

## Frequently Asked Questions: COVID-19 Recovery Charge at Restaurants

As of October 17, 2020, restaurants can temporarily require customers to pay a “COVID-19 Recovery Charge,” but they must follow certain requirements. This document provides helpful information.

### **What is the COVID-19 Recovery Charge?**

Under a new local law, restaurants can require customers who eat on-site to pay a surcharge called the COVID-19 Recovery Charge.

### **Who can charge the COVID-19 Recovery Charge?**

Restaurants that sell food or beverages to customers who are seated for permitted outdoor dining or indoor dining at limited capacity can require customers to pay the charge. Restaurants that offer outdoor dining in front of their establishment on the sidewalk or on the roadway must have permission from the City’s [Open Restaurants or Open Streets programs](#) to operate. Restaurants that offer indoor dining at limited capacity must follow the City’s [guidance for indoor dining](#).

*Exception:* Restaurants that are part of a chain with 15 or more locations nationally *cannot* charge the COVID-19 Recovery Charge. An example is a fast food restaurant.

### **Do restaurants need to do anything, including contact the City, before they start to charge the COVID-19 Recovery Charge?**

No. Restaurants can begin to require customers to pay the COVID-19 Recovery Charge on October 17, 2020. Restaurants must follow certain requirements, which are described in this document.

### **Is there a limit on how much restaurants can ask customers to pay for the COVID-19 Recovery Charge?**

Yes. The COVID-19 Recovery Charge cannot be more than 10% of the customer’s total bill, not including taxes and gratuity, and cannot be charged as a flat dollar amount. Restaurants can choose to charge a COVID-19 Recovery Charge that is less than 10% of the customer’s total bill.

### **Can restaurants charge the COVID-19 Recovery Charge for takeout, pick-up, or delivery orders?**

No. Restaurants cannot require customers who will consume food or beverages off-site to pay the COVID-19 Recovery Charge. Restaurants can require the COVID-19 Recovery Charge for on-premises dining only.

### **When must restaurants tell customers about the COVID-19 Recovery Charge?**

Restaurants must disclose the percentage they will charge for the COVID-19 Recovery Charge to customers before customers order any food or beverage.

## **Where should restaurants disclose information about the COVID-19 Recovery Charge so customers are aware?**

Restaurants must disclose the COVID-19 Recovery Charge:

- At the bottom of each page of the menus they give to customers for ordering or, if they do not use menus, wherever they list food or beverage choices
- On the customer's final bill and the receipt, if a receipt is provided

## **How should restaurants disclose the COVID-19 Recovery Charge?**

Except for the customer's final bill and receipt, all disclosures must:

- Be written.
- State explicitly that the COVID-19 Recovery Charge is a surcharge and not a gratuity for workers.
- Be clear and conspicuous.
- (*in addition to menus*) Be on each page of every document given to customers that lists prices.
- Be in English.
- Be in any other language used in the document, unless the other language is used solely for item names.
- Be in a font size similar to the rest of the document.
- Be labeled "COVID-19 Recovery Charge."

## **How should restaurants disclose the COVID-19 Recovery Charge on the customer's final bill and the receipt?**

The charge must be labeled "COVID-19 Recovery Charge" or "COVID Charge" and show the total dollar amount of the charge.

## **Can restaurants call the COVID-19 Recovery Charge by any other name?**

No. Restaurants must list the charge as "COVID-19 Recovery Charge" only.

## **If a restaurant's menu is not in English, how should restaurants list the COVID-19 Recovery Charge?**

The name of the charge and disclosure should be in English and in the same language as the menu.

## **Who enforces the local law that allows restaurants to charge the COVID-19 Recovery Charge?**

The NYC Department of Consumer Affairs (DCA) enforces this law. DCA's new name is Department of Consumer and Worker Protection (DCWP).

## **What if a restaurant does not follow the local law when it charges the COVID-19 Recovery Charge?**

If a restaurant does not comply with the law's requirements, restaurants may be issued a violation.

## **What is the fine for violating the law?**

The fine is up to \$350 per violation.

## **Isn't it illegal for restaurants to charge customers a surcharge or extra charge?**

Under the City's Restaurant Surcharge Rule ([6 RCNY § 5-59](#)), restaurants may not add a surcharge (extra charge) to the food or beverage prices listed on the menu. This remains illegal.

The new local law allows restaurants to charge the COVID-19 Recovery Charge. This surcharge is legal.

It is also legal for restaurants to charge a bona fide service charge, but the charge must be clearly disclosed to customers before they order food. Acceptable service charges include:

- Charge to split a single meal on multiple plates
- Minimum per person charge
- Mandatory gratuity for parties of eight or more

**Is the ability to charge the COVID-19 Recovery Charge permanent?**

No. Restaurants may require this charge only while the COVID-19 state of emergency is in effect and restaurants cannot operate at full capacity, and for an additional 90 days after the State and the City allow restaurants to reopen indoor dining at maximum indoor occupancy. Restaurants cannot continue to charge the COVID-19 Recovery Charge after the 90 days has expired.

**When do restaurants have to stop charging the COVID-19 Recovery Charge?**

Restaurants must stop charging the COVID-19 Recovery Charge 90 days after the date that the State and the City allow restaurants to reopen indoor dining at maximum indoor occupancy.

**How can restaurants use the money they collect under the charge?**

The law has not placed any restrictions on how restaurants can use the money.

**Can consumers file a complaint about restaurants that do not follow the local law when they charge the COVID-19 Recovery Charge?**

Consumers can file a complaint online at [nyc.gov/dca](https://nyc.gov/dca) or by calling 311 and saying “[Restaurant Surcharge Complaint](#).”

**Are restaurants required to charge customers the COVID-19 Recovery Charge?**

No. The law allows restaurants to charge customers the COVID-19 Recovery Charge; however, restaurants do not have to require customers to pay this legal surcharge.

**Can restaurants waive the COVID-19 Recovery Charge for certain customers?**

No. If a restaurant requires its customers to pay the COVID-19 Recovery Charge, the restaurant must charge it uniformly, at the same percentage, for all customers.

**Can restaurants change the percentage customers must pay for the COVID-19 Recovery Charge?**

Yes. Restaurants can charge a percentage that is less than 10% of the customer’s total bill (maximum allowable amount). However, the percentage must be uniform, and the restaurant must disclose it to customers before they order.

**If customers choose to split the bill, can a restaurant charge the COVID-19 Recovery Charge to each customer?**

Yes.