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**THE COUNCIL OF THE CITY OF NEW YORK**

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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**COMMITTEE ON SMALL BUSINESS**

Hon. Mark Gjonaj, Chair

**July 1, 2021**

**INT. NO. 2333:** By Council Member Gjonaj

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting third-party delivery services from arranging unauthorized deliveries from and posting unauthorized listings of food service establishments, and technical amendments in relation thereto

**INT. NO. 2335:** By Council Member Gjonaj

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to in relation to requiring third-party food delivery services to provide a description of the telephone numbers listed in connection with food service establishments

**INT. NO. 2356:** By Council Member Gjonaj

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting certain telephone order charges by third-party food delivery services

**INT. NO. 2359:** By Council Members Moya and Gjonaj

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

1. **INTRODUCTION**

On June 30, 2021, the Committee on Small Business, chaired by Council Member Mark Gjonaj, will hold a remote legislative hearing on the following bills: (1) Introduction Number 2333 (Int. 2333), in relation to prohibiting third-party delivery services from arranging unauthorized deliveries from and posting unauthorized listings of food service establishments, and technical amendments in relation thereto; (2) Introduction Number 2335 (Int. 2335), in relation to requiring third-party food delivery services to provide a description of the telephone numbers listed in connection with food service establishments; (3) Introduction Number 2356 (Int. 2356), in relation to prohibiting certain telephone order charges by third-party food delivery services; and (4) Introduction Number 2359 (Int. 2359), in relation to limiting fees charged to food service establishments by third-party food delivery services.

Those invited to testify include representatives from the New York City Department of Small Business Services (SBS), representatives from third-party delivery platforms, small business advocates, chambers of commerce, Business Improvement Districts (BIDs), and other community-based non-profit organizations.

1. **BACKGROUND**
2. **Third-Party Platforms**

Before the COVID-19 pandemic, online food delivery services were becoming an increasingly popular way for consumers to dine. Online restaurant orders grew 23 percent annually from 2013 to 2017.[[1]](#footnote-1) In 2018, UBS predicted that by 2030 the global online food ordering marketplace could grow to $365 billion, up from $35 billion in 2018.[[2]](#footnote-2) Sales for the third-party food delivery industry rose 31 percent in 2019, and the percentage of Americans who ordered food from a third-party platform increased from 20 percent to 26 percent. A 2019 survey conducted by the National Restaurant Association found that 60 percent of consumers ordering takeout used a third-party delivery service.[[3]](#footnote-3)

The three major third-party delivery platforms utilize different commission models to remain profitable in this overcrowded and competitive marketplace. Grubhub currently accounts for about 36 percent of meal delivery sales in New York City.[[4]](#footnote-4) Prior to the Council’s passage of Local Law 52 of 2020, Grubhub charged restaurants a 10 percent fee for all orders delivered by a Grubhub courier,[[5]](#footnote-5) and charged restaurants higher commissions in exchange for increased visibility on their platform.[[6]](#footnote-6) DoorDash accounts for 35 percent of meal delivery sales in NYC.[[7]](#footnote-7) Doordash charges restaurants promotion fees, marketing fees, and subscription fees.[[8]](#footnote-8) Similar to Grubhub, DoorDash charges restaurants a commission fee “in exchange for promoting and featuring the Merchant…on the DoorDash platform,” and for all orders delivered by DoorDash couriers (known as “Dashers”).[[9]](#footnote-9) Uber Eats accounts for 28 percent of delivery sales in NYC.[[10]](#footnote-10) Uber Eats charged restaurants a 30 percent fee for orders delivered by Uber couriers,[[11]](#footnote-11) and a 15 percent fee for orders that are made on the Uber Eats website but are delivered by a restaurant’s delivery worker.[[12]](#footnote-12)

During the COVID-19 pandemic, when lockdowns were in place across the country, many consumers turned to take-out due to their inability to dine-in at restaurants. Over 65 percent of consumers in the United States are more likely to purchase takeout from a restaurant now than before the pandemic, and over 50 percent of consumers say that takeout and delivery are essential to the way they now live.[[13]](#footnote-13) Even though COVID-19 restrictions have been lifted in New York and City residents are able to dine-in at restaurants, the shift in consumer behavior may remain. According to Scott Duke Kominers, an associate professor at Harvard Business School, “People have gotten much more used to ordering food and other products through delivery services. Some of that will decline once it's safe to do things in person, of course… But new habit formation is powerful."[[14]](#footnote-14) Uber CEO Dara Khosrowshahi similarly expects Uber Eats to experience a small decline in new customers as COVID-19 restrictions are lifted, however, he acknowledged “it looks like the habit [of consumers ordering food on Uber Eats] is sticking.”[[15]](#footnote-15)

Third-party platforms profited from the surge in consumer use of their platforms during the pandemic. The major food delivery platforms doubled their combined revenue during the pandemic, making a profit of $5.5 billion in April to September 2020, compared to $2.5 billion during the same months the previous year.[[16]](#footnote-16) Food delivery companies generated $50.6 billion in sales in 2020, more than double the $22.7 billion in sales generated in 2019.[[17]](#footnote-17) A study found that of the $28 billion increase in sales that occurred between 2019 and 2020, over $19 billion (69 percent) of this increase was due to the pandemic.[[18]](#footnote-18) The report concludes, “Sales would have grown by 38% in the absence of the pandemic, significantly less than the 122% [growth] that was actually observed.”[[19]](#footnote-19)

The financial success of these companies is also apparent from their corporate strategies during this period. Uber acquired the delivery service Postmates in November 2020, further consolidating the food delivery marketplace.[[20]](#footnote-20) In December 2020, DoorDash made its public market debut and the DoorDash stock rose 86 percent during its initial public offering (IPO), one of the biggest IPOs of 2020.[[21]](#footnote-21)

While platforms profited during the pandemic, the restaurant industry has struggled. Even before the pandemic, the costs to operate a restaurant in City, including rent, labor and inventory, were high, leaving little room for added costs like platform commission fees.[[22]](#footnote-22) From 2015 to 2016 the number of independent restaurants in the City fell three percent, slightly more than the national average.[[23]](#footnote-23) The onset of the pandemic only worsened conditions for restaurants. According to Partnership for New York City, 5,000 eateries have closed in New York City since the start of the pandemic.[[24]](#footnote-24) In December 2020, the National Restaurant Association reported that over 110,000 restaurants, around 17 percent of restaurants in the U.S., were either closed permanently or long-term due to the pandemic.[[25]](#footnote-25) Opportunity Insights reports that revenue for small businesses in the leisure and hospitality industry are still down 70 percent in June 2021 in comparison to January 2020.[[26]](#footnote-26)

In response to this financial devastation, the Council passed Local Laws 51 and 52, which went into effect in June 2020, and then further extended these pieces of legislation through the passage of Local Laws 87 and 88 of 2020. These laws prohibited platforms from charging restaurants for telephone orders that did not result in an actual transaction during the call and limited the amount of fees per order that may be charged by the platforms, respectively. Other jurisdictions have taken similar measures to limit third-party platform fees. The State of New Jersey has limited commission fees to 10 or 20 percent depending on whether the order is delivered by a restaurant worker or a restaurant’s contractor;[[27]](#footnote-27) Philadelphia,[[28]](#footnote-28) Washington D.C.[[29]](#footnote-29) and Portland[[30]](#footnote-30) enacted laws limiting commission fees; and the mayors of Seattle[[31]](#footnote-31)and San Francisco[[32]](#footnote-32) issued emergency orders temporarily capping commission fees at 15 percent (Jersey City at 10 percent)[[33]](#footnote-33). On June 22, 2021, the San Francisco Board of Supervisors voted unanimously to pass a permanent fee cap on the amount that platforms can charge restaurants.[[34]](#footnote-34) The cap prohibits the platforms from charging over 15 percent per order for delivery fees, however, the cap does not cover other costs like marketing fees.

1. **Issues with Restaurants**

While third-party delivery platforms provide restaurants a unique marketing and delivery service, small businesses have accused these platforms of acting in a predatory manner. A class action lawsuit was filed in the United States District Court for the Southern District of New York in April 2020 against the major third-party delivery platforms.[[35]](#footnote-35) The lawsuit alleges that the platforms have violated U.S. antitrust law by requiring restaurants to charge delivery customers and dine-in customers the same price for each menu items, while imposing “exorbitant” fees of 10 percent to 40 percent of revenue to process delivery orders.[[36]](#footnote-36) On June 7, 2021, a bakery in Manhattan filed a class action lawsuit against the third party delivery platforms[[37]](#footnote-37) alleging they have violated Local Law 52 of 2020. The plaintiff allege that the platforms failed to comply with the Council’s Local Law, as they overcharged the bakery above the permitted fee cap and inflated credit card processing fees.[[38]](#footnote-38)

The City Council has conducted three oversight hearings this legislative session on the rise of third-party delivery platforms in the City.[[39]](#footnote-39) During these hearings, small businesses and advocates have highlighted issues they experienced from using these platforms, including high commission fees, restrictions on menu pricing, and erroneous fees they are forced to pay from consumer phone calls that do not result in orders.[[40]](#footnote-40)

1. **Listing Non-Participating Restaurants**

Since the food delivery sector is a competitive marketplace, certain practices have become commonplace in the industry that are disadvantageous to restaurant owners. For example, restaurants that have not joined a platform may find their restaurant listed on a delivery application without their consent. According to Grubhub spokesperson Grant Klinzman, a platform may add a restaurant to the platform without the consent of the restaurant owner if the platform sees local demand for the restaurant owner’s cuisine. Grubhub adds these unlisted restaurants so “the restaurant can receive more orders and revenue from deliveries completed by our drivers. This is a model that other food delivery companies have been doing for years as a way to widen their restaurant supply, and we’re using it as well in some markets to create a level playing field.”[[41]](#footnote-41) A delivery application may add restaurants to their platform, even in the absence of a contract with the restaurant, to ensure they are not at a disadvantage in comparison to other food delivery platforms. This system may also benefit a restaurant owner, who could begin to get higher order volumes through the application.[[42]](#footnote-42)

Nonetheless, the model of platforms adding restaurants without the restaurant owner’s knowledge can be detrimental to a restaurant owner’s business. Restaurants may not have designed dishes for long travel or high volume,[[43]](#footnote-43) and menus posted by third-party platforms can be out of date or inaccurate, which can also further frustrate customers.[[44]](#footnote-44) Delivery platforms’ practice of listing restaurants without consulting the restaurant owner also robs the restaurant of the agency to decide whether they want to contract with a platform.[[45]](#footnote-45) Restaurant owners unknowingly lose control of making their own business decisions and deciding the direction they want to take their business.[[46]](#footnote-46) According to Grubhub, “[T]he non-partnered model is no doubt a bad experience for diners, drivers and restaurants. But our peers have shown growth – although not profits – using the tactic, and we believe there is a benefit to having a larger restaurant network: from finding new diners and not giving diners any reason to go elsewhere.”[[47]](#footnote-47)

Restaurants have filed lawsuits against delivery platforms after finding out they have been listed on a platform without their knowledge. In 2015, In-N-Out filed a lawsuit against DoorDash for trademark infringement and unfair competition under state and federal laws for DoorDash advertising and delivering In-N-Out orders without the company's agreement.[[48]](#footnote-48) In October 2020, two restaurants in California filed a class action lawsuit against Grubhub for listing their restaurants on the platform without the restaurants’ consent, which the restaurants have alleged has caused their businesses to suffer reputational harm and a loss in control over their customers’ experiences.[[49]](#footnote-49)

Regulators have taken action to stop the practice of platforms listing restaurants without the consent of the restaurant owner. In September 2020, Governor Newsom signed AB-2149, which prevents platforms from delivering food from a restaurant unless the restaurant has “expressly authoriz[ed] the food delivery platform to take orders and deliver meals prepared by the food facility.”[[50]](#footnote-50) The Seattle City Council passed a similar law on June 14, 2021, which requires food delivery platforms to have a written agreement with a restaurant prior to offering consumers delivery from that restaurant.[[51]](#footnote-51) In the New York State Legislature, A00784/S03225 has been introduced to similarly prohibit unauthorized listing of restaurants on food delivery platforms.[[52]](#footnote-52)

1. **Telephone Orders**

As previously mentioned, during past Committee hearings on the rise of third party delivery platforms, restaurants have testified that they have been charged erroneous fees they are forced to pay from consumer phone calls that do not result in orders. When consumers call a restaurant directly instead of ordering from the platform’s website or phone application, delivery platforms are left out of the transaction and therefore do not profit from the order. To capitalize off these transactions, certain third party platforms have generated their own numbers for restaurants online.[[53]](#footnote-53) Telephone calls placed through the number are analyzed by an algorithm to determine whether an order was placed on the call.[[54]](#footnote-54)

The algorithm often does not accurately identify telephone orders, however, according to restaurants that have been charged these fees. In 2018 a class action lawsuit was filed in the United States District Court for the Eastern District of Philadelphia against Grubhub. According to the plaintiff, an owner of a local Indian restaurant chain, Grubhub had committed wrongful conduct, including, but not limited to, “withholding commissions for sham telephone food orders, depriving more than 80,000 restaurants of revenues and profits that rightfully belong to them.”[[55]](#footnote-55) At the Committee hearing on August 13, 2020, a restaurant owner testified that despite the Council’s passage of Local Law 51, he continued to be charged by a platform erroneously for phone orders. The Council subsequently extended Local Law 51 through the passage of Local Law 87.

1. **CONCLUSION**

The Council seeks to gain a better understanding of the impact Ints. 2333,2335, 2356 and 2359 will have on the restaurant industry and third-party platforms. The Council is also interested in hearing from the Administration about any difficulties they have experienced enforcing Local Laws 87 and 88, and the predecessor bills, and any concerns they may have about the other pieces of legislation being heard at the hearing. Further, the Committee will hear from business advocates on how to better support the restaurant industry as it recovers from the COVID-19 pandemic.

1. **BILL ANALYSIS**

**Int. 2333, in relation to prohibiting third-party delivery services from arranging unauthorized deliveries from and posting unauthorized listings of food service establishments, and technical amendments in relation thereto**

This bill would prohibit third-party food delivery services from listing food service establishments on their application or website and making deliveries from such establishments, without a written agreement between the delivery service and the establishment that expressly authorizes the third-party food delivery service to do so. Violations of the provisions in this bill could result in a civil penalty of up to $500 per day for each unauthorized delivery or listing. This bill would also require the Department of Consumer and Worker Protection to conduct outreach and promulgate rules necessary for the enforcement of the law.

This bill would take effect 90 days after it becomes law.

**Int. 2335, in relation to requiring third-party food delivery services to provide a description of the telephone numbers listed in connection with food service establishments**

Some third-party food delivery service platforms generate and advertise unique telephone numbers for the businesses they host and collect a fee when customers use that unique telephone number for orders. That unique telephone number may be in addition to or instead of the business’s actual, direct telephone number. This bill would require these platforms, if listing any telephone number for a hosted business, to include that business’s direct telephone number as well as a description of that number. This bill would also require such platforms to provide a description of the telephone numbers listed in connection with a hosted business. Platforms that violate this bill would be subject to civil penalties of $500 for each business and each day in which the platform listed a telephone number in violation of the bill.

This bill would take effect 180 days after it becomes law.

**Int. 2356, in relation to prohibiting certain telephone order charges by third-party food delivery services**

This bill would amend Local Law 87 for the year 2020, which prohibits third-party food delivery services from charging restaurants for telephone orders that did not result in a transaction during the call. Under Local Law 87, such charges are prohibited only when there is a State or City state of emergency in effect and all city restaurants are prohibited from operating at maximum indoor capacity, plus an additional 90 days. This bill would prohibit such charges under any circumstances going forward.

This bill would take effect immediately.

**Int. 2359, in relation to limiting fees charged to food service establishments by third-party food delivery services**

This bill would build upon Local Law 88 for the year 2020, which prohibits third-party food delivery services from charging any food service establishment more than 15 percent per order for delivery and more than 5 percent per order for all other fees. Under Local Law 88, such charges are prohibited only when there is a State or City state of emergency in effect and all city restaurants are prohibited from operating at maximum indoor capacity, plus an additional 90 days. This bill would instead prohibit such fees at all times. It would also clarify the definition of “credit card” in the existing law.

This bill would take effect immediately.

Int. No. 2333

By Council Member Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting third-party delivery services from arranging unauthorized deliveries from and posting unauthorized listings of food service establishments, and technical amendments in relation thereto

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-848 of the administrative code of the city of New York, as added by local law number 52 for the year 2020, is amended to read as follows:

a. [Any person that violates any provision of section 20-846 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed $1,000 per violation. Any person that violates any provision of section 20-847 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed $500 per violation. Violations under this subchapter shall accrue on a daily basis for each day and for each food service establishment charged a fee in violation of this subchapter or any rule promulgated pursuant to this subchapter.] The department shall impose a civil penalty against any third-party food delivery service that violates any provision of this subchapter as set forth in the table of civil penalties. Violations under this subchapter shall accrue on a daily basis.

|  |  |
| --- | --- |
| TABLE OF CIVIL PENALTIES | |
| Violation | Maximum Civil Penalty |
| 20-846(a) | $1,000 |
| 20-846(b) | $1,000 |
| 20-847(a) | $500 |
| 20-847.1(a) | $500 |
| 20-847.1(b) | $500 |

b. 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.

[b.] c. 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. Any civil penalty authorized pursuant to this section;

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

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

4. [attorneys’] Attorneys’ fees and costs, and such other remedies as a court may deem appropriate.

[c.] d. 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.

§ 2. Subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-847.1 to read as follows:

§ 20-847.1 Prohibiting unauthorized deliveries and listings. a. Prohibiting unauthorized deliveries. A third-party food delivery service shall not arrange for the delivery of an online order from a food service establishment without first entering into a written agreement that expressly authorizes such delivery service to deliver online orders prepared by such establishment.

b. Prohibiting unauthorized listings. A third-party food delivery service shall not list a food service establishment on its application or website as a participating food service establishment without first entering into a written agreement that expressly authorizes such delivery service to take online orders prepared by such establishment.

c. Outreach. No more than 30 days after the effective date of the local law that added this section, and continuing for 90 days thereafter, the commissioner, in collaboration with relevant agencies and relevant stakeholders, 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 this section. 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.

d. The commissioner shall promulgate rules necessary and appropriate to the administration of this section.

§ 3. This local law takes effect 90 days after it becomes law, except that the commissioner of consumer and worker protection shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

NLB

LS #17479

5/27/21

Int. No. 2335

By Council Member Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring third-party food delivery services to provide a description of the telephone numbers listed in connection with food service establishments

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-845 of the administrative code of the city of New York, as amended by local law number 88 for the year 2020, is amended by adding a new definition for “direct telephone number” in alphabetical order to read as follows:

Direct telephone number. The term “direct telephone number” means a telephone number belonging to a food service establishment that is not provided by a third-party food delivery service.

§ 2. Subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-847.1 to read as follows:

§ 20-847.1 Telephone number listings. a. Where a third-party food delivery service lists or links to any telephone number for a food service establishment on its website or mobile application, such listing shall include the direct telephone number of such food service establishment and a prominent and conspicuous description of the telephone number, including but not limited to identification of the telephone number as the direct telephone number and any fee associated with use of such telephone number for telephone orders, whether imposed on the food service establishment or the caller.

b. Where a third-party food delivery service lists or links to a telephone number in addition to a direct telephone number on its website or mobile application, such listing shall include a prominent and conspicuous description of the telephone number, including but not limited to identification of the telephone number as a third-party telephone number and any fee associated with use of such telephone number for telephone orders, whether imposed on the food service establishment or the caller.

c. 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.

§ 3. Subdivision a of section 20-848, as amended by local law number 51 for the year 2020, is amended to read as follows:

 a. Any person that violates any provision of section 20-846 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed $1,000 per violation. Any person that violates any provision of section 20-847, section 20-847.1 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed $500 per violation. Violations under this subchapter shall accrue on a daily basis for each day and for each food service 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.

§ 4. This local law takes effect 180 days after it becomes law, except that the commissioner of consumer affairs and worker protection shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

SG

LS #17482

6/11/21

Int. No. 2356

By Council Member Gjonaj

..Title

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting certain telephone order charges by third-party food delivery services

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-847 of the administrative code of the city of New York, as amended by local law number 87 for the year 2020, is amended as follows:

§ 20-847 Telephone orders. [a.] 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.

[b. The requirements of this section apply only during the period in which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy and for a period of 90 days thereafter.]

§ 2. This local law takes effect immediately.

SJ

LS #17899

6/16/21

Int. No. 2359

By Council Members Moya and Gjonaj

..Title

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

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-845 of the administrative code of the city of New York, as amended by local law number 88 for the year 2020, is amended by adding a new definition of “credit card” in alphabetical order to read as follows:

Credit card. The term “credit card” means any credit card, charge card, courtesy card, debit card, internet payment technology or other device or technology 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 another person.

§ 2. Section 20-846 of the administrative code of the city of New York, as amended by local law number 88 for the year 2020, is amended to read as follows:

§ 20-846 [Fee limits during declared emergencies] Fees. 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 other than a delivery fee for the use of their service greater than 5% of the purchase price of each online order, provided that such cap shall not apply to a credit card transaction fee that is charged to the third-party food delivery service and is charged in the same amount by the third-party food delivery service to such food service establishment.

[c. The requirements of this section apply only during the period in which a state disaster emergency has been declared by the governor of the state of New York or a state of emergency has been declared by the mayor, such declaration is in effect in the city, and all food service establishments in the city are prohibited from operating at the maximum indoor occupancy and for a period of 90 days thereafter.]

§ 3. This local law takes effect immediately.

SJ

LS #15934

6/16/21

1. The NPD Group “Feeding the growing appetite for restaurant apps, <https://www.npd.com/wps/portal/npd/us/news/infographics/2018/feeding-the-growing-appetite-for-restaurant-apps/>. [↑](#footnote-ref-1)
2. USB Investment Bank “Is The Kitchen Dead?”,June 18, 2018, available at: <https://www.ubs.com/global/en/investment-bank/in-focus/2018/dead-kitchen.html> [↑](#footnote-ref-2)
3. Hudson Riehle and Melissa Wilson “Harnessing Technology to Drive Off-Premises Sales”, 2019, *National Restaurant Association*, available at: <https://www.restaurant.org/Downloads/PDFs/Research/research_offpremises_201910>. [↑](#footnote-ref-3)
4. Kathryn Roethel Rieck, “Which company is winning the food delivery war?”, June 14, 2021, *Second Measure*, available at: <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/> [↑](#footnote-ref-4)
5. Grubhub “Grubub Pricing”, available at: <https://learn.grubhub.com/wp-content/uploads/2018/08/Grubhub_One-Pager_Pricing-Overview_Final.pdf> [↑](#footnote-ref-5)
6. David Yaffe-Bellany, “New York vs. Grubhub”, September 30, 2019, *The New York Times*, available at: <https://www.nytimes.com/2019/09/30/business/grubhub-seamless-restaurants-delivery-apps-fees.html> [↑](#footnote-ref-6)
7. Kathryn Roethel Rieck, “Which company is winning the food delivery war?”, June 14, 2021, *Second Measure*, available at: <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/> [↑](#footnote-ref-7)
8. DoorDash “Terms of Service - United States DoorDash Merchants”, available at: <https://help.doordash.com/merchants/s/terms-of-service-us?language=en_US#payment-fees-and-taxes> [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. Kathryn Roethel Rieck, “Which company is winning the food delivery war?”, June 14, 2021, *Second Measure*, available at: <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/> [↑](#footnote-ref-10)
11. Julie Littman “Delivery by the numbers: How top third-party platforms compare”, October 3, 2019, *Restaurant Dive*, available at: <https://www.restaurantdive.com/news/delivery-by-the-numbers-how-top-third-party-platforms-compare/564279/>. [↑](#footnote-ref-11)
12. Uber “How do fees work on Uber Eats”, available at: <https://help.uber.com/ubereats/article/how-do-fees-work-on-uber-eats?nodeId=65d229e2-a2b4-4fa0-b10f-b36c9546cf55> [↑](#footnote-ref-12)
13. “National Restaurant Association Releases 2021 State of the Restaurant Industry Report”, January 26, 2021, available at: <https://restaurant.org/news/pressroom/press-releases/2021-state-of-the-restaurant-industry-report> [↑](#footnote-ref-13)
14. Sara Ashley O’Brien, “The pandemic boosted food delivery companies. Soon they may face a reality check” December 6, 2020, available at: <https://www.cnn.com/2020/12/06/tech/food-delivery-pandemic-doordash/index.html> [↑](#footnote-ref-14)
15. “Food Delivery Is Keeping Uber Alive. Will It Kill Restaurants?” Kara Swisher, *The New York Times*, January 14, 2021, available at: <https://www.nytimes.com/2021/01/14/opinion/sway-kara-swisher-dara-khosrowshahi.html?showTranscript=1> [↑](#footnote-ref-15)
16. Levi Sumagaysay “The pandemic has more than doubled food-delivery apps’ business. Now what?”, *MarketWatch*, November 27, 2020, available at: <https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>. [↑](#footnote-ref-16)
17. Elliot Shin Oblander and Daniel Minh McCarthy, “How has COVID-19 Impacted Customer Relationship

    Dynamics at Restaurant Food Delivery Businesses?” April 26, 2021, available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3836262> [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. “Mike Isaac, Erin Griffith and Adam Satariano, “Uber Buys Postmates for $2.65 Billion,” *The New York Times*, Updated November 13, 2020, available at: <https://www.nytimes.com/2020/07/05/technology/uber-postmates-deal.html#:~:text=SAN%20FRANCISCO%20%E2%80%94%20Uber%20has%20agreed,stock%20deal%20on%20Monday%20morning> [↑](#footnote-ref-20)
21. Erin Griffith, “DoorDash Soars in First Day of Trading,” *The New York Times*, Updated March 19, 2021, available at: <https://www.nytimes.com/2020/12/09/technology/doordash-ipo-stock.html> [↑](#footnote-ref-21)
22. Karen Stabiner, “Is New York Too Expensive for Restaurateurs? We Do the Math,” *The New York Times*, October 25, 2016, <https://www.nytimes.com/2016/10/26/dining/restaurant-economics-new-york.html>. *See also* Gabe Flores, “What Is the Average Profit Margin for a Restaurant?” *Restaurant365*, February 25, 2020, <https://www.restaurant365.com/blog/what-is-the-average-profit-margin-for-a-restaurant/> (asserting the average profit margin of a restaurant is three to six percent, with a possible margin of up to 10 percent). [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. “Jobs, not Taxes, Should be Top Priority for 2021-22” *Partnership for New York City*, February 17, 2021, available at: <https://pfnyc.org/news/jobs-not-taxes-should-be-top-priority-for-2021-22/> [↑](#footnote-ref-24)
25. “Restaurant Industry in Free Fall; 10,000 Close in Three Months”, *National Restaurant Association*, December 7, 2020, available at: <https://restaurant.org/news/pressroom/press-releases/restaurant-industry-in-free-fall-10000-close-in> [↑](#footnote-ref-25)
26. “Percent Change in Small Business Revenue”, *Opportunity Insights*, Updated June 2, 2021, available at: <https://tracktherecovery.org/> [↑](#footnote-ref-26)
27. New Jersey Senate Bill 2437, available at: <https://legiscan.com/NJ/text/S2437/id/2203307>. [↑](#footnote-ref-27)
28. The Philadelphia Code, Chapter 9-5000, available at: <https://phila.legistar.com/LegislationDetail.aspx?ID=4553673&GUID=0DE18EE1-E462-4B1E-B58F-746F39D76748&Options=ID%7cText%7c&Search=200344&fbclid=IwAR02ax6pEBPrAZVOYk4jBY5ydrD_ZbeiA2WwwroV9E-CFOeQD4MKzlp5I-U>; *see also* Jenn Ladd, “How Philly’s new food-delivery law changes the rules for Grubhub, DoorDash, and other services”, July 30, 2020, *The Philadelphia Inquirer*, <https://www.inquirer.com/food/philadelphia-caps-third-party-delivery-fees-restaurants-pandemic-20200730.html>. [↑](#footnote-ref-28)
29. Code of the District of Columbia, § 48-641, available at: <https://code.dccouncil.us/dc/council/code/sections/48-641.html>. [↑](#footnote-ref-29)
30. Portland Ordinance available at: <https://efiles.portlandoregon.gov/Record/13908986/File/Document> [↑](#footnote-ref-30)
31. City of Seattle, Civil Emergency Order: Restricting Restaurant Delivery and Pick-Up Commission Fees, April 24, 2020, available at: <https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/04/Emergency-Order-Delivery-Fee-Cap-4-24-2020.pdf>. [↑](#footnote-ref-31)
32. City and County of San Francisco, Office of the Mayor, Mayor London Breed Announces Delivery Fee Cap to Support San Francisco Restaurants During COVID-19 Pandemic, April 10, 2020, available at: <https://sfmayor.org/article/mayor-london-breed-announces-delivery-fee-cap-support-san-francisco-restaurants-during-covid>. [↑](#footnote-ref-32)
33. City of Jersey City Office of the Mayor, Executive Order – Third-Party Food Service Fee Cap, May 7, 2020, available at: <https://jerseycitynj.gov/UserFiles/Servers/Server_6189660/File/City%20Hall/Mayors%20Office/Mayoral%20Executive%20Orders/2020/Executive%20Order%20Food%20Delivery%20App%20Price%20Cap%20-%205.4.20.pdf>. [↑](#footnote-ref-33)
34. Tanay Warerkar, “San Francisco will permanently cap food delivery fees for DoorDash, Grubhub and other apps”, San Francisco Chronicle, June 23, 2021, available at: <https://www.sfchronicle.com/food/restaurants/article/Food-app-delivery-commission-in-S-F-capped-at-16266468.php> [↑](#footnote-ref-34)
35. The four platforms are Grubhub Inc. (which also does business as Seamless), DoorDash Inc., Postmates Inc., and Uber Technologies, Inc., which is the parent company of Uber Eats. [↑](#footnote-ref-35)
36. Jonathan Stempel, “Grubhub, DoorDash, Postmates, Uber Eats are sued over restaurant prices amid pandemic” April 13, 2020, *Reuters*, available at: <https://www.reuters.com/article/us-health-coronavirus-food-delivery-laws-idUSKCN21V2C1>. [↑](#footnote-ref-36)
37. Including Grubhub and Seamless, Uber Eats and Postmates, and DoorDash. [↑](#footnote-ref-37)
38. Micheli & Shel, LLC individually and on behalf of others similarly situated, *v.* GRUBHUB INC., GRUBHUB INC. d/b/a SEAMLESS, SEAMLESS NORTH AMERICA, LLC, UBER TECHNOLOGIES INC., UBER EATS, POSTMATES LLC, and DOORDASH INC., UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK [↑](#footnote-ref-38)
39. New York City Council “Oversight – The Changing Market for Food Delivery”, June 6, 2019, available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=705634&GUID=0BC09A92-5DB4-496B-90EE-BF75DF712131&Options=info|&Search=>; and New York City Council “Oversight: ‘Ghost Kitchens’ ‘Virtual Restaurants’ and the Future of the Restaurant Industry”, February 6, 2020, available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=759804&GUID=B42220FE-417A-484C-B7CF-51725F784A71&Options=info|&Search=>; and New York City Council “Oversight - The Impact of COVID-19 on Small Businesses in New York City.” April 29, 2020, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4424922&GUID=F205F93F-5C61-490F-ACA3-D343CA9C8584&Options=&Search>= [↑](#footnote-ref-39)
40. *Id.*  [↑](#footnote-ref-40)
41. Christopher Robbins, “New Bill Aims To Curb "Parasite" Food Delivery Apps In NY State”, *Gothamist*, January 6, 2021, available at: <https://gothamist.com/food/new-bill-aims-curb-parasite-food-delivery-apps-ny-state> [↑](#footnote-ref-41)
42. Jaya Saxena, “Grubhub’s New Strategy Is to Be an Even Worse Partner to Restaurants” *Eater NY*, October 30, 2019, available at: <https://www.eater.com/2019/10/30/20940107/grubhub-to-add-restaurants-without-permission-like-postmates> [↑](#footnote-ref-42)
43. Caleb Pershan, “‘We Don’t Even Do Takeout’: Why, Then, Is This Restaurant on Seamless?” Eater, January 29, 2020, available at: <https://www.eater.com/2020/1/29/21113416/grubhub-seamless-kin-khao-online-delivery-mistake-doordash> [↑](#footnote-ref-43)
44. *Id.* [↑](#footnote-ref-44)
45. “Restaurants File Class Action Lawsuit Against Grubhub for Adding Them to Its Platform Without Permission” *Business Wire*, October 27, 2020, available at: <https://www.businesswire.com/news/home/20201027006171/en/Restaurants-File-Class-Action-Lawsuit-Against-Grubhub-for-Adding-Them-to-Its-Platform-Without-Permission> [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. Jaya Saxena, “Grubhub’s New Strategy Is to Be an Even Worse Partner to Restaurants” *Eater NY*, October 30, 2019, available at: <https://www.eater.com/2019/10/30/20940107/grubhub-to-add-restaurants-without-permission-like-postmates> [↑](#footnote-ref-47)
48. Whitney Filloon, “In-N-Out Burger Sues DoorDash for Delivering Its Food Without Permission,” *Eater*, November 11, 2015, available at: <https://www.eater.com/2015/11/11/9714840/in-n-out-doordash-delivery-lawsuit> [↑](#footnote-ref-48)
49. LYNN SCOTT, LLC; THE FARMER’s WIFE, LLC, on behalf of themselves and all others similarly situated,

    v. GRUBHUB INC. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION, October 26, 2020, available at: <https://www.classlawgroup.com/wp-content/uploads/Grubhub-Class-Action-Lawsuit-Gibbs-Law-Group.pdf?x96633> [↑](#footnote-ref-49)
50. Assembly Bill No. 2149, California Legislative Information, available at: <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2149> [↑](#footnote-ref-50)
51. “CB 120092, AN ORDINANCE relating to the regulation of food delivery businesses and platforms; adding a new Chapter 7.30 to the Seattle Municipal Code.” Office of the City Clerk, available at: <https://seattle.legistar.com/LegislationDetail.aspx?ID=4969081&GUID=75D6EFC5-36FB-4B08-AFA5-3898DC755786&Options=ID%7CText%7C&Search=120092> [↑](#footnote-ref-51)
52. A00784, New York State Assembly, <https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A00784&term=2021&Summary=Y&Actions=Y&Memo=Y&Text=Y> [↑](#footnote-ref-52)
53. Jaya Saxena, “Delivery Apps Aren’t Getting Any Better” *Eater*, May 29, 2019, available at: <https://www.eater.com/2019/5/29/18636255/delivery-apps-hurting-restaurants-grubhub-seamless-ubereats> [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. *TIFFIN EPS, LLC v. GrubHub*, *Inc*, 2:18-cv-05630-PD, Complaint, p. 2l.5., available at: <https://cdn.vox-cdn.com/uploads/chorus_asset/file/16288289/Grubhub_lawsuit.pdf>. [↑](#footnote-ref-55)