

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448
FROM: Alisa Somera, Clerk, Public Safety and Neighborhood Services Committee
Board of Supervisors
DATE: November 4, 2021
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 211131 Police Code - Third-Party Delivery Services

Ordinance amending the Police Code to allow third-party food delivery services to charge restaurants a delivery fee of up to 15% of an online order total and a non-delivery fee of up to 5% of an online order total, provided the third-party food delivery services do not make their agreement to provide delivery services contingent on restaurants' agreement to pay for non-delivery services, and provided the delivery and non-delivery fees are agreed to in separate contracts.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

\*\*\*\*\*
RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

\_\_\_ No Comment

\_\_\_ Recommendation Attached

\_\_\_\_\_
Chairperson, Small Business Commission

c: Chair Gordon Mar, Public Safety and Neighborhood Services Committee
Alan Wong, Office of Supervisor Gordon Mar

1 [Police Code - Third-Party Food Delivery Services]

2

3 **Ordinance amending the Police Code to allow third-party food delivery services to**  
4 **charge restaurants a delivery fee of up to 15% of an online order total and a non-**  
5 **delivery fee of up to 5% of an online order total, provided the third-party food delivery**  
6 **services do not make their agreement to provide delivery services contingent on**  
7 **restaurants' agreement to pay for non-delivery services, and provided the delivery and**  
8 **non-delivery fees are agreed to in separate contracts.**

9

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
11 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.  
12 **Board amendment additions** are in Arial font.  
13 **Board amendment deletions** are in ~~Arial font~~.  
14 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
15 subsections or parts of tables.

13

14 Be it ordained by the People of the City and County of San Francisco:

15

16 Section 1. Article 53 of the Police Code is hereby amended by revising Sections 5301  
17 (with the defined terms that are added to that section sequenced alphabetically within the  
18 section) and 5302, to read as follows:

19

20 **SEC. 5301. DEFINITIONS.**

21

\* \* \* \*

22

*“Delivery fee” means a fee, commission, or charge per online order assessed by a third-party*  
23 *food delivery service for the purpose of providing a covered establishment with a service that facilitates*  
24 *and/or performs the delivery of food and/or beverages from such establishments to customers,*  
25 *including listing a covered establishment on a third-party food delivery service platform. A delivery fee*

1 does not include any other fee or costs that may be charged by a third-party food delivery service to a  
2 covered establishment, such as fees for advertising or credit card processing.

3 \* \* \* \*

4 “Non-delivery fee” means a fee, commission, or charge per online order assessed by a third-  
5 party food delivery service to a covered establishment for a service to the covered establishment other  
6 than facilitating or performing the delivery of food and/or beverages from such covered establishment  
7 to customers and listing a covered establishment on a third-party food delivery service platform. Non-  
8 delivery fees include but are not limited to fees for advertising the covered establishment on the third-  
9 party food delivery service platform beyond a simple listing, business consulting service fees, and  
10 credit card transaction fees.

11 \* \* \* \*

12 **SEC. 5302. CAP ON PER-ORDER FEES.**

13 (a) No third-party food delivery service may charge a covered establishment a ~~fee,~~  
14 ~~commission, or charge per online order~~delivery fee that ~~totals more than~~ exceeds 15% of the  
15 purchase price of the online order.

16 (b) No third-party food delivery service may charge a covered establishment a ~~fee,~~  
17 ~~commission, or charge per online order~~delivery fee that exceeds 15% of the purchase price of  
18 online orders to that covered establishment processed through the third-party food delivery  
19 service during the time period covered by the fee, commission, or charge.

20 (c) Notwithstanding the limitations on a delivery fee set forth in subsections (a) and (b), above,  
21 a third-party food delivery service may charge a covered establishment a non-delivery fee of not more  
22 than 5% of the purchase price of an online order, provided the third party food delivery service does  
23 not make its agreement to provide delivery services to a covered establishment contingent on that  
24 establishment’s agreement to pay a non-delivery fee and/or accept services covered by a non-delivery  
25

1 fee, and provided the covered establishment agrees to the non-delivery fee in a contract separate from  
2 the contract in which the covered establishment agrees to the delivery fee.

3 \* \* \* \*

4  
5 Section 2. Effective Date. This ordinance shall become effective 30 days after  
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
8 of Supervisors overrides the Mayor's veto of the ordinance.

9  
10 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
14 additions, and Board amendment deletions in accordance with the "Note" that appears under  
15 the official title of the ordinance.

16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18 By: /S/ Sarah Crowley  
19 SARAH CROWLEY  
20 Deputy City Attorney

21 n:\legana\as2021\2000108\01561827.docx

**LEGISLATIVE DIGEST**

[Police Code - Third-Party Food Delivery Services]

**Ordinance amending the Police Code to allow third-party food delivery services to charge restaurants a delivery fee of up to 15% of an online order total and a non-delivery fee of up to 5% of an online order total, provided the third-party food delivery services do not make their agreement to provide delivery services contingent on restaurants' agreement to pay for non-delivery services, and provided the delivery and non-delivery fees are agreed to in separate contracts.**

Existing Law

Existing law prohibits a third-party food delivery service from charging a restaurant a fee that exceeds 15% of an online order total.

Amendments to Current Law

This ordinance would allow a third-party food delivery service to charge a restaurant a fee of up to 15% of an online order total for delivery services, which include listing a restaurant on the delivery service's website. The ordinance would allow a third-party food delivery service to charge a restaurant an additional fee of up to 5% of an online order total for non-delivery services, which include advertising the covered establishment on the third-party food delivery service platform beyond a simple listing, business consulting, and credit card transaction services, provided the third-party food delivery service does not make its agreement to provide delivery services to a restaurant contingent on the restaurant's agreement to pay a non-delivery fee and/or accept services covered by a non-delivery fee, and provided the restaurant agrees to the non-delivery fee in a contract separate from the contract in which they agree to the delivery fee.