

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2021

COUNCIL BILL NO. 21-0606
COMMITTEE OF REFERENCE:
4 Finance & Governance
5

6 A BILL

7 **For an ordinance amending article X of chapter 53, of the Denver Revised**
8 **Municipal Code, regarding the disclosure of information on receipts relating to**
9 **third-party food delivery services in the city.**
10

11 **Section 1.** That Section 53-471, D.R.M.C., is amended by deleting the language stricken and
12 adding the language underlined, to read as follows:

13 **Sec. 53-471. Third-party food delivery commissions.**

14 (a) A third-party food delivery platform shall not perform any service for or disclose any
15 information about a retail food establishment without their consent.

16 ~~(b) (1) No person shall cause a third-party food delivery platform to charge a retail food~~
17 ~~establishment a commission fee for the use of the platform's services for delivery or pick-up that~~
18 ~~exceeds 15% of the purchase price per online order.~~

19 ~~(2) The provisions of this section shall not limit the ability of any retail food establishment to~~
20 ~~choose to pay a higher commission or supplemental fee to access additional advertising or other~~
21 ~~products and services offered by any third-party food delivery platform.~~

22 ~~(c) No person shall cause a third-party food delivery platform to reduce the compensation~~
23 ~~rate paid to a delivery service driver or garnish gratuities in order to comply with subsection (b) of this~~
24 ~~section.~~

25 (db) A third-party delivery food platform shall not charge any additional fee to a retail food
26 establishment that it has not voluntarily agreed to pay;

27 (ec) At the time a final price is disclosed to a customer for the intended purchase and delivery
28 of food from a retail food establishment through a third-party food delivery platform and before that
29 transaction is completed by the customer, the third-party food delivery platform shall disclose to the
30 customer, in plain language and in a conspicuous manner, an itemized list of any commission, fee, or
31 any other monetary payment charged to the customer by the third-party food delivery platform, along
32 with a statement that the retail food establishment pays a commission or fee in connection with the
33 purchase and delivery of the order.

34 (fd) After a transaction occurs for the purchase and delivery of food from a retail food
35 establishment through a third-party food delivery platform, the third-party food delivery platform will

1 provide an electronic or printed receipt to the customer. The receipt shall disclose, in plain and simple
2 language and in a conspicuous manner:

- 3 (1) The menu price of the ~~food~~ purchased items;
- 4 (2) Any sales or other tax applied to the transaction;
- 5 (3) Any delivery charge ~~or~~ service fee, or commission imposed on and collected from the
6 customer by the third-party food delivery platform and by the covered establishment, ~~in addition to the~~
7 ~~menu price of the food~~;
- 8 (4) A statement that the retail food establishment also pays a commission or fee in
9 connection with the purchase and delivery of the order;

10 (45) Any tip that will be paid to the person delivering the food, and not to the third-party food
11 delivery platform, that was added into the transaction when it occurred, and

12 ~~(5) Any commission associated with the transaction.~~

13 (ge) No third-party food delivery platform may charge any fee from a retail food establishment
14 for a telephone order if a telephone call between such retail food establishment and a customer does
15 not result in an actual transaction during such telephone call.

16 (hf) For purposes of this section, the term:

- 17 (1) "Manager" means the manager of finance or designee.
- 18 (2) "Online order" means an order placed by a customer through a platform provided by the
19 third-party food delivery platform for delivery or pickup within the city.
- 20 (3) "Purchase price" means the menu price of an online order, excluding taxes, gratuities, or
21 any other fees that may make up the total cost to the customer of an online order.
- 22 (4) "Retail Food Establishment" shall have the same meaning as provided in section 23-
23 2(30) of the Revised Municipal Code.
- 24 (5) "Telephone order" means an order placed by a customer to a restaurant through a
25 telephone call forwarded by a call system provided by a third-party food delivery platform for delivery
26 or pickup within the city.

27 (6) "Third-party food delivery platform" means any person, website, mobile application, or
28 other internet service that offers or arranges for the sale of food and beverages prepared by, and the
29 same-day delivery or same-day pickup of food and beverages from, retail food establishments.

30 (ig) Complaints. Subject to any rules and regulations that may be issued by the manager,
31 any retail food establishment may submit a complaint of a violation of this section to the manager. The
32 burden of demonstrating to the manager's satisfaction that a violation has occurred rests with the retail
33 food establishment making the complaint and shall be demonstrated by a preponderance of the
34 evidence. Any such complaint shall be made in writing to the manager and shall include all information

1 relied upon by the retail food establishment.

2 (jh) *Investigation.* The manager shall investigate written complaints, shall notify any third-
3 party food delivery platform alleged to have violated this section of any complaint, and shall provide a
4 summary of findings regarding any such complaint to both the complainant and the third-party delivery
5 platform. Third-party food delivery platforms shall maintain books and records sufficient for the
6 manager to conduct an investigation an issue an assessment under this article. Such books and
7 records shall be made available to the manager upon demand.

8 (ki) *Civil or Administrative Penalty.* If the manager determines a violation of this article has
9 occurred, the third-party food delivery platform shall be subject to a civil penalty of not more than nine
10 hundred ninety-nine dollars (\$999.00) per violation, each day a violation of this article occurs. For
11 purposes of this article, the continuation of a violation shall be a separate violation for each day the
12 manager determines a third-party food delivery platform has violated this article. The manager is
13 hereby authorized to waive for good cause shown any civil penalty assessed under this article.

14 (lj) *Administrative Hearing.* Any person who disputes an assessment arising out of or
15 regarding a civil penalty assessed pursuant to this Article shall be resolved by administrative hearing
16 pursuant to the procedure established by section 53-50, regarding hearings before the manager. The
17 decision of the manager is the final decision which may only be appealed to Denver district court under
18 the provisions of Colorado Rule of Civil Procedure 106(a)(4) within thirty (30) days of the date the
19 order becomes final.

20 (mk) *Interest on late payments, penalty.* Interest and penalties shall be assessed in the
21 amounts and pursuant to the procedure established by section 53-46.

22 **Section 2.** That section 53-472, D.R.M.C., is amended by deleting the language stricken and
23 adding the language underlined, to read as follows:

24 **Sec. 53-472. - Sunset.**

25 Chapter 53, Article X shall be repealed effective ~~June 14, 2021~~ December 31, 2021.

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1 COMMITTEE APPROVAL DATE: May 25, 2021 by Consent

2 MAYOR-COUNCIL DATE: June 1, 2021 by Consent

3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9

10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

11 PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: May 19, 2021

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
13 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
14 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
15 3.2.6 of the Charter.
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17 Kristin M. Bronson, Denver City Attorney

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19 BY: *Kristin M. Bronson*, Assistant City Attorney DATE: Jun 3, 2021