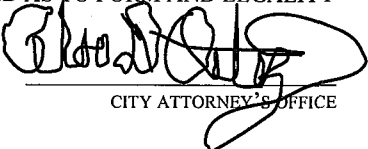


REVISED
4/14/23

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. 13613 C.M.S.

ORDINANCE AMENDING AND RECODIFYING ORDINANCE NO. 13613 C.M.S. ADOPTED JULY 21, 2020, WHICH CAPPED COMMISSIONS, CHARGES, AND FEES OF FOOD DELIVERY SERVICE PROVIDERS DURING THE COVID-19 PANDEMIC EMERGENCY, AS OAKLAND MUNICIPAL CODE CHAPTER 5.97

WHEREAS, the Council adopted Ordinance No. 13613 on July 21, 2020, Entitled “Cap On The Commissions, Charges, And Fees Of Food Delivery Service Providers During The Covid-19 Pandemic Emergency” hereafter referenced as “Cap on Food Delivery Charges Ordinance”, to impose a cap on the commissions, charges and fees of food delivery service providers during the COVID-19 Pandemic Emergency; and

WHEREAS, the Ordinance stated it would be codified at Oakland Municipal Code Chapter 5.94 which was duplicative of another city ordinance and should be corrected, for clarification purposes; and

WHEREAS, this ordinance will recodify the Cap on Food Delivery Charges Ordinance in O.M.C. section 5.97; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Correction and Recodification and Change of Designation and section numbering of Oakland Municipal Code (“O.M.C.”) Chapter 5.94 to Chapter 5.97

Title 5-Business Taxes, Permits And Regulations, Chapter 5, of the Oakland Municipal Code which was amended by Ordinance no. 13613 C.M.S. , which was adopted by the City Council on

July 21, 2020 to add new Chapter 5.94, limiting fees charged by third-party food delivery services and related telephone charges and entitled "Cap On The Commissions, Charges, And Fees Of Food Delivery Service Providers During The Covid-19 Pandemic Emergency." Ordinance no. 13613 C.M.S. is hereby amended to correct the designation and section numbering of Chapter 5.94 and to move and recodify it as O.M.C. Chapter 5.97. Each section and subsection designations in Chapter 5.94 are amended to now be referenced as part of Chapter 5.97. Each such section and subsection are hereby re-codified as O.M.C. Chapter 5.97.

SECTION 3. Ordinance no. 13613 C.M.S. is hereby amended to read as follows (additions are indicated by underscoring and deletions are indicated by strike-through type; any portions not cited or not shown in underscoring or strike-through type are not changed):

"~~Chapter-5.94~~ CAP ON THE COMMISSIONS, CHARGES, AND FEES OF FOOD DELIVERY SERVICE PROVIDERS DURING THE COVID-19 PANDEMIC EMERGENCY"

5.947.010 Definitions. For the purposes of this Chapter, the following definitions will apply:

"Covered establishment" means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City.

"Formula Retail Restaurant" means any restaurant having a standardized name, décor, logo, façade, color scheme, trademark, employee uniforms, merchandise, and signage, throughout their locations and which have 20 or more employees in Oakland and at least 40 restaurants worldwide.

"Online order" means an order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup within the City.

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

"Restaurant" shall have the meaning provided in Section 8.07.020 of this Code.

"Telephone order" means an order placed by a customer to a food service establishment through a telephone call or the use of the third-party food delivery service providers' platform and/or on-line phone system, or via text.

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

5.947.020 Limit on Online Food Delivery Commissions, Charges and Fees

- A. Delivery Fees. It shall be unlawful for a third-party food delivery service to charge a covered establishment a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order.
- B. Telephone orders. No third-party food delivery service may charge any fee from a food service establishment for a telephone order if a telephone call between such establishment and a customer does not result in an actual transaction during such telephone call.
- C. Other costs. In addition to the delivery fees, it shall be unlawful for a third-party food delivery service to charge a covered establishment for any other fee other than the actual cost incurred for credit card processing.
- D. Term of Cap. The requirements of this section apply only during a declared emergency and for a period of 90 days after the end of a declared emergency.
- E. Cap Not Applicable to Formula Retail Restaurants. The Cap will not apply to any “Formula Retail Restaurant” as defined in Section 5.97.010 of this Code

5.947.020 -City Administrator May Promulgate Guidance and Rules

The City Administrator, or his designee, is authorized to implement this ordinance and issue any necessary guidance or rules consistent with this Chapter and this Code.

5.947.030-Term of Cap on Commissions, Charges and Fees

This ordinance shall take effect on shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption and shall be in effect for the duration of the COVID-19 pandemic crisis and for a period of 90 days after the end of a declared emergency.

5.947.040-Enforcement and Penalty For Violation

- A. A third-party food delivery service shall not be found in violation of this order if between the Effective Date of this Ordinance and August 31, 2020, it imposes a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order, provided it refunds the portion of the fee that exceeds 15% of the purchase price to the covered establishment no later than 15 days after the purchase.
- B. If a third-party food delivery service charges a covered establishment fees that violate this order, the covered establishment shall provide written notice to the third-party food delivery service requesting a refund within seven days. If the third-party food delivery service does not

provide the refund requested after seven days or the third-party food delivery service continues to charge fees in violation of this order after the initial notice and seven-day cure period, a covered establishment may enforce this order by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

C. Any person that violates any provision of this Chapter or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed \$500 for the first violation. Any person that violates any provision of this section or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed \$1000 for any subsequent violations. Violations under this subchapter shall accrue on a daily basis for each day and for each food service establishment charged a fee in violation of this subchapter or any rule promulgated pursuant to this section. A proceeding to recover any civil penalty authorized pursuant to this section may be brought by the City Administrator pursuant to Section 1.28.0420 of this Code.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

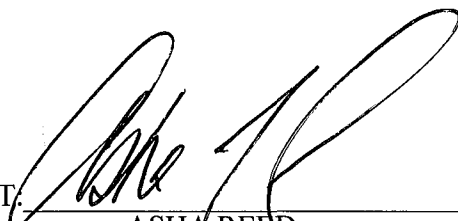
SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, **Introduction Date**

PASSED BY THE FOLLOWING VOTE: **JUL 28 2020**

AYES FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN -8

NOES - 0
ABSENT - 0
ABSTENTION - 0

ATTEST: 
ASHA REED
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: April 14, 2023

NOTICE AND DIGEST

ORDINANCE AMENDING AND RECODIFYING ORDINANCE NO. 13613 C.M.S. ADOPTED JULY 21, 2020, WHICH CAPPED COMMISSIONS, CHARGES, AND FEES OF FOOD DELIVERY SERVICE PROVIDERS DURING THE COVID-19 PANDEMIC EMERGENCY, AS OAKLAND MUNICIPAL CODE CHAPTER 5.97

This Amendment of Ordinance No. 13613 revises the Oakland Municipal Code (“O.M.C.”) in order to move and recodify the Ordinance from O.M.C. Chapter 5.94 To O.M.C. Chapter 5.97.