

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

CONSUMER AFFAIRS & BUSINESS LICENSING

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July 29, 2021
Start: 12:14 p.m.
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HELD AT: Council Chambers - City Hall

B E F O R E: Diana Ayala
Chairperson

COUNCIL MEMBERS: Diana Ayala
Justin L. Brannan
Margaret S. Chin
Ben Kallos
Peter A. Koo
Karen Koslowitz
Brad S. Lander
Carlos Menchaca
Keith Powers
Kalman Yeger

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

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2 ISRAEL MARTINEZ: This a sound check for
3 the Committee on Consumer Affairs, taking place City
4 Council Chambers today, July 29, 2021, being recorded
5 by Israel Martinez.

6 CHAIRPERSON AYALA: Good morning,
7 everyone. I'm Council Member Diana Ayala, and this
8 meeting is called to order. Again, good morning. My
9 name is Diana Ayala and I am the chair of the
10 Committee on Consumer Affairs and Business Licensing.
11 I am joined today by my colleagues on the committee,
12 Council Members Brannan, Powers, Yeger, Lander, Chin,
13 Kallos, and Koo. Today we will be voting on an
14 introduction, number 2311-A, sponsored by Council
15 Member Powers, in relationship to allowing
16 restaurants to access customer data collected by
17 third-party delivery apps, sorry, I'm gonna take this
18 off because it's, there is a reason that New York
19 City is considered a global food capital. We have
20 some of the best eateries and cuisines of our city
21 that you can find. In fact, the food of over 150
22 countries is served in New York City, and if you
23 tried a different restaurant every day it would take
24 you a decade to reach them all. Across the five
25 boroughs you can find exceptional food in everything

2 from street vendor carts and trucks and mom and pop
3 eateries to fine dining, Michelin starred
4 restaurants. It is no wonder that after lodging the
5 restaurant industry is the city's largest contributor
6 to tourism. The industry is also a vital source of
7 employment and a, and a key contributor to the
8 economy. Prior to COVID-19 pandemic there was more
9 than 23,600 food establishments in New York City,
10 which contributed to nearly 27 billion in taxable
11 sales. Furthermore, in 2019 the industry accounted
12 for one, accounted for one in every 12 private sector
13 positions, supported around 317,800 jobs. Clearly
14 the food and restaurant sector is a pivotal economic
15 contributor and an essential component of the city's
16 identity to New Yorkers and visitors alike. That is
17 why we must do all that we can to help keep this
18 industry alive and thriving. I am proud of the work
19 that this committee has done so far over the past
20 year and a half to support the industry, including
21 permitting recovery surcharge, suspending various
22 fees and applications, and, of course, establishing
23 the use of public streets and sidewalks to
24 accommodate outdoor dining. We have heard from food
25 establishments that these lifelines were crucial, but

2 we know that the ongoing fallout from COVID-19 will
3 be felt for years to come, so we have to continue to
4 find creative ways to support the industry. As the
5 hospitality industry looks to rebuild we have the
6 opportunity to ensure the new landscape for
7 restaurants is more equitable and fair than what it
8 existed before the pandemic. This is why we are
9 voting on Intro 2311-A today. This bill would
10 require third-party food delivery apps, such as Grub
11 Hub, Door Dash, and Uber Eats to share the customer
12 data they collect with the restaurants fulfilling the
13 order. Third-party apps helped keep restaurants
14 afloat during the peak of the pandemic, when the only
15 option available was delivery and take-out, and these
16 apps saw their profits explode as a result. One
17 report estimated that without the COVID-19 emergency
18 sales for third-party platforms would have grown by
19 approximately 38%, which is significantly below the
20 actual sales growth of 122% achieved due to the
21 pandemic. For every order placed through one for one
22 of the apps, consumers hand over a trove of valuable
23 information. However, even though they are customers
24 of the, the restaurants who the food is being, where
25 the food they buying, as well as the app who

2 facilities the order, the restaurant is typically
3 precluded from accessing this information. The
4 third-party apps are accurately, acutely aware of the
5 value of the customer data and have an interest in
6 limiting the sharing of this information to protect
7 their own growth. Running analytics of current
8 customer data enables the apps to expose, ah,
9 customers to restaurants that pay a high commission
10 to the platform, creating a hierarchy of
11 advertisement and search results to benefit the app.
12 Ownership of data of thousands of restaurants in the
13 city also enables the apps to create targeted
14 restaurant concepts that exist only on their
15 platforms, thereby deepening, ah, deepening
16 dependency on their products. Platforms like Uber
17 Eats, for example, persuades restaurants to open
18 virtual restaurants, which are restaurants with an
19 actual storefront or dining room and rebrand their
20 cuisine to meet the demand gleaned from the customer
21 data. According to a recent report analyzing which
22 apps track and share customer data, some food
23 delivery apps, ah, were some of the most invasive.
24 For instance, according to the report Uber Eats
25 shared half of all of the customer data it collected

2 with other third parties. Meanwhile, when it came to
3 collecting data to benefit their own businesses, Grub
4 Hub collected 64% of personal data, while Uber Eats
5 collected 57%. Food delivery apps have lobbied the
6 council to try to kill this bill by arguing that they
7 are concerned about consumer privacy. Given the
8 scale of their data collection and sharing
9 operations, it is difficult to believe that the food
10 delivery apps are actually concerned about consumer
11 data privacy. Although the apps play a role in
12 facilitating food ordering and delivery, it is the
13 restaurant that produces the product, which is, ah,
14 with its own labor. Therefore, consumers, customers
15 of the app are also, ah, customers of the restaurant
16 and the app should not be exclusive beneficiaries to
17 this data. This is especially true given that it is
18 common in the restaurant industry for 80% of the
19 restaurant's business to come from only 20% of its
20 customers. Restaurants have the right to know who
21 their loyal customers are. Thus, customer data is
22 crucial for the survival of the restaurant industry.
23 Under Intro 2311-A if a restaurant requests customer
24 data from an order placed for its business through a
25 third-party apps the app must provide this data. The

2 information will consist of simply the customer's
3 name, phone number, email address, delivery address,
4 and the contents of the order, all the information
5 that is readily handed over by customers now when
6 they use the platforms. And unlike the platforms,
7 who are not limited by any city legislation on how to
8 use customer data, Intro 2311-A would prohibit
9 restaurants from selling, renting, or disclosing the
10 information for financial benefit without express
11 consent from the customer. The customer would also
12 be able to withdraw the consent to using their
13 information and request that the restaurant delete
14 their information. As more of our daily activities
15 move online, the production and use of customer data
16 will continue to be paramount. I commend Council
17 Member Powers for his thoughtful consideration in
18 Intro 2311-A, which I believe strikes the right
19 balance between ensuring that customer data can be
20 sold as a commodity to restaurants while also
21 providing them equitable access to the data that they
22 helped to create. The food delivery platforms are
23 middle men between the consumer and the restaurant
24 and they should not be the exclusive gatekeepers and
25 benefits of the valuable information. Therefore, I

2 encourage my colleagues to vote in the affirmative on
3 this bill. Before I call on the clerk to call a
4 roll, I will pass it over to, ah, the bill sponsor,
5 Council Member Powers, to make a statement.

6 COUNCIL MEMBER POWERS: Thank you, and
7 good afternoon, everyone. And it's hard to follow
8 that, ah, well-said explanation of the bill and the
9 balance that we're striking here today. I want to
10 thank the chair and members of the committee for
11 taking up this bill today. It's my bill, Intro 2311,
12 which will empower restaurants by providing them
13 access to their customers' basic information - name,
14 telephone number, address, email, and order placed.
15 Ah, this is part of an effort here that we've been
16 taking in the last year to really help our restaurant
17 industry, which has been very hit hard, hit very hard
18 by the COVID-19 pandemic. Customers were forced to
19 stay at home and many turned to delivery options.
20 Whether it's outdoor dining or to-go alcoholic
21 beverage purchases, we've had to think creatively in
22 the past year by how to support our restaurants and
23 bars during this difficult and unprecedented year.
24 Restaurants still need our support and resources,
25 even as we start to reopen, including basic

2 information about their customers so they can market
3 and run their business better. For them, knowledge
4 is power, and having simple information about their
5 customers will allow restaurants to make strategic
6 business decisions and choices about their futures.
7 And for decades, decades, predating the migration to
8 delivery apps, restaurants received this basic
9 information every time a customer ordered. And I can
10 tell you simply my father was a restaurant owner. I
11 used to take those orders and I used to deliver food.
12 And we used to get that information every time an
13 order came into the restaurant - where the food was
14 going, what the phone number was, and the
15 individual's order and their name. With more and
16 more people turning to technology as an intermediary
17 to traditional brick and mortar services, services,
18 we need to strike the right balance between those
19 that supply the platforms and retain all of the
20 customer's data and the restaurants who rely on them,
21 but should have basic access to their own customer
22 information. That's the goal of the bill. The
23 legislation ensures customers will be informed to
24 have a choice about their information being shared,
25 as well as an opportunity to withdraw consent at any

2 point in time. And for the restaurants that may not
3 want this data they will have a choice whether or not
4 they can opt in to receive it or not. Restaurants
5 will be prohibited from selling it or in any way
6 disclosing customer data to any party in exchange for
7 financial benefit. Customers' privacy is maintained
8 and protected under federal, state, and city laws.
9 I'm proud of this bill and will be setting a
10 precedent here today. And, again, as the son of a
11 former restaurant owner, it's really important to me
12 that we take steps to help these small businesses. I
13 want to thank Chair Adams for holding this hearing
14 and bring this bill, holding a hearing and bringing
15 this bill to a vote. I want to thank the speaker for
16 his support of the bill and the legislative staff,
17 especially Stephanie Jones and Rachel Cordero for
18 their hard work on this bill, and of course my chief
19 of staff, Kate Theobald, and my correction, ah, my
20 corrections, communications director Kay DiJa, for
21 all their work here today as well. Thank you. And,
22 of course, I ask you all to vote in the affirmative.
23 Thanks. Thank you. Back to the chair.

24 CHAIRPERSON AYALA: Thank you, Council
25 Member Powers. I also want to recognize that we've

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AND BUSINESS LICENSING

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2 been joined by Council Member Koslowitz and Council
3 Members Menchaca. I will now call on the clerk to
4 call the roll.

5 COMMITTEE CLERK MARTIN: William Martin,
6 committee clerk, roll call vote, Committee on
7 Consumer Affairs and Business Licensing, proposed
8 Intro 2311-A. Chair Adams.

9 CHAIRPERSON AYALA: I vote aye.

10 COMMITTEE CLERK MARTIN: Chin.

11 COUNCIL MEMBER CHIN: I vote aye.

12 COMMITTEE CLERK MARTIN: Kallos.

13 COUNCIL MEMBER KALLOS: I vote aye on
14 all.

15 COMMITTEE CLERK MARTIN: Koo.

16 COUNCIL MEMBER KOO: I vote aye.

17 COMMITTEE CLERK MARTIN: Koslowitz.

18 COUNCIL MEMBER KOSLOWITZ: I vote aye.

19 COMMITTEE CLERK MARTIN: Council Member
20 Koslowitz votes aye.

21 COMMITTEE CLERK MARTIN: Lander.

22 COUNCIL MEMBER LANDER: I vote aye. I do
23 want to note that I thought that some of the concerns
24 that Council Member Yeger raised in democratic
25 conference about, ah, really not hand waving at data

2 privacy and being thoughtful about where this council
3 is allowing data to be shared and spread or real.
4 Ah, and I think they're important for this council
5 and this city to think about more broadly. In this
6 case because it's data that I think most customers
7 believe they are giving to, ah, the person who is
8 providing their order and because I think the
9 imbalance of power between the platforms and the
10 restaurants is so grave, um, I think it's merited.
11 But I do think those are important concerns for us to
12 consider for the future. I vote aye. Thank you.

13 COMMITTEE CLERK MARTIN: Menchaca.

14 COUNCIL MEMBER MENCHACA: Ah, gotta turn
15 it on. Hi, committee. Can I have some time to
16 explain my vote?

17 CHAIRPERSON AYALA: Yes.

18 COUNCIL MEMBER MENCHACA: So, um, yeah,
19 this is on the line of privacy. I, I just want to
20 say that, ah, in the last few hours I've been getting
21 a lot of notes from advocates in the immigrant world
22 who are concerned about some of the privacy pieces.
23 This bill can be stronger with some protections, ah,
24 like not allowing for the data to be, ah, indirect
25 flow to some of the federal agencies that have been

2 deporting some of our neighbors like Homeland
3 Security and ICE. So maybe we can work on a follow-
4 up bill that can strengthen that. Ah, we just got
5 these notes in the last few hours, but I wanted to
6 make sure their voices were in the room and that we
7 can address some of these issues as we move forward
8 and as implementation happens. I vote aye.

9 COMMITTEE CLERK MARTIN: Brannan.

10 COUNCIL MEMBER BRANNAN: I'd like to, ah,
11 associate myself with, ah, remarks from Council
12 Member Lander, and I vote aye.

13 COMMITTEE CLERK MARTIN: Yeger.

14 COUNCIL MEMBER YEGER: [inaudible]

15 CHAIRPERSON AYALA: You may.

16 COUNCIL MEMBER YEGER: Thank you very
17 much, Madam Chair. Um, I appreciate the comments
18 from my colleagues. I will be voting no today. The,
19 the idea that what we've been doing here in the
20 council to help restaurants, I agree with that.
21 We've been doing that for the last couple of months.
22 We've been doing that tremendously in many ways. But
23 I think we've also creatively stretched the
24 relationship between the pandemic and what we do here
25 in the council that helps restaurants. This is not a

2 COVID-19-related bill. This has nothing to do with
3 COVID-19. We can pretend it does because that's the
4 doorway by which we entered to doing this bill. But
5 it has nothing to do with it. This is in essence a
6 contract of adhesion. We are forcing the consumers
7 who do not know that their data is being handed over
8 to restaurants for permanent keeping to have that
9 data over, handed over. The fix for this is very
10 simple. If restaurants want to keep the information
11 the, that they're not getting because the apps took
12 the order, put a menu in the bag saying for a 10%
13 coupon sign up to our mailing list, it would be
14 fixed. Most people would do it. What we're doing is
15 we're removing the choice from consumers. Now the
16 answer to that concern of mine, of course, is, oh,
17 but we're gonna force the consumers, we're gonna
18 force the apps to put a, an opt-out, and what I ask
19 my colleagues and I ask everybody is how many people
20 read through the opt-out questions before they just,
21 no, no, no, let's keep going, let's just get my order
22 in. When you want a pizza from the guy, you're just
23 gonna your pizza. You're not reading the, the
24 disclosures. You're doing the check yes, check no,
25 check this, check that. You're not opting out. So

2 this would in essence take private data and hand it
3 over to restaurants, the corner restaurant that may
4 not have the kind of secure platforms that the app
5 companies have, and they would have this information
6 and they'd have it in perpetuity. So I'm gonna vote
7 no because this is not a consumer-friendly bill.
8 It's in fact, if it's anything, it's an anti-consumer
9 bill. Thank you very much, Madam Chair.

10 COMMITTEE CLERK MARTIN: By a vote of 8
11 in the affirmative, 1 in the negative, and no
12 abstention, the item has been adopted by the
13 committee. Madam Chair, that is a full committee.

14 CHAIRPERSON AYALA: Thank you, and with
15 that this meeting is adjourned. [gavel]

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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 August 1, 2021