



Legislation Text

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Int. No. 762

By Council Members Salamanca, Holden, Menin, Abreu, Williams, Stevens, Banks, Joseph, De La Rosa, Riley, Feliz, Narcisse, Dinowitz, Hanks, Ossé, Salaam, Brewer, Ayala, Fariás, Yeger, Ung, Hudson, Zhuang, Borelli, Paladino, Carr, Vernikov and Marmorato

A Local Law to amend the administrative code of the city of New York, in relation to establishing exemptions for third-party food delivery services from the limits on fees charged by such services on food service establishments

Be it enacted by the Council as follows:

Section 1. Section 20-563.3 of the administrative code of the city of New York, as added by local law number 103 for the year 2021, is amended to read as follows:

a. It shall be unlawful for a third-party food delivery service to charge a food service establishment a delivery fee that totals more than 15% of the purchase price of each online order.

b. It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee or fees, other than a delivery fee and a transaction fee (such fees other than a delivery fee and a transaction fee referred to collectively as “Other Fees”), for the use of [their] a service that allows customers to place orders with the food service establishment using the third-party food delivery platform that totals more than 5% of the purchase price of each online order.

c. It shall be unlawful for a third-party food delivery service to charge a food service establishment a transaction fee that totals more than 3% of the purchase price of each online order, provided however that a third-party food delivery service may charge a food service establishment a transaction fee of more than 3% of the purchase price of an online order if: (i) such transaction fee is charged to the food service establishment in the same amount as the charge imposed upon the third-party food delivery service for such online order, and (ii)

such third-party food delivery service can provide proof of such charge imposed upon it to both the department and the relevant food service establishment upon request.

d. Subdivisions a, b and c of this section shall not apply to a third-party food delivery service that provides a food service establishment with: (i) the option to obtain delivery services for a fee consistent with the cap on fees as set forth in subdivisions a, b and c of this section, and (ii) the option to be listed and discoverable on all modalities or platforms offered by the third-party food delivery service for a fee consistent with the caps on fees as set forth in subdivisions b and c of this section. Notwithstanding the foregoing, a third-party food delivery service shall not charge more than 15% for delivery fees, 25% for Other Fees and 3% for transaction fees unless such transaction fees are covered by an exception pursuant to subdivision c of this section.

e. Within 30 days of the effective date of this local law, a third-party food delivery service shall notify all food service establishments with which it has an existing agreement of the options described in subdivision d. A third-party food delivery service may not change the fees set forth in any such agreement except as permitted in the terms of the agreement.

f. Within 30 days of receipt of a written request by a food service establishment that has executed an agreement with a third-party delivery service in accordance with section 20-563.6, a third-party delivery service shall not purchase the public-facing name of the requesting food service establishment as a keyword from an internet search provider that sells advertising keywords for purposes of internet advertising that is targeted to be displayed within New York City. This subdivision does not apply to advertising or interest content displayed outside of New York City or prohibit a third-party food delivery service from purchasing keyword advertising using common terms or names, including, but not limited to, terms relating to locations, food types, or cuisine types.

g. A third-party food delivery service shall not prevent a food service establishment from including physical marketing materials, such as menus or coupons, to customers in connection with an order made

through a third-party food delivery service.

h. A third-party food delivery service shall not require a food service establishment, as a condition of an agreement entered into pursuant to section 20-563.6, to charge the same price for food and beverage items ordered through a third-party food delivery service for delivery as that purchased in person at the food service establishment or ordered directly through the food service establishment. It shall not be a violation of this subsection for a third-party food delivery service and a food service establishment to enter an agreement that includes a provision that deviates from this prohibition, but only if the food service establishment maintains the ability to obtain delivery service from the third-party food delivery platform through an agreement without such a provision.

i. No later than September 30, 2023, and every two years thereafter, the commissioner shall submit to the speaker of the council and the mayor a report on the fee cap pursuant to this section, which shall include but not be limited to recommendations related to either the maintenance or adjustment of the fee cap as set forth in this section, in consideration of factors from the immediately preceding two years, such as:

1. The effect of the cap as set forth in subdivisions a, b and c of this section and the effect of the exemption as set forth in subdivision d of this section on third-party food delivery services and food service establishments, including, but not limited to, the effect on the revenue of third-party food delivery services and the effect on the marketing and revenue of food service establishments;

2. Whether [the cap] such cap or such exemption affects wages and working conditions for persons who deliver food or beverages for third-party food delivery services;

3. Products that third-party food delivery services offer to food service establishments for listing, processing and marketing;

4. The number of complaints made to the department related to the alleged violations of this subchapter and the number of violations issued under this subchapter;

5. The total amount of penalties imposed as a result of violations of this subchapter; and

6. The amount of restitution recovered on behalf of food service establishments pursuant to this subchapter.

§ 2. This local law takes effect 30 days after it becomes law.

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