



Comments Received by the Department of
Consumer and Worker Protection on

Proposed Rules related to Third-Party Food Delivery Services
and Third-Party Courier Services

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose



December 22, 2021

Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

RE: Comments on Proposed Rules Governing Third-Party Food Delivery Services

Dear Commissioner Hatch:

On behalf of DoorDash, I am writing to provide comments on the proposed rules issued by the NYC Department of Consumer and Worker Protection (“the Department” or “DCWP”) to implement Local Laws 100, 110, and 115 of 2021.

DoorDash is a technology company whose mission is to grow and empower local economies, including in New York City. We do that by partnering with thousands of local restaurants throughout New York City for online ordering, takeout, delivery, and marketing services. We also empower New Yorkers from all walks of life to earn money when, where, and how they choose by delivering meals and other essentials to their communities.

We appreciate the Department’s attention to these important issues and are thankful for this opportunity to provide feedback on the proposed rules in order to ensure that any final regulations are clear with respect to the obligations of third-party food delivery services, and that such rules do not create any unintended barriers to implementation. Please find our comments below.

Final Section 2-461(b) should limit the type of documents or information that the Department will request as part of the license application process to those documents and information that bear a clear nexus to the information required in the licensure forms.

Concern: The proposed rule provides that an application for a third-party food delivery service license must include the basic license application, a third-party food delivery service license application supplement, and “any other documents and information requested by the Department.” We believe “any other documents and information” is overbroad, unpredictable, and risks being significantly timely and burdensome.

Recommendation: We propose that any document and information requests by the Department as part of the license application process be limited to documents and information that bear a clear nexus to that information which is directly requested in the basic business application or third-party food delivery service license application supplement. This would ensure that all document and information requests directly relate to a third-party food delivery service’s

compliance with the statutory and/or regulatory obligations of obtaining and maintaining a license. Alternatively, the final rule could clarify what specific documents and information may be requested as part of the license application process to provide third-party food delivery services with transparency regarding the supplemental information that will be expected.

Final Section 2-461(c) should allow a single license to cover multiple trade names of a third-party food delivery service.

Concern: The proposed rule would require an applicant to submit a separate license application for each trade name it will use to conduct the business. There is no apparent benefit to requiring separate licenses for each trade name under which the third-party food delivery service is operating. Requiring wholly separate licensing applications would merely result in the production of duplicative information and documents from third-party food delivery services and cause unnecessary burdens for both the third-party food delivery service and the Department. For example, DoorDash also owns and operates the food delivery service Caviar. Under the proposed rule, DoorDash would need to undergo a separate licensing process for Caviar even though Caviar is a wholly-owned subsidiary of DoorDash with the same ownership structure. Therefore, much of the information DoorDash submits for both licenses will be identical.

Recommendation: A single license application process could ensure that an applicant discloses each trade name it uses to conduct business and provide all necessary information that would otherwise be provided in two or more separate license applications.

The final rules should omit proposed Section 2-461(d).

Concern: The proposed rule states that a third-party food delivery service must notify the Department in writing of any changes made to the website, mobile applications, and other systems contained in the licensee's application within 10 days of such changes. Third-party food delivery services make mundane, non-material changes to websites, applications, and other systems multiple times each day. For example, copy or formatting is frequently revised on websites and minor updates are continuously issued for mobile applications. Although these changes will not be relevant to any obligations under New York City law or be of interest to the DCWP, a requirement to notify the Department of each in writing will result in a significant administrative burden. This requirement will also be onerous on the Department, which will be frequently inundated with multiple pages of non-material changes to review from each licensee.

Recommendation: We recommend that DCWP remove this requirement from any final rule or, alternatively, revise the requirement to apply only where such changes directly relate to the compliance of any New York City statutory or regulatory obligations.

The required disclosure under proposed Section 2-465(b) should be revised in the final rule to clarify that data sharing is required by law and should not require that a customer visit a new webpage and complete a form in order to opt out of mandated data sharing.

DoorDash has sued to enjoin enforcement of the City's data sharing law (Int. 2311) on the grounds that it is unlawful in its entirety, and the City has stipulated not to enforce the law against DoorDash while that litigation is pending. But to the extent the law ever goes into effect, and without prejudice to its arguments in the pending suit, we propose the following changes:

Concern: The proposed rule requires that third-party food delivery services provide customers with a specific disclosure regarding potential data sharing with restaurants if a customer does not opt out of such data sharing. As provided in the proposed rule, the disclosure does not make clear that sharing the customer's data is required under New York City law and, instead, could be wrongly interpreted by consumers as a unilateral policy or practice of the third-party food delivery service.

The proposed language also provides that the data sharing disclosure must be accompanied by "a hyperlink to an electronic form allowing customers to opt-out." The contemplated opt-out process of taking customers to a new page where they complete a form is unnecessarily burdensome on customers who prefer that their data not be shared and risks rendering the opt-out moot by creating significant friction that discourages customers from doing so.

Recommendation: We recommend the required disclosure in the final rule be revised to the following or similar:

"As required under New York City law, if the restaurant requests it, (name of third-party food delivery service) must share your personal data, which includes your name, telephone number, email address, and delivery address, with the restaurant unless you opt out of sharing your data."

We believe this revision still accomplishes the policy goals of the disclosure while providing transparency to consumers that sharing their data with restaurants is an obligation under City law, not a policy of the third-party food delivery service. We also believe the disclosure as a whole should be shorter given the limited space generally available on a mobile app page.

Our proposed language is also silent as to the precise way customers are able to opt-out of sharing their data, thereby providing third-party food delivery services with flexibility to determine the most efficient way to do so.

* * *

Thank you again for this opportunity to provide comments on the proposed rules governing third-party food delivery services. We look forward to working with the Department to implement these rules in a way that supports the Dashers, merchants, and customers who rely on our platform.

Sincerely,



Toney Anaya
Global Head of Government Relations

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement new legislation regarding third-party food delivery services and third-party courier services.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on Thursday, December 23. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial (646) 558-8656
 - Meeting ID: 865 6056 6556
 - Passcode: 769207
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/86560566556?pwd=M0dXeHVpNkxaNi83akN4a1pSdXl2QT09>
 - Meeting ID: 865 6056 6556
 - Passcode: 769207

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Thursday, December 23. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 11:59pm on Thursday, December 23.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 21, 2021.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in DCWP’s regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement Local Law 100 of 2021, Local Law 110 of 2021, and Local Law 115 of 2021, regarding third-party food delivery services and third-party courier services.

Specifically, these proposed new rules would:

- Set the expiration date for third-party food delivery service licenses;
- Require third-party food delivery services to maintain certain records;
- Establish procedures for complying with requests for records and information;
- Clarify the location of a required disclosure about gratuities for food delivery workers; • Clarify the location of a required disclosure about third-party telephone number listings; • Require third-party delivery services to provide a disclosure and the ability for customers to opt out of certain data sharing;
- Create a penalty schedule for violations related to third-party food delivery services; and • Clarify requirements for responding to certain requests for data from the Department.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter KK to read as follows:

Subchapter KK: Third-Party Food Delivery Services

§ 2-461 License Application Requirements.

(a) Third-party food delivery service licenses expire on August 31st in odd numbered years.

(b) An application for a third-party food delivery service license must include the Department's basic license application, the third-party food delivery service license application supplement, and any other documents and information requested by the Department.

(c) Pursuant to section 20-113 of the Administrative Code, a separate third-party food delivery service license is required for each trade name that a person uses to conduct the business of a third-party food delivery service. A third-party food delivery service license applicant must submit a separate license application for each trade name it will use to conduct the business of a third-party food delivery service.

(d) A licensee or applicant must notify the Department in writing of any change to the websites, mobile applications, third-party food delivery platforms, uniform resource locators, or operating systems contained in the licensee's or applicant's basic license application or third-party food delivery service license application supplement within 10 days of the change.

- Proposed edit: (d) A licensee or applicant must notify the Department in writing of any change that would materially alter the representations included in the licensee's or applicant's basic license application or third-party food delivery service license application supplement within 10 days of the change.

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§ 2-462 Records.

(a) (1) Pursuant to subdivision (a)(4) of section 20-563.8 of the Administrative Code, every third-party food delivery service must maintain records sufficient to document the full ownership of such third-party food delivery service. Such records must be maintained in an electronic format for a period of at least 3 years.

(2) Every third-party food delivery service must maintain records sufficient to demonstrate compliance with the requirements set forth in subdivision (b) of section 20-563.2 of the Administrative Code. Such records must be maintained in an electronic format for a period of at least 3 years.

(3) Every third-party food delivery service must maintain records sufficient to document all customer requests not to share the customer's data with a food service establishment pursuant to subdivision (b) of section 20-563.7 of the Administrative Code. Such records must be maintained in an electronic format for a period of at least 3 years.

(b) (1) A request or subpoena for information or records from the Department must be served on a third-party food delivery service in writing in person, via mail, or via email. A third-party delivery service must respond to a written request or subpoena for information or records from the Department by providing to the Department true, accurate, and contemporaneously made electronic records or information within 30 days of the date that the request is received and in the formats and layouts prescribed by the Department in such request or subpoena.

- Proposed edit: (b) (1) A request or subpoena for information or records from the Department must be served on a third-party food delivery service in writing, in person, via mail, or via email. A third-party delivery service must respond to a written request or subpoena for information or records from the Department solely as it relates to the information or records required to be maintained pursuant to this subsection 2-462 by providing to the Department true, accurate, and contemporaneously made electronic records or information within 30 days of the date that the request is received and in the

formats and layouts prescribed by the Department in such request or subpoena.

(2) Notwithstanding subdivision (b)(1) of this section, the Department can provide for a deadline of fewer than 30 days if agreed to by the parties or if the Department has reason to believe that the third-party food delivery service will: destroy or falsify records; or close, sell, or transfer its business, dispose of assets, or imminently declare for bankruptcy.

(3) A deadline of more than 30 days may be agreed to on consent by the Department and the third-party food delivery service.

- Should also add something like it shall be extended "for good cause."

(4) The Department may issue a summons to a third-party food delivery service who fails to provide true and accurate electronic records or information by the deadline provided in the written request or subpoena or the deadline agreed to by the parties.

(c) A third-party delivery service's failure to maintain, retain, or produce a record that is required by law or rule to be maintained that is relevant to a material fact alleged by the Department in a summons, petition, or other notice of hearing creates a reasonable inference that such fact is true.

§ 2-463 Gratuities for Food Delivery Workers

The disclosure required by subdivision (b) of section 20-563.2 of the Administrative Code must be

made: (a) directly adjacent to the gratuity solicitation; or

(b) accessible via a link placed directly adjacent to the gratuity solicitation if such link is labeled with plain language to describe its contents.

§ 2-464 Telephone Number Listings.

A listing or link for a third-party telephone number permitted by subdivision (a) of section 20-563.5 of the Administrative Code and the disclosures required by such subdivision for a third-party telephone number must appear directly adjacent to the direct telephone number for the food service establishment.

§ 2-465 Sharing Customer Data.

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(a) To comply with subdivision (b) of section 20-563.7 of the Administrative Code, every third-party food delivery service must, for every prospective order, provide the following disclosure in a clear and conspicuous manner: "To process orders, (name of third-party food delivery service) collects customer data, which includes your name, telephone number, email address, delivery address, and what you ordered from the restaurant. If the restaurant requests it, (name of third-party food delivery service) will share your customer data concerning this order with the restaurant unless you opt out of sharing your data. You can click here to opt out of sharing this data (hyperlink to an electronic form allowing customer to opt out)."

- Proposed edit: (a) To comply with subdivision (b) of section 20-563.7 of the Administrative Code, every third-party food delivery service must, for every prospective order, provide an opt out option in a clear and conspicuous manner. With the opt out option, third-party food delivery service must include the following information: (1) disclosure of what information is collected (e.g. your name, telephone number, email address, delivery address, and what you ordered from the restaurant), (2) the data sharing obligation with the restaurant, and (3) the option to opt out

(b) Every third-party food delivery service must provide for what is required by this section prior to the customer completing a prospective order and on the same page of its website, mobile application, or other platform where the customer is completing such prospective order.

- Proposed edit: (b) Every third-party food delivery service must provide for what is required by this section prior to the customer completing a prospective order.

§ 2. Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new Section 6-79 to read as follows:

§ 6-79 Third-Party Food Delivery Services Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Violations by third-party food delivery services accrue on a daily basis for each day and for each food service establishment with respect to which a violation is committed.

- Two notices of violation and notice by certified mail to cure should be issued before a \$ penalty is issued.

Citation	Violation Description	First Violation	Second Violation	Third and	Third and	Third and	Third and
		Default	Default	Subsequent Violation	Subsequent Default	Subsequent Violation	Subsequent Default
Admin Code § 20-563.1	Operating without a third-party food delivery service license	\$500	\$500	\$500	\$500	\$500	\$500
Admin Code § 20-563.2	Failure to comply with requirements for the issuance of a license	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.3	Failure to comply with the caps on fees	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-563.4	Failure to comply with requirements for telephone orders	\$375	\$500	\$450	\$500	\$500	\$500

Admin Code § 20-563.5

Failure to comply with requirements for listing telephone numbers \$375 \$500 \$450 \$500 \$500 \$500

Admin Code § 20-563.6	Failure to comply with requirements on unauthorized listings or requirements on the availability of toilet facilities	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.7	Failure to comply with requirements on customer data	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.8	Failure to comply with records requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCN Y § 2-461	Failure to comply with license application requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCN Y § 2-462	Failure to comply with records requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCN Y § 2-463	Failure to comply with requirements for gratuities for food delivery workers	\$375	\$500	\$450	\$500	\$500	\$500
6 RCN Y § 2-464	Failure to comply with requirements for telephone number listings	\$375	\$500	\$450	\$500	\$500	\$500
6 RCN Y § 2-465	Failure to comply with requirements for sharing customer data	\$375	\$500	\$450	\$500	\$500	\$500

Section 3, Chapter 7 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter H to read as follows:

Subchapter H: Third-Party Service Workers

§§ 7-801 through 7-809

[Reserved]

§ 7-810 Minimum Pay Study Recordkeeping and Data Requests.

- (a) When the department issues a written request or subpoena for data, information or documents under Section 20-1522(a)(2) of the administrative code, a third-party food delivery service or third-party courier service must provide all responsive data, information or documents to the department within 30 days of receiving such request or subpoena and, if so requested, in the comma-delimited formats and layouts prescribed by the department in such request or subpoena.

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NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Proposed Rules Governing Third Party Food Delivery Services

REFERENCE NUMBER: 2021 RG 083

RULEMAKING AGENCY: New York City Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

(i) is drafted so as to accomplish the purpose of the authorizing provisions of law; (ii)

is not in conflict with other applicable rules;

(iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose;
and

(iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN Date: November 17, 2021
Acting Corporation Counsel

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NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Proposed Rules Governing Third Party Food Delivery

Services REFERENCE NUMBER: DCWP-10

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro November 17, 2021 Mayor's Office of Operations Date

**Richard Robbins Testimony to New York City Department of Consumer and Worker Protection Hearing on Third-Party Food Delivery Services
December 23, 2021**

Good morning. When I signed up to speak, I had only gotten a notice that this hearing was about rules for third-party food delivery services. Only later did I search and find the specific rules being proposed, which were not easy to find.

I support the rules changes including data sharing with restaurants.

More work is needed to protect delivery cyclists and pedestrians – many elderly – who are terrified by delivery cyclists.

I did not start out as an advocate for delivery cyclists – I care about street safety.

This summer, I signed up to work for DoorDash to try to get the experience of being a delivery cyclist and worked two shifts. I followed every traffic law, stopping at every red light and riding the right way on one-way streets. The first time, I failed to get any business, as I was sitting at red lights as my “competition” was getting to restaurants more quickly and getting orders. The second time in 90 minutes, I got 3 orders and made exactly \$22.50 – the equivalent of minimum wage at a time when DoorDash had sent me an alert saying they were at their busiest.

A big challenge we have is that companies avoid the need to comply with existing laws or be held accountable because their workers are contractors and not employees.

DoorDash did not alert me to any laws, such as the requirement to have a unique ID. Rather, they had me sign a comprehensive release as an independent contractor.

We need for third party delivery services to be accountable. Otherwise, penalties are meaningless.

Thank you.

Richard Robbins
317 West 103rd Street
New York, NY 10025
(646) 657-8802
richardrobbins1@gmail.com



Uber Technologies, Inc.
1515 3rd St.
San Francisco, CA 94158

Proposed Action: Amendments to Local Laws 100, 110, and 115 of 2021
Regarding: Third-Party Food Delivery Services and Third-Party Courier Services
Agency: New York City Department of Consumer and Worker Protection
Hearing Date: December 23, 2021
Position: Support in Part, Oppose in Part, and Offer Recommended Modifications in Part

Introduction

Uber Eats appreciates the City’s interest in enacting a regime that addresses the needs of the city’s various constituents while unlocking opportunities for merchants and couriers. In that respect, we view the City Council’s various enactments as providing the key contours for the regulatory framework in this area.

Uber Eats shares the values, intentions, and motivations behind these proposed rule amendments. At the same time, we recommend certain modifications to these proposed amendments, to best advance the interests of the City and its residents and businesses, and maintain fidelity with the Council’s enactments in this area.

Who We Are

Portier, LLC (“Uber Eats”) is a Delaware company founded in 2014 and headquartered in San Francisco, California. Uber Eats is a wholly owned subsidiary of Uber Technologies, Inc. (“Uber”). Postmates, which was acquired by Uber Technologies, Inc., assigned its rights in merchant agreements to Uber Eats. Uber Eats’ online marketplace platforms (operating under the Uber Eats and Postmates brands) connect restaurants and other merchants to consumers and a network of independent delivery people in their communities. Consumers can access the Uber Eats platforms via websites or mobile applications on a smartphone. Uber Eats provides various services to restaurant partners with which it enters contracts. The platforms offer consumers benefits, including but not limited to the ability to discover new restaurants, gain access to special offers and discounts, read reviews, and use of one app or website to order from numerous merchants, rather than having to fill out delivery and payment details anew for every order, let alone call on the phone, be placed on hold, and order without menu information. Uber Eats and Postmates fall within the definition of a “third-party food delivery service” under New York City Administrative Code §§20-845 and 20-563.

What We Care About

The COVID-19 pandemic and the resulting public health measures have severely impacted the restaurant industry. When dine-in operations were largely prohibited throughout 2020, many restaurants turned to take-out and delivery models to continue reaching customers, maintain revenue, and stay in business. In the spring and summer of 2020, Uber Eats launched many initiatives to support restaurants, including reducing consumer fees to drive demand, enacting 0% fees for pickup orders, launching efforts to support Black-owned restaurants, and introducing new safety features and policies to support restaurants and delivery people during COVID. We also announced \$20 million in funding for restaurant success in 2021, including \$4.5 in grants given to local restaurants.

Feedback on Rules related to implementation of Local Laws 100, 110, and 115 of 2021

Over the last twelve months, the City Council has enacted a series of ordinances that establish clear rules governing activities by Uber Eats, merchants, and couriers. Although we did not necessarily support each of these enactments, we appreciate that legislation, as a general matter, looks to strike the right balance

between potentially competing interests. In this case, we appreciate that the Council's enactments needed to balance efficacy, administrative efficiency, fairness, promoting innovation, and a number of other considerations.

We view the Council's enactments as providing the necessary backdrop for any further regulatory effort. And, to that end, recommend that these Amendments look to implement, rather than revisit, the fundamental balances that the Council has sought to advance.

So as to cleave closely to the Council's work in this area, and promote the interests of platforms, merchants, couriers, and customers, Uber Eats proposes the Department consider adopting the following recommended amendments:

Recommended Amendments to the Proposed Licensing Scheme

The draft amendments on licensing would benefit, in our view, from closer alignment to the Council's legislative efforts. The Council has considered and enacted a series of substantive provisions in this area. Although we recognize the importance of new administrative procedural mechanisms to implement some of these rules, we do recommend that this process not look to craft all new substantive standards in connection with the licensing process. In particular, we offer the following recommendations as to the licensing proposals:

- §2-461(b) - Information Reviews: This provision proposes to grant the Department unlimited and unfettered access to all business documents, data, and records as part of the licensing process.
 - Suggested Approach: Because we maintain the Department's review should focus on those substantive factors established by Council, we recommend the information request process be similarly calibrated to focus only on the set of information that is needed to substantiate that an applicant is meeting those substantive standards.
 - Suggested Amendment: An application for a third-party food delivery service license must include the Department's basic license application, the third-party food delivery service license application supplement, and other documents and information sufficient to establish that the applicant meets those other substantive requirements established by § 2-461.

- §2-461(d) - Content pre-approvals: This provision would grant the Department certain pre-approval rights over platform content changes. We recommend that the Department not implement this provision. First, this rule would push beyond the areas identified by Council for regulation; no aspect of the background legislation suggests that platforms should be subject to this type of broad content pre-approval. Uber and other app-developers often makes changes to a consumer-facing interface in order to approve functionality and ease of use. None of that should fall under the Department's scrutiny or require pre-approval. Examples of such changes include:
 - Allowing consumers to create multiple "carts" at once so a customer can place orders from two stores at the same time;
 - Allowing consumers to "split the bill" with another person so each customer can pay for their part of the order; and
 - Moving the 'Refer Friends' button to a more prominent place on the app to allow Couriers to find it more easily.

In addition to the changes to the app that should not be subject to pre-approval, this provision raises serious First Amendment concerns, by positioning the City as a necessary approver for protected speech and content.

- ~~Suggest striking the provision: A licensee or applicant must notify the Department in writing of any change to the websites, mobile applications, third-party food delivery platforms, uniform resource locators, or operating systems contained in the licensee's or applicant's basic license application or third-party food delivery service license application supplement within 10 days of the change.~~
- §2-461(c) - Additional Licenses for Trade Names: The draft amendments would require multiple licenses for different trade names operated through a single company. We recommend the Department revisit this approach, as unduly burdensome and inconsistent with the Department's more general approach to interacting with discrete businesses. As an example, Uber Eats and Postmates are both wholly owned subsidiaries of Uber Technologies. We would expect that the Department would look to Uber to account for all the conduct of its different subsidiaries, and recommend the Department's licensing strategy match that approach even if Uber, based on its business judgment, elects to maintain different brand interfaces across its platform.
 - Suggested Amendment: Pursuant to section 20-113 of the Administrative Code, a separate third-party food delivery service license is required for each trade name that a person uses to conduct the business of a third-party food delivery service. A third-party food delivery service license applicant must submit a separate license application for each trade name it will use to conduct the business of a third-party food delivery service. This provision shall not apply to an applicant held under common ownership provided the applicant list all trade names held under common ownership in the application.
- §2-462 and §7-810 - Record Keeping: A food delivery business will typically process thousands of transactions a day. 30 days to respond to a records request is an insufficient length of time to search, compile, review, and format records. Uber has experience providing this level of data with other city agencies and knows that cooperation is required to ensure which data is needed, and to ensure that it is submitted in a usable format.
 - Suggested Approach: While Uber appreciates the proposed rule permitting a mutually agreed up extension of the 30 day deadline, we believe that businesses should be granted 90 days to respond to subpoena requests.
 - Suggested Amendments: §2-462(b) (1) A request or subpoena for information or records from the Department must be served on a third-party food delivery service in writing in person, via mail, or via email. A third-party delivery service must respond to a written request or subpoena for information or records from the Department by providing to the Department true, accurate, and contemporaneously made electronic records or information within ~~30~~ 90 days of the date that the request is received and in the formats and layouts prescribed by the Department in such request or subpoena.
 - (2) Notwithstanding subdivision (b)(1) of this section, the Department can provide for a deadline of fewer than ~~30~~ 90 days if agreed to by the parties or if the Department has reason to believe that the third-party food delivery service will: destroy or falsify records; or close, sell, or transfer its business, dispose of assets, or imminently declare for bankruptcy.

(3) A deadline of more than 390 days may be agreed to on consent by the Department and the third-party food delivery service.

- Suggested Amendments: §7-810(a) When the department issues a written request or subpoena for data, information or documents under Section 20-1522(a)(2) of the administrative code, a third-party food delivery service or third-party courier service must provide all responsive data, information or documents to the department within 390 days of receiving such request or subpoena and, if so requested, in the comma-delimited formats and layouts prescribed by the department in such request or subpoena.

Recommended Amendments to Avoid Unduly Burdensome Regulations that Will Impede Innovation and the interests of Merchants, Couriers, and Customers

Separately, the draft amendments, in certain instances, create legal responsibilities that either assign responsibility to parties other than those primarily responsible for the subject conduct, and/or involve unduly burdensome requirements that will impede the City's commercial vitality and consumer welfare. We recommend that these regulations be right-sized to meet the City's policy objectives, without interfering with the productive relationships that have benefited the city's couriers, merchants, and consumers. Specific examples follow:

- **§6-79 - Penalty Schedule:** The proposed penalty schedule would result in fines for conduct outside a party's control, and contemplates penalty amounts that -- by punishing a party hundreds of times for essentially single allegations (because of daily accruals) -- would prove disproportionate to the supposed wrongdoing.
- **§20-563.6 - Failure to comply with requirements on unauthorized listings or requirements on the availability of toilet facilities:** The penalty schedule proposes fines for the third-party delivery service of \$375 a day if a restaurant refuses to allow a courier to access the restaurant's toilet. First, this approach goes beyond §20-563.6 which only requires that contracts with a third-party delivery service contractually commit to providing bathroom access. Once the appropriate contractual provisions are in place, the third-party delivery service cannot possibly control the on-the-ground interaction between a merchant and a courier, and should not face penalties based on the results of that interaction.
 - Suggested Approach: We recommend that this penalty is removed completely as it is not in line with the framework enacted by Council, and ultimately a third-party food delivery service cannot, in practice, exercise any oversight on the in-person interactions happening between a delivery worker and staff at restaurants or other merchants.

Additionally and relatedly, serial fines for the same conduct result in a fundamental unfairness: If a third-party delivery service engages in a single instance of misconduct, that should result in a single fine, and not endless multiples of a fine based simply on the amount of time that has elapsed. Another example arises in connection with the requirements around application submissions. The draft schedule proposes a minimum daily fine of \$375 for failing to comply with the license application requirements. This might suggest that limiting document productions in conjunction with a license application (see above) would result in these dramatic fines. Or that

omitting notification to the Department insignificant changes to the platform, under §2-461(d), will result in a minimum penalty of \$375 every day.

- Suggested Approach: We recommend the Department clearly limit the penalty schedule both in scope (to conduct genuinely necessitating a punitive approach) and degree (to single predictable fines, not multiplying endlessly over time).
 - Suggested Amendments: All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York. Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule. Multiple instances involving violations of the same provision charged in the Notice of Violation shall constitute a single violation of the law or rule for purposes of penalty calculations.
In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently. Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s). Violations by third-party food delivery services accrue on a daily basis for each day and for each food service establishment with respect to which a violation is committed.
The Department must issue at least two Notices of Violation by certified mail and provide the third-party food delivery service the opportunity to cure the violation prior to assessing a penalty.
- **§2-465 (a) and (b) - Data Privacy**: Uber has maintained that the City's data sharing requirements are illegal and unconstitutional, and has brought suit in the Southern District of New York to challenge the rules' validity. Uber recognizes that these proposed regulations largely look to implement those requirements. At the same time, the rigid proposed consumer notice is unnecessarily prescriptive, especially in light of the same screen limitations discussed above.
 - Suggested Approach: Uber recommends the City simply proffer the key pieces of information that a platform must provide to consumers (which itself should align with the elements of the ordinance as enacted by the Council), and leave some flexibility for the platform to craft the appropriate language, for example a brief description in the application, which includes a hyperlink detailing all sources of data.