

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS AND
BUSINESS LICENSING

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HELD AT: COMMITTEE ROOM - CITY HALL

B E F O R E: CHAIR DIANA AYALA

COUNCIL MEMBERS: Diana Ayala
Margaret Chin
Ben Kallos
Peter Koo
Karen Koslowitz
Brad Lander
Carlos Menchaca
Justin Brannan
Kalman Yeger
Francisco Moya

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

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2 CHAIR DIANA AYALA: Good morning. My
3 name is Diana Ayala, and I am the Chair of the
4 Committee on Consumer Affairs and Business Licensing.
5 I would like to welcome you all to our vote today on
6 a package of Bills designed to enhanced worker
7 protections for two groups of essential workers,
8 delivery services and hotel workers. We will be
9 voting on seven Bills today that relate to third
10 party delivery platforms such as Grubhub, Door Dash,
11 and Uber Eats, and how they treat their contracted
12 delivery workers. The seven Bills include Intro
13 2288-A in relation to platforms providing insulated
14 bags for delivery workers and Intro 2289-A allowing
15 delivery workers to set distance and route
16 limitations for themselves; both of which are
17 sponsored by Council Member Brannan. We will also be
18 voting on Intro 2294-A from Council Member Lander
19 that would establish minimum payments per delivery.
20 Intro 2296-A from Council Member Menchaca would
21 establish standards for payment for delivery workers.
22 Intro 2298-A from Council Member Rivera that would
23 insure that these delivery workers have access to
24 toilet facilities, and Intro 1846-A from Council
25 Member Chin which would require the platforms to

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2 disclose information about how gratuities are
3 provided to their delivery workers. The final
4 preconsidered Bill is a clean up Bill that addresses
5 issues in some of the previous ones and is sponsored
6 by Council Member Brannan. Throughout the pandemic,
7 food delivery workers have been on the frontlines
8 when lock down orders and indoor dining restrictions
9 were put in place, it was the delivery workers that
10 helped keep restaurants open, and New Yorkers fed.
11 Politicians and the public recognize them as
12 essential workers and heaped much deserved praise on
13 them. However, beyond the rhetoric, these delivery
14 workers have had little support. Most of the city's
15 delivery workers are immigrants, and many are
16 undocumented. This means that many missed out on
17 stimulus checks and other forms of government
18 assistance during the peak of the pandemic. They
19 struggled to get PPE, and during the curfew, some of
20 them found themselves as target of police
21 enforcement, despite being recognized as essential
22 workers. Just a few weeks ago, delivery workers were
23 delivering food through flooded roadways during
24 Hurricane Ida. As independent contractors, delivery
25 workers are not always guaranteed protection under

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all of the city's vast worker protection laws. Similarly, some of the conditions that my third-party delivery platforms force these workers to rush around the city delivering orders in unrealistic timeframes just to maintain good customer ratings, but for very minimal pay. The package of Bills we are voting on today aims to rectify some of the concerns raised by delivery workers. No longer will delivery workers have to worry about bathroom breaks on the job, as food service establishments will be required to provide delivery workers access to toilet facilities when they are picking up orders. Four of these Bills will also directly improve the financial security of delivery workers. There will no longer be ambiguity as to how much delivery workers will get paid per trip, as the platforms will be required to establish minimum per trip payments for workers. There will also be no ambiguity for consumers on where their tips are going, rather or not their tips are going to delivery workers as a platform must disclose how much of each gratuity goes to the worker who delivered the order. How gratuities are distributed to delivery workers and how much of each gratuity is used to compose each delivery worker's base wage. The

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2 platform will be required to provide insulated bags
3 for workers which will cut down on the cost required
4 to become a food delivery worker. The platform will
5 also be prohibited from charging workers any fees to
6 receive payment, require that they be an option for
7 payment that does not require a bank account, and
8 require that payments be made at least once a week.
9 Finally, food delivery workers will be able to set
10 their own distance and route limitations so that they
11 can control how far they travel while working and
12 they can avoid dangerous routes and unrealistic
13 delivery timeframes. The Bill that we will be voting
14 on today is Intro 2397-A which would require
15 severance pay for hotel service employees in the
16 event of a hotel closure or a mass layoff. The hotel
17 industry was hit hard by the pandemic and the hotel
18 workers are in a precarious state. While hotel
19 owners may look to sell their hotels to recoup their
20 losses, this Bill will ensure that hotel workers
21 receive the severance that they deserve and not be
22 left in the lurch if the hotel closes. I want to
23 extend special thanks yous to all of the Bill's
24 sponsors for their hard work on these Bills,
25 (inaudible) and the Worker's Justice Project for

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2 Fighting for these Bills, and to the essential
3 delivery workers who kept the city alive and vibrant
4 during its most difficult months. I am confident
5 that these Bills would improve the lives of all food
6 delivery workers and provide them the labor rights
7 that they deserve. I will now turn it over to
8 Council Member Brannan to give a statement on his
9 Bill.

10 COUNCIL MEMBER JUSTIN BRANNAN: Thank
11 you, Chair Ayala. This is a very big day that
12 started about a year ago thanks to some intrepid
13 reporters from the city who really uncovered what
14 goes on with these largely immigrant, undocumented
15 workforce who kept us fed during the pandemic, and
16 these Bills really are an attempt to humanize the
17 people who are doing the work in an increasingly
18 digital and isolated world, and remembering that
19 there are human beings behind these apps who cook the
20 food, make the food or deliver the food, so this is a
21 first step in delivering some dignity and respect to
22 these workers who kept small businesses afloat during
23 the darkest days of the pandemic and who we rely on,
24 and in an indispensable, but completely unregulated
25 industry. So, Chair, I appreciate you prioritizing

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2 these Bills and getting them done, and this is a
3 great day, thank you.

4 CHAIR DIANA AYALA: Thank you, Council
5 Member Brannan. I now turn it over to Council Member
6 Moya to also make an opening.

7 COUNCIL MEMBER FRANCISCO MOYA: Thank
8 you, Madame Chair, thank you for the opportunity
9 here. As we all know how challenging this pandemic
10 and our path to recovery has been, it's been even
11 more challenging for workers in the hospitality
12 industry who are part of the hotel workforce. These
13 workers have been the hardest hit by COVID. They
14 represent our immigrant, Latino, Asian, and black
15 communities. So, we can have a true economic
16 recovery if we don't protect these worker's
17 livelihoods. This Bill, Intro 2397 creates an
18 opportunity to put thousands back to work and provide
19 a much-needed economic lifeline to those struggling
20 to make ends meet. It also creates an opportunity to
21 incentivize the revitalization of New York City's
22 hotel industry. These workers are not only the
23 backbone of New York's tourism economy, they are
24 ambassadors to our great city. We cannot leave them
25 and their families behind, so, I thank you for

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2 joining me in voting to pass Intro 2397. We have an
3 opportunity to protect workers, their families, and
4 mobilize our local economy. Thank you, Madame Chair.

5 CHAIR DIANA AYALA: Thank you, council
6 member. I would like to recognize Council Member
7 Yeger.

8 COUNCIL MEMBER KALMAN YEGER: Good
9 morning. Thank you very much, Madame Chair. I'll
10 speak very briefly, or as briefly as I can. We
11 frequently find ourselves here in the council
12 inserting ourselves into the private operations of
13 business and frequently, above and beyond what we are
14 allowed to do. So, for example, we are instituting a
15 minimum wage scheme. We are not authorized by law to
16 do that. That state of New York does that. We are,
17 what we call, pre-empted. We are inserting ourselves
18 into contracts already established and the insertion
19 of government interference with the existing
20 contracts is a violation of the constitution article
21 1, section 10, something I speak frequently about in
22 this council and we're doing it again, so I'm not
23 going to vote for Bills that do that. With respect
24 to Introduction 2289, I will side with the NAACP
25 which is concerned about the redlining of

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2 neighborhoods. If we create a scheme in statute that
3 enables deliver workers to say I'm not going to go to
4 this neighborhood, I'm not going to go to that
5 neighborhood, we will, I believe, very quickly find
6 neighborhoods shut out from deliveries, and when that
7 happens, we will find ourselves back here in a new
8 council screaming about the redlining of
9 neighborhoods, neighborhoods that are not able to get
10 service. So, the NAACP, having reached out to all of
11 us and told us about their concerns, I'm going to
12 side with them on this topic, and finally, with
13 respect to Introduction 2397, I believe in calling
14 things what they are, not withstanding what we choose
15 to call them. This is not a severance Bill. This is
16 an unemployment Bill, it's an unemployment benefits
17 Bill, and that's okay if we want to provide an
18 unemployment benefit, as long as we pay for it, but
19 we're not. We're shifting the cost for something
20 that we choose to do to other people. How do I know?
21 Well, we have all of these fancy fiscal impact
22 statements and not a single one of them say that
23 there will be a single dollar of expenditure to the
24 city, I suppose, beyond the enormous amount of paper
25 that we've been presented with this morning. So, no

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2 cost to the tax payers, cost to industry for
3 something that we choose is the right thing to do.
4 This Bill is retroactive to over a year ago, and if
5 we truly believe that that's something that's
6 necessary and that's something that's wise, we should
7 pay for it, but what we're going to do is send a bill
8 to businesses for the last year and a half for a
9 program or a plan that they were not anticipating.
10 Hotels weren't making money while they were closed.
11 Why do we think that we can now turn around and send
12 them a bill? Now, if it's an unemployment insurance
13 or unemployment benefit, as I believe it is, we are
14 again pre-empted from doing that. We can't create an
15 unemployment package. The state of New York does
16 that. We are pre-empted by the state labor law. So,
17 I will vote no on that as well, and with that, I
18 thank you very much, Madame for your time, and I
19 appreciate it. Thank you very much.

20 CHAIR DIANA AYALA: Thank you, council
21 member. I now ask the clerk to call the roll.

22 LEGISLATIVE CLERK WILLIAM MARTIN: Good
23 morning, William Martin, Committee Clerk, roll call
24 vote, Committee on Consumer Affairs and Business
25 Licensing. All items are coupled. Chair Ayala.

COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING

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CHAIR DIANA AYALA: I vote I.

LEGISLATIVE CLERK WILLIAM MARTIN:

Koslowitz.

COUNCIL MEMBER KAREN KOSLOWITZ: I vote

I.

LEGISLATIVE CLERK WILLIAM MARTIN: Chin.

COUNCIL MEMBER MARGARET CHIN: Permission

to say a few words?

CHAIR DIANA AYALA: Permission granted.

COUNCIL MEMBER MARGARET CHIN: Yeah, I'm

really proud to be part of this package of Bills that

will really help out and support our hardworking

delivery workers and the hotel workers, so I vote I

on all. Thank you.

LEGISLATIVE CLERK WILLIAM MARTIN:

Kallos.

COUNCIL MEMBER BEN KALLOS: I on all.

LEGISLATIVE CLERK WILLIAM MARTIN: Koo.

COUNCIL MEMBER PETER KOO: I on all.

LEGISLATIVE CLERK WILLIAM MARTIN:

Lander.

COUNCIL MEMBER BRAD LANDER: Request

permission to explain my vote?

CHAIR DIANA AYALA: Go ahead.

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COUNCIL MEMBER BRAD LANDER: Thank you very much, Chair. I'm also proud to be one of the lead sponsors on the package of delivery worker Bills today, Intro 2294 which will establish minimum per trip payment requirements to guarantee that our delivery workers can earn the equivalent of that minimum wage, and I want to give big thanks to the other sponsors to Council Members Brannan, Menchaca, and Rivera, and to you as well as Chair, but especially to Worker's Justice Project for their extraordinary organizing of these delivery workers. It should not have taken us a pandemic, a hurricane and flooding to recognize the basic humanity of a set of worker in New York City with some of the hardest, most dangerous jobs, struggling to get by, and the fact that before the pandemic, that before the flooding, we allowed a set of platform corporation, multi-billion dollar transnational corporations to take what's obviously work, these are folks who go to work every day and work hard to feed their families and restructure it as though they are like freelance, independent contractors, and therefore swept them, be able to pay them less than a minimum wage, not provide them any benefits, not provide them any

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2 working conditions. That's a travesty for the
3 country, and that will need to be fixed ultimately at
4 the federal level or the state level. They, in my
5 opinion, are workers and should be categorized as
6 workers and we should close at the federal or the
7 state level the loophole in law that allow them to be
8 sweating. The fact though, that that has not taken
9 place does put it on this city where we have relied
10 so heavily on these workers to do everything that we
11 legally and possibly can. I won't speak to the other
12 Bills, but 2294, which establish or authorizes and
13 requires the Department of Consumer and Worker
14 Protection to do a study and then promulgate rules
15 establishing minimum per trip payments builds on the
16 work of this council did groundbreaking work for Uber
17 and Lyft drivers to do the same thing. Several years
18 ago, we authorized and required the taxi and
19 limousine commission to do something comparable.
20 It's been tested in court, lift, sued to block it.
21 It survived court challenge, and as a result, tens of
22 thousands of Uber and Lyft drivers now earn payments;
23 they are still treated as independent contractors,
24 but the payments they earn are set to make sure if we
25 believe everybody ought to take home \$15 an hour for

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2 their work in New York City, that after their taxes
3 as independent contractors, that after their
4 expenses, they will do so. It is structure that is
5 not only legal, but has been tested in court, and
6 it's about time we go around to applying it to the
7 thousands of delivery workers that have kept us fed
8 during this pandemic, through rain, and hurricane,
9 and sleet, and dark of night. It is important in
10 those instances to tip your delivery workers well,
11 and this will help, you know, that they're getting
12 their tips, but it is critical that we make sure that
13 they are paid enough to live on in the city, and I'm
14 honored to be part of the package. I want to thank
15 everybody who is part of it, and especially those
16 workers for their organizing. I vote I on all.

17 LEGISLATIVE CLERK WILLIAM MARTIN:

18 Menchacha.

19 COUNCIL MEMBER CARLOS MENCHACA:

20 Permission to explain my vote.

21 CHAIR DIANA AYALA: Permission granted.

22 COUNCIL MEMBER CARLOS MENCHACA: Thank
23 you, Chair and thank you colleagues and the committee
24 and especially those who have brought together
25 legislation to help our workers either at hotel or

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2 the deliveristas. You know, I'm the proud sponsor of
3 2296 and this Bill is something that came to me
4 through the voices of the workers who came to me in
5 Sunset Park after a rally that parents were putting
6 together against the DOE's inability to communicate
7 with them in different languages, and so they here
8 they were, workers who I had known for a long time,
9 delivery workers that were once day laborers and when
10 construction stopped on all sites, they moved into
11 delivery worker space. They were already trained and
12 organized in the Day Labor movement that we've been
13 fighting for, and this council has been supporting
14 day laborers, but they brought that energy into this
15 work around delivery workers, and they said to me,
16 "They're charging us for our paychecks", and I
17 thought, imagine if we were charged for our own
18 paychecks. We have to pay a fee to get paid. That's
19 what was happening with the delivery workers, and
20 they were not getting paid on time for different
21 reason, and so we said let's put some legislation
22 together. Quickly, we found out that so many of
23 those conversations were happening with members, with
24 Rivera, with Lander, with Brannon, and myself, and we
25 put together this package that is now before this

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incredible committee and its Chair, and that only took a year to do. That is beautiful in so many different ways that this labor movement that started with immigrant voices. These are people who cannot vote in our local, municipal elections right now. They put power together, and they made this happen. That is the power of what's happening today, and with these Bills, justice will be restored. You've all heard and will continue to hear how important these workers are, but now we're putting action and law in the aim for protecting these workers. This is going to send a ripple across the country as other municipalities are going to look to figure out how to regulate, and it's just a really proud moment for this committee to really be offering that as a way through this historic moment. So, I just want to say thank you again for everyone whose supporting and for those who are signing on, thank you so much, and I vote I on all.

LEGISLATIVE CLERK WILLIAM MARTIN:

Brannan.

COUNCIL MEMBER JUSTIN BRANNAN: I on all.

LEGISLATIVE CLERK WILLIAM MARTIN: Yeger.

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COUNCIL MEMBER KALMAN YEGER: May I be excused to explain my vote?

CHAIR DIANA AYALA: You may.

COUNCIL MEMBER KALMAN YEGER: Thank you very much. I agree with Council Member Menchaca, and I am proud to co-sponsor Intro 2296 with him. It's the height of unfairness for an employer to cause an employee to have a deduction to their paycheck, not authorized by law in order to receive their pay that they've earned, and I join him in supporting this Bill. I vote I on 2296. I agree with Council Member Rivera on basic human fairness. It would seem to me that it is impossible to fathom that we would deny somebody the right to use the restroom, rather its an employee, rather it's a stranger in a restaurant. It just doesn't make any sense to me. So, I vote on 2298, and I would like to thank my neighborhood, gentleman, Council Member Lander for helping me make the case clear, and the record clear, reclassification of workers is a prevue of state law. We do not have the legal authority to do that, and as such, we are pre-empted, and anything that we do that serves to reclassify independent contractors is, rather we think its right or not, is unlawful, and so

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I vote no on the remainder of the Bills. Thank you very much.

LEGISLATIVE CLERK WILLIAM MARTIN: Okay, by a vote of nine in the affirmative, zero in the negative, and no abstentions, we have Introductions 2296-A and 2298-A adopted by the committee, and by a vote of eight in the affirmative, one in the negative, and no abstentions, Introductions 1846-A, 2288-A, 2289-A, 2294-A, 2397-A, and preconsidered Introduction were also adopted, again, but that's by a vote of eight in the affirmative, one in the negative, and no abstentions.

CHAIR DIANA AYALA: And with that, we're adjourned.

C E R T I F I C A T E

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



Date October 17, 2021