

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 59, consisting of Sections 5900 through 5909, to read as follows:

ARTICLE 59: PROHIBITION OF RESTAURANT SURCHARGES

SEC. 5900. SHORT TITLE

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

SEC. 5901. 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 act in parallel with the Consumers Legal Remedies Act 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 \$100 with a 5% surcharge could be reformatted as a \$105 bill: in either case, the customer pays the same amount.

SEC. 5902. DEFINITIONS

For purposes of this Article 59, 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 within the City.

“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. 5903. 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) Service Charges are clearly disclosed to customers before ordering.

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

(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.

(b) The provisions of Sec. 5903(a)(3)(ii), (iii) and (iv) do not apply to Covered Establishments covered by a valid collective bargaining agreement if the agreement expressly provides for the distribution of Service Charges to the Employee(s) who performed services for the customers.

SEC. 5904. NO IMPACT ON HEALTH CARE SECURITY ORDINANCE

Nothing in this article shall be interpreted to affect requirements for Covered Establishments under the San Francisco Health Care Security Ordinance, as amended.

SEC. 5905. ADMINISTRATION AND ENFORCEMENT

This Article 59 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. 5906. PENALTIES AND ENFORCEMENT.

(a) Enforcement Procedure. The OEWD Director shall issue an administrative citation for the violation of any section of this Article 59. 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 5906.

(b) Violations Subject to Penalties. Any Covered Establishment that violates any provision of this Article 59 shall be subject to an administrative penalty imposed by order of the

OEWD Director. For purposes of assessing penalties for violation of Section 5903, a separate violation shall accrue each time a customer transaction is processed that includes surcharges that were excluded from prices presented to that customer in violation of this section. For example, if a Restaurant excludes a surcharge from prices on menus given to three customers, and two customers order and pay checks that include the surcharge, the Restaurant shall accrue two violations.

(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 59, 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. 5907. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Article 59, 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. 5908. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 59, 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. 5909. AMENDMENT.

The Board of Supervisors may amend this Article 59 by ordinance by a two-thirds vote and without a vote of the people, but only to further the intent as set in Section 5901.

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. Competing Measures.

In the event that this measure appears on the same ballot as one or more measures which would prevent the Transparent Restaurant Pricing Act from being implemented, the other measure or measures shall be deemed in conflict. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety.

A measure appearing on the same ballot as this measure shall not be deemed to be in conflict solely because the other measure modifies the Police Code or adds a separate prohibition of surcharges with similar criteria.

Section 5. Effective Date.

The effective date of this ordinance shall be 30 days after the date the official vote count is declared by the Board of Supervisors.