

PROHIBITION ON SEPARATE CHARGES IN CUSTOMER BILLS BY FOOD BUSINESSES

The Way It Is Now

City law does not specifically require restaurants, bars, or other businesses that prepare and serve food (food businesses) to include in their prices all of the fees or charges that they require customers to pay. Some food businesses instead show their mandatory fees and charges as separate items on the customer bill.

Beginning on July 1, 2024, a new state law will prohibit food businesses from advertising, displaying, or offering a price for a good or service that does not include the businesses' mandatory fees or charges. Limited exceptions from this prohibition include any fees or charges the government imposes on the sale of the good or service, such as sales tax.

The City has an Office of Economic and Workforce Development that supports San Francisco's businesses and workers.

The Proposal

The proposed measure would change City law to prohibit any food business from advertising, displaying, or offering a price for a good or service that excludes the business's mandatory fees or charges. The proposed measure would not require the posted price to include government fees or taxes, such as sales taxes, or delivery fees that are clearly disclosed during the ordering process. The proposed measure also would not require the posted price to include service charges when those charges:

- take the place of a tip by the customer;
- are clearly disclosed by the food business to the customer before ordering;
- are completely distributed by the food business to its employees who performed services for the customers who paid the charges; and
- do not total more than 20% of the final bill.

The proposed measure would allow the Director of the Office of Economic and Workforce Development to issue citations for any violation of this law and to impose penalties on food businesses of up to \$1,000 per violation.

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DEPARTMENT OF ELECTIONS

Note: Uncodified text is in plain or **bold** text.

Additions to Codes are in single-underline italics text.

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

Section 1. Title.

This Initiative shall be known and may be cited as “The Transparent Restaurant Pricing Act.”

Section 2. The Police Code is hereby amended by adding Article 57, consisting of Sections 5700 through 5709, to read as follows:

ARTICLE 57: PROHIBITION OF RESTAURANT SURCHARGES

SEC. 5700. SHORT TITLE

This ordinance shall be known as “The Transparent Restaurant Pricing Ordinance.”

SEC. 5701. FINDINGS AND PURPOSE

(a) This act is intended to prohibit drip pricing, which involves advertising a price that is less than the actual price that a consumer will have to pay for a good or service.

(b) This practice, like other forms of bait and switch advertising, is prohibited by existing California statutes, including the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), the False Advertising Law (Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code), and the Consumers Legal Remedies Act (Section 1770 of the Civil Code).

(c) The Consumers Legal Remedies Act, as recently amended by Senate Bill 1524, created an exception that allows bars and restaurants to continue to engage in drip pricing. This act is intended to eliminate this loophole within the City and County of San Francisco.

(d) Restaurants are vital to the character and community fabric of San Francisco (the "City"). They reflect and nurture the cultural diversity of the City, while offering access to food, an essential foundation of human health and basis for social connection. Restaurants are also important engines of the local economy, providing jobs and serving as commercial anchors in neighborhoods across the City. As such, this Article is not intended to diminish the income on which restaurants rely or limit the prices they can charge. It simply seeks to ensure that these charges are more properly disclosed to consumers.

(e) This act is not intended to prohibit any particular method of determining prices for goods or services, including algorithmic or dynamic pricing. This act is intended to regulate how prices are advertised, displayed, or offered.

(f) Many San Francisco restaurants currently utilize surcharges with labels such as "living wage surcharge" or "SF Health Mandate," which can mislead customers into thinking that these fees supplant gratuities or are fees imposed by a government on the transaction.

(g) Any purpose for which a surcharge is added can be adequately filled by reformatting prices to be inclusive of all surcharges. For example, a bill for \$20 with a 20% surcharge could be reformatted as a \$24 bill; in either case, the customer pays the same amount.

SEC. 5702. DEFINITIONS

For purposes of this Article 57, the following definitions apply.

"Bar or tavern" shall have the meaning set forth in Section 451 of the Health Code, as may be amended from time to time.

"City" means the City and County of San Francisco.

"Covered Establishment" means any bar, tavern, restaurant, or food preparation and service establishment.

"Employee" means any person who in a particular week performs at least two hours of work within the City for an Employer; and qualifies as an employee entitled to payment of a minimum wage from any Employer under the California Labor Code and wage orders published by the California Industrial Welfare Commission.

"Employer" means any person, including a corporate officer or executive, association, organization, partnership, business trust, and limited liability company or corporation, who directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

"Food preparation and service establishment" shall have the meaning set forth in Section 451 of the Health Code, as may be amended from time to time.

"OEWD" means the Office of Economic and Workforce Development or its successor agency.

"OEWD Director" means the Director of OEWD or the Director's designee.

"Restaurant" shall have the meaning set forth in Section 451 of the Health Code, as may be amended from time to time.

"Service Charges" means any separately-designated amount charged and collected by an Employer from customers, that is for service by Employees, or is described in such a way that

customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to Employees, including those charges designated on receipts, invoices, or billing statements under the term "service charge," "table charge," "portorage charge," "automatic gratuity charge," or similar language. Service Charges do not include a tip or gratuity as defined under State or federal law.

SEC. 5703. PROHIBITION OF MISLEADING PRICING

(a) No Covered Establishment may advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than the following:

(1) Taxes or fees imposed by a government on the transaction.

(2) Delivery fees that are clearly disclosed during the ordering process, as regulated by Article 53.

(3) Service Charges, provided that:

(i) These charges take the place of an optional gratuity.

(ii) Service Charges are clearly disclosed to customers before ordering.

(iii) An Employer shall distribute all such Service Charges in their entirety to the Employee(s) who performed services for the customers from whom the Service Charges are collected. No part of these amounts may be paid to Employees whose primary role is supervisory or managerial. No Employer or agent thereof shall deduct any amount from wages or other compensation due an Employee on account of a Service Charge, or require an Employee to credit the amount of a Service Charge, in whole or in part, against and as a part of the wages or other compensation required by the laws of the State of California and the City.

(iv) These charges may not total more than 20% of the final bill.

SEC. 5704. NO IMPACT ON HEALTH CARE SECURITY ORDINANCE

Nothing in this article shall be interpreted to affect obligations under the Health Care Security Ordinance, as amended.

SEC. 5705. ADMINISTRATION AND ENFORCEMENT

This Article 57 shall be administered and enforced by OEWD. The OEWD Director may adopt regulations, guidelines, and forms to carry out the provisions and purposes of this Article.

SEC. 5706. PENALTIES AND ENFORCEMENT.

(a) Enforcement Procedure. The OEWD Director shall issue an administrative citation for the violation of any section of this Article 57. Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," is hereby incorporated in its entirety, except as it relates to the definition of a violation and the calculation of penalty amounts, addressed in subsections (b) and (c). Administrative Code Chapter 100 shall govern the procedure for imposition, enforcement, collection, and administrative review of administrative citations issued under this Section 5706.

(b) Violations Subject to Penalties. Any Covered Establishment that violates any provision of this Article 57 shall be subject to an administrative penalty imposed by order of the OEWD Director. For purposes of assessing penalties for violation of Section 5703, a separate violation shall accrue each time a customer transaction is processed subject to any contract, term, fee, commission, charge, or price that violates this section

(c) Penalty Amounts. In setting the amount of the administrative penalty, which shall not exceed \$1,000 per violation, the OEWD Director shall consider any one or more mitigating or aggravating circumstances presented, including but not limited to the following: the amount of any fee, commission, or charge collected in violation of this Article 57, the persistence of the misconduct, the willfulness of the misconduct, the length of time over which the misconduct occurred, and the assets, liabilities, and net worth of the Covered Establishment.

SEC. 5707. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Article 57, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SEC. 5708. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 57, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article. The People of the City and County of San Francisco hereby declare that they would have passed this Article and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

SEC. 5709. AMENDMENT.

The Board of Supervisors may amend this Article 57 by ordinance by a two-thirds vote and without a vote of the people, but only to further the intent as set in Section 5702.

Section 3. No Conflict with Federal or State Law.

Nothing in this measure shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

Section 4. Effective Date.

The effective date of this ordinance shall be 60 days after the date the official vote count is declared by the Board of Supervisors.