



Legislation Text

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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 of the administrative code of the city of New York is amended by adding a new definition of “basic service fee” in alphabetical order and amending the definition of “delivery fee” to read as follows:

Basic service fee. The term “basic service fee” means a fee charged by a third-party food delivery service for providing a food service establishment with services that allow the food service establishment to receive orders for delivery and pick-up on all modalities and platforms offered by the third-party food delivery service. Such fee shall also ensure that the food service establishment is listed and searchable on all modalities and platforms, such that at minimum, the food service establishment is prominently displayed upon a search for the food service establishment, and the food service establishment may be included in search results that populate based on customer criteria such as cuisine type, location, delivery radius or any other search terms relevant to the food service establishment. A third-party food delivery service may not omit, or otherwise block, a food service establishment from relevant search results based solely on the establishment purchasing only those services covered by the basic service fee, or basic service fee and delivery fee.

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. At minimum, payment of such delivery fee shall ensure the third-party food delivery service shall provide a food service establishment with a service that delivers food from such establishment to a location located within 1 mile of the food service establishment. The total delivery radius provided to a food service establishment may not be based solely on the establishment purchasing only those services covered by the basic service fee, or basic service fee and delivery fee. 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.

§ 2. 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, for the use of their service] a basic service fee 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. It shall be unlawful for a third-party food delivery service to charge a food service establishment any additional fee or fees for online ordering and delivery services covered by the delivery fee, basic service fee and a transaction fee, except that a third-party food delivery service that offers food service establishments the option of purchasing basic service pursuant to the fee caps in subdivisions a, b and c of this section may also charge food service establishments an additional fee of no more than 20% of the purchase price of each online order for enhanced online ordering and delivery services if the food service establishment selects these enhanced services.

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 option to purchase services pursuant to subdivisions a, b and d of this section and of any fee changes based on the services previously selected by a food service establishment. A food service establishment shall have the opportunity to update or change the type of services received from a third party food delivery service based on pricing changes and/or options to purchase enhanced services. A third-party food delivery service shall disclose to all food service establishments with which it has an existing agreement, or upon entering a new agreement, in a clear and conspicuous manner, the fees, commissions and charges associated with the contracted services of such agreement.

f. A third-party delivery service shall not purchase or otherwise obtain the public-facing name of a 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 without consent from the relevant food service establishment in writing, either as part of an agreement in accordance with section 20-563.6 or otherwise. 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 allow a food service establishment to include menus,

coupons or other physical marketing materials with any online order.

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 any food or beverage item ordered through or with the assistance of such delivery service for delivery as such food service establishment charges for such food or beverage item ordered directly from or through the food service establishment. It shall not be a violation of this subdivision 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] no later than September 30, 2026, 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] caps prescribed by subdivisions a, b, c and d of this section on third-party food delivery services and food service establishments, including, but not limited to, any effect on the revenue of third-party food delivery services and any effect on marketing by and revenue of food service establishments;

2. Whether [the cap] any such cap 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.

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

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