

File No. 200398

Committee Item No. 5

Board Item No. 3

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Comm: Public Safety & Neighborhood Services

Date: October 22, 2020

Board of Supervisors Meeting:

Date: November 10, 2020

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance - VERSION 4 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest - VERSION 4 |
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OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>SBC Response – July 31, 2020</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referrals FYI – April 29, 2020</u> |
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Prepared by: John Carroll

Date: October 15, 2020

Prepared by: John Carroll

Date: October 30, 2020

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

2

3 Ordinance amending the Police Code to regulate third-party food delivery services
4 (“delivery services”) by 1) capping fees charged to non-formula retail restaurants at
5 ~~40~~15% of an order total ~~plus a 3% point-of-sale processing charge;~~ 2) prohibiting
6 delivery services from restricting such restaurants’ pricing; 3) and prohibiting delivery
7 services from charging such restaurants for telephone calls to the delivery service not
8 resulting in any food or beverage order; 4) prohibiting delivery services from providing
9 services to any such restaurants without the restaurant’s express written agreement to
10 receive such services; 5) requiring delivery services to terminate a service contract
11 with such restaurants within 72 hours of receiving a notice requesting termination; 6)
12 requiring retention of and City access to records substantiating compliance with these
13 restrictions; 7) authorizing the imposition of penalties for violations; and 8) authorizing
14 the Office of Economic and Workforce Development to implement and enforce this
15 ordinance; and providing that the ordinance shall expire by operation of law 60 days
16 after the County Health Officer amends the Stay Safer at Home Order to allow indoor
17 dining at restaurants at 100% capacity.

18

19 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
20 **Additions to Codes** are in *single-underline italics Times New Roman font*.
21 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
22 **Board amendment additions** are in double-underlined Arial font.
23 **Board amendment deletions** are in ~~Arial font~~.
24 **Asterisks (* * * *)** indicate the omission of unchanged Code
25 subsections or parts of tables.

23

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

25

1 Section 1. The Police Code is hereby amended by adding Article 53, consisting of
2 Sections 5300-~~5309~~5312, to read as follows:

3
4 **ARTICLE 53: REGULATION OF THIRD-PARTY FOOD DELIVERY SERVICES**

5
6 **SEC. 5300. FINDINGS.**

7 (a) Restaurants are vital to the character and community fabric of San Francisco (“City”).
8 They reflect and nurture the cultural diversity of the City, while offering access to food, an essential
9 foundation of human health and basis for social connection. Restaurants are also important engines of
10 the local economy, providing jobs and serving as commercial anchors in neighborhoods across the
11 City.

12 (b) The central place of restaurants in the City’s commercial districts is evident from City real
13 estate statistics. Restaurants occupy a substantial percentage of ground floor retail space along the
14 City’s commercial corridors, in some neighborhoods accounting for close to 25% of active ground
15 floor businesses.

16 (c) But in recent years, the City’s restaurant industry has been in decline. According to data
17 from the Department of Public Health, the number of restaurant closures has exceeded the number of
18 new restaurants in the City for at least the past five consecutive years.

19 (d) The decline of brick-and-mortar restaurants in the City over the past five years coincides
20 with the rapid rise of third-party food delivery services, businesses that process food delivery and
21 pickup orders through mobile apps and websites. According to one consumer market outlook
22 publication, revenue in the U.S. “platform-to-consumer delivery” market was \$8.7 billion in 2019, a
23 nearly 10% increase over the same segment’s valuation in 2018. Market research data from the first
24 quarter of 2020 shows approximately 15.9% of all U.S. residents utilized third-party food delivery
25 services at least once in the past year, many on a regular basis, and industry experts expect that

1 percentage to continue to increase. Percentage use is even higher in urban markets such as San
2 Francisco, and the COVID-19 crisis has driven the usage rates higher still. This booming market is
3 highly concentrated in just a handful of businesses. As of November 2019, just four third-party food
4 delivery services controlled approximately 98% of the entire market.

5 (e) The increasing market dominance of a small number of third-party food delivery services
6 companies has resulted in increasingly difficult economic conditions for City restaurants, which must
7 contract with these companies if they wish to access the growing share of customers who rely on
8 delivery platforms to obtain meals.

9 (f) The market dominance of a few third-party food delivery services companies gives these
10 companies disproportionate leverage in contract negotiations with restaurants. These companies use
11 this leverage to extract high fees from restaurants – typically totaling 30% of an order total – and
12 thereby diminish restaurants’ already-narrow profit margins. Food delivery services companies also
13 often impose contract terms that prohibit restaurants from charging a higher price for delivery orders
14 than dine-in orders, eliminating a means by which restaurants could recoup the fees charged by
15 delivery services. And the companies frequently include in restaurant contracts a “telephone order
16 charge” that restaurants are required to pay even in cases where a customer telephone call does not
17 result in an order.

18 (g) Sample contracts used by leading third-party food delivery services companies reflect that
19 these companies commonly charge restaurants a 10% per-order fee for “delivery services,” the most
20 logistically demanding and resource-intensive service they provide to restaurants. These companies
21 often impose additional fees totaling as much as 20% of the order cost for what are described as
22 “marketing” or “logistics” services. Market research indicates that third-party food delivery services
23 companies that impose such a mix of services fees earn high profits. Market research also indicates
24 that companies’ profit margins from automated non-delivery services such as marketing and online
25 order processing are higher relative to profit margins from more resource-intensive delivery services.

1 (h) While money spent by consumers at local restaurants circulates within communities and
2 bolsters the vitality of commercial corridors, third-party food delivery services companies have
3 amassed concentrated wealth without providing similar community benefits. And increasingly, these
4 companies are using their market leverage to extract unfairly high payments from restaurants,
5 hastening the closure of City restaurants and the resulting decline of City commercial districts.

6 (i) The COVID-19 emergency has worsened the economic picture for City restaurants. Due to
7 a ban on dine-in restaurant service caused by a concern with the spread of COVID-19, third-party food
8 delivery services have enjoyed unprecedented revenue, while restaurants have become dependent on
9 delivery and takeout orders, and increasingly vulnerable to unfair contract terms demanded by delivery
10 services companies.

11 (j) Capping the fees third-party food delivery services companies can charge restaurants,
12 prohibiting these companies from restricting restaurant pricing, and prohibiting these companies from
13 imposing unfair “telephone order charges” unconnected with any customer purchase are all important
14 steps to ensure that restaurants can thrive in San Francisco and continue to nurture vibrant, distinctive
15 commercial districts. The fact that leading third-party food delivery services companies currently
16 charge a 10% per-order fee for the most resource-intensive aspect of their business – delivery services
17 – and that these companies report high profit margins from all aspects of their business operations,
18 indicate that a ~~40~~15% fee cap on per-order fees charged to restaurants is a reasonable step to protect
19 restaurants from financial collapse without unduly constraining third-party food delivery services’
20 businesses.

21 (k) Prohibiting third-party food delivery services from providing delivery and other
22 services to a restaurant without the restaurant’s express consent, and further requiring that
23 third-party food delivery services terminate a contract promptly upon receiving oral or written
24 termination notice from a restaurant, are other important steps to ensure that restaurants can
25 exercise appropriate control over their businesses.

1
2 **SEC. 5301. DEFINITIONS.**

3 *For purposes of this Article 53, the following definitions apply:*

4 *“City” means the City and County of San Francisco.*

5 *“Covered establishment” means a restaurant that offers, in a single commercial transaction*
6 *over the internet, whether directly or through a third-party food delivery service, the sale of food for*
7 *same-day pickup or delivery to customers from one or more retail locations within the City. Covered*
8 *establishment shall not include any restaurant that meets the definition of a formula retail use*
9 *under Section 303.1 of the Planning Code.*

10 *“Food preparation and service establishment” shall have the meaning set forth in Section 451*
11 *of the Health Code, as may be amended from time to time.*

12 *“OEWD” means the Office of Economic and Workforce Development or its successor agency.*

13 *“OEWD Director” means the Director of OEWD or the Director’s designee.*

14 *“Online order” means a food and/or beverage order placed by a customer through a platform*
15 *provided by a third-party food delivery service for delivery or pickup within the City.*

16 *“Purchase price” means the menu price of an online order. Such term therefore excludes taxes,*
17 *gratuities, and any other fees that may make up the total cost to the customer of an online order.*

18 *“Restaurant” shall have the meaning set forth in Section 451 of the Health Code, as may be*
19 *amended from time to time.*

20 *“Third-party food delivery service” means any website, mobile application, or other internet*
21 *service that offers or arranges for the sale of food and/or beverages prepared by, and the same-day*
22 *delivery or same-day pickup of food and beverages from, no fewer than 20 separately owned and*
23 *operated food preparation and service establishments.*

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

2 (a) No third-party food delivery service may charge a covered establishment a fee, commission,
3 or charge per online order that totals more than ~~40~~15% of the purchase price of the online order.

4 (b) No third-party food delivery service may charge a covered establishment a fee, commission,
5 or charge that exceeds ~~40~~15% of the purchase price of online orders to that covered establishment
6 processed through the third-party food delivery service during the time period covered by the fee,
7 commission, or charge.

8 (c) Notwithstanding the limitation on fees, commissions, and charges set forth in
9 subsections (a) and (b), above, a third-party food delivery service may charge a point-of-sale
10 processing fee to a covered establishment of up to 3% of the purchase price. Such fee shall
11 be itemized separately in any agreement, invoice, or other written statement of charges to a
12 covered establishment, and shall not be considered in determining whether a third-party food
13 delivery service has reached or exceeded the 15% fee cap referenced in subsections (a) and
14 (b).

15
16 **SEC. 5303. PROHIBITION ON RESTRICTING RESTAURANT PRICING.**

17 No third-party food delivery service may impose on a covered establishment, by contract or
18 other means, any restrictions on the prices that a covered establishment may charge for food or
19 beverages, whether sold through a website, app, or other service operated by the third-party food
20 delivery service, or sold directly from the restaurant, or through any other means.

21
22 **SEC. 5304. PROHIBITION ON TELEPHONE ORDER CHARGES.**

23 No third-party food delivery service may charge a covered establishment a fee, commission, or
24 charge for a telephone call by a customer to the third-party food delivery service that does not result in
25 a purchase by a customer during the telephone call.

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SEC. 5305. PROHIBITION ON SERVICES WITHOUT WRITTEN CONSENT BY A COVERED ESTABLISHMENT.

No third-party food delivery service may provide any services related to the processing or delivery of an order for delivery of food or beverages from a covered establishment unless that covered establishment expressly agrees in writing to allow the third-party food delivery service to provide such services.

SEC. 5306. TERMINATION OF SERVICES WITHIN 72 HOURS OF NOTICE BY COVERED ESTABLISHMENT.

A third-party food delivery service shall terminate any service contract with a covered establishment within 72 hours after the covered establishment provides oral or written notice of its decision to terminate the contract to an individual contact person designated for communications regarding the termination or amendment of a contract in either the parties' contract or in the version of the third-party delivery service's software application used by the covered establishment, or if no such individual is so specified, to either the individual designated on the website of the California Secretary of State as agent for service of process for the third-party delivery service, or to any officer or local or regional manager of the third-party delivery service. For purposes of this Section 5306, "written notice" shall include any writing delivered by email, text message or similar message transmitted through phone or software application, facsimile, personal delivery, or mail service.

1 **SEC. 53055307. DOCUMENTATION OF COMMISSIONS, FEES, AND TERMS**

2 **IMPOSED ON RESTAURANTS.**

3 (a) Third-party food delivery services shall maintain records sufficient to document their
4 compliance with Sections 5302, 5303, and 5304, 5305, and 5306, including but not limited to all
5 relevant agreements, invoices, and transaction records, for three years from the date of any related
6 customer transaction.

7 (b) At any time, OEWD may direct any third-party food delivery service to disclose any
8 documents and records required to be retained under subsection (a) with respect to any covered
9 establishment. Any third-party food delivery service so directed must disclose specified documents and
10 records to OEWD within 72 hours, not counting weekends or holidays. A third-party food delivery
11 service's failure to provide required records to OEWD within the required 72 hours shall be a violation
12 of this Article 53.

13
14 **SEC. 53065308. ADMINISTRATION AND ENFORCEMENT.**

15 This Article 53 shall be administered and enforced by OEWD. The OEWD Director may adopt
16 regulations, guidelines, and forms to carry out the provisions and purposes of this Article. ~~Any~~
17 regulations adopted by OEWD under this authority must be submitted to the Board of
18 Supervisors, and shall become effective 30 days from that submission unless a member of
19 the Board of Supervisors introduces an ordinance to modify or reject them. If a member of the
20 Board of Supervisors introduces such an ordinance, the regulations shall become effective 70
21 days from introduction of the ordinance, unless the ordinance has been enacted.

22
23 **SEC. 53075309. PENALTIES AND ENFORCEMENT.**

24 (a) Enforcement Procedure. The OEWD Director shall issue an administrative citation for the
25 violation of any section of this Article 53. Administrative Code Chapter 100, "Procedures Governing

1 the Imposition of Administrative Fines,” is hereby incorporated in its entirety, except as it relates to the
2 definition of a violation and the calculation of penalty amounts, addressed in subsections (b) and (c).
3 Administrative Code Chapter 100 shall govern the procedure for imposition, enforcement, collection,
4 and administrative review of administrative citations issued under this Section ~~5307~~5309.

5 (b) Violations Subject to Penalties. Any third-party food delivery service that violates any
6 provision of this Article 53 shall be subject to an administrative penalty imposed by order of the OEWD
7 Director. For purposes of assessing penalties for violation of Sections 5302, 5303, ~~and 5304,~~ 5305,
8 and 5306, a separate violation shall accrue each time a customer transaction is processed subject to
9 any ~~contract,~~ term, fee, commission, charge, or price that violates one or more of these sections. As
10 used in the prior sentence, “customer transaction” includes a telephone call by a customer to the third-
11 party food delivery service that does not result in a purchase by a customer during the telephone call,
12 for purposes of identifying a violation of Section 5304. For purposes of assessing penalties for
13 violation of Section ~~5305~~5307, each day a third-party food delivery service fails to disclose documents
14 or records in violation of that section shall be a separate violation.

15 (c) Penalty Amounts. In setting the amount of the administrative penalty, which shall not
16 exceed \$1,000 per violation, the OEWD Director shall consider any one or more mitigating or
17 aggravating circumstances presented, including but not limited to the following: the amount of any fee,
18 commission, or charge collected in violation of this Article 53, the persistence of the misconduct, the
19 willfulness of the misconduct, the length of time over which the misconduct occurred, and the assets,
20 liabilities, and net worth of the third-party delivery service.

21
22 **SEC. ~~5308~~5310. UNDERTAKING FOR THE GENERAL WELFARE.**

23 In enacting and implementing this Article 53, the City is assuming an undertaking only to
24 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
25

1 obligation for breach of which it is liable in money damages to any person who claims that such breach
2 proximately caused injury.

3
4 **SEC. 53095311. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Article 53, or any
6 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
7 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
8 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
9 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
10 declared invalid or unconstitutional without regard to whether any other portion of this ordinance or
11 application thereof would be subsequently declared invalid or unconstitutional.

12
13 **SEC. 5312. SUNSET DATE.**

14 This Article 53 shall expire by operation of law 60 days after the County Health Officer
15 amends or terminates the Stay Safer At Home Order or any subsequent order regulating
16 restaurants so that restaurants may allow the number of patrons present in the indoor space
17 of the restaurant to resume at 100% of the restaurant's maximum occupancy, provided that no
18 subsequent order is issued to restrict restaurant occupancy below 100% capacity during that
19 60-day window. ~~two years from its effective date. Upon expiration, the City Attorney shall~~
20 cause this Article to be removed from the Police Code. ~~Upon expiration, the City Attorney~~
21 shall cause this Article to be removed from the Police Code.

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

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: /s/ Sarah A. Crowley
9 SARAH A. CROWLEY
 Deputy City Attorney

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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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CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

July 31, 2020

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 200398 – Police Code - Third-Party Food Delivery Services

Small Business Commission Recommendation to the Board of Supervisors: **Support**

Dear Ms. Calvillo,

On July 02, 2020 the Small Business Commission (SBC or Commission) heard BOS File No. 200398 – Police Code - Third-Party Food Delivery Services. Lee Hepner, Legislative Aide to Supervisor Peskin provided the SBC with an overview of the legislation. After a substantive discussion, the Commission voted (5-0, with two absent) to recommend that the Board of Supervisors support the legislation.

The Commission earnestly contemplated the tenants of the legislation with Mr. Hepner and were provided with ample opportunity to ask important questions relative to the proposed administration of the ordinance. They highlighted the urgent need to regulate third-party food delivery services and expressed a desire to see this expanded to services that deliver groceries as well.

The Commission voted unanimously, with two absent, to support the legislation and were appreciative for the opportunity to discuss it with the sponsor's office in the public forum.

Thank you for considering the Commission's recommendation. Please feel free to contact me should you have any questions.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Aaron Peskin, Member, Board of Supervisors

Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Joaquin Torres, Director, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development
John Carroll, Clerk, Public Safety and Neighborhood Services Committee

From: [Michael Nulty](#)
To: [Carroll, John \(BOS\)](#)
Subject: 10-22-20 Public Safety Committee Public Comment
Date: Friday, October 23, 2020 8:08:59 AM
Attachments: [3-PartyFoodServices_NOMBA.pdf](#)
[LatinxCommunity_COVID_MN.pdf](#)
[TheSwigType48.pdf](#)

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Michael Nulty

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(415) 339-8683 - Central City Democrats
(415) 937-1289 - North of Market Business Association
(415) 820-1412 - Tenderloin Futures Collaborative
<http://abd6.cfsites.org/>

North of Market Business Association

P.O. Box 420846; San Francisco, CA 94142-0846

(415) 937-1289 Phone (415) 820-1565-Fax

nomba@att.net

October 22, 2020

Public Safety & Neighborhood Services Committee
City Hall
San Francisco, CA 94102

Police Code - Third-Party Food Delivery Services Public Comment

Dear Public Safety and Land Use Committee of SF Board of Supervisors members:

This is Michael Nulty, Co-coordinator of The North of Market Businesses Association (NOMBA) was established 13 years ago serving/advocating for small businesses with in the North of Market area.. The North of Market Businesses Association (NOMBA) is in full support of Aaron Peskin's Police Code changes regarding Third-Party Food Delivery Services. We believed it is about time serves be stream lined for both restaurants and customers who have to use these servings during either shelter in place or lack of a kitchen facility in their tourist room or SRO room.

Further, we understand that Mom and Pop and immigrant owned restaurants need city hall to step up to serve their needs and make sure that delivery services are regulated in a manner that provides relieve from services that are not being regulated.

On a personal note I have experience as a consumer I have experience the different pricing of that restaurant use for customers their online pricing and their onsite menu. I think better customer protection are needed.

Michael Nulty
Coordinator
North of Market Businesses Association

From: [Jeremy Wallenberg](#)
To: [Carroll, John \(BOS\)](#)
Cc: [Waltonstaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [Stefani, Catherine \(BOS\)](#)
Subject: Submissions for 10/22 Public Safety and Neighborhood Services committee meeting [tomorrow]
Date: Wednesday, October 21, 2020 10:52:27 AM
Attachments: [Burma Inc. Permanent SF Cap.pdf](#)
[Commission Cap Letter to the Editor William Bornhorst \(1\).docx](#)

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Good morning John and hope you and yours are well today.

In preparation for tomorrow's regular meeting of the Board of Supervisors Public Safety and Neighborhood Services committee meeting, Thursday, October 22, 2020, we would like to submit the enclosed letters on behalf of two San Francisco restaurant owners who would like to register their opinions for the official record regarding Item #5 on the agenda: **200398 [Police Code - Third-Party Food Delivery Services]**.

These locally based small businesses include *Burma Inc.* (Burma Club, Burma Superstar, Burma Love, Burma Love Foods Company) and *Man vs Fries* (locations across San Francisco and the Bay Area, including Bernal Heights) who believe this ordinance, as currently written, inhibits merchant ability to maintain optionality and choice in how they operate their businesses.

Please let us know should you have any follow up questions or require any additional information of course.

Thank you as always for your assistance.

Jeremy

--

Jeremy L. Wallenberg, Vice President
[Ground Floor Public Affairs](#)
[Facebook](#) | [LinkedIn](#)
58 2nd St. 4th Floor | SF, CA 94105
(415) 291-9501



To Whom it May Concern:

Burma Inc. appreciates the steps that DoorDash has taken to be a proactive partner to small restaurants across San Francisco. One of the most important things that delivery companies can do for local restaurants is to provide access to new customers through efficient fulfillment of delivery orders; DoorDash has been an active partner in helping us make this happen before COVID but especially since our dining rooms were forced to close when they reduced commission fees, increased delivery boundaries, and funded marketing promotions. Having third party partners like DoorDash handle delivery logistics has been essential to our operations, because providing our own delivery services would not have been financially viable. We hope that city policymakers are able to make a fair assessment and come to a viable solution that continues to allow our delivery partners to bring value to restaurants.

Burma Love
211 Valencia St
San Francisco, CA 94103

As a San Francisco restaurant owner, I've had to adapt this year in ways I never thought before. Today 80% of my sales are now through delivery platforms. In exchange for access to a delivery fleet (which is resource-intensive and inefficient to build on my own) and exposure to customers who may never have known about my store, DoorDash receives a portion of the order subtotal - a commission. Commissions also pay for marketing, customer support, insurance, and more.

The Board of Supervisors has proposed a long-term cap on delivery platform commissions. While well-intended, the way it's currently written, the proposal could hurt restaurants trying to survive. For example, in the future I might need to increase lunch orders and choose to work with DoorDash on marketing to do that. But the current proposal means I'd come up against an arbitrary limit on what I can do.

The pandemic has been unpredictable since day one. I need as much flexibility as I can get, so fixing prices won't help. I hope our elected officials will find a way to keep my options open and choose what's best for my business.

William Bonhorst, Owner, Man vs. Fries

wbonhorst@gmail.com, 860-940-9290, San Francisco, CA

William Bonhorst is the owner of Man vs Fries founded in 2018 with locations across the Bay Area, including in Bernal Heights. He has been a long time Bay Area resident, currently calling Alameda home.

From: [Carroll, John \(BOS\)](#)
To: [Carroll, John \(BOS\)](#)
Subject: FW: Support the Fairness in Food Delivery legislation
Date: Wednesday, October 14, 2020 10:36:56 AM

From: Koji Kanematsu <koji@onigilly.com>
Sent: Thursday, October 8, 2020 9:23 AM
To: BOS-Supervisors <bos-supervisors@sfgov.org>
Subject: Support the Fairness in Food Delivery legislation

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

My name is Koji Kanematsu, founder of Onigilly.
We had 6 restaurant locations, however because of the pandemic, we had to close 4 locations permanently. We open 2 locations, but we are still not making a profit.

The fairness food delivery legislation helped us a lot to survive. The order from the delivery companies has been increasing significantly and we believe it is helping to prevent COVID-19 spread. We couldn't survive without the commission cap and this is very important for us to make the business sustainable.

Thank you very much,
Koji Kanematsu

--

Koji Kanematsu

ONIGILLY LLC,
343 Kearny St, San Francisco CA 94108

Tel and Fax 415-671-4706
koji@onigilly.com www.onigilly.com

Mission: Provide delicious, healthy and convenient food to our customers!

From: [BOS Legislation, \(BOS\)](#)
To: [Carroll, John \(BOS\)](#)
Cc: [Board of Supervisors, \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Subject: RE: Fairness in Food Delivery Request
Date: Thursday, October 8, 2020 8:15:32 AM
Attachments: [image001.png](#)

Hey John,

Does the below go under File No. 200398 [Police Code - Third-Party Food Delivery Services]?

Lisa Lew
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

From: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Sent: Wednesday, October 7, 2020 9:16 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: FW: Fairness in Food Delivery Request

Hello Leg,

Just checking that there is not a file open for this?

Eileen

From: Benson Wang <bensonwang@gmail.com>
Sent: Tuesday, October 6, 2020 9:43 PM
To: BOS-Supervisors <bos-supervisors@sfgov.org>
Subject: Fairness in Food Delivery Request

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I'm writing to ask that you please consider extending the 15% commission cap on delivery apps for the foreseeable future or at the very least, until restrictions are pulled on dining capacity.

With indoor dining restrictions, our business is more heavily predicated on delivery sales than ever intended and cannot survive on the margins created by this segment alone. Not to mention, the winter months will also be driven largely by delivery. Our business went from 1% delivery to 100% overnight. The old adage that the strong will survive is not applicable in this situation - we are all limited at the moment by uncontrollable circumstance. I believe that only restaurant concepts built for delivery will make it - these are chain restaurants, large restaurant groups, and quick service restaurants - often serving low quality and commoditized food and owned by large Corp.

Although I believe free markets can influence innovation, the exorbitant amount of private capital invested in the delivery tech industry has played a heavy hand in creating the habit of ordering delivery vs dine in and takeout. As these companies race to the bottom to acquire market share, merchants are often stifled with the bill. This model, in my humble opinion, is unsustainable for merchants and as Mayor Breed pointed to, has heavily contributed to restaurant net closures since they began 5+ years ago. Without consolidation, many of these businesses will crumble and leave with nothing to show for it other than apocalyptic commercial corridors.

As a restaurant owner, Treasurer of the GGRA and a restaurant advisory committee member of Doordash, I am working tirelessly to help our industry survive through this pandemic and can confidently say that this cap singlehandedly kept my businesses alive, allowing me to keep people employed and serving the community.

I am happy to connect to provide further insight on this matter and appreciate your time. Thank you for the continued support

Best,
Benson

--

Benson Wang
2030 Union St., Ste 208

San Francisco, CA 94123
[SL Hospitality](#) | [The Flamingo](#)
c: 707.888.3343
bensonwang@gmail.com

From: [Hepner, Lee \(BOS\)](#)
To: [Carroll, John \(BOS\)](#)
Cc: [Peskin, Aaron \(BOS\)](#)
Subject: Fwd: Support the Fairness in Food Delivery legislation
Date: Thursday, October 8, 2020 11:35:36 AM

Mr. Carroll - when you get a chance, please include the below correspondence in the public file for Board File No. 200398.

Thanks,
Lee

Begin forwarded message:

From: "Peskin, Aaron (BOS)" <aaron.peskin@sfgov.org>
Date: October 8, 2020 at 10:21:19 AM PDT
To: "Hepner, Lee (BOS)" <lee.hepner@sfgov.org>
Subject: Fwd: Support the Fairness in Food Delivery legislation

From: Koji Kanematsu <koji@onigilly.com>
Sent: Thursday, October 8, 2020 9:22:48 AM
To: BOS-Supervisors <bos-supervisors@sfgov.org>
Subject: Support the Fairness in Food Delivery legislation

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Hello,

My name is Koji Kanematsu, founder of Onigilly.
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Thank you very much,
Koji Kanematsu

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Koji Kanematsu

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koji@onigilly.com www.onigilly.com

Mission: Provide delicious, healthy and convenient food to our customers!

From: [Mchugh, Eileen \(BOS\)](#)
To: [Carroll, John \(BOS\)](#)
Subject: FW: SUPPORTING Public Safety and Neighborhood Services Committee Agenda Item #3 Police Code - Third-Party Food Delivery Services File #200398
Date: Monday, October 5, 2020 10:18:05 AM

Hello John,

For the file!

Thank you,

Eileen

From: aeboken <aeboken@gmail.com>
Sent: Saturday, October 3, 2020 6:22 PM
To: BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>
Subject: SUPPORTING Public Safety and Neighborhood Services Committee Agenda Item #3 Police Code - Third-Party Food Delivery Services File #200398

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

TO: Board of Supervisors members

I am in support of amending the Polce Code to regulate third-party food delivery services.

Restaurants are already facing enough challenges.

Eileen Boken
Coalition for San Francisco Neighborhoods*

* For identification purposes only.

Sent from my Verizon, Samsung Galaxy smartphone

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Chief William Scott, Police Department
Joaquin Torres, Director, Office of Economic and Workforce Development

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: April 29, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Peskin on April 21, 2020:

File No. 200398

Ordinance amending the Police Code to regulate third-party food delivery services ("delivery services") by capping fees to restaurants at 10% of an order total, prohibiting delivery services from restricting restaurant pricing, and prohibiting delivery services from charging restaurants for telephone calls to the delivery service not resulting in any food or beverage order; requiring retention of and City access to records substantiating compliance with these restrictions; authorizing the imposition of penalties for violations; and authorizing the Office of Economic and Workforce Development to implement and enforce this Ordinance.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Rowena Carr, Police Department
Asja Steeves, Police Department
J'Wel Vaughan, Office of Economic and Workforce Development
Anne Taupier, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: April 29, 2020

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. 200398

Ordinance amending the Police Code to regulate third-party food delivery services ("delivery services") by capping fees to restaurants at 10% of an order total, prohibiting delivery services from restricting restaurant pricing, and prohibiting delivery services from charging restaurants for telephone calls to the delivery service not resulting in any food or beverage order; requiring retention of and City access to records substantiating compliance with these restrictions; authorizing the imposition of penalties for violations; and authorizing the Office of Economic and Workforce Development to implement and enforce this Ordinance.

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

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Ordinance amending the Police Code to regulate third-party food delivery services ("delivery services") by capping fees to restaurants at 10% of an order total, prohibiting delivery services from restricting restaurant pricing, and prohibiting delivery services from charging restaurants for telephone calls to the delivery service not resulting in any food or beverage order; requiring retention of and City access to records substantiating compliance with these restrictions; authorizing the imposition of penalties for violations; and authorizing the Office of Economic and Workforce Development to implement and enforce this ordinance.

Signature of Sponsoring Supervisor:

For Clerk's Use Only