of information and trends we could provide that would help them strategically grow their businesses.

We are also concerned with Intro 2294, which would establish minimum per trip payments to third party food delivery service workers. While we supported similar legislation the Council passed regarding high volume for hire vehicles services in 2018, the broad authority granted to the Administration resulted in a poorly implemented rule that negatively impacts TLC licensed drivers. We would encourage the Council to first examine the impact of how that legislation was implemented and put stricter limitations on the Executive branch.



**Rebecca Dixon**  
Executive Director

[www.nelp.org](http://www.nelp.org)

**NELP National Office**  
90 Broad Street  
Suite 1100  
New York, NY 10004  
212-285-3025

**Washington, DC Office**  
1350 Connecticut Ave. NW  
Suite 1050  
Washington, DC 20036  
202-640-6520

**California Office**  
2030 Addison Street  
Suite 420  
Berkeley, CA 94704  
510-982-5945

**Washington State Office**  
300 Lenora Street #357  
Seattle, WA 98121  
206-324-4000

June 8, 2021

TESTIMONY OF BRIAN CHEN, NATIONAL EMPLOYMENT LAW PROJECT

**To Chair Diana Ayala and the Honorable Members of the New York City Council's Committee on Consumer Affairs and Business Licensing:**

Thank you for the opportunity to testify in support of these important bills that will improve working conditions for food delivery workers in New York City.

On behalf of the National Employment Law Project (NELP), I urge the City Council to pass Int. 2288, 2289, 2294, 2296, and 2298. Altogether, these bills will deliver common sense protections to a workforce that for too long has been underpaid, marginalized, and excluded from decent working conditions.

NELP is a national legal, research, and policy organization with more than fifty years of experience advocating for policies that create good jobs, expand access to work, and strengthen protections and support for workers in low-wage industries and for unemployed workers. For decades, we have focused on the ways in which various work structures—subcontracting, temp and staffing, calling workers “franchisees” or “independent contractors”—affect income and wealth inequality, the segregation of workers by race and gender into poor-quality jobs, and the ability for workers to come together to negotiate over wages and working conditions.

App-based food delivery workers have performed essential work during the pandemic. Workers on platforms like DoorDash and Postmates delivered countless meals to New Yorkers who had the luxury to stay indoors and work from home. It is no exaggeration to say these workers have been essential to New York City throughout an unprecedented public health crisis.

But those same workers, in a difficult and dangerous job, have virtually zero on-the-job protections. Their employer has created a fiction that they are not their employees, and that fiction has been cemented by forced arbitration requirements and class action waivers that make it nearly impossible for workers to access their rights. The result is that app-based food delivery workers have no practical access to a guaranteed minimum wage, overtime pay, workers' compensation, paid sick leave, or basic health and safety standards under New York state law.



That these workers are disproportionately immigrants and people of color<sup>1</sup> speaks to the racialized exploitation within the app-based food delivery industry. App-based food delivery, and the “gig economy” writ large, functions on occupational segregation—companies can get away with offering poor-quality, unsafe jobs, where workers have virtually zero legal protections on the job, because for so many workers, there simply is no alternative. Far from offering economic opportunity, this illegal business model deepens the desperation of underpaid Latino, Black, and Asian workers who have been shunted to the bottom of the economy.

While these workers continued to deliver meals throughout the pandemic, placing them at higher risk of contracting COVID-19 even in the absence of paid sick leave, app-based food delivery companies’ valuations reached all-time highs. As demand for food delivery soared, DoorDash’s valuation skyrocketed to \$71 billion in December 2020.<sup>2</sup> All the while, workers continued to suffer from chronic low pay and financial instability.

The City Council now has an opportunity to deliver long overdue protections to these workers, including studying and regulating minimum pay standards; providing insulated food delivery bags to workers at no charge; permitting workers to set limitations on distance and route; establishing standards for payment; and providing bathroom access to workers during an active pickup.

In the long run, greater worker protections and industry regulation will bring stability to a food delivery industry that has become an integral part of dining in New York City.

In cities that have legislated greater safety and working standards for app-based workers, the sky has not fallen. The industry has adapted and continued on, while workers benefit from local protections. In 2020, the Seattle City Council passed premium pay and paid sick leave for app-based delivery workers during the pandemic, which yielded millions of dollars in workers’ pockets.<sup>3</sup> Philadelphia’s City Council passed paid sick leave for app-based workers and renewed it in March 2021.<sup>4</sup> And only a few years ago, this City Council passed legislation to regulate ride-hail services, with a groundbreaking minimum pay standard for app-based drivers that resulted in a nine percent increase in driver pay.<sup>5</sup>

---

<sup>1</sup> Lina Moe, James A. Parrott, and Jason Rochford, *The Magnitude of Low-Paid Gig and Independent Contractor Work in New York State*, The New School’s Center for New York City Affairs (Feb. 2020), [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e41df531c6ca3300b587073/1581375317656/GigReport\\_February2020.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e41df531c6ca3300b587073/1581375317656/GigReport_February2020.pdf) (finding that “two-thirds of low-paid independent contractors in New York City are persons of color).

<sup>2</sup> Noor Zainab Hussain & Joshua Franklin, *DoorDash valued at \$71 billion in blockbuster market debut*, Reuters (Dec. 9, 2020), <https://www.reuters.com/article/doorDash-ipo-shares-idUKKBN28J249>.

<sup>3</sup> Daniel Beekman, *Seattle’s COVID-19 rules have paid off for delivery app drivers. What’s next?*, Seattle Times (May 16, 2021), <https://www.seattletimes.com/seattle-news/politics/seattles-covid-19-rules-have-paid-off-for-delivery-app-drivers-whats-next/>.

<sup>4</sup> Oona Goodin-Smith, *Philly Council votes to restore paid COVID-19 sick leave mandate for low-wage workers*, The Philadelphia Inquirer (Mar. 19, 2021), <https://www.inquirer.com/news/philadelphia/philadelphia-paid-sick-leave-restores-gig-workers-low-wage-20210319.html>.

<sup>5</sup> Dmitri Koustas, James Parrott, and Michael Reich, *New York City’s Gig Driver Pay Standard: Effects on Drivers, Passengers, and the Companies*, The New School’s Center for New York City Affairs (Dec. 2020), [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5fcfc3dda8cbdc2f053a82fc/1607451614588/DriverReport\\_Dec8th.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5fcfc3dda8cbdc2f053a82fc/1607451614588/DriverReport_Dec8th.pdf).

The overwhelming result of local legislation to boost protections in the app-based economy has been that workers enjoy greater financial security and improved working conditions. When workers have greater economic stability, livable wages, and safe workplaces, industries can sustain themselves over the long run. Without those baseline protections, some workers may become burnt out, exhausted, and less likely to take those jobs in the first place.<sup>6</sup> That kind of tenuous business model cannot serve New York City's food delivery workers, diners, and restaurants alike in the long run.

This package of food delivery worker bills will provide better working conditions for a workforce that has seen exploitation upon exploitation by multibillion-dollar companies. These bills offer overdue protections for workers who have been essential to New York City throughout the pandemic.

As advocates for and substantive experts on the labor and employment rights of underpaid workers, NELP strongly supports this package of bills.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Chen". The signature is fluid and cursive, with the first name "Brian" and last name "Chen" clearly distinguishable.

Brian Chen  
Staff Attorney  
National Employment Law Project

---

<sup>6</sup> See Faiz Siddiqui, *Where have all the Uber drivers gone?*, The Washington Post (May 7, 2021), <https://www.washingtonpost.com/technology/2021/05/07/uber-lyft-drivers/> (noting that many drivers are not returning to Uber after the pandemic, after “a meaningful reset that gave them a better understanding of the toll the gigs had taken on their bodies, their mental health and their vehicles”).



**Headquarters**  
40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

**DC Office**  
815 16<sup>th</sup> Street NW, Suite 4162  
Washington, DC 20005

**Southern Office**  
2301 21<sup>st</sup> Ave. South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

**Colorado Office**  
191 University Blvd., #631  
Denver, CO 80206

[abetterbalance.org](http://abetterbalance.org) | [info@abetterbalance.org](mailto:info@abetterbalance.org)

**New York City Council  
Consumer Affairs and Business Licensing Committee**

Testimony on Int. 2163  
Sarah Brafman, Senior Policy Counsel, A Better Balance  
June 8, 2021

Thank you Chair Ayala and members of the Committee for the opportunity to testify today on Int. 2163, a critical piece of legislation for New York City restaurant workers. My name is Sarah Brafman and I am Senior Policy Counsel at A Better Balance (ABB), a national legal nonprofit headquartered in New York City. Our mission is to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security.

Here in New York City, we are proud to have drafted and shepherded to passage groundbreaking legislation to support working families. We were at the forefront of drafting and advocating for the New York City Earned Sick Time Act as well as the 2018 expansion of the law to include safe time and to broaden the definition of family members. We also led efforts to pass the City’s Fair Workweek law, the NYC Pregnant Workers Fairness Act, and helped to draft New York City’s caregiver discrimination law. We were also proud to work closely on New York City’s salary history ban law and recent lactation rooms laws. At the state level, we are proud to have advocated for and helped to pass New York Paid Family Leave, the State’s recent permanent and emergency paid sick time laws, and a range of laws to protect pregnant and breastfeeding workers and caregivers.

For several years, ABB has joined the effort to end the subminimum wage for tipped workers across New York State, a practice that perpetuates gender and racial inequities and imperils workers’ economic security. In 2019, Governor Cuomo issued an executive order ending the tipped minimum wage for many tipped workers—such as nail salon workers and massage parlor workers—but the Order did not include restaurant workers. With Int. 2163, championed by Council Member Reynoso, New York City has the



**Headquarters**  
40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

**Southern Office**  
2301 21<sup>st</sup> Ave. South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

**DC Office**  
815 16<sup>th</sup> Street NW, Suite 4162  
Washington, DC 20005

**Colorado Office**  
191 University Blvd., #631  
Denver, CO 80206

[abetterbalance.org](http://abetterbalance.org) | [info@abetterbalance.org](mailto:info@abetterbalance.org)

opportunity to lead in the fight to end the subminimum wage for restaurant workers by allowing restaurants to add up to a 15% surcharge so long as they pay tipped workers a full minimum wage with tips on top.

Two thirds of tipped workers are women, disproportionately women of color; and nearly 40% of them are mothers.<sup>1</sup> The sub-minimum wage for tipped workers is in effect legislated pay inequity for a predominately female, disproportionately women of color, workforce, perpetuating the gender pay gap. These women are working at restaurants like IHOP and Applebee's and are among the poorest workers in the city. New York is at the beginning of a long process of recovering from an economic recession the impact of which has been disproportionately felt by women;<sup>2</sup> if that recovery effort is to succeed, the tipped minimum wage cannot be allowed to continue.

Furthermore, many women are essentially forced to expose themselves to sexual harassment as a result of having to live off of tips. The restaurant industry is the single largest source of sexual harassment claims in the U.S.<sup>3</sup> The 42 states with lower wages for tipped workers have *twice* the rate of sexual harassment and *three times* the rate of management coercion of workers to subject themselves to objectification than the seven states with one fair wage.<sup>4</sup> Even before the pandemic, restaurant workers were over twice as likely—with tipped restaurant workers nearly two and a half times as likely—to live below the poverty line as the rest of the employed population.<sup>5</sup> The Bureau of Labor Statistics found that tipped restaurant workers make median wage of just \$9.28 an hour, including tips, or just over \$19,000 for a full time, full

---

<sup>1</sup> ROC UNITED, RECIPE FOR SUCCESS: ABOLISH THE SUBMINIMUM WAGE TO STRENGTHEN THE RESTAURANT INDUSTRY 4 (2014), [https://chapters.rocunited.org/wp-content/uploads/2014/03/ROCUnited\\_Recipe-for-Success.pdf](https://chapters.rocunited.org/wp-content/uploads/2014/03/ROCUnited_Recipe-for-Success.pdf).

<sup>2</sup> See, e.g., Amanda Holpuch, *How the 'Shecession' Will Cause Long-Term Harm for Women in the U.S.*, Guardian (6:00 PM, Jan. 4, 2021), <https://www.theguardian.com/business/2021/jan/04/shecession-women-economy-c-nicole-mason-interview>.

<sup>3</sup> See ROC UNITED & FORWARD TOGETHER, THE GLASS FLOOR (2014), <https://chapters.rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.

<sup>4</sup> *Id.*

<sup>5</sup> See Heidi Shierholz, *Low Wages and Few Benefits Mean Many Restaurant Workers Can't Make Ends Meet*, ECON. POL'Y INST. (Aug. 21, 2014), <https://www.epi.org/publication/restaurant-workers/>.



**Headquarters**  
40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

**Southern Office**  
2301 21<sup>st</sup> Ave. South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

**DC Office**  
815 16<sup>th</sup> Street NW, Suite 4162  
Washington, DC 20005

**Colorado Office**  
191 University Blvd., #631  
Denver, CO 80206

[abetterbalance.org](http://abetterbalance.org) | [info@abetterbalance.org](mailto:info@abetterbalance.org)

year job.<sup>6</sup> This isn't even half of what a family needs to make ends meet, especially in New York City.

The COVID-19 pandemic upended many industries in New York City, but it hit the restaurant industry particularly hard. In April 2020, 70 percent of low-income restaurant workers in New York had lost their jobs, with employment in the industry still down 50 percent from pre-pandemic levels by the end of June 2020.<sup>7</sup> More than a thousand restaurants throughout the state closed due to the challenges of continuing to operate during the pandemic;<sup>8</sup> restaurants in Manhattan's Chinatown were especially hard-hit, due to the added challenge of misinformation about the virus and anti-Asian racism.<sup>9</sup>

Relief has started to come for restaurants themselves, with indoor dining restrictions are beginning to lift and the implementation of the American Rescue Plan's \$28 billion Restaurant Revitalization Fund.<sup>10</sup> However, even as jobs in the industry start to come back, restaurant workers are still struggling due to several factors including continued subminimum wages, a year of lost wages and tips, increased harassment and customer hostility, and difficulty accessing unemployment insurance during the pandemic due to low wages.<sup>11</sup> A new report from One Fair Wage found exactly half (50%) of New York workers report that they are considering leaving their restaurant jobs, and 90% report they are leaving due to low wages and tips - far higher than the national average of 76%.<sup>12</sup> These startling statistics could be reversed by paying workers a living wage. The report also found that 8 in 10 New York restaurant workers would

---

<sup>6</sup> BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, *Characteristics of Minimum Wage Workers: 2014* (2015), <https://www.bls.gov/opub/reports/minimum-wage/archive/characteristics-of-minimum-wage-workers-2014.pdf>.

<sup>7</sup> FORD FOUNDATION, REIMAGINING A SUSTAINABLE RESTAURANT INDUSTRY IN NEW YORK 5 (2020), <https://www.fordfoundation.org/media/5657/reimagining-a-sustainable-restaurant-industry-in-new-york.pdf>.

<sup>8</sup> See, e.g., Luke Fortney, *A Running List of Restaurants that Closed in New York City*, EATER (12:57 PM, Mar. 19, 2021), <https://ny.eater.com/2021/3/5/22309128/nyc-restaurant-closings-march-2021>.

<sup>9</sup> See, e.g., Juliana Kim, *The Uncertain Recovery of Manhattan's Chinatown*, N.Y. TIMES (Mar. 11, 2021), <https://www.nytimes.com/2021/03/11/nyregion/jing-fong-chinatown-nyc.html>.

<sup>10</sup> American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 5003 (2021).

<sup>11</sup> ONE FAIR WAGE, LOCKED OUT BY LOW WAGES: NEW YORK SERVICE WORKERS' CHALLENGES WITH ACCESSING UNEMPLOYMENT INSURANCE DURING COVID-19 (2020), [https://onefairwage.site/wp-content/uploads/2020/11/OFW\\_LockedOut\\_UI\\_COVID-19\\_FINALUPDATE.pdf](https://onefairwage.site/wp-content/uploads/2020/11/OFW_LockedOut_UI_COVID-19_FINALUPDATE.pdf).

<sup>12</sup> One Fair Wage, IT'S A WAGE SHORTAGE, NOT A WORKER SHORTAGE: WHY NEW YORK RESTAURANT WORKERS ARE LEAVING THE INDUSTRY, AND WHAT WOULD MAKE THEM STAY (May 2021).



**Headquarters**  
40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

**Southern Office**  
2301 21<sup>st</sup> Ave. South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

**DC Office**  
815 16<sup>th</sup> Street NW, Suite 4162  
Washington, DC 20005

**Colorado Office**  
191 University Blvd., #631  
Denver, CO 80206

[abetterbalance.org](http://abetterbalance.org) | [info@abetterbalance.org](mailto:info@abetterbalance.org)

continue working in restaurants if they receive a full, stable livable wage with tips on top. In the states that pay One Fair Wage, the restaurant industry has projected employment growth of 10.5% over the next decade, compared to 9.1% in states with a subminimum wage.<sup>13</sup> Over 1000 restaurants nationwide and over 100 restaurant owners in New York are calling on states to enact one fair wage.

In Fall 2020, the City Council passed legislation permitting restaurants to charge customers a 10% surcharge. According to One Fair Wage, 60% of workers who work at a restaurant that implemented the surcharge reported that as a result of the surcharge, their tips had been cut in half -- on top of the already significant general decline in tips during the pandemic<sup>14</sup>. Many customers thought the surcharge was a tip that would benefit workers, not owners, and reduced their tips as a result.

As laid out in the rest of our testimony, the payment of a sub-minimum wage to restaurant workers is an appalling policy that hurts those working in the industry, particularly women and particularly women of color. Int. 2163 does not completely solve this problem but at least it would remedy the particular problems that resulted from the 10% surcharge policy. Allowing restaurant owners to implement a surcharge of up to 15% so long as they pay their tipped employees a full minimum wage with tips on top will hopefully persuade more restaurant owners to share the benefits of the surcharge with their workers rather than having the surcharge cause further harm to a drastically underpaid workforce. The bill also requires that employers make explicit that the additional charge is a surcharge, not a tip, which will also help customers make informed decisions around tipping.

---

<sup>13</sup> See ROC United, *Recipe for Success*, *supra* note 1, at 5 (2014).

<sup>14</sup> One Fair Wage, *DOING MORE FOR LESS: NEW YORK RESTAURANT WORKERS' EXPERIENCE OF TIPS, SURCHARGES, RACIAL INEQUITY, AND WHY THEY'RE LEAVING THE INDUSTRY DURING COVID-19* (February 2021), [https://onefairwage.site/wp-content/uploads/2021/03/FINAL\\_OFW\\_DoingMoreForLess\\_NY-1.pdf](https://onefairwage.site/wp-content/uploads/2021/03/FINAL_OFW_DoingMoreForLess_NY-1.pdf).



**Headquarters**

40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

**Southern Office**

2301 21<sup>st</sup> Ave. South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

**DC Office**

815 16<sup>th</sup> Street NW, Suite 4162  
Washington, DC 20005

**Colorado Office**

191 University Blvd., #631  
Denver, CO 80206

[abetterbalance.org](http://abetterbalance.org) | [info@abetterbalance.org](mailto:info@abetterbalance.org)

It is also important to emphasize that this bill does NOT run afoul of any limitations on this Council's ability to regulate minimum wage. As indicated in the attached memo which was submitted to Council, the Council has complete power to enact this legislation.

Int. 2163 is a pivotal policy to ensure equality and economic security for New York City's restaurant workers. A Better Balance supports this legislation and strongly urges the Council to pass the bill without delay.

To: Interested Parties  
From: A Better Balance  
Re: Local Authority to Allow Restaurant Surcharges  
Date: September 29, 2020

---

**Issue Presented:** Would an NYC ordinance allowing restaurants that adopt One Fair Wage to apply a surcharge to bills be preempted by state law?

**Short Answer:** No, such a surcharge would not be preempted. No state law expressly prohibits such a restaurant surcharge. In fact, state law appears entirely silent on the issue of business surcharges. While New York State’s minimum wage law has been interpreted as preempting local minimum wage increases, it does not appear to preempt voluntary incentives that encourage employers to pay workers a wage higher than the minimum set by the state.

**Background:**

The COVID-19 pandemic has had an immense impact on New York City’s restaurant industry. Even as restaurants begin to reopen, they are operating at significantly limited capacity. Meanwhile, many restaurant workers still make only the city’s tipped minimum wage, a base rate that is \$5 per hour lower than the city’s \$15 per hour minimum wage. This situation leads to an intractable problem for restaurant workers: not only are they charged with enforcing social distancing and mask requirements on customers whose tips they depend on, but seating capacity limits reduce the number of customers from whom they can expect a tip.

Currently, New York City does not allow restaurants to impose surcharges on bills.<sup>1</sup> A recent city law passed in response to the COVID crisis temporarily allows restaurants to impose up to a 10% surcharge on bills.<sup>2</sup> Advocates and council members plan to introduce an ordinance that would allow restaurants to permanently apply a surcharge to bills, but only if they commit to paying their workers the full \$15 minimum wage. Under this law, restaurants would be able to recoup some of the additional costs associated with providing the higher wage and incurred in operating in this new COVID-19 environment, and workers would be guaranteed a higher wage that is less dependent on customer tips.

---

<sup>1</sup> R.C.N.Y. Tit. 6, § 5-59(a).

<sup>2</sup> N.Y.C. Int. No. 823-B (2020).

## Analysis:

Local governments in New York generally have broad authority to enact legislation, including for the “government, protection, order, conduct, safety, health and well-being of persons or property therein,” with the caveat that they may not enact laws that are inconsistent with the constitution or general laws.<sup>3</sup> New York’s Home Rule Amendment requires that municipal home rule powers be “liberally construed.”<sup>4</sup> As the Court of Appeals has noted, “unless preemption is limited to situations where the intention is clearly to preclude the enactment of varying local laws, the power of local governments to regulate would be illusory.”<sup>5</sup> This presumption applies even when there are state laws that deal with issues that are also addressed by local regulations: “[c]learly . . . localities are accorded a great amount of latitude in passing local legislation to address local issues, even when the State has already legislated in those areas.”<sup>6</sup>

New York recognizes three kinds of preemption: express, field, and conflict. That is, a local ordinance can be considered “inconsistent” with a state law only when the state expressly prohibits local action, when the state evinces an intent to “occupy the field” of regulation on a particular matter, or when a local ordinance conflicts with state law.<sup>7</sup>

**Express Preemption:** Express preemption is not at issue since there is no state law purporting to prohibit localities from allowing restaurant surcharges.

**Conflict Preemption:** Nor is conflict preemption at issue, since there does not appear to be any state law that speaks to the issue of whether businesses can impose surcharges on bills. The Court of Appeals has been clear that state silence on an issue cannot be the basis of a finding of conflict preemption. *People v. Cook*, for example, dealt with a local regulation that required cigarette retailers to charge more for cigarettes with higher tar and nicotine contents. In that case, the Court of Appeals held that mere silence at the state level regarding the sale of cigarettes without such a surcharge did not create a conflict between the local law and existing state tobacco regulations.<sup>8</sup> The Court noted that a conflict preemption analysis that invalidates any local law that prohibits what the state allows would go against “the essence of home rule.”<sup>9</sup>

**Field Preemption:** Finally, while the state’s minimum wage law has been interpreted as occupying the field of wage regulations, it does not follow that local *incentives* that encourage businesses to pay a higher wage to their employees are preempted by state law.<sup>10</sup> That is because a law allowing restaurants to impose a surcharge in exchange for voluntarily raising their wages does not impose *any* requirement on any business with respect to wages and thus cannot be seen as regulating wages.

---

<sup>3</sup> N.Y. Const. Art. IX, § 2(c)(i)(10).

<sup>4</sup> N.Y. Const. Art. IX, § 3(c).

<sup>5</sup> *People v. Judiz*, 38 N.Y.2d 529, 532, 344 N.E.2d 399, 402 (1976).

<sup>6</sup> *McDonald v. New York City Campaign Fin. Bd.*, 40 Misc.3d 826, 849 (2013).

<sup>7</sup> *See, e.g., New York State Club Ass’n, Inc. v. City of New York*, 69 N.Y.2d 207, 217, 513 N.Y.S.2d 349, 351 (1988).

<sup>8</sup> *People v. Cook*, 34 N.Y.2d at 109 (1974).

<sup>9</sup> *Id.*

<sup>10</sup> *See Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 17 A.D.2d 327, 330 (1st Dept. 1962).

Field preemption occurs when state law establishes a “comprehensive and detailed regulatory scheme in a particular area” that evinces a legislative intent to occupy the field of regulation in that area.<sup>11</sup> As for what constitutes a field, in its most recent treatment of the subject the Court of Appeals took a narrow approach. In *Wallach v. Dryden*, the Court upheld a local zoning ordinance that prohibited fracking within the town, despite a law explicitly stating that state’s Oil, Gas and Solution Mining Law supersedes local regulations relating to the extractive mining industry.<sup>12</sup> *Dryden* makes clear that the state must make a clear expression of legislative intent to occupy an entire field of regulation.<sup>13</sup>

New York’s minimum wage law has been interpreted as occupying the field of minimum wage requirements.<sup>14</sup> But to preempt the restaurant surcharge at issue here, state law would have to evince an intent to also preempt voluntary incentive programs that encourage “high-road” business practices. These issues are easily distinguishable because incentive programs do not require businesses to provide any particular wage, but provide them with a benefit if they choose to do so. So while New York may occupy the field of minimum wage regulations, since the restaurant surcharge is not a minimum wage regulation, it should not be considered preempted under a field preemption theory.

**Conclusion:** Since no state law expressly prohibits a restaurant surcharge, such a surcharge does not conflict with any state law, and the state has not occupied the field of such voluntary incentive programs as the surcharge sets up, it is not preempted by state law.

---

<sup>11</sup> *See, e.g. New York State Club Ass’n*, 69 N.Y.2d at 217.

<sup>12</sup> *Wallach v. Town of Dryden*, 992 N.Y.S.2d 710, 717; 723 (2014).

<sup>13</sup> *Id.*

<sup>14</sup> *Wholesale Laundry*, 17 A.D.2d at 330.

June 7, 2021

To: New York City Council  
Committee on Consumer Affairs and Business Licensing



From: Do J. Lee, Ph.D.  
Biking Public Project  
Queens College CUNY  
Do.Lee@qc.cuny.edu

Re: Oversight: Protections for Delivery Workers

To whom it may concern:

I write this testimony to express support from myself and the Biking Public Project of the following proposed legislation being discussed by the Committee on Consumer Affairs and Business Licensing: Int. 2163, Int. 2288, Int. 2289, Int. 2294, Int. 2296, and Int. 2298. I am a core team member at the Biking Public Project and an Assistant Professor of Urban Studies at Queens College. This testimony is based upon my research and organizing work with the Biking Public Project and with NYC food delivery workers in regards to their working conditions.

For far too long, NYC's food delivery workers have endured numerous unfair, unsafe, and exploitative working conditions in order to bring New Yorkers their food as quickly as possible. During the ongoing Covid-19 pandemic, NYC deemed food delivery workers to be essential workers, but not enough has been done to ensure safe, fair, and decent conditions for their work.

In my research with the Biking Public Project in 2017, we found that businesses usually misclassified food delivery workers as independent contractors in order to offload numerous costs and expenses necessary for the job onto the workers themselves. For example, more than 90% of all workers reported paying out of pocket for many costs for doing their jobs that businesses should be responsible for including buying and maintaining a bike or e-bike, bike lights, helmets, reflective vests, bells, locks, cell phones and data, and delivery bags. More than 50% of the workers reported paying more than \$500 annually out of pocket for their delivery equipment and maintenance. In addition, during the pandemic, most restaurants and to third-party apps neglected to keep delivery workers safe by failing to provide necessary personal protective equipment (PPE) such as masks and sanitizer. As such, Int. 2288 would provide an important step to end these unethical business practices of externalizing costs onto workers by requiring third-party app companies to pay for their own branded insulated delivery bags instead of making delivery workers pay for them. This practice has long been a source of deep frustration for delivery workers in having the added insult to injury by companies forcing them to pay out of pocket to carry public advertisement for the same company.

Furthermore, in our research with delivery workers, we found that the median wages (including tips) for immigrant Asian and Latinx workers were \$9-10 per hour, which is considerably less than minimum wage before even factoring in the workers paying out of pocket for equipment and

maintenance mentioned previously. In addition, delivery workers often reported traveling upwards of 50 to 60 miles per day in making deliveries because many businesses will demand that workers deliver within unreasonably large delivery zones and distances. We believe that bills such as Int. 2163, Int. 2289, and Int. 2294 will help clarify the per trip payments and also help provide fairer pay and working conditions for delivery workers. The strategies and tactics of third-party app companies are fluid and changing rapidly and typically these changes result in the detriment of worker pay and labor conditions. Thus, it is vital for New York City to build ongoing practices of keeping track of delivery worker conditions.

Finally, we support Int. 2298 in providing restroom and toilet access to delivery workers while on a delivery. During the pandemic, with the rapid growth of delivery workers working directly for third-party apps instead of for restaurants, many delivery workers struggle to find access to decent facilities for relieving themselves and washing their hands during their workday, which is particularly unconscionable during a pandemic where personal hygiene is particularly important. Some workers have to go far out of their way or even back to home during their workday to access public toilet facilities, which costs them much time and can cause severe discomfort. I also urge the City Council to amend Int. 2298 to prohibit businesses and third-party apps from penalizing workers for taking the time to use restroom facilities while during a delivery. In many cases, third-party apps penalize or even shut down worker accounts for taking too much time on a delivery. In this situation, workers would not be able to have enough time to use restroom facilities if the third-party app mandates for delivery time do not allow time for restroom breaks. Int. 2298 should have a provision about requiring third-party apps to allow for time for adequate restroom breaks during deliveries.

I strongly urge the City Council to also consider many other labor conditions facing delivery workers that include their misclassified work statuses, the lack of provision of health care and workers compensation, wage theft, and unsafe streets where workers are at risk of being hit by car drivers or being robbed and assaulted for their e-bikes. Specifically, e-bike robberies fall particularly harshly upon delivery workers because businesses force workers to pay for their own e-bikes. I would strongly urge the City Council to look into how to close this loophole by ensuring that businesses pay for and provide the vehicles workers need to do deliveries.

Thank you,

A handwritten signature in black ink, appearing to read 'Do J. Lee', with a long horizontal flourish extending to the right.

Do J. Lee, Ph.D.  
Biking Public Project  
Queens College CUNY  
Do.Lee@qc.cuny.edu

**Testimony before the  
New York City Council Committee on Consumer Affairs and Business Licensing**

**Hearing on Restaurant Delivery Issues  
June 8, 2021**

**Establishing a Minimum Pay Standard for Third Party Restaurant Delivery Workers**

**James A. Parrott, PhD  
Director of Economic and Fiscal Policies  
Center for New York City Affairs at The New School**

Good afternoon Chairperson Ayala and members of the committee. My name is James Parrott, Director of Economic and Fiscal Policies at the Center for New York City Affairs at The New School. Thank you for the opportunity to testify as this hearing.

I appear today to express support for Intro. 2294 to establish a minimum per trip payment to third party food delivery service workers. This measure builds on the highly successful minimum pay standard for For-Hire-Vehicle (FHV) drivers established in December 2018 by the City's Taxi and Limousine Commission (TLC) following passage of authorizing legislation passed by the City Council in August 2018. I co-authored a study for the TLC analyzing the need for the New York City driver pay standard, and also co-authored a July 2020 study for the City of Seattle analyzing the need for a similar minimum driver pay standard in Seattle that was enacted in August of 2020.<sup>1</sup>

---

<sup>1</sup> James Parrott and Michael Reich, [An Earnings Standard for New York City's App-based Drivers; Economic Analysis and Policy Assessment](http://www.centrernyc.org/an-earnings-standard). Center for New York City Affairs at The New School and UC Berkeley Center on Wage and Employment Dynamics, July 2018. <http://www.centrernyc.org/an-earnings-standard>; James Parrott and Michael Reich, [A Minimum Compensation Standard for Seattle TNC Drivers](http://www.centrernyc.org/reports-briefs/2020/7/2/seattle-report). Center for New York City Affairs at The New School and UC Berkeley Center on Wage and Employment Dynamics, July 2020. <http://www.centrernyc.org/reports-briefs/2020/7/2/seattle-report>

In both New York City and Seattle, the driver pay standards were designed to compensate drivers for all their working time and to account fully for drivers' vehicle and other expenses during all of their working time. In an evaluation of the first year of the New York City app-dispatched driver pay standard, our research undertaken with funding from the Alfred P. Sloan Foundation found a high rate of compliance and that driver pay had increased by about nine percent, or \$1.33 per trip. Total driver pay increased by \$340 million for the 11 months of 2019 the pay standard was in effect. Passenger wait times declined and some of the pay increase was absorbed through lower effective commission rates taken by the companies. While passenger fares rose and trip volumes leveled off and declined some in the latter part of 2019, these trends were also evident in Chicago where a minimum pay standard was not implemented.<sup>2</sup>

Like New York City's third party restaurant delivery workers, drivers whose services are arranged through an online platform in New York City and Seattle are not considered employees by the platform companies and are treated as independent contractors. Since independent contractors are not covered by minimum wage standards established under the Federal Fair Labor Standards Act, it is essential for New York City to establish a minimum payment standard for food service delivery workers.

Intro. 2294 appropriately calls for a study of third party food delivery worker "per trip pay and the methods by which such pay is determined," hours worked, and an analysis of delivery worker expenses as well as other pertinent factors and issues. Following the study, the Department of Consumer and Worker Protection (DCWP) would implement a rule "establishing a method for determining" a minimum per trip payment. The legislation is explicit that the third party delivery services shall not use tips to offset required minimum payments.

The TLC's ability to effectively regulate driver pay and ensure a high rate of compliance depends in part on the authority the TLC has exercised to require the app companies to provide data on all trips, payments to drivers, hours worked and miles driven. It will be important for the DCWP to have the authority to similarly compel data sharing by the third party delivery services. This is particularly crucial given the experience of delivery workers regarding tip theft and significant data transparency problems.

Delivery workers are among the heroes of the pandemic. At great personal health risk, they responded to the explosion in demand for food service delivery over the past year, providing a

---

<sup>2</sup> Dmitri Koustas, James Parrott and Michael Reich, New York City's Pay Standard: Effects on Drivers, Passengers, and the Companies, Center for New York City Affairs at The New School, UC Berkeley Center on Wage and Employment Dynamics, and The University of Chicago, December 2020. <http://www.centernyc.org/reports-briefs/2020/12/8/new-york-citys-gig-driver-pay-standard-effects-on-drivers-passengers-and-the-companies>

tremendous service to remote-working and home-bound New Yorkers and to struggling restaurant owners. Yet, they were forced to endure tip theft and extensive payment problems from the delivery companies. They had to deal on their own with the indignity of finding a place to use the bathroom, and confronting a wave of bicycle thefts that jeopardize their livelihoods. As contractors, they have no employee rights, no paid sick days, and virtually no access to a worker safety net. Irony or not, the jobs that increased the most during the pandemic were those most devoid of basic worker rights and protections.

The delivery companies and their executives have certainly prospered on the backs of the delivery workers. Uber's revenue from delivery services soared by 215 percent in the first quarter of 2021 compared to the first quarter of 2020, rising faster than the 157 percent increase in "gross bookings," or sales from food deliveries. Uber reports that their "take-rate," that is the share of gross bookings the company received (as opposed to drivers or restaurant owners) rose over the year from 11.3 percent to 14 percent.<sup>3</sup> DoorDash reports that its revenues soared nearly three-fold, or 400 percent, from the first quarter of 2020 to the first quarter of 2021. The Wall Street Journal reports that DoorDash's founder and CEO received stock worth more than \$400 million in December, noting that this was among the biggest executive compensation packages "ever awarded," particularly striking since the company is not even included in the S&P 500 index.<sup>4</sup>

New York City's delivery workers were vastly under-appreciated and under-paid before the pandemic. Their sacrifice and value are too great to ignore any longer.

The delivery companies undoubtedly will oppose Intro. 2294. In fact, they are actively seeking to prevent New York City from regulating how they compensate or treat delivery workers, as was made clear recently by draft Albany legislation reportedly written by the large gig companies. Such State preemption would be an enormous setback to the City's ability to protect the most vulnerable New York workers.

Thank you for the opportunity to testify on this important matter.

# # #

---

<sup>3</sup> Uber Technologies, Inc. Q1 2021 Earnings, Supplemental Data, May 5, 2021.

[https://s23.q4cdn.com/407969754/files/doc\\_financials/2021/q1/Q1-2021-Supplemental-Slides.pdf](https://s23.q4cdn.com/407969754/files/doc_financials/2021/q1/Q1-2021-Supplemental-Slides.pdf)

<sup>4</sup> Theo Francis, "Palantir and DoorDash CEOs Top List of Biggest Pay packages in 2020," *The Wall Street Journal*, June 3, 2021. [https://s23.q4cdn.com/407969754/files/doc\\_financials/2021/q1/Q1-2021-Supplemental-Slides.pdf](https://s23.q4cdn.com/407969754/files/doc_financials/2021/q1/Q1-2021-Supplemental-Slides.pdf)



**Testimony by Irene Lew, Policy Analyst at CSS**

**June 8<sup>th</sup>, 2021**

**Hearing on Protections for Delivery Workers**

**Before the NY City Council's Committee on Consumer Affairs and Business Licensing**

Thank you for the opportunity to testify today on the issue of workplace protections for food delivery workers. My name is Irene Lew. I am a Policy Analyst at the Community Service Society of New York (CSS), a nonprofit organization that works to advance upward mobility for low-income New Yorkers. While CSS is supportive of the entire package of bills the committee is considering today, I am focusing my testimony on two of them: Intro 2294, which would establish a minimum per trip payment for third-party food delivery workers, similar to protections that the city's Uber and Lyft drivers already have in place; and Intro 2163, which would allow restaurants to raise the existing COVID-19 recovery surcharge from 10 percent to 15 percent on customers' bills but require employers to pay their workers the full minimum wage of \$15 an hour.

First, I would like to focus on our support for Intro 2294 and the need for this bill. While restaurants struggled to stay afloat during the pandemic without indoor dining, they increasingly contracted out food delivery operations to third-party intermediaries like GrubHub, Postmates and DoorDash, which have created billion-dollar businesses while absolving themselves of any responsibility to uphold fair labor and pay standards for their delivery workers. In an effort to increase their profits and reduce labor costs, these app companies continue to effectively exploit delivery workers by classifying them as independent contractors instead of employees. This classification not only denies these workers essential workplace rights and protections, including their right to a \$15 minimum wage, but it contributes to their financial instability.

Throughout the pandemic, app-based food delivery workers have braved the risk of exposure to the virus to keep New Yorkers fed. Yet these workers—many of them people of color and low-income—continue to struggle with feeding their own families and making the rent. Based on CSS's annual survey of low-income New Yorkers, the Unheard Third, we find that app-based gig workers experience food and housing insecurity, as well as difficulties with accessing affordable health care, at much higher rates than regular employees. Compared to regular employees, app-based gig workers were more likely to go hungry, fall behind on their rent or delay necessary medical care. App-based gig workers were also more likely to worry about their finances and their ability to make ends meet.

Establishing a minimum payment for each trip would be a small but critical first step to secure fair pay for these workers and improve their economic security. Furthermore, a recent [study](#) from the Center for NYC Affairs at the New School, UC Berkeley and the University of Chicago found that a similar minimum pay standard for ride-hail drivers raised their incomes without significantly reducing growth in trip volume.

Additionally, we support the provision in the bill prohibiting third-party food delivery services from using tips to offset these minimum payments. However, to ensure compliance with this provision and the minimum pay standard more broadly, we urge the Council to ensure that Intro 2294 is well-known to workers and fully enforced. Specifically, the bill should include language on how the city will conduct outreach— including in multiple languages, and how the bill’s contents will be enforced by the Department of Consumer and Worker Protection. As our previous [research](#) has shown, the impact of new progressive labor standards is diluted if workers are not aware of their rights.

We would also like to express our support—and highlight the need—for Intro 2163, specifically the provision in the bill mandating restaurant employers to pay their workers a full minimum hourly wage of \$15 an hour without using tips to make up the difference between the lower tipped wage of \$10 an hour and the full minimum wage. Previous CSS [research](#) has shown that workers reliant on tips, including those in restaurants, suffer higher levels of poverty and hardship than workers covered by the full minimum wage. Furthermore, a recent [survey](#) conducted by One Fair Wage, an advocacy group pushing to abolish all sub-minimum wages, found that nearly 60 percent of New York City restaurant workers, whose employers were using the COVID-19 surcharge, reported that their tips declined after the addition of the surcharge— most plausibly due to customer assumptions that the surcharge went directly to workers. Guaranteeing restaurant workers the full minimum wage would help ensure predictable income and improve financial stability for this workforce regardless of changes in customers’ tipping behavior due to the temporary surcharge. Additionally, paying restaurant workers a full minimum wage is not only a matter of economic fairness but that of economic justice. Women and people of color constitute the majority of the tipped workforce and denying them the full minimum wage further marginalizes them in the labor force and more broadly in everyday life.

For much of the city’s essential workforce, including third-party food delivery workers and restaurant workers, low wages, grueling, unpredictable hours and inadequate safety standards have become the norm. And for far too long, the city has enabled food delivery platforms and other app-based gig companies to circumvent labor laws by allowing these companies to choose – with little to no oversight - how to compensate their workers and how they should be protected. The bottom line is that if we do not pass Intro 2294, Intro 2163 and the other bills in this package, we are locking thousands of hard-working New Yorkers into a state of perpetual financial instability and depriving them of basic on-the-job protections. We applaud the City Council for considering these measures and we are hopeful that they will help significantly improve the lives of the city’s food delivery and restaurant workers.

**Testimony of StreetsPAC board member Ken Coughlin  
in support of Ints. 2288, 2289, 2294, 2296, 2298 and 2163  
Committee on Consumer Affairs and Business Licensing  
Hearing Date: Tuesday, June 8, 2021**

My name is Ken Coughlin and I am a board member of StreetsPAC, a political action committee dedicated to electing public officials committed to improving the safety, mobility and livability of New York City's streets.

We are proud to speak in favor of this package of bills and are especially proud that all of the lead sponsors of the bills are StreetsPAC endorsees, either past or present, including Council Members Rivera, Brannan, Reynoso, Lander, Menchaca, Van Bramer, Kallos, Chin, Rosenthal, Gibson, and Adams, along with Public Advocate Williams.

The pandemic has exposed many inequities in our city, and the plight of delivery workers is near the top of the list. Before the virus hit, these tens of thousands of essential workers were invisible to many New Yorkers. As restaurants closed, many began to realize how much we rely on food delivery workers for our very survival. At the same time, it became clearer how poorly these workers are treated and how harsh their working conditions are. These conditions include: low pay, dangerous streets, constant exposure to the elements, lack of access to bathrooms or safe places to rest and, recently, the armed theft of their e-bikes.

These bills are a milestone -- not just because they go a long way toward improving working conditions for delivery workers -- but even more importantly because they signal that these workers are invisible no longer; that they matter and they deserve protection -- just as construction workers, taxi drivers, nail salon workers and all others whose labor makes this city possible -- matter and deserve protection. Gracias mis amigos!

**Memo in Opposition to Int. 2311-2021**  
**June 2021**

---

Comments: Tech:NYC and the Electronic Frontier Foundation strongly oppose Int. 2311-2021 which would weaken consumer privacy protections by forcing third-party food delivery platforms to share consumer personal information with restaurants. This bill would directly undermine the spirit and intent of consumer rights advocates and technology companies currently working together in New York State and elsewhere throughout the country to better protect the personal data of consumers.

Int. 2311-2021 mandates that food delivery platforms share consumers' personal information based on the faulty premise that it will "level the playing field" for small businesses. But on-demand platforms, restaurants, and other food facilities are working together every day to find new ways to promote growth in local stores and expand the customer base in those local stores without the dangerous data sharing mandate contemplated by this bill.

Int. 2311-2021 would force on-demand platforms that facilitate food delivery to disclose the personal information of their users, including their names, email addresses, telephone numbers, and delivery addresses with any restaurant or other food facility upon request in a machine-readable, downloadable format. Platforms would also be required to share the contents of the order in a downloadable, machine-readable format.

This data sharing mandate is concerning on several fronts. First, this information is not the type of personal information merchants would require during their normal course of business. In other words, a consumer who dines-in at a restaurant today does not have to provide the restaurant the very same information that Int. 2311-2021 mandates be disclosed. On the other hand, this information is required by the platforms, solely to perform food purchasing transactions and delivery.

Second, this bill places consumer information at risk. The bill fails to provide any security requirements for restaurants after they receive personal information or how they must store information. For example, information could be stored on a computer that does not require a password, that is regularly accessed by multiple people, or located at the front of the restaurant where it could be easily accessed by anyone when staff isn't looking. The bill simply assumes that restaurants have the technical capacity to download this information and store it in a way that will not allow for unauthorized individuals to access it. Even if they voluntarily choose to do so, not all restaurants will have the resources to invest in a secure operating system to download and keep this information secure.

Given the lack of security protections after this data is shared, most concerning is that the bill is silent on notice to consumers if their personal information held by a restaurant is accessed by a third party without the restaurant's permission. Since the information to be shared is not covered by the New York State Shield Act, this is most concerning that there could be a security breach and no notice would be provided to customers that their name, address, email address, and telephone numbers had been improperly disclosed to a person or entity.

Int. 2311-2021 is ultimately a net negative for consumers. It forces consumer data to be shared with food facilities for little or no benefit to the consumer. Consumers who utilize a platform do not expect that their information will necessarily be shared with any food facility that they order from, nor do these consumers necessarily want to receive communications from every restaurant they order from. Second, the bill would undoubtedly lead to a proliferation of unsolicited and unwanted spam from merchants. Forced dissemination of personal information will no doubt lead to unsolicited calls and text messages, email spam, and junk mail. Since such data is not traditionally collected by restaurants in the analog world, it is not appropriate for platforms to be required to disclose it to every restaurant receiving an order.

For these reasons, we are opposed to Int. 2311-2021 as it will place consumer personal information at risk for no consumer benefit.

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



**NEW YORK CITY COUNCIL**

**CONSUMER AFFAIRS AND BUSINESS LICENSING COMMITTEE**

**TESTIMONY IN SUPPORT OF INT. 2163 (REYNOSO)**

**June 8, 2021**

Thank you Chairwoman Ayala and the rest of the committee. My name is Zachary Lerner, Organizing Director for **New York Communities for Change (NYCC)**. I would like to submit this testimony in support of Int. 2163 which would allow restaurants to impose a “Food Service Establishment Surcharge” of up to 15% as long as those restaurants pay their tipped employees no less than the legal minimum wage. We are additionally supportive of the 6 bills for delivery workers that are being presented today as well.

In light of the COVID-19 pandemic’s devastating effect on New York City’s food service industry, Int. 2163 would benefit tipped workers by finally providing this class of employees a minimum wage while the surcharge will enable restaurant owners to obtain critical revenue to help carry their businesses out of the crisis.

NYCC represents more than 20,000 low income and working class black and latinx members across New York City and Long Island. We have been on the forefront of fighting for workers across the state including starting the fight for 15 for Fast food workers, helping organize carwash workers, and recently helping win the fund for excluded workers, many of whom worked in restaurants and were excluded from any kind of relief from the state. Many of our members are barely surviving relying on the subminimum wage and tips that Restaurant

We’ve seen the negative impacts the subminimum wage has had for tipped workers, which has only been exacerbated by the pandemic. During this pandemic, restaurants stayed open for outdoor dining, limited indoor dining, and pick-up where tipped workers saw a reduction in the tips they received and were exposed to increased health risks and harassment from customers.

They were deemed essential workers, but not treated or compensated that way. Thousands of our members and other restaurant workers also were laid off during this period as well.

In addition, although well intentioned, the COVID related 10% surcharge that was enacted last fall by the City Council, has exacerbated the problem for workers in restaurants as they have realized decreased tips on top of the reduction faced due to loss of business.

The New York City Council will be a leader for the struggling Restaurant industry and for tipped restaurant workers by passing Intro. 2163. We've seen restaurants that don't pay the \$15 minimum wage struggle to staff up. The surcharge allowed by Int. 2163, will help allow restaurants to staff up and retain employees.

In 2019, NYCC was part of the fight to eliminate the subminimum wage for tipped workers in the car wash and nail salon industries but the hospitality industries were left out by Governor Cuomo. Just like California and Nevada, New York City can lead in creating a mechanism to help restaurant workers receive the one fair wage they deserve while helping the restaurant industry come out of the pandemic stronger than ever.

Thank you for letting me testify and the city council should vote yes on Int. 2163



**NEW YORK CITY COUNCIL  
CONSUMER AFFAIRS AND BUSINESS LICENSING COMMITTEE**

**TESTIMONY ON INT. 2163**

**Saru Jayaraman, co-founder and President, One Fair Wage;  
Director of the Food Labor Research Center, UC Berkeley  
June 8, 2021**

Thank you Chair Ayala and the members of the committee for allowing me to testify today on this important piece of legislation. My name is Saru Jayaraman; I am a Professor at the UC Berkeley Goldman School of Public Policy and co-founder and President of One Fair Wage, a national organization that represents about 250,000 service workers nationally, including over 10,000 in New York, and launched an association of about 1000 'high road' restaurant owners, including over 100 in New York. I'm here to testify in support of Int. 2163, sponsored by Council Member Reynoso, which would allow restaurants to permanently add a surcharge of up to 15% if they pay their tipped workers a full minimum wage with tips on top.

The subminimum wage for tipped workers in New York is a direct legacy of slavery. At Emancipation, restaurant owners sought to hire Black people and not pay them a wage, forcing them to live exclusively on tips. That concept of tips as wage replacement became law in 1938 as part of the first federal minimum wage bill in the New Deal, and New York is one of 43 states that persists with this legacy of slavery.<sup>1</sup> In 2017 Governor Cuomo said that he would end the subminimum wage for tipped workers; in 2019, he did end the subminimum wage for tipped workers for all other tipped workers *except* restaurant workers, due to the lobbying of the restaurant industry. At the time, he said he would consider restaurant workers for a full minimum wage next, but has not done so to this date.

New York State's failure to pay tipped workers a full minimum wage has become a devastating, life-threatening matter during the COVID-19 pandemic. And unfortunately, though well-intentioned, New York City's new surcharge policy, passed in fall 2020, has worsened the situation for tipped workers. Int. 2163 would fix that, and represent an important step New York City can take to address the subminimum wage for tipped workers.

---

<sup>1</sup> One Fair Wage. (February 2021). Ending a Legacy of Slavery: How Biden's COVID Relief Plan Cures the Racist Subminimum Wage. [https://onefairwage.site/wp-content/uploads/2021/02/OFW\\_EndingLegacyOfSlavery-2.pdf](https://onefairwage.site/wp-content/uploads/2021/02/OFW_EndingLegacyOfSlavery-2.pdf).

Prior to the pandemic, the subminimum wage was a source of race and gender inequity for a workforce that is more than two thirds women, and disproportionately women of color, in New York State.<sup>2</sup> A direct legacy of slavery, the subminimum wage has forced a workforce of largely waitresses working in casual restaurants across the state to suffer from the highest rates of sexual harassment of any industry because they had to tolerate inappropriate customer behavior to feed their families in tips.<sup>3</sup>

We saw these inequities worsen during the pandemic. First, nearly two thirds of New York State tipped workers reported that they faced great challenges accessing unemployment insurance because their subminimum wages were too low to qualify for benefits and their tips were often underreported, especially for women of color working in casual restaurants where there were more likely to be cash tips.<sup>4</sup> Upon returning to work last summer, workers reported that tips had decreased 50-75% and health risks, customer hostility and harassment increased.<sup>5</sup> UCSF, a top medical school, named restaurants the most dangerous place to work, and workers were forced to enforce social distancing and mask rules on the same customers from whom they had to obtain tips to survive - an impossible situation.<sup>6</sup> Worst of all, over 50% of women reported that sexual harassment increased, with hundreds of New York women reporting that they were repeatedly asked to remove their masks so male customers could judge their looks and their tips on that basis - a life-threatening situation.<sup>7</sup>

In February 2021, we surveyed several hundred New York City restaurant workers about the 10% surcharge allowed by the City Council in fall 2020. Approximately one third of workers surveyed reported that their employer uses the surcharge, and 60% of those workers reported that as a result of the surcharge, their tips had been cut at least in half -- on top of the already significant general decline in tips during the pandemic.<sup>8</sup> While well-intentioned, the temporary COVID surcharge policy allowing restaurants to add a surcharge of up to 10% confused consumers, who believed that the surcharge was going to workers when in fact it was going to employers. If they were planning to tip 20%, the 10% surcharge resulted in them tipping an additional 10%.

---

<sup>2</sup> One Fair Wage. (July 2020). A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers in New York as a Racial Equity Measure. [https://onefairwage.site/wp-content/uploads/2020/11/LegacyOfSlavery\\_5.pdf](https://onefairwage.site/wp-content/uploads/2020/11/LegacyOfSlavery_5.pdf).

<sup>3</sup> ROC United. (October 2014). The Glass Floor: Sexual Harassment in the Restaurant Industry. New York, NY: ROC United. [https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT\\_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf](https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf).

<sup>4</sup> One Fair Wage. (June 2020). Locked Out By Low Wages: Challenges With Accessing Unemployment Insurance During COVID-19. [https://onefairwage.site/wp-content/uploads/2020/11/OFW\\_LockedOut\\_NY\\_2.pdf](https://onefairwage.site/wp-content/uploads/2020/11/OFW_LockedOut_NY_2.pdf).

<sup>5</sup> See note 1

<sup>6</sup> Chen, Y.H., Glymour, M., Riley, A., Balmes, J., Duchowny, K., Harrison, R., Matthay, E., and Bibbins-Domingo, K. (January 2021). Excess mortality associated with the COVID-19 pandemic among Californians 18-65 years of age, by occupational sector and occupation: March through October 2020. medRxiv. doi: <https://doi.org/10.1101/2021.01.21.21250266>.

<sup>7</sup> One Fair Wage. (December 2020). Take off your mask so I know how much to tip you: Service Workers' Experience of Health & Harassment During COVID-19. [https://onefairwage.site/wp-content/uploads/2020/12/OFW\\_COVID\\_WorkerExp-1.pdf](https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp-1.pdf).

<sup>8</sup> One Fair Wage. (February 2021). Doing More For Less: New York Restaurant Workers' Experience of Tips, Surcharges, Racial Inequity, and Why They're Leaving the Industry During COVID-19. [https://onefairwage.site/wp-content/uploads/2021/03/FINAL\\_OFW\\_DoingMoreForLess\\_NY-1.pdf](https://onefairwage.site/wp-content/uploads/2021/03/FINAL_OFW_DoingMoreForLess_NY-1.pdf).

Int. 2163 would fix this, allowing New York City restaurant owners to permanently add a surcharge of up to 15% as long as they pay their tipped employees a full minimum wage with tips on top, instead of the subminimum wage. Paying workers a full minimum wage would guarantee a stable base wage regardless of customer reactions to the surcharge. It would also reward restaurants willing to pay the full minimum wage by allowing them to bring in increased revenue during the pandemic. 'High road' restaurant employers report that the additional 5% surcharge would more than cover the cost of paying tipped workers the full minimum wage.

In fact, many New York restaurateurs are already transitioning to pay workers the full minimum wage due to the intense industry staffing shortage, and this bill would allow them increased revenue to do so. Restaurant workers are leaving the industry in droves. Exactly half (50%) of New York workers report that they are considering leaving their restaurant jobs, and 90% report they are leaving due to low wages and tips - much higher than the national average of 76%. Most importantly, nearly 8 in 10 New York restaurant workers report they will stay working in restaurants if they receive a full, stable livable wage with tips on top.<sup>9</sup>

We appreciate the desire to reopen the restaurant industry and the allowance for restaurants to reopen fully. But very few New York restaurants actually have the staff to fully reopen. With half of all New York restaurant workers leaving or already having left the industry, restaurants are attempting to reopen understaffed, and remaining workers are walking out of restaurants because they are overworked.

Hundreds of independent restaurant owners across the City have raised their wages and eliminated the subminimum wage for tipped workers in response to this crisis, but they cannot do it alone. Ultimately, we need New York State to create a level playing field, so that all boats rise together. Only statewide policy can create a level playing field, and only statewide policy can communicate to the hundreds of thousands of workers who have already left the industry that it is worth coming back. Independent restaurateurs cannot do this on their own. But as is often the case, New York City can lead, taking the first step toward statewide policy for One Fair Wage by allowing restaurants to add an up to 15% surcharge if they pay One Fair Wage.

The federal government and New York State have offered up billions in restaurant relief to restaurant owners, but restaurants cannot recover without real relief for the workforce. We rely on the restaurant industry to help New York State's economy, and the restaurant industry depends on its workers. New York City can take the first step toward raising the wages for tipped workers to the full minimum wage with tips on top as an urgent matter to let New York's restaurant industry fully reopen and recover.

I would also like to lend our support to the other bills on today's committee agenda to provide further protections to delivery workers. Food delivery workers have served as critical essential workers throughout the pandemic and they deserve resources and protections afforded to other workers.

Thank you again for the opportunity to testify today. I am more than happy to answer any questions the members of the committee may have.

---

<sup>9</sup> One Fair Wage. (May 2021). It's A Wage Shortage, Not A Worker Shortage: Why New York Restaurant Workers Are Leaving the Industry, and What Would Make Them Stay. New York, NY: One Fair Wage.



NEW YORK CITY COUNCIL

Andrew Stettner, THE CENTURY FOUNDATION  
TESTIMONY IN SUPPORT OF INT. 2163 (REYNOSO)

June 8, 2021

As a Senior Fellow of THE CENTURY FOUNDATION, I would like to submit this testimony in support of Int. 2163 which would allow restaurants to impose a “Food Service Establishment Surcharge” of up to 15% contingent upon restaurants paying their tipped employees no less than a \$15 per hour minimum wage. This bill would benefit food service workers who are discriminated against in state labor laws because their income relies on tips, as well as providing employers with increased revenue and the ability to attract more workers.

The Century Foundation is an independent think tank, based in New York City, focused on creating a more equitable and inclusive economy. Over the past year, we have played a leading role in understanding the impact of COVID19 on the economy and the effectiveness of policies in response.

I commend the Council for considering this action to rectify a deep injustice in the state’s wage structure, that allows the food service industry to pay poverty wages to those in tipped occupations like servers and bussers. Under current state law, tipped workers currently can be paid as little as \$10 per-hour, which is only \$13,000 per year for someone who averages 25 hours per week. The exclusion of tipped workers from the state’s \$15 per hour minimum wage is wrong and facilitates the persistence of the working poor. While the City does not have direct authority to raise this wage it should do everything in its power to do so.

This disparity is even worse when considering that women and people of color are further harmed by the reliance on tipping for wages. Women, who make up 70% of the subminimum wage workforce,<sup>1</sup> in food service experience the highest rates of sexual harassment compared to any other industry (as they feel obligated to endure it since they are reliant on tips). People of color often receive lower tips with a \$4.79 percent gap between white male and Black female front-of-house workers.<sup>2</sup> Workers earning a subminimum wage reliant on tips also endure twice the rate of poverty compared to the rest of the workforce. Providing a minimum wage would help

---

<sup>1</sup> One Fair Wage and UC Berkeley Food Labor Research Center, “One Fair Wage: It’s a Wage Shortage, Not a Worker Shortage,” May 2021 [https://onefairwage.site/wp-content/uploads/2021/05/OFW\\_WageShortage\\_F.pdf](https://onefairwage.site/wp-content/uploads/2021/05/OFW_WageShortage_F.pdf)

<sup>2</sup> *ibid.*

alleviate these issues. For instance, the states that pay tipped service workers full minimum wage have half the rate of sexual harassment as states with a subminimum wage.<sup>3</sup>

This proposal properly amends a surcharge originally put into place during the pandemic to support restaurants. The original 10 percent surcharge enacted by the council last October greatly benefited employers with increased revenue, yet did not require the business to pass along the revenue to service workers. These frontline essential workers experienced the same if not more risk to COVID-19 as those in non-tipped minimum wage jobs. With a 5% increase in the surcharge, restaurant employers could more than cover a minimum wage for tipped workers.

This proposed legislation would also facilitate the recovery of our economy. With in person dining reopening, City restaurateurs are bemoaning a labor shortage.<sup>4</sup> Focus groups of immigrant workers conducted by the Century Foundation found that many left the restaurant sector for other work during the pandemic due to fear of infection and a decline in earnings. This is backed up by a survey of 2,600 food service workers from late last year with over half of workers (56%) considering leaving the sector. A super majority of respondents (78%) said they would stay in their jobs if provided a full, stable, minimum wage.<sup>1</sup>

The employers complaining about a worker shortage are really suffering from a “wage shortage.” With a full minimum wage, workers, who are better able to provide for themselves, and employers, who can attract new workers and preserve their talent, would both be able to benefit through this bill. This bill would give these employers a powerful tool - a 15% surcharge - to boost their bottom line and cover decent wages.

In conclusion, we all know that restaurants are at the heart of New York City’s consumer economy. Nothing is more important to the city’s recovery than supporting this sector and the workers that are at the heart of it. Intr. 2163 is a bold and powerful step in the right direction.

---

<sup>3</sup> ROC United. “The Glass Floor: Sexual Harassment in the Restaurant Industry,” October 2014 [https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT\\_TheGlass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf](https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf)

<sup>4</sup> Grace Dean, “New York City restaurants are being crushed by the current labor shortage and may take months to get enough staff, Shake Shack founder Danny Meyer,” *Insider*, May 28, 2021 <https://www.businessinsider.com/nyc-restaurants-labor-shortage-find-workers-danny-meyer-union-square-2021-5>