

Frequently Asked Questions on Delivery Service Regulations

Updated 11/15/22

On December 21, 2020, a new set of laws took effect that regulate third-party food delivery services in San Francisco. Article 53 of the San Francisco Police Code establishes several requirements for third-party delivery services. This document provides answers to frequently asked questions about these requirements.

For more information about how to report a suspected violation of Article 53, please visit: <https://sf.gov/report-violation-san-franciscos-food-delivery-service-requirements>

To read Article 53 in its entirety, please visit: https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_police/0-0-0-51745

Which restaurants are covered by these laws?

To be covered by these protections, a restaurant must:

- (1) Meet the definition of “restaurant” provided in [Section 451 of the Health Code](#);
- (2) Offer, 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; and
- (3) Not meet the definition of a Formula Retail use in [Section 303.1 of the Planning Code](#).

What third-party food delivery services do these laws apply to?

These requirements apply to any website, mobile application or other internet service that offers or arranges for the sale of food and/or 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 preparation and service establishments.

Is there a cap on the delivery fees charged by third-party food delivery services? (Added 11/15/22)

The rules related to the cap on delivery fees charged by third-party food delivery services have recently changed.

Until January 30, 2023:

- No third-party food delivery service may charge a covered restaurant a fee, commission, or charge per online order that totals more than 15% of the purchase price of the online order.
- No third-party food delivery service may charge a covered establishment a fee, commission, or charge that exceeds 15% of the purchase price of online orders to that covered establishment processed through the third-party food delivery service during the time period covered by the fee, commission, or charge.

Beginning on January 31, 2023:

- The 15% delivery fee cap will not apply to a third-party food delivery service that does both of the following:
 - (1) offers all covered restaurants the option to obtain “core delivery service” for a total fee, commission, or charge that does not exceed 15% of the purchase price of the online order, without requiring the purchase of additional services; and
 - (2) no later than December 1, 2022, notifies all covered restaurants that have an existing contract with the third-party delivery service of the option to obtain “core delivery service.”
- “Core delivery service” means a service that does both of the following:
 - (1) lists a covered restaurant, and makes the covered restaurant discoverable, on all modalities or platforms offered by a third-party food delivery service, including but not limited to any website, mobile application, or other internet service where a third-party food delivery service lists covered restaurants; and
 - (2) facilitates and/or performs the delivery (through employees or independent contractors of the third-party food delivery service and/or such establishments) of food and/or beverages from covered restaurants to customers.
- Core delivery service does not include any other service that may be provided by a third-party food delivery service to a covered restaurant, including but not limited to advertising services, search engine optimization, business consulting, or credit card processing.

A contract between a third-party food delivery service and a covered restaurant must clearly define the fees, commissions, or charges associated with contracted services. For example, if a covered restaurant enters into a contract with a third-party food delivery service for core delivery service only, that contract must clearly state a fee, commission, or charge of 15% of the purchase price for the service.

Do taxes or gratuities count toward the “purchase price” for purposes of calculating the 15% limit on delivery fees?

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

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

May a third-party delivery service place limitations on the prices that a restaurant may charge?

No third-party food delivery service may impose on a covered restaurant, by contract or other means, any restrictions on the prices that the establishment may charge for food or beverages, whether sold through a website, app, or other service operated by the third-party food delivery service, or sold directly from the restaurant, or through any other means.

May a third-party delivery service charge a fee connected with phone orders?

No third-party food delivery service may charge a covered restaurant a fee, commission, or charge for a telephone call by a customer to the third-party food delivery service that does not result in a purchase by a customer during the telephone call.

May a third-party delivery service list my restaurant on their service without my consent?

No third-party food delivery service may provide any services related to the processing or delivery of an order for delivery of food or beverages from a covered restaurant unless that establishment expressly agrees in writing to allow the third-party food delivery service to provide such services.

What if a restaurant wants to terminate an agreement with a third-party delivery service?

A third-party food delivery service must terminate any service contract with a covered restaurant within 72 hours after the restaurant provides oral or written notice of its decision to terminate the contract to an individual contact person designated for communications regarding the termination or amendment of a contract in either the parties' contract or in the version of the third-party delivery service's software application used by the covered establishment.

If no such individual contact person is specified, the restaurant shall provide oral or written notice to either the individual designated on the website of the California Secretary of State as agent for service of process for the third-party delivery service, or to any officer or local or regional manager of the third-party delivery service.

For purposes of this requirement, "written notice" shall include any writing delivered by email, text message or similar message transmitted through a phone or software application, facsimile, personal delivery, or mail service.

I think a delivery service is not abiding by one of these requirements with respect to my restaurant. How do I report a suspected violation?

For more information about how to report a suspected violation of these requirements, please visit: <https://sf.gov/report-violation-san-franciscos-food-delivery-service-requirements>

What documentation must delivery services retain?

Third-party food delivery services must maintain records sufficient to document their compliance with their requirements under Article 53, including but not limited to all relevant agreements, invoices, and transaction records, for three years from the date of any related customer transaction.

At any time, the Office of Economic and Workforce Development (OEWD) may direct any third-party food delivery service to disclose any documents and records required to be retained with respect to any covered restaurant. Any third-party food delivery service so directed must disclose specified documents and records to OEWD within 72 hours, not counting weekends or holidays. A third-party food delivery service's failure to provide required records to OEWD within the required 72 hours shall be a violation of Article 53.

What are the penalties for not complying with these requirements?

Any third-party food delivery service that violates any provision of Article 53 shall be subject to an administrative penalty not to exceed \$1,000 per violation. Administrative penalties will be

imposed by order of the Director of the Office of Economic and Workforce Development, or their designee.