Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Local Laws 113, 114, 115, 116 and 118 of 2021

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

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THE COUNCIL OF
THE CITY OF NEW YORK
SHAHANA HANIF
39TH DISTRICT, BROOKLYN

COMMITTEES
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MEMBER OF COMMITTEE ON EDUCATION
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MEMBER OF COMMITTEE ON CULTURAL AFFAIRS, LIBRARIES, AND INTERNATIONAL INTERGROUP RELATIONS
MEMBER OF COMMITTEE ON MENTAL HEALTH, DISABILITIES, AND ADDICTIONS

Good morning, I'm Council Member Shahana Hanif. Thank you to the Department of Consumer and Worker Protection for holding this hearing and for granting me the opportunity to speak.

I am here today to express my support for this package of legislation that will ensure the protection and safety of food delivery workers. Food delivery workers, many of whom are immigrants and people of color, put their lives at risk to ensure New Yorkers were fed during the ongoing pandemic and despite the grave danger and traffic violence that they face every day, they continue to be at the front lines of our City's pandemic recovery.

Today's proposed rules would mandate third-party food delivery apps to provide a notice of rights to delivery workers, allow food delivery workers to set limits on the routes and distances that they travel, and prohibit third-party food delivery apps to impose fees on payments to delivery workers. These proposed provisions will increase wage and tip transparency for the 65,000+ delivery workers in our city.

Additionally, tip transparency should be expanded to other service workers in the food industry. Too often, tips made in stores and restaurants are not equitably distributed among their workers, especially when tips are made electronically. These proposed rules model a system for tip transparency from third-party food delivery apps that can and should be replicated for restaurant and fast-food workers.

This could not have been possible without the organizing of our gig workers, our advocacy groups, and nonprofits that fight each and every day to advance protections for our gig workers. As the Chair of the Immigration Committee, I am committed to ensuring that these rules are implemented swiftly and that proper outreach is conducted so that delivery workers know their rights. I want to express my gratitude to these organizations for their diligent work in educating delivery workers on their rights in the languages that workers speak. In a City as proudly diverse as ours, that is not simply English and Spanish. Language access efforts need to be hyper-

localized and should occur in partnership with community-based organizations that are trusted messengers in the areas they serve. If there are opportunities for my Office to be of assistance in this regard, I encourage the Department to proactively reach out.

I look forward to continuing working with our City's deliveristas and community-based organizations to make New York City a safer and fairer place to work. Thank you for your time and consideration.

March 31, 2022

Grubhub Holdings Inc. ("Grubhub") is pleased to submit the following comments to the New York City Department of Consumer and Worker Protection (the "Department") concerning the proposed rules to implement Local Law 113 of 2021, Local Law 114 of 2021, Local Law 115 of 2021, Local Law 116 of 2021, and Local Law 118 of 2021. Grubhub submits these comments to identify aspects of the proposed rules which could be unnecessarily burdensome and/or present significant operational difficulties. If you have any questions or would like to discuss these comments further, please contact Joshua Bocian, Senior Government Affairs Manager, at jbocian@grubhub.com.

Comment to § 7-806(c)

In Section § 7-806(c), the Department specifically identifies 30 bridges and 4 tunnels which delivery drivers must be able to exclude from their routes. The majority of the bridges and tunnels identified are major thoroughfares connecting separate boroughs of New York City. However, there are four bridges listed in § 7-806(c) which are highly local, very small, and do not raise similar concerns to the larger bridges. These bridges are: (A) the Pulaski Bridge; (B) the Greenpoint Avenue Bridge, (C) the Kosciuszko Bridge and (D) the Grand Street Bridge. Maps images reflecting these small bridges are included below as Exhibit A.

The Pulaski Bridge, Greenpoint Avenue Bridge, and Kosciuszko Bridge connect Astoria and Brooklyn, while the Grand Street Bridge is located in the middle of a commercial district in Brooklyn. These bridges carry highly localized traffic. All have lanes set aside for pedestrians and bikers, and all are frequently crossed on foot as well as by bike. These bridges are small, have no tolls, can be traversed in minutes, and are commonly used for very short trips.

Due to their central position in the midst of local commercial activity, building a functionality to allow drivers to avoid these four bridges would present a major operational and engineering challenge. Additionally, limiting drivers' ability to use these bridges will cause a large negative impact on service, order volume and, consequently, driver earnings, as currently hundreds of orders per day cross these bridges.

Due to the nature of these bridges and the neighborhoods they connect, these four bridges do not raise the same concerns as much longer, larger, and heavier traffic bridges such as the Williamsburg Bridge, Manhattan Bridge, Brooklyn Bridge, etc.

Accordingly, Grubhub proposes that the Pulaski Bridge, Greenpoint Avenue Bridge, Kosciuszko Bridge, and Grand Street Bridge be removed from Section 7-806(c).

Comment to § 7-806(e)

Section 7-806(e) appears to permit drivers to specify any bridge or tunnel *not* listed in § 7-806(c) by "any other reasonable means."

This requirement, due to its vague and open-ended nature, would be unworkable in practice. Whereas it is possible to design a program to control for the use of specific bridges and specific tunnels, there is likely no reliable method whereby access to unidentified, unspecified bridges and tunnels can be granted and revoked on an ad hoc basis.

Grubhub believes the list of bridges and tunnels contained in § 7-806(c) is comprehensive, and that the purpose of the law is achieved through that section alone, while the proposed rule in § 7-806(e) presents a potentially unworkable operational burden. Accordingly, Grubhub requests § 7-806(e) be removed from the proposed rules.

Request for a Grace Period

Grubhub notes that, while portions of the law go into effect on April 22, 2022 the formal rules are still in the process of being developed.

While Grubhub seeks to comply with the law's text and rules, Grubhub will need to make updates and changes to incorporate the operational requirements into its product. It may not be technologically feasible for Grubhub to complete these updates within the three weeks between the present date and April 22, particularly as the rules setting forth the law's specific requirements are still not finalized.

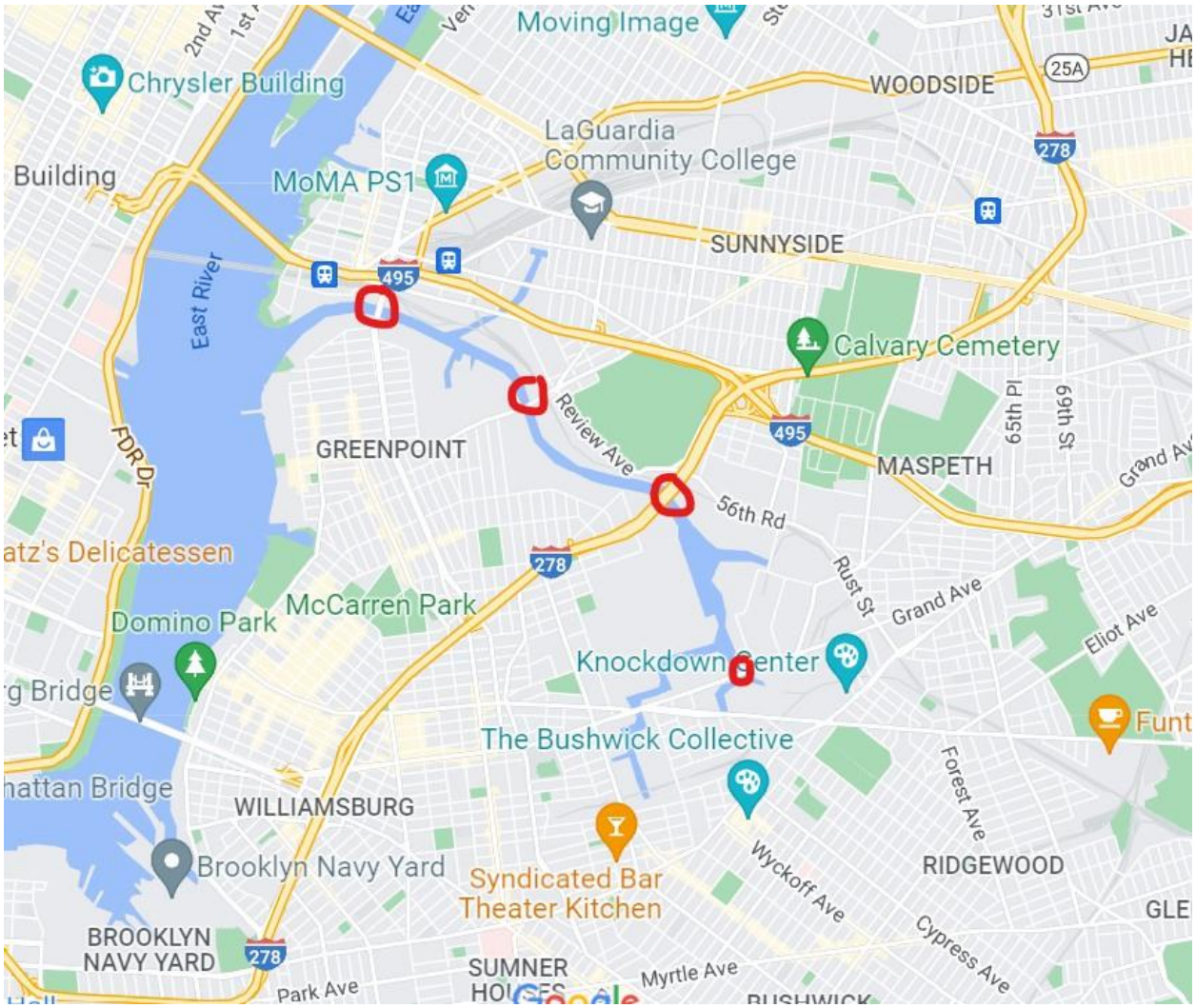
Accordingly, Grubhub asks for a grace period until 60 days following the publication of the final rules to make the necessary product updates consistent with the final rules.

Exhibit A follows on next page

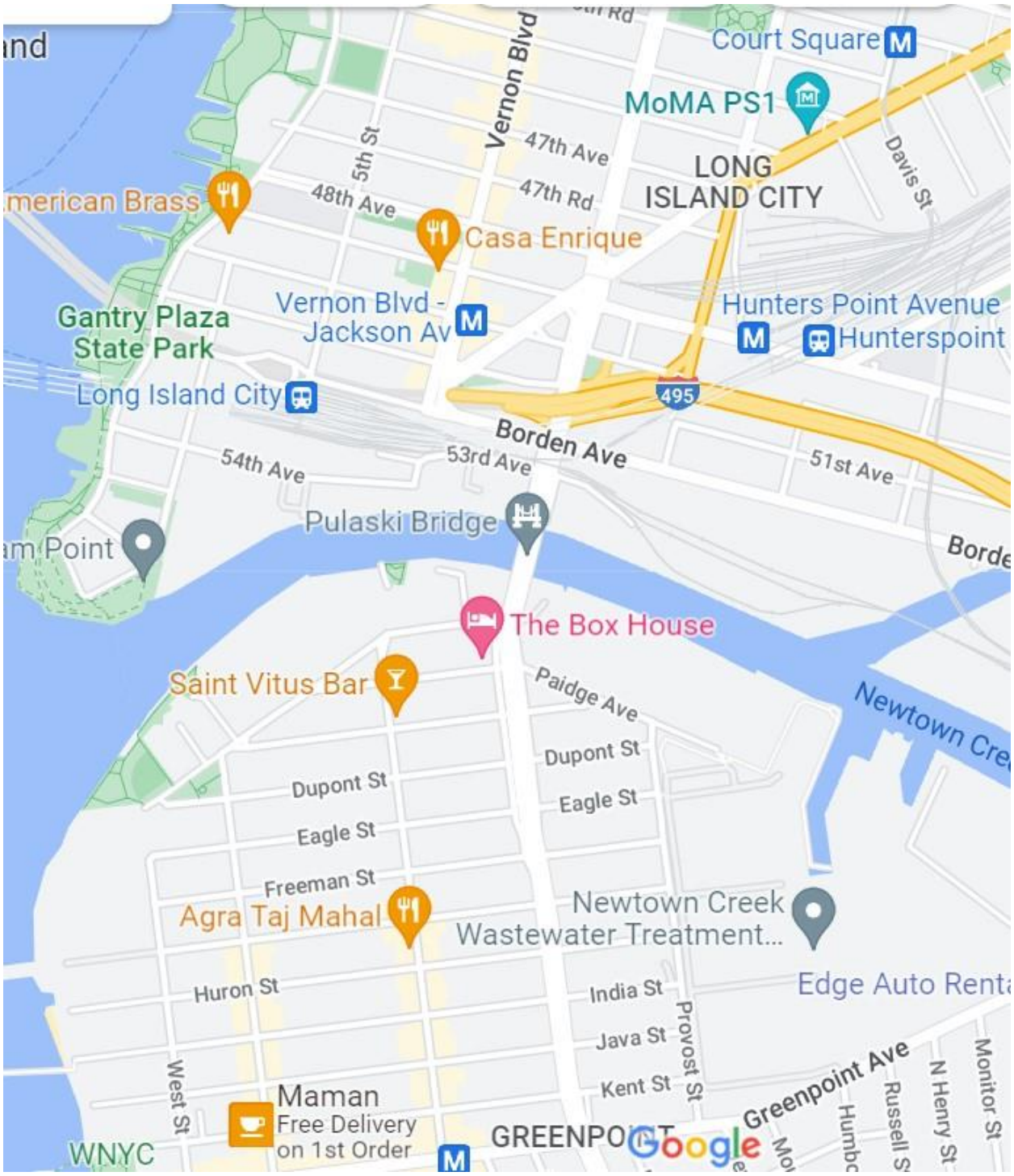
EXHIBIT A

Below please find map images (drawn from Google Maps) of the Pulaski Bridge, Greenpoint Avenue Bridge, Kosciuszko Bridge, and Grand Street Bridge. As discussed above and reflected in these map images, the small size and local nature of these bridges remove them from the concerns raised by larger and heavier traffic bridges between boroughs.

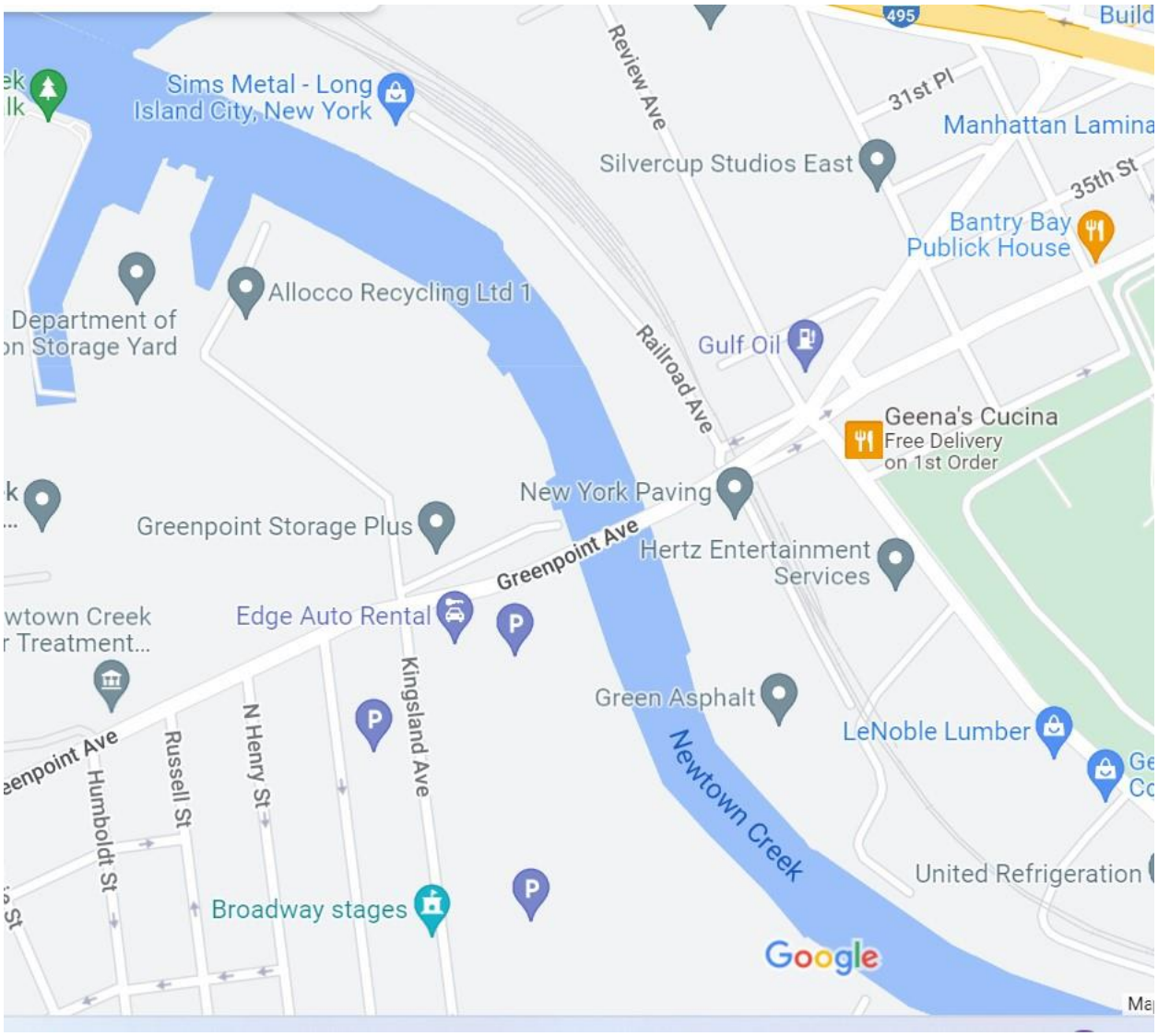
A. All four bridges



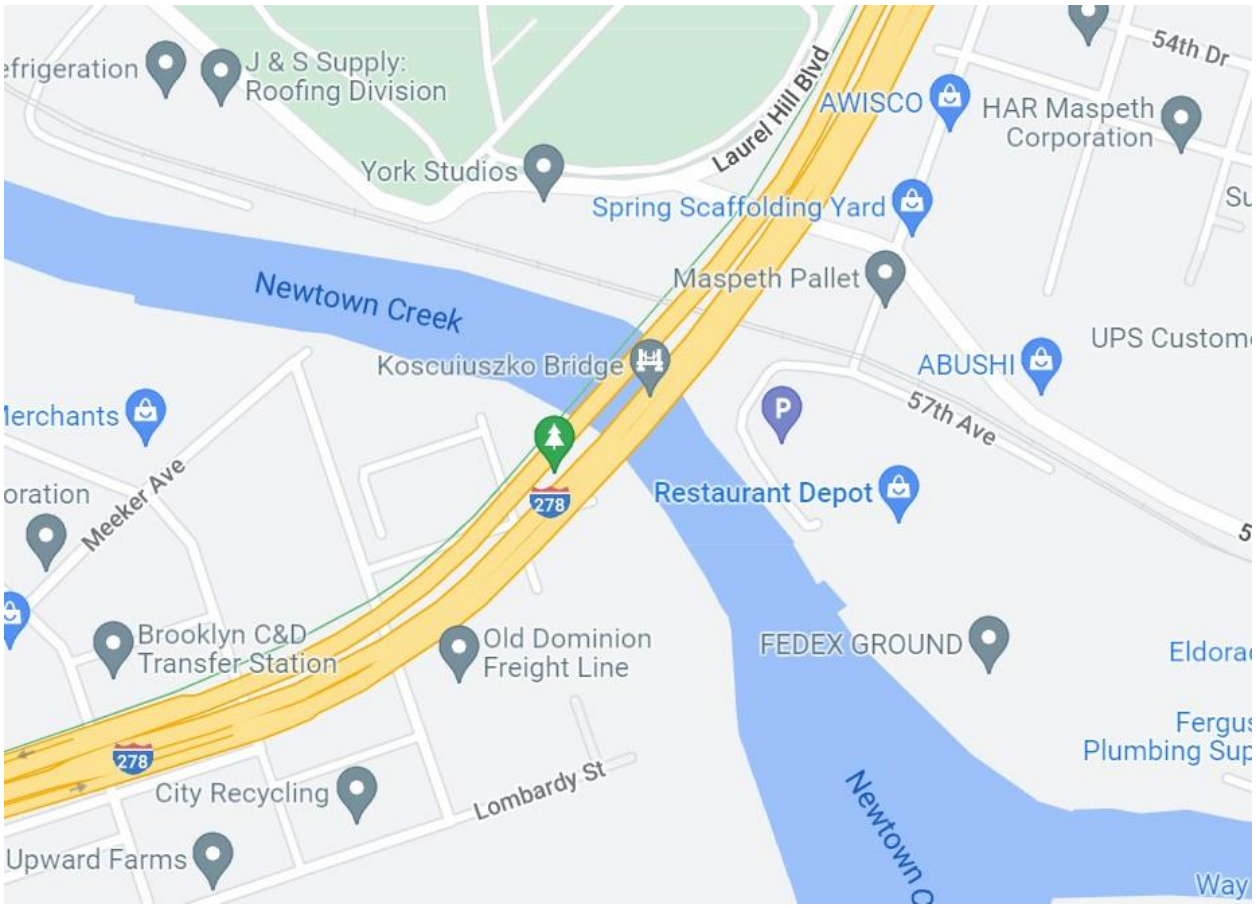
Pulaski Bridge



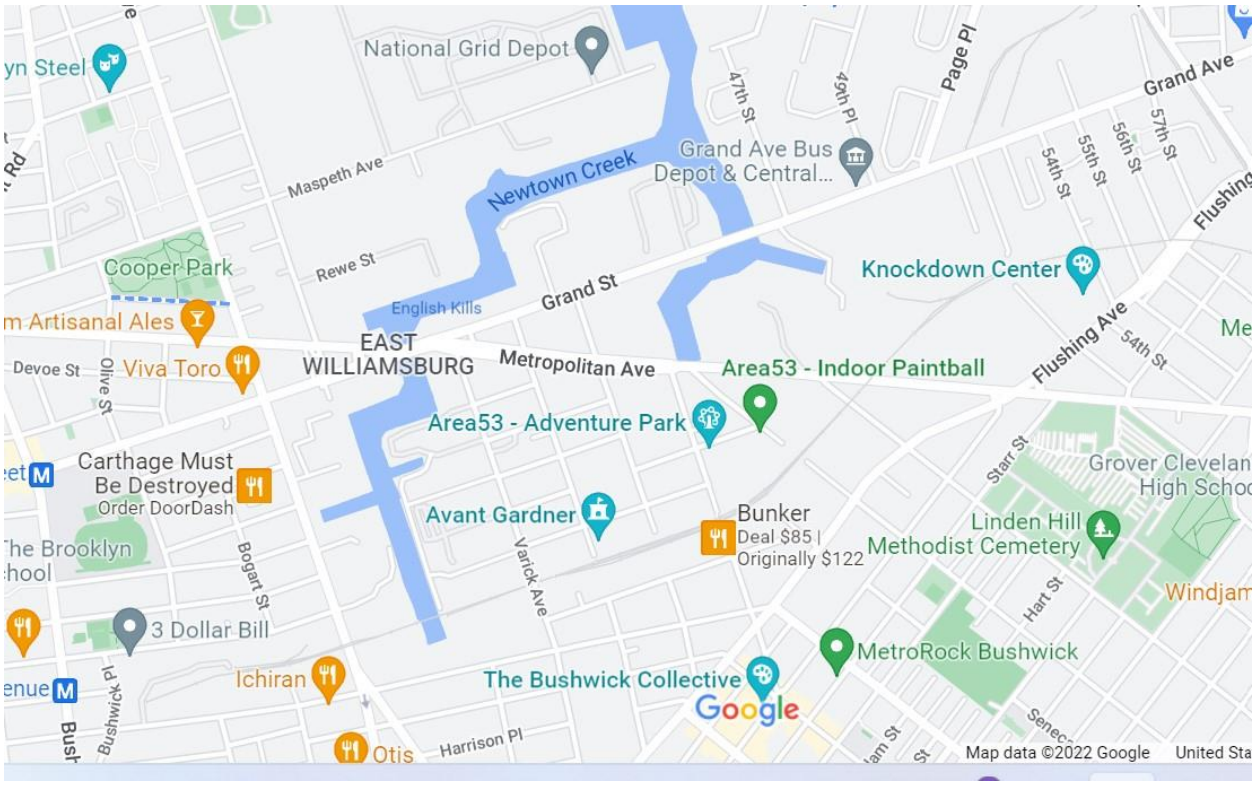
B. Greenpoint Avenue Bridge



C. Kosciuszko Bridge



D. Grand Street Bridge



March 31, 2022

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

RE: Comments on Proposed Rules to Implement Local Laws 113, 114, 115, 116, and 118 of 2021.

Dear Commissioner Mayuga:

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") to implement Local Laws 113, 114, 115, 116 and 118 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 merchants throughout the City and connecting New Yorkers with their favorite local businesses 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. By building the logistics infrastructure for local commerce, DoorDash is bringing communities closer, one doorstep at a time.

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 third-party courier services, and that such rules do not result in unequal treatment of similarly-situated businesses or create any unintended barriers to implementation. Please find our comments below.

The final rule should omit Section 7-802(a) to avoid unequal treatment of different businesses facilitating the exact same trips using the same model.

Concern: The coverage provision in Section 7-802(a) of the proposed rule (1) treats similar businesses in unequal ways based on arbitrary characteristics and (2) impermissibly expands the law to regulate deliveries unconnected to food service establishments.

I. *The proposed rule results in unequal treatment of similar businesses based on arbitrary characteristics.*

Chapter 15 of Title 20 of the New York City Administrative Code ("Chapter 15") currently imposes restrictions and obligations on companies that facilitate food delivery from restaurants. The proposed rule would expand that law and impose those restrictions whenever those companies facilitate delivery from other establishments, such as grocery stores. But neither the law nor the proposed rule applies to companies that facilitate delivery only from other establishments, like grocery stores. Accordingly, two companies can offer substantially similar delivery services, but one company is subject to the restrictions and the other company is not. There is no basis for this arbitrary treatment, and therefore proposed Section 7-802(a) likely implicates Equal Protection.

The Equal Protection Clauses of the U.S. and New York Constitutions require government actions that treat groups differently to have a rational relation to a legitimate end,[1] which "ensure[s] that classifications are not drawn for the purpose of disadvantaging the group burdened by the law."[2] Courts frequently invalidate laws that treat similar people or businesses in different ways based on arbitrary characteristics.[3]

Here, the Department's proposed rule creates a situation where similar businesses are treated differently based on arbitrary classifications. Currently, Chapter 15 applies only to third-party food delivery services and third-party courier services that facilitate delivery from "food service establishments," (*i.e.*, restaurants). Section 7-802(a) of the Department's proposed rule would extend nearly all of Chapter 15's requirements to deliveries not only from restaurants, but also from every other type of business, such as grocery and convenience stores. The rule does not, however, expand the definition of which companies are subject to the law. Accordingly, a company that facilitates delivery from restaurants and other businesses would be required to comply with the law with respect to *all* of its deliveries. But a company that facilitates deliveries only from non-restaurants would never have to comply with the law at all.

The rule is problematic because both sets of companies offer competing services. For example, some companies that facilitate restaurant delivery also facilitate delivery from grocery stores.

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[1] Rational basis review "is not meant to be toothless" and requires scrutiny of the challenged government activity. *Winston v. City of Syracuse*, 887 F.3d 553, 560 (2d Cir. 2018).

[2] *Romer v. Evans*, 517 U.S. 620, 633 (1996); *Bertoldi v. State of New York*, 275 A.D.2d 227, 229 (N.Y. App. Div. 2000).

[3] For example, in *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973), the Supreme Court struck down a law that limited food stamps based on household structure. The Court held that the law violated Equal Protection because personal relationships within a household had "nothing to do with their abilities to stimulate the agricultural economy by purchasing farm surpluses, or with their personal nutritional requirements." Likewise, in *Consol. Edison Co. of New York v. Pataki*, 117 F. Supp. 2d 257, 264 (N.D.N.Y. 2000), *aff'd on other grounds*, 292 F.3d 338 (2d Cir. 2002), the court struck down a law because it regulated only the plaintiff's nuclear power plant, not all similarly situated nuclear power plants, and failed to provide a rational basis for the distinction. *See also Sherwin-Williams Co. v. Crotty*, 334 F. Supp. 2d 187, 195 (N.D.N.Y. 2004) (plaintiffs stated equal protection violation when a law provided an exemption for smaller businesses in the same industry to escape regulation).

And other companies facilitate delivery from grocery stores only. New York City's delivery restrictions and obligations would apply to grocery-store deliveries facilitated by the first company, but not to those facilitated by the second company. This places the first company at a competitive disadvantage vis-à-vis the second company.

The competitive disadvantage is significant because both sets of companies use app-based platforms to reach their customers and engage independent contractors to provide the delivery services. In fact, delivery workers often fulfill orders from both sets of companies, sometimes during the same day. Thus, two identical orders, fulfilled using similar app-based technology, ordered from the same store, and delivered by the exact same person, are not regulated the same way by the City under the rule. This regulation violates the fundamental rule that governments "must treat like cases alike."[4]

Treating these two sets of companies differently is arbitrary. The classification is drawn based on whether the company facilitates deliveries from restaurants in addition to facilitating delivery from other types of retail establishments. But whether a company might also facilitate deliveries from restaurants as part of separate transactions has nothing to do with regulating delivery from non-restaurants. The service is still facilitating the delivery of the same item from the same store. Nothing in the legislative record supports treating these identical transactions differently based on what other services the company also offers. There is no rational link between the classification and a legitimate public purpose.

II. *The proposed rule impermissibly expands Chapter 15.*

The New York City Council charged the Department with "the administration" of these food delivery laws. The Department, however, seeks to do far more than administer the law—in fact, its proposed rule would significantly expand the law to a new class of businesses. The proposed rule thus exceeds the Department's limited authority to administer the law.[5]
It is well established that an administrative agency "may adopt only rules and regulations which are in harmony with the statute's over-all purpose."[6] The proposed rule is inconsistent with Chapter 15's overall purpose and therefore exceeds the Department's authority.

The purpose of Chapter 15 is to protect individuals who deliver prepared meals from restaurants.[7] Indeed, the substantive portion of Chapter 15 is titled "Subchapter 2: Food Delivery Workers." Not only does the title focus on the delivery of food, but Section 20-

[4] *Vacco v. Quill*, 521 U.S. 793, 799 (1997).

[5] See *Boord v. O'Brien*, 98 N.Y.S.2d 1, 4 (App. Div. 1950) (finding that a rule which was "in effect a formulation of law . . . rather than an implementation of the law," could not "be justified as an administrative execution of the law," and was therefore outside of the agency's "limited authority to adopt regulations appropriate to carrying out the stated objects of the statute."

[6] *Gen. Elec. Corp. v. N.Y. State Div. of Tax Appeals*, 2 N.Y.3d 249, 252 (App. Div. 2004) (internal quotation marks omitted); *see also Juarez v. N.Y. State Office of Victim Servs*., 36 N.Y.3d 485, 492 (App. Div. 2021) (Any rules adopted by administrative agencies must be "consistent with the statutory language and underlying purpose." (internal quotation marks omitted)).

[7] See § 20-1501 (defining Food Service Establishment).

1521(a)(1) specifically relates to deliveries from a restaurants, and Section 20-1524 requires Food Delivery Workers to be offered "an insulated food delivery bag," which has no value except in the context of delivering prepared meals.

The proposed rule oversteps that purpose by expanding the law to regulate deliveries unconnected to restaurants. This is most apparent when considering that the rule expressly renders a portion of the law meaningless by stating that Section 20-1521(a)(1) related to food service establishments will not apply in certain circumstances (*see* Proposed Rule Amendment § 7-802(a)), and implicitly renders a portion of the law meaningless by regulating deliveries where "an insulated food delivery bag," as required by Section 20-1524, would have no use. If the City Council wished to regulate activity beyond deliveries from food service establishments, it had the power to do so. The City Council did not, however, pass such a law.

Recommendation: The final rule should omit Section 7-802(a) to avoid arbitrarily treating deliveries by similarly-situated businesses unequally and impermissibly expanding the scope of Chapter 15.

The final rule should tailor the requirement in Section 7-806(c).

Concern: Section 7-806(c) of the proposed rule requires that a third-party food delivery service or third-party courier service make available a selectable list of 34 NYC bridges and tunnels for purposes of providing workers with ability to set their bridge and tunnel preferences. While DoorDash appreciates the rule clarifying the specific bridges and tunnels that are subject to the preference requirement, we do not believe there is any policy rationale for requiring a third-party food delivery or third-party courier service to list bridges and tunnels that would never be crossed as part of any trip offered by the service and, therefore, never implicate a worker's bridge or tunnel preference. Listing bridges and tunnels for which crossings would never occur creates additional implementation burdens, implies to workers that certain trips do in fact cross those bridges or tunnels, and negatively impacts worker experience by requiring them to make selections that are superfluous.

Recommendation: The final rule should make clear that, out of the 34 identified NYC bridges and tunnels, a third-party food delivery or third-party courier service must only make available for selection those bridges and tunnels over which a crossing may actually occur as a result of a trip offered by the service.

The final rule should clarify the requirement in Section 7-806(g).

Concern: The proposed rule states that a third-party food delivery service or third-party courier service must disclose to the food delivery worker the amount of any gratuity, if specified by the consumer, even if such third-party food delivery service or third-party courier service does not receive the order for delivery directly from the consumer. DoorDash agrees with this requirement, but believes some additional clarity could be beneficial. Specifically, when an order is received directly by a restaurant and then transferred to a third-party food delivery

service or third-party courier service, the service must often rely on the restaurant to accurately convey the details of that order, including any gratuity specified by a consumer when the order is placed.

Recommendation: In the situation identified by Section 7-806(g), the final rule should clarify that a third-party food delivery service or third-party courier service must disclose the amount of gratuity specified by the customer *as shared by the party who received the order directly from the customer*.

The final rule should omit Section 7-807(b).

Concern: Chapter 15 prohibits a third-party food delivery service or third-party courier service from charging or imposing any fee on a food delivery worker for the use of any form of payment "selected by such service" to pay such worker for work performed. The proposed rule expands this requirement to provide that any form of payment a third-party food delivery or third-party courier service *makes available* is a form of payment selected by such service. DoorDash believes that delivery workers should always have fee-free methods to access their pay and is proud to already offer multiple fee-free payment options. But, by expanding the requirement of Chapter 15 to encompass any payment method made available, the regulations preclude a third-party food delivery service or third-party courier service from offering optional pay-related services that include a fee, even if such optional service would be viewed as enhancing worker convenience or benefits. It is also unclear what meaningful policy goal of Section 7-807(b) is attempting to achieve as long as platforms otherwise have fee-free payment methods available.

Recommendation: The final rule should omit Section 7-807(b) or revise the provision to make clear that a third-party food delivery service or third-party courier service will not be determined to have charged or imposed any fee on a food delivery worker as long as the service offers at least one payment option that is fee-free and that option also satisfies the requirements of Chapter 15 and these regulations.

The final rule should allow for reasonable limitations on providing replacement bags as required by Section 7-808(c).

Concern: The proposed rule requires that a third-party food delivery service or third-party courier service make available a replacement insulated bag to delivery workers in cases of loss, damage, theft, or deterioration. DoorDash is not opposed to providing replacement bags at no cost. However, DoorDash in no way can verify that the conditions – loss, damage, theft, or deterioration – are met to provide a replacement bag. This means that, in practice, the obligation of this requirement is without limitation.

Recommendation: The final rule should allow a third-party food delivery service or third-party courier service to impose reasonable limitations to protect against fraud and abuse of the replacement bag requirement. For example, we recommend that the final rule state that in no

case is a third-party food delivery service or third-party courier service required to provide more than one replacement bag during a six month period.

The final rule should omit Section 7-804(b).

Concern: The proposed rule requires the notice of rights be resent through all required channels to any worker who has not engaged with the third-party food delivery service or third-party courier service in a six-month period. This requirement is burdensome and unnecessary. The rule already requires that the notice be permanently available through the third-party food delivery or third-party courier service's platform or website, available to a delivery worker upon request, resent to all workers each time the notice of rights is updated by the City, and provided via email and text before the delivery worker's first trip. Given these other notice requirements, including continuous access to the notice of rights, requiring a third-party food delivery service or third-party courier service to fully resend the notice to a delivery worker after any six-month break in engagement does not serve a significant benefit.

Recommendation: The final rule should omit Section 7-804(b) in light of other requirements regarding notice of rights availability.

* * *

Thank you again for this opportunity to provide comments on the proposed rules. 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,

Sascha Owen
Senior Manager of Government Relations for New York

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

Proposed Action: Amendments to Proposed Rules Related to Local Laws 113, 114, 115, 116, and 118 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: March 31, 2022
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 rules, to best advance the interests of the City and its residents and businesses, and maintain fidelity with the Council's enactments in this area.

To this end, Uber Eats proposes the following amendments, discussed more fully below:

1. Add a definition for the term "suspension".
2. Limit the applicability of Title 20, Chapter 15 to deliveries from food service establishments.
3. Clarify that courier preferences for certain bridges and tunnels apply only where the preference is relevant.
4. Clarify that companies must deliver insulated bags only if a courier requests one.
5. Eliminate the requirement for companies to provide replacement insulated bags.

Nothing herein shall in any way limit or waive arguments and points that may be asserted in pending or future litigation.

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
have secured licenses to operate as "third-party food delivery services" 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, 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 million in grants given to local restaurants.

Feedback on Proposed Rules Related to the Implementation of Local Laws 113, 114, 115, 116, and 118 of 2021
Over the last twelve months, the City Council has enacted a series of ordinances that govern activities by Uber Eats, merchants, and couriers. We view the Council's enactments as providing the backdrop for any further rulemaking effort. And, we recommend that these proposed rules look to implement, rather than revisit, the fundamental balances that the Council struck in the legislation. To that end, Uber Eats urges the Department to consider adopting the following recommended amendments:

Recommended Amendments to the Proposed Third-Party Service Workers Rules
(suggested language is <u>underlined</u>, deleted language is ~~stricken~~)

- §7-801 - Definitions (a)(1): Defines "deactivation" as ceasing to offer shifts or trips to a food delivery worker on a temporary basis.

    - <u>Suggested Approach</u>: A temporary deactivation is commonly thought of as being a "suspension". The terms "suspensions" and "suspended" are even used in §§7-803(a) and (b) and 805(c)(7)(i), respectively. We recommend clarifying the distinction between a "deactivation" and a "suspension" to give meaning to the term "suspension" as it is used in the proposed rules.
        - <u>Recommended Amendment</u>: (a)(1) "Deactivation" means a third-party food delivery service or third-party courier service ceases to offer shifts or trips to a food delivery worker on a ~~temporary or~~ permanent basis.
        - **New Provision:** §7-801(a)<u>(3) "Suspension" means a third-party food delivery service or third-party courier service ceases to offer shifts or trips to a food delivery worker on a temporary basis.</u>

- §7-802 - Coverage (a): Requires deliveries from establishments other than "food service establishments" to be covered by Title 20, Chapter 15 of the Administrative Code. This provision broadens the scope of the Department's authority to activities unrelated to the underlying code. The relevant definitions of Title 20, Chapter 15 of the Administrative

Code, Section 20-1501, (below) are clear in defining the scope of regulated activity as deliveries from "food service establishments":

> The term "third-party courier service" means a service that (i) facilitates the ***same-day delivery or same-day pickup of food, beverages, or other goods from a food service establishment*** on behalf of a third-party food delivery service and (ii) that is owned and operated by a person other than the person who owns such food service establishment. (Emphasis added)
>
> The term "third-party food delivery service" means any website, mobile application, or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the ***same-day delivery or same-day pickup of food and beverages from, a food service establishment***; and (ii) that is owned and operated by a person other than the person who owns such food service establishment. (Emphasis added)

- ○ Suggested Approach: We recommend striking this provision to align with the provisions of Title 20, Chapter 15 of the Administrative Code.
  - ■ Recommended Amendment: ~~(a) If a third-party food delivery service or third-party courier service offers a trip to a food delivery worker that involves pickup or delivery of goods solely from a business or businesses other than a food service establishment, such trip is covered by Title 20, Chapter 15 of the Administrative Code and this subchapter, except that the requirements of Section 20-1521(a)(1) shall not apply to that trip.~~

- §7-806 - Delivery Distance and Route (b) and (e): Requires couriers be allowed to set and update their preferred bridges and tunnels and their maximum distance parameter and preferences. This provision as proposed risks cutting off entire communities from accessing reliable food delivery and thus being inconsistent with the intent of the local laws. As Consumer Affairs Committee Chair Diana Ayala stated on September 23, 2021, "Finally, food delivery workers will be able to set their own distance and route limitations so that they can control how far they travel while working and they can avoid dangerous routes and unrealistic delivery timeframes." To the extent any rules are proposed on this issue, they should only apply where that choice by a courier matters (i.e., where absent the choice, the courier might be routed over a bridge/tunnel).

  In addition, to the extent any rules are proposed on this issue, they should exclude crossings whose inclusion may have the effect of cutting off communities, contrary to the intent and purpose of the local law. To give just a couple of many illustrations of the problem, included in the list of bridges that could be encompassed within the scope of the proposed rule are considering are the Grand Street Bridge, which is less than 200 feet long, the Greenpoint Avenue Bridge which is a two minute walk, and the Roosevelt Island Bridge, which is 0.3 miles long and connects more than 11,000 residents to Queens. By requiring companies to allow workers to opt out of deliveries over these bridges, the proposed rules would create significant operational challenges for the companies and potentially dramatically restrict the ability for consumers to order from within their own communities, while not addressing issues that were behind the intent of the bill. Granting couriers the ability to categorically opt-out of specific access points

may adversely impact underserved communities. To name just one example, Roosevelt Island Bridge is the only access point for the residents who live there to get deliveries and there are only a few restaurants on the Island.

- Suggested Approach: We recommend clarifying that this functionality should only be required in instances where a courier would, in the absence of a choice being presented, be routed over a bridge or tunnel, and that the list is revised to include major bridges in the densest areas of New York City where most delivery workers travel on two-wheeled vehicles. The City's proposed list of Bridges/Tunnels includes smaller bridges that do not implicate the issues set forth in support of the rule, and that more acutely risk collateral harm to communities that depend on smaller bridges and tunnels to facilitate delivery. To this end, even if the City retains aspects of this provision (which it should not except as outlined in the recommended amendment below), the following following bridges/tunnels should be excluded:
  - Pulaski Bridge
  - Greenpoint Ave Bridge
  - Grand Street
  - Kosciuszko Bridge
  - Roosevelt Island Bridge
  - Marine Parkway-Gil Hodges Memorial Bridge
  - Cross Bay Veterans Memorial Bridge

- Recommended Amendments: (b) Pursuant to Subdivisions (a) and (b) of Section 20-1521 of the Administrative Code, where a third-party food delivery service might otherwise offer a trip to a food delivery worker requiring the traversal of a bridge or tunnel listed in subdivisions c and d, and where the third-party food delivery service does not provide the food delivery worker the opportunity to decline the trip, a third-party food delivery service or third-party courier service must provide ~~a food delivery~~ such worker with the ability to set and update the maximum distance parameter and preferences in respect to the bridges and tunnels listed in subdivisions c and d of this section using the third-party food delivery or third-party courier service's website, mobile application, or other internet service through which trips are offered to such worker. Such distance, bridge, and tunnel parameters, when set or updated, shall take effect automatically and as soon as practicable, without requirement for review, approval, or any other act by a natural person employed by or acting on behalf of the third-party food delivery service or third-party courier service. The functions to set and modify such parameters must be included within a user interface easily accessible to workers through the website, mobile application, or other internet service and no less accessible than other settings or profile information a food delivery worker can select or input. A food delivery worker must be able to select and deselect the

bridges and tunnels listed in subdivisions c and d of this section using a list or map within the user interface.

- §7-808 - Insulated Food Delivery Bags (a): Requires food delivery companies to deliver an insulated food delivery bag to couriers within seven days after their sixth delivery regardless of whether the courier requests the bag. This is contrary to the language of the local law, which specifies that delivery services must either provide bags or make them available.

    - Suggested Approach: We recommend not requiring companies to deliver a bag to a courier without their request.
        - Recommended Amendment:(a) A third-party food delivery service or third-party courier service must ~~make an insulated food delivery bag required by Section 20-1524(a)(1) of the Administrative Code available for pickup by a food delivery worker or deliver such bag to a food delivery worker~~ no later than seven (7) days following the day of ~~such~~ a food delivery worker's sixth delivery for that third-party food delivery service or third-party courier service: (1) make an insulated food delivery bag required by Section 20-1524(a)(1) of the Administrative Code available for pickup by a food delivery worker, or (2) at the request of a food delivery worker facilitate the delivery of such a bag to the worker.

- §7-808 - Insulated Food Delivery Bags (c): Requires food delivery companies to provide "replacement insulated food delivery bags" to couriers at no expense to the courier and with no limit on the number of replacement bags that must be provided. The underlying code, Section 20-1524(a)(1), does not require food delivery companies to provide replacement bags and instead only requires food delivery companies to provide couriers with "an insulated food delivery bag" (emphasis added). The use of the singular—"an insulated food delivery bag"— is inconsistent with an interpretation requiring food delivery companies to provide a limitless quantity of "replacement insulated food delivery bags," and the proposed rule is thus inconsistent with the local law.

    - Suggested Approach: We recommend striking this provision.
        - Recommended Amendment: ~~(c) In cases of loss, damage, theft, or deterioration, a third-party delivery service or third-party courier service must make available replacement insulated food delivery bags for a food delivery worker at no expense to such food delivery worker.~~

Thank you for your consideration.

Sincerely,

/s/ Hayley Prim

Hayley Prim

Policy Manager, Uber Technologies, Inc.

THE NEW BRONX CHAMBER OF COMMERCE, INC.

March 31, 2022

Commissioner Vilda Vera Mayuga
Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Dear Commissioner Mayuga,

As the representative of small businesses in the Bronx, we are writing to ask the New York City Department of Consumer and Worker Protection to amend its recently issued proposed rule regulating third-party food delivery services. As it currently stands, this proposed rule goes far beyond the original intent of the City Council and will ultimately hurt many of our local businesses that rely on these platforms.

According to the proposed rules, delivery apps that help restaurants and small businesses expand their reach and customer base and deliver grocery items would be subject to the City Council laws passed in 2021 for all their deliveries while companies that only deliver grocery- and not from restaurants would be exempt despite their similar business models.

More plainly: under this legislation, two different delivery companies could fulfill the same order using the same delivery workers but be treated entirely differently under the proposed rules. We respect the City's and the Council's efforts to establish rules of the road, but we ask that you ensure parity for similar businesses under those very rules.

Moreover, the City Council laws that were passed unequivocally sought to regulate delivery from restaurants. By DCWP applying this law to all other parts of a third-party delivery service business, it is overreaching beyond the scope of the law.

Since the start of the pandemic, Bronx businesses have steadily relied on delivery services, giving them additional sources of revenue, and allowing them to find new customers. Third-party delivery services have served as a lifeline for small businesses and continue to help these businesses to create more revenue and expand their reach.

We're asking that DCWP amend its proposed rule to meet the clear intention of the City Council law that was passed. This legislation would set a dangerous precedent around how New York regulates businesses. Please take the time to consider the implications.

Thank you for the opportunity to submit testimony.

Lisa Sorin
President

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March 31, 2022

Commissioner Vilda Vera Mayuga
Department of Consumer and Worker Protection
42 Broadway New York, NY 10004

Dear Commissioner Mayuga:

Thank you for the opportunity to submit testimony on behalf of the Yemeni American Merchants Association (YAMA) on the proposed rules regarding third party delivery platforms recently released by the Department of Consumer and Worker Protection (DCWP). YAMA represents over 3,000 merchants in New York City who own bodegas and delis. We work to protect the interests of small, local businesses.

While we commend the DCWP for its efforts to promulgate the rules based off of the 2021 New York City Council laws that provided protections for our essential delivery workers, we believe the rules should be amended to make sure that they apply equally to businesses doing the same type of work and does not change the clear scope of the law.

According to the proposed rules, delivery apps that help restaurants and small businesses expand their reach and customer base and deliver grocery items would be subject to the City Council laws passed in 2021 for all their deliveries while companies that only deliver groceries and not from restaurants would be exempt despite their similar business models.

Last year, the City Council laws that were passed unequivocally sought to regulate delivery from restaurants. But now DCWP is applying this law to all other parts of a third-party delivery service business, it is in our opinion overreaching beyond the scope of the law. In addition, being done without any consultation or engagement of small businesses which have suffered in the last two years by the pandemic.

Since the start of the pandemic, our bodegas and delis relied on delivery services, giving them additional sources of revenue, and allowing them to find new customers during a time local, state or the federal government shut them out of receiving aid. Third Party delivery services have served as a lifeline for bodegas and delis to stay afloat and have helped them to generate more revenue and expand their business reach.

We urge the DCWP to amend its proposed rule to meet the clear intention of the City Council law that was passed. We fear this legislation would set a dangerous precedent on how New York regulates businesses. Please take the time to consider the implications this has on our small businesses.

Thank you in advance for your consideration of this testimony.

Dr.Debbie Almontaser
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YEMENI AMERICAN MERCHANTS ASSOCIATION
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