



Legislation Text

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Int. No. 762-B

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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. The definition of “delivery fee” in section 20-563 of the administrative code of the city of New York, as added by local law number 100 for the year 2021, is amended to read as follows:

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 located within at least 1 mile of such food service establishment. [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 of the administrative code of the city of New York is amended by adding new definitions for the terms “basic service fee,” “enhanced service fee,” and “exigent circumstances” in alphabetical order 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 a service that: (i) allows such food service establishment to receive orders for delivery and pick-up on all websites and mobile and online platforms

offered by such third-party food delivery service; and (ii) enables a person to search for such food service establishment on all such websites and platforms, in a manner that prominently displays such food service establishment by name and includes such food service establishment in results for a search based on customer criteria, such as cuisine type, location, or delivery radius, that are relevant to such food service establishment.

Enhanced service fee. The term “enhanced service fee” means a fee charged by a third-party food delivery service for providing a food service establishment with a service other than the service such third-party food delivery service provides to such food service establishment in exchange for paying a basic service fee, a delivery fee, or a transaction fee.

Exigent circumstances. The term “exigent circumstances” means circumstances outside the control of a third-party food delivery service, such as severe weather conditions or natural disasters.

§ 3. 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:

§ 20-563.3 Fee caps.

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 unless the average of the sum of all delivery fees a third-party food delivery service charges a food service establishment in a calendar month totals no more than 15% of the sum of the purchase price of all such orders in such month. Any third-party food delivery service that charges a delivery fee pursuant to this subdivision shall provide delivery to any customer located within at least 1 mile of such food service establishment, unless exigent circumstances prevent such delivery.

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 unless the average of the sum of all basic service fees a third-party food delivery service charges a food service establishment in a calendar month totals no more

than 5% of the sum of the purchase price of all such orders in such month.

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 fee other than a basic service fee, delivery fee or transaction fee, except that a third-party food delivery service that offers a service for which such third-party food delivery service charges a basic service fee pursuant to this section may charge an enhanced service fee. Such an enhanced service fee may total no more than 20% of the purchase price of each online order, unless the average of the sum of all enhanced service fees a third-party food delivery service charges a food service establishment in a calendar month totals no more than 20% of the sum of the purchase price of all such orders in such month.

e. Notwithstanding any provision of law to the contrary, it shall not be a violation this section where a third-party food delivery service refunds to a food service establishment the portion of any fee such third-party food delivery service has charged such food service establishment that exceeds any fee cap imposed pursuant to subdivisions a, b or d of this section within 30 calendar days of the final day of the month in which such charge occurs.

f. Where a food service establishment pays a third-party food delivery service a basic service fee, such third-party food delivery service shall enable a person to search for such food service establishment on all websites and mobile and online platforms offered by such third-party food delivery service and shall not omit such food service establishment from relevant search results produced in response to such search.

g. 1. Within 30 days of the effective date of the local law that added this subdivision, a third-party food delivery service shall notify any food service establishment with which such third-party food delivery service has an existing agreement of:

(i) The services offered by such third-party food delivery service;

(ii) The applicable caps on fees for such services pursuant to subdivisions a, b, and d of this section;

(iii) The services provided to such food service establishment pursuant to such existing agreement; and

(iv) Any change to a fee for any such service, provided that any such change shall take effect no earlier than 30 days after notification of such change from the third-party food delivery service to the food service establishment.

2. A food service establishment that has such an existing agreement with a third-party food delivery service may modify the type of services such third-party food delivery service provides to such food service establishment following: (i) notification from such third-party food delivery service of a change in the amount of any fee charged by such third-party food delivery service; or (ii) an offer from such third-party food delivery service to provide enhanced services to such food service establishment.

3. A third-party food delivery service shall disclose, in a clear and conspicuous manner, any fee, commission, or other charge imposed pursuant to any new or existing agreement between such third-party food delivery service and a food service establishment.

h. Each month, a third-party food delivery service shall provide to a food service establishment with which such third-party food delivery service has an agreement an itemized list of each transaction between the food service establishment and the third-party food delivery service, including any fees such third-party food delivery service charged such food service establishment, in the preceding month.

i. A third-party delivery service shall not purchase or otherwise obtain the name of a food service establishment from an internet search provider that sells advertising keywords for purposes of internet advertising within the city, unless a food service establishment consents in writing, including as part of an

agreement in accordance with section 20-563.6. This subdivision shall not apply to advertising or interest content outside of the city, and shall not 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.

j. 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.

k. A third-party food delivery service shall not require a food service establishment, as a condition of such third-party food delivery service providing such establishment with any service for which such third-party food delivery service may charge a basic service fee, delivery fee, enhanced service fee, or transaction fee pursuant to this section, to charge the same price for any food or beverage item ordered through or with the assistance of such delivery service as such food service establishment charges for such food or beverage item ordered directly from or through the food service establishment, provided, however, that a third-party food delivery service and a food service establishment may agree to terms regarding differences in pricing, including a requirement that such establishment charge the same price for any food or beverage item ordered through or with the assistance of such delivery service as such establishment charges for such food or beverage item ordered directly from or through the food service establishment, in a written contract or agreement other than the contract or agreement pursuant to which the third-party food delivery service provides such food service establishment with services for which such third-party food delivery service may charge a basic service fee, delivery fee or transaction fee pursuant to this section, and provided, further, however, that any such agreement by a food service establishment regarding differences in pricing may not be a condition of such third-party food delivery service providing such establishment with any service for which such third-party food delivery service may charge a basic service fee, delivery fee, enhanced service fee or transaction fee pursuant to this section.

l. 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 in exchange for [listing, processing and marketing] paying basic service, delivery and enhanced service fees;

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 number of violations issued under this subchapter, disaggregated by section of the code;

6. The number of violations issued to each third-party food delivery service licensed pursuant to section 20-563.1;

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

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

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