



Grubhub Holdings Inc.
222 W Merchandise Mart Plaza, Suite 800
Chicago, IL 60654

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NYC Department of Transportation
55 Water Street
9th Floor
New York, NY 100141

On behalf of Grubhub Holdings Inc. (“Grubhub”), we are writing to provide comments on the New York City Department of Transportation (“DOT”) proposed rule to amend the rules contained in Chapters 3 and 4 of Title 34 of the Rules of the City of New York and implement certain provisions of section 10-157 of the Administrative Code, which governs businesses using bicycles for commercial purposes. Grubhub is grateful for the opportunity to provide feedback on the proposed rules. Please find the comments below.

Business using a bicycle for commercial purposes

Grubhub is not a “business using a bicycle for commercial purposes” as defined by Section 10-157 of the City Administrative Code. Grubhub is a technology company and a “third party food delivery service” under the Administrative Code. Grubhub’s online food ordering and delivery marketplace (operating under the Grubhub and Seamless brands) connects consumers with a broad array of local takeout and delivery merchants, and in some cases, independent-contractor delivery partners or “couriers.” Grubhub began connecting merchants with couriers to provide delivery services on behalf of merchants in 2014. Only approximately half of Grubhub’s order volume in NYC involves couriers performing deliveries; the remainder are consumer pick-up orders or merchants fulfilling the deliveries themselves.

Section 10-157 of the Administrative Code and its term “business using a bicycle for commercial purposes” went into effect in 2013, before Grubhub facilitated couriers performing deliveries for merchants and consumers. Under section 10-157, a “business using a bicycle for commercial purposes” is defined as “a person, firm, partnership, joint venture, association, corporation, or other entity that, either on behalf of itself or others, delivers packages, parcels, papers or articles of any type by bicycle.” Grubhub does not deliver packages, parcels, papers or articles of any type by bicycle, and the definition of “business using a bicycle for commercial purposes” has not been amended or modified to include third-party delivery services or third-party courier services. As such, Grubhub is not a business using a bicycle for commercial purposes.

If the DOT seeks to create rules affecting Grubhub, the appropriate definitions must be used and the proper legal and administrative channels must be followed.

The Proposed Rule is Unworkable for Grubhub and Couriers.

Even if Grubhub was a “business using a bicycle for commercial purposes,” which it is not, the proposed rule is unworkable for a number of reasons.

First, Section (xiv) of the proposed rule states that “a business using a bicycle for commercial purposes shall be separately responsible for compliance with the provisions of subparagraph (viii) of this paragraph by its bicycle operators when such operators are making a delivery or otherwise operating a bicycle on behalf of such businesses at the time of the violation.” Section (viii) of the proposed rule, in turn, requires bicycle operators to carry and produce identification cards upon demand, as well as wear certain headgear and retro-reflective apparel.

Couriers who perform delivery services with Grubhub are independent contractors, as governed by their applicable agreements with Grubhub. Under New York law, businesses are not responsible for the acts or omissions of independent contractors, due to the lack of control over the contractors’ work. The proposed rule therefore violates bedrock agency law by imposing liability on an entity for the acts or omissions of independent contractors.

Holding businesses liable for conduct they cannot realistically control - such as helmet or apparel violations - raises serious due process concerns. The statute’s intent is to promote safety compliance by individual operators and oversight by employers. The proposed rule undermines this by shifting liability to third-party platforms, effectively coercing them into exercising a degree of control over independent contractors not previously exercised. This approach is inconsistent with the statute’s design and is unconstitutional.

Under the New York State Constitution, an agency exceeds its authority when it makes major policy decisions via regulation without legislative guidance. Here, DOT is not merely implementing technical rules - it is making substantive policy choices about the economic relationship between businesses and independent contractors. Imposing liability on platforms for the conduct of individuals they do not employ is a legislative decision outside of DOT’s traffic-safety mandate. The rulemaking states this as clarifying that businesses are responsible for fines issued to their bicycle operators. However, while the statute permits DOT to impose penalties on businesses for their own noncompliance, it does not authorize cost-shifting or require businesses to pay fines issued to individual operators. This distinction is critical: obligating businesses to cover individual fines would create a new liability not contemplated by the Council and constitutes an *ultra vires* action by DOT.

Second, Section (xiv) of the proposed rule is unworkable from a practical standpoint. Grubhub is not in a position to monitor and control whether couriers carry and produce identification cards upon request or wear headgear and reflective apparel at all times when performing delivery services. Many couriers choose to operate across multiple platforms in a practice commonly known as “multi-apping.” DCWP has acknowledged that an estimated 17.7 percent of couriers are multi-apping within the city. Acknowledging that multi-apping takes place, it would be nearly impossible to hold a platform responsible for violations of a courier when the courier could be in the process of delivering for multiple platforms. Couriers make their own decisions and determine their own methods and means to perform deliveries. Even if Grubhub were subject to the proposed rule, it cannot force individuals to take or not take any specific action, and it should not be held separately liable for those actions or inactions. The proposed rule is therefore impossible to administer and enforce. As such, Section (xiv) of the proposed rule

should be removed.

Third, Section (xi) of the proposed rule states that “a business using a bicycle for commercial purposes shall be liable for any violation of subdivision b of section 19-176/2 of the Administrative Code committed by any person operating a motorized scooter on behalf of such business.” This section of the proposed rule is unworkable for the same reasons that section (xiv) is unworkable. Imposing liability against Grubhub for the actions of couriers unlawfully disregards their independent contractor status. Further, it would be logistically impossible for Grubhub to force any individual to not use a motorized scooter. As such, the vicarious liability imposed by section (xi) is unlawful and unworkable and should be removed from the proposed rule.

Further, Section (ii)(F) of the proposed rule requires a business using a bicycle for commercial purposes to provide DOT with “a list of the type or class of devices used by bicycle operators making deliveries or otherwise operating a bicycle on behalf of such business and the number of devices of each type or class.” Grubhub does not currently collect the level of detail required by section (ii)(F) for couriers who use bikes. And even if Grubhub were able to collect this information for each courier, Grubhub would have no way of knowing if a particular courier was to switch devices while performing delivery services. As such, this section is also unmanageable from a practical standpoint and should be removed.

The Proposed Rule Does Not Account for Couriers Working with Multiple Platforms

Sections (vi), (vii) and (ix) of the proposed rule requires businesses using a bicycle for commercial purposes to provide at their own expense headgear, upper body apparel, a lamp, bell, reflective tires and “other devices or material” to all of its bicycle operators. As previously mentioned, many of the couriers who provide delivery services with Grubhub also work with other app-based platforms, such as DoorDash and UberEats. The requirement that each company provide a laundry list of materials to each biker will result in bikers receiving numerous sets of headgear, upper body apparel, lamps, bells, reflective tires and “other devices or material,” even if those bikers don’t actively work with each company. This, in turn, will result in significant expense to all platforms without any requirement on bicycle operators to actually perform work with these platforms. This section of the proposed rule should either be removed or modified through the appropriate legislative and administrative channels such that third-party platforms would be required to ensure the availability of these materials and to provide them upon specific request from a courier.

The Proposed Rule Requires Platforms to Provide DOT with Sensitive Personal Information

Section (ii)(E) of the proposed rule requires a business using a bicycle for commercial purposes to register with the DOT and provide DOT with a roster with the names and addresses of each of its bicycle operators. The names and addresses of couriers is sensitive information that should not be provided without appropriate confidentiality protections in place. DOT should either revise this section to not require the production of this information or lay out the steps DOT will put in place to ensure that the information provided will be stored and maintained confidentially.

We hope that you consider the comments outlined above. Grubhub looks forward to continuing

working with DOT to make sure New York City is a safe and equitable place for all couriers.