

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOORDASH, INC., GRUBHUB INC., and	:
PORTIER, LLC,	:
	: No. 21-cv-7564
Plaintiffs,	:
	: COMPLAINT
-against-	:
	: JURY TRIAL DEMANDED
CITY OF NEW YORK,	:
	:
Defendant.	:
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Plaintiffs DOORDASH, INC., GRUBHUB INC., and PORTIER, LLC (collectively, “Plaintiffs”) by and through their attorneys, Gibson, Dunn & Crutcher LLP, allege for their complaint against Defendant CITY OF NEW YORK, as follows:

NATURE OF THE ACTION

1. Plaintiffs operate the popular food ordering and delivery platforms DoorDash, Caviar, Grubhub, Seamless, Postmates, and Uber Eats, which connect restaurants, consumers, and independent delivery couriers. Throughout the COVID-19 pandemic, third-party platforms like Plaintiffs have been instrumental in keeping restaurants afloat and food industry workers employed, including by investing millions of dollars in COVID-relief efforts specifically for local restaurants. *See infra* ¶¶ 39–42. And today, now that restaurants may operate at full capacity, Plaintiffs remain committed to maintaining and restoring the vibrancy of New York City’s local restaurants. Yet, the City of New York (the “City”) has taken the extraordinary measure of imposing *permanent* price controls on a private and highly competitive industry—the facilitation of food ordering and delivery through third-party platforms. Those permanent price controls will harm not only Plaintiffs, but also the revitalization of the very local restaurants that the City claims to serve.

2. In May 2020, purportedly in response to the COVID-19 pandemic, the City enacted unconstitutional—though ostensibly temporary—price controls that impaired existing agreements and prevented restaurants and third-party platforms from freely negotiating the prices that platforms may charge restaurants for their services within the City, primarily by capping the rate that third-party platforms could charge restaurants at 15% of an online order for delivery services and 5% for all other services, including marketing. That law originally was scheduled to expire 90 days after a declared public-health emergency that prohibits *any* on-premises dining due to the COVID-19 pandemic. The City Council then moved the goalposts three times: first it amended the sunset date to be 90 days after a declared emergency that prohibits restaurants from operating at *maximum* indoor occupancy; then it extended the applicability of the price controls until the arbitrary date of February 17, 2022 (the “Current Ordinance”);¹ and most recently, it removed the law’s sunset date altogether, thus making it permanent (the “Pending Amendment”).²

3. This now-indefinite legislation bears no relationship to any public-health emergency, and qualifies as nothing more than unconstitutional, harmful, and unnecessary government overreach that should be struck down. The Ordinance is *unconstitutional* because, among other things, it interferes with freely negotiated contracts between platforms and restaurants by changing and dictating the economic terms on which a dynamic industry operates.

4. The United States and New York Constitutions prohibit such government overreach by safeguarding the terms of freely negotiated contracts, protecting property rights and the right to pursue legitimate business enterprises, and providing for due process and equal protection under

¹ As relevant here, NYC Int. No. 2359-A, Local Law 2021/094 (amending Section 20-846 of the New York City Administrative Code). Ex. A.

² As relevant here, NYC Int. No. 2390. Ex. B. Mayor de Blasio has until September 25, 2021 to sign or veto Int. No. 2390 (or take no action). The Current Ordinance and the Pending Amendment (which also includes Int. No. 1897-A, discussed *infra*) are collectively referred to as the “Ordinance,” unless otherwise noted.

the law. Left unchecked, the Ordinance sets a dangerous precedent. Indeed, in refusing to sign a price control measure into law, Mayor London Breed of San Francisco described permanent price controls as “unnecessarily prescriptive in limiting the business models of the third-party organizations, and oversteps what is necessary for the public good.”³ The same is true here.

5. The Ordinance is also *harmful*. The cost of facilitating food delivery and marketing will likely shift to consumers, thereby reducing order amounts or volume, lowering restaurant revenues, decreasing earning opportunities for delivery couriers, and resulting in less tax revenue in the City’s coffers. There is no evidence that the City Council solicited or reviewed any data to understand the impact of this extended price-fixing regime, including the relationship between third-party platform commissions and restaurant profitability, or the negative externalities the Ordinance will impose on New York City restaurants, couriers, and consumers. Indeed, the City appears to have ignored the negative externalities various advocacy organizations and trade associations pointedly raised at multiple committee hearings (*see infra* ¶ 72), and those that many couriers described in their submitted testimony (*see infra* ¶¶ 74, 91). Hundreds of delivery couriers who use Plaintiffs’ platforms to earn livings—single parents, primary caretakers, and single-income families—objected to the Ordinance as detrimental to their earning opportunities and harmful to the restaurant industry. For example, as one courier explained:

I’m worried that this bill will have negative effects on people like myself who work on these platforms. A permanent price control would directly hurt delivery workers’ ability to make money. Restaurants pay app-based delivery companies for a variety of services through commissions, one of these being delivery services. Capping these commissions means less earnings for people like me. A commission cap could also mean delivery services get more expensive for the customers I deliver to, which ultimately means less orders for me.

³ Letter from Mayor London Breed to Shamann Walton re File 210492 (July 9, 2021). Ex. C.

And, as another courier told the City Council, “I’m writing to tell you that I hope you will listen to people like me who are scared that [the Ordinance] will actually reduce work opportunities for people like me.” But the City did not listen. Instead, as part of its “legislate first, study second” approach, the City postponed analyzing the impact of permanent price controls until 2023, at which point a report will be authorized examining the Ordinance’s impact.

6. The Ordinance is also *unnecessary*. Restaurants need not partner with third-party platforms. Restaurants have an array of options for receiving orders and providing delivery, including providing delivery services themselves, as well as third-party options well below the price control established by the City (including delivery options where restaurants pay no fees or little more than credit card processing fees, *see infra* ¶ 14). Likewise, restaurants have access to many marketing options (within and apart from third-party platforms) to attract customers and promote their businesses, including online advertising channels—such as building their own websites and using sites like Google and Yelp, among many others—and offline advertising mediums, such as printing flyers or using billboards.

7. Furthermore, if the City’s goal is to improve the profitability of local restaurants, then the City—which projected a budget surplus for Fiscal Year 2021 of \$3.4 billion⁴—has other, lawful means to aid restaurants, such as tax breaks or grants.⁵ But rather than exercise one of those lawful options, the City chose instead to adopt an irrational law, driven by naked animosity towards

⁴ *DeNapoli: Some Bright Spots for NYC Finances in FY21, but Long-Term Challenges Looming*, OFFICE OF THE N.Y. STATE COMPTROLLER (Feb. 23, 2021), <https://bit.ly/3mleWCe> (last visited Sept. 8, 2021).

⁵ Indeed, earlier this year, the National Restaurant Association issued an 11-point blueprint for state and local policymakers for restaurant recovery. This blueprint included policies like tax breaks and grants but did not state or even suggest that commission caps were necessary for restaurant recovery. *See* Letter from Nat’l Rest. Ass’n to Governor Andrew Cuomo (Feb. 18, 2021), <https://bit.ly/3jXEIls> (last visited Sept. 8, 2021).

third-party platforms and unlawful economic protectionism, in violation of the United States and New York Constitutions and beyond the scope of New York City's limited police power.

8. That the Ordinance was driven by such is evident from lawmakers' many public statements. For example, prior to the announcement of any public state of emergency, one of the Ordinance's sponsors, Council Member Francisco Moya, introduced a 10% commission cap bill, and later tweeted, "NYC local restaurants needed a 10% cap on delivery fees from third party services like GrubHub long before #COVID19 hit us. They damn sure need it now."⁶

9. The Current Ordinance's text itself clearly targets certain large, out-of-state third-party platforms. Notably, the Ordinance does not regulate the prices of other businesses with which restaurants regularly contract, such as wholesale food and supply companies, point-of-sale vendors, online reservation platforms, credit card processing companies, or other marketing companies. Indeed, the Ordinance irrationally limits third-party platforms like Plaintiffs to charging 15% per order for delivery services and 5% per order for marketing services, which services other companies may provide to the very same restaurants at an unregulated price.

10. Yet the City has not offered any explanation for why it randomly selected a 15% cap for delivery services nor why it randomly selected a 5% cap for all non-delivery services performed on behalf of restaurants, including marketing services. Nothing in the Ordinance, legislative history, or public record explains why the City chose these arbitrary figures, much less how they are reasonably related (which they are not) to the public-health emergency that purportedly prompted their imposition in the first place. Nor is there any justification for imposing such a restrictive cap (or any cap at all) on marketing services offered by food-delivery companies, in particular, when other marketing and advertising providers, such as Google, Facebook, or

⁶ Francisco Moya (@FranciscoMoyaNY), TWITTER (Apr. 14, 2020), <https://bit.ly/3CBqsaA> (last visited Sept. 8, 2021).

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