Testimony of the New York City Hospitality Alliance on:

> **Int 888** - In relation to establishing a retirement savings program for private-sector employees.
>
> **Int 901** - In relation to establishing a retirement savings board to oversee the city's retirement savings program for private-sector employees.

The New York City Hospitality Alliance is a not-for-profit association representing restaurant and nightlife establishments in the five boroughs that would be impacted by establishing a retirement savings program for private-sector employees.

Retirement savings accounts are vital for New Yorkers and we commend the desire of City Council members to expand their availability to more working New Yorkers. While we recognize that the proposed legislation does not mandate direct funding of these accounts by employers when so many have financial constraints, we do have concerns about adding <u>another</u> administrative burden to their plate, which collectively pose significant challenges and liabilities.

As City Council deliberates this legislation, we urge you to consider the following points that have been developed based on expert feedback we've received and the experiences of our restaurant members who have or offer retirement programs to their employees:

- As drafted, this legislation may violate Employee Retirement Income Security Act (**ERISA**) because ERISA preempts all state and local governments from designing and operating retirement savings programs. In 2016, the Obama Administration issued a regulation that would have created a safe harbor to allow state and local governments from creating retirement savings programs. In 2018, under the Congressional Review Act, Congress explicitly rejected and blocked this safe harbor provision, which only reinforces the fact that under the current state of the law, the proposal for the City to design and create retirement savings plans is preempted by ERISA.

- In the restaurant and nightlife industry, a large segment of workers earn significant income from tips, which they leave with after their shift. This means that taxes from their tip income is then taken out of their weekly base paychecks. This often results in paychecks of a negative amount, or an amount too small for retirement savings to be debited from.

- Some businesses may employ undocumented workers and therefore would be unable to provide SS or TIN numbers usually required to establish retirement savings accounts. This may also create complications if a plan is created for an individual under an incorrect identification number.

- The feedback we've received from some restaurants is that even when they offer and encourage hourly employees (which is the vast majority of their employees) to take advantage of retirement savings accounts, they rarely do, even if there is an employer match. Thus, anecdotal evidence suggests that this proposed mandate would burden employers with more administrative and paperwork requirements, while providing little adoption by their employee community.

Again, we laud the intent of this proposed legislation, but hope you consider its practicality and the issues we've raised. As you know, there are many retirement programs available to the public via private entities, or ones that could be through the City administered program contemplated by this proposal, for which the employer need not be directly involved. Because of the importance of retirement programs and the issues we've raised, perhaps employers only provide a notice to employees upon hire that outlines the programs they sponsor and/or information about the availability of retirement plans available to them in the market, in a manner that doesn't violate ERISA. Alternatively, the City could promote small business 401(k), multi-employer plans, or promote Roth IRAs for employees. This approach would help accomplish the goal of getting more New Yorkers to think about and hopefully save for retirement, while mitigating issues posed by the legislation as currently drafted.

We are happy to discuss this matter further and appreciate your consideration of our comments.

Respectfully,

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