

Legislation Text

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Amending Title 9 of The Philadelphia Code to create a new Chapter 9-5000, entitled "Food Delivery Services," to regulate third-party food delivery services, require certain disclosures to consumers, and provide for a limitation on certain fees charged to consumers; all under certain terms and conditions.

WHEREAS, the COVID-19 pandemic has required restaurants to suspend dine-in services and offer only pickup and delivery;

WHEREAS, many restaurants now find themselves wholly reliant on third-party food delivery services to stay in business; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of the Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-5000. FOOD DELIVERY SERVICES

§ 9-5001. Definitions.

(1) Food service establishment. A food service establishment as that term is defined by § 6-102(19.1).

(2) Likeness. Identifiable symbols attributed and easily identified as belonging to a food service establishment.

(3) Delivery fee. 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. 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 service platform or fees related to processing the online order.

(4) Purchase price. The total price of items contained in an online order that are listed on the menu of the food service establishment where the order is placed. The term does not include taxes, gratuities or any other fees that may make up the total cost to the customer of an online order.

(5) Third-party food delivery service. Any company, organization or entity that is not the same business as the food service establishment that provides a limited food delivery service to customers as a result of a single commercial transaction over the internet, whether directly or through a third-party application.

§ 9-5002. *Use of Food Service Establishment Trademarks and Likeness.*

(1) *No third-party food delivery service shall use the likeness, registered trademark, any intellectual property belonging to a food service establishment, or the name of such food service establishment to advertisement such third-party food delivery service without obtaining written consent from the food service establishment to use the likeness, trademark, or other intellectual property, or name of the merchant, unless:*

(a) such use is otherwise permitted under federal or state law; and

(b) such use is accompanied by a prominent disclaimer beneath any likeness, registered trademark, other intellectual property, or the name of such food service establishment in a font that is at least as large as any other text appearing on the platform on which the reference to the food service establishment appears:

“THIS THIRD-PARTY FOOD DELIVERY SERVICE IS NOT AN AUTHORIZED DELIVERY SERVICE FOR THIS RESTURANT. THIS THIRD-PARTY FOOD DELIVERY SERVICE DOES NOT HAVE AN AGREEMENT TO DELIVER FOR THIS RESTAURANT. PLEASE CONTACT THE RESTAURANT DIRECTLY TO OBTAIN UP TO DATE INFORMATION ON MENU ITEMS.”

The disclaimer must be noticeable and of a size and color that sets the disclaimer apart from other parts of the advertisement, webpage, mobile application, or other platform, such as a contrasting style and color to the surrounding text.

§ 9-5003. *Commission Disclosure Requirement.*

(1) *A third-party food delivery service shall disclose to a customer purchasing food or beverages from a food service establishment through the third-party delivery service, in plain and simple language and in a conspicuous manner, any commission, fee or other monetary payment imposed by the third-party delivery service on the food service establishment in connection with the food service establishment utilizing the third-party delivery service. The disclosure shall be made before the transaction occurs, when the purchase price is disclosed to the customer.*

(2) *If it is not feasible for the third-party food delivery service to calculate the total commission actually attributable to the specific transaction, because that information is not available in real time or because the commission depends on factors such as sales volume, dollar volume, distance travelled, or periodic fixed charges such as an annual fee, the third-party food delivery service shall disclose a good-faith estimate of the commission, as a dollar amount, a percentage, an average percentage or a range of percentages, based on the most recent periodic payout from the third-party food delivery service to the food service establishment. It shall not be required that the third-party food delivery service specify what period of time is covered by the disclosure.*

(3) *Opt-out provision. Any food service establishment may decline to disclose to customers the commission charged by a third-party delivery service.*

§ 9-5004. *Fees During Public Health Emergencies.*

(1) It shall be unlawful for third-party food delivery services to charge food service establishments a delivery fee per online order for the use of their services that totals more than 10% of the purchase price of each online order.

(2) It shall be unlawful for third-party food delivery services to charge food service establishments any fee or fees other than a delivery fee for the use of their service greater than 5% of the purchase price of each online order.

(3) Any fees or other charges from a third-party food delivery service to a food service establishment beyond such maximum 5% fee per order, and a delivery fee collected pursuant to subsection (1), are unlawful.

(4) It shall be unlawful for third-party food delivery services to reduce the compensation rates paid to the services delivery drivers, or to garnish gratuities, as a result of any fee limitations instituted by this section.

(5) The requirements of this section apply only during a declared public health emergency and for a period of 90 days after the end of a declared emergency.

§ 9-5005. Penalties.

(1) Any violation of this Chapter shall be punishable by a fine of three hundred dollars (\$300).

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SECTION 2. This Ordinance shall be effective immediately.