Committee on Small Business

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

**Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON SMALL BUSINESS**

**Hon. Mark Gjonaj, Chair**

##### August 27, 2020

**PRECONSIDERED INT. No. 2054-A:** By Council Members Moya and Gjonaj

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services while an emergency has been declared and food service establishments are prohibited from operating at the maximum indoor occupancy, and for 90 days thereafter

**ADMINISTRATIVE CODE:** REPEALS the definition of “declared emergency” in § 20-845 and amends § 20-846 (b) and (c)

**PRECONSIDERED INT. No. 2043-A:** By Council Member Gjonaj

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services while a state of emergency has been declared and food service establishments are prohibited from operating at maximum indoor occupancy and for 90 days thereafter

**ADMINISTRATIVE CODE:** Amends § 20-847 (b)

**INT. No. 1958-A:** By Council Members Richards, Lander, Kallos, Moya, Chin, Ampry-Samuel, Gjonaj, Ayala and Vallone

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to ­­­­­­­­­­­­reporting on financial assistance received by small businesses impacted by COVID-19

**INT. No. 1470-B:** By Council Members Levine, Rivera, Powers, Rosenthal, Ayala, Kallos, Vallone and Chin

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to legal services for small business tenants

**ADMINISTRATIVE CODE:** Renumbers § 22-1003, as added by Local Law 156 of 2019, as § 22-1004; adds § 22-1006

1. **INTRODUCTION**

On August 27, 2020, the Committee on Small Business, chaired by Council Member Mark Gjonaj, held a remote hearing to vote on four pieces of legislation: (1) Int. No. 1958-A, by Council Member Richards, a Local Law in relation to reporting on financial assistance received by small businesses impacted by COVID-19; (2) Preconsidered Int. No 2054-A, by Council Members Moya and Gjonaj, a Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services while an emergency has been declared and food service establishments are prohibited from operating at the maximum indoor occupancy, and for 90 days thereafter; (3) Preconsidered Int. No. 2043-A, by Council Member Gjonaj, a Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services while a state of emergency has been declared and food service establishments are prohibited from operating at maximum indoor occupancy and for 90 days thereafter; and (4) Int. No. 1470-B, by Council Member Levine, a Local Law to amend the administrative code of the City of New York, in relation to legal services for small business tenants.

The Committee previously heard testimony on the two Preconsidered bills and Int. No. 1958 during a hearing on August 13, 2020. The Committee heard testimony on Int. No. 1470 during a hearing on March 18, 2020. Those invited to testify at the hearing on August 13, 2020 included representatives of the Department of Small Business Services (SBS), the Office of Special Enforcement (OSE), third-party food delivery platforms, small business advocates, chambers of commerce, Business Improvement Districts (BIDs) and other community-based non-profit organizations.

At the vote on August 27, the Committee voted 5 in favor 0 opposed and 0 abstentions on the bills.

1. **BACKGROUND**

In late December 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization (WHO) declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern (PHEIC).[[1]](#footnote-1) As of August 21, 2020, COVID-19 has infected over 23 million people across 213 countries and territories, and has killed over 799,000 people.[[2]](#footnote-2) In the United States alone, there have been over 5.5 million infections and over 174,000 deaths.[[3]](#footnote-3) To date, New York has had over 427,000 infections and over 32,000 deaths, many of which took place in our City.[[4]](#footnote-4)

The progressive nature by which the virus spreads has caused governments across the globe to shutdown businesses, schools, religious and cultural institutions, and mandate various levels of social isolation. While this has seemingly helped to limit the spread of the virus, stay-at-home orders have had a catastrophic impact on economic markets, in particular small businesses that thrive from regular contact with their community and neighbors.

**1. The Impact on Restaurants Amid the COVID-19 Crisis**

 In New York, Governor Andrew Cuomo issued an executive order – New York State on PAUSE (PAUSE) – that closed all on-site, non-essential businesses, effective March 22, 2020, to help stop the spread of SARS-CoV-2.[[5]](#footnote-5) Restaurants and bars were permitted to operate statewide; however, they were only allowed to make sales through take-out and delivery.[[6]](#footnote-6)

As New Yorkers stayed home to stop the spread of the virus, consumer spending declined in the City. In late March 2020, consumer spending dropped 44 percent year-over-year, according to Mastercard.[[7]](#footnote-7) While restaurants were open for take-out and delivery, they experienced drastic revenue declines. According to an April 2020 report from the New York State Restaurant Association, sales declined 79 percent in the first ten days of April compared to the same time period in 2019, and New York State restaurants were expected to lose $3.6 billion in sales revenue in April alone.[[8]](#footnote-8) Just over half (51 percent) of all restaurants had been able to move their operations online, and unemployment rates in this sector skyrocketed, as 80 percent of restaurant workers lost their jobs.[[9]](#footnote-9)

The experiences of individual restaurant owners highlight the challenges the industry faces to remain stable throughout the pandemic. Business for all of June at the Nugget Spot, a restaurant on East 14th Street in Manhattan, equaled “one good Thursday” before the pandemic.[[10]](#footnote-10) Havana Central’s takeout and delivery business in Times Square equaled about three percent of its former revenue.[[11]](#footnote-11) Outdoor dining provided a small boost to the restaurant, as revenue is up to 10 percent of its pre-COVID total.[[12]](#footnote-12) According to Mark Fox, owner of The Ragtrader, a restaurant on 36th Street in the Garment District, 70 percent of his customer base were commuters on their way home from their jobs, 20 percent were tourists, and 10 percent those shopping at retail stores in the area.[[13]](#footnote-13) The timeline of when the City will be able to fully reopen and therefore prompt restaurants to profit from their traditional business models remains uncertain. According to Eater NY writer Tanay Warerkar, “This is definitely a life-altering situation for the restaurant industry in New York and I don’t think things will probably ever go back to the way they were, even though things may normalize to some extent.”[[14]](#footnote-14)

 Even as New York City advanced through Governor Cuomo’s phased re-openings, restaurants continued to struggle. As restaurants experienced drastic revenue declines, a majority of restaurant owners have been unable to pay their commercial rents. The Hospitality Alliance surveyed over 500 restaurants, bars, nightclubs, and event venues in NYC about their rent obligations in June. The resulting report found that approximately 80 percent of respondents did not pay their full rent in June, while over 70 percent of landlords did not waive rent payments for restaurants, bars and clubs.[[15]](#footnote-15) The Hospitality Alliance produced another nearly identical survey in July. It found that 83 percent of respondents did not pay their full July rent, up from 80 percent in June, and around 71 percent of landlords did not waive rent payments.[[16]](#footnote-16)

 As restaurants continue to face challenges paying their fixed monthly expenses without their pre-COVID revenues, many across the City have closed down. According to an August 2020 report by the City Comptroller, 187,000 of the 758,000 private sector jobs that have been lost in the City through June came from the food services industry.[[17]](#footnote-17) At least 2,800 small businesses closed permanently from March 1st through July 10th, including over 1,280 restaurants.[[18]](#footnote-18) These closures have affected restaurants of all sizes across the City, including Lucky Strike, a Soho “neighborhood institution” and the four-story McDonald’s flagship store in Times Square.[[19]](#footnote-19) Iconic City restaurants that have been in business in their respective neighborhoods for many years have closed permanently: Sarabeth’s on the Upper East Side (20 years), the Copacabana (80 years), kosher deli Jay and Lloyd’s (28 years), La Caridad 78 (52 years) and the Irish Cottage (60 years) are some examples.[[20]](#footnote-20) The outlook is similarly dire if mandatory social distancing measures on restaurants continue. One model suggests that, if the City’s accommodation and food services industry experiences “frequent, blunt lockdowns” in 2021, revenue would be 53 percent lower than the same time period in 2019. Even less severe restrictions would result in a 43% reduction in revenue for the industry as compared with 2019.[[21]](#footnote-21)

As restaurants have shut their doors, the livelihoods they generate for both the restaurant workers and business owners have disappeared. Partnership for New York City predicts that as many as a third of the 230,000 small businesses in NYC may never reopen.[[22]](#footnote-22) The unemployment rate in the City, at 20.4% as of June 2020,[[23]](#footnote-23) was over 16 percentage points higher than the previous June,[[24]](#footnote-24) and may continue to be high even after the pandemic subsides as thousands of restaurants might permanently close. A May 2020 report from the New York City Independent Budget Office projected that a total of 115,000 leisure and hospitality jobs would be lost by October 2020,[[25]](#footnote-25) and that even if distancing restrictions are relaxed, industries with “strong ties to tourism,” such as hospitality, would continue to lose jobs due to a decline in foreign tourists.[[26]](#footnote-26) The Partnership for New York City report classifies an estimated 679,000 accommodation and food service jobs as vulnerable to loss – the most of any sector in the city – 58% coming from small businesses that employ fewer than 100 employees.[[27]](#footnote-27) The closure of City businesses will leave households “struggling to feed their families and pay rent,” [[28]](#footnote-28) and the impact of job loss in the City may disproportionately fall on Black, Hispanic and Asian residents; one report estimates that they hold 40-50% of the total jobs at risk of loss due to the COVID-19 pandemic.[[29]](#footnote-29) The survival of the restaurant industry is essential to ensure the City can have a strong, equitable economic recovery from the financial collapse caused by the pandemic.

In addition to providing employment opportunities to New Yorkers, the restaurant industry generates tens of millions of dollars for the City through tax collection. In Fiscal Year 2019, the City gained over $21.9 million from general sales taxes at restaurants and other eating establishments.[[30]](#footnote-30) Twenty percent of the City’s revenue came from personal income tax, which may be significantly lower in future years than it was in FY19 due to the job losses caused by the closure of many City restaurants.[[31]](#footnote-31)

Restaurants also contribute immensely to the culture of the City. According to Hannah Goldfield, a food critic for The New Yorker, “Restaurants, and the people who work in and around them, are essential to the fabric and the functioning of New York, and of society.”[[32]](#footnote-32) NYC’s 27,000 restaurants span across the City’s boroughs and neighborhoods, delivering a variety of global cuisines that match the City’s diversity.

 Until restaurants can reopen to full-capacity indoor seating, they are unlikely to generate the revenue they produced pre-COVID, and therefore government involvement is necessary to help save the restaurant industry. The Partnership for New York City report identifies the accommodation and food services industries as “sectors that will require drastic intervention to survive.”[[33]](#footnote-33) The City’s Open Restaurants program provided a major boost to the restaurant industry. While around 9,700 restaurants are participating in the program, that represents well under half of total restaurants in the city.[[34]](#footnote-34) Many restaurants are unable to participate in the program, either due to the price of constructing outside seating areas, or because they are located in areas that prohibit adding outdoor tables, such as being near crosswalks or bus stops.[[35]](#footnote-35) Even with the city’s expansion of outdoor dining options, however, the number of seated diners at restaurants is down 88% compared to before the pandemic hit New York.[[36]](#footnote-36) During the week of August 14, restaurants were doing about 23 percent of last year’s volume in terms of people seated, according to data from a reservation company Resy, which many restaurants use for outdoor dining.[[37]](#footnote-37) As restaurants have been unable to drive revenue through traditional on-premise dining, many have and continue to rely upon delivery for income, therefore engaging in the ever-popular third party delivery platforms. Even for the minority of restaurants maintaining revenue through current outdoor dining programs, this income generation will likely cease once the weather becomes cooler, and if predictions of COVID worsening in the winter come true.[[38]](#footnote-38) Consumer spending and restaurant revenue may continue to plummet in the very near future.

 The Council took action to try and save the restaurant industry by passing Local Laws 51 and 52 on May 13, 2020. During the Council’s hearing on August 13, 2020, restaurant owners offered testimony highlighting how these local laws have helped their businesses. Evan Franca, the owner of a Brooklyn juice shop testified he was able to save $7,000 since the enactment of the bills. Another restaurant owner, George Constantinou, testified at the hearing that before the passage of the bills he was sending around $6,000 in fees to one of the third-party platforms, while that number had since reduced to $1,500 after the bills’ passage.

**2. Third-Party Delivery Platforms**

In contrast to restaurants, third-party platforms have experienced a surge in sales during the pandemic. Uber Technologies Inc.’s second-quarter earnings reflected a 103% jump in delivery revenue over the previous year, more than its revenue from ride-hailing for the first time ever.[[39]](#footnote-39) For the same quarter, Grubhub Inc.’s revenue rose 41% and its number of active diners were up 35%.[[40]](#footnote-40) The company’s daily average orders increased by 32% over last year and its gross sales (2.3 billion) rose by 59%.[[41]](#footnote-41) This growth is sustained after promising first quarter 2020 results, about which Grubhub’s CFO Adam Dewitt acknowledged, “COVID-19 has driven a significant uptick in new diners and orders from existing users as most restaurant dining rooms have been temporarily closed nationwide."[[42]](#footnote-42) In a letter to shareholders in July 2020, Grubhub executives wrote that they believed the growth would be long-term: “Given the strength we continue to see in the third quarter, we now believe the pandemic has been less of a temporary demand spike and more of a permanent catalyst putting our business on a higher, sustained trajectory.”[[43]](#footnote-43) One report asserts that, collectively, food delivery sales have doubled through the end of June 2020, as opposed to June of the previous year.[[44]](#footnote-44) A report by the Rewards Network found that 42% of restaurants had added delivery services since March, and 31% planned to continue them.[[45]](#footnote-45) Grubhub has added about 25,000 restaurant partners since May,[[46]](#footnote-46) and its average order size during the second quarter of 2020 increased by 20% versus last year.[[47]](#footnote-47) Similar to Grubhub’s figures, DoorDash’s average order grew to $36 in June, with gains experienced by the other food delivery platforms in May.[[48]](#footnote-48)

For many food delivery platforms, the COVID-19 outbreak has coincided with increased opportunities for growth and diversification. In June, Grubhub was acquired by Just Eat Takeaway in a $7.3 billion deal,[[49]](#footnote-49) and Uber recently bought Postmates for $2.65 billion, which the company claims will make it profitable in 2021.[[50]](#footnote-50) The companies have branched out with new services and high-profile restaurant partners. Uber began offering grocery delivery services this past July,[[51]](#footnote-51) and DoorDash has partnered with CVS to provide delivery of food, groceries and other products, including to the Bronx and Brooklyn.[[52]](#footnote-52) The platforms also gained access to large customer pools and wide advertising reach by partnering with restaurant chains such as Little Caesars Pizza, [[53]](#footnote-53), [[54]](#footnote-54) Buffalo Wild Wings, The Cheesecake Factory and Chipotle, many of which reported a substantial portion of their June sales coming from delivery platforms.[[55]](#footnote-55)

Local Laws 51 and 52, which went into effect in June 2020, prohibited telephone orders that did not result in an actual transaction during the call and limited the amount of fees per order that may be charged by the platforms, respectively. Other jurisdictions have taken similar measures to limit third-party platform fees. The State of New Jersey has limited commission fees to 10 or 20 percent depending on whether the order is delivered by a restaurant worker or a restaurant’s contractor;[[56]](#footnote-56) Philadelphia,[[57]](#footnote-57) Washington D.C.[[58]](#footnote-58) and Portland[[59]](#footnote-59) enacted laws limiting commission fees; and the mayors of Seattle[[60]](#footnote-60)and San Francisco[[61]](#footnote-61) issued emergency orders temporarily capping commission fees at 15 percent (Jersey City at 10 percent)[[62]](#footnote-62). Despite a limit of 10 percent for delivery in Portland, Postmates and Grubhub are reportedly not complying, charging restaurants as high as 30 percent per order.[[63]](#footnote-63) In response to Jersey City’s executive order, Uber Eats reportedly charged customers an additional three dollar fee,[[64]](#footnote-64) and in San Francisco, the company ceased delivery to one lower-income neighborhood.[[65]](#footnote-65)

**3. SBS Loan and Grant Programs**

On March 8, 2020, Mayor de Blasio announced that SBS would create two financial relief programs, the Employee Retention Grant Program and Small Business Continuity Loan Fund, to provide immediate financial relief to small businesses during the COVID-19 crisis.[[66]](#footnote-66) The programs were intended to serve as a stop-gap for businesses before the Federal Small Business Association released a broader federal relief program.[[67]](#footnote-67) To qualify for either the grant or loan program, businesses were required to provide documentation proving that over a two-month period in 2020 their revenues decreased by 25% due to COVID-19.[[68]](#footnote-68) Businesses with fewer than five employees were eligible for the Employee Retention Grant Program, which provided a grant covering up to 40% of a business's payroll for two months, with a maximum amount of $27,000.[[69]](#footnote-69) The Small Business Continuity Loan Fund provided a zero-interest loan to businesses with fewer than 100 employees for up to $75,000.[[70]](#footnote-70)

In total, SBS allocated $60 million for both programs.[[71]](#footnote-71) As of May, SBS had distributed $16.7 million to 293 businesses through the Small Business Continuity Loan Fund of the $20 million allocated to the program.[[72]](#footnote-72) SBS had distributed $23.4 million to 3,200 businesses through the Employee Retention Grant Program of the $40 million allocated to the program.[[73]](#footnote-73)

During the joint Committees on Small Business, and Consumer Affairs and Business Licensing hearing on April 29, 2020, then-SBS Commissioner Gregg Bishop broke down the amount of loans and grants the Administration distributed through the two relief programs. The Commissioner revealed that both programs disproportionately benefitted businesses in Manhattan.[[74]](#footnote-74) According to a July 2020 report from the City Comptroller, only 40 minority or women owned businesses (M/WBEs) applied for the Continuity Loan. Of the 40, only six were approved.[[75]](#footnote-75) Only 48 M/WBEs applied for the Employee Retention Grant Program. Of the 48, only 15 were approved.[[76]](#footnote-76) The Committee would like a further breakdown of the loan and grant programs to investigate what demographics benefitted most from the City’s relief efforts. The Committee is also interested in understanding why the Administration failed to distribute funds equitably.

**4. Commercial Lease Assistance Program**

In February of 2018, SBS created the Commercial Lease Assistance Program (CLA) to match small businesses with legal service providers that offer free pre-litigation services to small businesses experiencing lease-related issues.[[77]](#footnote-77) The program was created to specifically assist small business owners who would otherwise be unable to afford an attorney, as the program focused on providing legal resources to immigrant, minority, women or veteran owned businesses, businesses that are located in rezoned or high-poverty areas, and businesses that employ local low-income City residents.[[78]](#footnote-78) According to SBS’s testimony at the Committee on Small Business’ August 13th hearing, the Commercial Lease Assistance Program has helped over 800 businesses with lease-related issues since the program began, including over 200 businesses since the on-set of COVID-19.[[79]](#footnote-79)

To compensate for the multi-billion dollar deficit the City faced, however, the Administration cut the CLA from the City’s Fiscal Year 2021 budget.[[80]](#footnote-80) The CLA was cut when the need was highest for small businesses to have pro-bono legal services. Demand for the program’s services increased tenfold during the pandemic, according to participating legal service providers.[[81]](#footnote-81) During the Mayor’s press conference on August 11, 2020, he acknowledged the need for the program and announced that the Administration would renew it for $1.5 million. The Mayor emphasized the importance of providing “free legal support to help [small businesses] address issues with their landlords, to help them find a way through. This is an initiative that worked in the past, over 900 cases were resolved.”[[82]](#footnote-82)

1. **LEGISLATIVE ANALYSIS**

**Preconsidered Int. No. 2043-A, A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services while a state of emergency has been declared and food service establishments are prohibited from operating at maximum indoor occupancy and for 90 days thereafter**

This bill would amend the conditions in existing law under which third-party food delivery services are prohibited from charging restaurants for telephone orders that did not result in a transaction during the call. Under the existing law, Local Law 51 of 2020, such charges are prohibited only during states of emergency when on-premises dining is prohibited entirely, plus an additional 90 days thereafter. This bill would instead prohibit such charges during states of emergency when restaurants are restricted from operating at maximum indoor occupancy, plus an additional 90 days thereafter.

The bill would take effect immediately after becoming law.

**Preconsidered Int. No 2054-A, A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services while an emergency has been declared and food service establishments are prohibited from operating at the maximum indoor occupancy, and for 90 days thereafter**

This bill would amend an existing law limiting third-party food delivery service fees under certain circumstances. Under the existing law, Local Law 52 of 2020, third-party food delivery services are prohibited from charging restaurants more than 15 percent per order for delivery and more than five percent per order for all other fees during states of emergency when on-premises dining is prohibited entirely, plus an additional 90 days thereafter. This bill would instead limit such fees during states of emergency when restaurants are restricted from operating at maximum indoor occupancy, plus an additional 90 days thereafter. In addition, this bill would exempt from the five percent limit on non-delivery fees, any fees incurred by the third-party service for processing the customer transaction, for which the third-party service acts as a “pass-through” by charging such fees to the restaurant. Therefore, a third-party food delivery service would be required under the bill to limit their fees as follows: if providing a restaurant with a delivery service, the third-party service could charge the restaurant up to 15 percent for the provision of delivery services, five percent for any other fees (for example marketing or listing fees), and an additional percentage equal to processing fees incurred and passed on to the restaurant, as described above (for example, credit or debit card fees or other methods of payment customers use to place an order that involves a fee charged to a third-party delivery service). If a platform is not providing delivery services (for example the order is picked up by the customer or the restaurant uses its own delivery workers) the platform may only charge up to five percent for marketing or other fees, plus any such processing fees incurred, as described above.

As with the existing law, this bill would continue to apply to orders placed through a third-party delivery app, utilizing a third-party delivery service forwarding phone number, or any other order placed through or with the assistance of a third-party delivery service.

This bill would take effect immediately after becoming law.

**Int. No. 1470, A Local Law to amend the administrative code of the city of New York, in relation to legal services for small business tenants**

Subject to appropriation, this bill would require SBS to provide individualized legal assistance to small business tenants on commercial lease-related issues free of charge, through a designated organization. Small business tenants would be defined as those with incomes no higher than 500% of federal poverty guidelines, who meet size requirements established by the Small Business Administration and are not chain businesses. It would also empower SBS to provide legal representation in court for small business tenants facing eviction, lease termination or allegations that the businesses had breached their lease terms, at no cost to the small business tenant, through a designated organization. SBS would also be required to provide assistance to small businesses with regards to funding programs related to COVID-19, such as loans and grants, until 180 days after the Mayor’s declaration of a state of emergency expires.

Additionally, SBS would be required to report every two years on the outcomes of the programs established by the bill, including certain characteristics of the businesses served and a description of the types of legal matters addressed by the designated organizations who provided the programs.

This bill would take effect in 120 days, except that the requirement to provide assistance with COVID-19 funding programs would expire 180 days after the Mayor’s declaration of a state of emergency in Executive Order 98, issued on March 12, 2020, as extended, expires.

**Int. No. 1958, A Local Law in relation to reporting on financial assistance received by small businesses impacted by COVID-19**

This bill would require SBS to prepare a report detailing which businesses received a grant or loan from the New York City Employee Retention Program or New York City Small Business Continuity Loan Fund. For each business that received a grant or loan, the report would include the Council District, zip code, industry type including whether the recipient is a mobile business, and the amount of grant or loan received by the business. SBS would submit the report to the Mayor and Speaker of the City Council and make the information publicly available by posting the report on its website. This bill would take effect immediately, but would expire and be repealed once the required report is submitted.

Preconsidered Int. No. 2043-A

By Council Member Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to telephone order charges by third-party food delivery services while a state of emergency has been declared and food service establishments are prohibited from operating at maximum indoor occupancy and for 90 days thereafter

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 20-847 of the administrative code of the city of New York, as added by local law number 51 for the year 2020, is amended to read as follows:

b. The requirements of this section apply only during [a declared emergency] the period in which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy and for a period of 90 days [after the end of a declared emergency] thereafter.

§ 2. This local law takes effect immediately.

SJ

LS #15187

8/6/20 4:30 PM

Preconsidered Int. No. 2054-A

By Council Members Moya and Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services while an emergency has been declared and food service establishments are prohibited from operating at the maximum indoor occupancy, and for 90 days thereafter

..Body

Be it enacted by the Council as follows:

Section 1. The definition of “declared emergency” in section 20-845 of the administrative code of the city of New York, as added by local law number 52 for the year 2020, is REPEALED and subdivisions b and c of section 20-846, as added by local law number 52 for the year 2020, are amended to read as follows:

b. It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee [or fees] other than a delivery fee for the use of their service greater than 5% of the purchase price of each online order, provided that such cap shall not apply to a credit card fee that is charged to the third-party food delivery service and is charged in the same amount by the third-party food delivery service to such food service establishment. [Any fees or other charges from a third-party food delivery service to a food service establishment beyond such maximum 5% fee per order, and a delivery fee collected pursuant to subdivision a of this section, are unlawful.]

c. The requirements of this section apply only during [a declared emergency] the period in which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy and for a period of 90 days [after the end of a declared emergency] thereafter.

§ 2. This local law takes effect immediately.

SJ

LS #15591

8/19/20 9:40 AM

Proposed Int. No. 1470-B

By Council Members Levine, Rivera, Powers, Rosenthal, Ayala, Kallos, Vallone and Chin

..Title

A Local Law to amend the administrative code of the city of New York, in relation to legal services for small business tenants

..Body

Be it enacted by the Council as follows:

Section 1. Section 22-1003 of the administrative code of the city of New York, as added by local law number 156 for the year 2019, is renumbered section 22-1004.

§ 2. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1006 to read as follows:

§ 22-1006 Small business legal services. a. Definitions. For the purposes of this chapter, the following terms have the following meanings:

Covered legal matter. The term “covered legal matter” means a legal matter related to a commercial lease, including but not limited to drafting and negotiation of lease terms, terminating a lease, and addressing other lease-related issues.

Covered proceeding. The term “covered proceeding” means any proceeding in any court of competent jurisdiction against a covered small business tenant to:

(i) Evict such tenant, including a summary proceeding to seek possession for the non-payment of rent or a holdover; or

(ii) Terminate such tenancy; or

(iii) Establish a breach of the terms of such tenant’s commercial lease.

Covered small business tenant. The term “covered small business tenant” means a business that is:

(i) A lessee or sublessee in a commercial tenancy located in the city;

(ii) Small, in accordance with the size standards set forth in section 121.201 of title 13 of the code of federal regulations;

(iii) Not a franchisee, as such term is defined in section 681 of the general business law; and

(iv) Owned and operated by one or more persons, all of whom are income-eligible individuals.

Designated organization. The term “designated organization” means a person or entity licensed to provide legal services in New York and designated by the commissioner pursuant to this section, provided, however, that the commissioner may give preference to not-for-profit organizations when designating an organization pursuant to this section.

In-court legal representation. The term “in-court legal representation” means ongoing legal representation provided by a designated organization to a covered small business tenant in connection with a covered proceeding, and all legal advice, advocacy, and assistance associated with such representation. In-court legal representation includes, but is not limited to, the filing of a notice of appearance on behalf of the covered small business tenant in a covered proceeding.

Income-eligible individual. The term “income-eligible individual” means an individual whose annual gross household income is no more than 500 percent of the federal poverty guidelines.

Legal services. The term “legal services” means out-of-court legal assistance and in-court legal representation.

Out-of-court legal assistance. The term “out-of-court legal assistance” means the provision of individualized legal assistance or counseling regarding a covered legal matter provided by a designated organization to a covered small business tenant, but does not include any representation in a legal action or proceeding to enforce the terms of a lease or the filing of any papers or in-court appearance or representation by such designated organization.

b. Provision of legal services to covered small business tenants. 1. Subject to appropriation, the commissioner shall provide, at no cost to a covered small business tenant, out-of-court legal assistance and may provide, at no cost to a covered small business tenant, in-court legal representation.

2. Any legal services performed by a designated organization pursuant to this section shall not supplant, replace, or satisfy any obligations or responsibilities of such designated organization pursuant to any other program, agreement, or contract.

3. Nothing in this section or the administration or application thereof shall be construed to create a private right of action on the part of any person or entity against the city or the department, or any official or employee thereof.

c. Reporting. On or before October 1, 2022, and on or before October 1 every two years thereafter, the commissioner shall submit to the mayor and the speaker of the council a report on the operation of the provision of legal services provided pursuant to subdivision b of this section during the previous two fiscal years. Such report shall include, but need not be limited to:

1. The number of small businesses that received such legal services in the previous fiscal year, disaggregated by the following characteristics of such businesses:

(a) Borough and postal code;

(b) Number of persons employed by business;

(c) Net income of business; and

(d) Type of business as categorized by section 121.201 of subpart A of part 121 of title 13 of the code of federal regulations;

2. A description of the aggregate performance outcomes of designated organizations, information on the geographic areas for which such organizations provided legal services, and identification of the types of covered legal matters handled by designated organizations.

d. Rules. To the extent the commissioner provides in-court legal representation pursuant to subdivision b of this section, the commissioner shall promulgate rules to implement the provision of such representation. Such rules shall include factors to be considered in providing such representation, including but not limited to, the procedural posture of such covered proceeding, the current operational capacity of the covered small business tenant, and compliance with applicable laws and rules by such tenant or person commencing the covered proceeding.

§ 3. Provision of services to small businesses impacted by COVID-19. a. Subject to appropriation, the department of small business services shall offer assistance to covered small business tenants with respect to funding programs offered by the federal, state, and city government to businesses to alleviate the impact of COVID-19 on such tenants. Such assistance may include understanding eligibility requirements, completing applications and understanding the terms of awarded grants and loans of any such funding program.

b. For the purposes of this section, all terms have the meanings set forth in section two of this local law.

§ 4. This local law takes effect 120 days after it becomes law, provided that section three of this local law expires 180 days following the expiration of the local state of emergency declared by the mayor in emergency executive order number 98, issued on March 12, 2020, as extended.

ARP/SJ

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Proposed Int. No. 1958-A

By Council Members Richards, Lander, Kallos, Moya, Chin, Ampry-Samuel, Gjonaj, Ayala and Vallone

..Title

A Local Law in relation to reporting on financial assistance received by small businesses impacted by COVID-19

..Body

Be it enacted by the Council as follows:

Section 1. Small business COVID-19 financial assistance report. a. Definitions. For purposes of this local law the following terms have the following meanings:

Employee retention grant program. The term “employee retention grant program” means the program announced by the mayor on March 8, 2020 to provide grants covering up to 40 percent of payroll costs for 2 months to small businesses that employ fewer than 5 employees and experienced a 25 percent or greater decrease in revenue related to the COVID-19 pandemic.

Small business continuity loan fund. The term “small business continuity loan fund” means the fund announced by the mayor on March 8, 2020 to provide zero-interest loans to eligible small businesses that employ fewer than 100 employees and experienced a 25 percent or greater decrease in revenue related to the COVID-19 pandemic.

b. No later than 60 days after the effective date of this local law, the department of small business services shall post on its website and submit to the mayor and speaker of the council a report of each business that received a grant pursuant to the employee retention grant program and each business that received a loan pursuant to the small business continuity loan fund as of such effective date. The report shall include:

1. The council district in which each business was located;

2. The zip code of each business;

3. The industry type of each business, including but not limited to types of goods and services offered, and whether the business occupies a storefront or is a mobile business;

4. The type of award each business received, whether grant or loan; and

5. The loan or grant amount each business received.

§ 2. This local law takes effect immediately, and expires and is deemed repealed 1 year after it becomes law.

JSA/SJ

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