

ANALYSIS

This ordinance amends Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, to delete Chapter 8.203 – COVID-19 Food Delivery Platforms and add Chapter 8.46 – Food Delivery Platforms.

Chapter 8.46 adopts portions of the former Chapter 8.203 but also establishes a new food delivery fee cap, exempts food delivery platforms from the new cap if the platform offers a core delivery service with a maximum fee cap, allows restaurants and food delivery platforms to contract for additional services in return for higher fees, and requires transparency in fee-for-services agreements between restaurants and food delivery platforms.

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ORDINANCE NO. _____

An ordinance amending Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, to delete Chapter 8.203 – COVID-19 Food Delivery Platforms, and add Chapter 8.46 – Food Delivery Platforms.

Chapter 8.46 adopts portions of the former Chapter 8.203, but also establishes a new food delivery fee cap, exempts food delivery platforms from the new cap if the platform offers a core delivery service with a maximum fee cap, allows restaurants and food delivery platforms to contract for additional services in return for higher fees, and requires transparency in fee-for-services agreements between restaurants and food delivery platforms.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 8.46 is hereby added to read as follows:

Division 2 Business Regulations.

Chapter 8.46 FOOD DELIVERY PLATFORMS.

8.46.010 Purpose.

8.46.020 Definitions.

8.46.030 Prohibitions.

8.46.040 Disclosures.

8.46.050 Agreements.

8.46.060 Enforcement.

8.46.070 No Waiver of Rights.

8.46.080 Severability.

8.46.010 Purpose.

The use of third-party food delivery platforms is widespread throughout the County of Los Angeles. In addition to fees that may be charged to the customer, the food delivery platforms also charge fees to restaurants. These restaurants have limited bargaining power to negotiate lower fees with the food delivery platforms and must accept these fees or risk closure. Restaurants are essential to the public health and welfare, and also help drive the local economy by providing jobs and serving as commercial anchors in neighborhoods across the County of Los Angeles. The County of Los Angeles previously enacted a twenty percent (20%) cap on the fees which a food delivery platform could charge restaurants for the delivery of food. This ordinance removes that twenty percent (20%) cap and replaces it with a fifteen percent (15%) cap on the fees a food delivery platform may charge restaurants for basic delivery and listing services, while allowing food delivery platforms to charge additional fees to restaurants for additional services.

8.46.020 Definitions.

The following definitions shall apply to this Chapter:

- A. "Core Delivery Service" means a service offered by a Food Delivery Platform that:
1. Lists a Restaurant and makes it discoverable on the Food Delivery Platform's website, mobile application, or other internet service;

2. Facilitates and/or performs the delivery (through its employees or independent contractors) of food and/or beverages from the Restaurant to Customers; and

3. Does not include any other service that may be provided by the Food Delivery Platform to a Restaurant, including, but not limited to, advertising services, search engine optimization, business or marketing assistance, and debit/credit card processing.

B. "County" means the unincorporated areas of the County of Los Angeles.

C. "Customer" means any person, firm, or association who makes use of a Food Delivery Platform for the purpose of obtaining food from a Restaurant.

D. "Food" shall have the same meaning as set forth in Section 11.02.250 of the County Code.

E. "Food Delivery Platform" means any person, firm, or association that utilizes an online website, mobile application, or other similar presence to interact with Customers, to act as an intermediary between its Customers and a Restaurant, and offers or arranges for the sale, delivery, or pick-up of Food sold or prepared by no fewer than twenty (20) separately owned and operated Restaurants.

F. "Online Order" means an order placed by a Customer through or with the assistance of a Food Delivery Platform, including telephone orders, orders made over the internet through a website, and orders made via a mobile application, for delivery to, or pick-up by, the Customer.

G. "Purchase Price" means the price for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the Customer by the Restaurant through the Food Delivery Platform. This definition does not include taxes, gratuities, or any other fees or costs that may make up the total amount charged to the Customer of an Online Order.

H. "Restaurant" shall have the same meaning as set forth in Section 8.04.400 of the County Code.

I. "Worker" means any person working for a Food Delivery Platform, including as an employee or an independent contractor.

J. "In Writing" or "Written" for the purposes of this Chapter means any form of communication that is documented in a tangible or electronic format. This includes text that is manually inscribed, typed, printed, or otherwise recorded on paper or in digital form and includes any communication delivered by email, text message, software application, facsimile, personal delivery, or mail.

8.46.030 Prohibitions.

A. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any fee, commission, charge, or combination thereof, that totals more than fifteen percent (15%) of the Purchase Price of an Online Order.

B. The fee cap in Subsection A of this section shall not apply to a Food Delivery Platform that does both of the following:

1. Offers all Restaurants the option to obtain Core Delivery Service for a total fee not to exceed fifteen percent (15%) of the Purchase Price of an Online Order, without requiring the Restaurant to purchase any additional services; and

2. Notifies all Restaurants that have an existing contract with the Food Delivery Platform of the option described in Subsection B.1.

C. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any fee, commission, or charge in addition to the cost of Core Delivery Service, unless the Restaurant has contracted In Writing with the Food Delivery Platform to pay for additional services.

D. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any fee, commission, charge, or combination thereof for an Online Order that does not result in Food being delivered to, or picked up by, the Customer.

E. A Food Delivery Platform shall not impose any restrictions on the Purchase Price that a Restaurant may charge for Food.

F. It shall be unlawful for a Food Delivery Platform to reduce the compensation, including any tip or gratuity, paid to any Worker as a result of the prohibitions in this Chapter.

G. A Food Delivery Platform shall not purposefully obscure or reduce the visibility of a Restaurant on its website, mobile application, or other internet service solely because the Restaurant declines any additional service offered by the Food Delivery Platform.

8.46.040 Disclosures.

A. A Food Delivery Platform shall disclose to the Customer an accurate, clearly identified, and itemized cost breakdown for each and every Online Order, including the following:

1. The Purchase Price of any Food.
2. Each and every fee, commission, or cost charged to the Customer.
3. Any tip or gratuity authorized by the Customer to be paid to the

Worker delivering the Food.

B. None of the fees, commissions, or costs in Subsection A, above, may be combined together.

C. A Food Delivery Platform shall advise the Customer that the price of Food items in an Online Order may vary from the price of the same Food items if ordered in-person at the Restaurant.

8.46.050 Termination of Service.

A. A Food Delivery Platform must terminate any service contract with a Restaurant within seventy-two (72) hours after the Restaurant provides notice In Writing of its decision to terminate its contract with the Food Delivery Platform.

8.46.060 Enforcement.

A. A Restaurant, Customer, or Worker claiming a violation of this Chapter may bring an action in Superior Court of the State of California against a Food Delivery Platform and may be awarded:

1. All actual damages suffered.

2. Other legal or equitable relief the court may deem appropriate.

3. The court shall award reasonable attorneys' fees and costs to a Restaurant, Customer, or Worker who prevails in any such enforcement action. If a Restaurant, Customer, or Worker fails to prevail against a Food Delivery Platform, a court may award reasonable attorneys' fees and costs to the Food Delivery Platform upon a determination by the court that the action was frivolous.

B. A civil action alleging a violation of any provision of this Chapter shall commence only after the following requirements have been met:

1. The Restaurant, Customer, or Worker has provided notice In Writing to the Food Delivery Platform of the specific section of this Chapter which is alleged to have been violated and the facts to support the alleged violation; and

2. The Food Delivery Platform is provided 45 days, from the date of receipt of the notice in Subsection B.1., to cure any alleged violation.

8.46.070 No Waiver of Rights.

Except for a collective bargaining agreement provision, any waiver by a Worker of any or all provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a Food Delivery Platform to a Worker to waive rights given by this Chapter shall be a violation of this Chapter.

8.46.080 Severability.

If any subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

SECTION 2. Chapter 8.203 is hereby deleted in its entirety.

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