Legislation Details (With Text)

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Title: A Local Law to amend the administrative code of the city of New York, in relation to allowing a food service establishment surcharge, and to repeal local law number 100 for the year 2020, relating to a COVID-19 recovery charge.

Sponsors:

Indexes: Agency Rule-making Required

Attachments: 1. Summary of Int. No. 2163, 2. Int. No. 2163, 3. November 19, 2020 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 11-19-20, 5. Minutes of the Stated Meeting - November 19, 2020, 6. Committee Report 6/8/21, 7. Hearing Testimony 6/8/21, 8. Hearing Transcript 6/8/21

Date	Ver.	Action By	Action	Result
11/19/2020	*	City Council	Introduced by Council	
11/19/2020	*	City Council	Referred to Comm by Council	
6/8/2021	*	Committee on Consumer Affairs and Business Licensing	Hearing Held by Committee	
6/8/2021	*	Committee on Consumer Affairs and Business Licensing	Laid Over by Committee	
12/31/2021	*	City Council	Filed (End of Session)	

Int. No. 2163

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

A Local Law to amend the administrative code of the city of New York, in relation to allowing a food service establishment surcharge, and to repeal local law number 100 for the year 2020, relating to a COVID-19 recovery charge.

Be it enacted by the Council as follows:

Section 1. Local law number 100 for the year 2020 is REPEALED.

§ 2. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 24 to read as follows:

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SUBCHAPTER 24

FOOD SERVICE ESTABLISHMENT SURCHARGES

§ 20-855 Definitions. For purposes of this subchapter, the following terms have the following meanings:

Food service establishment. The term "food service establishment" has the same meaning as set forth in subdivision (s) of section 81.03 of the New York city health code, except that such term does not include pushcarts, stands, vehicles or a food service establishment that is part of a chain with 15 or more locations nationally doing business under the same name and offering for sale substantially the same menu items.

Stated price. The term "stated price" means the amount that a consumer owes for an individual listed item. The term "stated price" does not include any additional charge that was not included in the pricing of an individual listed item.

Surcharge. The term "surcharge" means a charge imposed in addition to the stated price of individual listed items. The term "surcharge" does not include tax, gratuity, tip or a charge for the administration of a banquet, special function or package deal pursuant to section 146-2.19 of title 12 of the New York codes, rules and regulations.

Tipped worker. The term "tipped worker" means a service employee or food service worker, as such terms are defined in sections 146-3.3 and 146-3.4 of title 12 of the New York codes, rules and regulations, respectively.

§ 20-856 Food service establishment surcharge. a. A food service establishment may impose a surcharge of no more than 15 percent of a consumer's total bill, to be known as the "Food Service Establishment Surcharge."

b. The food service establishment surcharge shall be imposed for on-premises dining only. Such surcharge shall be imposed for indoor or outdoor dining but shall not be imposed for takeout or delivery orders.

c. A food service establishment shall not impose the food service establishment surcharge unless each tipped worker employed at such food service establishment is paid an hourly cash wage that is not less than the

city's minimum wage in effect pursuant to paragraph (a) of subdivision 1 of section 652 of the labor law. Tips received by tipped workers employed at a food service establishment that imposes the food service establishment surcharge pursuant to this subchapter shall not be credited towards the hourly cash wage.

d. A food service establishment shall not impose the food service establishment surcharge in addition to a charge for the administration of a banquet, special function or package deal pursuant to section 146-2.19 of title 12 of the New York codes, rules and regulations.

§ 20-857 Disclosure. a. A food service establishment that imposes the food service establishment surcharge shall conspicuously disclose the amount of such surcharge to a prospective consumer before any item is ordered by placing it at the bottom of each menu page supplied to the consumer. If no menus are used, the disclosure shall be placed wherever food and beverage choices are listed. The disclosure must be:

1. Written;

2. Explicit that the additional charge is a surcharge and not a gratuity;

3. Clear and conspicuous;

4. On each page of any document, whether in paper or electronic format, that lists prices for the consumer, including but not limited to, any paper or electronic menu;

5. In plain English, or in the same language as the rest of the menu, if applicable; and

6. In a font size similar to surrounding text.

b. A consumer's final bill and receipt, if a receipt is provided, shall disclose the food service establishment surcharge and the total dollar amount attributable to such surcharge.

c. A food service establishment shall not give the food service establishment surcharge any other name, and shall reference such charge as the "Food Service Establishment Surcharge" on all disclosures required by this section, except that such charge may be referred to as the "FSE Surcharge" on any final consumer bill or receipt.

§ 20-858 Rules. The department shall promulgate such rules as are necessary to carry out the provisions

of this subchapter, including but not limited to, rules related to the form and manner of disclosures related to the food service establishment surcharge.

§ 20-859 Enforcement. Any food service establishment that violates any provision of this subchapter or any rule promulgated pursuant to this subchapter is subject to a civil penalty of not less than $50 nor more than $350 for each violation. A proceeding to recover any civil penalty authorized pursuant to this subchapter is returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

§ 3. This local law takes effect 120 days after it becomes law, except that the commissioner of consumer and worker protection shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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