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###### **THE COUNCIL OF THE CITY OF NEW YORK**

**BRiefing Paper and Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING**

**Hon. Diana Ayala, Chair**

##### September 23, 2021

**PRECONSIDERED INT. NO. 2399:** By Council Member Brannan

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to limitations on distance and route for food delivery workers; to amend three local laws for the year 2021 amending the administrative code of the city of New York, relating to providing food delivery workers with insulated food delivery bags and denying, suspend, revoking or refusing to renew a license for a third party delivery service, minimum per trip payments to third-party food delivery service and courier service workers, and standards for payment of food delivery workers, respectively, as proposed in introduction numbers 2288-A, 2294-A, and 2296-A, respectively; and in relation to requiring a study of the working conditions for food delivery workers

**PROPOSED INT. NO. 1846-A** By Council Members Chin, Ayala, Lander, Koslowitz, Menchaca, Rivera, Van Bramer, Rosenthal, Reynoso and the Public Advocate (Mr. Williams)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the disclosure of gratuity policies for food delivery workers

**PROPOSED INT. NO. 2288-A** By Council Members Brannan, Rivera, Chin, Louis, Ayala, Lander, Van Bramer, Rosenthal, Reynoso, Menchaca and the Public Advocate (Mr. Williams)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring third-party food delivery services and third-party courier services to provide food delivery workers with insulated food delivery bags, and authorizing the commissioner of the department of consumer and worker protection to deny, suspend, revoke or refuse to renew a license for violations of chapter 15 of title 20 of such code

**PROPOSED INT. NO. 2289-A** By Council Members Brannan, Menchaca, Chin, Rivera, Louis, Ayala, Lander, Van Bramer, Rosenthal and Reynoso

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries

**PROPOSED INT. NO. 2294-A** By Council Members Lander, Menchaca, Chin, Ayala, Van Bramer, Rosenthal, Reynoso, Rivera and the Public Advocate (Mr. Williams)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to establishing minimum per trip payments to third-party food delivery service and third-party courier service workers

**PROPOSED INT. NO. 2296-A** By Council Members Menchaca, Rivera, Louis, Ayala, Lander, Van Bramer, Rosenthal, Reynoso and the Public Advocate (Mr. Williams)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to establishing standards for payment of food delivery workers

**PROPOSED INT. NO. 2298-A** By Council Members Rivera, the Public Advocate (Mr. Williams), Menchaca, Chin, Louis, Ayala, Lander, Rosenthal, Van Bramer, Reynoso and Gjonaj

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the agreements between third-party food delivery services and food service establishments and the provision of toilet facility access to food delivery workers

**PROPOSED INT. NO. 2397-A** By Council Member Moya

**TITLE:** A Local Law in relation to severance pay for hotel service employees

1. **INTRODUCTION**

On September 23, 2021, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Diana Ayala, voted on a package of eight pieces of legislation designed to provide workplace protections to food delivery and hotel workers. The Committee previously heard testimony from the Department of Consumer Affairs and Worker Protection (DCWP), third-party delivery platforms, Los Deliveristas Unidos and other delivery workers, hotel workers and trade groups, advocates, and business groups, and this feedback informed the final versions of the bills.

The package of legislation includes the following bills: 1) Preconsidered Bill Number\_\_ (Int.\_\_), in relation to limitations on distance and route for food delivery workers; to amend three local laws for the year 2021 amending the administrative code of the city of New York, relating to providing food delivery workers with insulated food delivery bags and denying, suspend, revoking or refusing to renew a license for a third party delivery service, minimum per trip payments to third-party food delivery service and courier service workers, and standards for payment of food delivery workers, respectively, as proposed in introduction numbers 2288-A, 2294-A, and 2296-A, respectively; and in relation to requiring a study of the working conditions for food delivery workers; 2) Proposed Introduction Number 1846-A (Int. 1846-A), in relation to the disclosure of gratuity policies for food delivery workers; 3) Proposed Introduction Bill Number 2288-A (Int. 2288-A), in relation to requiring third-party food delivery services and third-party courier services to provide food delivery workers with insulated food delivery bags, and authorizing the commissioner of the department of consumer and worker protection to deny, suspend, revoke or refuse to renew a license for violations of chapter 15 of title 20 of such code; 4) Proposed Introduction Bill Number 2289-A (Int. 2289-A), in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries; 5) Proposed Introduction Bill Number 2294-A (Int. 2294-A), in relation to establishing minimum per trip payments to third-party food delivery service and third-party courier service workers; 6) Proposed Introduction Number 2296-A (Int. 2296-A), in relation to establishing standards for payment of food delivery workers; 7) Proposed Introduction Number 2298-A (Int. 2298-A), in relation to the agreements between third-party food delivery services and food service establishments and the provision of toilet facility access to food delivery workers; and 8) Proposed Introduction Bill Number 2397-A (Int. 2397-A), in relation to severance pay for hotel service employees.

The bills passed with eight in the affirmative, two in the negative, and no abstentions; with the exception of Int. 2296-A and 2298-A, which passed with nine in the affirmative, zero in the negative and no abstentions.

1. **BACKGROUND**

**Food Delivery Workers**

There are approximately 80,000 food delivery workers in New York City,[[1]](#footnote-2) and although some may work directly for restaurants, third-party platforms (TPPs) such as DoorDash, Grubhub and Uber Eats, have redefined the food delivery market over the past decade.[[2]](#footnote-3) Under a TPP model, a restaurant signs a contract with a TPP to offer a range of services, including access to a fleet of delivery workers, advertising, and placement of the restaurant on the TPP app, which centralizes food ordering for customers. The restaurants then pay either a monthly fee or commission for such services.[[3]](#footnote-4) Although some research suggests that hiring delivery workers directly is actually cheaper for restaurants,[[4]](#footnote-5) the growth in customer use of TPPs means that restaurants rely heavily on this model. Prior to the COVID-19 pandemic, consumers in New York City spent the most in the country on food ordered through TPPs, spending more than $770 per capita per year, and way ahead of the second most common consumers in San Francisco, who spent just under $580, per capita each year.[[5]](#footnote-6)

TPPs advertise to prospective delivery workers that they are independent contractors, touting the benefits of having no employer and flexible work schedules. The lived reality, however, is very different, and one worker described it more of a “hustle” akin to selling drugs on a corner rather than a steady job where you can make a living wage.[[6]](#footnote-7) Part of the difficulty for delivery workers is navigating the complicated conditions set by TPPs. Typically, a TPP will pay a delivery worker a fee based on the number of miles travelled, how successful the delivery was, and how many minutes an order took to be delivered.[[7]](#footnote-8) For example, for a delivery worker using the Postmates app in late 2019, they would receive “$2.50 for a successful pickup and drop-off, $1.05 per mile, and $0.07 per minute in Manhattan, the most lucrative borough; in the Bronx, the pay per mile is only sixty cents.”[[8]](#footnote-9) These small payments often are not enough to make the job lucrative and so delivery workers rely on tips and bonuses offered by the TPP to help boost pay.[[9]](#footnote-10)

The low base rate for deliveries means that most delivery workers will deliver for multiple TPPs,[[10]](#footnote-11) each of which have their own conditions and bonuses. Grubhub, for example, requires delivery workers to accept a majority of orders in order to secure a guaranteed wage (around $11 per hour in 2019).[[11]](#footnote-12) Uber Eats, meanwhile, does not show their delivery workers how far away an order is before the worker accepts the job.[[12]](#footnote-13) All of these variations feed into hiding the true pay rate and if that rate has been maintained. If delivery workers were paid a standard rate per hour or per delivery, “you could see very clearly when they start lowering your wage…When every order is dynamically priced, it gets so much harder to see if you’re making less money. Drivers wonder, did I reject too much? Did I work a little less? Might it be an incidental thing?”[[13]](#footnote-14) This obfuscation combined with the juggling of different requirements by individual TPPs means that delivery workers aren’t easily able to track their rate per hour or per delivery.

During the height of the COVID-19 pandemic, when lockdowns were in place and restaurants were restricted from offering dining at full capacity, many restaurants relied on TPPs to stay in business, and TPPs benefitted from a surge in consumer use of their platforms. The major food delivery TPPs – Uber Eats, DoorDash and Grubhub – doubled their combined revenue during the pandemic, making a profit of $5.5 billion in April to September 2020, compared to $2.5 billion during the same months the previous year.[[14]](#footnote-15)

In New York City, the delivery drivers for these platforms tend to be immigrants and people of color.[[15]](#footnote-16) During the pandemic, when unemployment rates were skyrocketing, many people turned to this work to make ends meet. According to a survey on such workers in New York City by Cornell University, “75 percent of delivery workers joined the industry because they lost work during the pandemic”.[[16]](#footnote-17) While this work offered an important avenue for employment, many feel exploited by poor conditions and pay. One group of frustrated workers, mainly from Mexico and Guatemala, have begun organizing under the collective banner of Los Deliveristas Unidos in order to push for better pay and conditions.[[17]](#footnote-18)

If delivery workers are classified as independent contractors, that classification could mean being excluded from certain protections afforded employees, such as a minimum wage, health benefits, and overtime.[[18]](#footnote-19) During the peak of COVID-19, when TPPs were flourishing and more people were turning to food delivery for work, delivery workers were struggling to access much needed PPE,[[19]](#footnote-20) despite being classified as essential workers. Delivery workers were on the frontlines of the pandemic, making sure New Yorkers were fed and helping to keep the restaurant industry alive. In spite of this, they struggle to secure the most basic worker protections, while the platforms that employ them rake in profits.

**Difficulties Facing Delivery Workers in NYC**

* 1. **High Cost of Entry**

Delivery workers face challenges that make it difficult for them to earn a livable wage under safe working conditions. Since delivery workers are employed as independent contractors by TPPs, they are responsible for purchasing the necessary equipment to perform their jobs. Due to the physical demands of delivering food, workers’ need to deliver food quickly to obtain positive ratings by customers, and to maximize profits, delivery workers typically use electric bikes (e-bikes) for deliveries.[[20]](#footnote-21) New e-bikes cost $1,800 to $2,000,[[21]](#footnote-22) and delivery workers commonly refrain from purchasing used e-bikes to avoid supporting the underground market of stolen e-bikes from other workers.[[22]](#footnote-23) Delivery workers must purchase other expensive equipment as well that, while not technically necessary for the job, are considered essential. Delivery workers must purchase lights for their e-bikes to deliver food at night, a spare battery,[[23]](#footnote-24) and locks to prevent their e-bike from being stolen.[[24]](#footnote-25) Thermal bags to keep food warm is another unofficial requirement of the job, as restaurants will often refuse to give delivery workers orders unless they have one.[[25]](#footnote-26) An insulated bag from the delivery service Relay costs between $40 to $60, while on Amazon these insulated bags are sold for as much as $120.[[26]](#footnote-27) The total cost to become a delivery worker is estimated to be around $3,000, a substantial price and financial investment for delivery workers that is not subsidized by their employers.[[27]](#footnote-28)

* 1. **Violence and Harassment**

The high cost to purchase e-bikes coupled with the dramatic growth of delivery workers has led to the development of an underground market of stolen e-bikes. Stolen e-bikes can be easily resold for cash in NYC or dismantled and sold for their parts.[[28]](#footnote-29) Reported cases of e-bike thefts nearly doubled in 2020 according to the New York Police Department (NYPD), increasing from 166 in 2019 to 328 in 2020.[[29]](#footnote-30) The NYPD has not always been very helpful to delivery workers in recovering stolen e-bikes. For example, a worker named Rodrigo had his e-bike stolen while making a delivery, and while the bike had a trackable GPS, an NYPD officer allegedly “refused” to recover it.[[30]](#footnote-31) In October 2021, a delivery worker was mugged at gunpoint and had his $3,000 e-bike stolen while waiting for his next delivery.[[31]](#footnote-32) When the delivery worker contacted the police, the 20th precinct officer who responded to the complaint allegedly told the worker the NYPD could not do anything about the robbery because of budget cuts to the NYPD.[[32]](#footnote-33) In response to the NYPD’s inaction, dozens of workers biked to the 20th precinct to protest the police department’s inaction and the rise in e-bike related muggings in the neighborhood.[[33]](#footnote-34) Overall, the NYPD solved around 36 percent of e-bike robberies in 2020.[[34]](#footnote-35)

Delivery workers’ substantial investment in buying an e-bike and reliance on e-bikes to perform their jobs has also led e-bike robberies to turn violent. In April of 2021, 29-year-old Francisco Villalva Vitinio was killed when he refused to give up his e-bike to a man robbing him at gunpoint.[[35]](#footnote-36) According to delivery worker Gustavo Ajche, "We’re facing many issues: robberies, physical assault…We’re being killed in the streets by people who steal our bikes. This is happening more and more and we’re angry because no one does anything."[[36]](#footnote-37) According to preliminary results from a recent Cornell University Worker Institute survey of over 500 e-bike delivery workers in NYC, over 50 percent of workers reported having had their e-bikes stolen.[[37]](#footnote-38) Maria Figueroa, Director of Labor and Policy Research at the Worker Institute, reported that around half of delivery workers experienced violence or harassment while on the job.[[38]](#footnote-39) Given their status as independent contractors, when delivery workers are robbed, assaulted or murdered on the job, delivery companies do not owe the workers or their families any compensation.[[39]](#footnote-40)

It is important to note that the number of robberies reported to the police may be substantially undercounted given the poor relationship these workers historically have with the police. Before e-bikes were legalized in the New York State budget in April of 2020,[[40]](#footnote-41) the NYPD was responsible for issuing summonses and confiscating e-bikes, which were not street-legal vehicles. In 2017, the NYPD confiscated nearly 1,000 e-bikes.[[41]](#footnote-42) Police ticketing and confiscation of e-bikes served as an existential threat to delivery workers’ livelihoods, which created an environment of fear towards the police. This historical distrust of the police, coupled with fears of deportation due to the undocumented immigration-status of many delivery workers, has led many delivery worker-related accidents and issues to remain unreported.[[42]](#footnote-43)

* 1. **Bathroom Access**

The lack of workplace protections for delivery workers is apparent in the absence of available bathrooms for delivery workers. Restaurants often post signs reserving their bathrooms for use by customers or employees.[[43]](#footnote-44) As delivery workers are neither a customer nor an employee, they are often denied this basic necessity. According to data from the Worker Institute at Cornell University, over 65 percent of NYC delivery workers reported being denied access to a restaurant bathroom.[[44]](#footnote-45) Delivery workers that are delivering food either in areas of NYC without public bathrooms or during hours when public bathrooms are closed have therefore been forced to use the bathroom in public. According to DoorDash delivery worker Sergio Solano, “We use [a] Gatorade bottle because it is wider…[D]iscreetly, we pee in the bottle behind the stairways of buildings after delivering an order.”[[45]](#footnote-46) Delivery worker Mamadou Kokeina expressed frustration with restaurants for not allowing delivery workers to use their bathrooms: “I’m outside for 10 hours. I have to use the bathroom… I’m picking up food to bring to your customers, so you should allow me at least to use the bathroom…We are human. We have needs.”[[46]](#footnote-47) Relay Delivery has allegedly sent the message “Don’t ask to use restroom!!” to delivery workers upon sending a delivery request.[[47]](#footnote-48) Grubhub also allegedly sent a notification to delivery workers saying: “Come and wait at the host station. Please do not use the restroom, ask for a drink or bring outside food to eat while you wait.”[[48]](#footnote-49)

In response to delivery workers organizing to demand access to bathrooms at restaurants, DoorDash released a statement stating that they are “engaging with local leaders to find additional ways to address bathroom access.”[[49]](#footnote-50) DoorDash’s statement was met with skepticism by delivery workers, however, and Ligia Guallpa, executive director of Worker’s Justice Project, commented, “We know that at the end of the day, if it’s not a law, it’s not going to happen.”[[50]](#footnote-51)

* 1. **Wage Issues and Delivery Distances**

As delivery workers are employed as independent contractors instead of full time employees, TPPs are not required to pay delivery workers minimum wage, overtime or other benefits, such as health insurance.[[51]](#footnote-52) Accordingly, even though TPPs profited from the dramatic increase in usage of their services by New Yorkers during the pandemic, delivery workers did not see an increase in their hourly wages. In fact, unemployed undocumented workers, who were not eligible for unemployment or federal coronavirus assistance, joined delivery services during the pandemic to maintain an income, and the added competition from the increase in workers further compounded workers’ financial challenges.[[52]](#footnote-53) According to Maria Figueroa, “In addition to getting low pay, [delivery workers] don’t get enough work from each of the applications, so they have to work for at least three or four of them, and there are more workers than the market can hold.”[[53]](#footnote-54)

TPPs have stated that delivery workers can earn as much as $22 per hour, including tips, while delivering food through their platform.[[54]](#footnote-55) Delivery workers have objected to those claims, however, arguing that compensation is never that high. Delivery workers working 12 hours a day for seven days a week can earn between $300 and $800.[[55]](#footnote-56) Edgar Usac, a delivery driver on a TPP, made $11 from four hours of work.[[56]](#footnote-57) Elias Pacheco, another delivery worker, made $32 dollars for six and a half hours of work.[[57]](#footnote-58)

As mentioned previously, unlike the other delivery services, Relay delivery pays couriers operating on its platform minimum wage, which includes payment for the time couriers wait between new deliveries.[[58]](#footnote-59) Workers, however, have accused Relay of wage theft. A 2016 lawsuit against Relay was filed by six delivery workers accusing the company of underpaying them. The case was settled outside of court.[[59]](#footnote-60) In 2017, two Relay workers filed a class action lawsuit over allegations of a lack of overtime pay and diverted tips.[[60]](#footnote-61) The workers reached a $100,000 settlement with Relay. DoorDash delivery service was also diverting tips from delivery drivers, as the platform was found to be using tips to subsidize its payment to workers.[[61]](#footnote-62) DoorDash reached a settlement of $2.5 million with the D.C. Attorney General for misleading consumers over how it tipped its workers.[[62]](#footnote-63) Survey data from Cornell University’s Worker Institute found that 45 percent of workers have had problems with TPPs related to their pay.[[63]](#footnote-64) According to Maria Figuroa, "These workers don't get paid on time. Tips disappear. The pay isn't credited to their bank accounts even though they file a claim. There's definitely a need for more transparency so these problems are clarified.”[[64]](#footnote-65)

Delivery workers have also objected to the long distances they must travel for deliveries. Unlike delivery workers employed by restaurants who typically only service the area around the restaurant, delivery workers can be responsible for picking up deliveries across the City. Long trips that require delivery workers to travel across the City for a few dollars pay may not be worth the time or expense.[[65]](#footnote-66) According to delivery worker Lucina Villano, Relay delivery service does not allow her to see where she is taking a delivery in advance. If she declines a delivery from the application, she risks losing out on further jobs.[[66]](#footnote-67)

Because delivery workers need to travel long distances as quickly as possible so they can obtain positive ratings and tips by customers, certain delivery workers may e-bike dangerously. As e-bikes can reach speeds of up to 30 miles per hour, e-bike collisions with pedestrians can be fatal. Two pedestrians have been killed in the City since November 2020.[[67]](#footnote-68) The delivery conditions set by TPPs, such as those that pay more for fast delivery to customers, only encourages such dangerous biking behavior.

* 1. **Worker Organizing**

To compensate for the lack of workplace protections provided to them by TPPs, delivery workers have organized WhatsApp groups to disseminate information on restaurants that allow them to use bathrooms and open parks where they can wait between deliveries.[[68]](#footnote-69) The Whatsapp group has grown to over 200 members, and the Worker’s Justice Project has been advising the workers on how to fight for improved workplace conditions. Thousands of workers came together to form Los Deliveristas Unidos, the United Delivery Workers, to demand workplace protections including, but not limited to, a living wage and transparency on tips, safety from robberies and access to bathrooms and a place to wait between deliveries.[[69]](#footnote-70) On October 15, 2020, hundreds of workers rallied at City Hall to demand City officials force restaurants to let workers use their bathrooms and create spaces where they can wait safely between deliveries.[[70]](#footnote-71) On April 2, 2021, Los Deliveristas Unidos organized a protest in Time Square. Over 1,000 delivery workers attended the protest, and workers honked horns, waved Mexican and Guatemalan flags, and held banners that read “Don't buy bikes on the street without a receipt" and "United we are stronger."[[71]](#footnote-72)

**Hotel Workers in NYC**

Before the COVID-19 pandemic, New York City was a mecca for tourists, and over the last ten years the number of visitors to the City had increased exponentially.[[72]](#footnote-73) For example, in 2018, there were 65 million tourists and in 2019, there were a record 67 million visitors.[[73]](#footnote-74) That’s more than eight times the City’s 2019 population.[[74]](#footnote-75) However, with domestic and global travel restrictions in place because of the COVID-19 pandemic, the City’s tourism industry has diminished substantially. According to data from the City’s tourism agency, New York and Company, hotel rates for the last week of August 2020 were down 72 percent compared to the seasonal rate in 2019.[[75]](#footnote-76) While tourism to the City has increased over the past year, the hotel occupancy rate for early August 2021 was still only 65 percent.[[76]](#footnote-77)

In 2017, the City’s Department of City Planning (DCP) published a report analyzing the trends in New York’s hotel industry. The report highlighted that over the previous ten years, the industry had grown by 42 percent in New York City, and that much of this growth had occurred in outer boroughs, mainly Brooklyn and Queens.[[77]](#footnote-78) At the time, New York’s hotel market was described as “very stable” and the City had the highest hotel occupancy rate in the country, during the first quarter of 2017.[[78]](#footnote-79) Unfortunately, a more recent analysis predicts that New York City will permanently lose 20 percent of its hotel rooms, due to the closure of hotels impacted by the COVID-19 pandemic.[[79]](#footnote-80)

At the end of 2019, and prior to the pandemic, New York City had 703 hotels operating approximately 138,000 rooms.[[80]](#footnote-81) The industry was valued at $45 billion and it employed an estimated 300,000 workers.[[81]](#footnote-82) With tourism steeply declining in the City, however, the negative effects have been felt acutely by the hotel industry, their workers, and the State as a whole. The City and State are expected to lose around $1.3 billion in tax revenues due to the downturn.[[82]](#footnote-83) The outlook for workers is similarly bleak. At the peak of the pandemic, during late March and April, nine in 10 hotels furloughed workers and nationally, 7.5 million industry jobs were lost.[[83]](#footnote-84)

According to the American Hotel and Lodging Association, hoteliers need an occupancy rate of about 50 percent if they have any likelihood of breaking even.[[84]](#footnote-85) While the data indicates modest improvements, the hotel industry remains in dire straits. If hoteliers are unable to stay afloat, there is serious concern that they will be forced into bankruptcy or sell. While this may help the individual hotelier, this puts hotel workers in a precarious state, with little to no guarantee regarding the security of their job, let alone their wages, benefits and working conditions. In New York City there are around 300,000 hotel workers, but around 60 percent are still unemployed after COVID-19 drastically reduced hotel revenues.[[85]](#footnote-86)

1. **LEGISLATIVE ANALYSIS**
2. **Int. 1846-A, in relation to the disclosure of gratuity policies for food delivery workers**

For each order placed on a food delivery platform, Int. 1846-A would prohibit a “third-party food delivery service” - defined in Int. 2289-A as “any website, mobile application, or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment” and referred to as a “TPP” in this Legislative Analysis - from soliciting a gratuity from a customer unless the platform discloses conspicuously in plain language the fixed amount or proportion of each gratuity that is provided to the delivery worker; and the manner in which gratuities are provided, whether immediately or not, and whether in cash or not. This information must be provided before or at the same time the gratuity is solicited from the customer. A “gratuity” is defined in the bill as “a sum of money (i) paid voluntarily by a customer when placing an online order or after delivery of such online order, (ii) that is in addition to the purchase price and other mandatory charges such as taxes and fees, (iii) the amount of which the customer may choose, and (iv) that is referred to on the third-party food delivery platform as a gratuity, tip or other similar term that would suggest to a reasonable person that the sum, or a substantial portion thereof, would be received by the food delivery worker delivering goods in addition to such food delivery worker’s base wage.”

Additionally, the bill would require TPPs to credit gratuities to their delivery workers. It would also mandate that TPPs notify delivery workers whether a gratuity was added to the order, how much the gratuity was, whether the customer removed it from the bill and why, if a reason was provided. The TPPs would have to notify the delivery worker if any change was made to a gratuity. Each day the TPPs would be required to inform the delivery worker of the aggregate amount of compensation and gratuities earned by that worker the day before. Food delivery apps would have to keep records demonstrating their compliance with this bill as part of the requirements of their licensure.

This bill would take effect on the same date as Int. 1897-A takes effect, except that DCWP may promulgate rules or take any other necessary measures to implement the bill before it takes effect. Int. 1897-A takes effect 120 days after it becomes law.

1. **Int. 2288-A, in relation to requiring third-party food delivery services and third-party courier services to provide food delivery workers with insulated food delivery bags, and authorizing the commissioner of the department of consumer and worker protection to deny, suspend, revoke or refuse to renew a license for violations of chapter 15 of title 20 of such code**

This bill would require each TPPs and “third-party courier service” – defined in Int. 2289-A as “a service that (i) facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a food service establishment on behalf of a third-party food delivery service and (ii) that is owned and operated by a person other than the person who owns such food service establishment” and referred to as “couriers” in this Legislative Analysis - to make available insulated food delivery bags to any delivery worker who has completed at least six deliveries for the company. The TPP or courier would not be permitted to charge their delivery workers any money for the bag. The bag would also have to comply with Section 1235 of the New York State Vehicle and Traffic Law, which prohibits bicyclists from carrying bags or other articles unless they can keep at least one hand on the handlebars. Despite the requirement that the bags be made available by the TPPs and couriers, the bill explicitly states that it cannot be interpreted as requiring delivery workers to use them.

In addition to the aforementioned requirements related to insulated bags, this bill would add a provision to the licensing scheme established in Int. 1897-A allowing DCWP to suspend, revoke, deny or refuse to renew a TPP’s license if the TPP has violated a provision of this bill or any other provision in Chapter 15 two or more times in the previous two years.

This bill would take effect on the same date as Int. 1897-A takes effect, except that DCWP may promulgate rules or take any other necessary measures to implement the bill before it takes effect. Int. 1897-A takes effect 120 days after it becomes law.

1. **Int. 2289-A, in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries**

This bill would add Chapter 15 to Title 20 of the Administrative Code. Within Chapter 15, this bill would add Subchapter 1, which would set forth various definitions; obligations on DCWP, TPPs and couriers; and enforcement options, including those available to the City and to delivery workers themselves. Subchapter 2 would require the TPPs and couriers to permit their delivery workers to set allowable trip parameters without penalty. It would also require the apps and couriers to provide certain information to their delivery workers when a trip is offered to them.

*Subchapter 1*

Subchapter 1 would define “food delivery worker” and “food service establishment,” among other terms. A “food delivery worker” could be either a natural person or an organization of no more than one person delivering for a TPP or courier. A “food service establishment” would be defined as any establishment located within the City where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. That could include restaurants, food trucks, grocery stores or any other establishment meeting the definition.

In Subchapter 1, the bill would obligate DCWP to conduct outreach and education about the provisions of Chapter 15 to delivery workers, TPPs and couriers. DCWP would be required to publish an annual report on its website containing: the number and nature of the complaints received pursuant to the Chapter; the results of investigations undertaken pursuant to the Chapter, including the number of complaints not substantiated and the number of notices of violations issued; the number and nature of adjudications held to resolve notices of violation issued pursuant to the Chapter; and the average time for a complaint to be resolved pursuant to the Chapter. The Department would also be required to provide a downloadable notice on their website for TPPs and couriers subject to Chapter 15 that would inform delivery workers of their rights under the Chapter. The TPPs and couriers would have to provide the notice electronically to all their delivery workers, in English and in any other language spoken as a primary language by at least five percent of their delivery workers, provided DCWP has made the notice available in that language.

TPPs and couriers would have to keep records of their compliance with Chapter 15 for at least three years, and make these records available to DCWP in furtherance of an investigation conducted pursuant to Chapter 15, provided it is consistent with applicable laws, in accordance with DCWP’s rules and with appropriate notice. The Department would also be empowered to establish by rule a uniform system of records or to require by rule that the records be submitted to them. Failing to maintain, retain or produce a record or other information required by Chapter 15 that is requested by the Department in furtherance of an investigation and relevant to a material fact alleged by the Department in a notice of violation of Chapter 15 would create a rebuttable presumption that the material fact was true.

Subchapter 1 of Chapter 15 would also forbid retaliation by TPPs or couriers if a delivery worker avails themselves of the rights afforded them under the Chapter. TPPs and couriers would be prohibited from taking adverse action that penalizes their delivery workers for, or is reasonably likely to deter such worker from, exercising or attempting to exercise any right protected under this chapter. Adverse actions would include threats, intimidation, harassment, discipline, denial of work opportunities to or discrimination against a food delivery worker, reduction in hours or pay, reduction or downgrade of a worker’s public or internal rating, and other negative consequences imposed on a food delivery worker, including actions related to perceived immigration status or work authorization.

DCWP would be charged with enforcing Chapter 15. A person could allege a violation of this Chapter up to two years after that person knew or should have known of the violation. DCWP would be required to keep the identity of complainants confidential unless disclosing the complainant’s identity was necessary to resolve the investigation or was required by law. DCWP would have to notify the complainant of a necessary disclosure, to the extent practicable, before the disclosure. Delivery workers who initiate actions against a TPP or courier would be entitled to the following remedies: compensatory damages and relief to make the worker whole; an order directing the TPP’s or courier’s compliance with the Chapter; and financial payments as set forth in the bill. Relief would be authorized on a per-worker and per-instance basis.

TPPs and couriers who violate Chapter 15 would be subject to civil penalties of $500 for a first violation, and for any subsequent violation within two years thereafter, up to $750 for the second and up to $1000 for any others. The Corporation Counsel would be authorized to bring an action to correct a violation of Chapter 15, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter, or such other relief as may be appropriate. Any person may bring a civil action for violation of Chapter 15, and courts could order compensatory, injunctive and declaratory relief, and reasonable attorney’s fees. The Corporation Counsel could bring a civil action to allege a pattern and practice of violations of Chapter 15, for which the City may request relief for delivery workers. The Corporation Counsel would be empowered to issue subpoenas and compel the attendance of witnesses in connection with such an action.

*Subchapter 2*

Subchapter 2 would require food apps and couriers to provide delivery workers with the opportunity to set the following trip parameters:

* The maximum distance per trip, from a location selected by a food delivery worker, that such worker will travel on trips;
* That such worker will not accept trips that require travel over any bridge or over particular bridges chosen by such worker; and
* That such worker will not accept trips that require travel through any tunnel or through particular tunnels chosen by such worker.

Further, the apps and couriers would be obligated to allow their delivery workers to change these parameters at any time. Once these parameters are set, the app or courier would not be permitted to offer a delivery worker a trip inconsistent with the parameters, and could not penalize a delivery worker in any way for selecting or changing their parameters.

In addition to permitting delivery workers to set trip parameters, the food delivery apps and couriers would be required to provide the following information to their delivery workers before the worker decides whether to accept the trip:

* The address where the food, beverage or other goods must be picked up;
* The estimated time and distance for the trip;
* The amount of any gratuity, if specified by the consumer; and
* The amount of compensation to be paid to the food delivery worker, excluding gratuity.

This bill would apply to any delivery trip originating in the City, ending in the City, involving the picking up of food from a food service establishment in the City to be delivered to the customer.

This bill would take effect 180 days after becoming law, except that DCWP may promulgate rules or take any other necessary measures to implement the bill before it takes effect.

1. **Int. 2294-A, in relation to establishing minimum per trip payments to third-party food delivery service and third-party courier service workers**

This bill would require DCWP, and any other City entity engaged to assist, to conduct a study of delivery workers’ working conditions. Such study shall include consideration of the following, at a minimum:

* The pay food delivery workers receive and the methods by which the pay is determined;
* The total income such workers earn;
* The expenses of such workers;
* The equipment required to perform their work;
* The hours of such workers;
* The average mileage of a trip;
* The mode of travel used by such workers;
* The safety conditions of such workers; and
* Other topics deemed appropriate by the Department.

In furtherance of the study, DCWP may request or issue subpoenas for data, documents or other information from TPPs or couriers, who are subject to the bill, including but not limited to:

* Worker identifiers;
* Information about the times such workers are available to work for TPPs or couriers;
* The mode of transportation such workers use;
* How trips are offered or assigned to food delivery workers;
* The data the apps and couriers maintain relating to the trips of such workers;
* The compensation such workers receive from the apps and couriers;
* Any gratuities such workers receive;
* Information relating to both completed and cancelled trips;
* Agreements with or policies covering such workers;
* Contact information of such workers;
* Information relating to the setting of fees paid by food service establishments and consumers; and
* Any other information deemed relevant by the Department.

The app or courier from whom information is sought would have to provide it in a manner designated by the rules of the Department, whether that be in the information’s original format or in a machine-readable, electronic format.

Based on the results of the study, DCWP would be required to promulgate rules establishing a method of determining minimum payments that must be made to delivery workers, by January 1, 2023. The TPPs and couriers would be required to abide by these minimum standards, whether they choose to pay their delivery workers on an hourly or weekly basis, or on any other basis. In establishing the minimum payments required, the Department would be required to consider:

* The duration and distance of trips;
* The expenses of operation associated with the typical modes of transportation such workers use;
* The types of trips, including the number of deliveries made during a trip;
* The on-call and work hours of food delivery workers;
* The adequacy of food delivery worker income considered in relation to trip-related expenses; and
* Any other relevant factors, as determined by the Department.

Food delivery apps and couriers would not be permitted to comply with the Department’s minimum payment rules through the use of gratuities. Furthermore, the apps and couriers would be required by this bill to clearly and conspicuously inform their delivery workers which which payments constitute gratuities from consumers and which payments constitute compensation paid by the TPPs or couriers.

Beginning February 1, 2024 and each year by February 1 thereafter, DCWP would be required to announce any update to the minimum payment method it has established. Any changes would go into effect on the following April 1. The Department would also be required to issue a report to the Speaker of the Council and the Mayor on the minimum payment standard, any amendment to the standard, and the effect of such minimum payment standard on food delivery workers and the food delivery industry. The first such report would have to be issued by September 30, 2024, and then by September 30 every two years thereafter.

This bill would take effect immediately after becoming law, except that DCWP may promulgate rules or take any other necessary measures to implement the bill before it takes effect.

1. **Int. 2296-A, in relation to establishing standards for payment of food delivery workers**

The bill would prohibit TPPs and couriers from charging delivery workers for the payment of their compensation. It would also require the TPPs and couriers pay their delivery workers for their work at least once per week.

This bill would take effect 180 days after becoming law, except that DCWP may promulgate rules or take any other necessary measures to implement the bill before it takes effect.

1. **Int. 2298-A, in relation to the agreements between third-party food delivery services and food service establishments and the provision of toilet facility access to food delivery workers**

The Council previously passed Local Law 91 of 2021, which included a requirement for TPPs to execute written agreements with the food service establishments they list on their platforms. This bill would enhance the requirement in that Local Law to mandate that the apps also include a provision in these agreements requiring restaurants and other food service establishments to make their toilet facilities available for delivery workers’ use, as long as the delivery worker seeks to access the facilities while picking up a food or beverage order for delivery.

A food service establishment would not be required to allow a delivery worker access to their toilet facilities, however, when doing so would require walking through the establishment’s kitchen, food prep area, storage area or utensil washing area, as set forth in Section 81.22 (d) of the Health Code; when accessing the toilet facility would create an obvious health and safety risk to the food delivery worker or to the establishment; or in other cases identified by DCWP through promulgated rules. A “toilet facility” is defined in the bill as the restroom the food service establishment provides for customers, or, if such a restroom is not provided for customers, the employee restroom.

This bill would take effect on the same date as Int. 1897-A takes effect, except that DCWP may promulgate rules or take any other necessary measures to implement the bill before it takes effect. Int. 1897-A takes effect 120 days after it becomes law.

1. **Int. 2397-A, in relation to severance pay for hotel service employees**

The bill would require severance pay for hotel service employees in the event of: 1) the closure of a hotel to the public, provided that the hotel has not, by October 11, 2021, recalled at least 25% of employees and reopened to the public by November 1, 2021; or 2) a mass layoff of at least 75% of employees. Employees eligible for severance pay would be owed $500 per week, for up to 30 weeks.

This requirement would not apply to a hotel that has closed permanently and has or is in the process of converting to an alternate use, provided that employees are offered severance of at least 20 days pay per year of service and provided that the severance is specifically tied to the conversion. The obligation to provide severance would end when an employee is recalled, or, for a closed hotel, when the hotel reopens to the public and recalls 25% of employees.

This bill would take effect immediately and would be deemed repealed on June 1, 2022.

1. **Int.\_\_, in relation to limitations on distance and route for food delivery workers; to amend three local laws for the year 2021 amending the administrative code of the city of New York, relating to providing food delivery workers with insulated food delivery bags and denying, suspend, revoking or refusing to renew a license for a third party delivery service, minimum per trip payments to third-party food delivery service and courier service workers, and standards for payment of food delivery workers, respectively, as proposed in introduction numbers 2288-A, 2294-A, and 2296-A, respectively; and in relation to requiring a study of the working conditions for food delivery workers**

This bill would amend language in Int. 2289-A regarding distance limits, to provide that a worker may set a maximum distance per trip from a food service establishment where such worker will pick up food, beverages, or other goods, that such worker will travel on trips. The bill would also amend the effective dates of Int. 2288-A and Int. 2294-A to provide that such local laws would take effect on the same date as Int. 2289-A. In addition, the bill would provide that a study regarding the working conditions of food delivery workers may take effects immediately.

Int. No.

By Council Member Brannan..Title

A Local Law to amend the administrative code of the city of New York, in relation to limitations on distance and route for food delivery workers; to amend three local laws for the year 2021 amending the administrative code of the city of New York, relating to providing food delivery workers with insulated food delivery bags and denying, suspend, revoking or refusing to renew a license for a third party delivery service, minimum per trip payments to third-party food delivery service and courier service workers, and standards for payment of food delivery workers, respectively, as proposed in introduction numbers 2288-A, 2294-A, and 2296-A, respectively; and in relation to requiring a study of the working conditions for food delivery workers

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 20-1521 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to working conditions for third-party service workers, as proposed in introduction number 2289-A,..Body is amended to read as follows:

§ 20-1521 Delivery distance and route. a. Each third-party food delivery service and third-party courier service shall provide each food delivery worker with the ability to specify:

1. the maximum distance per trip, from [a location selected by a food delivery worker] a food service establishment where such worker will pick up food, beverages, or other goods, that such worker will travel on trips;

2. that such worker will not accept trips that require travel over any bridge or over particular bridges chosen by such worker; and

3. that such worker will not accept trips that require travel through any tunnel or through particular tunnels chosen by such worker.

§ 2. Section 3 of a local law for the year 2021 amending the administrative code of the city of New York, relating to providing food delivery workers with insulated food delivery bags and denying, suspending, revoking or refusing to renew a license for a third party food delivery service, as proposed in introduction number 2288-A, is amended to read as follows:

§ 3. This local law takes effect on the same date as a local law for the year 2021 amending the administrative code of the city of New York, relating to [the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020] establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A, takes effect, except that the commissioner of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

§ 3. Section 2 of a local law for the year 2021 amending the administrative code of the city of New York, relating to minimum per trip payments to third-party food delivery service and courier service workers, as proposed in introduction number 2294-A, is amended as follows:

§ 2. This local law takes effect [immediately] on the same date that a local law for the year 2021 amending the administrative code of the city of New York, relating to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A, takes effect, provided that the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

§ 4. Section 2 of a local law for the year 2021 amending the administrative code of the city of New York, relating to standards for payment of food delivery workers, as proposed in introduction number 2296-A, is amended as follows:

§ 2. This local law takes effect [180 days after it becomes law] on the same date that a local law for the year 2021 amending the administrative code of the city of New York, relating to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A, takes effect, provided that the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

§ 5. a. The department of consumer and worker protection shall study the working conditions for food delivery workers. In conducting such study, the department may coordinate with any other agency, organization, or office that can assist in such study. Such study shall include, at minimum, consideration of the pay food delivery workers receive and the methods by which such pay is determined, the total income food delivery workers earn, the expenses of such workers, the equipment required to perform their work, the hours of such workers, the average mileage of a trip, the mode of travel used by such workers, the safety conditions of such workers, and such other topics as the department deems appropriate.

b. In furtherance of such study, the department of consumer and worker protection may request or issue subpoenas for the production of data, documents, and other information from a third-party food delivery service or third-party courier service relating to food delivery workers that include, but are not limited to, worker identifiers, information about the times that such workers are available to work for such third-party food delivery service or third-party courier service, the mode of transportation such workers use, how trips are offered or assigned to food delivery workers, the data such service maintains relating to the trips of such workers, the compensation such workers receive from such third-party food delivery service or third-party courier service, any gratuities such workers receive, information relating to both completed and cancelled trips, agreements with or policies covering such workers, contact information of such workers, information relating to the setting of fees paid by food service establishments and consumers, and any other information deemed relevant by the department of consumer and worker protection. In accordance with applicable law and rules and with appropriate notice, a third-party food delivery service or third-party courier service must produce such information to the department of consumer and worker protection in its original format or a machine-readable electronic format as set forth in rules of such department.

c. Definitions. As used in this section, the following terms have the following meanings:

Food delivery worker. The term “food delivery worker” means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, who is hired, retained, or engaged as an independent contractor by a third-party food delivery service required to be licensed pursuant to section 20-563.1 of the administrative code of the city of New York, or a third-party courier service to deliver food, beverage, or other goods from a business to a consumer in exchange for compensation.

Food service establishment. The term “food service establishment” means a business establishment located within the city of New York where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

Third-party courier service. The term “third-party courier service” means a service that (i) facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a food service establishment on behalf of a third-party food delivery service and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Third-party food delivery service. The term “third-party food delivery service” means any website, mobile application, or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Trip. The term “trip” means the time spent, distance travelled, and route followed by a worker to provide delivery services to a consumer through a third-party food delivery service or third-party courier service, including travel to a business, picking up the food, beverage, or other goods for delivery, and taking and depositing such delivery at a different location as requested.

§ 6. This local law takes effect on the same date that a local law for the year 2021 amending the administrative code of the city of New York, relating to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A for the year 2021, takes effect, except that section five of this local law takes effect immediately and such section five expires and is deemed repealed on such date that such local law for the year 2021 amending the administrative code of the city of New York, relating to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A for the year 2021, takes effect.

9/22/21 7:07PM

Proposed Int. No. 1846-A

By Council Members Chin, Ayala, Lander, Koslowitz, Menchaca, Rivera, Van Bramer, Rosenthal, Reynoso and the Public Advocate (Mr. Williams)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the disclosure of gratuity policies for food delivery workers

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-563 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020, is amended by adding new definitions of “base wage” and “gratuity” in alphabetical order to read as follows:

Base wage. The term “base wage” means money paid, whether by the hour or otherwise, to a food delivery worker by a third-party food delivery service in exchange for work performed, not including gratuities, bonuses, allowances, shift differentials or other monetary payments that may contribute to such food delivery worker’s total compensation.

Gratuity. The term “gratuity” means a sum of money (i) paid voluntarily by a customer when placing an online order or after delivery of such online order, (ii) that is in addition to the purchase price and other mandatory charges such as taxes and fees, (iii) the amount of which the customer may choose, and (iv) that is referred to on the third-party food delivery platform as a gratuity, tip or other similar term that would suggest to a reasonable person that the sum, or a substantial portion thereof, would be received by the food delivery worker delivering goods in addition to such food delivery worker’s base wage.

§ 2. Section 20-563.2 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020, is amended to read as follows:

§ 20-563.2 Issuance of license and certain restrictions on third-party food delivery service conduct. a. A license to operate a third-party food delivery service shall be granted in accordance with the provisions of this subchapter and any rules promulgated by the commissioner thereunder.

b. Restrictions on third-party food delivery service operations.

1. It shall be unlawful for a third-party food delivery service to solicit a gratuity for a food delivery worker hired, retained or engaged by such third-party food delivery service from a customer in connection with an online order unless such third-party food delivery service discloses, in plain language and in a conspicuous manner, the following information before or at the same time as such gratuity is solicited:

(i) The proportion or fixed amount of each gratuity that is distributed to a food delivery worker who delivers the goods purchased; and

(ii) How gratuities are distributed to a food delivery worker, including whether such gratuities are distributed immediately or otherwise, and whether such gratuities are distributed in cash or otherwise.

2. For each transaction, a food delivery worker hired, retained or engaged by a third-party food delivery service shall be notified of how much the customer paid as gratuity, if such customer paid additional gratuity, and if such customer decided to remove the gratuity and the reason for such removal, if such a reason is provided. Upon any change or payment of gratuity, a third-party delivery service shall notify such food delivery worker and credit such gratuity to such worker’s account.

3. A third-party food delivery service shall disclose to a food delivery worker hired, retained or engaged by such third-party food delivery service, the aggregate amount of compensation and aggregate amount of gratuities earned by such food delivery worker on the day after such compensation and gratuities were earned.

§ 3. Subdivision a of section 20-563.8 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020, is amended to read as follows:

a. Every third-party food delivery service required to be licensed under this subchapter shall maintain the following records in an electronic format for a period of at least three years:

1. A roster of all food service establishments the third-party food delivery service lists on its website, mobile application, or other third-party food delivery platform and has listed on such website, mobile application, or other third-party food delivery platform;

2. All written agreements with a food service establishment;

3. Records listing itemized fees the third-party food delivery service has charged each food service establishment with which the third-party food delivery service maintains an agreement;

4. Such records related to the ownership of the third-party food delivery service as the commissioner may prescribe by rule; [and]

5. Records demonstrating compliance with the requirements set forth in subdivisions c, d and e of section 20-563.2 of this subchapter; and

6. Such other records as the commissioner may prescribe by rule.

§ 4. This local law takes effect on the same date as a local law amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020, takes effect, except that the commissioner of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such effective date.

SJ

LS #10612

9/15/21 4:57PM

Proposed Int. No. 2288-A

By Council Members Brannan, Rivera, Chin, Louis, Ayala, Lander, Van Bramer, Rosenthal, Reynoso, Menchaca and the Public Advocate (Mr. Williams)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring third-party food delivery services and third-party courier services to provide food delivery workers with insulated food delivery bags, and authorizing the commissioner of the department of consumer and worker protection to deny, suspend, revoke or refuse to renew a license for violations of chapter 15 of title 20 of such code

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-563.9 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020, is amended to read as follows:

§ 20-563.9 Denial, renewal, suspension and revocation of license. In addition to any powers of the commissioner and not in limitation thereof, the commissioner may deny or refuse to renew any license required under this subchapter and may suspend or revoke any such license, after due notice and opportunity to be heard, if the applicant or licensee, or, where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, is found to have:

a. Committed two or more violations of any provision of this subchapter or any rules promulgated thereunder in the preceding two years;

b. Made a material false statement or concealed a material fact in connection with the filing of any application pursuant to this subchapter; [or]

c. Committed two or more violations of chapter five of title twenty of this code and any rules promulgated thereunder in the preceding two years; or

d. Committed two or more violations of chapter fifteen of title twenty of this code and any rules promulgated thereunder in the preceding two years.

§ 2. Subchapter 2 of chapter 15 of title 20 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A for the year 2021, is amended by adding a new section 20-1524 to read as follows:

§ 20-1524 Insulated food delivery bags. a. 1. A third-party food delivery service or third-party courier service shall provide at its own expense, or ensure the availability of, an insulated food delivery bag to each food delivery worker, provided that such worker has completed at least six deliveries for such service. Such service may not require any food delivery worker to provide an insulated food delivery bag at such worker’s expense. Such insulated food delivery bag must be designed for use in accordance with section 1235 of the vehicle and traffic law.

2. Nothing in this section shall be construed to require the use of insulated delivery bags by food delivery workers.

§ 3. This local law takes effect on the same date as a local law amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2020, takes effect, except that the commissioner of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

SG

LS #16930

9/15/21 8:45PM

Proposed Int. No. 2289-A

By Council Members Brannan, Menchaca, Chin, Rivera, Louis, Ayala, Lander, Van Bramer, Rosenthal and Reynoso

A Local Law to amend the administrative code of the city of New York, in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries..Body

..Body

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 15 to read as follows:

CHAPTER 15

THIRD-PARTY SERVICE WORKERS

SUBCHAPTER 1

GENERAL PROVISIONS

§ 20-1501 Definitions.

§ 20-1502 Outreach and education.

§ 20-1503 Reporting.

§ 20-1504 Retaliation.

§ 20-1505 Notice of rights.

§ 20-1506 Recordkeeping.

§ 20-1507 Administrative enforcement.

§ 20-1508 Remedies for workers.

§ 20-1509 Civil penalties.

§ 20-1510 Enforcement by the corporation counsel.

§ 20-1511 Private cause of action.

§ 20-1512 Civil action by corporation counsel for pattern or practice of violations.

§ 20-1501 Definitions. As used in this chapter, the following terms have the following meanings:

Food delivery worker. The term “food delivery worker” means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, who is hired, retained, or engaged as an independent contractor by a third-party food delivery service required to be licensed pursuant to section 20-563.1 or a third-party courier service to deliver food, beverage, or other goods from a business to a consumer in exchange for compensation.

Food service establishment. The term “food service establishment” means a business establishment located within the city where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

Third-party courier service. The term “third-party courier service” means a service that (i) facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a food service establishment on behalf of a third-party food delivery service and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Third-party food delivery service. The term “third-party food delivery service” means any website, mobile application, or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Trip. The term “trip” means the time spent, distance travelled, and route followed by a worker to provide delivery services to a consumer through a third-party food delivery service or third-party courier service, including travel to a business, picking up the food, beverage, or other goods for delivery, and taking and depositing such delivery at a different location as requested.

§ 20-1502 Outreach and education. The commissioner shall conduct outreach and education about the provisions of this chapter. Such outreach and education shall be provided to food delivery workers, third-party food delivery services, and third-party courier services.

§ 20-1503 Reporting. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications held to resolve notices of violation issued pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

§ 20-1504 Retaliation. No person shall take any adverse action against a food delivery worker that penalizes such worker for, or is reasonably likely to deter such worker from, exercising or attempting to exercise any right protected under this chapter. Adverse actions include threats, intimidation, harassment, discipline, denial of work opportunities to or discrimination against a food delivery worker, reduction in hours or pay, reduction or downgrade of a worker’s public or internal rating, and other negative consequences imposed on a food delivery worker, including actions related to perceived immigration status or work authorization. A food delivery worker need not explicitly refer to this chapter or the rights enumerated herein to be protected from retaliation.

§ 20-1505 Notice of rights. a. The commissioner shall publish and make available a notice for a third-party food delivery service or third-party courier service to provide to food delivery workers informing them of their rights protected under this chapter. Such notice shall be made available in a downloadable format on the city’s website and shall be updated if any changes are made to the requirements of this chapter or as otherwise deemed appropriate by the commissioner.

    b. A third-party food delivery service or third-party courier service shall provide such notice electronically to a food delivery worker hired, retained, or engaged by such service. Such notice shall be in English and any language spoken as a primary language by at least five percent of the food delivery workers hired, retained, or engaged by such service, provided that the commissioner has made the notice available in such language.

§ 20-1506 Recordkeeping. a. A third-party food delivery service or third-party courier service shall retain records documenting its compliance with the applicable requirements of this chapter for a period of three years and shall allow the department to access such records and other information, consistent with applicable law and in accordance with rules of the department and with appropriate notice, in furtherance of an investigation conducted pursuant to this chapter. A third-party food delivery service or third-party courier service must maintain records in their original format and provide such records to the department in their original format or a machine-readable electronic format as set forth in rules of the department. The department also may establish by rule, and require third-party food delivery services and third-party courier services to adhere to, a uniform system of records, and require submission of such records and other reports as the department may determine, in accordance with applicable law and rules and with appropriate notice.

b. The failure of a third-party food delivery service or third-party courier service to maintain, retain, or produce a record or other information required to be maintained by this chapter and requested by the department in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the department in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.

§ 20-1507 Administrative enforcement. a. The commissioner shall enforce the provisions of this chapter.

    b. 1. Any person alleging a violation of this chapter may file a complaint with the department within two years of the date the person knew or should have known of the alleged violation.

       2. Upon receiving such a complaint, the department shall investigate it.

       3. The department may open an investigation on its own initiative.

       4. A person or entity under investigation shall, in accordance with applicable law, provide the department with information or evidence that the department requests pursuant to the investigation. The department may attempt to resolve an investigation concerning a violation of this chapter through any action authorized by chapter 64 of the charter.

       5. The department shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing the complainant's identity before such disclosure.

c. The commissioner may promulgate rules necessary and appropriate to the administration of this chapter.

§ 20-1508 Remedies for workers. a. For violations of their rights under this chapter, a food delivery worker shall be entitled to the following relief:

       1. all compensatory damages and other relief required to make the worker or former worker whole;

       2. an order directing compliance with the requirements set forth in this chapter; and

       3. for each violation of:

(a) section [20-1504](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128201#JD_20-1204),

              (1) $500 for each violation not involving denial of future work opportunities;

             (2) $2,500 for each violation involving denial of future work opportunities; and

 (3) any equitable relief appropriate under the circumstances, including but not limited to payment of any lost earnings resulting from such retaliation.

          (b) section 20-1521, $200;

          (c) section 20-1522, including any minimum payment established by rule pursuant to section 20-1522, three times the amount of any payment that should have been made and was not timely made;

 (d) section 20-1523, $200; and

(e) section 20-1524, $200.

    b. The relief authorized by this section shall be imposed on a per worker and per instance basis for each violation.

§ 20-1509 Civil penalties. a. For each violation of this chapter, a third-party food delivery service or third-party courier service is liable for a penalty of $500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to $750 for the second violation and up to $1,000 for each succeeding violation.

    b. The penalties imposed pursuant to this section shall be imposed on a per worker and per instance basis for each violation.

§ 20-1510 Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to sections 20-1507 through 20-1509, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter, or such other relief as may be appropriate.

§ 20-1511 Private cause of action. a. Any person alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

       1. section 20-1504;

       2. section 20-1521;

       3. section 20-1522, including any minimum payment established by rule pursuant to section 20-1522;

4. section 20-1523; and

5. section 20-1524.

    b.  Such court may order compensatory, injunctive and declaratory relief, including the remedies set forth in section 20-1508, and reasonable attorney’s fees.

    c. A civil action under this section shall be commenced within two years of the date the person knew or should have known of the alleged violation.

    d. 1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the department. Failure to so serve a notice does not adversely affect any person’s cause of action.

       2. A worker need not file a complaint with the department pursuant to subdivision b of section [20-1507](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128203#JD_20-1207) before bringing a civil action; however, no person shall file a civil action after filing a complaint with the department unless such complaint has been withdrawn or dismissed without prejudice to further action.

       3. No person shall file a complaint with the department after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

       4. The commencement or pendency of a civil action by a worker does not preclude the department from investigating a third-party food delivery service or third-party courier service or commencing, prosecuting or settling a case against a third-party food delivery service or third-party courier service based on some or all of the same violations.

§ 20-1512 Civil action by corporation counsel for pattern or practice of violations.

    a. 1. Where reasonable cause exists to believe that a third-party food delivery service or third-party courier service is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

       2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, relief for food delivery workers set forth in section 20-1508, civil penalties set forth in section 20-1509, and any other appropriate relief.

       3. Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.

       4. Nothing in this section prohibits (i) the department from exercising its authority under section 20-1507 through 20-1509 or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section 20-1507 or a civil action pursuant to section 20-1511 based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.

    b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

SUBCHAPTER 2

FOOD DELIVERY WORKERS

§ 20-1521 Delivery distance and route.

§ 20-1522 Reserved.

§ 20-1523 Reserved.

§ 20-1524 Reserved.

§ 20-1521 Delivery distance and route. a. Each third-party food delivery service and third-party courier service shall provide each food delivery worker with the ability to specify:

1. the maximum distance per trip, from a location selected by a food delivery worker, that such worker will travel on trips;

2. that such worker will not accept trips that require travel over any bridge or over particular bridges chosen by such worker; and

3. that such worker will not accept trips that require travel through any tunnel or through particular tunnels chosen by such worker.

b. Each third-party food delivery service and third-party courier service shall allow each food delivery worker to change the parameters established by such worker pursuant to subdivision a at any time.

c. A third-party food delivery service or third-party courier service shall not offer any food delivery worker any trip that is inconsistent with the parameters established by such worker and shall not penalize a food delivery worker for selecting or changing such parameters.

d. Each time a third-party food delivery service or third-party courier service offers a trip to a food delivery worker, before such worker accepts such trip, such third-party food delivery service or third-party courier service shall disclose to such worker the following information:

1. the address where the food, beverage or other goods must be picked up;

2. the estimated time and distance for the trip;

3. the amount of any gratuity, if specified by the consumer; and

4. the amount of compensation to be paid to the food delivery worker, excluding any gratuity.

e. The requirements of this section shall apply to trips that originate in the city, end in the city or involve picking up food from a food service establishment located in the city.

§ 2. This local law takes effect 180 days after it becomes law, provided that the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

LS #17300/17301

NAB

9/15/21 8:21PM

..BodyProposed Int. No. 2294-A

By Council Members Lander, Menchaca, Chin, Ayala, Van Bramer, Rosenthal, Reynoso, Rivera and the Public Advocate (Mr. Williams)

A Local Law to amend the administrative code of the city of New York, in relation to establishing minimum per trip payments to third-party food delivery service and third-party courier service workers

..Body

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 15 of title 20 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A for the year 2021, is amended by adding a new section 20-1522, to read as follows:

§ 20-1522 Minimum payment. a. 1. The department shall study the working conditions for food delivery workers. In conducting such study, the department may coordinate with any other agency, organization, or office that can assist in such study. Such study shall include, at minimum, consideration of the pay food delivery workers receive and the methods by which such pay is determined, the total income food delivery workers earn, the expenses of such workers, the equipment required to perform their work, the hours of such workers, the average mileage of a trip, the mode of travel used by such workers, the safety conditions of such workers, and such other topics as the department deems appropriate.

2. In furtherance of such study, the department may request or issue subpoenas for the production of data, documents, and other information from a third-party food delivery service or third-party courier service relating to food delivery workers that include, but are not limited to, worker identifiers, information about the times that such workers are available to work for such third-party food delivery service or third-party courier service, the mode of transportation such workers use, how trips are offered or assigned to food delivery workers, the data such service maintains relating to the trips of such workers, the compensation such workers receive from such third-party food delivery service or third-party courier service, any gratuities such workers receive, information relating to both completed and cancelled trips, agreements with or policies covering such workers, contact information of such workers, information relating to the setting of fees paid by food service establishments and consumers, and any other information deemed relevant by the department. In accordance with applicable law and rules and with appropriate notice, a third-party food delivery service or third-party courier service must produce such information to the department in its original format or a machine-readable electronic format as set forth in rules of the department.

3. Based on the results of the study conducted pursuant to paragraph a of this subdivision, and no later than January 1, 2023, the department shall by rule establish a method for determining the minimum payments that must be made to a food delivery worker by a third-party food delivery service or third-party courier service. In establishing such method, the department shall, at minimum, consider the duration and distance of trips, the expenses of operation associated with the typical modes of transportation such workers use, the types of trips, including the number of deliveries made during a trip, the on-call and work hours of food delivery workers, the adequacy of food delivery worker income considered in relation to trip-related expenses, and any other relevant factors, as determined by the department. Any rules promulgated by the department pursuant to this subdivision shall not prevent payments to food delivery workers from being calculated on an hourly or weekly basis, or by any other method, provided that the actual payments made to such workers comply with the minimum payment requirements determined by the department.

b. Any minimum payment determined by the department pursuant to this section shall not include gratuities. A third-party food delivery service or third-party courier service shall not retain any portion of any gratuity or use gratuities to offset or cover any portion of minimum payments required by this section. A third-party food delivery service shall clearly and conspicuously disclose to food delivery workers which payments constitute gratuities from consumers and which payments constitute compensation paid by the third-party food delivery service.

c. Beginning February 1, 2024 and no later than February 1 of each year thereafter, the department shall announce any update to the minimum payment method established pursuant to this section if it determines an update is warranted or necessary. Any such update shall become effective the following April 1 after it has been announced. If the department determines that an amendment to the minimum payment standard is warranted or necessary, it is hereby authorized to promulgate such amendment by rule.

d. The department shall, no later than September 30, 2024, and two years thereafter, submit to the council and the mayor a report on the minimum payment standard, any amendment to such standard, and the effect of such minimum payment standard on food delivery workers and the food delivery industry.

§ 2. This local law takes effect immediately, provided that the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

EL

LS 7933

9/15/21 9:05PM

Proposed Int. No. 2296-A

By Council Members Menchaca, Rivera, Louis, Ayala, Lander, Van Bramer, Rosenthal, Reynoso and the Public Advocate (Mr. Williams)

A Local Law to amend the administrative code of the city of New York, in relation to establishing standards for payment of food delivery workers

..Body

..Body

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 15 of title 20 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, in relation to requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries, as proposed in introduction number 2289-A for the year 2021, is amended by adding a new section 20-1523 to read as follows:

§ 20-1523 Payments to workers. a. A third-party food delivery service or third-party courier service shall not charge or impose any fee on a food delivery worker for the use of any form of payment selected by such service to pay such worker for work performed.

b. A third-party food delivery service or third-party courier service shall pay a food delivery worker for work performed no less frequently than once a week.

§ 2. This local law takes effect 180 days after it becomes law, provided that the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

LS #17253

NAB

9/15/21 8:51PM

Proposed Int. No. 2298-A

By Council Members Rivera, the Public Advocate (Mr. Williams), Menchaca, Chin, Louis, Ayala, Lander, Rosenthal, Van Bramer, Reynoso and Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the agreements between third-party food delivery services and food service establishments and the provision of toilet facility access to food delivery workers

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-563 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897, is amended by adding new definitions of “food delivery worker” and “toilet facility” in alphabetical order to read as follows:

Food delivery worker. The term “food delivery worker” means a natural person who is hired or retained as an independent contractor by a food service establishment, as an independent contractor of a third-party food delivery service or as an independent contractor of a third-party courier service, as defined in section 20-1501, to deliver food or beverage from such establishment to a consumer in exchange for compensation.

Toilet facility. The term “toilet facility” means a toilet facility on the premises of a food service establishment that is a dedicated facility for its patrons or that is a dedicated facility for its employees to the extent such establishment does not have a dedicated facility for its patrons.

§ 2. Subdivision b of section 20-563.6 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897, is amended to read as follows:

b. An agreement executed in accordance with this section shall include a provision requiring that a toilet facility is available for the use of food delivery workers lawfully on such establishment’s premises to pick up such establishment’s food or beverage for consumer delivery, except (i) where accessing the toilet facility would require a food delivery worker to walk through such establishment’s kitchen, food preparation or storage area or utensil washing area to access such facility, pursuant to subdivision d of section 81.22 of the health code; (ii) where accessing the toilet facility would create an obvious health and safety risk to the food delivery worker or to the establishment; or (iii) any additional exceptions that the commissioner promulgates by rule. Such agreement shall not include a provision, clause, or covenant that requires a food service establishment to indemnify a third-party food delivery service, any independent contractor acting on behalf of the third-party food delivery service, or any registered agent of the third-party food delivery service, for any damages or harm by an act or omission occurring after the food service establishment’s product leaves the place of business of the food service establishment. To the extent an agreement executed in accordance with this section contains such a provision, such provision shall be deemed void and unenforceable.

§ 3. This local law takes effect on the same date as a local law amending the administrative code of the city of New York, relating to the licensing of third-party food delivery services, and repealing subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services, as proposed in introduction number 1897 for the year 2021, takes effect, provided that subdivision b of section 20-563.6 of such code, as amended by section two of this local law, applies only to agreements executed on and after such date, and except that the commissioner of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

NLB/EL

LS #16766/16838

9/15/21 9:11PM

Proposed Int. No. 2397-A

By Council Members Moya, Kallos, Salamanca, Rosenthal, Dinowitz, Levine, Menchaca, Lander, Brannan, Adams, Powers, Feliz, Reynoso, Rivera and Gennaro

A LOCAL LAW

In relation to severance pay for hotel service employees

Be it enacted by the Council as follows:

Section 1. Definitions. For the purposes of this local law, the following terms have the following meanings:

Closure. The term “closure” means the closure of a hotel to the public commencing on or after March 1, 2020, provided that such hotel has not, by October 11, 2021, recalled 25 percent or more of its employees employed as of March 1, 2020 and reopened to the public by November 1, 2021. The term “closure” shall not include a lockout or strike.

Covered hotel service employee. The term “covered hotel service employee” means, with respect to a hotel, a person who:

(i) was employed by such hotel on March 1, 2020;

(ii) as of March 1, 2020, had been employed by such hotel for a period of not less than one year to perform hotel service;

(iii) was not a managerial, supervisory or confidential employee and did not otherwise exercise control over the management of such hotel; and

(iv) was laid off after March 1, 2020 due to a closure or a mass layoff.

Hotel. The term “hotel” means a transient hotel as defined in section 12-10 of the New York city zoning resolution that, as of March 1, 2020, had 100 or more rooms.

Hotel employer. The term “hotel employer” means any person who owns, controls or operates a hotel.

Hotel service. The term “hotel service” means work performed in connection with the operation of a hotel.

Lockout. The term “lockout” has the same meaning as in paragraph 2 of subdivision a of section 22-501 of the administrative code of the city of New York.

Mass layoff. The term “mass layoff” means a reduction in force that is not the result of a closure, lockout or strike, and that results in a layoff by a hotel employer during any 30-day period of 75 percent or more of the employees engaged in hotel service at a hotel as of March 1, 2020.

Room. The term “room” means a room available or let out for use or occupancy in a hotel.

Strike. The term “strike” has the same meaning as in paragraph 1 of subdivision a of section 22-501 of the administrative code of the city of New York.

 § 2. Severance. a. Except as provided in subdivision b of this section, commencing on October 11, 2021, a hotel employer shall provide to each covered hotel service employee $500 in severance pay for each week, after such date, that such employee remains laid off, provided that a hotel employer shall not be required to provide severance pay pursuant to this section for more than 30 weeks.

 b. For each week described in subdivision a of this section, any severance pay provided to a covered hotel service employee shall be reduced by the amount of any severance or similar pay provided or owed for such week to such employee by the hotel employer. The payment of severance pay pursuant to subdivision a of this section shall be in addition to any severance or similar pay already paid or otherwise owed for periods prior to October 11, 2021.

c. A hotel employer shall provide severance pay pursuant to this section to a covered hotel service employee within five days after the end of each week.

d. The provision of severance pay pursuant to this section shall not affect the right, if any, of a covered hotel service employee to be recalled to their previous position.

§ 3. Applicability. a. Section two of this local law shall not apply to a hotel that has closed permanently and has converted or is in the process of converting to an alternate use, provided that every covered hotel service employee at such hotel is offered severance pay specifically for such conversion in an amount that equals no less than pay for 20 days per year of service, at the same rate that such employee is paid for paid days off.

b. The requirement to provide severance pay to a covered hotel service employee pursuant to section two of this local law shall cease on the sooner of the date such employee is recalled, or, if a hotel that experienced a closure reopens, the date on which such hotel reopens to the public and has recalled 25 percent or more of its employees employed as of March 1, 2020.

§ 4. Remedies. a. A covered hotel service employee who has not received severance pay that is required to be provided pursuant to this local law may bring an action in supreme court against a hotel employer for violation of this local law.

b. A court that finds that such employee has not received severance pay in violation of this local law shall award to such employee twice the amount of severance pay owed pursuant to this local law and such employee’s reasonable attorney’s fees and costs.

§ 5. This local law takes effect immediately and expires and is deemed repealed on June 1, 2022.

9/20/21 4:55PM

1. Clayton Guse “Restaurants would be required to allow NYC’s 80,000 food delivery workers to use restrooms under proposed legislation”, *NY Daily News*, April 27, 2021, available at: <https://www.nydailynews.com/new-york/ny-delivery-workers-bathroom-wage-legislation-20210427-zpy25xy3ajcfroncy674t6pqzq-story.html>. [↑](#footnote-ref-2)
2. Amir Khafagy “Delivery workers are struggling to survive the pandemic”, *The Counter,* January 5, 2021, available at: <https://thecounter.org/nyc-delivery-workers-pandemic-grubhub-seamless/>. [↑](#footnote-ref-3)
3. There are other companies that have entered the app-based delivery industry, but operate slightly differently to the TPPs mentioned. Relay, for example, only offers a delivery service to restaurants. Under this model, a customer can place an order either through a TPP or directly with the restaurant, but Relay will arrange the delivery. Relay argues that this allows restaurants to continue using the websites and menu platforms that TPPs offer, but allows restaurants to not use the delivery services that TPPs also offer, which Relay argues is more expensive than their service (see: Relay “Grow your restaurant’s margins by switching to Relay”, available at: <https://www.relay.delivery>). For delivery workers though, Relay operates in a similar fashion to TPPs. [↑](#footnote-ref-4)
4. Stephanie Resendes “Why hiring your own delivery drivers may not be as expensive as you think”, *Upserve*, July 28, 2020, available at: <https://upserve.com/restaurant-insider/delivery-service-for-restaurants/>. [↑](#footnote-ref-5)
5. S. Lock “Food delivery: U.S. cities with the highest spend per capita 2019”, *Statista,* September 7, 2019, available at: <https://www.statista.com/statistics/1051250/us-food-delivery-cities-spending-per-capita-2019/>. [↑](#footnote-ref-6)
6. Willa Glickman “What the apps that bring food to your door mean for delivery workers”, *The New York Review*, September 20, 2019, available at: <https://www.nybooks.com/daily/2019/09/20/what-the-apps-that-bring-food-to-your-door-mean-for-delivery-workers/?lp_txn_id=1253341>. [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. Andy Newman “My frantic life as a cab-dodging, tip-chasing food app deliveryman”, *New York Times*, July 21, 2019, available at: <https://www.nytimes.com/2019/07/21/nyregion/doordash-ubereats-food-app-delivery-bike.html>. [↑](#footnote-ref-11)
11. Willa Glickman “What the apps that bring food to your door mean for delivery workers”, *The New York Review*, September 20, 2019, available at: <https://www.nybooks.com/daily/2019/09/20/what-the-apps-that-bring-food-to-your-door-mean-for-delivery-workers/?lp_txn_id=1253341>. [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. Niels van Doorn as quoted by Willa Glickman “What the apps that bring food to your door mean for delivery workers”, *The New York Review*, September 20, 2019, available at: <https://www.nybooks.com/daily/2019/09/20/what-the-apps-that-bring-food-to-your-door-mean-for-delivery-workers/?lp_txn_id=1253341>. [↑](#footnote-ref-14)
14. Levi Sumagaysay “The pandemic has more than doubled food-delivery apps’ business. Now what?”, *MarketWatch*, November 27, 2020, available at: <https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>. [↑](#footnote-ref-15)
15. Wilfred Chan “Food delivery workers are coronavirus first responders — here's how you can repay us”, *NBC News*, March 22, 2020, available at: <https://www.nbcnews.com/think/opinion/food-delivery-workers-are-coronavirus-first-responders-here-s-how-ncna1164946>. [↑](#footnote-ref-16)
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