City of Newark

City Hall
920 Mayor Kenneth A.
Gibson Boulevard
Newark, New Jersey 07102

Legislation Details (With Text)

File #:	22-1335	**Version:**	1	**Name:**	Ordinance: Third Party Delivery Services and Internet Applications; Limitations on Fees
Type:	Ordinance			**Status:**	Tabled
File created:	9/16/2022			**In control:**	Municipal Council and City Clerk
On agenda:	1/18/2023			**Final action:**	
Title:	AN ORDINANCE AMENDING TITLE 8, BUSINESSES AND OCCUPATIONS, CHAPTER 12, RESTAURANTS AND RETAIL SALES AND SERVICE ESTABLISHMENTS, SECTION 16, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, CREATING SECTION 8:12-16, THIRD-PARTY DELIVERY SERVICES AND INTERNET APPLICATIONS; LIMITATIONS ON FEES. Sponsor(s): Council President, LaMonica R. McIver Deferred 6PSF-c 020123 Deferred 6PSF-a 021523 Deferred 6PSF-a 021523				
Sponsors:	LaMonica R. McIver				
Indexes:					
Code sections:					

Date	Ver.	Action By	Action	Result
3/15/2023	1	Municipal Council	Tabled	Pass
3/1/2023	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
3/1/2023	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
2/15/2023	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
2/1/2023	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
1/18/2023	1	Municipal Council	Advance and Adopt on First Reading as 6F-	Pass

AN ORDINANCE AMENDING TITLE 8, BUSINESSES AND OCCUPATIONS, CHAPTER 12, RESTAURANTS AND RETAIL SALES AND SERVICE ESTABLISHMENTS, SECTION 16, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, CREATING SECTION 8:12-16, THIRD-PARTY DELIVERY SERVICES AND INTERNET APPLICATIONS; LIMITATIONS ON FEES.

Sponsor(s): Council President, LaMonica R. McIver

Deferred 6PSF-c 020123
Deferred 6PSF-a 021523
Deferred 6PSF-a 021523

WHEREAS, during a State of Emergency such caused by COVID-19, limitations on fees were imposed on third-party take-out and delivery services, temporarily, which are normally imposed by the State Legislative Body (S.2437); and

WHEREAS, an increased use of third-party food takeout and delivery service applications to place orders with restaurants for food takeout or delivery allowed for charging restaurants a service fee exceeding thirty (30%) percent of the individual order price, thereby compounding the current financial strain on restaurants in the City of Newark (the "City"); and

WHEREAS, while some companies have provided meaningful support to the restaurant community, other companies offering third-party food takeout and delivery services may; restaurants that are also small businesses, in particular, may have limited bargaining power to negotiate lower fees; and

WHEREAS, the City finds that it is in the public interest to take action to maximize restaurant revenue from takeout and delivery orders to enable restaurants to survive this continuing crisis and any similar future crisis, to allow sources of employment and community vitality within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

SECTION 1. The foregoing whereas clause are incorporated herein by reference and made a part hereof.

SECTION 2. Title VIII, Businesses and Occupations, Chapter 12, Restaurants and Retail Sales and Service Establishments, is amended to add the following new Subsection 16 entitled Third -Party Delivery Services and Internet Applications; Limitations on Fees, which shall establish that it is unlawful for any third-party food takeout and delivery service application or internet website to charge a service fee to a restaurant for take-out or delivery service in excess of 15%.

§ 8:12-16 THIRD-PARTY DELIVERY SERVICES AND INTERNET APPLICATIONS; LIMITATIONS AND FEES.

A. It shall be unlawful for any third-party food takeout and delivery service application or internet website to charge a service fee to a restaurant for take-out or delivery service greater than:

1. 15% of the cost of the individual order; or

2. 5% of the cost of the individual order when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

B. It shall be unlawful to reduce the compensation rates or gratuities paid to a delivery service driver because of the limits on fees imposed by this Ordinance.

C. Notwithstanding any existing agreement in effect prior to the effective date of this Ordinance, it shall be unlawful for a third-party delivery service application or internet website to charge a restaurant a fee per order greater than the fee allowed by this Ordinance for services, including, but not limited to, fees for promotions, advertising, marketing, or delivery. Any fees in a pre-existing agreement greater than those permitted by this Ordinance shall be void and unenforceable against a restaurant.

powered by Legistar™

D. The provisions of this Section shall not be construed to limit the right of any restaurant to choose by agreement to pay an additional 5% percent of the cost of the individual order to access additional advertising or other services offered by any third-party food takeout and delivery service application or Internet website. However, any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this Ordinance shall be required to affirmatively elect to pay that fee regardless of any contract that is in effect on the effective date of this Ordinance.

E. The parties to an agreement to pay for additional services may define the term "cost of an order" to include tips, service charges and any additional fees associated with an individual order.

F. Violators of this Ordinance shall be subject to the punishment provided for in the Code of the City of Newark. Each order for which a fee charged exceeds the fee permitted by this Ordinance shall be considered a separate offense.

Section 3. This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

An Ordinance amending Title VIII, Businesses and Occupations, Chapter 12, Restaurants and Retail Sales and Service Establishments, is amended to add the following new Subsection 16 entitled Third-Party Delivery Services and Internet Applications; Limitations on Fees, which shall establish that it is unlawful for any third-party food takeout and delivery service application or internet website to charge a service fee to a restaurant for take-out or delivery service in excess of 15%.