

# **An Overview of Key Issues in Washington, D.C. Area Restaurant Industry in 2024**

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*This report is based on existing publicly-accessible data and literature.*

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## Executive Summary

It is a chaotic and disruptive time for Washington, D.C.'s independent restaurants even several years beyond the COVID-19 pandemic, which brought the challenges of restaurant working conditions and wage inequality – along with the fragility of restaurant business models – more widely into focus. Owner/operators face increased food, occupancy, and labor costs while at the same time experiencing declining sales and traffic due to persistent pandemic-era “work-from-home” routines<sup>1</sup> and increased crime in the city<sup>2</sup>. In November 2022, D.C. voters passed Initiative 82,<sup>3</sup> which phases out the tip credit system and establishes a universal minimum wage by 2027. On July 1, 2024, the regular minimum hourly wage increased to \$17.50 and the tipped minimum hourly wage rose to \$10.00.

The proliferation of ambiguous “service charges” by restaurants and other food service operations around the country has generated confusion and ire among consumers<sup>4</sup> and regulatory scrutiny. The Federal Trade Commission proposed a ruling prohibiting deceptive “junk fees” that includes restaurant service charges<sup>5</sup>. The rule is expected to be adopted later this year, with some modifications. Additionally, the D.C. consumer advocacy nonprofit Travelers United brought several “junk fee” lawsuits against local restaurant groups claiming that service fees violate consumer protection laws and liquor license requirements. These lawsuits have been settled.

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<sup>1</sup> [Free Coffee. Restaurant Specials through March hope to reignite Downtown DC.](#) *Eater DC* (Feb. 5, 2024)

<sup>2</sup> [As Washington crime spikes, DOJ vows to send more resources to reeling city.](#) USA Today. (Jan. 26, 2024)

<sup>3</sup> [A DC Voter's Guide to Initiative 82 and the Tipped Minimum Wage.](#) Washingtonian. (Oct. 4, 2022)

<sup>4</sup> [Service fees are roiling DC Restaurants. Here is what you need to know.](#) *Washington Post*. (Feb. 16, 2024)

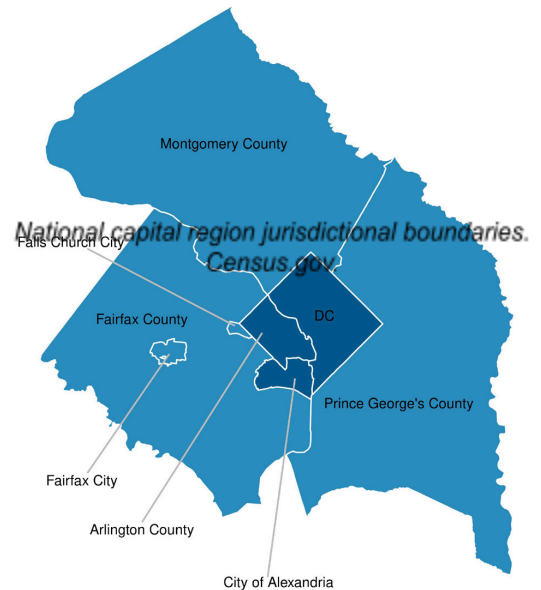
<sup>5</sup> [FTC proposes rule to ban junk fees.](#) FTC.gov (Oct. 11, 2023)

## D.C. Restaurant Landscape at a Glance

In 2016, *Bon Appétit* magazine named Washington, D.C. its restaurant city of the year, recognizing the vibrant and diverse industry that had been previously deleteriously associated with a monotonous “power lunch” crowd and the stereotypical expense account steakhouse destinations of legislators, lobbyists, and lawyers.<sup>6</sup>

*The Michelin Guide* arrived in Washington D.C. in 2017, marking the first U.S. installment of the publication since Chicago in 2011. The D.C. metropolitan region is now home to 25 Michelin-starred restaurants. Washington D.C. area restaurateurs have also had a steady and noteworthy presence in the James Beard Awards over the last decade, with consistent semifinalist positions across various categories. The region has recently secured awards in categories such as “Outstanding Chef,” “Best Chef: Mid Atlantic,” “Emerging Chef,” “Outstanding Restaurant,” and “Best New Restaurant.”

The region’s culinary scene is one of evolution and change, with new restaurants and innovative chefs emerging and representing a wide range of cuisines from around the world - more reflective of its diverse population<sup>7</sup> and international influence. D.C.’s food culture is also praised for its focus on local and regional ingredients and chefs that exemplify the city’s unique culinary identity. While the city of more than 700,000 has become more populous, diverse, and economically vibrant in the last decade, this progress has also come with challenges, including



<sup>6</sup> [The Tasty History of D.C.'s Restaurant Scene](#). WAMU. (Jan. 7, 2014)

<sup>7</sup> [Why Certain Immigrant Communities Thrive in Washington, D.C.](#) U.S. News. (Aug. 6, 2019).

gentrification and income disparities, lack of affordable housing, transportation issues, food insecurity, and rising crime rates, which impact the restaurant industry in various ways.

Since the COVID-19 pandemic, remote or hybrid work has remained the status quo, leading to historic declines in office vacancy rates. The D.C. area's share of office workers on site is among the lowest of 10 major metropolitan areas, according to a report produced by building security firm Kastle, who tracks and analyzes access activity data from the buildings and businesses it secures in 10 cities, including Austin, Chicago, Dallas, Houston, Los Angeles, New York, Philadelphia, San Francisco, San Jose, and Washington, D.C.<sup>8</sup> As of August 8, 2024, Kastle reports its D.C. office occupancy was at 43.4%.<sup>9</sup> A new market report from commercial real estate firm, CBRE, reported Q2 office vacancy at 22.4%<sup>10</sup>.

In November 2023, the Restaurant Association of Metropolitan Washington (RAMW) released results of its member survey, which revealed that more than one-third of restaurants experienced declines in sales and traffic over the summer and the early fall. The survey also revealed that three out of four restaurants are earning less income than before the pandemic, with profitability down an average of 34%. And yet, while the RAMW reports that more than 50 restaurants closed in 2023, the organization also reports that nearly 100 new restaurants opened<sup>11</sup>. The National Restaurant Association commissioned an online poll of restaurant goers from August through September 2023 from Morning Consult to learn how increased restaurant prices affect dining habits. Cited in the RAMW's member survey report, the Morning Consult poll

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<sup>8</sup> [Report shows under 50% of DC office workers on site compared to pre-pandemic levels.](#) *WTOP News* (April 1, 2024)

<sup>9</sup> [Kastle Back to Work Barometer.](#) (August 2024)

<sup>10</sup> [Washington D.C. Office Figures Q2.](#) CBRE (July 1, 2024)

<sup>11</sup> [More than 50 D.C. restaurants closed last year. Support the ones left.](#) *Washington Post.* (Jan. 22, 2024)

showed that 53% of DC diners are eating at home more often, 43% of diners are eating out less often, and 32% of diners are eating out in Maryland and Virginia more often.<sup>12</sup>

Despite these trends, Axios reports<sup>13</sup> that the RAMW tracked 100 new restaurant openings in 2023, and 55 closures.

## Policy & Regulatory Environment

### DC's Initiative 82

In November 2022, Washington, D.C. adopted the “District of Columbia Tip Credit Elimination Act,” or Initiative 82. The Act eliminates the tiered minimum wage system in the city with the aim of addressing wage disparity and income stability for tipped workers – D.C. was the first city or state to do so in more than 20 years. In 2018, a similar bill – Initiative 77 – was passed by D.C. voters by a slim margin, but it was repealed by the D.C. Council before the law could take effect.

Initiative 82 began implementation in May 2023, with the tipped minimum wage increasing every year until 2027. On July 1, 2024, the minimum wage in the District of Columbia will increase from \$17.00 per hour to \$17.50 per hour for all workers, regardless of the size of the employer. As of July 1, 2024, the base minimum wage for tipped employees will increase from \$8.00 per hour to \$10.00 per hour.<sup>14</sup>

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<sup>12</sup> [Tipping Behaviors in Washington, DC](#). Morning Consult Memorandum to National Restaurant Association (September 7, 2023)

<sup>13</sup> [D.C.'s New Restaurant Listings are Growing](#). Axios. (January 24, 2024)

<sup>14</sup> D.C. Department of Employment Services, [Office of Wage Hour Compliance](#).

In adjacent Arlington County, Virginia, the minimum wage is \$12.00 per hour. Tipped employees may be paid the base minimum wage of \$2.13 per hour. However, Virginia's House of Delegates narrowly passed a bill that would increase the minimum wage to \$13.50 effective January 1, 2025; then it would increase again to \$15 per hour on January 1, 2026. The bill must still pass in the Senate and be approved by the Governor before it would go into law.

Another surrounding jurisdiction, Montgomery County, Maryland, raised its minimum wage to \$15.00 per hour for businesses from 1-50 employees and to \$16.70 for businesses with more than 50 employees, as of January 1, 2024. The base minimum wage for tipped employees was raised to \$4.00 per hour.

The Montgomery County Office of Legislative Oversight (OLO) conducted a study on the economic impact of D.C.'s Initiative 82.<sup>15</sup> In September 2023 the Montgomery County Council introduced Bill 35-23, County Minimum Wage - Tipped Employees, which would adjust the calculation of the minimum wage for tipped workers and phase out the tip credit under the current minimum wage law. The OLO issued the following preliminary findings from its survey of 592 establishments<sup>16</sup> with tipped workers in D.C. conducted in December 2023 and January 2024:

- Seventy percent of respondents indicated that the Tipped Wage Law had a strong *negative* impact on the profitability of their establishment; with more than 80% of respondents indicating they had opposed the law.
- Most establishments raised menu prices (82%) and reduced hours offered to tipped employees (67%) in response to the law.

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<sup>15</sup> [Preliminary Findings on the Economic Impact of Washington, D.C.'s Initiative 82](#). Montgomery County Office of Legislative Oversight. (Jan. 16, 2024)

<sup>16</sup> The OLO received a total of 60 responses from the 592 surveyed: an overall response rate of 10%.

- More than half of the establishments reported reducing both part-time (52%) and full-time employment (51%).
- A third of the establishments instituted a service charge, and 6% reported increasing an existing service charge.
- Some establishments also reported taking other measures to offset the increased labor costs, such as removing items from the menu, implementing technology, renegotiating leases, and changing or discontinuing employee health insurance.

Because of the incremental increase in the tipped minimum wage, the OLO acknowledges that the impact of Initiative 82 on businesses cannot be fully known at this point. However, the office plans a future study that will focus on the impact of the law on the industry most affected by it: full-service restaurants. It also seeks comparative data from surrounding jurisdictions, including Arlington County (to the west), Fairfax County (to the southwest), and the City of Alexandria (south), in Virginia and Prince George's County (east and south) in Maryland.

It is important to note that the OLO's report does not examine the economic impact of Initiative 82 on tipped workers. *The Washington Post* has launched an online survey of restaurant workers to understand how they have been affected by Initiative 82,<sup>17</sup> but the results of that survey have not yet been published. A 2021 One Fair Wage commissioned survey of restaurant workers in D.C. finds overwhelming support for raising the tipped minimum wage.

An April 2023 survey of approximately 100 D.C. restaurant owners with tipped workers conducted for the Employment Policies Institute (EPI)<sup>18</sup> found that most were planning to raise prices, lay off employees, or reduce employees' scheduled hours sometime before the full

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<sup>17</sup> [Tell the Post: Are you a restaurant worker impacted by Initiative 82?](#) *Washington Post*.

<sup>18</sup> [The Impact of Initiative 82: Survey of Restaurants on the Impact of Tip Credit Elimination in the District of Columbia](#). Employment Policies Institute (April 2023).



implementation of Initiative 82 in 2027. The EPI advocates for the federal tip credit and has argued in several reports that tip credit elimination will result in job losses for tipped workers.

## **Federal Trade Commission Ruling on “Junk Fees”**

The Federal Trade Commission's (FTC) proposed "junk fees" rule<sup>19</sup> could significantly impact restaurant menu pricing strategies and potentially affect restaurant worker income. The rule would eliminate the hidden and unexpected fees that consumers encounter at checkout, thereby promoting greater price transparency.

While the ruling would impact a wide range of businesses that charge unexpected fees, including airlines and hotels, utility companies, ticket sellers and more – restaurants are concerned that the ruling would prevent them from adding service charges to their checks, a popular pricing strategy used to offset rising costs of labor and food. Restaurant operators are also concerned about the ruling's potential impact on customers' incentive to leave tips as recognition of service quality. Additionally, they argue that including service fees in advertised prices would clutter their menus and make price comparisons more difficult.

The public comment period for the FTC's ruling closed in early February. Comments on the FTC site reveal concern about restaurant fees that were not previously disclosed and that do not clearly identify their nature or purpose *e.g.*, “service fee,” “hospitality fee,” “kitchen fee,” “equity fee,” “economic impact fee,” “temporary inflation fee”). Commenters expressed concern about the use and purpose of restaurant “service charges,” which they expected would go

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<sup>19</sup> [16 CFR Part 464: Trade Regulation Rule on Unfair or Deceptive Fees \(NPRM\)](#). FTC Federal Register Notices. (Nov. 9, 2023)

entirely to service staff.<sup>20</sup> The National Restaurant Association (NRA) has advocated strongly that restaurant service charges should be removed from the FTC's ruling, arguing that the current method of disclosing service fees separately from the menu price offers greater transparency and benefits both restaurants and consumers.<sup>21</sup> The FTC has not yet announced the publish date for its final ruling, but it is expected to do so by the end of summer.

While the ruling is still pending at the Federal level, at the state level, California passed a law (Senate Bill 478, Consumers Legal Remedies Act) in June 2024 banning restaurants and other businesses from adding surcharges to customer bills; however, days before the law was to go into effect, Governor Gavin Newsom signed an emergency statute (Senate Bill 1524) amending the Civil Code to exempt restaurants from the principal provisions of the bill, and to allow for mandatory fees or charges as long as they are clearly and conspicuously displayed on the menu and other materials with an explanation of its purpose.

Minnesota Governor Tim Walz signed legislation that will go into effect on January 1, 2025 that prohibits surprise service charges and fees, but allows restaurants to add an automatic gratuity at the end of the bill. The law requires automatic tipping to be clearly labeled on the bill, and unlike "service fees," those automatic tipping fees must go to restaurant workers, not other business costs.<sup>22</sup>

Legislators in at least a dozen other states, including Maryland and Virginia, have introduced service fee bills: Virginia's bill (SB 388, Virginia Consumer Protection Act),

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<sup>20</sup> Comments on [FTC Trade Regulation Rule on Unfair or Deceptive Fees](#). *Regulations.gov* (Nov.9, 2023)

<sup>21</sup> [Eliminating "junk fees" would cause chaos at restaurants, group says](#). *Scripps News*. (Feb. 12, 2024)

<sup>22</sup> [What Minnesota's new 'junk fees' law means for purchases — and tipping at restaurants](#). *Minnesota Star Tribune* (May 21, 2024)

introduced by Senator Stella Pekarisky,<sup>23</sup> failed to pass in the House of Delegates in March 2024. Maryland's HB467 (One Fair Wage Act 2024), which addressed both tipped wages and service fees, was introduced by Delegate Adrian Boafu but withdrawn in February 2024.

Meanwhile, D.C.'s Attorney General Brian Schwalb issued a Consumer Advisory<sup>24</sup> in March 2024 that outlines which restaurant fee practices are legal and illegal according to the District's Consumer Protection Procedures Act, provides illustrative examples of proper restaurant disclosures, and details how to notify the office of potential violations.

### **“Junk Fee” Lawsuits**

In late 2023, the consumer protection nonprofit organization, Travelers United, sued Clyde's Restaurant Group, and in January 2024, Knead Hospitality, for adding deceptive fees to their customers' bills.<sup>25</sup> Travelers United argues that the fees, named a "2023 surcharge" by Clyde's and a "service charge" by Knead, are illegal and misleading to consumers. They claim these fees make it difficult for customers to understand the final cost of their meals before they dine, and they do not provide any tangible benefit to the consumer beyond offsetting the restaurant's increased costs (such as increased labor costs resulting from Initiative 82). Both Clyde's and Knead have since dropped the service charges.

### **DC's Restaurant Revitalization Act**

On February 5, 2024, the D.C. City Council unanimously supported a new omnibus bill that – among non-controversial provisions such as reducing liquor liability insurance rates,

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<sup>23</sup> [SB 388: Virginia Consumer Protection Act](#). Virginia Legislative Information System.

<sup>24</sup> [Consumer Alert: DC Restaurants are Barred from Charging Deceptive Fees](#). Office of the Attorney General for the District of Columbia (Mar. 7, 2024).

<sup>25</sup> [Mi Vida. Succotash Among DC Restaurants Sued for Allegedly Deceptive Menu Fees.](#) *Washingtonian* (Jan. 18, 2024)

regulating food delivery services, and streamlining bar manager licensing – seeks to address restaurant service charges. The Restaurant Revitalization and Dram Shop Clarification Amendment Act (A25-0427), which went into effect on May 21, 2024, exempts service fees from the calculation of restaurant sales for the purpose of a commercial landlord's determination of percentage rent lease payments and caps restaurant service fees at 20%.<sup>26</sup>

In its appeal to the D.C. Council in November 2023, the Restaurant Association of Metropolitan Washington D.C. (RAMW) argued that the city should waive sales tax on service charge portion of the bill so that D.C. restaurants would be more price-competitive with Virginia and Maryland restaurants.<sup>27</sup> D.C. has a 10% meals tax, which is the highest in the region. Arlington County, Virginia has a 6% sales tax plus a 1% food tax. Adjacent Maryland counties like Montgomery and Prince George's have a 6% sales tax.

## Conclusion

The complexity of and variation in the regulatory landscape of Washington D.C. and the contiguous counties in Virginia and Maryland impacts restaurant strategies for mitigating rising operating costs in conjunction with declines in sales and customer traffic across the region in an industry already functioning within slim profit margins. Future research could explore the strategies that independent restaurant operators in D.C. and surrounding jurisdictions are using to sustain their business and maintain profitability in this challenging landscape, highlighting approaches to wages and hours, menu composition and pricing, technology adoption, service

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<sup>26</sup> [B25-0056 - Dram Shop Clarification Amendment Act of 2023 \(now known as "Restaurant Revitalization and Dram Shop Clarification Amendment Act of 2023"\)](#). The Council of the District of Columbia.

<sup>27</sup> "Struggling under declining traffic and shrinking sales, DC restaurants call on the DC Council to act now." *Restaurant Association of Metropolitan Washington memorandum*. (Nov. 1, 2023)

structure and business model, or even restaurant location. Case studies could also illuminate worker perspectives on job satisfaction and how the changes impact their employment choices.

## Resources

Access to the right resources can make a difference for the success of restaurant operators as well as restaurant workers. The following selected links are starting points for more information, guidance, and advocacy on the issues outlined in this paper.

### For Owners/Operators

- **Independent Restaurant Coalition (IRC):** Founded in March 2020, IRC fights for meaningful change for independent restaurants and bars nationwide by providing strong advocacy centered on making sure that independent businesses are being seen, heard and supported by federal policy makers. (<https://www.independentrestaurantcoalition.com/>)
- **High Road Restaurants (HRR):** A national network of restaurant owners who advocate for fair wages and increased racial and gender equity through hiring, training, and promotional practices. (<http://www.highroadrestaurants.org/>)
- **Restaurant Association of Metropolitan Washington, D.C. (RAMW):** RAMW is the regional trade association representing restaurants and the foodservice industry in the Washington, DC Metropolitan Area. The organization also operates a foodservice political action committee to support its advocacy. (<http://www.ramwdc.org>)
- **Restaurant Association of Maryland (RAM):** RAM, in collaboration with the National Restaurant Association, provides education and advocacy supporting Maryland restaurant operators. (<https://www.marylandrestaurants.com/>)
- **FAB:** An organization based in Charleston, S.C., with a mission to connect, empower, and champion women in the hospitality industry. FAB is a business workshop offering opportunities to learn in areas of HR, finance, leadership, and more. (<http://www.thisisfab.org>)
- **MAPP:** A national nonprofit dedicated to transforming the landscape of the hospitality and culinary industry by empowering women to lead through mentorship, advocacy, purpose, and the power of women. (<http://www.mappimpact.org>)
- **Regarding HER:** This nonprofit organization (with a sister chapter in Los Angeles) creates programming to accelerate the growth of women entrepreneurs and leaders in the food and beverage industries. (<https://www.regardingherfooddc.org/>)
- **Les Dames d'Escoffier Washington DC Region:** A national philanthropic organization with a Washington, D.C. regional chapter of women leaders in the food, beverage, and

hospitality industries that support their communities through grants, scholarships, and mentoring. (<http://www.lesdamesdc.org/>)

- **Oyster Sunday:** Consulting firm supporting independent hospitality businesses with services and solutions ranging from concept development to human resources and operations, including a hospitality-specific benefits marketplace. (<https://www.oystersunday.com/>)

### For Restaurant Workers

- **DC Department of Employment Services (DOES):** The DOES enforces DC's labor laws and provides information and resources for workers. (<https://does.dc.gov/>)
- **DC Office of Human Rights (OHR):** The OHR investigates and resolves complaints of discrimination and harassment in the workplace. (<https://ohr.dc.gov/>)
- **Virginia Department of Labor and Industry:** The agency promotes safe, healthful workplaces, best employment practices, and job training opportunities, and administers the state's labor laws. (<https://doli.virginia.gov/labor-law-virginia-labor-laws/>)
- **Maryland Division of Labor and Industry:** The division enforces and promotes workplace rights and health and safety standards in the workplace. (<https://www.dllr.state.md.us/labor/>)
- **Restaurant Opportunities Centers United (ROC-DC):** This organization advocates for the rights of restaurant workers and provides training and support for workers in the industry. (<https://rocunited.org/dc/>)
- **One Fair Wage (OFW):** A key player in lobbying locally for Initiative 82, One Fair Wage is a national campaign advocating for the elimination of the tipped minimum wage. (<http://www.onefairwage.org/>)