

Testimony of the New York City Hospitality Alliance Before the Committee on Small Business

June 8th, 2021

My name is Andrew Rigie, and I am Executive Director of the New York City Hospitality Alliance (“The Alliance”), a not-for-profit trade association representing restaurants and nightlife establishments throughout the five boroughs.

The following is our testimony on:

- [Int. 2311](#), in relation to data on orders placed through third-party food delivery services.
- [Int. 2298](#), in relation to requiring food service establishments to provide toilet facility access to food delivery workers.
- [Int. 2163](#), 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.

[Int. 2311](#): We strongly support this legislation requiring third-party delivery companies to provide restaurants with the data of customers who place food orders from their business through such platforms. Data includes: customer name, telephone number, e-mail address, delivery address of the online order, and the contents of the online order. Restaurants deserve the legal right to have access to their own customer data that their customers provide when placing an order.

This legislation is so important because it removes a major barrier certain third-party delivery companies place between restaurants and their customers. By giving restaurants access to their own customer data, it enables them to directly manage their relationships with their customers, offer them deals, market to them, and more. It’s good for restaurants and for consumers.

When third-party delivery companies prevent restaurants from having access to their own customer data, it makes small businesses reliant, and at the mercy of mega-sized delivery companies with their high fees and sometimes unsavory business practices. Restaurants feel unable to leave the delivery platforms because then they will lose access to their own customers, and then the third-party delivery companies will market competitor restaurants to their customers using the data.

This is groundbreaking legislation that the City of New York must lead on to empower our local restaurants. We only ask that it be amended to also require third-party reservation platforms to also provide restaurants with their customer data to address a similar power dynamic and create a fairer and more equitable marketplace.

We also urge the City Council, while addressing matters related to third-party delivery, to enact the critically important permanent cap on third-party delivery fees because the temporary cap will expire after the pandemic.

[Int. 2298](#): First, when restaurants were shut down due to Covid-19 in March of 2020 and were limited to delivery and takeout only, people working delivery for third-party companies became even more essential to support restaurants and keep our city’s food supply chain going.

Unfortunately, New York City's failure to create a network of public restrooms means that said workers – and the public at large – must rely on restaurants and other local businesses to use their facilities.

Based on snap poll data we collected, the vast majority of restaurant respondents from a couple hundred establishments said they allow third-party delivery workers to use their restrooms (*and would support a law requiring such a policy*). However, we've heard from delivery workers and their representatives that some establishments prohibit them from using their toilet facility. So, while we have concerns about the precedent established by the City Council introducing legislation creating a law requiring that restaurants provide such service to independent contractors of third-party companies, we believe that providing toilet facility access to third-party food delivery workers who have been so essential is a common courtesy. *When you have to go, you have to go!* Therefore, we support Int. 2298, subject to these two amendments:

1. All first-time violators must be provided with a warning to food service establishments before a violation and fine is issued.
2. Food service establishments must be permitted to develop their own policies for non-employee, third-party delivery workers to use their restrooms, such as set the number of workers who may wait inside the business or at the restroom door at one time, require the large, insulated delivery bags to be left in a secure place, etc.

Int. 2163: We are concerned that the City Council has introduced legislation to repeal the emergency COVID-19 recovery charge enacted to help restaurants during the crisis, which is scheduled to expire when the crisis is over, while simultaneously seeking to implement a law they claim restaurants could utilize, without addressing restaurant industry concerns about its development and feasibility.

Thus, the quid pro quo required in this bill, a surcharge in exchange for overruling the State tip wage laws (*which, we question the City's legal authority to do*) will not be widely utilized because as proposed it creates unrealistic operational and financial challenges for struggling neighborhood restaurants. The tradeoff in this proposal – a 15% surcharge for not taking the *tip credit*, which equals a 50% increase in labor costs for *food service workers*, plus additional expenses - doesn't add up for most restaurants that want to use a surcharge business model. The math just does not work for us.

However, there are many reasons to allow restaurants to apply a clearly disclosed surcharge in the amount that meets their business needs without referencing the *tip credit*, as is permitted around the rest of the state and country in lieu of increasing menu prices. For example, the surcharge can help offset vendor and credit cards fees, support increased wages, benefits, and more. But for the business model to work restaurants generally need to use a 3-8% surcharge and utilize the *tip credit*, or an 18-25% surcharge in which case they would not take the *tip credit*. In all scenarios, a restaurant must of course comply with all disclosure, wage and tax laws and requirements. We urge the City Council to amend this legislation to reflect these operational needs or withdraw it.

Thank you for your consideration of our comments.

Respectfully submitted,

Andrew Rigie
Executive Director
NYC Hospitality Alliance