

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON SMALL BUSINESS

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ROOM 1

B E F O R E: CHAIR MARK GJONAJ

COUNCIL MEMBERS: MARK GJONAJ
HELEN ROSENTHAL
ERIC DINOWITZ
FRANCISCO MOYA
BILL PERKINS
SELVENA BROOKS-POWERS

A P P E A R A N C E S (CONTINUED)

CHRISTIAN KLOSSNER
STEVEN ETTANNANI
RACHEL CORDERO
DCWP
ANDREW DING
AMY HEALY
THOMAS GRECH
DAVID LONDON
DANIEL MCCARTHY
GEORGE BUONO
IKE BRANNON
ANDREW RITCHIE
ROBERT BOOKMAN
JOSH GOLD
JEFFREY BANK
KATHLEEN REILLY
LISA SORIN
LEE JACOBS
RYAN NAPLES
MICHAEL FUGUAY
ANDREA KOUTSOUDAKIS
JOHN MCCARTHY
JAMES MALLIOS
JOHN OLSEN
MONTANA WILLIAMS
JONATHAN FORGASH
BON YAGI
YUTAKA TAKEI
JEREMY WLACHIS
CYNTHIA SHEPHERD
ZOE DARMAN

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3 SGT. MARTINEZ: Sergeants, if you could
4 please begin your recording.

5 SGT. LEONARDO: PC recording is underway.

6 MAN: Chamber recording started.

7 SGT. BRADLEY: Cloud recording is up.

8 SGT. MARTINEZ: Good morning and welcome
9 to today's remote New York City Council's hearing of
10 the Committee on Small Business. At this time, would
11 all panelists please turn on their video. To
12 minimize disruption, please silence your electronic
13 devices and if you wish to submit testimony you may
14 do so via email at the following address,
15 testimony@council.nyc.gov. Once again, that address
16 [is testimony@council.nyc.gov](mailto:testimony@council.nyc.gov). Thank you for your
17 cooperation. We are ready to begin.

18 CHAIR GJONAJ: Thank you for joining our
19 hearing today before the Council's Committee on Small
20 Business. I'll be chairing this hearing in person
21 today. First, I'd like to acknowledge my colleagues
22 who are present in the chambers with me, Council
23 Member Rosenthal, Council Member Dinowitz, and via
24 Zoom, Council Member Moya. Good morning. I'm
25 Council Member Mark Gjonaj, Chair of the Committee on

2 Small Business. I'd like to welcome you to our
3 hearing on four Bills: Intros 2333, 2335, 2356, and
4 2359 which seek to accelerate the recovery of the
5 restaurant industry and ensure restaurants can
6 succeed in this post-COVID market place. Even before
7 the pandemic, owning and operating a restaurant in
8 the city was challenging. 80% of restaurants
9 typically go out of business within the first five
10 years of opening, between rent, labor, and inventory
11 costs, government regulations, and steep competition,
12 operating a restaurant at profit can be extremely
13 challenging, and yet, tens of thousands of New
14 Yorkers still choose this industry. Perhaps, they
15 felt their culture's cuisine was not represented in
16 their neighborhood or because they wanted to share
17 their love of the food with their communities, and
18 New Yorkers have supported this entrepreneurial
19 spirit by patronizing these restaurants. The
20 pandemic and the resulting restrictions on in person
21 dining, while certainly necessary for public health,
22 dealt a devastating blow to restaurant owners.
23 Restaurants were forced to survive on depleted
24 revenues and third-party platforms which had
25 previously accounted for a small percentage of orders

2 were suddenly the lifeline for many restaurants. To
3 ensure restaurants could survive through the
4 pandemic, this committee passed local laws 51 and 52
5 of 2020 which prevented platforms from erroneously
6 charging restaurants or phone orders that did not
7 occur and capped the fees that the platforms could
8 charge restaurants. The committee extended both of
9 these laws through the passage of local law 87 and
10 88. As the city has reopened and the dog days of the
11 pandemic are hopefully behind us, the restaurant
12 industry will begin to recover. Certain customers
13 and consumer habits have remained. That would make
14 it more difficult for restaurants to succeed. Mainly
15 consumers who have become accustomed to ordering on
16 third party platforms that charges a substantial fee
17 per order for the marketing and delivery service they
18 provide, may continue to use these platforms.

19 According to Scott Duke Coalminers (SP?), a professor
20 at Harvard Business School, and the quote is, "People
21 have gotten much more used to ordering food and other
22 products through delivery services. Some of that
23 will decline once it's safe to do things in person,
24 of course, but new habit formation is powerful". The
25 rise of third-party platforms is also apparent from

2 their corporate strategies. Uber acquired delivery
3 service Postmates in November 2020, and December
4 2020, Door Dash made its public market debut. Door
5 Dash stock rose 86% during its initial public
6 offering, one of the biggest IPOs of 2020 at a time
7 when over a 110,000 were closing across the country,
8 including over 5000 in New York City. The platforms
9 were experiencing a dramatic increase in business,
10 while the restaurants were seeing a depletion of
11 their business. The committee has conducted three
12 oversight hearing this legislative session on the
13 rise of third-party delivery platforms in the city.
14 During these hearings, small businesses and advocates
15 have highlighted issues with these platforms
16 including listing restaurants on their platforms
17 without permission, high commission fees, and the use
18 of app-generated phone numbers to charge a commission
19 and at times, charge a commission for an order that
20 did not take place. As President Biden has said, we
21 must build back better. The package of Bills we are
22 hearing today will ensure that restaurants have the
23 tools that they need to succeed and survive the post-
24 COVID world. I look forward to hearing feedback from
25 the delivery platforms, restaurants, business

2 adversary groups and restaurant owners on the impact
3 of this legislation and how the Bills can be best
4 tailored to achieve their aims. I look forward to
5 having a conversation with the Administration as well
6 as to hear about their experience enforcing Local
7 Laws 87 and 88 of 2020 and any changes to the Bills
8 they would recommend for that experience. As Chair
9 of the committee, it has been my top priority to
10 ensure that small businesses, microbusinesses, mom
11 and pop shops remain the backbone of the city's
12 economy from suspending personal guarantees on small
13 business leases to cutting government fines on rules
14 and regulations, it's been an honor to serve the
15 hardworking small business owners of this city. With
16 that said, I want to thank my Chief of Staff, Reggie
17 Johnson (SP?); our Legislative Council, Stephanie
18 Jones (SP?); Policy Analysis, Noah Micsler (SP?); and
19 Financial Analysis, Aleah Ali (SP?) for their hard
20 work in preparing for this hearing. Before I turn it
21 over to Council Member Moya to deliver an opening
22 statement, I just want to express the importance of
23 this hearing and why these hearings are so important
24 as we determine what needs to be done to protect
25 small businesses, consumers, and industries. The

2 impacts of Intros 2333, 2335, 2356, and 2359 now have
3 enough data for us to understand their impact and
4 perhaps unintended consequences. We need to learn
5 from this administration about the difficulties that
6 they have experienced enforcing Local Law 8788 and
7 concerns that they have about these Bills as we move
8 forward. While hearing from all from all of the
9 stakeholders. I'm a pro-business Council Member and
10 I believe in free markets, and I believe that
11 government's responsibility is not to pick winners
12 and losers, but I do believe that government has a
13 role in protecting its consumers and citizens and tax
14 payers, and with that being said, I'd like to turn it
15 over to Council Moya who has a statement to deliver.

16 CM MOYA: Thank you, Chair Gjonaj. Thank
17 you for all that you've done throughout this pandemic
18 and throughout the years to really help and protect
19 our small businesses when they needed it the most,
20 and I thank you for that as well. I'm Council Member
21 Francisco Moya. Thank you again, Chair, for having
22 me. Mom and Pop shops make each neighborhood unique
23 and they employ locally and drive our local
24 economy. When the pandemic hit, and if you're
25 operating in a neighborhood disproportionately

2 impacted by COVID, these businesses took a hit, and
3 if you didn't have the resources to pivot to a
4 digital food delivery service model, the loss of
5 business was greater. Now add that to having to pay
6 exorbitant fees to third party food delivery services
7 while trying to keep staff employed and covered
8 expenses, all the while managing the loss of
9 business. For far too long, these third-party food
10 delivery services knowingly and willingly took
11 advantage of small business, and the pandemic
12 highlighted this abuse. As one of the greatest
13 cities in the world, we need to stand by our small
14 business owners every single day. We cannot allow
15 these companies to choose their profit margins over
16 those of mom-and-pop shops and especially struggling
17 by charging them fees for services they may not even
18 be providing. As our small businesses begin to
19 recover, we must prevent abuse like this from
20 happening again. These companies from the onset had
21 the opportunity to do what is right, so here's their
22 chance. We need to do everything we can to protect
23 our mom-and-pop shops, the workers they employ, and
24 our local economy. For these companies, it's just
25 another restaurant, but for us, in our neighborhoods,

2 these restaurants are an integral part of the
3 character of our community, and that's why I
4 introduced Intro 2359 to make these caps permanent.
5 I will always stand by my small business owners over
6 a billionaire-owned company any given day of the
7 week, and with that, I want to turn it back over to
8 our Chair and thank you again for allowing me to
9 speak.

10 CHAIR GJONAJ: Thank you Council Member
11 and I want to thank you for the time and the hard
12 work that you've put into this hearing and all along
13 during the pandemic to protect our small businesses,
14 and your friendship and commitment to our small
15 business is something that I'm proud of, and with
16 that, I want to now turn it over to our moderator,
17 Committee Counsel Stephanie Jones to go over some
18 procedural items over Zoom for those of you present
19 here in person, Zoom feed that we broadcast footage
20 of our Committee Council and any witnesses testifying
21 over Zoom will be displayed on the television set up
22 for us in the city hall chambers.

23 COMMITTEE COUNSEL STEPHANIE JONES: Thank
24 you, Chair Gjonaj. I am Stephanie Jones, Counsel to
25 the Committee on Small Business and I will be

2 moderating this hearing. Before we begin, I'd like
3 to remind Zoom participants that you will be on mute
4 until you are called on to testify, at which point you
5 will be unmuted by the host. During the hearing, I
6 will be calling on panelists to testify one-by-one.
7 Please listen for your name to be called as I will
8 periodically be announcing who the next panelist will
9 be. At this hearing, we will first be inviting
10 testimony from the Office of Special Enforcement, and
11 then from members of the public. During the hearing,
12 Council Members who would like to ask a question of
13 the Administration or a specific panelist will be
14 called upon by the Chair to do so. We will be
15 limiting Council Member questions to five minutes,
16 which includes the time it takes to answer your
17 questions. For all panelists, when called on to
18 testify, please state your name and the organization
19 you represent, if any. We will now call
20 a representative of the Administration to testify. We
21 will be hearing testimony from Christian Klossner,
22 Executive Director of the Office of Special
23 Enforcement. We will also be joined for questions by
24 Steven Ettannani, Executive Director of External
25 Affairs for the Department of Consumer and Worker

2 protection. At this time, I will administer the
3 affirmation to Administration panelists. Executive
4 Director Klossner and Executive Director Ettannani,
5 please raise your right hands. Do you affirm to tell
6 the truth, the whole truth, and nothing but the truth
7 before this committee and to respond honestly to
8 Council Member questions?

9 CHRISTIAN KLOSSNER: I do.

10 COMMITTEE COUNSEL STEPHANIE JONES: Thank
11 you. Executive Director Ettannani.

12 STEVEN ETTANNANI: I do.

13 COMMITTEE COUNSEL STEPHANIE JONES: Thank
14 you. At this time, I'd like to invite Executive
15 Director Klossner to present his testimony.

16 CHRISTIAN KLOSSNER: Thank you. Good
17 morning, Chair Gjonaj and members of the Committee on
18 Small Business. My name is Christian Klossner, and I
19 am the Executive Director of the Office of Special
20 Enforcement, also known as OSE which is overseen by
21 the Mayor's Office of Criminal Justice. I am also
22 joined by my colleagues Steven Ettannani, Executive
23 Director of External Affairs for the Department of
24 Consumer and Worker Protection, or DCWP. Thank you
25 for the opportunity to testify today. OSE's mandate

2 originally from a mayoral executive order in 2006 is
3 coordinate efforts across cities agencies to problem
4 solve around emerging issues adversely affecting
5 neighborhood cohesion, livability, and safety. OSE
6 has served this function in numerous issue areas with
7 the vast majority of this work over the past several
8 years focused on preventing the housing loss and
9 community disruption caused by an illegal short-term
10 rental. Since the emergence of COVID-19, OSE has
11 engaged in new work strains related to the pandemic
12 including pursuant to a designation from the
13 corporation council, taking a lead in investigating
14 industry compliance with, at first, Local Laws 51 and
15 52, later Local Laws 87 and 88 which prohibit
16 delivery apps from charging restaurants for phone
17 calls that do not result in transactions and imposing
18 caps on certain delivery applications fees during and
19 for 90 days after the pandemic. When the laws were
20 first passed, the enforcement challenges were clear.
21 We considered, how can we move quickly to enforce a
22 law, ensure industry-wide compliance and do so
23 without placing a heavy time burden on struggling
24 restaurant tours to gather, detect, and report every
25 possible violation and then participate in extensive

2 investigation and prosecution of overcharges on a
3 one-by-one basis. We also considered how we can do
4 all that with existing resources. OSE is pleased to
5 have piloted a successful enforcement model that
6 resulted in broad-spread compliance with the law.
7 Instead of taking a complaint-by-complaint approach
8 that could have entailed bringing multiple actions
9 against the same several companies, OSE established a
10 sort of early warning system by which it would learn
11 about potential violations and then use those reports
12 of a singular occurrence that appeared to violate the
13 law to confront the company and ensure that the
14 issues were addressed comprehensively to the benefit
15 of all the users of that company's service and not
16 just the one that gave us the report. I want to take
17 a moment to thank those restaurantories who notified
18 OSE of practices that potentially violated the law,
19 and in particular, I see that several of them are
20 here today, and I look forward to hearing what they
21 have to report now. The reports and the effort they
22 took to prepare them allow OSE to identify and
23 resolve compliance issues as well as develop a sense
24 of the limitations of the law and to understand some
25 of the perhaps unintended consequences of these laws.

2 I look forward to hearing from them during this
3 hearing and others about these new proposals and the
4 need for a permanent cap. It should also be noted
5 that the companies themselves chose to take
6 compliance seriously. Often new laws are challenged
7 by industry law suits seeking to invalidate the
8 regulations. When it came to these laws, the
9 companies apparently chose to forego legal challenge
10 of the laws and instead accepted the temporary
11 restrictions for the duration of the pandemic. I
12 also want to thank the sponsors and the Council for
13 providing tools beyond the traditional enforcement of
14 complaint investigation violation and civil penalty.
15 OSE believes that including restitution as a
16 potential remedy not only created an option for
17 making restaurantories whole but eliminated the
18 financial incentive for companies who may have
19 otherwise chosen not to comply. Including an option
20 to seek injunctive relief meant that we could seek a
21 court order forcing a company to comply across the
22 board instead of hoping that fines for non-compliance
23 would be sufficient deterrence. Allowing an action
24 to be brought in any part of competent jurisdiction
25 for the full range of remedies sent the message that

2 enforcement actions could be brought swiftly and
3 comprehensively and not get bogged down in multiple
4 actions against the same party that would resolve one
5 instance at a time over months. It was your
6 partnership in providing this set of flexible
7 enforcement options that the Administration requested
8 that made possible the level of compliance we
9 observed and produced. OSE testified at the last
10 hearing in August that the Administration supports
11 passage of legislation ensuring the provisions added
12 by Local Laws 51 and 52 remain in effect until
13 restaurants are allowed to open fully. At a time
14 where the declared health emergency forced most
15 restaurants to pivot to a delivery only or a delivery
16 mostly operation, it was critical to step in and
17 ensure that restaurants would not be forced to
18 operate at a loss while delivery service company
19 reaped their windfall with the surge in deliveries.
20 Put another way, the pandemic forced restaurants to
21 use services that they may have otherwise never
22 accepted the rates or terms of simply so they could
23 keep their lights on, and their staff employed. As
24 the city reopens, restaurants are leading the way in
25 the recovery of the New York job market. According

2 to my colleagues at the Department of Small Business
3 Services, restaurants added 15,000 jobs in April and
4 the city's full-service restaurants now have three
5 times as many employees in April of this year as they
6 had in April of 2020, their lowest point. Given
7 these positive indicators, tourism and foot traffic
8 are still catching up with below pre-pandemic norms
9 and restaurants still need our support to recover
10 from a devastating year. Now that we are no longer
11 subject to the emergency declarations and restaurants
12 are no longer prohibited from maximum occupancy and
13 the clock is winding down on local laws 87 and 88,
14 OSE appears today to report that the administration
15 continues to support, ensuring that local businesses
16 are not subject to predatory actions by companies
17 that interject themselves between a business and its
18 patrons while also supporting those local businesses'
19 ability to determine for themselves free from
20 artificial bargaining disparities what services they
21 are or are not willing to pay for. Introductions
22 2356 and 2358 would make the provisions of Local Laws
23 51 and 52 and 87 and 88 permanent. Introduction 2333
24 prohibits third party delivery app from arranging
25 deliveries from a restaurant or listing the

2 restaurant on the app without a written agreement
3 between the app and the restaurant to provide
4 delivery services. Introduction 2335 requires third
5 party delivery apps to disclose a restaurant's direct
6 phone number with a description of the phone number
7 and any fees associated with calling the number. The
8 Administration stands ready to work with Council on
9 these proposals to ensure that they have dedicated
10 resources in stock and are well-tailored to prevent
11 predatory behavior and include flexible enforcement
12 alternatives. In particular, OSE encourages a close
13 review of the Bill's provisions and definitions.
14 Specifically, the definition of third party deliver
15 service could prove problematic in the long term. A
16 company could easily abandon its delivery options and
17 then be free to charge whatever it could get a
18 restaurant to agree for advertising and promotion.
19 Similarly, a company could provide a range of helpful
20 services but by also offering delivery, be
21 financially prevented from offering the other
22 valuable services, or a third situation could be two
23 company that provide advertising and discount credit
24 card processing rates, but only one of those two
25 offers delivery. Only the company that includes

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2 delivery would fall under the limit of the law. We
3 are looking forward to hearing from the many
4 restaurantories and other business who make these
5 kind of business decisions that are currently
6 impacted by the existing laws and who will be most
7 affected by the Bill proposals. We are committed to
8 working with the Council to ensure the final Bills
9 reflect the policies that will protect restaurants
10 from predatory behavior while retaining the business
11 options that businesses choose for themselves. Thank
12 you again for the opportunity to provide testimony
13 and I welcome any questions you have.

14 COMMITTEE COUNSEL STEPHANIE JONES: Thank
15 you. I will now turn it over to questions from Chair
16 Gjonaj. Administration panelists, please stay
17 unmuted if possible during this question-and-answer
18 period. Thank you. Chair Gjonaj, you may begin your
19 questions.

20 CHAIR GJONAJ: Thank you, and I want to
21 also acknowledge that we have Rachel Cordero (SP?)
22 with us, Deputy Director for Government Affairs and
23 how instrumental she has been in preparation for this
24 hearing. Thank you, Stephanie. I want to thank you
25 for that explanation. Can you help explain the

2 process from forcing the parts of Local Law 87/88
3 from the point of which you receive a complaint to
4 the point of which a complaint is resolved and the
5 number of agents or officers that you have working on
6 the complaints and then actually following through
7 with the complaint?

8 CHRISTIAN KLOSSNER: Sure. I mean I
9 covered this in my testimony. I reference the
10 (inaudible) system. I want to be very clear. We did
11 not set up a complaint and inspection resolution
12 system. What we set up was an early warning system
13 where businesses that believed that they were being
14 charged inappropriate could report that and that we
15 would then take that and approach the companies, we
16 would obviously investigate, look at it, see rather
17 the law applied and not in every case did it apply,
18 and then we would reach out to the companies and say
19 we've identified a problem, what is going on, here is
20 what we expect from you to fix it. Our goal in doing
21 that was to get restitution whenever possible for the
22 restaurants and to be able to have the benefits of
23 the one complaint in order to haul all of the
24 similarly situation restaurants throughout the city.
25 As to the number of staff, we did this within

2 existing resources. We, I would say, approximately
3 four to five OSE staff members worked on this with
4 some portion of their time, and I think that answers
5 the question. I'll turn it back to you, Chair, to
6 do, and I do want to say also, I want to thank your
7 staff for putting the hearing together. It was
8 seamless getting in this morning.

9 CHAIR GJONAJ: Thank you. For the four
10 or five OSE staff, what were the number of complaints
11 that were received in reference to Local Law 87 and
12 88?

13 CHRISTIAN KLOSSNER: Again, I'm going to
14 reject complaint because many of the context that we
15 received were actually more in the status of an
16 inquiry asking rather the law applied to us. We
17 received approximately 22 such contacts from 15
18 different individuals.

19 CHAIR GJONAJ: You received 22 questions,
20 is that what you're saying from 15 ... (crosstalk).

21 CHRISTIAN KLOSSNER: I would say 22
22 contacts, some of which were questions like, hey,
23 this company raised their rates on me to meet the
24 limits of the fees, can they do that? Right, that
25 answer is yes, they can. We received an inquiry

2 saying they're charging me 10 percent for a pickup.
3 Can they do that? The answer is no, and then we
4 lodged an investigation and we started dealing with
5 the company and pursuing restitution.

6 CHAIR GJONAJ: Using that question or
7 contact, how many of the 22 involved pricing and the
8 charges or the fees that they were paying to a third-
9 party delivery app?

10 CHRISTIAN KLOSSNER: I'd have to get back
11 to you on the specific breakdown. The issue that
12 received the majority of inquiries were certainly
13 related overcharging. Some of those inquires were,
14 you know, concerns about overcharging that turned out
15 to be, you know, more about how the charges were
16 described than rather or not they actually exceeded,
17 but that was the majority issue.

18 CHAIR GJONAJ: So, Mr. Klossner, did you
19 receive any question or concern or a contact
20 regarding a fee that should not have been charged
21 according to the local laws that we have passed and
22 that were found that they were unjustified?

23 CHRISTIAN KLOSSNER: Yes. Well, that was
24 a two-part question, sorry. I answered yes to your
25 first part which was were there complaints about the

2 fees that were unjustified. In the last appearance
3 before this committee, I described two specific
4 circumstances that were potentially violated. One
5 set of inquiries related to the situation I just
6 mentioned were a company was apparently charging 10
7 percent for pickup order when the limit would be 5
8 percent if there wasn't a delivery. We went to the
9 company, and we found that that was happening, that
10 company provided restitution, did a comprehensive
11 review, corrected the issue, and issued refunds to
12 the restaurant. The other instance that I reported
13 to the Council at the last hearing was that
14 restaurant owners were concerned that the credit card
15 processing fees were not covered by the 5 percent
16 cap, and they were being charged. When Local Laws 51
17 and 52 became Local Laws 87 and 88, the credit card
18 processing fees were specifically exempted and that
19 ended that review, and then in the last hearing, we
20 had reported that we had not heard any concerns about
21 charges for calls and then one of the public
22 witnesses then later testified in that hearing that
23 they believed that they had been charged for those
24 calls. We did investigate that, and we took that
25 back to the company, and we think that the, you know,

2 we think that the company has made very significant
3 efforts to comply with the law. Our review of that
4 matter continues to be ongoing, but it does raise
5 significant concerns that I want to put before the
6 Council about extending that Bill, and I think that
7 these concerns also touch on Intro 2335, uh, I
8 apologize, I may have just said the wrong number.
9 Uhm, no, 2335, that's right, uhm, and that's that,
10 and I, you know, I will give my view and I look
11 forward to the Council probing this issue with any of
12 the companies that testify so we can get a greater
13 clarity as well as what the restaurants have to say
14 about this. The reality is a restaurant is not just
15 paying for the order when they pay by each call,
16 right. They may also, depending on the company they
17 are interacting with, be paying for a suite of
18 business tools that are used to track, receive,
19 record, store phone calls, and to review and manage
20 the calls and orders. Making this provision
21 permanent in its current format, raises a concern in
22 that there is a possibility it would force the
23 company to suspend support for some of those tools.
24 I think that it's particularly important that
25 business owners maintain access to these tools.

2 These are the very same tools that they were using to
3 do their own investigation of charges to be able to
4 report and provide documentation to us. We would
5 also be concerned if these were made permanent that
6 the delivery of company's would change their pricing
7 model in such a way that the charges would be shift
8 to all users regardless of rather their phone is
9 ringing instead of only those users whose phones are
10 ringing based on the services provided by the
11 companies. As I said before, you know, I hope that
12 that's clear and I hope this provides the Committee
13 with a line of questions for the industry that
14 testifies today, and I welcome that insight of
15 business owners who use these tools and who can speak
16 to the volume.

17 CHAIR GJONAJ: Thank you, Mr. Klossner,
18 but I'm trying to get a better understanding of how
19 OSE received and what complaints or concerns were
20 brought to their attention and then the follow-up
21 with those third-party delivery apps. On the point
22 that you brought up about phone charge order from a
23 complaint that was brought up at our own hearing, was
24 it validated that it was an inappropriate charge
25 after you investigated it?

2 CHRISTIAN KLOSSNER: It did appear to be
3 an inappropriate charge.

4 CHAIR GJONAJ: And when you brought it to
5 their attention of the third-party delivery platform,
6 what was their response?

7 CHRISTIAN KLOSSNER: Their response is
8 part of an ongoing investigation that involves
9 exchange of confidential information that I'm not
10 going to talk about before this Committee hearing and
11 in a public way because it's ongoing.

12 CHAIR GJONAJ: But because it's ongoing ...
13 (crosstalk).

14 CHRISTIAN KLOSSNER: I'd happy to perhaps
15 meet privately with Council staff to discuss this,
16 but you know, the information sharing was between the
17 company and ourselves was often subject to
18 confidentially orders and protective orders, and so
19 we really need to be very careful to protect the
20 integrity and the ongoing cooperation of the company
21 frankly with the investigation.

22 CHAIR GJONAJ: Mr. Klossner, I thank you
23 for that, but this is a transparent hearing, and the
24 public is watching. I'm not asking you for the name
25 of the restaurant operator or the third-party food

2 delivery app itself, but you obviously found an
3 erroneous charge that was in violation of our Local
4 Law 8788. When you brought it to the attention of
5 that provider and you're investigating or they're
6 investigating, it sounds like they're trying to take
7 corrective measures; what I'm trying to find out is
8 this a wide-spread problem? Did they identify this
9 as a single incident? Are you looking into how many
10 other incidents that could be, that perhaps were not
11 brought to OSE?

12 CHRISTIAN KLOSSNER: Yeah, let me try to
13 give a little more detail, and forgive me for
14 speaking slowly. I just try carefully, in order to
15 make sure I'm not speaking out of turn about the
16 matter that continues to be under investigation. I
17 think, you know, as I mentioned, the tools that are
18 used; and I think the person who reported this in the
19 hearing, in their testimony said that because they
20 had some free time, they started going back and
21 listening to calls to see if they returned to the
22 order. The reality is, neither, neither the city,
23 the restaurants, nor the companies can afford to
24 listen to every single phone call to determine this
25 is a very, very challenging law to implement for the

2 industries. It's a very challenging law for
3 businesses to monitor, and it's a very challenging
4 law for the city to enforce. The understanding that
5 we gained, that we believe to be universal across
6 companies is that there are various indicators that
7 they use to screen out calls that are unlikely to
8 have reported an order. So, one example would be if
9 a call is five seconds long, right, and then the
10 company would say, we're not going to charge for that
11 because there's no way it resulted in an order. I do
12 not think that it can be done (inaudible), but I do
13 believe that the industries that took very
14 significant steps in the implementation of the law to
15 prevent any charges from occurring as well as after
16 our inquiry to continue to refile and adjust their
17 algorithms to make sure that even more calls were
18 screened out.

19 CHAIR GJONAJ: But Mr. Klossner, is the
20 law then fool-proof? Is it protecting our restaurant
21 industry?

22 CHRISTIAN KLOSSNER: I, I don't think
23 it's fool-proof. I think it was an important measure
24 during the emergency in order to protect consumers.
25 I think that this is an issue, and again, I really am

2 looking forward to hearing what witnesses that come
3 after me have to say on the matter continuing to
4 engage with Council on this to make sure that they're
5 protected in the best way possible, but as I said,
6 this is a very challenging law and it has potential
7 for a number of unintended consequences in terms of
8 simply the industry changing the way they build or
9 changing the amount services they provide, which we
10 know that they did. All right, we know that they
11 stopped allowed premium sponsored content ads and as
12 a result, businesses that wanted to pay more than
13 that the fee limits in order to launch a business or
14 to get premium placement, were not allowed to, right,
15 and there's tons of unintended consequences that we
16 really need to work through and we need to hear from
17 the companies here today on what efforts they took to
18 comply with the law as well as their view on how
19 their compliance is.

20 CHAIR GJONAJ: Mr. Klossner, and I
21 apologize for being so persistent, but it sounds more
22 like I'm a dentist now trying to pull out a tooth,
23 and this is, I believe several months ago that this
24 was brought to your attention, correct, at our
25 hearing. Do you remember the date?

2 CHRISTIAN KLOSSNER: I don't remember the
3 date, I believe, I believe August, but I'm guessing
4 on memory.

5 CHAIR GJONAJ: So, we're looking at
6 August and now, we're into July, that's more than 8
7 months later and you still haven't; if you, if there
8 was a violation, I believe the Local Law is clear, so
9 if you see a violation, you brought it the attention
10 of your provider and if it was confirmed a violation,
11 shouldn't there have been a violation issued?

12 CHRISTIAN KLOSSNER: No.

13 CHAIR GJONAJ: No?

14 CHRISTIAN KLOSSNER: I think the law
15 clear provides that as an option, but as I testified
16 before, the challenge to doing this was how can we
17 enforce this law right away. Right, when these
18 passed, we didn't know the year. We didn't want to
19 wait for an extensive (inaudible) of rules setting up
20 a full complaint line through 3-1-1 and etc., we set
21 up an immediate pre-effective date early warning
22 system where business owners committed to us to
23 report any problems that they saw, and we took each
24 complaint that had validity directly to the companies
25 and produced compliance on behalf of all restaurants.

2 So, I understand that you had a strong preference for
3 a complaint and violation, and I am here as the
4 (inaudible) enforcement expert to say that is not the
5 more efficient or effective way to do this kind of
6 enforcement, nor would it had been the kind of
7 lightening fast enforcement that we did settle.

8 CHAIR GJONAJ: Uh, this to me is
9 something unorthodox because in the city of New York,
10 we love to find our business owners and anyone that's
11 in violation and we leave it to the interpretation of
12 the court system thereafter. What you'll telling;
13 I'm going to read this law, and if I'm wrong here,
14 please let me know. Local Law 872020 is amended as
15 follows. Telephone orders, no third-party food
16 delivery service may charge any fee for a food
17 service establishment for a telephone order if a
18 telephone call between such establishment and a
19 customer does not result in an actual transaction
20 during the telephone call. The requirement of his
21 section applies only during the (inaudible) which a
22 state disaster emergency has been declared by the
23 governor of the state of New York or a state
24 emergency has been declared by the mayor. Such
25 declaration is in effect in the city's food service

2 establishment is prohibited from operating at the
3 maximum capacity for a period of 90 days. There is
4 no fine associated with this violation. Is that my
5 interpretation?

6 CHRISTIAN KLOSSNER: I'm sorry, you were
7 reading the law, and then you said there's no fine
8 associated with it, and you're asking me ...
9 (crosstalk).

10 CHAIR GJONAJ: I'm asking you. I'm
11 asking you the interpretation of this, of section
12 20847 of the Administrative Code of New York, as
13 amended by number 872020, cause if there is not
14 violation of fee imposed for violation or for non-
15 compliance, then why do we even have this Local Law?

16 CHRISTIAN KLOSSNER: The fines, and I
17 hear what you're saying, right, there is a
18 traditional view of how to do enforcement in the city
19 and that's, you take the complaint through 3-1-1, you
20 send an inspector, the inspector makes a finding,
21 (inaudible) and a violation is imposed, right, I
22 understand, but is the normal way, and in many
23 situations, that is the best way. Right, if you have
24 a set of actors such as building owners, right, we've
25 posed our work as according to building code, there

2 are hundreds and thousands (inaudible) and there is a
3 smaller number than that of owners. They're all
4 acting independently, right, you can't take them on
5 all at once as a class. This is an instance where
6 there are only a handful of companies that are
7 providing the same service to people all across the
8 city. If the city had one landlord for all, all
9 people ... (crosstalk).

10 CHAIR GJONAJ: Mr. Klossner, I'm so sorry
11 ... (crosstalk).

12 CHRISTIAN KLOSSNER: We really want to ...
13 (crosstalk).

14 CHAIR GJONAJ: I, I come from real estate,
15 so unless there was a complaint filled that was
16 brought the attention, to the attention of the
17 departmental agency, there wouldn't be an inspector
18 that sent out, and routinely inspectors go out and
19 they travel the districts and neighborhood of the
20 city and if they see something, they follow-up. In
21 this case, there was an actual complaint brought to
22 your attention, you confirmed that there was an
23 illegal charge. I'm asking eight months later;
24 you're telling me it's still under review. Why

2 wasn't there a violation issued? What more did we do
3 to see if this was widespread? I, I ... (crosstalk).

4 CHRISTIAN KLOSSNER: That's what I just
5 explained, and I've explained it, and I'll explain
6 again, and I don't mind your persistence. That is
7 why we're here, and I'll try to make myself clearer
8 than I have been so far. We did not set up a
9 violation system. That would have taken resources we
10 were not provided. It would have taken time that New
11 York City restaurants didn't have, and it would have
12 placed a significant amount of burden on restaurants
13 to do the work themselves, and I'm not going to back
14 down from that decision. That was the right
15 decision. We wanted to protect our restaurant as
16 fast as possible. It's a decision that Council was
17 aware of before they passed the Bills, and it's a
18 decision that I stand by, and as a result of that
19 decision, what we did was, we immediately protected
20 restaurants.

21 CHAIR GJONAJ: How?

22 CHRISTIAN KLOSSNER: We made sure that
23 these businesses were compliant with the fee caps.
24 We contacted them before the law went into effect and
25 we said, this is going on. We expect compliance. If

2 there's not compliance, you can expect to pay fines,
3 restitution, and attorney fees, right. What I don't,
4 what I'm not going to do with one of six companies
5 that's violating across dozens and dozens of users is
6 go to OATH dozens and dozens of times on every single
7 undercharge. That's an incredible, incredible
8 inefficiency ... (crosstalk).

9 CHAIR GJONAJ: (Inaudible).

10 CHRISTIAN KLOSSNER: And frankly, it
11 serves to the advantage of the major company that can
12 go and fight these individual instances out. It's
13 much better to work with them, get compliance and
14 restitution where need be, and if it requires a
15 lawsuit, to bring one lawsuit alleging all the
16 violations.

17 CHAIR GJONAJ: It's one violation for one
18 infraction and what you're telling me is there is no
19 teeth. You choose not to ... (crosstalk).

20 CHRISTIAN KLOSSNER: I didn't say that.
21 No, I didn't say that. In fact, I thanked the
22 Council for its partnership in ensuring that these
23 laws had reality in giving us options other than the
24 traditional complaint investigation violation.
25 Council Member, you know, you're trying to get me to

2 say something that you're trying to say. We may not
3 agree on this, but ... (crosstalk).

4 CHAIR GJONAJ: I come from a ...
5 (crosstalk).

6 CHRISTIAN KLOSSNER: I did explain what
7 we did in line, and I'm happy to keep explaining.

8 CHAIR GJONAJ: I come from real estate
9 and I'm very familiar on how you operate and what it
10 means to issue a violation where there is a complaint
11 and how it's followed up, and no real estate property
12 owner gets that break. We don't get a notice that
13 says hey do realize that your sidewalk is cracked.
14 It comes as an immediate violation and imposed
15 penalty for not maintaining. So, I asked you, in
16 your file with your company, you said they made
17 restitution to the restaurant. If I was in the
18 business, well, then I would be doing that all day
19 long because there would be no fee of penalty, and if
20 I get caught, worse-case scenario is I have to refund
21 the business that I erroneously charged for an order
22 that I shouldn't have. So, that's what I'm implying
23 here, and you're not saying, and I asked you ...
24 (crosstalk).

2 CHRISTIAN KLOSSNER: I will be more plain
3 there. It would not have served anyone's interest,
4 the government or the restaurant's to have brought an
5 action for a \$1000 fine against a company that was
6 cooperating with the investigation and making
7 changes. That would have been a misuse of public
8 funds and it would have provided no additional
9 benefit to any of the restaurants.

10 CHAIR GJONAJ: That's going to be music
11 to the ears of the real estate industry cause I'm
12 going to use this in their defense from now on.
13 Don't worry. It's not the best use of city funds
14 (crosstalk) to investigate a violation that we have
15 on the books that we just passed in the middle of a
16 pandemic under the umbrella of covering and
17 protecting restaurants which is just really helping
18 the third-party food delivery app, but I'll leave to
19 that to later on, and we're going to continue this
20 conversation, and if you don't mind, I'll ask another
21 question. Do you think the penalty, yeah ...
22 (crosstalk).

23 CHRISTIAN KLOSSNER: (Crosstalk) because
24 you're, you're citing your familiarity ... (crosstalk).

25 CHAIR GJONAJ: Okay.

2 CHRISTIAN KLOSSNER: And comparing this
3 to other concepts that are not appropriate. What I'm
4 trying to say is that the Office of Special
5 Enforcement exists to be innovated and nimble and to
6 look at new situations and develop the most effective
7 and efficient enforcement schemes we can find. The
8 fact that it's different from existing systems
9 doesn't mean it's wrong. It seems like you have
10 number of concerns about the traditional systems of
11 inspections and fine, but then you're criticizing OSE
12 for not applying those things that you don't agree
13 with in this context.

14 CHAIR GJONAJ: Yeah.

15 CHRISTIAN KLOSSNER: Instead, we came up
16 with an immediately implementable system that
17 produced broad spectrum fines. I think you're going
18 to hear that from the people who speak after us, and
19 with that, I'm happy to move to another topic.

20 CHAIR GJONAJ: We will absolutely
21 continue this conversation and it's called
22 unilaterally enforcement of the same laws,
23 unilaterally by across the board of any industry.
24 There should be no double standard or a separate
25 standard for any industry or any provider or any

2 entity. A law is a law, and it should be
3 unilaterally applied in a same fashion. That's my
4 point, and in this case, you've confirmed there was a
5 violation and there was no penalty imposed, and if
6 that's the position, I think many property owners
7 would be pleased to hear that that is how this
8 Administration is now moving forward. If you're in
9 vio- ... (crosstalk).

10 CHRISTIAN KLOSSNER: Well, they shouldn't
11 hear that and don't put those words in my mouth,
12 please because that is not the message. The message
13 is that in this instance where we had 99.9 percent
14 compliance and had the cooperation and adjustment of
15 companies, uh, 99.9 is a made up number, please don't
16 hold me to that, that while we have wide spread
17 compliance on a law that just took effect; right,
18 you're also talking about laws that have been on the
19 books for years and years and years, and are known
20 obligations to building owners through the city, but
21 we're not here today to talk about building policy.
22 We're here to talk about the enforcement policy, how
23 to protect restaurants by making sure that across the
24 board they are protected from these companies that
25 the cost of enforcement are not put on to them to

2 detect and report, but it can be dealt with across
3 the board in a single instance and that can be done
4 with minimal amount resources so that other resources
5 that are available to support business in ways that
6 can benefit them directly instead of imposing fines
7 that the restaurants don't see any benefit from.

8 CHAIR GJONAJ: Thank you, Mr. Klossner,
9 and I don't want to; I'm sure you want to move also,
10 but you're point of one infraction, on the way over
11 from the borough of the Bronx, I drove through many
12 stop lights, I abate all of them. If I would have
13 hit one red light, I expect to get hit with a
14 violation, but that's the point I'm making, the point
15 I'm making. Do you think, do you think the penalty
16 schemes in these Bills are effective and why not, and
17 do you think any other enforcement tools that you
18 would recommend including in the Bills?

19 CHRISTIAN KLOSSNER: Well, again, I very
20 much want to; and I'm only excited to move on,
21 because as I've said before, I really, I think the
22 best value that we're going to get at the end of this
23 hearing is understand how the business owners view
24 this and how the companies respond to it. I don't
25 mind the back-and-forth, and I'm happy to put that on

2 hold and do privately if need be. The fine, again, I
3 think the tools that are the most important are the
4 ability to seek conjunctive relief and the ability to
5 get restitution. I think fines in the traditional
6 model of imposing a fine allow for a business to not
7 comply and assume the cost of doing business. I
8 don't think we want that. What we want is a law that
9 was designed and that is the value that these laws
10 have where there's a range of remedies so that the
11 enforcement entity has the option of choosing what is
12 the most efficient and effective way to get broad
13 scale compliance regardless of the tool. You know,
14 there are obviously, there are, you know, always want
15 to make sure that the penalty is tied to the
16 violation. You know, there's a \$1000 fine for \$1000
17 of overcharges is one thing, a \$1000 fine for 10
18 cents of overcharge is another, but I think that the
19 important thing about this is not the fine amount,
20 but the range of remedies, the continued inclusion of
21 restitution as a remedy that says to restaurants,
22 you're going to pay all this back, so don't bother.
23 All right, that promotes a lot of upfront compliance
24 which is the goal of all laws. We want compliance
25 because it's the law. The inclusion brings an action

2 in a court of competent jurisdiction for all the
3 remedies instead of forcing us to go one-by-one-by-
4 one and bring multiple actions against a single
5 company. It's those tools and the range of
6 enforcement options that are the keys to this being
7 successfully enforced no matter what form it takes,
8 and as I've said before, you know, we look forward to
9 having a conversation after hearing what folks say in
10 the hearing today to really drill down on what is the
11 right policy, and we can look at the fine amounts
12 then.

13 CHAIR GJONAJ: Thank you. Would you
14 recommend requiring the extension of the Bills, the
15 sharing of any specific information from the app?

16 CHRISTIAN KLOSSNER: I'm sorry, I don't
17 understand the question.

18 CHAIR GJONAJ: Would you recommend the
19 extension or the permanent laws that remain in place?

20 CHRISTIAN KLOSSNER: I, you know, this is
21 again, a question that I want to hear from the
22 restaurants on. I'm very mindful in the first
23 hearing that many restaurant owners spoke about how
24 they would voluntarily assume the egregious cost of
25 an app when it was 10 percent of their sales and they

2 had a bustling business in their restaurant, but that
3 when they were forced to do all delivery and take
4 out, they were losing money with every order. I hope
5 that some of the folks who made those points are
6 going to speak today and give us their sense of how
7 this law's continuation is needed. I'm aware of
8 businesses, as I mentioned earlier, that believe they
9 failed; a business that believe it failed because it
10 couldn't purchase premiums advertising content and
11 you know, and again, I did highlight that in its
12 current form, I think the definition is problematic
13 because it really does allow the companies to simply
14 ship their business model or change services and
15 creates a situation where an advertising company can
16 offer the same advertising services at 15 percent,
17 but if they were also to include delivery, they could
18 only charge 5 percent. I will say, I'm not an
19 economist, and so, these are concerns that I raise
20 for other people with more training and expertise and
21 for the business owners who make these day-to-day
22 decisions to weigh it on.

23 CHAIR GJONAJ: Thank you, sir. I'm
24 looking forward to continuing this dialogue with you
25 as we figure out how we move forward, and what's in

2 the best interest of the industry and all the
3 stakeholders. Thank you.

4 CHRISTIAN KLOSSNER: Thank you, sir.

5 CHAIR GJONAJ: Ms. Jones, are we ready to
6 call DCWP?

7 COMMITTEE COUNSEL STEPHANIE JONES: DCWP
8 is present for questions if we have any questions for
9 them. So now, we can move on to questions from other
10 Council Members if there are any.

11 CHAIR GJONAJ: Do any of the Council
12 Members show that they have any questions, and just
13 for the record, we've been joined by Council Member
14 Perkins here in Chambers.

15 COMMITTEE COUNSEL STEPHANIE JONES: No,
16 Chair. No Council Members over Zoom have any
17 questions.

18 CHAIR GJONAJ: Then I just have a
19 question for DCWP. Would enforcing any of these
20 Bills become easier of the city license the platforms
21 to operate in the city New York? Are they with us?

22 COMMITTEE COUNSEL STEPHANIE JONES:
23 Steven, I think we can't hear you, although you're
24 unmuted, but sound isn't coming through.

25 CHAIR GJONAJ: Do you hear me now?

2 COMMITTEE COUNSEL STEPHANIE JONES: I
3 think Steven is having a technical issue with the
4 sound, so perhaps we can move on.

5 CHAIR GJONAJ: Okay, then I have no other
6 further questions, but I hope if they get back
7 online, that DCWP will answer what enforcing any of
8 those Bills become easier if the city licenses the
9 platforms, and secondly as a follow-up, is there
10 anything the Council could include in any of these
11 Bills that would make enforcement easier?

12 DCWP: Can you hear me now?

13 CHAIR GJONAJ: Now, we hear you.

14 DCWP: Okay, great. Sorry about that. I
15 just wanted to thank you, Chair for having this
16 hearing and the seamless transition. I guess it
17 wasn't so seamless if you couldn't hear me earlier,
18 but that was on my end, so my apologizes. I think,
19 and I thank you for recognizing our agency because we
20 do, as you know, the Bills, the permits of these
21 regulations as contemplated are drafted into our
22 title and do contemplate DCWP to have a long-term
23 role int his regulatory space. I think for us,
24 licensure in and of itself is not a (inaudible) for
25 rectifying any kind of behaviors in an industry.

2 It's really about the understand what a (inaudible)
3 practice are and then like taking that information
4 and then adapting an enforcement model that is
5 workable there, so like a licensure in and of itself,
6 is really just registering what the city and all of
7 that, and yes, there are, you know, depending on the
8 license, there are different regulatory schemes that
9 come with that, but the licensure in and of itself
10 isn't necessarily a (inaudible) and I think we've
11 seen that. I know, Chair, we've worked closely
12 together on the small business relief Bills that
13 passed out of the Council recently. Some of those
14 regulations that we discussed with Committee staff
15 and the speaker staff, and your staff involved kind
16 of routinely some licenses that we thought, you know,
17 after the fact didn't make a lot of sense for
18 stakeholder as well as for the agency itself. So,
19 that's all to say that I think, really, it boils down
20 to like the enforcement structure at the end the of
21 the day rather than the licensure itself, and if you
22 would allow me, just like a minute to speak to you.
23 Just the concept of what long-term regulation would
24 be and DCWP's role there. In general, our agency, as
25 a consumer and worker protection agency, skews to

2 that work exactly, literally protecting consumers,
3 protecting workers. These Bills contempt business-
4 to-business transactions, and as such, would require
5 resources for the agency. This is a new regulatory
6 work for us. It's something that we, ourselves are
7 interested in hearing from stakeholders on, and I
8 know that depending on what we, ourselves hear from
9 stakeholders, we're interested in working with the
10 Council on like adapting enforcement models that may
11 be most effective, and not necessarily care the
12 resource burden of like a case-by-case enforcement
13 model, and we have examples of that with our pattern
14 in practice model that my colleague Christian had
15 mentioned, or calling on other laws that are on the
16 books, like the freelances and free app for example.
17 The backbone of that enforcement structure,
18 contemplate our agency severing and corresponding, or
19 intaking complaints from complainants and like
20 corresponding with responce, and then depending on
21 what we hear, if we don't hear anything, it would
22 serve as, you know, a rebuttable presumption in a
23 court for the complainant. These are all things
24 we're (inaudible); these are all things that are
25 possible, that's resource intensive, but possible

2 also effective in the terms of regulating in this
3 case.

4 CHAIR GJONAJ: Thank you. What do you
5 anticipate the market impacts would be if the Council
6 enacts a permanent commission cap?

7 DCWP: Is that a question for DCWP or?

8 CHAIR GJONAJ: Yeah, from your end and
9 perhaps we'll ask OSE to come back on, but.

10 DCWP: Sure, so, I think as the Office of
11 Special Enforcement testified to, there is a
12 potential concern certainly from DCWP's end, we're
13 always very sensitive to this issue of the unintended
14 consequence of when you cap profit margins for a
15 particular business or entity, some of those cost
16 flowing down to consumers invariably, that's a
17 concern. It's something that doesn't necessarily
18 prohibit Council or suggest that we should do
19 anything here because of that risk, but it's
20 something that we want to work with you and your
21 staff on, for example, to see how we can kind of
22 limit that unintended expectation. I don't think
23 anyone here wants to see, you know, the average New
24 Yorkers who certainly has been affected financially
25 by the pandemic, you know, seeing the higher cost at

2 the end of the day. I don't think that's your
3 intent, it's not the Council's and it's certainly not
4 ours, so that's one potential output from this. In
5 terms of others, like I said, I'm really interested
6 in hearing from stakeholders after our testimony to
7 get a sense of like what this landscape really looks
8 like and then you know, working with you and your
9 staff on what's best moving forward.

10 CHAIR GJONAJ: Thank you, and my last
11 question to you, and I think I asked it early on,
12 what can the Council do to help you with the
13 enforcement of these laws?

14 DCWP: Yeah, well, I think it's going to
15 depend on where we land, on what's the structure. If
16 you're talking about a case-by-case model, that is
17 the most resource intensive model, a complaint-based
18 model that you were, kind of, discussing with my
19 colleague at OSE. That's new needs for our agency.
20 That's, like I said, we don't have a lot of
21 visibility in business-to-business transactions, so
22 it's not like an attorney can just step into that
23 work because you know, they're not specialize in
24 that. I don't think anybody wants kind of, you know,
25 a; I think we want a specialize team looking at this,

2 is, I guess, what I'm trying to say, but, as I
3 mentioned, there are other less resource intensive
4 models that also may be effective that get you to
5 your ultimate goals, Chair, and that includes
6 adopting models from, like I said, either the
7 existing laws and what we've seen as effective,
8 perhaps the freelances and free act is one example,
9 or adopting a pattern practice enforcement model as
10 well. So, depending on those, I think we can
11 certainly discuss, you know, what those day-to-day
12 impacts would be for our agency, but you know, I
13 think we're looking forward to like bridging those
14 gaps and concerns with you as this legislative
15 process moves on.

16 CHAIR GJONAJ: Thank you so much for your
17 time. Ms. Jones, if we can call up the next round of
18 panelists.

19 COMMITTEE COUNSEL STEPHANIE JONES: Sure.
20 Thank you, Chair. We will now turn to public
21 testimony. I'd like to remind everyone that we will
22 be calling individuals one-by-one to testify. Each
23 panelist will be given two minutes to speak. Please
24 observe the two-minute timer as we have a large
25 amount of panelists registered to testify today.

2 Once your name is called, a member of our staff will
3 unmute you on Zoom. Panelist, please wait for the
4 Sergeant at Arms to set the timer and announce that
5 you may begin before delivering your testimony.
6 Please be patient. We will get to everyone. I would
7 like now welcome Andrew Ding to testify, followed by
8 Unique Cohen (SP?), and then Amy Healy. Andrew.

9 ANDREW DING: Yes. One second, I'm just
10 trying to unmute, unblock my video, but, okay, here
11 we go. Start video. Okay. Does that work?

12 SGT. BRADLEY: Your time starts now.

13 ANDREW DING: Okay. So, I'm speaking to
14 the phone order charge situation. So, the reason why
15 this was even brought to your attention in the first
16 place was because these companies simply could not be
17 trusted to do the right thing on their own. I wasn't
18 the first to bring this situation to anyone's
19 attention. In fact, there were law suits brought to
20 these company's years beforehand, and it wasn't until
21 media coverage and also the hearings last year in
22 August, and also subsequently, I emailed and
23 submitted to, I think it's the OSE, but anything was
24 actually done about it, and I can confirm that the
25 amount of fraudulent calls has reduced. I can also

2 report back that I've not to date been able to get
3 any kind of reply back about the audits that were
4 promised about the fraudulent charges that I received
5 last year. So, there was no resolution on any of
6 those and I attempted to reach out to my account
7 point person, I've attempted to call customer service
8 reps at Grubhub and Seamless to no avail. So, what I
9 feel like is necessary about these Bills becoming
10 permanent is to send a clear message that, look, you
11 clearly can't be trusted to do the right thing on
12 your own, so we're going to have to step in and make
13 sure that restaurants are protected from you, and
14 unfortunately, that is the case. So, yeah, I feel
15 like it's crucial, that it's kind of ridiculous that
16 there even has to be a Bill about not charging for
17 phone calls that don't result in orders. So, here we
18 are ... (crosstalk).

19 STG. BRADLEY: Time has expired.

20 ANDREW DING: So, yeah.

21 CHAIR GJONAJ: Mr. Ding, thank you for
22 your testimony. How many erroneous phone orders did
23 you find in the time that you spent going back
24 through your bills?

25

2 ANDREW DING: So, I found 50, okay, so,
3 out of 55 phone calls, only three of those phone
4 calls resulted in an actual order. That is the
5 margin of error of 95 percent, and I don't think
6 anyone is stupid enough to believe that that was not
7 an intentional algorithmic thing, okay, so you cannot
8 be that incompetent to create a system that was only
9 5 percent correct at any given time, and not Malone's
10 (SP?) public statements and reply to my kicking off
11 the stick in the press was very indicative of the
12 fact that he felt this was like beneath even talking
13 about, he brushed it off as overblown, as if like I
14 should be somehow grateful for all the things that
15 they do and perhaps I could just like, you know,
16 disregard it somehow, and maybe say that they deserve
17 to take extra money from us. I don't know, it was
18 very, very bizarre, but at the same time, these phone
19 charges just kept on coming, so yeah.

20 CHAIR GJONAJ: Mr. Ding, did you bring
21 this to the attention of OSE?

22 ANDREW DING: Yeah, I gave them the
23 entire recording catalog. Everything was very
24 clearly labeled for them. I haven't actually since
25 followed up with them to tell them that I haven't

2 received any kind of communication or follow up. So,
3 that's something that, you know, that I'm bringing to
4 their attention today.

5 CHAIR GJONAJ: Thank you, Mr. Ding, and I
6 certainly will be following up with you and my staff
7 will be setting up a time for us to meet and discuss
8 this as well, so we can follow through with OSE and
9 relevant agencies and departments, and I apologize
10 that this was unknown to me. I thought this, based
11 on your last testimony was being addressed and now
12 we're finding out it's not. So, I see one of the
13 Council Members has raise their hand, and I'm not
14 sure if it's pertaining to your question. Council
15 Member Brannan, I see your hand is raised.

16 COMMITTEE COUNSEL STEPHANIE JONES:
17 Chair, that's one of the registrants that will be
18 testifying later.

19 CHAIR GJONAJ: Oh, I got it.

20 COMMITTEE COUNSEL STEPHANIE JONES: No
21 Council Members have raised their hand.

22 CHAIR GJONAJ: Then we will follow up
23 with you and we'll stay in touch. Council Member
24 Perkins has a question.

2 CM PERKINS: I kind of heard about more
3 than once something about some fraudulent calls that
4 were being put in play, and I guess my interest is,
5 what is the fraudulent that these calls are
6 representing and how are those being managed or being
7 dealt with so that the best interest of the community
8 and of the Council is being adequately address? So,
9 what is this fraudulent call problem that apparently
10 has become part of the discussion?

11 ANDREW DING: Is that a question for me?

12 CHAIR GJONAJ: I think that was a
13 statement more than a question. Correct, Council
14 Member Perkins?

15 CM PERKINS: For me, it's a question as
16 to what are these fraudulent calls that have come up
17 in this conversation?

18 CHAIR GJONAJ: Yeah.

19 CM PERKINS: And how are they being
20 address and what are the implications of these frauds
21 as they are being articulated today? I mean, are we
22 hearing that we have fraud taking place?

23 CHAIR GJONAJ: Council Member Perkins,
24 and that's exactly, these erroneous charges for phone
25 orders that did not yield a sale was the purpose of

2 this law and this restaurateur has brought it to the
3 attention of OSE and apparently of the 55 calls, only
4 three resulted in a sales transaction, and yet, he
5 was charged for 55, and that's what we're trying to
6 get to the bottom of, and we're going to be following
7 up with the restaurateur and the relevant agencies
8 and departments to ensure that one, that doesn't
9 happen again, and two, we that we make this
10 restaurant whole on those charges. Thank you. So,
11 Mr. Ding, we will stay in touch, and I'll follow up
12 with you. Thank you.

13 ANDREW DING: Thank you, Chair Gjonaj.

14 COMMITTEE COUNSEL STEPHANIE JONES: Thank
15 you, Andrew. Next, I will call Unique Cohen,
16 followed Amy Healy, and then Thomas Gretsche. Unique.

17 SGT. BRADLEY: Your time will begin.

18 COMMITTEE COUNSEL STEPHANIE JONES: I see
19 Unique Cohen is not present currently, so we will
20 move on. Next, we have Amy Healy, followed by Thomas
21 Grech, and then David London. Amy.

22 SGT. BRADLEY: Your time will begin.

23 AMY HEALY: Thank you. Good morning,
24 Chair Gjonaj and members of the committee. Thank you
25 for your time today. My name is Amy Healy, and I'm

2 the Head of Government Affairs at Grubhub. New York
3 and its restaurants hold a special place in the
4 hearts of everyone at Grubhub and Seamless. We've
5 been proud to partner with the city and organizations
6 across it to support local restaurants and advocate
7 for important public policies that support
8 restaurants and drivers like the delivery worker
9 Bills the Council is currently considering. We stand
10 in support of those proposals, and since the pandemic
11 began, Grubhub has stepped up to support New York,
12 investing tens of millions of dollars to directly
13 support the city's restaurants and their employees
14 and organizations that serve the communities
15 throughout the city, but we strongly oppose the fee
16 cap proposal being considered today which would place
17 permanent price controls on the contract freely
18 entered into between the restaurants and third-party
19 platforms they choose to partner with. This
20 unprecedented action, if passed, would have damaging
21 and long-term consequences for New York's
22 restaurants, deliver workers, diners, and the local
23 economy. The Latino Restaurant Association, in its
24 opposition to permit fee caps has acknowledged that
25 fee caps offset the cost balance of delivery, price

2 out some Latino families by making food delivery too
3 expensive, and unfairly penalize some of our most
4 vulnerable small restaurants and neighborhoods. The
5 fees paid on orders are negotiated in a private
6 contract between Grubhub and the restaurants we
7 serve, and they reflect the services a restaurant
8 operator has chosen for their specific business.
9 Many of the restaurants on the Grubhub platform
10 choose to utilize only our marketing and related
11 services to drive more orders. Some restaurants
12 choose marketing and delivery because they don't want
13 the burden and expense of hiring their own delivery
14 workers, and some restaurants simply want the option
15 to receive orders online which is why we launched
16 Grubhub Direct which offers commission free online
17 ordering. A permanent-press control like the one
18 proposed would severely limit Grubhub's ability to
19 offer these services, but beyond a significant
20 negative impact, we are confident a court would
21 strike the proposal down based on its numerous legal
22 shortcomings. These issues have been outlined in
23 great detail ... (crosstalk).

24 SGT. BRADLEY: Time expired.

25

2 AMY HEALY: By outside council and shared
3 with committee staff. Thank you.

4 CHAIR GJONAJ: Thank you so much, Ms.
5 Healy. Thank you for being here and testifying and
6 thank you for always agreeing to meet in and discuss
7 the issues. In layman terms, explain the long-term
8 consequences again so I can understand regarding the
9 caps.

10 AMY HEALY: Sure, so as I believe the
11 gentleman from OSE commented, if our fees are capped,
12 our vendor's fees are not, so we have hard costs for
13 the marketing and advertising services that we pay,
14 so we have to pay you well to run (inaudible)
15 programs, etc. So, you're not capping those fees,
16 you're only capping our fees which means we needs to
17 increase fees somewhere else, and those could be on
18 the consumer, which as I commented, the Latino
19 Restaurant Association has said the more (inaudible)
20 consumer will be greatly impact as will low-order
21 volume restaurants. So, restaurants that, you know,
22 a \$90 order can absorb a dollar or two fee. A \$20
23 order maybe, maybe won't, and then those order will
24 become less attractive, so diners will lose out,
25 restaurants will lose out, and then the work that

2 drivers rely on New York City during the pandemic
3 will lose out.

4 CHAIR GJONAJ: So, you're saying as if
5 they don't pay for the marketing or the increased
6 marketing that you're able to provide them, that
7 ultimately, it will cost them. Is that what you're
8 saying?

9 AMY HEALY: No. What I'm saying is if
10 you cap our ability to charge what our costs are ...
11 (crosstalk).

12 CHAIR GJONAJ: Mm-mmm.

13 AMY HEALY: And force us to operate at a
14 loss, then we have to try to make up those loss
15 somewhere, and Grubhub operated at a loss our recent
16 quarter.

17 CHAIR GJONAJ: So, what if the restaurant
18 that's operating at a loss?

19 AMY HEALY: When the restaurants were
20 closed because of government action, we complied with
21 the fee cap. Now that restaurants are open, they
22 have more of a choice on the partners and the vendors
23 that they choose to work with. If they're not
24 finding value by partnering with Grubhub, they are
25 welcome to choose other partners.

2 CHAIR GJONAJ: So, we're talking about
3 the industry overall, and because you're speaking on
4 behalf of Grubhub, I don't want to focus just on
5 Grubhub, but in Grubhub, in third quarter 2020, \$494
6 million, a 53 percent year-over-year increase.

7 AMY HEALY: In revenue.

8 CHAIR GJONAJ: In revenue.

9 AMY HEALY: Yes.

10 CHAIR GJONAJ: And ... (crosstalk).

11 AMY HEALY: But we operated at a loss.

12 CHAIR GJONAJ: Yet I saw another report
13 that during the pandemic, it was a \$50 billion dollar
14 increase in revenue and as a whole, profits of \$5
15 billion dollars.

16 AMY HEALY: \$50 bill-, I'm, I'm sorry.
17 I'm not playing with the numbers ... (crosstalk).

18 CHAIR GJONAJ: I, I, I see. I will find
19 that question, I will find that report for you, but
20 I, I recall reading a report that showed a \$50
21 billion dollar increase in gross sales for third-
22 party platforms across nationally, that is, which
23 yielded a \$5 billion dollar profit to those
24 companies.

2 AMY HEALY: Again, Council Member Gjonaj,
3 we're a public traded company and you can read our
4 financial earnings. They're on our website, and of
5 course, posted with the SCC. So, I can just tell you
6 what our, you know, what we reported. I'm not
7 familiar with the numbers that you're saying ...
8 (crosstalk).

9 CHAIR GJONAJ: Okay ... (crosstalk).

10 AMY HEALY: You said, but we did operate
11 at a loss our last quarter, and again, I'm happy to
12 share those earnings with you.

13 CHAIR GJONAJ: Thank you. So, now we're
14 talking about profit and loss for Grubhub, and you're
15 saying currently you're operating at a loss and if
16 you're not able to increase your fees that you
17 charge, you cannot operate at a profit, and that's
18 going to hamper your business model, obviously. So,
19 if I applied that same principal to the restaurant
20 that you are partnering with, if they are operating
21 at a loss today, after being opened and getting
22 through the pandemic, you're saying that they should
23 be able to pay an increase or remove this cap going
24 back to the predetermined contract negotiations that
25 you had. That will help them.

2 AMY HEALY: I'm saying that this, during
3 the pandemic, that artificial price caps, we went
4 along with.

5 CHAIR GJONAJ: Right.

6 AMY HEALY: Now, that restaurants are
7 open, they're free to increase their prices just like
8 we're free to increase ours.

9 CHAIR GJONAJ: Okay.

10 AMY HEALY: So, restaurants can make
11 business decisions that make sense for them, and if
12 they think it makes sense to work with us, we welcome
13 that opportunity and appreciate the tens of thousands
14 of restaurants in New York City that do, and if they
15 don't think that we're a good partner, then there are
16 plenty of options out there including several of my
17 friends and colleagues in other companies that will
18 be speaking today.

19 CHAIR GJONAJ: Alright, and thank you for
20 that, and I'm just pointing out cause the argument
21 that you made is some of the smaller mom and pop-
22 owned eateries will not be able survive and this will
23 be a further burden on them, they could not absorb
24 the one dollar charge that you're referring to, if
25 their order is only \$20, so we just painted a

2 scenario that Grubhub is their solution and their
3 answer that marketing their menu is going to,
4 although they will be paying more than they currently
5 are, will ultimately lead them to profit.

6 AMY HEALY: I didn't say that.

7 CHAIR GJONAJ: Okay.

8 AMY HEALY: I didn't say that. I said
9 they can make the business decision that makes sense
10 for them, and again, when restaurants were closed,
11 it's a different dynamic. Now, that restaurants are
12 opened, they can choose to hire their own delivery
13 service, they can pay the insurance, they can pay the
14 wages, rather or not that delivery individual might
15 be busy that day or not. When they work with us,
16 they only pay a delivery fee when there's an actual
17 delivery. These are all the decisions that the
18 restaurant owner can make, and as I mentioned, I was
19 quoting a letter from the Latino Restaurant
20 Association that said that even a small fee can be a
21 hurdle to some communities that are very price
22 sensitive, and I'm happy to share that entire letter
23 with you.

24 CHAIR GJONAJ: Alright, and that's what I
25 was referring to, the letter on the Latino

2 Association and I would be more than happy to look at
3 that letter. Please elaborate more on the impact if
4 these caps are permanent, what it would mean to
5 Grubhub or the industry.

6 AMY HEALY: I think as we discussed, we
7 are a public traded company and we would need to
8 increase costs somewhere or make business decisions
9 to stop the losses that we've been operating under,
10 this artificial cap.

11 CHAIR GJONAJ: Alright.

12 AMY HEALY: I'm not the business person,
13 I can't tell you exactly what we would do, but you
14 know, we are in business, and we need to make sure
15 that we are operating in a sustainable way for our
16 shareholders.

17 CHAIR GJONAJ: Right, and I think that's
18 the argument we just made, that those restaurants, if
19 they're not profitable, they would have to find ways
20 to raise revenue or profit levels and they would have
21 to raise their menu prices to a level of
22 profitability. That would be the ultimate goal.

23 AMY HEALY: I'm not a restaurateur.
24 That's up to the restaurateur to decide how to
25 operate their business.

2 CHAIR GJONAJ: Alright, I think I've
3 asked this question before. You're model, I believe
4 was 30 percent fee for marketing and deliver,
5 correct? And that's where you want to see this go
6 back to?

7 AMY HEALY: I want to see it go back to
8 the rate for a suite of services that the restaurant
9 chooses. So, we have different prices depending on
10 what restaurant chooses to buy, and advertising, as
11 you know, it cost more to advertise on the Superbowl
12 than it does on late night, you know, cable. So, it
13 depends on the exposure that the restaurant wants,
14 they work with their account executive and develop
15 the package that works for them.

16 CHAIR GJONAJ: I wish our restaurant had
17 account executives that would be making these
18 determinations for them, but apparently, they deal
19 with sales agents that determine what their budget is
20 and what they could afford and with the assumption
21 that there would be a return on their investment.
22 That's the whole idea here, and we're just trying to
23 get a better understanding of the impact now that
24 we've had some time to evaluate the impact that these
25 Bills have had on the industry, on all stakeholders,

2 rather it be the third-party deliver food apps or the
3 restaurant industry. Is there anything else that you
4 can add to this, Amy, when we talk about the
5 legislation that has been put into place during the
6 pandemic and aside the cap bill, the other
7 legislations, you're okay with, they're acceptable to
8 the industry, and you support?

9 AMY HEALY: I'd be happy to go through
10 them. The non-partner legislation where platforms
11 don't list restaurants without a written agreement, I
12 believe it's written agreement, we are fine with
13 that. The ordinance that requires no charges for a
14 phone order if there is no order; absolutely, we
15 support that. We've taken many steps. Council
16 Member, I've been here about a year and a half. I
17 think you and I met when I was six weeks in. We've
18 worked very diligently sense the first time you and I
19 met. We're putting into place additional controls on
20 our phone order system including a live call center
21 to remove the automation and we look forward to
22 sharing more about that. I think we had an
23 opportunity to talk about a couple of weeks ago. I
24 believe, so, I'm trying to think of the next
25 ordinance ... (crosstalk).

2 CHAIR GJONAJ: The other one is listing
3 phone numbers. If you allocate your own number that
4 the restaurant number should also be included and
5 identified as the direct number to the restaurant.
6 Do you support that Bill?

7 AMY HEALY: Right. We're continuing to
8 review that, Council Member Gjonaj. We have a lot of
9 restaurants who don't just advertise with us, they
10 advertise with other, maybe it's with Yelp or other
11 marketing platforms, and we're able to show them,
12 here are the number of calls that came through your
13 advertising with us, maybe they have a different
14 number on Yelp. They're able to see where their
15 advertising is spent. Businesses tell us, they like
16 to understand where their advertising revenue are
17 actually driving orders, and so, we're able to do
18 that, but using a unique number. This is not new
19 technology. It's not unique to delivery platforms.
20 The Yellow Pages has used for decades. Different ads
21 and different size, different numbers and different
22 sized ads with different heading, and then the
23 business can see, okay, now I know where I'm getting
24 my leads from, and I can reallocate my advertising
25 dollars in a smarter way.

2 CHAIR GJONAJ: Thank you. The Bill 2359
3 which permanently extends the existing commission
4 cap; are there any other models that you would like
5 to suggest that would reduce commission fees for
6 restaurants, and I only ask this question because the
7 reports that we're getting consistently are saying
8 the fees that we're paying, they lead to a net loss
9 on every transaction, and the 20 percent fee that is
10 currently being paid, 15 percent for delivery, 5
11 percent for marketing or vice versa, if you did no
12 delivery, and just a straight marketing fee, is not
13 yielding a profit to these restaurants?

14 AMY HEALY: Council Member, Grubhub isn't
15 delivering the order which we only do on about half
16 of the instances, and we're capped at 5 percent and
17 the restaurant is still operating at a loss, I
18 haven't seen the economics of that. So, I'm happy to
19 review that.

20 CHAIR GJONAJ: So, the answer to these
21 restaurants that show me that here's my profit and
22 loss and this is how my profit margins are, my
23 business may be opened for business, I am still not
24 receiving walk-ins. They are not a level of pre-
25 pandemic. I am continuing to operate and will

2 continue to operate a loss. My customers now have
3 become phone order deliver for using the delivery
4 app, rather than in-house dining. They're not coming
5 to the window. They're not walking in. They're
6 relying on these platforms, and here's how my bottom
7 line cannot sustain it cause I don't have the
8 increase in gross sales across the board to cover my
9 overhead currently.

10 AMY HEALY: Council Member, there are a
11 lot of vendors to restaurants, so to single out one
12 vendor to a restaurant, we believe is discriminatory.
13 Again, if the restaurants find it cheaper to hire
14 their own delivery service, clearly, their more than
15 welcome to do that. They find it often; in fact, one
16 of the last hearing that I attended, a restaurateur
17 was asked, well, why don't you hire your own delivery
18 service rather than pay Grubhub? And by the way, we
19 only charged 10 percent for delivery when there's no
20 fee cap, and the restaurateur said it was too
21 expensive. They didn't want to do the background
22 check, they didn't want to pay a delivery driver if
23 there was no business that night. So, again, that's
24 a business decision that the restaurant makes.

2 CHAIR GJONAJ: All right. When you were
3 referring to the report, was that by the New York
4 State Latino Restaurant Bar and Lounge Association?

5 AMY HEALY: No, it was not. It was by
6 Willie Groca (SP?) whose the CEO of the Latino
7 Restaurant Association. She published a letter in
8 the San Francisco Examiner, I believe, last week,
9 cause the city of San Francisco is considering a
10 permanent fee cap as well.

11 CHAIR GJONAJ: What was the name of the
12 organization in full, please, San Francisco, was the
13 Latino ... (crosstalk).

14 AMY HEALY: It's the Latino Restaurant
15 Association, and we'll share the letter. It was
16 published in the San Francisco Examiner.

17 CHAIR GJONAJ: Okay, cause I'm also
18 looking at the New York State Latino Restaurant Bar
19 and Lounge Association, which I believe is led by
20 Garcia, so the group's revenue-hungry members as
21 distraught a Grubhub's fees for Grubhub to take
22 advantage of this reliance during the midst of a
23 global health pandemic is; the fees certainly don't
24 outweigh the gross revenues of the restaurant
25 industry, and that's coming from the New York state

2 Latino Restaurant Bar and Lounge Association. So, do
3 you see any hybrid that in your mind would work for
4 both your industry and these restaurants? And we've
5 spoken about this in length. The restaurant and
6 eatery industry is a very vital part of this city,
7 not only for the cuisine and it's part of our actual
8 culture, but they are actually a tax block, they
9 contribute to the tax base of this city and huge
10 employer for New Yorkers, and they're an industry
11 that we want to preserve and protect and ensure that
12 they continue to thrive. In a perfect world, where
13 ultimately the prices aren't so high that the
14 consumer not longer frequents that establish, cause
15 that would be the answer if you want to make, if
16 you're charging 30 percent and you're looking to make
17 10 percent profit, and the restaurant obviously wants
18 to make 10 percent profit. Now, we're looking at
19 what price for a hamburger that the customer is going
20 to have to pay to please everyone so that there is a
21 profit. What hybrid would you imagine in a perfect
22 world in a very complicated city like New York where
23 eateries are a vital part of the integrity of this
24 city.

2 AMY HEALY: But first of all, Grubhub's
3 profit margins without caps are about 1 percent on an
4 order, and again, we're operating at loss with these
5 caps. In a perfect world, you know, the market place
6 would set the prices, right, without government
7 interference.

8 CHAIR GJONAJ: I, I'm with you on this.
9 If you heard my opening statement, I am not a big
10 supporter of government interference, but there is
11 also a responsibility from government to protect the
12 industries such as, in particular, the restaurant
13 industry. We cannot just have them close shop. We
14 cannot have them stop contributing to the tax base.
15 They are a part of this culture as much as the Arts
16 are in New York City. We want to preserve and
17 protect and allow all to flourish ... (crosstalk).

18 AMY HEALY: And we agree. You know,
19 Seamless and Grubhub don't exist without an
20 flourishing local independent restaurant scene.
21 Absolutely, which is why we go along with the cap
22 while we launched our commission-free product called
23 Grubhub Direct, where we rolled out technology to
24 power a restaurants own website, right. One of the
25 barriers, one of the reasons restaurants get what

2 they need to use one of apps is because it's
3 expensive and complicated to run a sophisticated e-
4 commerce ordering platform. So, we will, Grubhub
5 Direct is a new product we launched several months
6 ago that allows them to use our technology on their
7 website, on their back end seamlessly, and we do not
8 charge an commission on those order because the
9 restaurant drove the traffic to their website. We
10 charge a commission when we drive an order, when
11 diners choose to come to us, because of the user
12 experience, because of the security we provide,
13 because the customer service, the loyalty. So, when
14 a diner goes to a restaurant, that's their lead. We
15 don't charge a commission for that even if we powered
16 the transaction. If the diner comes through the
17 Grubhub market place, and they make an order, right,
18 we don't pay for eye ball, we only, the restaurant
19 pays when an order is made.

20 CHAIR GJONAJ: But Grubhub Direct doesn't
21 put them in the market place. Is that correct or
22 limited ... (crosstalk).

23 AMY HEALY: No, that's their website.
24 We're powering their website.

2 CHAIR GJONAJ: You're powering their
3 website.

4 AMY HEALY: If you want to be on Market
5 Place, then, the there's a charge for that.

6 CHAIR GJONAJ: Okay. Out of curiosity,
7 where is Grubhub's headquarters?

8 AMY HEALY: Our headquarters is in
9 Chicago.

10 CHAIR GJONAJ: In Chicago. So, and I'm
11 just playing this back in my own mind as we're
12 looking at, thinking of tax bases, and just finishing
13 New York City's budget, which was done yesterday,
14 \$100 Billion dollars, and now we're looking for
15 sources of revenue to keep this going for the future.
16 It's going to be very difficult. We're looking at
17 tax bases. I'm not sure if you can even answer this
18 question. Does Grubhub pay any taxes in the form of
19 the income tax, not sales tax, to New York City?

20 AMY HEALY: I'll have to talk to our, our
21 tax people and get back to you.

22 CHAIR GJONAJ: And which also makes it
23 even more important that if we know our restaurants
24 are contributing to the tax base through a real
25 estate taxes, through income tax, and other franchise

2 fees and taxes that we bestow upon them; it's more
3 important that we protect them instead of, and again,
4 I'm not knowing Grubhub or the other providers, I
5 would hate scenario of where a percentage of the
6 sales transaction is leaving our city and going to a
7 different state and not contributing to our tax base.

8 AMY HEALY: I'd be happy to get back with
9 you again. Public companies have this information.
10 It shouldn't be difficult to obtain. I didn't
11 prepare for that. We do have an office at Bryan Park
12 where normally, right now, we're at a return to work
13 pilot program, but after Labor Day, we expect to
14 bring the bulk of the 500 employee's based there
15 back. So, it is our second largest office after
16 Chicago.

17 CHAIR GJONAJ: And I believe Council
18 Member Moya has a question for you, Ms. Healy.
19 Council Member?

20 CM MOYA: Thank you, Chair. I got a few
21 questions if you don't mind.

22 CHAIR GJONAJ: Yeah.

23 AMY HEALY: Of course.

24 CM MOYA: Thank you, Ms. Healy. So, just
25 sticking to where the Chair was going this, how many

2 folks employed do you actually have in New York City?
3 Not independent contractors, full time employees?

4 AMY HEALY: Right. I believe close to
5 500.

6 CM MOYA: Okay, now, what is the cost of
7 your company to operate the platform?

8 AMY HEALY: All the technology? I, I
9 don't have that handy.

10 CM MOYA: Okay, could you get that
11 information, please?

12 AMY HEALY: Sure.

13 CM MOYA: Okay, and how much is it to
14 list a restaurant?

15 AMY HEALY: What do you mean? To just
16 put it on our platform?

17 CM MOYA: Yeah.

18 AMY HEALY: I don't have the exact cost
19 of that, again, it depends on where you want to be on
20 the platform. Do you want to be ... (crosstalk).

21 CM MOYA: Like, so you have options. So,
22 like if I want to different options for ...
23 (crosstalk).

24 AMY HEALY: Right ... (crosstalk).

25

2 CM MOYA: Wonderful service, right, what's
3 the lowest and what's the highest?

4 AMY HEALY: Generally, the lowest is
5 being 12 to 15 percent.

6 CM MOYA: 12 to 15 percent is the lowest,
7 and the highest would be what?

8 AMY HEALY: Depends on the restaurant,
9 what they, they can pay whatever they choose to pay.
10 There are restaurants who open a new restaurant who
11 really want to do, as you can imagine, a big grand
12 opening and buy a lot of advertising. I mean, they
13 might buy it from us, they might buy balloons, they
14 might buy signage, they might, you know, buy an ad in
15 the local paper. It's up to the restaurant.

16 CM MOYA: On how much it's going to cost
17 them to list on your platform?

18 AMY HEALY: No. You're, you're asking
19 about the, the top. If they want to do a coupon,
20 they can choose to do, they go through Valpak and say
21 20 percent off and the restaurant eats that 20
22 percent, or they can do a 20 percent off coupon
23 through, through Grubhub.

24 CM MOYA: But I'm just saying if I'm a
25 restaurant and I want to, I want to list my service

2 on your platform, on Grubhub, what is the lowest
3 cost, what is the, what is the, do you have packages,
4 how do you offer these to restaurants is what I'm
5 trying to get at?

6 AMY HEALY: Every restaurant has an
7 account executive that walks them through it, that's
8 how.

9 CM MOYA: But do you have something that
10 ... (crosstalk).

11 AMY HEALY: We don't list our prices on,
12 on the website. The account executive ... (crosstalk0.

13 CM MOYA: You don't put your prices on
14 the website?

15 AMY HEALY: That's right.

16 CM MOYA: Why?

17 AMY HEALY: Because the account
18 executive, they're all customizable, and again, you
19 asked what's the lowest price, it's between 12 and 15
20 percent to be on the market place.

21 CM MOYA: Okay, but you just said ...
22 (crosstalk).

23 AMY HEALY: They sign a contract, Council
24 Member, so everything, there's no, there's not

2 nefarious business going on. All the rates are in
3 their contract that they agree to with us.

4 CM MOYA: Okay, so, how much does it cost
5 to process an order through Grubhub?

6 AMY HEALY: What are you saying, what?
7 The credit card processing?

8 CM MOYA: Yep.

9 AMY HEALY: It's 3, it's about 3.5
10 percent.

11 CM MOYA: Okay.

12 AMY HEALY: We can get more specific.

13 CM MOYA: Okay, and how much did you
14 charge restaurants for each of those, like prior to
15 COVID? So, like, if I'm placing, if I'm placing an
16 order, right, through, through Grubhub, the
17 processing fee you're charging the restaurant is just
18 the credit card processing fee, is that all you're
19 charging them?

20 AMY HEALY: It's the credit fee ...
21 (crosstalk).

22 CM MOYA: Do you have a fee as well to
23 Grubhub because an order was placed through your app?

24 AMY HEALY: The credit card is what, what
25 the processor is charging, plus a nominal amount for

2 our fraud. We cover a fraud, credit card fraud for
3 the restaurants, so if a diner, for some reason
4 doesn't pay the restaurant cause their credit card
5 was cancelled or for some other reason, Grubhub eats
6 that loss and so, a small portion fee ... (crosstalk).

7 CM MOYA: What, what's the, what's the,
8 what's the cost of processing an order through
9 Grubhub?

10 AMY HEALY: It's about 3.5 percent. I
11 can get you exact numbers.

12 CM MOYA: So, it's 3.5 percent, is just
13 the credit card processing fee.

14 AMY HEALY: No. that's ... (crosstalk).

15 CM MOYA: I'm sorry, I'm just trying to,
16 I'm trying to be clear here because you said the
17 credit card charge is 3.5 percent, then you said that
18 you charge a nominal fee in case of fraud, so my
19 question is, what is the total processing fee for an
20 order that is being done through Grubhub?

21 AMY HEALY: I believe the total is a
22 little bit less than 3.5 percent, and I'll confirm
23 that with you. I'm texting my team now.

24 CM MOYA: Okay.

2 AMY HEALY: Including everything,
3 including everything, Council Member.

4 CM MOYA: Okay, including the credit card
5 and whatever nominal fee ... (crosstalk).

6 AMY HEALY: Yes.

7 CM MOYA: That is that you charge, is
8 less than 3 percent.

9 AMY HEALY: I didn't say, less than 3.5.

10 CM MOYA: 3, less than 3.5.

11 AMY HEALY: Yeah, I'll confirm that with
12 you.

13 CM MOYA: It really, it really, it would
14 be very helpful if we actually knew the cost of what
15 it is to process an order (crosstalk).

16 AMY HEALY: Yes, and Grubhub, Grubhub has
17 had extensive conversation with the OSC and provided
18 reams of information about our credit card processing
19 fees, so while ... (crosstalk).

20 CM MOYA: Yeah, but we don't, you're at
21 this hearing.

22 AMY HEALY: I know.

23 CM MOYA: Right, and, and, and you don't
24 know what it costs to actually put an order through
25 your own company's app.

2 AMY HEALY: I, I, I, it's less than 3.5
3 percent, and I'm waiting on my team to text that to
4 me ... (crosstalk).

5 CM MOYA: It's, it's, it's something that
6 this should, you should be prepared to know exactly
7 what it cost to do an order through your own
8 company's app, right? Like, I don't think that we
9 are asking anything that ... (crosstalk).

10 AMY HEALY: No, and I'm not trying to ...
11 (crosstalk).

12 CM MOYA: Team to go back and find out
13 what that is. I would like to get that, please
14 before your done testifying, and I'd also like to
15 know how much it was prior to, to COVID. Look, we've
16 heard from, from restaurants that their contracts and
17 rate with third-party apps having increased without
18 being informed or resigning the contract. What do
19 your contracts with restaurants look like and why
20 would this happen, what is the process of changing
21 the contract?

22 AMY HEALY: We don't change the contract
23 without the restaurants permission. Our contract is
24 a two-page contract on our website, easily found,
25 happy to share it with you, and it can be cancelled

2 by the restaurant at any time. There's no long-term
3 agreements required. There's no signup fee, so the
4 restaurant, if they don't like the value that they're
5 getting, they can cancel it at any time.

6 CM MOYA: Okay. What does your marketing
7 service provide and what is the hard cost of those
8 services?

9 AMY HEALY: The hard cost of those
10 services, Google is our largest vendor, so, in order
11 to get, we have 33 million diner that look to Grubhub
12 for local restaurants, so in order to reach those
13 diners, we have extensive marketing and advertising
14 and ad board campaigns, search engine optimization,
15 and other hard cost by vendors in order to surface
16 these local restaurants to these diners.

17 CM MOYA: Great, so, what's the actual
18 cost for the Google ad?

19 AMY HEALY: It, it, it depends on the
20 market. Google has a lot of different, as you can
21 imagine, it depends on the key word, it depends on
22 the geography.

23 CM MOYA: So, you don't have examples of
24 like what you offer restaurants when you go in and
25 say, look, we're going to market your restaurant

2 here, here's our basic package of what we can deliver
3 for you, and we can scale it to whatever you want,
4 like where is ... (crosstalk).

5 AMY HEALY: That's right. As I
6 mentioned, to get on a platform, it's about 12 to 15,
7 to get on the market place, about 12 to 15 percent,
8 and ... (crosstalk).

9 CM MOYA: 12 to 15 percent of what?

10 AMY HEALY: Of the order, that's a fee.
11 When there's an order, not to just to just get on a
12 market, sorry, there's no fee to get on the market
13 place. You only are charged when an order is
14 generated. So, that's different that eye balls.
15 It's not a billboard. You're only charged when an
16 order is generated. You're not charged, if you don't
17 get any orders in when you're on our market place.

18 CM MOYA: So, you're not charging them
19 for marketing, you're only charging them for orders?

20 AMY HEALY: The marketing that results
21 in order. We don't charge them just to be on the
22 website.

23 CM MOYA: How do you determine that that
24 order was placed due to marketing? So, if I go, if I
25 go on Grubhub, if I got the app and I download it

2 here, and I want to order from, you know, my favorite
3 restaurant here. How is that determined, like I know
4 the restaurant, how do you determine that that order
5 was placed due to advertisement and not just that I
6 want to order from the restaurant that's right down
7 the block from house? How do you determine that?

8 AMY HEALY: Because the order is coming
9 through our market place, so, if there's advertising
10 somewhere, and a restaurant clicks on that, or a
11 diner clicks on that restaurant, and it's our
12 advertising, it's, the transaction takes place in our
13 market place, so we can track that.

14 CM MOYA: So, if I download Grubhub
15 right now, right, and I get the app here, and I want
16 to place an order from Mama's in Corona, I know where
17 Mama's is. I didn't see on any ad, but I'm on your
18 platform, I'm on your app, and I click that
19 restaurant to place the order, it, is that you
20 charging them a marketing fee?

21 AMY HEALY: Yeah, if you made the order
22 on Grubhub, and, yes, it's as if you went on Amazon
23 and ordered from a store that you know is around the
24 corner, but you chose to go onto Amazon, Amazon is
25 taking a cut of that order, but if walked around the

2 corner and went to that hardware store yourself, no,
3 Amazon wouldn't be taking an order, and it's an
4 analogist to Grubhub. If you ... (crosstalk).

5 CM MOYA: So, you're saying that you use
6 Google as a part of you, you know, what you charge
7 them for marketing, right, I'm saying I'm going on
8 Grubhub, I'm not, I'm not on any other platform where
9 I can see advertisement that comes in, like normally
10 you get ads in different platforms, I'm solely on
11 your app. That's considered how you would charge them
12 as a marketing fee because I placed an order on your
13 app?

14 AMY HEALY: Yes, you chose to come
15 through the Grubhub door.

16 CM MOYA: Okay, so then, so that's what
17 I'm saying, it's like, that's, that's, to me, that's
18 not considered a digital ad for them. They're just
19 listing, that's, that to me is like the Yellow Pages,
20 right. I, I get the Yellow Pages and I got, I paid
21 to be in the Yellow Pages, and then there's a list
22 and I can go on the Yellow Pages and find out, right?
23 This is now ... (crosstalk).

24 AMY HEALY: If you paid, if you paid to
25 be, right, if you paid to be on the Yellow Pages,

2 you're paying, the difference is, you're paying the
3 Yellow Pages rather or not you get an orders. You're
4 only paying us if you get an order. Your paying the
5 Yellow Pages just to be listed.

6 CM MOYA: But that's, but that's
7 different because you're saying that you have a high
8 cost because you use Google.

9 AMY HEALY: For some orders, yes.

10 CM MOYA: As a platform, right, and I'm
11 just trying to distinguish, like what is considered
12 marketing, as opposed to ... (crosstalk).

13 AMY HEALY: Council Member Moya, we are,
14 we are a market place like an Amazon, and when you go
15 through the Amazon door, I don't think any consumer
16 thinks that Jeff Bezos isn't getting a slice of that
17 transaction ... (crosstalk).

18 CM MOYA: No, I'm talking about Grubhub,
19 I'm talking about Grubhub right now ... (crosstalk).

20 AMY HEALY: I understand ... (crosstalk).

21 CM MOYA: I'm trying to make a
22 distinction here what you're saying because you just
23 said that you have a hard cost and you pay Google to
24 place ads in their digital marketing form that goes
25 out to so many people. I'm saying, I go on your app.

2 AMY HEALY: Yes.

3 CM MOYA: I'm not on any of, anywhere
4 else. I'm still being charged by you as the
5 restaurant because it went through your platform.

6 AMY HEALY: That's right, and if you
7 don't want to be our platform, you don't need to be.

8 CM MOYA: Right, but you're saying,
9 you're saying this was all based on the high cost
10 that you had to do a lot of digital market?

11 AMY HEALY: Yes, and just, we're not the
12 Yellow Pages, we do, we optimize your menu, we take
13 care of the customer care inquiries even if you come
14 through the door, we take care of fraud protection,
15 undeliverable orders, we pay for the support that the
16 restaurants might have ... (crosstalk).

17 CM MOYA: You haven't given me any like
18 definitive cost of what it is to actually contract
19 with you. Like you tell me we don't list it. You
20 know, I've talked to other third-party apps that
21 actually do list their packaging of what they offer
22 folks. You're saying we just send out our accounting
23 team or whatever that goes out there any deals with
24 this agreement and that's how we do it. You haven't
25 given me any numbers at all, even just the simple

2 number of what it cost to process an order through
3 your app. I want to move on ... (crosstalk).

4 AMY HEALY: So, the numbers are ...
5 (crosstalk).

6 CM MOYA: If I could cause I know we're
7 running out of time. So, I just want to be able to
8 get three more questions in if I could, Chair. So,
9 what percentage of the marketing fees prior to COVID,
10 went to restaurants individual advertisement and
11 support, and how much money was used for ad campaigns
12 for your app, for example in the form of banners, in
13 subway cars, etc.

14 AMY HEALY: In New York City or
15 nationally?

16 CM MOYA: New York City, yeah.

17 AMY HEALY: Well, I don't have the New
18 York City advertising numbers, Nationally, we spent
19 about, I think it's about 300 million dollars
20 advertising for our restaurants.

21 CM MOYA: Okay, but you, you could get
22 us the numbers you spent here in New York City,
23 correct?

24

25

2 AMY HEALY: Yes, it's one of the data
3 points I didn't have handy, but I'll get it for you.
4 I've got the credit card information ... (crosstalk).

5 CM MOYA: I'm making an acute list for
6 you of things that I've been asking because I haven't
7 been able to get any, any real numbers from you. You
8 also, and I thank the Chair also for clarifying,
9 cause you threw out the Latino Restaurant
10 Association, and I was busy trying to Google and find
11 out what it is, they're not based in New York,
12 correct?

13 AMY HEALY: That's correct.

14 CM MOYA: Okay, well, you're in New
15 York, and you're talking about a fee here, but that
16 should have been something that you could have
17 clarified in the very beginning to not make it seem
18 as though it's the Latino Restaurant Association
19 here in New York City.

20 AMY HEALY: I never intended, I never
21 said it was in New York City.

22 CM MOYA: Okay, but when you come out and
23 you're doing that, it's kind of disingenuous that you
24 don't say that this from a completely different
25 state.

2 AMY HEALY: I believe I did say it was a
3 San Francisco Examiner.

4 CM MOYA: Only when the Chair asked you
5 to clarify who that was.

6 AMY HEALY: Okay.

7 CM MOYA: So, I just want to make that
8 very clear. How many restaurants, many restaurants
9 have described the third-party app as a necessary
10 evil that increases the volume of orders, but doesn't
11 actually net more profits because of the high cost of
12 service. What data do you have that shows a net gain
13 to the restaurants profit margin by using your
14 services that you provide beyond basic listing that
15 you had, you know, prior to COVID?

16 AMY HEALY: We list a restaurant
17 profitable calculator that restaurants can use on our
18 website so they can determine rather or not it makes
19 sense for them to work with us, so, that's public and
20 you're free to look at that calculator which you can
21 put in different numbers and it will show a
22 restaurant their profitability by working with us.

23 CM MOYA: Okay, and my last question is,
24 do you have geographic breakdown of where orders are
25 placed and from what restaurants are receiving the

2 most? So, for example, if you look at the zip code
3 10014 and 11368 in New York City, would you be able
4 breakdown the orders placed and the marketing
5 provided for the restaurants in each of those area?

6 AMY HEALY: I believe so, yes. I'm not
7 sure how much is, is proprietary or should be shared
8 with you directly, but we should be able to do that.

9 CM MOYA: I just want a breakdown of
10 orders, that's all I'm asking for.

11 AMY HEALY: When we work with over 20,
12 about 22,000 restaurants in New York City ...
13 (crosstalk).

14 CM MOYA: But are they broken down by
15 zip code?

16 AMY HEALY: Yes.

17 CM MOYA: Okay, and ... (crosstalk).

18 AMY HEALY: Or we can get them by zip
19 code.

20 CM MOYA: Okay, and you can break down
21 the orders that were placed and the marketing that
22 was provided for those restaurants in those areas,
23 correct?

24 AMY HEALY: Yeah, how much our
25 restaurants are spending on our marketing?

2 CM MOYA: Yes. The orders, the numbers
3 of orders that were placed and the marketing that was
4 provided for the restaurants in those zip codes?

5 AMY HEALY: Yes, we keep track of every
6 order, every order.

7 CM MOYA: Okay, and how much you spent
8 on marketing for each of those restaurants, right,
9 that are listed in those zip codes?

10 AMY HEALY: Uh, I believe so, yes. I
11 mean, some of the marketing we spent is TV,
12 obviously.

13 CM MOYA: Whatever it may be.

14 AMY HEALY: Okay, yeah.

15 CM MOYA: You would be able to give us a
16 breakdown, right?

17 AMY HEALY: Sure.

18 CM MOYA: Okay, all right, thank you so
19 much, Chair.

20 AMY HEALY: The credit card fee is uh,
21 3.05 percent, plus 30 cents.

22 CM MOYA: So, again, I'll ask it again.
23 What is the total cost of placing an order through
24 Grubhub?

25 AMY HEALY: 3.05 percent plus 30 cents.

2 CM MOYA: So, you charge the addition 30
3 cents on top of the 3.5 credit card fee?

4 AMY HEALY: For the fraud. It's paid
5 by, again for our credit card fraud, yes.

6 CM MOYA: Okay, so, the only charge, to
7 pay for Grubhub ... (crosstalk).

8 AMY HEALY: 3.05 percent plus 30 cents.

9 CM MOYA: Right, so that 3.05 percent is
10 just a credit card fee, and then you're saying you
11 add a 30 cents additional fee for fraud?

12 AMY HEALY: To cover our cost for fraud.
13 We lose around 10 million dollars a year to credit
14 card fraud.

15 CM MOYA: Okay, all right, I just wanted
16 to be clear that that's what it cost the restaurant.
17 It's just, you don't charge, you don't charge
18 anything but 30 cents to place an order?

19 AMY HEALY: That's my understanding,
20 yes.

21 CM MOYA: When you say that's my
22 understanding, do we have like ... (crosstalk).

23 AMY HEALY: We've had extensive
24 conversation; our lawyers have talked to the lawyers

2 at OSE about our credit card fee. I have not been
3 apart of those conversation.

4 CM MOYA: Well, I just want to know what
5 it cost to ... (crosstalk).

6 AMY HEALY: That's what I'm, that's what
7 I'm telling you, sir.

8 CM MOYA: Okay, I just think that we've
9 spent, I don't know how long I've been here, and you
10 know, we don't what it actually is, so, if you're
11 telling me it's 30 cents, okay, but it doesn't seem
12 like it's definitive. You don't know. You're
13 saying, you know, I still got to check. To me, that
14 says a lot. So, I hope that we can get the
15 information that I asked. Thank you, Chair so much
16 for the time. I appreciate it very much, thank you.

17 CHAIR GJONAJ: Thank you, Council Member.
18 Ms. Healy, and I think you want to revisit that
19 number cause the 3.05 percent may be the fee that's
20 being passed through, but I don't think that's the
21 actual fee, depends on the provider and the agreement
22 that they have with the credit card company is my
23 understanding.

24 AMY HEALY: Well, I was trying to get to
25 the closest numbers, Council Member Moya wanted. It

2 is very, we have different processors and they do
3 charge different things, that's my understand-, which
4 is why I, I clarified that way. There's been reams
5 of paper going back and forth between Grubhub
6 attorney's and OSE. I wish everything could be as
7 simple as one number and one size fits all, but
8 that's often not the case.

9 CHAIR GJONAJ: Thank you. So, I'm going
10 to follow up with some quick questions. Did you cut
11 wages for delivery workers during a period in which
12 the commission cap was in effect?

13 AMY HEALY: Did you cut wages? No.

14 CHAIR GJONAJ: Yeah. Perfect, and again,
15 on this, I'm asking a very specific question, and it
16 may not be able to be answered, depending on
17 different offers that you have. How much commission
18 as a percentage did you charge restaurants for
19 providing delivery before the commission cap was in
20 effect?

21 AMY HEALY: 10.

22 CHAIR GJONAJ: And once it was in effect,
23 5, 15 for delivery, and 5 for marketing.

24 AMY HEALY: But according to the law.

25 CHAIR GJONAJ: Right.

2 AMY HEALY: That's right.

3 CHAIR GJONAJ: Okay, can you describe the
4 various services you provide to restaurants and the
5 approximate cost to you to provide these services,
6 and I think that's what Council Member Moya was
7 actually asking, the various services ... (crosstalk).

8 AMY HEALY: Are you talking about
9 delivery?

10 CHAIR GJONAJ: Both. All services that
11 you offer, some, some cases you offer only marketing,
12 in some cases you're offering marketing and delivery.
13 I don't think you're doing just delivery.

14 AMY HEALY: That's right. We started
15 out as a marketing company and we didn't offer
16 delivery until about six years ago. So, delivery at
17 10 percent is obviously to pick a driver, the
18 technology on the app, the customer service to deal
19 with the drivers, the training, the PPE, the
20 background checks. Delivery a 10 percent, not a
21 money maker for us. We, again, as a marketing and
22 advertising company, that's our, our strong suit and
23 that's our focus. We only provided delivery because
24 our competitors started providing delivery. Again,
25 New York City, where restaurants know how to deliver,

2 it's just part of the restaurant eco system here and
3 yeah, they, they can find as value in needing
4 delivery as they did in getting to all the New York
5 City diners that prefer to transact this way.

6 CHAIR GJONAJ: All right, and I, I guess
7 that's the difference in your, as you explained the
8 delivery was just a service that wasn't profitable,
9 you just offered it as an additional service to your
10 marketing plan when you were charging 10 percent.
11 Now, we would imagine at 15 percent, it's profitable?

12 AMY HEALY: We don't, we're still
13 operating at a loss because of the fee cap, Council
14 Member.

15 CHAIR GJONAJ: Okay, well, that would
16 mean, if it would mean, if the break even point was
17 10 percent for delivery and you're charging 20
18 percent for delivery with marketing, that would allow
19 for 10 percent to cover your marketing expenses, is
20 where I'm heading at, and if you're saying that 10
21 percent is not covering your marketing expenses,
22 depending on which platform, which package, you can't
23 obviously offer the premium package to everyone,
24 there just isn't enough airtime for you to build a
25 market, all the pizzerias equally, as a premium

2 package. It just wouldn't work for you. So, I
3 guess, you would need those different tiers, and
4 they're not all going to be as expensive as the
5 premium tier.

6 AMY HEALY: That's right.

7 CHAIR GJONAJ: The current Bill which has
8 a break on a 15 percent delivery and 5 percent
9 marketing, do you find it fair to allow for a higher
10 percentage for a delivery service than for marketing
11 given the approximate cost you just described, and I
12 guess, that's where we're heading with all this?

13 AMY HEALY: No, we don't. Grubhub
14 provided, as I said, delivery service at 10 percent
15 because we're primarily a marketing company, so our
16 restaurants come to us for that, first and foremost,
17 to run loyalty programs for them to run, you know,
18 targeted email campaigns, you know, to optimize their
19 website, to do all of the things that a marketing
20 company does, you know, an ad agency has real costs,
21 and so to discriminate again that part of the
22 business in favor of the delivery side, you know, we,
23 we just can't support that. Again, you made a
24 comment about the government shouldn't be picking

2 winners and losers, and we believe that is exactly
3 what happened under the current law.

4 CHAIR GJONAJ: And I'm sure you won't be
5 surprised by this cause you're going to remain on the
6 hearing when we talk to the other third-party
7 platform providers, they're going to say just the
8 opposite, that marketing is such a minimal expense to
9 them, that really the hard costs and the expense part
10 of the delivery portion, and this is why this Bill is
11 so unfair to them. So, somewhere between those ...
12 (crosstalk).

13 AMY HEALY: Right ... (crosstalk).

14 CHAIR GJONAJ: That are focused on
15 delivery and marketing where no one is happy, would
16 probably mean we didn't something right. If you both
17 are arguing ... (crosstalk).

18 AMY HEALY: That's what, that's what we
19 would say, well, first of all, we are a different
20 companies and that's why we would say that the
21 government interfering in this industry is skewing,
22 you know, there's no way to, to not skew the
23 economics of the industry.

24 CHAIR GJONAJ: All right, so that's why
25 it's important for government to actually, for this

2 hearing, and for our involvement. So, I'm looking at
3 two reports. One from Camino Financial and one from
4 Restaurant 365, and both put full-service restaurants
5 at a profit margin of 3 to 5 percent. Fast Casual,
6 which is fast food, anywhere between 6 and 9 percent,
7 and a catering service which does apply to you, but
8 fine dining at 4. So, the question that we've been
9 asking from the first hearing that we had, please
10 help us understand how this works. If a fast food
11 establishment is making between 6 and 9 percent
12 profit on every order, that's their gross net profit,
13 how does it benefit them paying upward of 20 percent
14 plus the credit card fees that are being passed
15 through, that in everyone's mind, if we do the same
16 Math, that means every sale yields a net loss.

17 AMY HEALY: We've had this conversation.
18 Profit is calculated after all the restaurant's costs
19 are taken into account, yet, I feel like you're,
20 you're separating one cost which is a third-party
21 market place, does that include labor too ...
22 (crosstalk).

23 CHAIR GJONAJ: That includes everything.

24 AMY HEALY: It includes everything.

2 CHAIR GJONAJ: The market, this is an
3 industry standard now. Every industry like, well,
4 actually you should be able to answer this question
5 better than anyone else. You're industry is the
6 restaurant industry and you are the foremost expert
7 on the restaurant industry in New York City. My
8 question to you would be a fast food establishment,
9 what are the net profit margins, as an industry, not
10 specific to one location?

11 AMY HEALY: I, I, I'm not an expert on
12 the restaurant industry.

13 CHAIR GJONAJ: Okay.

14 AMY HEALY: I represent a third-party
15 market place.

16 CHAIR GJONAJ: Uh-huh.

17 AMY HEALY: And as I mentioned to
18 Council Member Moya, we have a restaurant
19 profitability calculator on our website so that
20 restaurants can determine, does it make sense to work
21 with Grubhub or not. If it doesn't make sense, these
22 are very smart business owners as you know, then they
23 will not, if it doesn't make sense for them work with
24 us, then they don't.

2 CHAIR GJONAJ: Alright, cause ...
3 (crosstalk).

4 AMY HEALY: Cause we have restaurants
5 that come on and come off all the time.

6 CHAIR GJONAJ: All right.

7 AMY HEALY: Cause they've made
8 determinations that it did work for me, maybe now it
9 doesn't, that's is their business decision to make,
10 which vendors they choose, which food suppliers they
11 use, what kind of labor that they want, that is not
12 our decision, that is theirs.

13 CHAIR GJONAJ: So, two years ago when we
14 first began these hearings, the whole argument and
15 notion when I asked that question, and we talked
16 about profit margins and the fees that were being
17 charged per order, the argument was called
18 incremental sales, that yes, you're paying more on an
19 order that you, through our platform because that
20 customer is going to come back and frequent your
21 establishment. Then we got the reports to show that
22 that wasn't the actual case. That it was actually
23 cannibalizing existing customers and that third-party
24 delivery food platforms are now becoming a consumer
25 demand, and that's was prior to the pandemic. During

2 the pandemic, it became the only way you can order
3 food and get in touch with a restaurant to have food
4 delivered because of the restrictions. We know that
5 some percentage will go back to in-house dining, but
6 overall this is now, a way of life. A habit.
7 Including my mother who has never ordered a product
8 in her life on the internet, now knows how to order
9 something with a credit card, and if she can do it,
10 that means everybody's doing it, and now, it's
11 normal. If we're looking at an industry that is very
12 vital, and I believe the numbers were 80 percent of
13 the restaurants within the first 5 years, close in
14 New York City. We're looking at an industry that is
15 extremely volatile to begin with, let alone these
16 unknown times. Help me understand so that when I'm
17 approached, I say I, a small business Chair, I did
18 everything possible to make sure that there was a
19 fair playing field, that truly there was a
20 partnership between providers and restaurants that
21 benefited both, and there was no need or whatever
22 need there was, we addressed through legislation.
23 Can you help me and my colleagues how we get there?

24 AMY HEALY: Sure. First of all, there
25 are several pieces of legislation you're considering

2 that Grubhub does support. I would also look to the
3 National Restaurant Association's blueprint for
4 cities and states, what cities can do according to
5 the National Restaurant Association based on their
6 membership, none of which says the fee caps are the
7 answer. There are a list of things in that
8 blueprint, many of which is bureaucracy from local
9 cities that restaurants face, and the fines and fees
10 and licenses; and you and I have talked about this,
11 you've been fighting this, in which we appreciate,
12 and our restaurants appreciate, but there are a list
13 of things that the restaurants are saying, based on
14 survey, all of their restaurant members, this is what
15 states and localities can do. On the transparency
16 issue and listing restaurants without permission,
17 that's on there. Fee caps are not. So, I'm happy to
18 sit down with you and go through this list where we
19 can, again, we support many of the things that you're
20 considering today, and happy for us to sit down and
21 look at what the restaurants are saying based on
22 their surveys, but what they need from cities and
23 city governments like New York.

24 CHAIR GJONAJ: All right. Thank you for
25 pointing that out. I agree with you, but some form

2 of regulation is always needed, rather it be a usury
3 regulation for unfair interest, rather it be energy,
4 rather it be housing, there are industries that have
5 to be regulated to protect consumers and everyday
6 citizens; otherwise you have a muck.

7 AMY HEALY: Agreed, and think ...
8 (crosstalk).

9 CHAIR GJONAJ: Price gouging and
10 everything else, so the, although we both agree in a
11 perfect world, markets that regulate themselves,
12 government intervention is needed because not
13 everyone is going to be fair and transparent, and
14 greed and driven by profitability, which is okay,
15 that's the way we operate, no one wants to operate at
16 a loss, and that should be the principal for small
17 business. We just want to make sure that these
18 small businesses have a fighting chance on these
19 scenarios, your partner, which is the local
20 restaurant is questionable on how we come of this
21 pandemic. Will they survive or not?

22 AMY HEALY: Council Member, one area
23 where we would love to have your support and the
24 Council support is to help lobby Albany to make
25 alcohol to go a permanent option for restaurants. As

2 you know, that was ended recently, our restaurants
3 tell us, you know, rather they're working with us or
4 not, that increases their margin on every order, and
5 so for the state to let that lapse, you know, we are
6 hearing from restaurants complaining that, you know,
7 at a time when they need it the most, the high margin
8 product of selling of alcohol to go, having that
9 taken away, is hurtful.

10 CHAIR GJONAJ: And I ... (crosstalk).

11 AMY HEALY: So, if, you know, we're
12 working to support this in Albany, whatever you can
13 do, and your colleagues can do, we would certainly
14 appreciate it and the restaurants would appreciate
15 it.

16 CHAIR GJONAJ: I think that's a great
17 idea, but the concerns, we go right back to square
18 one again, the profitability, is it 20 percent on
19 alcohol, obviously, it will add to your profile and
20 increase revenues if we could sell alcohol and
21 deliver alcohol, will be increased revenues for you.
22 The question is, is it sustainable for that
23 restaurant or that establishment where the fee would
24 be 20 percent, and we go back to the same questions.
25 Any which way I've look at this and every Math that I

2 can possible come up with on the every scenario shows
3 me net losses. Not profitability ... (crosstalk).

4 AMY HEALY: Council Member, we'll share
5 our restaurant profitability calculator and again, if
6 the restaurant doesn't find value in working with us,
7 they have other options.

8 CHAIR GJONAJ: Right, but the custom-, ...
9 (crosstalk).

10 AMY HEALY: We understand that during
11 the pandemic, it was a different scenario.

12 CHAIR GJONAJ: There was no option. The
13 customer demands now, third-party delivery food apps,
14 it's a demand, and if you're not offering it, I'm
15 sure there are restaurants that will love to say I'm
16 sorry, I don't accept credit cards. They wouldn't
17 have to pay a credit card fee for the transaction,
18 but the demands are there and they must provide that
19 service. The reality is today, and we're looking
20 moving forward, third-party food delivery apps are
21 here to stay, and they're only going to increase in
22 demand, and that's wonderful, but it's going to be, I
23 can't substantiate profitability levels for third-
24 party food delivery apps and not take the same
25 considerations for our restaurants, and we know, God

2 knows the consumers ultimately pays for it anyhow.
3 There's only a matter of time before they can't
4 afford the products that are being offered by
5 restaurants and we go back to a different argument
6 about unhealthy eating and less expensive food and
7 the impact that it has on New Yorkers which already
8 deal with obesity and high blood pressure and all the
9 negative issue cause they can't generally afford the
10 fresh food which is more expensive, and ultimately
11 this is the price that we'll all be paying for to
12 correct and address. I don't have any other
13 questions for Amy, unless you want to make a close
14 statement.

15 AMY HEALY: No. Appreciate, appreciate
16 the time. It's always a fun time talking in front of
17 this committee. I hope we can keep the dialogue
18 going. Like I said, there are things that the
19 restaurants are telling us that they want and need,
20 and you're in a position to make some of those happen
21 and we'd like work with you on that.

22 CHAIR GJONAJ: Thank you. Thank you.

23 COMMITTEE COUNSEL STEPHANIE JONES: Thank
24 you, Chair. Thank you for your testimony, Amy.
25 Moving on with public testimony, I will be calling

2 Thomas Grech next, followed by David London, and then
3 Daniel McCarthy. Thomas.

4 SGT. LEONARDO: Starting time.

5 THOMAS GRECH: I was going to say good
6 morning, but it's actually good afternoon. Thanks
7 for allowing me this opportunity, and before I get
8 started, I want to thank Chair Gjonaj, a friend of
9 small business, for his dedicated service to the City
10 Council and to this committee for years. Thank you
11 very much, Chairman Gjonaj. Good afternoon,
12 distinguished members of the committee. My name is
13 Tom Grech. I'm the President and CEO of the Queens
14 Chamber of Commerce, the oldest and largest business
15 association in Queens County. I'm here on behalf of
16 our nearly 1,400 members testifying in support of the
17 Bill you're hearing today that will help small
18 businesses and throughout Queens and New York City in
19 general. Prior to the pandemic, Queens was home to
20 6000 restaurants serving cuisine from around the
21 world. These small businesses created jobs and
22 opportunities in every nook and cranny in every
23 community of Queens County, especially for our
24 immigrants and new Americans who add character our
25 neighborhoods and are a major driver of tourism to our

2 borough. Sadly, the last 16 months have been
3 incredibly hard on the restaurant industry in Queens.
4 We estimate that nearly 1,000 of those 6,000 have
5 disappeared potentially forever. Too many cherished
6 neighborhood institutions have shut their doors and
7 those that have survived are hanging on by a thread.
8 I want to take a moment to highlight the four pieces
9 of legislation being considered today that will help
10 these vital small businesses and strongly encourage
11 the committee to pass them as quickly as possible.
12 Intro 2359, from my Council Members Moya and Chair
13 Gjonaj, will make temporary caps on third-party
14 delivery fees which is schedule 90 days after
15 restaurants are allowed to return to 100 percent
16 indoor occupancy permanent. The Bill will allow
17 small businesses to keep more of the money they earn
18 and ensure customers are supporting their local
19 restaurants. Intro 2233 from Chair Gjonaj will
20 require third-party delivery services to have an
21 agreement with ... (crosstalk).

22 SGT. LEONARDO: Time expired.

23 THOMAS GRECH: Before they can be listed.
24 Sounds like common sense. When third-party platforms
25 list restaurants without their permission and okay,

2 their siphoning off customers who may have otherwise
3 ordered directly from the restaurant, often paying a
4 smaller or no fee whatsoever. It also creates
5 confusion for customers and restaurants as menus
6 items change frequently and in some cases, daily.
7 Intro 2356, from Chair Gjonaj, will make permanent
8 the temporary law that ... (crosstalk).

9 SGT. LEONARDO: Time expired.

10 THOMAS GRECH: Third-party services. In
11 closing, it's been a very, very difficult year and
12 the Queens Chamber of Commerce supports the Bill.
13 Thank you very much for your time.

14 CHAIR GJONAJ: Tom, I want to thank you
15 for your work and what you've been doing in Queens
16 and throughout the city representing the small
17 businesses. We have a lot more to do. Thank you,
18 Tom.

19 THOMAS GRECH: Thank you, sir.

20 COMMITTEE COUNSEL STEPHANIE JONES: Thank
21 you, Tom. A reminder to Zoom panelists. You do not
22 need to raise your hand on Zoom. We will get to
23 everybody. Next, I will be calling David London,
24 followed by Daniel McCarthy, and then George Buono.
25 David.

2 SGT. LEONARDO: Starting time.

3 DAVID LONDON: Thank you, Chair Gjonaj
4 and committee members. My name is David London, and
5 I head US East Government Relations for DoorDash, and
6 I'd like to provide DoorDash's perspective on Intro
7 2359, the permanent commission cap legislation. We
8 share the Council's commitment to helping open
9 restaurants as they emerge from the pandemic, and
10 we're committed to being a strong community partner.
11 For example, here in New York City, we have expanded
12 initiatives to support restaurants delivering workers
13 and community members. Just in the past year, we
14 launched an initiative to support black women and
15 immigrant-owned restaurants through our Main Street
16 Strong accelerator. We partnered with the New York
17 City Hospitality Alliance to offer a half of million
18 dollars in grants to help New York City's small
19 business restaurants. We've also created a range of
20 products and services for New York City's diverse
21 restaurant community including options with no
22 commission at all and commission-based options
23 starting at 15 percent, and recently, we also
24 unveiled new pricing packages which give restaurants
25 the ability to reach new customers starting at a 15

2 percent commission. With restaurant restrictions
3 lifted and so many options available to restaurants,
4 we believe that permanent price controls are
5 necessary. We also believe that permanent price
6 control would be harmful, especially in communities
7 of color. For example, our Dashers who earn \$33 per
8 active hour in parts of this city, stand to lose an
9 estimated \$19 million dollars annually if a permanent
10 cap was implemented. These impacts will be felt most
11 in the city's communities of color as 89 percent of
12 Dasher earnings go to Dashers based in communities of
13 color. Permanent price controls will also increase
14 cost to consumers, creating a regressive tax that
15 makes food delivery less accessible to lower income
16 communities as 72 percent of orders are delivered to
17 communities of color. Each lost order means a lost
18 income earning opportunity for a Dasher and lost
19 revenue for the restaurant. Thank you for the
20 opportunity to address you today and look forward to
21 working with the City Council, Council Member Moya,
22 and Chair Gjonaj moving forward.

23 CHAIR GJONAJ: Thank you, Mr. London.
24 Thank you for always making yourself readily
25 available as well as we try to shape a scenario where

2 both restaurants and third-party platforms continue
3 to thrive. Can you please elaborate again on the
4 impacts if these fees become, if the current caps
5 become permanent and the impact that you see it will
6 having on our restaurants, your industry, and the
7 customers?

8 DAVID LONDON: Yeah, the impacts that
9 these will have specifically, you know, we look at
10 everything from the perspective from our Dashers or
11 our drivers, you know, and also partnered with our
12 restaurant or merchant partners. The impacts that
13 we've seen in other places when commission caps are
14 instituted, we see less orders being made and then
15 what thus we see less, opportunities for Dashers to
16 earn income. So, the places where there have been
17 price controls where we have seen customer order
18 buying go down, and we've also seen prices go up and
19 then we've also, at the same time seen wages go down
20 for Dashers, and as I mentioned in my testimony, a
21 lot of these communities are with the communities of
22 color specifically, and so, that's our larger
23 concern, and we started to talk about permanency of
24 commission caps. I mean, we understood it, though we
25 were here last year, you know, arguing against the

2 temporary cap, but we understood, you know, where the
3 City Council was going. We understood the hurt that
4 our merchant partners were going through last year,
5 but now, we're in a different place and now, we're
6 talking about extending, we can understand the
7 extension if that's where the Council goes, but a
8 permanency commission caps will have long term
9 impacts on those communities that I mentioned.

10 CHAIR GJONAJ: All right. Thank you, Mr.
11 London. So, the 15 percent fee for delivery, plus 5
12 percent for marketing does not work with your model?

13 DAVID LONDON: Well, I would say, I would
14 look at it different. You know, our restaurants are
15 looking for choice, you know, and still, for
16 instance, as I mentioned in my testimony, we've been
17 able to present new programs to give back choice to
18 restaurants, and so, we created a program through our
19 marked partnership programs which allows restaurants
20 to opt into a 50 percent cap, a 25 percent cap or a
21 30 percent cap, depending on the type of services
22 that they want. The concern here is with a
23 permanency of a commission cap, you know, capped at
24 15 percent and 5 percent for market, that's a one-
25 size fits all, and you've heard from, you know,

2 previous folks, our business models are very
3 different. So, I think, you know, restaurants are
4 looking for choice, and a lot of these choices
5 weren't even around a year ago when the pandemic
6 happened. So, I think giving those choices to our
7 restaurants is the key piece cause that's what we're
8 looking for, that's what consumers are looking for,
9 and that's what restaurants are looking for.

10 CHAIR GJONAJ: And I'm sure you heard the
11 question that was going on before your testimony.
12 The question is if we accept the industry standard of
13 6 to 9 percent for fast food establishment, as the
14 margin of profit, how is it that every transaction is
15 going to be benefit that restaurant if they're paying
16 fees of up to 20 percent and if this cap is removed,
17 even higher?

18 DAVID LONDON: Well, I think, again, I
19 got back to where the restaurants, what the
20 restaurants want, you know, and I think the services
21 that we provide, not just we provide, but you know,
22 some of our competitors provide, is allowing them
23 choice, and I keep coming back to choice because
24 again, and I think Amy mentioned this as well, you
25 know, there are options that restaurants have, they

2 don't have to delivery, or on their particular
3 platform, or on our particular platform or others,
4 but what we want to do is just make sure that we're
5 enhancing the choices for our consumers, our
6 restaurant partners. So, for instance, you know, we
7 have a product called store front. You know, one of
8 the things we've heard from a lot of our restaurant
9 partners is that they want to be closer to the folks
10 that actually order through our website, you know,
11 through our market place, and so from a store front,
12 they get a chance to know those customers, so we help
13 them build out their individual websites, they do the
14 orders, the own that relationship with the customer.
15 So, again, it's just one other piece that kind of
16 goes in. So, if we're looking at restaurants, some
17 of them might say, I want to choice; some of them may
18 say, I want to do my own storefront; some may say I
19 want to actually just use the DoorDash order platform
20 and just pick up my food and just order through their
21 individual website. That's what they're asking for.
22 So again, if we're talking profit margins, it depends
23 on the individual business and individual restaurant,
24 what they're look for, but what we want to give them
25 is that choice, so they can be successful.

2 CHAIR GJONAJ: Did you cut wages for
3 delivery workers during the period in which the
4 commission cap was in effect?

5 DAVID LONDON: No, sir.

6 CHAIR GJONAJ: Okay, how much commission
7 as a percentage did you charge restaurants for
8 providing delivery before the commission cap was in
9 effect?

10 DAVID LONDON: Commissions, you know, run
11 anywhere between 15 percent to up to 20 percent, so
12 it all depends on the individual restaurant. I think
13 the key piece is what do actual commission cover?
14 So, commissions actually cover a wide range of
15 services, so for instance, they cover, and you all
16 talked about credit card processing fees, there's
17 that. Theirs is actually, you know, a cost for
18 insurance. Those costs for customer service, and
19 there's some marketing costs, but also most
20 importantly, specifically for the market place side,
21 you know, of delivery, its for paying the Dashers,
22 and so, you know, commission caps before the pandemic
23 ranged, just depending on the individual relationship
24 we have with the restaurant.

2 CHAIR GJONAJ: All right, and then to
3 follow up with that question, what was the commission
4 that you were charging after, once it was in effect?
5 So, you complied and you were charging 15 percent for
6 delivery and 5 percent for marketing, I would
7 imagine. Is that the case?

8 DAVID LONDON: Yes, sir, yeah, by law,
9 yes, sir.

10 CHAIR GJONAJ: In the past too, the
11 credit card charge is in addition to this fee?

12 DAVID LONDON: Yeah. Credit card
13 processing fees are usually charged, you know, by the
14 company that we work with and it ranges anywhere
15 between 2 percent and 3 percent.

16 CHAIR GJONAJ: What is it?

17 DAVID LONDON: 2 to 3 percent.

18 CHAIR GJONAJ: So, you're charging to 2
19 to 3 percent ... (crosstalk).

20 DAVID LONDON: No, I'm sorry. The credit
21 card processor processes 3 percent.

22 CHAIR GJONAJ: And you don't market up,
23 you just make that a straight pass through?

24

25

2 DAVID LONDON: Yeah, we, yeah, we pass on
3 credit card fees. The fees are part of the
4 commission.

5 CHAIR GJONAJ: Okay, in addition to the
6 current caps which are 15 percent for delivery and 5
7 percent for marketing, that's a total of 20 percent,
8 is there an additional charge that you add on top of
9 that for the credit card transaction? So, you're all
10 in at 20 percent, no fee, that's included in the fee
11 that you're currently charging?

12 DAVID LONDON: Exactly. It's inside of
13 the commission, so we don't charge more than 15 plus
14 5 in New York City.

15 CHAIR GJONAJ: Thank you for that, and as
16 a follow up as you heard during her testimony, and
17 I'm hearing now counter, and I think I pointed it out
18 earlier, that one of the arguments that was made is
19 that the marketing is much more expensive than the
20 delivery service. I'm hearing from you otherwise,
21 that the delivery service is much more expensive than
22 the marketing side?

23 DAVID LONDON: No, that's not what I'm
24 saying. I'm saying that it's two different business
25 models and you know, there's no right or wrong to

2 hear one of the business models. We focus primarily
3 on our marketing model specifically, and that's
4 working with our three-sided business which includes,
5 again, our restaurants, our Dashers, and also with
6 our consumers, and so, it's a different business
7 model, that's it. I'm not saying one is better than
8 the other, ones right or wrong, that's just, our
9 business model is primarily market place.

10 CHAIR GJONAJ: All right, but your
11 business model, right, has a breakdown on you know
12 what your profit levels are, you break even based on
13 a service. Marketing has one, delivery has one. Can
14 I hear from you what that breakdown is?

15 DAVID LONDON: In New York City
16 specifically?

17 CHAIR GJONAJ: Yes, New York City.

18 DAVID LONDON: Again, we play the 15/5
19 which we're obligated under the law to pay, so what I
20 can do is I can get back to you. Are you looking for
21 a little bit more than that?

22 CHAIR GJONAJ: Yeah, I know what you're
23 charging, but I want to know what your profitability
24 is. Are you profitable under this current cap?

2 DAVID LONDON: I'd have to check with our
3 team on that one, but I know it's been hurting our
4 business.

5 CHAIR GJONAJ: All right, cause early on,
6 we spoke about, we're looking for a perfect world
7 where everybody is making a profit and everything is
8 running smoothly, and we're just trying to determine
9 the difference between the marketing percentage and
10 the delivery percentage and how we got there, and I
11 believe there was plenty of testimony early on that
12 the argue was the delivery component is much more
13 expensive than the marketing and that's how we
14 formulated during the pandemic, the 15 plus 5.

15 DAVID LONDON: Right.

16 CHAIR GJONAJ: Now that we've had a year
17 to look at this, and we all have experience and we
18 have enough data to actually make informative
19 decisions. What has been that impact on your model?

20 DAVID LONDON: Yeah, so, basically, this
21 model, again, commission caps in general, have had a
22 detrimental impact on our model, as we've said, and
23 again, because it's making delivery; and by the way,
24 deliver is more expensive cause part of the reason
25 why delivery is more expensive is cause we actually

2 have the Dashers and when it's broke down, what
3 commission caps actually paid for. So, no, these
4 commission caps have not had a positive impact on our
5 business, not only in New York City, but multiple
6 places across the country, and again, going back to
7 what I said earlier, I think we understood, and we
8 understood where the City Council was last year, we
9 understood the hurt of our restaurant partners last
10 year, and so we, and I think was pointed out as well
11 by the Administration, there wasn't a lot of push
12 back from, you know, our industry, you know, once
13 this particular Bill, the temporary Bill last year
14 became in statute. You know, we understood that, but
15 again, now we're talking more of a permanency in a
16 commission cap which, you know can completely change
17 business models, and we kind of looked it as once,
18 you know, we get into the capping permanently of a
19 lot of different things, where does it stop, you
20 know? You know, for our restaurant partners who
21 support this, you know, where does it end? Will cap
22 commission today in our industry, what's there to say
23 that it won't happen to another industry down the
24 road, so it's very concerning where things are going

2 in this, and I look forward to working with you as we
3 continue to gather all the facts.

4 CHAIR GJONAJ: My last question, if this
5 Bill permanently extends the existing commission cap,
6 are there any other models you would like to suggest
7 that would reduce the commission fee for restaurants
8 in lieu of a permanent cap?

9 DAVID LONDON: Well, I would say two
10 things. First, as you're looking at this, again, I'm
11 still understanding restaurants are still recovering,
12 if you need to temporarily, you know extend this for
13 a little bit, you know, longer, I understand 60 to 90
14 days, you would understand that, but also too, there
15 are other models out there. As I mentioned before,
16 giving restaurants choice, you know. So, to answer
17 your question, you know, looking at something that
18 says, you know, there's 15 percent, allows
19 restaurants often to 15 percent or other higher
20 percentages would be, you know, another solution.

21 CHAIR GJONAJ: Thank you, so much, Mr.
22 London. I'm not sure if any other colleagues that
23 are present have any questions, Stephanie?

24 COMMITTEE COUNSEL STEPHANIE JONES: No,
25 none on Zoom.

2 CHAIR GJONAJ: Okay. Thank you, we'll
3 follow up and thank you for your time.

4 DAVID LONDON: Thank you, sir.

5 COMMITTEE COUNSEL STEPHANIE JONES: Thank
6 you. Next, I'll be calling Daniel McCarthy, followed
7 by George Buono, and then Ike Brannon. Daniel.

8 SGT. LEONARDO: Starting time.

9 DANIEL MCCARTHY: All right. Great to be
10 here with you. Thanks for inviting me here today.
11 I'm name is Dan McCarthy. I'm an Assistant Professor
12 of Marketing at Emery University's School of
13 Business. I'm very grateful to be able to share
14 academic work that I've conducted that I think could
15 be relevant for the hearing. As I've been studying
16 the impact of the pandemic on consumer behavior in
17 the restaurant delivery category, there's been a lot
18 of buzz about this research that's been covered by
19 the Wall Street Journal, NPR, and the Economist
20 amongst many other outlets. So, hopefully, it's a
21 signal of the quality and relevance of the work. Our
22 results suggest that the pandemic was basically a big
23 gift to the category. Apparently because of COVID,
24 delivery sales grew 122 percent in 2020 nationwide,
25 to about \$51 billion dollars. Without COVID, we

2 estimate that sales growth would have actually been
3 38 percent, a lot lower. So, COVID basically created
4 \$19 billion dollar worth of food sales for restaurant
5 delivery, and to an earlier point you made, Chairman,
6 Gjonaj, DoorDash generated about \$300 million dollar
7 in profit over the last 12 months, and we infer a
8 very high customer lifetime value for them.

9 Importantly, we find that growth in the category was
10 primarily due to substitution away from restaurant
11 dine-in. So, to say it in English, consumers were
12 turning to delivery because they weren't able to
13 physically go to restaurants, but otherwise would
14 have if we weren't in a pandemic, and so, the gains
15 were largely one-for-one slots from restaurants to
16 dine-in visits, implying that the growth was
17 basically a large transfer of wealth from
18 restaurants to delivery due to an act of God, and on
19 this level, the apps didn't generate much in the way
20 of truly incremental sales. So, what we may see is
21 some of these trans revert is we're in the midst of
22 fully reopening on premise dining in New York City,
23 it's not guaranteed that we're going to see dine-in
24 go back to pre-pandemic levels, and to the extent
25 that they don't, the transfer of wealth from

2 restaurants to delivery may continue well after the
3 pandemic is over. I hope this has been helpful and
4 interesting. I've submitted a written testimony with
5 more information, and I'd be more than happy to talk
6 about this at your convenience in more depth.

7 CHAIR GJONAJ: Daniel, I want to thank
8 you for testifying today and for your written
9 submission, and I'm sure you've been following this
10 hearing from it's very beginning. It's very
11 difficult for me to comprehend that we've had a
12 pandemic that forced restaurants to close. Your
13 study shows a \$19 billion forced sales increase to
14 third-party platform delivery companies which was a
15 \$50 billion dollar overall year-over-year, correct,
16 and they're still operating at a net loss.

17 DANIEL MCCARTHY: Yeah, the final point
18 is the one that, I'm not sure is correct. They can
19 claim not being profitable, but when I look to their
20 final statement that they file with the SCC, DoorDash
21 has been generate over \$200 million of contribution
22 profit every quarter and they've been adjusted with a
23 positive between \$40 and \$100 million dollar per
24 quarter and this is after the fee were imposed, so I
25 don't know necessarily that they're profitable in New

2 York, but I would also say I have the geographic
3 breakdown of their sales, and I estimate that over 10
4 percent of the category's sales are in New York City.
5 This is across the country, at least 10 percent of
6 all the food sales that they do is coming from New
7 York City, so if they're this profitable nationwide,
8 and the New York is this big of a market, you know,
9 putting two and two together, that would suggest to
10 me that they've been profitable in New York City.

11 CHAIR GJONAJ: Thank you for that. You
12 reference DoorDash only. Has your research indicated
13 if the other platforms are operating at a profit or a
14 loss?

15 DANIEL MCCARTHY: Yeah, in 2020, Grubhub,
16 they filed with SCC saying that they generate about
17 \$110 million dollars of adjusted (inaudible) profits.
18 So, you know, that was for the year as a whole, and
19 it's not, you know front end loaded. You know,
20 they've been generate that sort of profit
21 consistently throughout the year.

22 CHAIR GJONAJ: Any other provider?

23 DANIEL MCCARTHY: Those are the two big
24 ones that I've been following publicly. So,
25 unfortunately, Uber Eats, the don't separately

2 disclose because they're under the Uber umbrella;
3 otherwise, I'd have figures for that as well.

4 CHAIR GJONAJ: So, does your study go
5 into the impact that these caps have had and what it
6 actually means for both, the platform and the
7 industry as a whole? Do you have a conclusion that
8 you formulated?

9 DANIEL MCCARTHY: The main thing that we
10 see is kind of the nationwide effect of the pandemic,
11 and to the extent that we've continued to see
12 dramatic growth in the revenues which really has not
13 slowed down at all. You know, that's one of the
14 boost that they've gotten, you know, off of what we
15 would have estimated they would have done if we
16 didn't have the pandemic, it really hasn't slowed.
17 So, so certainly, at least to the extent that that's
18 true, it would imply to me that the caps have not had
19 a dramatic effect on gross food sales volume.

20 CHAIR GJONAJ: And moving forward, as we
21 come out of this pandemic and restaurants are open to
22 full capacity limitations, the trends and the level
23 of comfort before diners start frequenting and
24 enjoying indoor dining again, that swing will go
25 back, but never back to where it was prior to

2 pandemic as it becomes a consumer behavior now. It
3 become not only a habit, but a demand.

4 DANIEL MCCARTHY: Yeah, our figures would
5 suggest that habituation is a reality and that we
6 seen people when they start using delivery, they just
7 tend to use it more and more and more. That actually
8 was true even before the pandemic started, so to the
9 extent that the pandemic has accelerated some of
10 that, that business is not going to be going away,
11 but certainly, one of our big findings was, we've
12 seen this big substitution effect, and so, if we do
13 see people going back to on-premise dining again,
14 you're only going to have one dinner, and so, you
15 know, if it's on-premise, it's not going to be
16 through a delivery app. So, I wouldn't anticipate
17 that we're going to go back to pre-pandemic levels,
18 but I would anticipate that we are going to see kind
19 of reversion to something in the middle.

20 CHAIR GJONAJ: Thank you so much. I'm
21 grateful to you, and we're going to stay in touch as
22 we continue to go through your submission and your
23 findings. Thank you. We're grateful for your time
24 that you've given us and for the research that you've
25 done.

2 DANIEL MCCARTHY: Thank you.

3 COMMITTEE COUNSEL STEPHANIE JONES: Thank
4 you, Daniel. Next, I'll be calling George Buono,
5 followed by Ike Brannon, and then Andrew Ritchie.
6 George.

7 SGT. LEONARDO: Starting time.

8 GEORGE BUONO: My name is George Buono.
9 I (inaudible) for over 40 years. What I have to say
10 about deliveries, it's gotten to a place where,
11 (inaudible).

12 CHAIR GJONAJ: George, you're cutting in
13 and out and it's very difficult to hear you, so you
14 may want to bring the speaker a little closer to you
15 because you're fading in and out.

16 GEORGE BUONO: Is that any better?

17 CHAIR GJONAJ: Much better.

18 GEORGE BUONO: Okay, so, (inaudible) for
19 over 40 years. The restaurant industry has changed
20 dramatically in terms of delivery. (Inaudible).
21 It's gotten to the point now where everybody just
22 uses third-party apps. With very small profit
23 margins, typically 10 cents out of every dollar is
24 towards our profits and you know, (inaudible). We
25 were basically working for free during the pandemic.

2 CHAIR GJONAJ: Sir, I hear you, George,
3 I'm not sure if you can hear me well, cause your
4 connection isn't the greatest. During the pandemic,
5 you're saying, even with the commission caps that
6 were in place, you were not profitable on the third-
7 party food delivery apps?

8 GEORGE BUONO: We had no markings.
9 Everything was ordered online, so even with the
10 pandemic cap, we still weren't making money.

11 CHAIR GJONAJ: What do you think we
12 should do to make sure that you continue to stay in
13 business, George? Tell me your, what you like this
14 City Council to do.

15 GEORGE BUONO: Sure, I think there should
16 be a, there should be a limit to how much they can
17 charge us from the third-party app. Again, they earn
18 85 percent of the market right now (inaudible) we're
19 not really serving our guest because the guest aren't
20 dealing us directly. They're dealing with the third-
21 party app, so they're kind of like the middle man. I
22 understand that they have to make money as well
23 because (inaudible) but it should be limited.

24 CHAIR GJONAJ: George, that's why this
25 hearing is so important and why it's ever more

2 important that we hear from the restaurant operators
3 as we figure out how we can help level the playing
4 field to make sure that you stay in business and that
5 the industry thrives. Your testimony today is well-
6 noted and we're grateful to you. Thank you, George.

7 COMMITTEE COUNSEL STEPHANIE JONES: Thank
8 you. Next, I'll be calling Ike Brannon, followed by
9 Andrew Ritchie, and then Robert Bookman. Ike.

10 SGT. BRADLEY: Time will begin.

11 IKE BRANNON: So, my name is Ike Brannon.
12 I'm the Senior Fellow of the Think Tank called the
13 (inaudible). I just wanted to share some of my
14 findings. There is a perspective that during the
15 pandemic, to help restaurant, we had to cap these
16 fees that food service companies were charging and
17 this was somehow the best, well, possible worlds and
18 (inaudible) is mistaken. (Inaudible) impose such
19 caps in response to the market (inaudible) of the
20 intended impact. For instance (inaudible). In such
21 situations as other witnesses have already said,
22 platform companies often reduce their service
23 (inaudible) three-sided food delivery marketplace
24 resulting in fewer opportunities for work, delivery
25 drivers nor earning for those who rely on this

2 business for a sizeable share of their income.
3 That's the research that's I've done. It is a
4 mistake to think that this caps help restaurants.
5 (Inaudible), and they don't need a government to do
6 this for them. They can increase prices on take out
7 food on their own if they want. The main economic
8 rationale we typically give for price cap is that
9 restaurants operate some kind of (inaudible) market
10 where they only have one buyer that they can use, but
11 there are multiple competitors in the food delivery
12 market. Also, as it's been pointed out, restaurants
13 are forced to participate this market. They can
14 decline to participate or do this on their own or
15 (inaudible).

16 SGT. BRADLEY: Time has expired.

17 IKE BRANNON: Really upon consumers being
18 willing to pay more for delivery service. That's it,
19 thank you.

20 CHAIR GJONAJ: Mr. Brannon, did you
21 submit written testimony?

22 IKE BRANNON: Yeah.

23 CHAIR GJONAJ: I'm sorry?

24 IKE BRANNON: Yes.

25

2 CHAIR GJONAJ: Okay, cause you're, the
3 connection is ... (crosstalk).

4 IKE BRANNON: Yes, I did.

5 CHAIR GJONAJ: The connection isn't the
6 greatest and it wasn't very easy to hear all of that,
7 and we were missing some key words there, but I look
8 forward to reading your testimony and in anticipation
9 of that, I only have a few questions for you. During
10 the pandemic, you were obviously complying with the
11 current caps, correct?

12 IKE BRANNON: So, I'm an economist. I am
13 not the, I don't, I'm not a restaurateur, so, I am
14 referring to research I've done on the economy.
15 (inaudible).

16 CHAIR GJONAJ: Mr. Brannon, the
17 connection is poor, so I look forward to reading your
18 testimony that you had submitted in writing, and I'm
19 sure I'll follow up with you with questions. Is that
20 okay?

21 IKE BRANNON: That will be perfectly
22 fine, thank you.

23 CHAIR GJONAJ: Thank you.

24

25

2 COMMITTEE COUNSEL STEPHANIE JONES: Thank
3 you, Ike. Next, we'll hear from Andrew Ritchie,
4 followed Robert Bookman, and then Josh Gold. Andrew.

5 SGT. BRADLEY: Your time will begin.

6 ANDREW RITCHIE: Good afternoon. My name
7 is Andrew Ritchie. I am the Executive Director of
8 the New York City Hospitality Alliance. We are a
9 non-profit association that represents restaurants
10 and nightlife establishments in the five boroughs. I
11 submitted written testimony, but I will summarize
12 that here. I just want to let you know that there
13 are many other restauranteurs that unfortunately
14 couldn't stick around, but will probably submit
15 written testimony as well. So, let me be clear.
16 Delivery is very important to restaurants and it's
17 quite essential to New York City, and there is
18 nothing inherently bad about delivery companies. It
19 is the unchecked market dynamics that creates an
20 environment for certain billion dollar corporations
21 to use their leverage to exploit New York City
22 restaurants, workers, and consumers in order for them
23 to stay competitive, and as you know, this
24 exploitation began long before COVID-19 struck and
25 these companies as you have heard in testimony

2 earlier and only through consolidated power
3 throughout the pandemic, and now legislators must
4 enact this packet of common sense legislation to
5 support the long term recovery ahead of us and the
6 future of our industry and city. So, first, we
7 support making permanent the critical fee cap on
8 third-party delivery fees that are set to expire. We
9 cannot go over the 25, 30 plus percent fees or
10 restaurants don't make money or they're even losing
11 it by doing these deliveries, but they're not
12 empowered to leave these platform because they
13 control the marketplace and they control the data,
14 mind you, there's another Bill that will require
15 third-parties pass on the (inaudible) of their
16 customers to restaurants. I hereby (inaudible)
17 consequences. What about the intended consequences
18 of the unchecked market right now, for these few
19 companies that hold so much power. If there were
20 such unintended consequences, you can also go back
21 and modify it. We know what we do know is that the
22 current market place does not work. Second, we
23 support prohibiting third-party companies and
24 charging restaurants all these fees for phone calls
25 that don't result in orders. I mean, this is

2 bonkers. The fact that we have to have legislation ...
3 (crosstalk).

4 SGT. BRADLEY: Time has expired.

5 ANDREW RITCHIE: To prohibit a company
6 from charging a business a fee for services that were
7 never rendered is kind of crazy, but we need it.
8 Third, we support requiring third-party delivery
9 companies having a written agreement with restaurants
10 before listing them on their site. Currently, they
11 pull outdated menus without the restaurant's
12 permission, they post outdated menu prices, many
13 items that are no longer there. It creates tons of
14 headaches for the restaurant, obviously for the
15 workers, they go to try to pick something up, or
16 place the order, it's not even there, customer's get
17 angry, they blame the restaurant's delivery workers,
18 and it's a bad place. That practice needs to stop.
19 Fourth, we also support (inaudible). It needs to be
20 stopped. In closing, I just want to say, these Bills
21 are straight forward. We understand some may be
22 addressing bit more complex issues, but we will
23 continue to hear fear mongering from opponents and
24 those (inaudible) regulated in any way shape or form.
25 (inaudible). There just needs to be a more fair and

2 equitable marketplace for the brick and mortar
3 restaurants that we love, the hardworking workers and
4 the company. So, we commend you. Pardon for taking
5 a little bit extra time, but we wanted to make sure
6 that these voices were heard. We're happy to work
7 with you, and we want to create a system that works
8 for all parties. We're happy to not only work with
9 the workers, of course, but also the third parties,
10 and Mr. Chair, I thank you for your leadership as
11 well as the Council Member Moya, and staff, and
12 everyone else. I'm happy to answer any questions.

13 CHAIR GJONAJ: Thank you, so, it sounds
14 like the Bills that you're hearing today would help
15 the restaurant industry survive and hopefully thrive.

16 ANDREW RITCHIE: Absolutely. These are
17 common sense Bills to create a more fair and
18 equitable marketplace that will help restaurants,
19 even if COVID didn't exit. As you know, these
20 conversations have been going on for years, but now,
21 through the (inaudible).

22 CHAIR GJONAJ: So, the current commission
23 cap in your opinion has worked well during this
24 pandemic?

2 ANDREW RITCHIE: Yes, I think we
3 (inaudible). The cost of not doing anything greatly
4 outweighs the attempt to bring a massive company
5 (inaudible). These companies are not leaving New York
6 City, and frankly if they do, we'll have other
7 companies that come and replace them.

8 CHAIR GJONAJ: Thank you for that. You
9 know, I want to point something out. We, government
10 has made an investment in particular, the restaurant
11 industry by providing loans and grants during the
12 COVID period. It's in our best interest that these
13 businesses survive, thrive, and gets to a level of
14 profitability where they can pay back first the
15 loans, and then in time, the grants become profitable
16 in the form of contributions to the tax base in the
17 city of New York. So, it's a partnership that have
18 invested in and need to assure that they can continue
19 to survive to pay back the money, and I don't think
20 that has been addressed at all during this hearing,
21 and to your testimony, I wasn't even thinking in that
22 fashion. So, we have a vested interest here, and
23 it's not ... (crosstalk).

24 ANDREW RITCHIE: That's cool. It's not
25 in the economic activity that surrounds restaurants,

2 not just restaurants, but it's you know, where we
3 purchase our food from, (inaudible). It's fair.

4 CHAIR GJONAJ: Thank you, Andrew. We'll
5 stay in touch, and I'm grateful to you, and I'm sure
6 you submitted your testimony in writing as well.
7 Thank you, and keep up the good work.

8 COMMITTEE COUNSEL STEPHANIE JONES: Thank
9 you, Andrew. Next, I'll be calling Robert Bookman,
10 followed by Josh Gold, and then Myer Gaul. Robert.

11 SGT. BRADLEY: You time will begin.

12 ROBERT BOOKMAN: Thank you, Chairman
13 Gjonaj, Council Member Moya. I don't know if you're
14 still around. I'm Rob Bookman. I'm one of the
15 founders and council to the New York City Hospitality
16 Alliance, Andrew' group, and my law practice, I
17 represent hundreds of restaurant owners, currently
18 and thousands over the years, and my clients have
19 been telling me throughout the pandemic that the
20 temporary laws that you passed were very useful, and
21 that these package of laws are desperately needed to
22 be adopted in a permanent so that they can continue
23 the slow come back from COVID. This is the single
24 most important package of Bills that you can do to
25 save mom and pop restaurants in your neighborhoods.

2 As Andrew said, this is a highly unregulated market
3 and being a former council member in the New York
4 City Council of Consumer Affairs, I'm very familiar
5 with government regulation, and it's perfectly
6 appropriate for the government to regulate a loud,
7 unrest, unregulated market, which is what we have
8 here in a very important industry. I disagree with
9 what the representative from DCWP said on a couple of
10 situations. One is it's not unprecedented for that
11 agency and for the city government to regulate
12 business to business. They regulate a number of
13 business categories now, which are business to
14 business categories and the city has for years,
15 rather it be tax medallions or rather it be
16 commercial training voice, so it's not unprecedented,
17 you're allowed to regulate that, and I do believe
18 that licensing would help (inaudible) creates a legal
19 structure for all these other regulations. So, I
20 disagree, you know, with (inaudible). Also we need
21 to understand that this is consumer protection
22 because it's not just protecting small businesses,
23 it's protecting consumers because this has to get
24 paid for one way or other. So, it's either higher
25 cost to the consumer directly or there's higher cost

2 to the consumers indirectly, but one way or another,
3 if these businesses, these mega-million dollar
4 businesses are unregulated, there's going to be
5 higher ... (crosstalk).

6 SGT BRADLEY: Time expired.

7 ROBERT Bookman: (Inaudible). The Grubhub
8 representative and the DoorDash both said that they
9 didn't make a profit last year, when the economists
10 said they clearly did, and understand when a
11 corporation's profit line doesn't include the \$20
12 million dollars that they pay to their CEO, that goes
13 to expenses, but in the real world, we understand
14 that to be profits as well, and if (inaudible) and
15 she said about 10 times, if a restaurant doesn't like
16 their services, they can leave. Well, you can't
17 leave when you own 70 percent of the market which is
18 what they owned prior to COVID, and you can't leave
19 when they own your customer data. They' got you over
20 a bag. So, it's a one-way contract, so its like the
21 Hotel California for the Eagles, you can check in,
22 but you can never check out, and so, you need to pass
23 these Bills as well as the customer data Bill, as
24 well as the licensing Bill and if you do all that
25 together, you will be creating a level playing field

2 where consumers and small businesses can use these
3 services which they are allowed to use, but we can
4 use it in a way where everybody can survive and make
5 a profit. Thank you.

6 CHAIR GJONAJ: Robert, thank you,
7 Robert, and thank you for all of the hard work that
8 you've done prior to the pandemic and during the
9 pandemic for this industry. It has been extremely
10 important for us.

11 ROBERT BOOKMAN: I appreciate you,
12 Chairman Gjonaj. One last thing I want to say about
13 the phone calls because it seems like Administration
14 and (inaudible). I don't know why they get any money
15 for a phone call. If they're doing a delivery, they
16 get paid for the delivery, and if they're not doing
17 the delivery, and I want to call, you know,
18 Brooklyn's Pizzeria, which I love and I got online
19 like you did at the first hearing, and you look for
20 Brooklyn's Pizzeria and you get a phone number that
21 they created, and so I call, thinking I calling
22 Brooklyn Pizzeria, I don't know why you would get any
23 money for that to tell you the truth. And also, the
24 last thing I want to say is, you know, I'm a third-
25 party provider for restaurants, I'm a lawyer. I

2 don't get to charge a percentage of what my client's
3 revenue is or profits is, I charge a fee for a
4 service. It's a flat fee or it's an hourly fee
5 (inaudible).

6 CHAIR GJONAJ: Robert, thank you, and I'm
7 sure you submitted a written testimony as well and I
8 want thank you for your patience and I really want to
9 follow up with you on the OC and the comment about
10 not being able to enforce and the argument ...
11 (crosstalk).

12 ROBERT BOOKMAN: Yes, of course they can.

13 CHAIR GJONAJ: All right, thank you.
14 Thanks, Robert.

15 ROBERT BOOKMAN: Thank you.

16 COMMITTEE COUNSEL STEPHANIE JONES: Thank
17 you, Robert. Next, we will be calling on Josh Gold,
18 followed by Myer Gaul, and then Jeffrey Bank. Josh.

19 SGT. BRADLEY: You time will begin.

20 JOSH GOLD: Good morning. I'm Josh Gold
21 from Uber Eats. Thank you for allowing me to testify
22 today. Uber Eats welcomes the continued conversation
23 with the Council on the topic food delivery
24 platforms. While we support three of the Bills
25 before you, I wanted to focus testimony today on the

2 price control legislation that permanent fixes prices
3 across food delivery industry. First, let's
4 (inaudible) commission for profit. Commissions made
5 by the restaurants are not profits on delivery
6 platforms. These funds may include everything such
7 as operating costs, insurance, marketing, customer
8 support, and delivery worker pay, among other
9 important parts of the business. You're not going to
10 commission charge to restaurants (inaudible). For
11 example, a restaurant that uses their own courier
12 pays a lower commission than a restaurant accessing a
13 courier through us. Since June 2020, when this cap
14 was put into place, the cap has had a big impact.
15 Uber Eats has lost more than \$60 million dollars in
16 revenue in New York City due to the need to subsidize
17 (inaudible). Rarely do we see private business to
18 business contracts subject to price controls, and in
19 the rare case, namely public utilities or state of
20 emergencies, this prevents price gauging and the
21 contract is set to ensure that the utility is still
22 able to gain a profit. Food delivery in New York
23 City has evolved significant over the last several
24 years, and ever as many see just a few delivery
25 platforms who are participants in the industry, it's

2 important to recognize that it's far more diverse.
3 On the logistics only side or the delivery side,
4 companies like Relay have established a substantial
5 business to provide delivery in New York, and on the
6 consumer basing side, many (inaudible) exists from
7 large companies like Toast and (inaudible). We do,
8 however understand the Council's desires to support
9 our restaurant industry as it continues to face
10 challenges to recover from the pandemic. With
11 tourism and business travel still suffering and
12 commercial offices unoccupied, a full recovery may
13 seen temporarily illusive and we understand that New
14 York City restaurants may need a longer runway than
15 other cities. To that end, we refer to Council to
16 explore extending the cap rather making it permanent.
17 The Council has already extended the cap and nothing
18 is stopping this body from doing that again if the
19 situation warrants it. Alternatively, the Council
20 could look to other jurisdictions like Chicago which
21 will require third-party platforms to offer at least
22 one option at 15 percent. Thank you for your time.
23 I look forward to any questions you may have.

24

25

2 CHAIR GJONAJ: Thank you, Josh. You, I
3 think you said \$60 million dollars was the loss
4 during the pandemic based on the cap?

5 JOSH GOLD: Correct.

6 CHAIR GJONAJ: And that's for New York
7 City?

8 JOSH GOLD: It has, I was going to say,
9 to answer your question about cutting wages, which I
10 know is coming up, we (inaudible).

11 CHAIR GJONAJ: I'm sorry. Repeat that
12 one more time. I think you're a little far from the
13 speaker, and I'm not hearing you very well.

14 JOSH GOLD: I was saying eat the \$60
15 million dollars instead of cutting wages. I was
16 answering your next question for you.

17 CHAIR GJONAJ: Okay, you saw increase
18 sales, I'm sure, during the pandemic as being the
19 only option for food to get to customers. What was
20 the increase in your overall gross sales that led to
21 a \$60 million dollar loss?

22 JOSH GOLD: Our increase Uber Eats wide
23 was ... (crosstalk).

24 CHAIR GJONAJ: Uber Eats Wide?
25

2 JOSH GOLD: (Inaudible) I can get you
3 that. It was in the second quarter of 2020, it was
4 \$885, sorry, increase in sales went from \$6.9 billion
5 dollars to \$12.4 billion dollars in the first quarter
6 where the numbers have been reported to me.

7 CHAIR GJONAJ: 6.9 to 12 billion. Is
8 that what I heard?

9 JOSH GOLD: Yes.

10 CHAIR GJONAJ: Billion.

11 JOSH GOLD: Well, (inaudible)

12 CHAIR GJONAJ: But, and that's what
13 percentage increase roughly over year over year?

14 JOSH GOLD: It looks like 100 percent
15 increase year over year.

16 CHAIR GJONAJ: 110 percent increase in
17 gross sales, and you're operating at a loss.

18 JOSH GOLD: Correct.

19 CHAIR GJONAJ: And what was your level of
20 profitability prior to that just from Uber Eats?

21 JOSH GOLD: We had not been profitable.

22 CHAIR GJONAJ: Oh, so what was your net
23 loss then prior to the pandemic?

24 JOSH GOLD: The loss in the most recent
25 publication was \$200 million dollars.

2 CHAIR GJONAJ: Okay.

3 JOSH GOLD: The Q1 of 2021, for Q2 of
4 2020 it's \$313 million dollars.

5 CHAIR GJONAJ: \$313 million, is that what
6 you said?

7 JOSH GOLD: Yes.

8 CHAIR GJONAJ: Okay, so, then actually
9 the pandemic not only helped, and the caps really
10 helped the amount of loss went from \$300 to \$60
11 million.

12 JOSH GOLD: I'm looking at Q1 2020. I
13 can go back a little further and find different
14 numbers.

15 CHAIR GJONAJ: During the pandemic ...
16 (crosstalk).

17 JOSH GOLD: Either way, it's, either
18 way, the point is that it's not currently a profit
19 making business.

20 CHAIR GJONAJ: All right, and I think
21 many of our restaurants feel the same way now, prior
22 to pandemic and obviously post-pandemic. Did you cut
23 wages for delivery workers during the period in which
24 the commission cap was in effect or were the wages
25 consistent?

2 JOSH GOLD: No, as I said, we ate the \$60
3 million dollars.

4 CHAIR GJONAJ: I'm sorry, say that again.

5 JOSH GOLD: We took it out from, we took
6 the loss.

7 CHAIR GJONAJ: But you didn't cut the,
8 did you cut the wages directly to the delivery
9 workers?

10 JOSH GOLD: No.

11 CHAIR GJONAJ: Wages stood consistent?

12 JOSH GOLD: Correct.

13 CHAIR GJONAJ: Thank you. How much
14 commission as a percentage did you charge restaurants
15 for providing delivery service before the commission
16 cap was in effect?

17 JOSH GOLD: Before the commission cap, we
18 had three options; zero percent for pickup orders,
19 15 percent for non-pickup orders with restaurant
20 performing the delivery themselves and 30 percent for
21 all. That included the credit card commission fee
22 and everything else prior to the pandemic.

23 CHAIR GJONAJ: And during the pandemic
24 when the laws took effect, you were obviously
25 charging?

2 JOSH GOLD: 15 percent for delivery, 5
3 percent for listing and then 2.5 percent for the
4 credit card fee.

5 CHAIR GJONAJ: What was the credit card
6 fee?

7 JOSH GOLD: 2.5 percent.

8 CHAIR GJONAJ: 2.5 percent?

9 JOSH GOLD: Yeah, some provider charge
10 more, but we decided at 2.5 percent. So, and so that
11 is for the restaurant owners (inaudible).

12 CHAIR GJONAJ: If I may, is it 2.5
13 percent a direct pass through or do you mark that up
14 at all?

15 JOSH GOLD: I believe it's a direct pass
16 through.

17 CHAIR GJONAJ: Direct pass through.
18 Would you let me know when you confirm that number?

19 JOSH GOLD: Yes.

20 CHAIR GJONAJ: If 2359 becomes
21 permanently extended, the extending existing
22 commission caps, are there any other models that you
23 would like to suggest that would reduce commission
24 fees for restaurants in lieu of a permanent cap?

2 JOSH GOLD: Yeah. I do think one thing
3 to look at what Chicago is contemplating doing, which
4 is requiring third-party delivery apps to have a 15
5 percent option for delivery and so, on, for
6 restaurants who want to use a 15 percent option that
7 is a requirement that they are contemplating having,
8 and for those orders, we may have higher costs to
9 consumers or we may have a shorter delivery radius,
10 and so that would make that option sustainable, but
11 the city of Chicago is contemplating having that as a
12 requirement that we offer a 15 percent option, but
13 that other restaurants wanted to have a more premium
14 package that had less cost for consumers or a larger
15 delivery radius where they're food can be delivered
16 to further away and then with the 15 percent option,
17 we are still able to enter into that agreement with
18 the restaurants.

19 CHAIR GJONAJ: Thank you, Josh. How is
20 the volume of orders placed changed since the
21 governor's reopened the restaurants at full capacity?
22 Do you see a significant change at this point?

23 JOSH GOLD: I don't have that for you. I
24 can get that for you today.

2 CHAIR GJONAJ: That would be great, and
3 if you can compare it to the platforms to pre-
4 pandemic, during pandemic would be a great for us to
5 fully understand what is happening to the industry
6 and the platforms.

7 JOSH GOLD: I will get that for you, sir.

8 CHAIR GJONAJ: Thank you. Stephanie, I'm
9 not sure if there's anyone that has a question for
10 Josh.

11 COMMITTEE COUNSEL STEPHANIE JONES: No
12 one has raised their hand on Zoom.

13 CHAIR GJONAJ: Okay.

14 COMMITTEE COUNSEL STEPHANIE JONES: No, I
15 think we can move on whenever you're ready, Chair.

16 CHAIR GJONAJ: Thank you, Josh. We'll
17 stay in touch.

18 JOSH GOLD: Thank you, Council Member

19 COMMITTEE COUNSEL STEPHANIE JONES: Thank
20 you, Josh. Next we'll be calling on Myer Gaul,
21 followed by Jeffrey Bank, and then Kathleen Reilly.
22 Myer.

23 SGT. BRADLEY: Your time will begin.

24 COMMITTEE COUNSEL STEPHANIE JONES: It
25 appears Myer Gaul is not present. So, we will move

2 on. Next, we will be calling Jeffrey Bank, followed
3 by Kathleen Reilly, and then Lisa Sorin. Jeffrey.

4 SGT. BRADLEY: Your time will begin.

5 JEFFREY BANK: Thank you to the Chairman
6 and the committee for your support during this
7 crisis. Many restaurants would not have survived
8 without this legislation. In the New York Time
9 Editorial Board said third-party app, these delivery
10 apps act like payday lenders with these high fees.
11 They're publicly traded companies who are acting like
12 800-pound gorillas crushing small business, but after
13 all their predatory actions that allowed them to
14 become monopolies, now let's use some of the words I
15 just heard earlier. The Seamless web GrubHub
16 representative said we all have options. We don't
17 have to use them, even though they clearly are
18 monopoly. Why we need this legislation be permanent,
19 let's use some of the words we just heard. She said,
20 we need these fees to pay Google for ads. We need
21 these fees to pay Google for ads. So, take the ads.
22 When you go to Google right now, type in Carmine's,
23 my restaurant that I own, and write Carmine's
24 delivery, cause you want to order from Carmine's.
25 So, why does she need fees from me to advertise for

2 customers then go to Seamless web so I can pay a
3 higher fee for the customer who is looking for me?
4 It's called direct search. They're very strong,
5 these companies, in their marketing abilities.
6 Again, I keep it simple. She needs fees, she said,
7 for Google ads. So, Google Carmine's delivery. Why
8 does Seamless ad Grubhub, DoorDash, and Postmates
9 come up before my restaurant? My customers are
10 looking for me. They don't want me to pay any fees.
11 So, they need more fees to charge me more money so
12 they can advertise more to steal my own customers.
13 It's crazy, a little genius. I'm obviously jealous.
14 We then hear her say, we're fined with. They're
15 always fined when they get caught. They're fine and
16 they fix the phone problem. When they got caught
17 with the phone number charging for fraudulent and non
18 orders, they're fined without being corrected. They
19 were fined stopping the fake website that they did
20 for years trying to trick customers into fake
21 websites to restaurants. That was okay. They
22 (inaudible) don't have to be listed with them if you
23 don't want to be, and now this new engine, this new
24 stand, we're going to give a free store front, I
25 think DoorDash called it, so people can order

2 directly, yet their advertising to direct them back
3 to their own, to their own websites.

4 SGT. BRADLEY: Time has expired.

5 JEFFRY BANK: These companies show not
6 being a legitimate partners. American Express
7 charges all restaurants the same fees. I think this
8 company should look into another road that she said.
9 She said the reps decide what people pay. It might
10 be interesting for you to look into GrubHub and see,
11 are they charging the same fees in different
12 neighborhoods or races? Is there discrimination
13 going on? (Inaudible) the same fees. I don't know
14 why Seamless and GrubHub let their reps charge
15 whatever fees they want, but whatever you decide the
16 most important, I beg of you, make them make their
17 fees be transparent on the Bills. That's it. At the
18 end of day, 5 percent, this percent, that percent,
19 let customers know how much they're actually
20 charging. Let there be transparency. Thank you for
21 the time.

22 CHAIR GJONAJ: Carmine, thank you and
23 while you were sharing with us, when you Google your
24 name, your absolutely right. It's one, two, three,
25 four platforms come up before your website.

2 JEFFREY BANK: And here's the irony,
3 Chairman, I paid for those ads at higher fees. I
4 have to be a moron.

5 CHAIR GJONAJ: Well ... (crosstalk).

6 JEFFREY BANK: This is what happened.

7 CHAIR GJONAJ: Carmine, do you have
8 written agreements with the platforms?

9 JEFFREY BANK: There are contracts, yes.
10 They are, they are very contentious and un-
11 negotiable.

12 CHAIR GJONAJ: Right, so then the
13 contract that you have, also call for that service
14 that your restaurant be listed at a certain priority,
15 correct?

16 JEFFREY BANK: No, we got on a priority
17 listing, in the contract originally. They had the
18 right to put in fake websites, but then your
19 legislation made them take that out. The contract
20 had that they could, you know, jump the phone
21 numbers. Your legislation took that out. This is
22 another step along the way that you guys have passed
23 legislation, and they'll say, oh, we'll take direct
24 search. They know what they're doing. This isn't
25 about a market place trying to get me new customers.

2 This is about them taking my own customers and then
3 being geniuses and charging me higher fees so they
4 can take my own customer, cause they could easily
5 stop doing this if they wanted to. They know what
6 they're doing.

7 CHAIR GJONAJ: Carmine, I know that
8 you're involve for quite some time. You're a legend
9 in the industry. During this pandemic, which I think
10 no one in their wildest dreams ever imagined could
11 put our businesses in the position that they are.
12 What did these commission caps and temporary measures
13 do for your business? Can you tell me what it
14 actually meant? Are you at a level of profitability
15 now or not during the pandemic, post-pandemic?

16 JEFFREY BANK: Profitability will come
17 maybe in 22. Everybody likes to forget that for 15
18 months, we've been working with capacity limits and
19 three hands tied behind our back. Just because we're
20 at a 100 percent capacity, no one's at profitability.
21 People are digging themselves out of a 15-month hole,
22 but the caps helped us survive, okay, because what
23 happened? The government shut down the wealth. The
24 government asked everyone to quarantine. Let's
25 remember, nobody even knew what a quarantine meant.

2 What was going to happen during those two weeks back
3 in March? People were afraid, but they asked
4 restaurants to stay open and serve the people so that
5 they could sit at home at be quarantined. So,
6 employees came to work. Didn't know, should we wear
7 a mask, not a mask; this is a long time ago, and our
8 employees went out of their way to help survive. We
9 weren't making any money. We were losing a ton of
10 money, and then God forbid, everyone went to apps, so
11 without those fees, we would have been crushed.
12 Putting in the restriction fees absolutely gave us
13 fighting chance to maybe survive. Then the
14 government grants and PPE gave us another lifeline.
15 We've been on a branch, on a branch, on branch the
16 whole way, and now that we're at 100 percent
17 capacity, everyone's under the delusion because the
18 restaurant has a line at 6:00 at night that we're all
19 fine. Nobody's fine. I'm in a better little bit of
20 a position than most, we've been around 30 years, but
21 the reason I do these things and I sat on hold here
22 for 5 hours, cause mom and pops can't fight like
23 this, and some of the mom and pops don't even
24 understand the manipulation that they're getting
25 themselves into or they're getting this little crap

2 taste from these third-party apps. They're
3 advertising my name delivery \$5 off or free to steal
4 my customer, to put them into their eco system, and
5 then charge me more fees and complaint to you, that
6 its not enough Chairman, we need more fees, as she
7 said, cause we need more ads so we can keep screwing
8 these guys over. It's almost comical. I'm using
9 their words, not mine.

10 CHAIR GJONAJ: What would you like see
11 done if you had to list your priorities, where we are
12 now and knowing what we're coming out of?

13 JEFFREY BANK: All these Bills are
14 equally important. Three of the Bills fix past
15 problems, and the fee cap fixes the future problem.
16 Please do not go back to this free-for-all fee
17 structure. It's crazy. They are an 800-pound
18 gorilla in New York City. It is unheard of. I'm
19 not going to compare myself to the rest of the
20 country. In New York City, everyone uses Seamless or
21 Grubhub or whatever it's called this week, okay, and
22 allowing them to charge whatever they want and now
23 say, just leave if you don't like it, is ridiculous.
24 It's impossible. They know what they're doing with
25 this direct search scam, they know what they did with

2 the phone fees, they know what they did with the
3 websites, they know what they did with listing
4 restaurants that didn't want to be listed, now they
5 have this new engine. Oh, we'll allow our
6 restauranteurs to have their own engine, but we're
7 going to advertise over it, so it's moved anyways.
8 They're damn marketing geniuses. My hats off, maybe
9 after, you know, someone puts them out of business,
10 they'll all come work for me and I can get my
11 restaurants going.

12 CHAIR GJONAJ: Thank you. Thank you so
13 much.

14 JEFFREY BANK: Thank you, Chair.

15 COMMITTEE COUNSEL STEPHANIE JONES: Thank
16 you. Next, we'll be calling Kathleen Reilly,
17 followed by Lisa Sorin, and then Lee Jacobs.
18 Kathleen.

19 SGT. BRADLEY: You time will begin.

20 KATHLEEN REILLY: Hello, everyone. Good
21 afternoon. My name is Kathleen Reilly with the New
22 York State Restaurant Association and thank you so
23 much for having me today. The pandemic has
24 exacerbated so many dynamics in the restaurant
25 industry and yet, we keep coming back to the

2 relationship between restaurants and food delivery
3 platforms. I want to take the time to thank Council
4 Member Gjonaj and Moya for keeping this relationship
5 on their minds before, during, and after the height
6 of the pandemic. Thankfully, New York City Council
7 did take the responsible step last spring to set some
8 boundaries in the fee structures that the delivery
9 platform could charge which corrected the
10 relationship imbalance, at least temporarily, but
11 today, City Council is taking the bold opportunity to
12 consider making the fee caps permanent and we are
13 fully supportive of this news. While Intro 2359
14 which creates permanent fee caps is the center piece
15 of the hearing in our minds, it's important to
16 remember the larger context for these caps which is
17 the relationship between the platforms and the
18 restaurants. The other Intros being considered today
19 touch upon several of these points. 2233 prohibits
20 platforms from listing restaurants without their
21 consent, a practice which had landed many of these
22 platform in lawsuits around the country, but has
23 still not been banned here in New York. Intro 2335
24 provides oversight and customer transparency about
25 phone numbers listed on third-party platforms and

2 clearly marks phone numbers that are hosted by the
3 third-parties and also requires a direct phone number
4 to be listed, and finally Intro 2356 would make the
5 ban on the phony phone charges permanent.

6 (Inaudible) in the first place, exploited the
7 practices by these platforms made it a necessity.

8 The lived experience of restaurant operators and
9 their important testimony at this hearing and in
10 hearing past, make it clear that third-party delivery
11 platforms have been finding ways to take advantage of
12 their role in the restaurant eco system. Sometimes
13 their on the margins, sometimes front and center.

14 Thankfully, City Council has not lost focus on this
15 sector and they've taken opportunity to learn more
16 about the dynamics at play and introduce legislation
17 to solve problem after problem that has come to
18 light. Today's hearing marks an important turning
19 point because it strives to address new Bills that we
20 haven't addressed before, but also because City
21 Council has ... (crosstalk).

22 SGT. BRADLEY: Time has expired.

23 KATHLEEN REILLY: A platform to say
24 exploited behavior is wrong during the height of the
25 pandemic, during the long, slow recovery from a

2 pandemic and actually always, and if it took a
3 pandemic for some of this exploitation to come to
4 light, the least we can do for the restaurant
5 industry is not forget what we learn, or begin to
6 excuse exploitation moving forward. I want to quick
7 address a couple of things that were said earlier in
8 the hearing. Also, are you planning to address this
9 act, but it did already come up from the platforms.
10 All over the state in localities where NYRA has been
11 working with localities for passing fee caps and at
12 the state legislature, the third-party platforms
13 advocated for amendment, but amounts to a huge
14 (inaudible). They're asking to allow for additional
15 marketing services to restaurants for an additional
16 percent of charge above the fees. I'm sure it's
17 intuitive to the committee, but it basically allows
18 the platforms to circumvent the caps all the
19 together, dropping service levels at visibility at
20 restaurants who don't opt in to bare bones or non-
21 existent, and then requiring them to pay extra to
22 redeem what they lost. We have not heard from a
23 single member that they wish they were paying more to
24 the platforms. The platforms like to frame it as
25 beneficial to restaurants, restaurant's choice, but

2 please do not take their word for it. Intro 2359
3 offers strong fee cap protections as written and any
4 opportunity for them to charge more will fully
5 undermine that. I also wanted to point out that much
6 earlier in the hearing, I think I heard Mr. Klossner
7 suggest that under the current laws, two identical
8 platforms, one who offers delivery and one who
9 doesn't would be unequally covered by this law which
10 did not appear to be correct based on how the law is
11 written because it defines the delivery platforms as
12 offering same day delivery or pickup, so rather or
13 not you offer or regularly use the delivery mechanism
14 is not important. Delivery and pickup are both
15 covered, and I think that we all know that straight
16 up marketing companies, some marketing consultant,
17 that was never the target of these laws. We all know
18 that it's of the platforms that have become critical
19 market places for ordering food, and they all deserve
20 to be regulated by this law and all are covered by
21 this law. Thank you so much for the time this
22 afternoon. Sorry for going over my two minutes, and
23 I'd be happy to answer any questions or follow up
24 afterwards.

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2 CHAIR GJONAJ: Thank you, Kathleen. I'm
3 sure you submitted your testimony in written as well,
4 and in short, what would you like to see done moving
5 forward?

6 KATHLEEN REILLY: We'd like to see this
7 full package passed. We also, it was mentioned by a
8 few other people, but the legislation about having
9 your customer data for orders placed through the
10 third-parties, we'd really like to see that passed as
11 well.

12 CHAIR GJONAJ: Thank you, Kathleen.
13 We'll stay in touch.

14 COMMITTEE COUNSEL STEPHANIE JONES: Thank
15 you. Next, we'll be calling Lisa Sorin, followed by
16 Lee Jacobs, and then Ryan Naples. Lisa.

17 SGT. LEONARDO: Time begins.

18 LISA SORIN: Thank you. Sorry for that.
19 Good afternoon, Chairman Gjonaj and members of the
20 New York City Council Committee on Small Business.
21 Thank you for the opportunity to testify today. I am
22 Lisa Sorin, President of the Bronx Chamber of
23 Commerce, a business service organization
24 representing over 23,000 Bronx businesses ranging
25 from micro and small business to large industry

2 employers. I am concerned and express our
3 organization's opposition to the third-party
4 permanent delivery cap legislation being discussed
5 today. I know our organization's opposition runs
6 counter to many of my colleagues; however, we cannot
7 continue to overstep and over legislate business
8 without a proper understand of our intended
9 consequences. Our organization does believe this
10 amendments to this legislation could make it much
11 better, but as it is written, it opens the door for
12 future regulatory actions on businesses and
13 establishes a slippery slope for future Council
14 actions that will deeply impact a business' ability
15 to operate in New York City. During the pandemic,
16 the closure of businesses that came to light the
17 absorbent prices that were being charged to our
18 restaurants and food establishments by third-party
19 delivery services. I represent many food
20 establishments that reached out with concerns of
21 pricing and loss of income due to these prices. I
22 believe these companies were taken advantage of these
23 businesses during the worst times in our city's most
24 recent memory. I applaud this committee, especially
25 Chair Gjonaj for the foresight and researching this

2 issue thoroughly and doing something about it.
3 Temporary capping of the fees made sense. It reduced
4 the cost to our food establishment allowing room for
5 profit or at a minimum, they were able to break even.
6 I believe the right way to do this would be to extend
7 the temporary cap and work with this industry on
8 their business models that make sense for everyone.
9 This Council must bring business to the table and
10 negotiating that fate. Mandating price caps of
11 private industry is a very slippery slope. If this
12 Bill goes through, what will stop the members from
13 going through a list of private businesses and
14 determining what they should and should not charge.
15 Allowing this Bill to go through is another notice
16 that New York City remains anti-business, that the
17 city will mandate how businesses run and what pricing
18 businesses can charge. A better solution, let us
19 revisit how this deliver industry does business, look
20 closely on what the regulations, if any, need to be
21 put in place to protect ... (crosstalk0.

22 SGT. LEONARDO: Time expired.

23 LISA SORIN: Not mandate what they can
24 and cannot charge. This city has already mandated
25 how businesses can schedule their employees who they

2 can and cannot fire, how much time they can give our
3 employees off. In addition of the more regulations
4 and the outrageous amount of paperwork that is
5 mandated by city agencies is a (inaudible) to
6 businesses which want to operate. This city has
7 established itself as being anti-business with
8 regulatory actions and a (inaudible) pandemic
9 response. The legislation today is another example
10 of just that. We respect to all you do to support
11 our micro businesses which my members and businesses
12 across my borough appreciate. Where do we draw the
13 line? What industry is next? I stand ready as do my
14 members to work with you and determine how best to
15 move forward on this issue. It worked during the
16 pandemic and can help during recovery, so let us
17 really talk about reasonable next steps. Maybe
18 provide monies toward marketing and education
19 personal businesses. Many of our immigrant
20 businesses may not understand their choices as it
21 relates to this specific service. We must learn from
22 our recent and long-term history. We lost the Amazon
23 Headquarters to a huge job creator because our
24 representative at city, state levels determine what
25 was in the best interest of our businesses and

2 community. It became a short-term solution, yet
3 Amazon moved it to Manhattan, opened many warehouses,
4 employing hundreds, if not thousands of people at
5 minimum wage, and we lost the opportunity for new
6 schools, high tech job training as so forth. Let us
7 learn from these mistakes. Let us take a step back
8 and bring the right businesses to the table and
9 figure out what will work best without putting our
10 foot down and telling business how to do business.
11 Thank you, and I'll take any questions you may have.

12 CHAIR GJONAJ: I want to thank you, Lisa,
13 and did you submit your testimony in writing as well?

14 LISA SORIN: I did.

15 CHAIR GJONAJ: Lisa, in a perfect world,
16 I agree that the less government intervention in
17 business and in marketplace is the ideal scenario,
18 but we currently have government regulating real
19 estate, energy, utilities, commercial coding, brokers
20 fees, taxi/limousine, and this is just to name a few
21 of the areas we regulate because government also has
22 a responsibility to protect consumers, and in this
23 regard, the reason we were looking the caps and why
24 they took place is because there was a need to
25 protect a very vital industry to this city. They're

2 so vital, that government actually invested in
3 restaurants through loans and grants. That's your
4 tax payer dollars, that's New Yorker's tax dollars.
5 Aren't we supposed to be in a position to make sure
6 that industry can survive to pay back those loans?
7 That in time, those grants get paid back through the
8 taxes they generate, making the tax payer whole and
9 the investment that we made in them. You've heard
10 the testimony on the vi-cap restaurants are breaking
11 even at best, at best. The numbers in the forecast
12 that we have on profitability on sales show a net
13 loss for every transaction. I don't want more
14 government regulation, but I also know that if
15 government doesn't intervene, this consumer demand of
16 third-party platform is not going away. It's going
17 to increase, and as it increases, it's going to have
18 a bigger impact on that particular establishment, the
19 restaurant industry as a whole, and we need to make
20 sure that they stay, that they're in business, they
21 are a very important part of our culture, they're
22 very important to New York from a tax base and from
23 an employment base. So, I hear your concerns, and
24 that's why this hearing is so important. We get to
25 hear from stakeholders, not only the platform, but

2 the actual restaurants. We get hear what the issues
3 are, and you know as well as I do, if you're a
4 partner, that means we both have to benefit. It
5 can't be one-sided. I don't know how you want to
6 answer that.

7 LISA SORIN: Allow me to say this. The
8 role of our representatives is to protect the
9 consumers. I am all-in on that and partnership and
10 our restaurants are the backbone of the majority of
11 the services provided. I deal with this almost on a
12 daily basis, but I will say this, yes, tax payer
13 dollars pay for loans and all other items, and I can
14 probably get into the very specific of how these
15 restaurants revitalization loans basically screwed
16 over our restaurants because of the minimal amount of
17 restaurant that we here, but I can also say that the
18 tax dollars and the amount of regulations that this
19 city puts upon our restaurants is that body of
20 legislation on top our restaurants (inaudible) as
21 hard as they are by our city government. There will
22 probably be more loans and negotiations with
23 companies like these third-parties, and please don't
24 let it confuse you, it's not a matter of you support
25 the companies one way or another. This is a

2 discussion about at what point do our legislators
3 realizes that not everything can be regulated and if
4 that's the tone we're going to take with companies
5 wanting to do business with companies, then we also
6 have to look at how these city agencies in New York
7 deal with others because if we are to put dollar to
8 dollar, I can almost guarantee you that the amount of
9 regulation violation we receive by our businesses,
10 even during COVID, outweighs what these business are
11 earning. So, I think it's a matter of looking in the
12 mirror with all due respect, Chairman, I get where
13 you're coming from. Listen, I will businesses and
14 some of them are probably really upset with me right
15 now, but the long-term solution is more about
16 conversation and not rushing through these Bills. I
17 mean, look at the vendor one. The vendor one went
18 through. I'm all about business, but their
19 overtaking our streets and everything else. Why
20 don't we focus on what we can bring, a better access,
21 quality of life business to the businesses we are
22 here to support, and right now, they need us on a
23 quality of life. Let's regulate what really needs
24 regulation, and let's allow people to come back and
25 eat at restaurants, shop, coming into our city,

2 coming into our borough without having to step over
3 vendors or businesses worried about keeping their
4 doors open because they'll get a violation for air
5 conditioning that staking from their doors.

6 CHAIR GJONAJ: Lisa, it sounds like you
7 want us to regulate government from regulating, and I
8 agree with you. We'll talk more about this, thank
9 you.

10 LISA SORIN: Thank you, Chairman, and
11 thank you to the committee.

12 COMMITTEE COUNSEL STEPHANIE JONES: Thank
13 you. Next we'll be calling Lee Jacobs, followed by
14 Ryan Naples, and then Michael Fuquay. Lee.

15 SGT. LEONARDO: Time begins.

16 LEE JACOBS: Good afternoon, Chair Gjonaj
17 and members of the Committee on Small Business. My
18 name is Lee Jacobs. I partner at the law firm at
19 Helbraun Levey, a full service New York City Law firm
20 focused on the needs of the hospitality industry.
21 I'm advocating on behalf of additional protection for
22 the hospitality industry against multi-billion dollar
23 tech giants seeking to add wealth at the expense of
24 small businesses and restaurants. Our firms
25 primarily represents members of the hospitality

2 industry with their real estate corporation
3 litigation and claimant and licensing needs. We
4 recently initiated a lawsuit in the southern district
5 of New York against the largest third-party delivery
6 service companies that predominantly service the New
7 York City hospitality industry. GrubHub which also
8 owns and operates Seamless, Uber, which also owns and
9 operates Uber Eats and Postmates, and DoorDash which
10 also owns and operates Caviar, for violations of the
11 local laws that are under consideration for today for
12 renewal. Now, as it's been discussed, it's been no
13 secret that the COVID 19 pandemic disproportionate
14 affected the restaurants and hospitality industry.
15 New York City restaurants were forced to fight for
16 their existence and reported massive layoffs and dips
17 in revenue as result of the pandemic and they were
18 forced to us third-party delivery platforms. As a
19 reminder, the third-party delivery platforms are just
20 another vendor to my restaurant clients, but unlike
21 other vendors, such as food providers, linen
22 companies, security companies, this is the only
23 vendor which makes money on both sides of the
24 transaction, both the consumer and the restaurant
25 pays these third-party companies for these services,

2 and it's those payments that we believe that massive
3 profits were made by these companies in violation of
4 the local law, and I'm happy to discuss with the
5 committee what we believe those violations are of the
6 local law as well as what further needs ...
7 (crosstalk).

8 SGT. LEONARDO: Time expired.

9 LEE JACOBS: Through the renewal of these
10 laws. I'm happy to take any questions if there are
11 any.

12 COMMITTEE COUNSEL STEPHANIE JONES: Thank
13 you so much for your testimony, Lee. Next, we'll be
14 calling Ryan Naples, followed by Michael Fuquay, and
15 then Andres Koutsoudakis. Ryan.

16 SGT. BRADLEY: Your time will begin.

17 RYAN NAPLES: Hi. Thank you for that.
18 Good afternoon, Chair Gjonaj and members of the
19 committee. I'm Ryan Naples, Deputy Director of Tech
20 NYC. We are an advocacy group for New York's tech
21 community representing more than 800 companies and
22 organizations. Food delivery in New York is not just
23 a luxury enjoyed by the affluent, but an important
24 service for the people of all walks of life. During
25 the pandemic, in fact, it was a crucial lifeline for

2 many people who lacks food access. This is why we
3 support legislation that helps customers ordering
4 food and New York City restaurants thrive.
5 Unfortunately, we cannot support making permanent the
6 20 percent of the re-fee cap previous enacted because
7 of now expired limits on restaurant capacity. In
8 situating an artificial price cap, will raise prices
9 for customers ordering food as a result, and as a
10 result, will reduce the amount that customers order
11 over time. Increased food prices may not be a
12 concern to high income families and genderfied
13 neighborhood but will have an effect on the ability
14 of lower income New Yorkers to access food from home.
15 The fee cap is also attempting a silver bullet
16 solution to a complex problem that is greatly
17 affected by many issues such as commercial rent,
18 increasing labor costs, and city fines and penalties.
19 It is unfortunate that the delivery platform fees
20 which are relatively minor compared to the cost of
21 labor, rent, and city fines may be capped while no
22 efforts exists to address these problems. We
23 encourage you to consider the origin of proposed 20
24 percent fee cap which is not tied directly to any
25 economic justification and is entirely arbitrary.

2 Given this reality, this cap will not enable more
3 restaurants to survive which is an important goal
4 that we support. Instead, this short side solution
5 will make ordering food more expensive for New
6 Yorkers which will lead to an even greater
7 contraction of the food delivery market. As many
8 restaurants will readily admit, maintaining their own
9 delivery operations and delivery staff is too
10 complicated and expensive for individual
11 establishments. Unfortunately, making the existing
12 cap permanent will negative impact delivery
13 platform's ability to provide these services. Our
14 members are not uniform in size and scale, and there
15 is real competition in this market. Some of our
16 members will not be able to survive the commission
17 cap, and two notable mergers in this industry have
18 already occurred. Few delivery ... (crosstalk).

19 SGT. BRADLEY: Time has expired.

20 RYAN NAPLES: Can I finish up? It will be
21 like 10 or 20 more seconds.

22 COMMITTEE COUNSEL STEPHANIE JONES: I
23 apologize. Go ahead and finish up if it's quick.
24 I'm sorry.

2 RYAN NAPLES: Yeah, so, sorry, so few
3 delivery (inaudible) will severely limit the broad
4 range of services and fee structures made available
5 to restaurants from different delivery platforms. We
6 know that at the federal level, a robust social
7 safety net and access to more affordable capital
8 would make a significant difference for restaurants
9 while at the state level commercial rent control
10 would actually reverse the trend of New York City's
11 decade long increase in the high current over rate of
12 restaurants of all sizes, up to 80 percent over the
13 course of five years. Unfortunately, we also know
14 that these structural changes are unlikely to occur
15 any time soon. These are the real solutions we hope
16 that we at Tech NYC can work on with you in the short
17 term, instead of this misguided one. Thank you for
18 consideration. I'm happy to take any questions.

19 COMMITTEE COUNSEL STEPHANIE JONES: Thank
20 you so much, Ryan.

21 RYAN NAPLES: Thank you.

22 COMMITTEE COUNSEL STEPHANIE JONES: Next,
23 we'll be calling Michael Fuquay, followed Andrea
24 Koutsoudakis, and then John McCarthy. Michael.

25 SGT. BRADLEY: You time will begin.

2 MICHAEL FUQUAY: Thank you. My name is
3 Michael Fuquay. I'm co-owner of the Queens Borough
4 in Jackson Heights. Thank you for inviting me to
5 speak today. Prior to COVID, our restaurant work
6 with GrubHub and Caviar. In March 2020, we cut the
7 cord and fired the delivery apps. Take out and
8 delivery became our entire business and we could not
9 afford to pay anyone 30 percent of our revenues. We
10 pivoted to taking takeout and delivery through our
11 own website and we used our own staff to make
12 deliveries. This was a key to our business and our
13 employees surviving the pandemic. Despite ending our
14 relationship with the delivery apps, they continued
15 to list us on their websites. We've asked to be
16 removed and our requests have been ignored. The apps
17 collect orders and call us as if they are the end
18 user. We only find out the source when the app
19 driver arrives for pickup. Why is this a problem for
20 us? One of the Queens Borough many pivots during the
21 pandemic was to revamp our menu and pricing to meet
22 the needs of our neighborhood. However, if you go on
23 the delivery apps, you will find menus and prices
24 from before the pandemic. This poses a problem. We
25 frequently get calls from menu items that we no

2 longer produce or complaints about prices not
3 matching online. Because we have no way to directly
4 these consumers, we have no way to repair the damage
5 done to our reputation. The delivery apps are
6 presenting us to the public as if we are their
7 partner. In truth, they have pirated our menu
8 without consent. What's more, they're presenting us
9 falsely to the public and doing significant damage to
10 our reputation in the process. I want to reiterate
11 something that's come up over and over. These are
12 not companies that act in good faith. They are
13 predatory and parasitic. We will never do business
14 with them again because they have proven to be an
15 untrustworthy partner. I salute the committee for
16 taking up these issues. Thank you for your time and
17 energy.

18 COMMITTEE COUNSEL STEPHANIE JONES: Thank
19 you, Michael. Next we'll be calling Andrea
20 Koutsoudakis, followed by John McCarthy, and then
21 James Mallios. Andrea.

22 SGT. BRADLEY: Your time will begin.

23 ANDREA KOUTSOUDAKIS: Good afternoon
24 everyone. My name is Andrew Koutsoudakis. I'm also
25 an attorney for dozens of restaurants. I have a

2 restaurant in Tribeca that I've recently taken over,
3 and I'm also the President of the Greenwich Village
4 Chelsea Chamber of Commerce. I've been on this
5 hearing all day and it's insane to hear some of the
6 things, but I think there's some clarity that's
7 needed. There's a big difference between a fee based
8 on the value of the user experience, a fee based on
9 additional enhanced marketing, and a fee based on the
10 value of delivering the food for the restaurants
11 instead of the restaurant doing it themselves. All
12 of those things are great. The problem here, and the
13 reason why a fee cap is absolutely necessary, is
14 because there is no way restaurants can compete with
15 these platforms when the do not provide the customer
16 data, the create secondary websites, secondary phone
17 numbers and spend substantial money; God knows how
18 much, for Google ads, Superbowl ads, etc., to not
19 only drive customers to their platform which would
20 otherwise be perfectly okay, but to drive them away
21 from the so-called restaurant partners that they list
22 on their platform. Websites at these restaurants
23 have created to maintain an online presence and
24 compete against these platforms and I'm going to do
25 it myself. All the testimony regarding the loss by

2 these companies, even with the billings of revenue,
3 it sounds crazy, we're suffering the loss. We made
4 \$4 billion dollars last year, but we lost X. Yeah,
5 that's because you're spending all your profits on
6 marketing money and advertisements to drive the
7 business away from the restaurants. Once those
8 restaurants are out of business, the profits will
9 magically appear in massive amounts. So, you know,
10 this concept of, you know, anti-business, anti-
11 business legislation, it's only anti-business if
12 you're pro-big business and it's pro-business if
13 you're pro-small business. At the end of the day,
14 the main take away here is, in the perfect universe,
15 these platform would love every single bite of food
16 any person in our city takes to happen, not at a
17 restaurant, but as home or at work and ordered
18 through their platform. So, there is no scenario
19 where ... (crosstalk).

20 SGT. BRADLEY: Time has expired.

21 ANDREA KOUTSOUDAKIS: There is no
22 scenario where they would like anyone to not buy from
23 their platform. They don't support our communities,
24 and you know, it's, in closing, I'll just cut right
25 to it, you know, I absolutely, wholeheartedly support

2 this legislation and in its entirety, and I really
3 urge the City Council to send a clear message to all
4 of these technology companies, not just these third-
5 party platforms. You're welcome to do business in
6 our great city, but not with free reign. If that's
7 the market you need to succeed, this is not the city
8 for you. You're business model must support our
9 communities and it must be aligned with our values
10 and our principals. We will not allow big type
11 business models to not only dictate what our
12 communities look like, and they certainly will not
13 eliminate our small business. Our restaurants matter
14 to us, hospitality matters to us. You must ...
15 (crosstalk).

16 COMMITTEE COUNSEL STEPHANIE JONES: Thank
17 you, Mr. Andrea. Thank you. Next, I'll be calling
18 John McCarthy, followed by James Mallios, and then
19 Sam Pierre. John.

20 SGT. BRADLEY: Your time will begin.

21 JOHN MCCARTHY: Hi, my name is John
22 McCarthy. I'm an advisor to the New York Japanese
23 Restaurant Association. The NYJRA was founded as a
24 non-profit 501C6 at the outset of the pandemic to
25 represent the interest of the Japanese restaurant

2 owners and operators and all the business owners. I
3 appear today to urge support and passage of all these
4 Bills, this entire package of Bills. These Bills are
5 not only vital to the continued recovery of an
6 industry that's been disproportionately and adversely
7 affected by the pandemic, but they also corrected
8 egregious wrongs to these businesses that were
9 brought to light during the lockdowns. To give the
10 community context, the Japanese restaurant community
11 has lost as many restaurants during the pandemic as
12 were created and opened in New York City from the
13 year 2000 to the present. That's a loss of 20 years
14 of progress and job creation. The nefarious and most
15 squalid business practice of some of these vendors
16 has been a burden on businesses and restaurants for
17 some time. I ask that the committee consider that
18 many of these small businesses that are targeted by
19 these vendors are ones that are owned by minorities
20 and in the case of the NYJRA, Asian and Asian-
21 Americans. In some instances, those are out of solid
22 understanding of English or the rights are being
23 taken advantage of by these vendors. I point to the
24 testimony regarding take it or leave contracts. I
25 point to the testimony of not having full disclosure

2 of fees and arrangements on websites, they are left
3 to the potentially unscrupulous behavior of account
4 executives and others. (Inaudible) this committee to
5 institute the protections that these businesses so
6 desperately need. I've heard a lot about the other
7 portions of the package, but focusing on the delivery
8 fees, I've not heard any creative ideas from the
9 actual third-party vendors as to a solution to the
10 situation other than they want to raise the fees on
11 restaurants who cannot ... (crosstalk).

12 SGT. BRADLEY: Time has expired.

13 JOHN MCCARTHY: They are looking to the
14 restaurants to support their business model instead
15 of looking for other creative ways. These are the
16 best ... (crosstalk).

17 COMMITTEE COUNSEL STEPHANIE JONES: Thank
18 you, John.

19 JOHN MCCARTHY: But we need some relief
20 and these Bills are for the relief and survival, not,
21 they're not going to thrive under it, but they are
22 survival ... (crosstalk).

23 COMMITTEE COUNSEL STEPHANIE JONES: Thank
24 you.

2 JOHN MCCARTHY: Depends on these Bills.
3 Thank you very much.

4 COMMITTEE COUNSEL STEPHANIE JONES: Thank
5 you for your testimony. Thank you. Next, I'll be
6 calling James Mallios, followed Sam Pierre and then
7 Josh Morgan. James.

8 SGT. BRADLEY: You time will begin.

9 JAMES MALLIOS: Can you hear me? Hi.
10 Just to be clear, I have one minute, correct, or two
11 minutes, please?

12 COMMITTEE COUNSEL STEPHANIE JONES: You
13 have two minutes.

14 SGT. BRADLEY: You time begins.

15 JAMES MALLIOS: So, my name is James
16 Mallios. I own three restaurants in the New York
17 City area. I'm also a member of the New York City
18 Hospitality Council among other Boards. First, make
19 no mistake and don't believe the BS that you heard
20 from GrubHub and the other companies earlier. Last
21 year, in 2020 and 2019, when they released their
22 fourth quarter earnings, GrubHub conceded that their
23 model cannot make money, that model loses money, and
24 they really had no hope to ever be profitable
25 Nevertheless, even when you reduce their fees this

2 year, they double their revenue this past, last
3 quarter in 2020, but yet, still true no prediction
4 loss money. They don't operate like the brick and
5 mortar businesses that exist in New York City.

6 Second, all we are asking with restaurants with
7 liquor licenses is asking you, the City Council to
8 enforce the state law that is on the books now, that
9 if someone was 10 percent revenue, in access of 10
10 percent revenue from our restaurants has to be listed
11 on the license. That is the law. Because the state
12 has not stepped in so far, we are asking our local
13 City Council to step in and enforce the state law as
14 it is written with the (inaudible). Third, what
15 you've seen since this law passed is that every one
16 of these companies has now (inaudible) a delivery
17 fee, a service fee, a gratuity fee. So, if you allow
18 them to go back to the previous 30 percent charges
19 that they were instituting, I will be gob smacked
20 that they would actually give up those other fees
21 that they've now instituted to subvert the
22 legislation that the Council already passed to date.
23 You already know about the importance of restaurants
24 on this community. I don't need to repeat it, but

2 for God sakes, don't believe a load of bullshit that
3 they're selling you from their lobbyist, please.

4 COMMITTEE COUNSEL STEPHANIE JONES: Thank
5 you for your testimony, James. Next, I'll be calling
6 Sam Pierre, followed by Josh Morgan, and then Rachel
7 Mulkagy. Sam.

8 SGT. BRADLEY: Your time will begin.

9 COMMITTEE COUNSEL STEPHANIE JONES: I
10 don't believe Sam is present, so I'll be moving on
11 to the next panelists. Next, we'll be calling Josh
12 Morgan, followed by Rachel Mukagy, and Samira
13 Alensari. Josh.

14 SGT. BRADLEY: Your time will begin.

15 COMMITTEE COUNSEL STEPHANIE JONES: I
16 don't believe Josh is present either, so I'll be
17 moving on to the next panelists. The next panelist
18 is Rachel Mukagy, followed by Samira Alensari, and
19 then Carlos Ignacio. Rachel.

20 SGT. BRADLEY: Your time will begin.

21 COMMITTEE COUNSEL STEPHANIE JONES: I
22 don't believe Rachel is present at the hearing at
23 this time, so I'll be calling Samira Alensari,
24 followed by Carlos Ignacio, and then Paul Poleti.
25 Samira.

2 SGT. BRADLEY: Your time will begin.

3 COMMITTEE COUNSEL STEPHANIE JONES:

4 Samira appears to not be present, so I will move on
5 to Carlos Ignacio, followed by Paul Poletti, and then
6 Deshay Grant. Carlos.

7 SGT. BRADLEY: Your time will begin.

8 COMMITTEE COUNSEL STEPHANIE JONES: I
9 don't believe Carlos is present, so next we'll be
10 calling Paul Poletti, followed by Deshay Grant, and
11 then Alberto Miranda. Paul.

12 SGT. BRADLEY: Your time will begin.

13 COMMITTEE COUNSEL STEPHANIE JONES: Okay,
14 I don't believe Paul is present. So, next up is
15 Deshay Grant, followed by Alberto Miranda, and then
16 John Olsen. Deshay.

17 SGT. BRADLEY: Your time will begin.

18 COMMITTEE COUNSEL STEPHANIE JONES: I
19 believe Deshay is not present, so next up is Alberto
20 Miranda followed by John Olsen, and then Montana
21 Williams. Alberto.

22 SGT. BRADLEY: Your time will begin.

23 COMMITTEE COUNSEL STEPHANIE JONES:

24 Alberto appears to not be present, so, next we'll be

25

2 calling John Olsen, followed by Montana Williams, and
3 then Spiros Casimis. John.

4 SGT. BRADLEY: Your time will begin.

5 JOHN OLSEN: Thank you. Good afternoon,
6 Chair Gjonaj and members of the Small Business
7 Committee. My name is John Olsen and I am the
8 Northeast Director for the Internet Association or
9 IA. IA is the only trade associations that exclusive
10 represents leaning global internet companies on
11 matters of public policy. Our mission is to foster
12 innovation, promote economic growth, empower people
13 to the free and open internet. We believe the
14 internet creates unprecedented benefits for society
15 and as a voice for the world's leading internet
16 companies, I work to ensure that legislators,
17 consumers and other stakeholders understand these
18 benefits. I'm here to speak on Introduction 2359
19 today. I, as opposed to any permanent cap on third-
20 party delivery commissions. Delivery network
21 companies have been financially subsidizing
22 restaurant delivery services throughout the pandemic.
23 Understanding ways as a society, we're collectively
24 living in extraordinary times and taking the steps to
25 ensure the survival of restaurant operators,

2 platforms operate on a financial restrains with a
3 temporary cap tied to the emergency order for over a
4 year. Now, with Governor Cuomo officially declaring
5 the end to the state of emergency in New York, the
6 temporary cap on commission should be allowed to
7 sunset and platform and their partners should be,
8 (inaudible) to return the contractual obligations
9 that have been agreed upon. It is both inappropriate
10 and unnecessary for the legislation to just dictate
11 business to business contracts behind opposing a
12 fixed price. Restaurants have a choice of rather
13 they want to offer delivery themselves or partner
14 with a delivery network company. Delivery network
15 companies are competing for restaurant business and
16 offer a wide range of partnerships, structures, and
17 commission rates to suit restaurants needs.
18 Commission fee structures are transparent and clear
19 when any restaurant enters a contractual partnership
20 with the delivery network company. Regulating these
21 contract terms is (inaudible) to government
22 intervention requiring wholesalers to sale their
23 goods at a loss. It's important to understand that
24 commissions are not profit delivery platforms.
25 Agreed upon rates with restaurants are based on a

2 broad range of services made available to restaurants
3 through our member's platforms. They are not one
4 size fits all, but rather tailored to each of the
5 restaurants needs. Restaurants can collaborate on
6 marketing collateral, determine the appropriate
7 neighborhood to open new locations and even see how
8 pricing affects consumer demand. Commission fees go
9 a long way towards supporting delivery platform's
10 operational costs, ensuring workers are paid fairly,
11 and allowing them to provide the reliable and safe
12 service that residence expect and rely on, especially
13 in times of need, like today, but for these reason, I
14 strongly urge the committee not to advance this
15 legislation. Thank you for your time, and I will
16 take any questions that you may have.

17 CHAIR GJONAJ: Thank you, Mr. Olsen.
18 Please tell me again, your affiliated with who?

19 JOHN OLSEN: I'm the Regional Director
20 for the Internet Association. We are a trade
21 association representing a number of internet
22 companies, including the ones that provided testimony
23 earlier today.

24 CHAIR GJONAJ: Thank you. So, John, and
25 I understand what you're saying that government

2 intervention is not a good thing. Regulation of
3 markets is very complicated, but here we have an
4 industry that is barely holding on, and I believe the
5 numbers are, they are 70 percent off their gross
6 revenues. They're operating at a loss. We've done
7 everything that we've possibly can, and that is at a
8 city, state, and federal level to invest in this
9 industry to make sure that they survive this. We're
10 not even referring to thriving, surviving was the
11 endgame during the pandemic. They are not there yet.
12 They're operating at net losses. You don't think
13 government has a responsibility to ensure an industry
14 like the restaurant industry survives? That not only
15 does it get through this pandemic, but because it's
16 such a vital part of this city from employment, tax
17 base, and a part of the very culture of what makes
18 New York City so great. The different cuisines, and
19 I am probably the most pro-business Council Member in
20 this Council and even I say there must be some
21 government intervention to make sure that no industry
22 wiped out. See, what you're failing to recognize,
23 John, and it was mentioned during one of the
24 testimonies, it's not only the commission caps, but
25 actually the data that these third-party platforms

2 are obtaining on their partnership through these
3 restaurants and what they're doing with that
4 information. Ghost kitchens. There is nothing that
5 prevents a third-party platform, and some of them are
6 already doing it, from taking the data from the
7 restaurants, using that to build a ghost kitchen to
8 compete with the very restaurant that was paying a
9 fee to them for a service. It's much more
10 complicated than government regulation. This is
11 hijacking of a business. There isn't a business out
12 there that would want to pay for a service. I mean,
13 hell, if we could, these restaurants would even stop
14 taking credit cards cause they don't want to pay the
15 3 percent for the credit card transaction. That
16 comes out of the bottom line. It gets passed on to
17 the customer one form or another, but 30 percent
18 because you're very knowledgeable, as far as your
19 aware, what is the level of profit on a fast food
20 establishment as an industry?

21 JOHN OLSEN: Are you asking me?

22 CHAIR GJONAJ: Yeah, I'm asking you.

23 JOHN OLSEN: You quoted 6 to 9 percent.

24 CHAIR GJONAJ: That's right.

25

2 JOHN OLSEN: But respectfully,
3 Councilman, this isn't just about third-party
4 delivery services and they commissions they, you
5 know, they charge. This is about the rents that
6 restaurants are currently paying, it's the lack of
7 their labor, it's lack of availability of drivers,
8 it's a lack of affordability in product, especially
9 at the wholesale level when it comes to proteins, it
10 comes to linens. The commission cap fee thing seems
11 to be an arbitrary and almost discriminatory intent
12 to alleviate restaurant suffering from a myriad of
13 issues, and I as I said as the, you know, the
14 Internet Association's Director, we take a global
15 look at things and permanent commission caps are just
16 one aspect. We are fully supportive of laws that
17 would ban those kitchen, we're fully supportive of
18 the measures that are also on the agenda today;
19 however, when it comes to price fixing, especially in
20 a business to business contract, that's where we have
21 major concerns because it does seem like this Council
22 is attempting to assist restaurants who fairly are
23 still struggling, but to impost a permanent cap now
24 that the emergency order has been lifted, the
25 temporary cap was tied to that, it does seem a bit

2 like revoltage. So, I understand where you're coming
3 from, especially as the Chair of the Committee on
4 Small Business, but I would encourage the committee
5 to look at other aspects of what is causing
6 restaurants to have to pay so much more to stay open.

7 CHAIR GJONAJ: All right, and thank you
8 for that, and just to counter, you know, in all of
9 those other issues that you mentioned rather it be
10 rent or regulation or fees or taxation, there's an
11 ability and a time for a business to adapt and change
12 its business model. The pandemic, what should have
13 taken years or perhaps decades to do, happened within
14 months. A complete shutdown. You only option was to
15 order food through a platform and where over a
16 duration of time, a restaurant could have adopted and
17 been prepared for those fees that are needed, could
18 have come up with its own platform, could have
19 marketed its own products and services, was stripped
20 away because the pandemic forced closure and the only
21 avenue for them to do any business was predominantly
22 through third-party food delivery apps. That's the
23 part of the equation here that we have to keep in
24 mind. I'm not supportive of regulation, but those
25 times called for dire action because they were dire

2 times and consequences. These hearings are part of a
3 process. Bills are introduced, legislation is
4 introduced. We presented to the public, we hear from
5 the public, and then ultimately we decide based on
6 those testimonies what, if anything, we do. So, I
7 want, this hasn't been dictated or written in stone,
8 and I'm grateful to you for participating and sharing
9 your thoughts with us, but I want you know, every bit
10 of the testimony heard today, is taken into
11 consideration to determine what steps are needed
12 next.

13 JOHN OLSEN: Thank you, Chair.

14 CHAIR GJONAJ: Thank you.

15 COMMITTEE COUNSEL STEPHANIE JONES: Thank
16 you. Next, we'll be calling on Montana Williams,
17 followed by Spiros Casimis, and then Sal Ismael.
18 Montana.

19 SGT. BRADLEY: You time will begin.

20 MONTANA WILLIAMS: Good afternoon, Chair
21 Gjonaj and members of the Council. My name is
22 Montana Williams and I am the Director of State and
23 Local Public Policy for the Chamber of Progress, a
24 new center-left tech industry coalition promoting
25 technology's progressive future. Our corporate

2 partners include companies like DoorDash, GrubHub,
3 and Uber Eats, but our partners do not have a vote or
4 veto power over our positions. During the pandemic,
5 Governor Andrew Cuomo designated food delivery as an
6 essential service. Third-party delivery companies
7 provided a safe and convenient alternative for
8 families to get their meals. The caps that the
9 Council imposed last year may have offered some
10 relief to restaurants in challenging times, but is
11 also made it more expensive for New Yorkers who were
12 trying to support local restaurants safely through
13 delivery, that's because while restaurants were
14 paying lower fees, delivery services still had to pay
15 drivers, conduct background checks, and handle
16 customer inquiries. Families ordering local delivery
17 ended up covering restaurant's tabs through higher
18 prices or recovery fees, creating domino effect.
19 These families started ordering less, leading
20 restaurant sale volumes to decrease 4 to 7 percent in
21 some cities. This translated into lost wages for
22 delivery drivers and lost sales tax revenue which
23 could ultimately mean a New York tax revenue loss of
24 \$500 million dollars annually. Thought times are
25 notable still tough, local restaurants are now on the

2 path to recovery. New York restaurants have been
3 functioning at full capacity since May 19th, and the
4 federal government is administering \$29 billion
5 dollars in grants. Because of this, they are no
6 longer in need of these delivery fee caps. As we
7 emerge from the pandemic, we encourage the City
8 Council to leave the delivery fee cap behind. Thank
9 you for your time, and I'm here to answer any
10 questions.

11 CHAIR GJONAJ: Thank you, Ms. Williams.
12 The number you quoted, \$5 million dollar loss in tax
13 base, is that what you said?

14 MONTANA WILLIAMS: Yes, loss in tax
15 revenue for New York.

16 CHAIR GJONAJ: Due to the pandemic and the
17 forced closure and not allowing New Yorkers to
18 frequent restaurants. Is that the number you're
19 referring to?

20 MONTANA WILLIAMS: No, I was more so,
21 like I said, because of the delivery caps, that would
22 be kind of a unintended consequence of keeping the
23 fee caps consistent.

24 CHAIR GJONAJ: So, Ms. Williams, the
25 argument is, and restaurants are entrepreneurs.

2 MONTANA WILLIAMS: Yeah.

3 CHAIR GJONAJ: They're going to make
4 adjustments to make a profit to stay in business.
5 Many restaurants didn't offer delivery service to
6 pandemic, and they weren't prepared for it. All of
7 their in-house employees obviously had to be, there
8 was no need for bar backs and waiters and waitresses
9 and bus boys, the in-house dining was shut down.
10 They were forced to rely on pickup or delivery only
11 when their businesses were not set up for it. If you
12 heard the testimony that the profit margins are
13 between 6 and 9 percent, and they're paying fees
14 currently with a cap at 20 percent, the translation
15 is on every transaction, it's yielding a net loss to
16 that restaurant. That's not good for anyone because
17 when that restaurant shuts down, there is no need for
18 a deliver person, there is no need for a kitchen
19 staff or a cleaning staff or a waiting staff. We
20 need to ensure that this industry survives and the
21 measures that we're taking were done so to give them
22 time to adopt their business models to this new
23 world. Ecommerce is here to stay. Third-party food
24 delivery apps will remain. We just need time for our
25 businesses to adopt and become real partners where

2 they benefit from it as well, and it just can't be
3 passed on to customers cause when those fees, when
4 the venue prices go so high there will no one
5 ordering and there will be no need for a driver or
6 for a kitchen staff, and that's our concern, but I
7 hope you submitted your testimony in writing so that
8 we can refer to it as well, and we'll stay in touch
9 with any follow up.

10 MONTANAN WILLIAMS: Okay, thank you.

11 CHAIR GJONAJ: Thank you.

12 COMMITTEE COUNSEL STEPHANIE JONES: Thank
13 you. Next, we'll be calling Spiros Casimis, followed
14 by Sal Ismael, and then Carmine Metrone. Spiros.

15 SGT. BRADLEY: Your time will begin.

16 COMMITTEE COUNSEL STEPHANIE JONES: I
17 don't believe Spiros is present in the hearing, so
18 next we'll be moving on to Sal Ismael and then
19 Carmine Metrone, and then Jonathan Forgash. Spiros.

20 SGT. BRADLEY: You time will begin.

21 COMMITTEE COUNSEL STEPHANIE JONES: Next
22 we'll be calling Sal Ismael, oh, I just, I'm sorry. I
23 apologize for repeating myself. Is Sal present at
24 the hearing? Okay, we'll be moving on to Carmine
25 Metrone, and then Jonathan Forgash, and then Bryan

2 Groman. Carmine, are you present? Okay, next we'll
3 be moving on to Jonathan Forgash, Bryan Groman, and
4 Carina Marote. Is Jonathan present?

5 JONATHAN FORGASH: I am.

6 COMMITTEE COUNSEL STEPHANIE JONES: Okay,
7 please proceed, Jonathan, thank you.

8 SGT. BRADLEY: Your time will begin.

9 JONATHAN FORGASH: You're welcome. Thank
10 you for having me. My name is Jonathan Forgash. I'm
11 the Executive Director of Queens Together, a non-
12 profit association of diverse restaurants supporting
13 each other in business and working with communities
14 in crisis. We are located in Queens, New York. By
15 our very nature, our diversity, our multiculturalism,
16 geography spread, makes us ripe for predatory
17 practices by groups such as these here today, the
18 third-party delivery apps, and let me start by saying
19 that the third party delivery and ordering platforms
20 offer valuable services to the restaurant community.
21 Without them, we might not have been able to get
22 through the pandemic. With that being said, these
23 services are not being sold to restaurant as a
24 standard business offerings to help their bottom
25 line. Many of the larger third-party delivery and

2 ordering platforms are using these services in a
3 predatory manner to dominant the market, control a
4 restaurant's online presence and exploit our
5 restaurant community for profit. How? With
6 exorbitant fees, hidden fees, confusing contracts,
7 false websites and phone numbers. An example of this
8 is over the last year, one of our member restaurants,
9 a small pizzeria in western Queens paid a total of
10 \$178,000.00 in fees to third-party delivery
11 platforms. That's about 23 percent of each order.
12 These exorbitant fees leave very little room with any
13 for profits and as you heard earlier, standard profit
14 in a restaurant is 69 percent. A lot was said here
15 today, so I'm going to skip ahead to something that I
16 found very important and that was commentary by
17 Daniel McCarthy. He spoke about the transference of
18 \$19 billion dollars from the restaurant industry to
19 these third-party platforms, and it's not just the
20 restaurants. That is transfer of wealth from
21 communities, the restaurant, the customer and the
22 community itself. So, by taking the money out of the
23 community, we are losing much more than perhaps
24 restaurants. You know, you're taking money from tax
25 base, from local employees. All these things really

2 need to be discussed and you know, GrubHub mentioned
3 earlier that they are a publicly traded company and
4 they need to have the right to profit protected.
5 Wow, I would love the same for our restaurants in New
6 York City, but unfortunately, we cannot do that, nor
7 is that democratic. We are here to fight for our
8 business and fight for ourselves. That type of
9 protection really shouldn't be allowed and we applaud
10 the efforts by the City Council to pass these Bills.
11 We support every bit of it. We need to help our
12 restaurants survive and thrive in today's economy.
13 Thank you for your time, Chairman. I really applaud
14 your comments here today, and I welcome your
15 questions.

16 CHAIR GJONAJ: Jonathan, I want to thank
17 you for being so patient and your participation on
18 today's hearing. You're fighting for an industry and
19 we welcome it, all of the testimonies will be
20 considered as we decide how we're going to move
21 forward and we have a lot of work to do. I'm
22 grateful to you.

23 JONATHAN FORGASH: Thank you very much.

24 COMMITTEE COUNSEL STEPHANIE JONES: Thank
25 you for your testimony. Next, we'll be calling Bryan

2 Groman, followed by Carina Marote, and then Tener
3 Ujeter. Bryan.

4 SGT. BRADLEY: Your time will begin.

5 COMMITTEE COUNSEL STEPHANIE JONES: I
6 don't believe Bryan is present at the hearing, so we
7 will move on to Carina Marote, followed by Tener
8 Ujeter and then John Capotanos. Carina. Since
9 Carina is not present, we will move on to Tener
10 Ujeter and then John Capotanos, and then Sanjay
11 Patel. Tener. Since Tener is not present, we will
12 move on to John Capotanos, and then Sanjay Patel, and
13 then Finally, Spiro Cocuces. John are you present?
14 Okay, next Sanjay Patel and Spiro Cocuces, and then
15 Tommy Connally. Sanjay are you present? Okay, next
16 we have Spiro Coucuces, Tommy Connally, and then
17 Johnny Marero. Is Spiros present? Is Tommy Connally
18 present? Okay since Spiros and Tommy are not
19 present. We'll move on to the next panelists. We
20 have Johnny Marero and then Zoe Darman, and then
21 Obita Von Bigi. Is Johnny present? Okay, next Zoe
22 Daman, are you present at the hearing? Okay, since
23 Zoe is not present, we will move on to Obita Von
24 Bigi. Obita are you here? Okay, next in line Bon

2 Yagi, and then Yutaka Takei, and the Nicholas
3 Hartman. Bon, are you here?

4 BON YAGI: YES.

5 COMMITTEE COUNSEL STEPHANIE JONES: Okay,
6 great, thank you. Please proceed.

7 SGT. BRADLEY: Your time begins.

8 BON YAGI: Hi. My name is Bon Yagi. I'm
9 representing Japanese Restaurant Association. We
10 about 1000 Japanese restaurants in New York City and
11 during the pandemic, we had so much a hard time, but
12 again, Chairman, and New York City Council Committee,
13 thank you very much for having this opportunity to
14 express myself as the third-party delivery charge.
15 Before pandemic, you know, we, myself, had a
16 restaurant and some of the restaurant, we had charge
17 by different percentage, one was 20 percent, one was
18 25, so had to negotiate with that, but then you made
19 a cap, this cap will be over in August 19th, so
20 permanent cap on third-party delivery, because the
21 temporary cap on third-party delivery fees scheduled
22 to expire in 90 days which is August 19th, you know,
23 we like to, possible, keep the number low so
24 surviving after COVID to recover, we still need it,
25 and also we have a problem that requires your

2 permission to list the restaurant, you know, the
3 legislation will require third-party delivery service
4 agreement with the restaurant before listing them on
5 their site, so we need that also. Prohibit bogus fee
6 for phone calls, those have a lot of problem and
7 transparent phone numbers. The third-party service
8 sometimes create second number and you know, we lose
9 our own business. Again, the third-party and the
10 restaurant, you know, that's like a husband and wife.
11 We have to survive, so we need them, but they need
12 us. So, we should make some kind of a conversation
13 and we can come up with the numbers ... (crosstalk).

14 SGT. BRADLEY: Time has expired.

15 BON YAGI: That would be very great, but
16 then third-party, they need to do more work because
17 they don't help us too much because when we have a
18 delivery service and we are in trouble, but you know,
19 they depend on us, and they don't take care any phone
20 calls, food, nobody picks up for two hours, and we
21 have to start making another one fresh and they still
22 charge the same amount. I know they give some time,
23 okay, the customer, they never pick up, we gonna pay
24 for you, but again, it's not that, we want a
25 satisfied customer. We need to make customer

2 satisfied, we got to work together. So, please, you
3 know, the committee, help us to keep this number very
4 low so we can survive. Thank you very much.

5 CHAIR GJONAJ: Thank you, Mr. Yagi. You
6 brought something to my attention that I was not
7 aware of, so because you specialize in Japanese
8 restaurants and a lot of the food that you are
9 preparing has to be, is temperature controlled, so it
10 doesn't spoil, sushi. You're saying that you can
11 have an order come and it can be waiting for pickup
12 to the point where it's not transportable and you
13 have to redo the order?

14 BON YEGI: Yes.

15 CHAIR GJONAJ: And how does the third-
16 party food delivery platform address this issue?

17 BON YEGI: Like I said, they don't answer
18 right away. We have to keep calling them like four
19 or five times and also we have a noodle, you know
20 Japanese noodle is like, you have to serve, same
21 thing, within certain time; otherwise, gets very
22 soggy, you know, faster than pasta. Pasta can stay
23 longer, but Japanese Soba takes, very quick, even
24 Raman noodle, you know, Raman is in now, it's in New
25 York City. How many Raman shops? You know, they

2 need to pick up right away and the customer has to
3 eat right away, it's not like you can reheat again,
4 you know. You can reheat it once, but you know, you
5 can't heat it at a long time because the noodles lose
6 the flavor. So, again, the third-party, they helping
7 us in certain ways, we have very quickly order come
8 in, but sometimes they don't pick up and we call
9 them, so, somebody is going to be on their way, they
10 don't care too much. So, that's no good. Again, we
11 got to work together. It's like a husband and wife.
12 We want to help them, they gonna help us, and please
13 give us a little break on the numbers, you know the
14 restaurant has to survive. Cutting our profit 20
15 percent from our revenue, it's cutting like 2 or 3
16 percent of our profit.

17 CHAIR GJONAJ: Explain that please, Mr.
18 Yagi. What is your profit? You said you represent
19 1000 Japanese restaurants, correct?

20 BON YEGI: No, Japanese restaurant is
21 1000 in New York City right now, but our members
22 right now, is about 160. We just started the
23 organization. Do you remember John McCarthy, he's
24 our representative. He's our advisor and he

2 addressed the issue and you know, we, again ...
3 (crosstalk).

4 CHAIR GJONAJ: Mr. Yagi.

5 BON YAGI: Right before the pandemic.

6 CHAIR GJONAJ: What is the profit margins
7 for the food that you sell?

8 BON YAGI: Our food cost is especially
9 sushi is very expensive, like 35 or 40, so then if
10 you take out the third-party delivery, you know, we
11 don't do too much, you know, so that's another
12 problem right there. If you need exactly, you know,
13 what's the margin of the sushi, we can give you later
14 and Raman, the profit of that, we can get you later.

15 CHAIR GJONAJ: Thank you, Mr. Yagi.
16 Thank you.

17 BON YAGI: Thank you.

18 COMMITTEE COUNSEL STEPHANIE JONES: Thank
19 you. Next, we'll be calling on Yutaka Takei,
20 followed by Nicholas Hartman and then Natsumi Yamase.
21 Yutaka.

22 SGT. BRADLEY: Your time will begin.

23 YUTAKA TAKEI: Yes. Can you hear me.

24 CHAIR GJONAJ: Yes, we can.

25 YUTAKA TAKEI: Hello.

2 CHAIR GJONAJ: Yes, we hear you fine.

3 YUTAKA TAKEI: Okay. Well, thank you for
4 the opportunity today. Well, I am the, same as Mr.
5 Yagi, I am a Boardman of the Japanese Restaurant
6 Association. My basic position is the same as Mr.
7 Yagi, and also Mr. Andrew Ritchie, New York
8 Hospitality Alliance and Joe Macasi of the New York
9 Japanese Restaurant Association as well. I am a
10 Board member, and at the same time, I'm running the
11 (inaudible) New York. Of course, yes, we suffered a
12 tremendous loss in the pandemic. First, we need a
13 quick recovery at this moment, and because of the
14 customers having to change, we have no choice but to
15 rely on third-party delivery platform. The problem
16 is that we do not have any bargaining power to
17 negotiate with those third-party giants, so we have
18 to negotiate one-by-one to those third-party delivery
19 platform, but unfortunately, we restaurant, each one
20 if very weak to negotiate, so why we insisted
21 (inaudible) delivery platform. For instance, if a
22 customer come up some claim or some food that's not
23 delivered, well the result (inaudible) or agreement
24 of the restaurant. They, they just make a refund,
25 and uh, well, next day, we come to know about it.

2 So, it is a little (inaudible). Sometimes it is not
3 our mistake, and well, you know, those type of
4 things, so that they are insisting a lot of delivery
5 that is one of the problem we are facing. That's
6 all. Chairman, thank you for the opportunity.

7 CHAIR GJONAJ: Thank you, Mr. Takei.
8 What are the profit margins for your restaurant and
9 the group that you work with?

10 YUTAKA TAKEI: Well, I think the same as
11 Mr. Yagi, and have similar numbers, while the food,
12 so, well, I can't specific what the profit margin at
13 this moment because we are suffering, we are
14 (inaudible) but we cannot afford to pay too much
15 delivery fee at this moment.

16 CHAIR GJONAJ: And if we, if the caps are
17 removed, then they go back to the fees that you were
18 paying before. What would happen to the restaurant
19 group that you work with?

20 YUTAKA TAKEI: Well, I can't answer that
21 question, but of course, what I'm concerned is if the
22 delivery fee is going up further, that is a big
23 problem to us, and the (inaudible) that is going to
24 the customers. So, that's what we're afraid of.
25 Chairman.

2 CHAIR GJONAJ: Thank you, Mr. Takei.

3 YUTAKA TAKEI: You're welcome. Thank you
4 very much for the opportunity.

5 COMMITTEE COUNSEL STEPHANIE JONES: Thank
6 you for your testimony. Next, we'll move on to
7 Nicholas Hartman, followed by Natsumi Yamase, and
8 then George Tinavios. Is Nicholas here? Since
9 Nicholas does not appear to be present, we will move
10 on to Natsumi Yamase, followed George Tinavios, and
11 then Michael Trank. Natsumi. Since Natsumi is not
12 present, I will move on to George Tinavios, and then
13 Michael Trank, followed by Janice Pulachino. George.
14 Since George is not present at the hearing, we will
15 call Michael Trank next, and then Janice Pulachino,
16 followed by William Ruben. Michael. Since Michael
17 does appear to be present, we will call next Janice
18 Pulachino, and then William Ruben. Janice. Since
19 Janice does not appear to be present, the next person
20 up will be William Ruben, followed Taki Wakeyama, and
21 the David Wang. William. Since William is not
22 present at the hearing, the next up will be Taki
23 Wakeyama and the David Wang, and then Jeremy Wlachis.
24 Taki. Since Taki is not present, the next panelist
25 will be David Wang, followed by Jeremy Wlachis and

2 then Cynthia Shephard. David. Since David is no
3 longer present at the hearing, next up will be Jeremy
4 Wlachis, and then Cynthia Shephard, and finally Igor
5 Segota. Jeremy.

6 JEREMY WLACHIS: (Inaudible) My name is
7 Jeremy and I own and operate the Restaurant group
8 which has three restaurants in the upper westside of
9 New York City for about 33 years. Prior to the
10 pandemic, the restaurant has always been a struggle
11 and a grind to make a living for my family and the
12 team. One of the biggest problems in our business is
13 with all these third-party delivery apps. Many
14 restaurants lose money on a continuous annual basis.
15 A good successful restaurant can make somewhere in
16 the nature about 10 percent profit, that's a good
17 one. The delivery apps come in and charge as much as
18 40 to 50 percent of the guest's final bill. It take
19 money right out of our pockets and our team's
20 pockets. The delivery business used to be a profit
21 center. Since the third-parties have come in, it's
22 changed the world and all we do now is for it to
23 promote our businesses and kind of give the guess
24 amenity to keep ourselves relevant. The restaurant
25 business was a struggle before COVID, we needed to do

2 about 90% of our old volumes, typically to pay the
3 bills and now the cost has been driven up by all the
4 different issues of problems caused by the pandemic
5 and we need, if we do 100 percent, we will be lucky,
6 it would be a struggle just to pay our bills, and
7 there's a good chance we'll never do 100 percent
8 again because of the people moving out and all the
9 other related issues. These third-party companies
10 come in and change the landscape of our business and
11 they really hurt our team members and ourselves.
12 Many people in my company of the 33 years (Inaudible)
13 this is how they make a living. This is how I make a
14 living. I beg of this committee, please cap these
15 fees and give the (inaudible) opportunity to be
16 successful. I just want to mention a couple of
17 things that I heard other people say ... (crosstalk).

18 SGT. BRADLEY: Time has expired.

19 JEREMY WLACHIS: We wait for delivery
20 drivers to pick up all the time. The
21 representatives, you can't get one on the phone. It
22 takes weeks. They tell you stories like oh, it's 25
23 percent is the minimum for your fee, particularly
24 GrubHub, delivery problem, if there's a delivery
25 issue that could be caused by them, they charge us.

2 We can never get our money back even though the
3 customer's got the food, and they charge us for the
4 money that was caused by the issues by Grubhub or
5 some of these other people, and they claim that they
6 were their customers. They were our customers before
7 they were theirs, and they came in with these
8 different ways of making a living, very smart for
9 them, and they cause us all these issues.

10 CHAIR GJONAJ: I want to thank you Jeremy
11 for your testimony and for your patience. I think I
12 heard you say that you need to do 90 percent of your
13 gross sales before you can turn a profit. That would
14 mean you do 10 percent profit on your margins?

15 JEREMY WLACHIS: That is when things go
16 right, and that was pre-COVID, and not all our stores
17 have been successful. We've changed concepts and
18 everything else, but we've had three locations for
19 many, many years on the upper westside, and not 90
20 percent is typical, if things are going well, that's
21 what we need. Now, we're not doing 100 percent of
22 what we used to do and we would need probably more
23 than 100 percent because the cost of everything has
24 gone up.

2 CHAIR GJONAJ: So, if I were to ask you,
3 what are your profit margins?

4 JEREMY WLACHIS: We're not making money.

5 CHAIR GJONAJ: Well, so you're typically,
6 pre-COVID, your profit margins were? Or don't even
7 answer that question (crosstalk). If you're not
8 making ... (crosstalk).

9 JEREMY WLACHIS: Last several ...
10 (crosstalk).

11 CHAIR GJONAJ: Jeremy, if you're not
12 making money, why are you using these third-party
13 platforms since their charging, even with the cap, 20
14 percent?

15 JEREMY WLACHIS: It gives people work,
16 its keeps the wheels turning, it's an amenity to the
17 guest, and it's a promotion. If we stop delivering,
18 people will forget about who we are. We used to
19 make, we used to make a profit from delivery, from
20 delivery business, a good one. It used to be really
21 helpful to our industry. Since these third-party
22 apps have come in, things are, there's almost no
23 money to be made unless you're doing a real big
24 volume and we do an okay volume, one that many people
25 can handle, but it's not profitable anymore. I can

2 tell you a quick story. There was a place on the
3 upper westside (inaudible).

4 CHAIR GJONAJ: We've lost you Jeremy.

5 JEREMY WLACHIS: The reason he closed,
6 and I didn't even believe him was because of the
7 delivery apps.

8 CHAIR GJONAJ: We lost you there for a
9 second, Jeremy. I just want to repeat the question.
10 If you don't mind, so prior to COVID and third-party
11 delivery apps, you had your own delivery people?

12 JEREMY WLACHIS: (Inaudible) Can you hear
13 me?

14 CHAIR GJONAJ: Yes.

15 JEREMY WLACHIS: Sorry about that.

16 CHAIR GJONAJ: So, you had your own
17 delivery people prior to the third-party delivery
18 apps?

19 JEREMY WLACHIS: We did and obviously
20 people called up directly to the restaurants, which
21 is the biggest issue.

22 CHAIR GJONAJ: All right, and then you
23 just simply just place the order to go and you had
24 your own staff deliver it?

25 JEREMY WLACHIS: Yes, sir.

2 CHAIR GJONAJ: That's what I needed to
3 hear. Did you submit written testimony, Jeremy?

4 JEREMY WLACHIS: No, I haven't, but I
5 will submit it.

6 CHAIR GJONAJ: If you will so we can stay
7 in touch with you. I want to continue our
8 conversation and dialogue.

9 JEREMY WLACHIS: Thank you. I appreciate
10 everything you guys are doing.

11 CHAIR GJONAJ: Thank you. Survive,
12 Jeremy, just survive.

13 JEREMY WLACHIS: We will. We're fighters
14 and grinders. It's the restaurant business.

15 COMMITTEE COUNSEL STEPHANIE JONES: Thank
16 you. Next, we'll be calling Cynthia Shepherd, and
17 then Igor Segota, and then finally Zoe Darman.
18 Cynthia.

19 SGT. BRADLEY: Time starts now.

20 CYNTHIA SHEPHERD: Hi. Hello. My name
21 is Cynthia. My mom is Maria. We're a business,
22 well, we had two restaurants, Corazon de Mexico and
23 Latina de Woodside. Unfortunately, due to the
24 pandemic, we had to close one in Long Island City and
25 we are currently trying to survive with the one that

2 we have here now in Queens. We are a restaurant, but
3 we also access and provide work for women who have
4 been suffering from abuse or who is trying to stand
5 up, so most of our target markets are to provide
6 opportunity for them as well as to serve our
7 community. That was one of the things that we did
8 during the COVID. Due to these platforms, I was able
9 to at least, pay, not cover everything, basically
10 survive, but I was able to pay the employees that
11 were working during the time of COVID. So, it was
12 due to the cut that was placed, we were able to at
13 least have a little breathing air beside of
14 everything that was going around us, and it helped us
15 to survive through it. As things have been opening,
16 I got really excited thinking that maybe people are
17 going to come back to normal like it used to be,
18 people coming in, but is has definitely changed our
19 model a lot. Most of our people are still ordering
20 through these platform which our small business
21 depends on. We still struggling. I hear that there
22 were grants and stuff given away. We were only
23 successful to get our first PPE, but all the other
24 grants and all of that has been offered, we haven't
25 been lucky enough as a small business, to have, you

2 know, to have that breathing air. So, most of the
3 things that we are making, we are depending on these
4 delivering, catering. I'm going out there, trying, I
5 had to recreate myself, selling potteries, to try to
6 get people inside, bread, bakeries, everything, so
7 I've been trying everything and then through the
8 platform, we've been able to sell most of this ...
9 (crosstalk).

10 SGT. BRADLEY: Time has expired.

11 CHAIR GJONAJ: Cynthia?

12 CYNTHIA SHEPHERD: Hi, yes, Mark.

13 CHAIR GJONAJ: So, I don't know if you're
14 finished, but you want to wrap it up?

15 CYNTHIA SHEPHERD: Yes, for this reason,
16 I think this should be placed if you really want to
17 help revive this hospitality and really want the
18 future for New York, I think this should be, there
19 should be a capped placed on these platforms because
20 then they will take advantage of this, this liberty
21 of placing things and we are barely making it
22 through.

23 CHAIR GJONAJ: Cynthia, before the
24 pandemic, did you use third-party delivery apps?

25

2 CYNTHIA SHEPHERD: Yes, I did use a
3 third-party delivery app. It didn't use to be my
4 primary revenue streamline, but that we had it and it
5 was (inaudible) which contributed to it, but then to
6 the pandemic, it became the only thing that we had,
7 and now as transition, it still has been like people
8 are still demanding it. It hasn't changed. It's
9 still, we're trying to give it out, but there's
10 people, I don't know because of what happened was
11 traumatic, and I think this is something that's going
12 to stay for awhile as we try to recover.

13 CHAIR GJONAJ: So, Cynthia, when you get
14 an order through a third-party food delivery app, are
15 you bringing even or are you losing money or are you
16 making money on that order?

17 CYNTHIA SHEPHERD: We basically breaking
18 even. What has happened that most of our, most of
19 the deliveries, for example, the plates, the bags,
20 and all of this has increased tremendously. Also for
21 group orders, as well, so when it used to be, let's
22 say, a tray, now it's everything individually packed
23 because now it's become a requirement and these are
24 costs, and instead of things staying stable, things
25 are going up, including the meat, everything, it's

2 ridiculous, and I'm happy that I would like to pursue
3 an applaud because you kept us informed and you've
4 been fighting for our small businesses and I truly,
5 truly appreciate that because some of, in my
6 community, there are many people who, like right now,
7 I am able to connect because I'm, you know, computer
8 saavy, but you see, my mom and those mom and pops who
9 are struggling and they don't have this ability to
10 represent and I'm a representative to them as well
11 cause I know the struggle is real over here in our
12 end.

13 CHAIR GJONAJ: Thank you, Cynthia.
14 Please submit you information so we can stay in touch
15 with you after this hearing.

16 CYNTHIA SHEPHERD: No, problem, I will.
17 Thank you.

18 CHAIR GJONAJ: Thank you.

19 COMMITTEE COUNSEL STEPHANIE JONES: Thank
20 you. Next, we'll be moving on to Igor Segota and
21 then finally Zoe Darman. Igor. Since I believe Igor
22 is not present at the hearing, we will move on to our
23 final panelist, Zoe Darman. Zoe.

24 ZOE DARMAN: Hi there, thank you for
25 having me. I actually work with Andrea who testified

2 earlier and I fully support everything that he said.
3 I share all of his solutions on this.

4 CHAIR GJONAJ: Thank you, Zoe.

5 COMMITTEE COUNSEL STEPHANIE JONES: Thank
6 you so much. We've reached the end of our registered
7 panelists. If we've inadvertently missed anyone who
8 is registered to testify today and has yet to have
9 been called, please use the Zoom raise hand function
10 now or bring it to the attention of a Sergeant in
11 City Hall chambers. Seeing that there are no further
12 panelists, I will now turn it over to Chair Gjonaj to
13 offer closing markers. Chair.

14 CHAIR GJONAJ: Stephanie, I want to thank
15 you for your hard work and the entire team from Noah
16 and I want to thank Rachel here and all of you for
17 working so hard on this hearing and the testimony
18 that we heard and those that we could not hear but
19 have submitted their testimonies in writing, we will
20 be following up with you. I want to thank all of you
21 for your patience and your time and your input. It
22 is extremely important that we hear from stakeholders
23 as we determine how we're going to shape the future.
24 I want to thank Councilwoman Brooks-Powers for
25 sitting in for me and for participating. I am

1 COMMITTEE ON SMALL BUSINESS

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2 grateful to all. This hearing is now adjourned.

3 Thank you.

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date July 30, 2021