

REVISED LEGISLATIVE DIGEST

(Amended in Board, 11/3/2020)

[Police Code - Third-Party Food Delivery Services]

Ordinance amending the Police Code to regulate third-party food delivery services (“delivery services”) by 1) capping fees charged to non-formula retail restaurants at 15% of an order total; 2) prohibiting delivery services from restricting such restaurants’ pricing; 3) prohibiting delivery services from charging such restaurants for telephone calls to the delivery service not resulting in any food or beverage order; 4) prohibiting delivery services from providing services to any such restaurants without the restaurant’s express written agreement to receive such services; 5) requiring delivery services to terminate a service contract with such restaurants within 72 hours of receiving a notice requesting termination; 6) requiring retention of and City access to records substantiating compliance with these restrictions; 7) authorizing the imposition of penalties for violations; and 8) authorizing the Office of Economic and Workforce Development to implement and enforce this ordinance; and providing that the ordinance shall expire by operation of law 60 days after the County Health Officer amends the Stay Safer at Home Order to allow indoor dining at restaurants at 100% capacity.

Existing Law

On April 10, 2020, the Mayor issued the Ninth Supplement to the Proclamation declaring the existence of a local emergency related to COVID-19 (“Ninth Supplement”). The Ninth Supplement imposed a temporary 15% cap on per-order fees charged by third-party food delivery services to San Francisco restaurants until the ban on dine-in restaurant service is lifted, but exempted from that fee cap orders with restaurants that qualify as “formula retail” under the Planning Code. The Mayor subsequently clarified the termination provision of that order in the Nineteenth Supplement to the Proclamation of Local Emergency (“Nineteenth Supplement”) issued on June 13, 2020. On September 30, 2020, the Mayor issued the Twenty-Ninth Supplement to the Proclamation of Local Emergency (“Twenty-Ninth Supplement”) to extend the fee cap until such time as restaurants are permitted to allow indoor dine-in service by patrons occupying at least 50% of the restaurant’s maximum occupancy.

All above provisions are currently in effect.

Amendments to Current Law

This ordinance would add Article 53 to the Police Code to regulate third-party food delivery services. It would authorize OEWD to implement and enforce Article 53, and would prohibit third-party food delivery services from doing the following:

- charging any non-formula retail restaurant a fee for online orders for delivery or pickup in San Francisco that exceeds 15% of the order total;
- restricting any non-formula retail restaurant's discretion to set its prices;
- charging any non-formula retail restaurant a fee for "telephone orders" through the third-party food delivery service that do not result in a customer purchase;
- providing services to any non-formula retail restaurant without the restaurant's express written agreement to receive such services; and
- failing to terminate a service contract with a non-formula retail restaurant within 72 hours of receiving oral or written notice of a restaurant's decision to terminate the contract.

The ordinance would require that third-party food delivery services maintain records sufficient to substantiate their compliance with these provisions for three years from the date of a customer transaction, and produce these records on request to OEWD. The OEWD director would be authorized to impose penalties for violations of Article 53.

The ordinance would expire by operation of law 60 days after the County Health Officer amends the Stay Safer at Home Order to allow indoor dining at restaurants at 100% capacity.

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