Proposed Int. No. 1908-A

By Council Members Moya, Gjonaj, Kallos, Brannan, Rosenthal, Gibson, Ayala, Van Bramer, Rivera, Cohen, Perkins, Louis, Lander, Chin and Koslowitz

..Title

A Local Law to amend the administrative code of the city of New York, in relation to fees charged by third-party food delivery services

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 22 to read as follows:

Subchapter 22

Third-Party Food Delivery Services

§ 20-845 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Covered establishment. The term “covered establishment” means any food service establishment that offers, in a single commercial transaction over the internet, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the city.

Declared emergency. The term “declared emergency” means any time during which a state of emergency has been declared by the president of the United States, the governor of the state of New York or the mayor of the city, and is in effect in the city, and during which all food service establishments in the city are prohibited from providing food for consumption on-premises.

Delivery fee. The term “delivery fee” means a fee charged by a third-party food delivery service to cover the cost of providing a covered establishment with a service that delivers food from such establishment to customers. The term does not include any other fee that may be charged by a third-party food delivery service to a covered establishment, such as fees for listing or advertising the covered establishment on the third-party food delivery service platform or fees related to processing the online order.

Food service establishment. The term “food service establishment” has the same meaning as provided in subdivision s of section 81.03 of the health code of the city of New York.

Online order. The term “online order” means an order placed by a customer through a platform provided by a third-party food delivery service.

Purchase price. The term “purchase price” means the menu price of an online order. 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.

Third-party food delivery service. The term “third-party food delivery service” means any website, mobile application or other internet service that 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, no fewer than 20 separately owned and operated food service establishments.

§ 20-846 Service fees. a. It shall be unlawful for a third-party food delivery service to charge a covered establishment a fee for the use of their service that totals more than 10% of the purchase price of each online order.

b. Subdivision a of this section notwithstanding, during a declared emergency it shall be unlawful for any third-party food delivery service to charge a covered establishment a delivery fee that totals more than 10% of the purchase price of each online order, and it shall be unlawful during such declared emergency for a third-party food delivery service to charge a covered establishment any fee for the use of their services other than a delivery fee.

§ 20-847 Penalties. Any person that violates any provision of this subchapter or any rule promulgated pursuant to this subchapter shall be subject to a civil penalty of not less than $1,000 per violation, with the exact amount determined by a rule promulgated by the commissioner of consumer affairs. Violations shall accrue on a daily basis for each day and for each covered establishment charged a fee in violation of this subchapter or any rule promulgated pursuant to this subchapter. A proceeding to recover any civil penalty 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.

§ 20-848 Injunctive relief. In addition to any other relief available by law, the commissioner may seek any relief available under article 63 of the civil practice law and rules in a proceeding against any person alleged to be in violation of any provision of this subchapter.

§ 2. This local law takes effect immediately.

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