

White Paper on 3rd Party Delivery Fees
Provided by Ontario County Tourism – Finger Lakes Visitors Connection,
Valerie Knoblauch
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Page | 1 **Executive Summary**

In late February while local restaurants were limited to 50% capacity, an issue was raised by the Downtown Business Improvement District and the owner of Simply Crepes restaurant in Canandaigua with regard to the escalating fees of 3rd party delivery services such as DoorDash and Grub Hub. Because of the pandemic, the online orders and food deliveries increased by about 40% nationally. With these increases in deliveries came increases in fees for delivery services. When this reached a certain point – some felt that it was essentially gouging both the restaurants and the customers with fees which were not transparently presented.

Government action was requested to look at this issue and to potentially follow the adoption of a local law which would essentially cap these fees dished out by the delivery services – at least until the point that restaurants could open their establishments for table service to at least 75% or 85%.

Ontario County executed an executive order to limit these while the mechanics of a local law, including a public hearing, could be executed. The execution of the law bought time to look deeper into the issues and also provided more “nearby case studies” for the broader restaurant community and their use and reasoning for use or non-use from the 3rd party delivery companies. Additionally, we were able to see what the 3rd party delivery services did when a nearby county (Monroe) imposed these new regulations.

This paper provides background on the dynamics of the restaurant business model shifts resulting from this pandemic. Those dynamics include customer motivations, restaurant concerns for saving their business in a new world, and some anecdotal information about the 3rd party delivery fees reaction and transparency – or lack of transparency.

Sources. Sources are listed throughout the document. These sources provide a better understanding of the dynamics of 3rd party delivery from an economic standpoint, as well as with a lens on consumer transparency. Some sources are anecdotal, but provide real life, real time examples. The members of the Board of Supervisors wanted more information. A summary of “more information” is in this paper. FLVC cooperated with The Canandaigua Downtown BID, Pierre Heroux of Simply Crepes, and the NYS Restaurant Association to access broader resources and opinion about this, at a national, state and local level.

Shifting dynamics and developing information. From the time that Finger Lakes Visitors Connection addressed this at our February 11th meeting and Ontario County addressed it with the execution of the executive order, much has changed.

- More counties across the state have adopted local laws
- DoorDash and Grub Hub have not backed down from charging the fees, but have offered “rebates” if the restaurants want to claim it; or have instituted alternative fees, pushed to the consumer; there are no reports of them pulling away from this lucrative business
- The State continues to change the emergency orders on occupancy for restaurants on February 20, 2021 (most recently announcing an upcoming increase to 75% within this month)

Next steps. The Ontario County Board of Supervisors has scheduled the public hearing on April 1st for this potential local law. Finger Lakes Visitors Connection supplies this White Paper to consolidate information, provide more up-to-date information, identify issues at the base level for our restaurant community, as well as sensitivity to our residents – who are “the customers” and “the consumers” in this scenario.

The path forward. As director of tourism for Ontario County, I augment the hues and cries for the help that our industry needs to rebuild from the devastating effects of this pandemic. Our models have changed, our consumer attitudes have shifted, our future – will be a new future which will require flexibility, adaptation, and innovation. This is particularly true of the restaurant segment of the hospitality industry.

We appreciate that our elected officials also recognize that “we” need help and are willing to review particular ideas to provide that help. At the conclusion of this paper, I summarize the conversations from an informal restaurant group in Canandaigua. I asked them, “what can the county or other government do to help you the most right now? If they can only focus on one thing what would that one thing be. Getting us open – and allowing policies which will help us expand our seat space both indoors and outdoors, was the unanimous desire. We look forward to working with the Board of Supervisors to develop a plan to this end – and to open the door for our industry to access the resources which are included in the COVID-19 relief bill to rebuild our businesses from an infrastructural standpoint as well as the ever important side of our Hospitality industry – getting the customer to come back and walk through our doors!

I don’t claim this document to be all encompassing of this big issue. Within I may raise more issues than I solve. There are many facets: micro-economically, socially, culturally, and macro-economically. Shifting sands and quick timelines have necessitated some lack of specificity. I hope this provides enough information with a look at the issues from all sides: a government policy side, a consumer protection element, private business viewpoints, and economic development opportunity.

I’m always open to questions and discussion.

Valerie Knoblauch
President, Ontario County Tourism –
Finger Lakes Visitors Connection

Customers, Restaurants, and Delivery Fees

Customers.

To survive any restaurant needs customers.

Customers in this case are both visitors and residents. The emergency order refers to the residents specifically.

Customers need to be **allowed** to sit at tables in restaurants

Customers need to be **comfortable** to eat in restaurants

Customers need to **afford** the food and the service

Customers have service and quality standards from restaurants

Restaurants.

Restaurants make a choice whether to engage with any of these delivery services and whether to have delivery service at all as part of their model. Restaurants may choose to provide: At the table; take out; delivery.

Who did we talk to?

We talked to over ½ dozen restaurants in Canandaigua and Bloomfield and Geneva to ask about this issue. We also spoke to one restaurant as defined here: *Restaurant Model (RestMCPlus): I reached out to someone who used to work with me and is now the marketing manager for a 43-unit restaurant “chain.” These restaurants are all East of the Mississippi, with the closest being in Monroe County. There are none of these restaurants in Ontario County. This marketing manager was very open with me and shared market segment numbers, correspondence and customer reaction since these fees have been put into place in some of their constituent areas. I will refer to this source as RestMCPlus.*

Factors in choice to use a 3rd party delivery:

Brand identity within market segment

Customer expectations and needs

Profitability

At issue here: 3rd party delivery fees and its effect on profitability and customer expectations

Time	% of online orders from Customers
Pre Pandemic	5%
April – Fall	45%
Fall – Current	25%
Future	Expected stabilization; dependent upon access to restaurants; customer comfort/safety; affordability

Source: RestMCPlus

“The Governor announced on Sunday that restaurants outside of New York City, which have been operating at 50 percent capacity, can now move to 75 percent capacity starting March 19.”

Note: this allows them to open, but the consumer still needs to feel comfortable to come back; and the restaurants which are small may not add that many seats.

Source: NY Wine and Grape Foundation

Delivery Services.

Door Dash, Grub Hub, Uber Eats, or Self Delivery by Restaurants

The very rough model of fees:

	At Restaurant level	Customer	Driver	Note
Food				
Marketing Fees	x			
Delivery Fee	x	X		
Sales Tax		X		
Processing Fee	x			
Tips				
Regulatory Compliance Fee		X		See Dinosaur B' bQue receipt from Monroe Co.
Commissions	x			

Source: <https://blog.doordash.com/understanding-merchant-fees-cbdf057d15c>
Source: New York Restaurant Association

Source: The New York Times (2/26/20)

<https://www.nytimes.com/2020/02/26/technology/personaltech/ubereats-doordash-postmates-grubhub-review.html>

How Delivery Apps Drove Up the Cost of a Subway Order

I ordered two turkey sandwiches from a nearby Subway. Here are the details of how the costs worked out.

Cost	Grubhub	DoorDash	Postmates	Uber Eats	Restaurant
6-inch Turkey Breast Sub (x2)	\$11.98	\$14.78	\$14.78	\$14.78	\$12.58
Delivery fee	\$1.99	\$1.99	\$2.99	\$3.99	
Service fee	\$1.29	\$1.20	\$2.42	\$2.22	
Sales tax	\$1.20	\$1.29	\$1.33	\$1.26	\$0.63
Misc.				\$3	
Total cost	\$16.46	\$19.26	\$21.52	\$25.25	\$13.21
Markup	25%	46%	63%	91%	

Note: Several attempts were made to contact DoorDash and Grub Hub directly. This outreach was made in response to supervisor's request to see what the other side has to say. No response was received to my phone inquiries and my online inquiries after these attempts. I know that the county attorney also noted her difficulty getting in touch with them.

Delivery Workers:

Q. Are they local?

A. Yes, they are from the area.

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Q. Who are these drivers employed by? The restaurant? The Delivery Service Company? Independent.

A. Not the Restaurant. (that's why they are third party)

A. Grub Hub employs their workers. "Unlike waiters, most of these delivery workers aren't paid by the restaurants outright. They're paid by Grubhub—and it's not based on the size or price of the order.

"Grubhub has a \$3.50 base [depending on location], plus mileage, any bonuses they're offering, and tip," says Curtis, who delivers for Grubhub in Denver. While actual fees can vary based on the city or state you drive in, an anonymous driver in Rochester, New York, shared that he gets paid 50 cents a mile. But it's important to note, he says, that "we don't get paid from where we are to the restaurant. We only get paid from where we are to the diner, so we can drive up to 20 minutes sometimes to pick up the food that we're not getting paid for."

Source: [Glamour.com/story/what to tip food delivery](https://www.glamour.com/story/what-to-tip-food-delivery)

A. Door Dash treats the delivery workers as independent contractors

Source: [DoorDash.com](https://www.doordash.com)

Below are Questions which have been asked by the Supervisors in their discussions on this topic. They are presented in a Q and A Format, with sources noted at the end of the answers.

Q and A – Miscellaneous

Q. If the county adds this law, will the delivery services pull out of our area?

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A. Although this appears to be a common threat, there is no data to support this happening. As my source at RestMCPlus said, “why would they – when they’ve seen a market opportunity expand to 45% and level at 25%, this all represents growth potential to them. They are not going to secede this opportunity or the growing market to a competitor, because it’s not coming back.’

A. NYS Restaurant Association – not likely. See Attached.

Source: NYS Restaurant Association
RestMCPlus

Q. Do the restaurants want to lose the services of these delivery companies?

A. No. Not one restaurant who is currently engaged with them said that they want to lose this option for delivery. Their desire was for affordability, transparency, and customer satisfaction. They ar

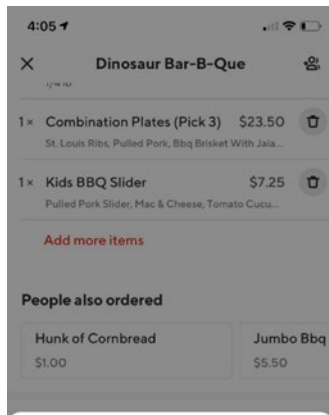
Q. What is the customer’s reaction to this?

A. The customers desire the same thing that the restaurants do: affordability, quality, and transparency on fees.

Q. How many other NYS Counties have done this or have pending legislation?

A. Nine as of this date.

Source: NYS Restaurant Association



Q. Will the “costs” above the cap be passed on to the restaurant, ignored, or passed on to the consumer?

A. It appears that Door Dash, at least, is passing them on to the consumer, since this side is unregulated.

While the Ontario County law was written to not allow Door Dash or others to create new fees on the restaurant, this evidence from Monroe County shows that DoorDash has created a new fee and tacked this on to the customer side of the order as a regulatory response fee. There is no reason to believe that this will not happen in Ontario County.

Comment. This is the big concern that for the small amount of dollars to a restaurant fee, that the customers (residents) will suddenly have this added in and will not point at DoorDash, but rather at the government who imposed the fee. Some are likely to be annoyed that the fees have been shifted, through your local law from the restaurants to the consumer. I think this may be an unintended consequence.

Summary.

The time of the Emergency Order being in place and the questions asked by the Board of Supervisors and others around this issue allowed us to do a deeper dive into this issue. After presenting a number of the facts above to the restaurant group (just the Canandaigua ones met as a group), I did ask them in a zoom meeting how many of them were using these services and how the nature of their business had changed from March of last year to March of this year. It was an interesting mix because there were three definitive points of view and it was about evenly split. POV #1 – don't let DoorDash, etc. add to my already escalating costs; POV #2 – Those types of delivery services don't fit my model and I'm just not planning on using them – this is much adieu about nothing; POV #3 – I need these tops of services so that I can be in the delivery game.

I stated that the County Board of Supervisors are very aware of the struggles of our industry and of the small restaurants – bricks and mortar. I asked them what they thought the “best help” was that the county or municipal (government) could provide for them to recover.

Here are the rankings of their answers. You will note that despite the fact that this meeting was set up to address the 3rd party fees, they did not mention this in the top “things” which needed to be done.

#1 priority was to get their restaurant capacity back to 100% as soon as possible. They were hoping that the county could play a role in advocating at the state level to get them open.

#2. Helping get the customers back and comfortable. Marketing, advertising; infrastructure

#3. Help them through policy or innovation or access to funds to get more outdoor space so that they can expand to the outdoors. This help ranged from zoning regulation flexibility, equipment needed, identification of potential joint space.

Canandaigua Business Improvement District
Meeting of restaurants – March 16, 2021

Article from Consumer Reports.

Food delivery app policies and COVID-19: With the global pandemic, food delivery app platforms saw a rise in demand. 40% of Americans have ordered food takeout more often during COVID-19, according to an S&P Global Market Intelligence survey. Amidst a variety of lock-down protocols, restaurants began to rely more heavily on takeout and delivery as their primary source of income, highlighting the effects of the commissions charged to restaurants, while increased use of the service highlighted effects on consumers and delivery drivers.

In response, U.S. cities created a variety of policies. San Francisco, Los Angeles, and New York, among others, capped the percent commission fees that delivery services could charge restaurants. Others like Seattle and Portland mandated hazard pay to delivery drivers. Uniquely, Chicago mandated transparent, itemized fee and commission disclosures to consumers. ... In the past several months, stories emerged around exorbitant fees, fee cap rules, hidden phone fees to restaurants, and opaque and confusing fee design. Due to these practices, local city governments around the country implemented various fee caps and provisions to provide safeguards and temporary relief to restaurants and customers who bore the burden of these spikes in fees.

For more:

<https://digital-lab-wp.consumerreports.org/wp-content/uploads/2020/09/Food-delivery-Report.pdf>

Key Survey Findings – New York New York State Restaurant Association

The findings below are based a survey of
136 New York restaurant operators conducted February 2-10, 2021

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Restaurant Business Conditions

- Consumer spending in restaurants remained well below pre-pandemic levels in January. Overall, 92% of New York restaurant operators say their total dollar sales volume in January was lower than it was in January 2020. Only 5% of operators reported higher sales in January, while 3% reported sales volume that was about the same as it was in January 2020. Including all restaurants, sales were down 44% between January 2020 and January 2021.
- With on-premises capacity limited – and sometimes nonexistent – during the last several months, restaurant operators had no choice but to focus on their off-premises business. While many restaurants saw off-premises sales rise, it wasn't nearly enough to make up for their lost on-premises sales. Among restaurant operators who say their off-premises business increased compared to pre-COVID levels, 67% say their higher off-premises sales have made up less than 30% of their lost on-premises sales.
- Most restaurant operators do not expect business conditions to improve during the next several weeks. Only 19% of New York operators expect their sales in February and March to be higher than it was in January. Forty-six percent of operators think their sales will decline in February and March from January's levels, while 35% expect their sales to remain about the same.
- Looking further down the road, most New York restaurant operators do not expect a return to normal business conditions any time soon. Thirty percent of operators think it will be 7-12 months before business conditions return to normal for their restaurant, while 35% think it will be more than a year. An additional 14% of operators say business conditions will never return to normal for their restaurant.
- For many restaurants, additional actions from the federal government will be critical to their business surviving beyond a few weeks. Twenty-seven percent of New York restaurant operators say they will 'probably' or 'definitely' be closed within 3 months if there are no additional relief packages from the federal government.

Restaurant Jobs

- Deteriorating business conditions led to additional job losses in recent weeks, with 54% of New York operators saying they laid off or furloughed employees in December or January.
- Although many restaurants added back employees after the initial lockdowns, overall staffing levels remain well below normal. Ninety-two percent of New York operators say their current staffing level is lower than what it would normally be in the absence of COVID-19. Sixty-four percent of operators are currently more than 20% below normal staffing levels.
- With future business conditions remaining uncertain, very few operators are planning to expand payrolls in the near term. Only 17% of New York operators expect their restaurant's staffing levels to be higher in February and March than it was in January. Fourteen percent of operators expect their staffing levels to decline in February and March, while 69% think it will remain unchanged.

Charitable Activities

- Even in the midst of the most challenging business conditions in history, the philanthropic spirit of the restaurant industry remained intact. Seventy-seven percent of New York operators say their restaurant business made a charitable contribution (such as cash, food, space, in-kind or volunteering) since the COVID-19 outbreak in March 2020.