Legislation Details (With Text)

File #:	Int 1897-2020	**Version:**	A	**Name:**	Licensing of third-party food delivery services, and to repeal subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services.
Type:	Introduction			**Status:**	Enacted
				In control:	Committee on Small Business
On agenda:	2/27/2020				
Enactment date:	9/26/2021			**Enactment #:**	2021/100

Title: A Local Law to amend the administrative code of the city of New York, in relation to the licensing of third-party food delivery services, and to repeal subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services

Sponsors: Mark Gjonaj, Justin L. Brannan, Vanessa L. Gibson, Bill Perkins, Farah N. Louis, Diana I. Ayala, Brad S. Lander, Margaret S. Chin, Karen Koslowitz, James F. Gennaro

Indexes: Agency Rule-making Required

Attachments: 1. Summary of Int. No. 1897-A, 2. Summary of Int. No. 1897, 3. Int. No. 1897, 4. February 27, 2020 - Stated Meeting Agenda with Links to Files, 5. Hearing Transcript - Stated Meeting 2-27-20, 6. Minutes of the Stated Meeting - February 27, 2020, 7. Committee Report 4/29/20, 8. Hearing Testimony 4/29/20, 9. Hearing Testimony 4/29/20 (Con't), 10. Hearing Transcript 4/29/20, 11. Proposed Int. No. 1897-A - 8/19/21, 12. Committee Report 8/26/21, 13. Hearing Transcript 8/26/21, 14. Committee Report - Stated Meeting, 15. August 26, 2021 - Stated Meeting Agenda with Links to Files, 16. Hearing Transcript - Stated Meeting 8-26-21, 17. Minutes of the Stated Meeting - August 26, 2021, 18. Int. No. 1897-A (FINAL), 19. Fiscal Impact Statement, 20. Legislative Documents - Letter to the Mayor, 21. Local Law 100

Date	Ver.	Action By	Action	Result
2/27/2020	*	City Council	Introduced by Council	
2/27/2020	*	City Council	Referred to Comm by Council	
4/29/2020	*	Committee on Small Business	Hearing Held by Committee	
4/29/2020	*	Committee on Small Business	Laid Over by Committee	
4/29/2020	*	Committee on Consumer Affairs and Business Licensing	Hearing Held by Committee	
4/29/2020	*	Committee on Consumer Affairs and Business Licensing	Laid Over by Committee	
8/26/2021	*	Committee on Small Business	Hearing Held by Committee	
8/26/2021	*	Committee on Small Business	Amendment Proposed by Comm	
8/26/2021	*	Committee on Small Business	Amended by Committee	
8/26/2021	A	Committee on Small Business	Approved by Committee	Pass
8/26/2021	A	City Council	Approved by Council	Pass
8/26/2021	A	City Council	Sent to Mayor by Council	
9/26/2021	A	Administration	City Charter Rule Adopted	
9/27/2021	A	City Council	Returned Unsigned by Mayor	

Int. No. 1897-A

powered by Legistar™

By Council Members Gjonaj, Brannan, Gibson, Perkins, Louis, Ayala, Lander, Chin, Koslowitz and Gennaro

A Local Law to amend the administrative code of the city of New York, in relation to the licensing of third-party food delivery services, and to repeal subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York, relating to third-party food delivery services

Be it enacted by the Council as follows:

Section 1. Subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York is REPEALED.

§ 2. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 36 to read as follows:

Subchapter 36

Third-Party Food Delivery Services

§ 20-563 Definitions. As used in this subchapter, the following terms have the following meanings:

Credit card. The term “credit card” means any credit card, charge card, courtesy card, debit card, or other device issued by a person to another person which may be used to obtain a cash advance or a loan or credit, or to purchase or lease property or services on the credit of the person issuing the credit card or a person who has agreed with the issuer to pay obligations arising from the use of a credit card issued to another person.

Customer data. The term “customer data” means the following information provided to a third-party food delivery service by a customer who has placed an online order:

i) Name;

ii) Telephone number;

iii) E-mail address;

iv) The delivery address of the online order; and

v) The contents of the online order being requested to be fulfilled by a food service establishment.

Delivery fee. The term "delivery fee" means a fee charged by a third-party food delivery service for providing a food service establishment with a service that delivers food from such establishment to customers.

powered by Legistar™

The term does not include any other fee that may be charged by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food service establishment on the third-party food delivery platform or fees related to processing the online order.

Direct telephone number. The term “direct telephone number” means a telephone number by which the caller communicates directly with a food service establishment, which is not a third-party telephone number.

Food service establishment. The term “food service establishment” means a business establishment located in the city where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

Internet-based payment system. The term “internet-based payment system” means any mobile application or other internet service that facilitates electronic payments.

Online order. The term "online order" means any order placed by a customer through or with the assistance of a third-party food delivery platform, including a telephone order.

Purchase price. The term "purchase price" means the total price of the items contained in an online order that are listed on the menu of the food service establishment where such order is placed. Such term does not include taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

Telephone order. The term "telephone order" means an order placed by a customer through a third-party telephone number.

Third-party food delivery platform. The term “third-party food delivery platform” means the online or mobile platform of the third-party food delivery service on which a customer can view products available for sale and place an online order for a food service establishment’s products.

Third-party food delivery service. 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.

Third-party telephone number. The term "third-party telephone number" means a telephone number for a food service establishment that is provided by or on behalf of a third-party food delivery service, through which an online order may be placed.

Transaction fee. The term "transaction fee" means a charge for the processing of a payment for an online order imposed upon a third-party food delivery service either by: (i) a credit card issuer or (ii) an internet -based payment system.

§ 20-563.1 License. a. License required. It shall be unlawful for any person to operate a third-party food delivery service without first having obtained a license therefor issued pursuant to this subchapter. All licenses issued pursuant to this subchapter shall be valid for no more than two years and expire on a date the commissioner prescribes by rule.

b. License application. An application for any license required under this subchapter or for any renewal thereof shall be made to the commissioner in such form or manner as the commissioner shall prescribe by rule, provided that such application shall include, but need not be limited to:

1. The address of the applicant;

2. A list of all websites, mobile applications, or other third-party food delivery platforms, with relevant uniform resource locators, that the applicant uses or plans to use to conduct the business of a third-party food delivery service;

3. An e-mail address that the department can use to send the applicant license application materials, official notifications, or other correspondence; and

4. If the applicant is a non-resident of the city, the name and address of a registered agent within the city upon whom process or other notifications may be served.

c. Fee. There shall be a biennial fee of $200 for a license to operate a third-party food delivery service.

§ 20-563.2 Issuance of license. A license to operate a third-party food delivery service shall be granted in accordance with the provisions of this subchapter and any rules promulgated by the commissioner thereunder.

§ 20-563.3 Reserved.

§ 20-563.4 Telephone orders. No third-party food delivery service may charge any fee from a food service establishment for a telephone order if a telephone call between such establishment and a customer does not result in an actual transaction during such telephone call.

§ 20-563.5 Telephone number listings. a. A third-party food delivery service that lists or links to a telephone number for a food service establishment shall include in such listing or link the direct telephone number of such food service establishment. A third-party food delivery service may also list or link to a third-party telephone number in addition to such direct telephone number, provided that such listing or link includes a prominent and conspicuous description of each telephone number, including but not limited to identification of each telephone number as a third-party telephone number or a direct telephone number, as applicable, and any fee associated with the use of each telephone number for telephone orders, whether imposed on the food service establishment or on the caller.

b. The commissioner shall adopt such rules and regulations as may be necessary to effectuate the purposes of this section, including but not limited to defining the contents, size and location of the descriptions required by this section.

§ 20-563.6 Unauthorized listings. a. A third-party food delivery service shall not list, advertise, promote, or sell a food service establishment’s products on, or arrange for the delivery of an order of such products through, the website, mobile application or other platform of such third-party food delivery service without a written agreement between such third-party food delivery service and such food service establishment to include the food service establishment’s products on such website, mobile application or other platform.

b. An agreement executed in accordance with this section shall not include a provision, clause, or covenant that requires a food service establishment to indemnify a third-party food delivery service, any independent contractor acting on behalf of the third-party food delivery service, or any registered agent of the third-party food delivery service, for any damages or harm by an act or omission occurring after the food service establishment's product leaves the place of business of the food service establishment. To the extent an agreement executed in accordance with this section contains such a provision, such provision shall be deemed void and unenforceable.

§ 20-563.7 Customer data. a. A food service establishment may request customer data from a third-party food delivery service. Upon such a request, a third-party food delivery service shall provide to the food service establishment all applicable customer data, until such food service establishment requests to cease receiving such customer data.

b. Notwithstanding the requirements of subdivision a of this section, a third-party food delivery service shall not share customer data applicable to an online order pursuant to subdivision a of this section if such customer requests that such data not be shared in relation to such online order. The customer shall be presumed to have consented to the sharing of such customer data applicable to all online orders unless such customer has made such a request in relation to a specific online order. The third-party food delivery service shall provide in a conspicuous manner on its website, in a style and form required by the commissioner, a means for a customer to make such request. To assist its customers with deciding whether their data should be shared, a third-party food delivery service shall clearly and conspicuously disclose to the customer the customer data that may be shared with the food service establishment and shall identify the food service establishment fulfilling such customer's online order as a recipient of such data.

c. Third-party food delivery services that share customer data pursuant to this section shall provide such data in a machine-readable format, disaggregated by customer, on an at least monthly basis. Third-party food delivery services shall not limit the ability of food service establishments to download and retain such data, nor

limit their use of such data for marketing or other purposes outside of the third-party food delivery service website, mobile application or other internet service.

d. Food service establishments that receive customer data pursuant to this section shall not sell, rent, or disclose such customer data to any other party in exchange for financial benefit, except with the express consent of the customer from whom the customer data was collected; shall enable a customer to withdraw their consent to use of their data by the food service establishment; and shall delete any such customer data upon request by a customer.

e. Nothing in this section shall prevent a third-party food delivery service or a food service establishment from complying with any other law or rule.

§ 20-563.8 Records. a. Every third-party food delivery service required to be licensed under this subchapter shall maintain the following records in an electronic format for a period of at least three years:

1. A roster of all food service establishments the third-party food delivery service lists on its website, mobile application, or other third-party food delivery platform and has listed on such website, mobile application, or other third-party food delivery platform;

2. All written agreements with a food service establishment;

3. Records listing itemized fees the third-party food delivery service has charged each food service establishment with which the third-party food delivery service maintains an agreement;

4. Such records related to the ownership of the third-party food delivery service as the commissioner may prescribe by rule; and

5. Such other records as the commissioner may prescribe by rule.

b. All records required by this section or by the commissioner by rule shall be made available to the department electronically upon request, consistent with applicable law and in accordance with rules promulgated hereunder and with appropriate notice.

§ 20-563.9 Denial, renewal, suspension and revocation of license. In addition to any powers of the

commissioner and not in limitation thereof, the commissioner may deny or refuse to renew any license required under this subchapter and may suspend or revoke any such license, after due notice and opportunity to be heard, if the applicant or licensee, or, where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, is found to have:

a. Committed two or more violations of any provision of this subchapter or any rules promulgated thereunder in the preceding two years;

b. Made a material false statement or concealed a material fact in connection with the filing of any application pursuant to this subchapter; or

c. Committed two or more violations of chapter five of title twenty of this code and any rules promulgated thereunder in the preceding two years.

§ 20-563.10 Enforcement, civil penalties and restitution. a. Any person who violates, or causes another person to violate, a provision of this subchapter or any rule promulgated pursuant thereto, shall be subject to a civil penalty that shall not exceed $500 for each violation, except that a person that violates any provision of section 20-563.3 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed $1,000 for each violation. Violations by third-party food delivery services under this subchapter shall accrue on a daily basis for each day and for each food service establishment with respect to which a violation of this subchapter or any rule promulgated pursuant to this subchapter was committed. The department may also recover restitution on behalf of any food service establishment harmed by a violation of this subchapter or any rules promulgated pursuant to this subchapter by a third-party food delivery service. A proceeding to recover any civil penalty or restitution authorized pursuant to this subchapter may be brought in any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

§ 20-563.11 Enforcement by the corporation counsel. a. A civil action may be brought by the

corporation counsel on behalf of the city in any court of competent jurisdiction to recover any or all of the following:

1. Civil penalties authorized by this section;

2. Injunctive relief to restrain or enjoin any activity in violation of this subchapter;

3. Restitution in an amount not to exceed the amount of fees collected by a third-party food delivery service in excess of the maximum amounts permitted pursuant to this subchapter;

4. Attorneys' fees and costs, and such other remedies as a court may deem appropriate.

b. 1. Where reasonable cause exists to believe that a third-party food delivery service is engaged in a pattern or practice of violations of this subchapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. A civil action pursuant to paragraph 1 of this subdivision shall be commenced by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. In any civil action commenced pursuant to paragraph 1 of this subdivision, the trier of fact may impose a civil penalty of not more than $25,000 for a finding that a third-party food delivery service has engaged in a pattern or practice of violations of this subchapter. Any civil penalty so recovered shall be paid into the general fund of the city.

c. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

d. Nothing in this section prohibits a person alleging a violation of this subchapter from filing a civil action pursuant to section 20-563.12 based on the same facts as a civil action commenced by the corporation counsel pursuant to this section.

powered by Legistar™

§ 20-563.12 Private cause of action. Any person alleging a violation of any provision of this subchapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction to recover any or all of the following remedies:

a. Injunctive relief to restrain or enjoin any activity in violation of this subchapter;

b. Restitution in an amount not to exceed the amount of fees collected by a third-party food delivery service in excess of the maximum amounts permitted pursuant to this subchapter; and

c. Attorneys' fees and costs, and such other remedies as a court may deem appropriate.

§ 20-563.13 Outreach. No more than 60 days after the effective date of this local law, and continuing for 90 days thereafter, the commissioner, in collaboration with relevant agencies, shall conduct culturally appropriate outreach in the designated citywide languages, as defined in section 23-1101, to alert food service establishments and third-party food delivery services to the requirements of this subchapter. Such outreach shall include, but need not be limited to, posting information on relevant agency websites and distributing information to food service establishments, third-party food delivery services and other relevant stakeholders.

§ 3. This local law takes effect 120 days after it becomes law, except that the commissioner of consumer affairs may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

SJ
LS #13018
8/18/21 10:00 PM