

## **New York City Department of Consumer and Worker Protection**

### **Notice of Adoption**

Notice of Adoption to add rules to implement new legislation regarding third-party food delivery services and third-party courier services.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on November 23, 2021. A public hearing was held on December 23, 2021. The Department of Consumer and Worker Protection (“DCWP” or “Department”) received and reviewed comments submitted.

### **Statement of Basis and Purpose of Rule**

The Department is adding rules to implement Local Law 100 of 2021, Local Law 110 of 2021, and Local Law 115 of 2021, regarding third-party food delivery services and third-party courier services.

Specifically, these new rules:

- Set the expiration date for third-party food delivery service licenses and clarify other application requirements;
- Require third-party food delivery services to maintain certain records;
- Establish procedures for complying with requests for records and information;
- Clarify the location of a required disclosure about gratuities for food delivery workers;
- Clarify the location of a required disclosure about third-party telephone number listings;
- Require third-party delivery services to provide a disclosure and the ability for customers to opt out of certain data sharing;
- Create a penalty schedule for violations related to third-party food delivery services; and
- Clarify requirements for responding to certain requests for data from the Department.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter KK to read as follows:

### **Subchapter KK: Third-Party Food Delivery Services**

#### **§ 2-461 License Application Requirements.**

(a) Third-party food delivery service licenses expire on August 31st in odd numbered years.

(b) An application for a third-party food delivery service license must include the Department's basic license application, the third-party food delivery service license application supplement, and any other documents and information requested by the Department.

(c) Pursuant to section 20-113 of the Administrative Code, a separate third-party food delivery service license is required for each trade name that a person uses to conduct the business of a third-party food delivery service. A third-party food delivery service license applicant must submit a separate license application for each trade name it will use to conduct the business of a third-party food delivery service.

(d) A licensee or applicant must notify the Department in writing of any change to the list of websites, mobile applications, third-party food delivery platforms, uniform resource locators, or operating systems provided in the licensee's or applicant's basic license application or third-party food delivery service license application supplement within 10 days of the change.

### **§ 2-462 Records.**

(a) (1) Pursuant to subdivision (a)(4) of section 20-563.8 of the Administrative Code, every third-party food delivery service must maintain records sufficient to document the full ownership of such third-party food delivery service. Such records must be maintained in an electronic format for a period of at least 3 years.

(2) Every third-party food delivery service must maintain records sufficient to demonstrate compliance with the requirements set forth in subdivision (b) of section 20-563.2 of the Administrative Code. Such records must be maintained in an electronic format for a period of at least 3 years.

(3) Every third-party food delivery service must maintain records sufficient to document all customer requests not to share the customer's data with a food service establishment pursuant to subdivision (b) of section 20-563.7 of the Administrative Code. Such records must be maintained in an electronic format for a period of at least 3 years.

(b) (1) A request or subpoena for information or records from the Department must be served on a third-party food delivery service in writing in person, via mail, or via email. A third-party delivery service must respond to a written request or subpoena for information or records from the Department by providing to the Department true, accurate, and contemporaneously made electronic records or information within 30 days of the date that the request is received and in the formats and layouts prescribed by the Department in such request or subpoena.

(2) A deadline of more than 30 days may be agreed to on consent by the Department and the third-party food delivery service.

(3) The Department may issue a summons to a third-party food delivery service who fails to provide true and accurate electronic records or information by the deadline provided in the written request or subpoena or the deadline agreed to by the parties, provided that the monetary penalties authorized by section 20-563.10 of the Administrative Code for a violation of section 20-563.8 of the Administrative Code shall not apply while such written request or subpoena is the subject of a pending proceeding.

(c) A third-party delivery service's failure to maintain, retain, or produce a record that is required by law or rule to be maintained that is relevant to a material fact alleged by the Department in a summons, petition, or other notice of hearing creates a reasonable inference that such fact is true.

### **§ 2-463 Gratuities for Food Delivery Workers**

The disclosure required by subdivision (b) of section 20-563.2 of the Administrative Code must be made:

(a) directly adjacent to the gratuity solicitation; or

(b) accessible via a link placed directly adjacent to the gratuity solicitation if such link is labeled with plain language to describe its contents.

### **§ 2-464 Telephone Number Listings.**

A listing or link for a third-party telephone number permitted by subdivision (a) of section 20-563.5 of the Administrative Code and the disclosures required by such subdivision for a third-party telephone number must appear directly adjacent to the direct telephone number for the food service establishment.

### **§ 2-465 Sharing Customer Data.**

(a) To comply with subdivision (b) of section 20-563.7 of the Administrative Code, every third-party food delivery service must, for every prospective order, provide the following disclosure in a clear and conspicuous manner: “To process orders, (name of third-party food delivery service) collects customer data, which includes your name, telephone number, email address, delivery address, and what you ordered from the restaurant. As required by New York City law, if the restaurant requests it, (name of third-party food delivery service) will share your customer data concerning this order with the restaurant unless you opt out of sharing your data.”

(b) A hyperlink, fillable form, or other means for a customer to opt out of sharing data must be made available directly adjacent to the disclosure required by this section.

(c) Every third-party food delivery service must provide for what is required by this section prior to the customer completing a prospective order and on the same page of its website, mobile application, or other platform where the customer is completing such prospective order.

§ 2. Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new Section 6-79 to read as follows:

### **§ 6-79 Third-Party Food Delivery Services Penalty Schedule.**

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a

settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Violations by third-party food delivery services accrue on a daily basis for each day and for each food service establishment with respect to which a violation is committed.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
<u>Admin Code § 20-563.1</u>	<u>Operating without a third-party food delivery service license</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-563.2</u>	<u>Failure to comply with requirements for the issuance of a license</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-563.3</u>	<u>Failure to comply with the caps on fees</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$900</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$1,000</u>
<u>Admin Code § 20-563.4</u>	<u>Failure to comply with requirements for telephone orders</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-563.5</u>	<u>Failure to comply with requirements for listing telephone numbers</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-563.6</u>	<u>Failure to comply with requirements on unauthorized listings or requirements for the contents of agreements between third-party food delivery services and food service establishments</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-563.7</u>	<u>Failure to comply with requirements on customer data</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-563.8</u>	<u>Failure to comply with records requirements</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-461</u>	<u>Failure to comply with license application requirements</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-462</u>	<u>Failure to comply with records requirements</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-463</u>	<u>Failure to comply with requirements for gratuities for food delivery workers</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-464</u>	<u>Failure to comply with requirements for telephone number listings</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-465</u>	<u>Failure to comply with requirements for sharing customer data</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>

Section 3. Chapter 7 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter H to read as follows:

**Subchapter H: Third-Party Service Workers**

**§§ 7-801 through 7-809**

[Reserved]

**§ 7-810 Minimum Pay.**

(a) When the department issues a subpoena for data, information or documents under Section 20-1522(a)(2) of the administrative code, a third-party food delivery service or third-party courier service must provide all responsive data, information or documents to the department within 30 days of receiving such subpoena and, if so requested, in the comma-delimited formats and layouts prescribed by the department in such subpoena.



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

GEORGIA M. PESTANA  
*Corporation Counsel*

STEVEN GOULDEN  
Division of Legal Counsel  
Room 6-231  
Tel: (212) 356-4028  
Fax: (212) 356-4019  
sgoulden@law.nyc.gov

Hon. Peter A. Hatch  
Commissioner of the Department of Consumer and Worker Protection

Re: Rules Governing Third Party Food Delivery Services

No. 2021 RG 083

Dear Commissioner Hatch

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

*/s/ Steven Goulden*

STEVEN GOULDEN  
Senior Counsel  
Division of Legal Counsel

cc: Andrew Schwenk (DCWP)  
Michael Tiger (DCWP)  
Tamala Boyd (DCWP)  
Francisco Navarro