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Attorneys for Plaintiffs
DOORDASH, INC. and GRUBHUB INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DOORDASH, INC. and GRUBHUB INC.,
Plaintiffs,
v.
CITY AND COUNTY OF SAN FRANCISCO,
Defendant.

CASE NO. 3:21-CV-05502-EMC

**JOINT UPDATE RE PROPOSED
ORDINANCE TO AMEND SECTIONS 5301
AND 5302 OF THE SAN FRANCISCO
POLICE CODE**

Hearing Date: December 16, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Courtroom 5 – 17th Floor
Hon. Edward M. Chen

Action Filed: July 16, 2021
FAC Filed: Oct. 1, 2021

1 In its reply in support of its motion to dismiss, the City wrote that “[o]n October 26, 2021,
2 Supervisor Peskin introduced an amendment to raise the cap to 20% by permitting platforms to
3 charge up to 15% for delivery services and an additional 5% for non-delivery services. *See* File No.
4 211131, [https://sfgov.legistar.com/LegislationDetail.aspx?ID=5199186&GUID=346DF058-033B-](https://sfgov.legistar.com/LegislationDetail.aspx?ID=5199186&GUID=346DF058-033B-4438-B414-18B5D9F2BF77)
5 [4438-B414-18B5D9F2BF77](https://sfgov.legistar.com/LegislationDetail.aspx?ID=5199186&GUID=346DF058-033B-4438-B414-18B5D9F2BF77).” Dkt. 49 at 4 n.1.

6 The parties jointly write to update the Court on the status of Supervisor Peskin’s proposed
7 legislation to amend Section 5301 and 5302 of the San Francisco Police Code, which is attached as
8 Exhibit A. The proposed ordinance has been referred to the Public Safety and Neighborhood
9 Services Committee (the “Committee”) for hearing, which must occur before it can return to the full
10 Board of Supervisors for first and second readings. In light of the Board’s December recess, the
11 Committee will not hear the proposed amendment before January 2022.

12
13 DATED: December 14, 2021

Respectfully submitted,

14 GIBSON, DUNN & CRUTCHER LLP

15
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28

EXHIBIT A

[Police Code - Third-Party Food Delivery Services]

Ordinance amending the Police Code to allow third-party food delivery services to charge restaurants a delivery fee of up to 15% of an online order total and a non-delivery fee of up to 5% of an online order total, provided the third-party food delivery services do not make their agreement to provide delivery services contingent on restaurants' agreement to pay for non-delivery services, and provided the delivery and non-delivery fees are agreed to in separate contracts.

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

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

Section 1. Article 53 of the Police Code is hereby amended by revising Sections 5301 (with the defined terms that are added to that section sequenced alphabetically within the section) and 5302, to read as follows:

SEC. 5301. DEFINITIONS.

* * * *

“Delivery fee” means a fee, commission, or charge per online order assessed by a third-party food delivery service for the purpose of providing a covered establishment with a service that facilitates and/or performs the delivery of food and/or beverages from such establishments to customers, including listing a covered establishment on a third-party food delivery service platform. A delivery fee

1 does not include any other fee or costs that may be charged by a third-party food delivery service to a
 2 covered establishment, such as fees for advertising or credit card processing.

3 * * * *

4 “Non-delivery fee” means a fee, commission, or charge per online order assessed by a third-
 5 party food delivery service to a covered establishment for a service to the covered establishment other
 6 than facilitating or performing the delivery of food and/or beverages from such covered establishment
 7 to customers and listing a covered establishment on a third-party food delivery service platform. Non-
 8 delivery fees include but are not limited to fees for advertising the covered establishment on the third-
 9 party food delivery service platform beyond a simple listing, business consulting service fees, and
 10 credit card transaction fees.

11 * * * *

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

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

16 (b) No third-party food delivery service may charge a covered establishment a ~~fee,~~
 17 ~~commission, or charge per online order~~delivery fee that exceeds 15% of the purchase price of
 18 online orders to that covered establishment processed through the third-party food delivery
 19 service during the time period covered by the fee, commission, or charge.

20 (c) Notwithstanding the limitations on a delivery fee set forth in subsections (a) and (b), above,
 21 a third-party food delivery service may charge a covered establishment a non-delivery fee of not more
 22 than 5% of the purchase price of an online order, provided the third party food delivery service does
 23 not make its agreement to provide delivery services to a covered establishment contingent on that
 24 establishment’s agreement to pay a non-delivery fee and/or accept services covered by a non-delivery
 25



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