

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2020

COUNCIL BILL NO. CB20-0935
COMMITTEE OF REFERENCE:
4 Finance & Governance

5 A BILL

6
7 **For an ordinance restating Article X of Chapter 53, of the Denver Revised**
8 **Municipal Code to establish a temporary maximum fee that can be charged for**
9 **third-party food delivery services in the city.**
10

11 **WHEREAS**, the council finds and determines that the recent COVID-19 crisis and emergency
12 orders continue to restrict all food service establishments from operating freely within the city, thereby
13 increasing the need for take-out meal services; and,

14 **WHEREAS**, the council finds and determines that the restrictions from freely operating within
15 the city have had severe financial impacts on all food service establishments within the city; and,

16 **WHEREAS**, the council finds that while some restaurants may receive take-out orders directly,
17 there are many third-party food delivery platforms and other services that operate through websites
18 and/or mobile phone applications used by consumers to quickly and easily order pick-up and delivery
19 meals from local restaurants; and,

20 **WHEREAS**, the council finds that in most instances the third-party food delivery platforms and
21 services, without the local restaurant's knowledge or consent, will purport to sell meals from the local
22 restaurant to consumers, and sometimes charge exorbitant fees to the already struggling local
23 restaurants during the time of and following the declared emergency that restricts on-premises dining;
24 and,

25 **WHEREAS**, the council finds that the fees charged by a third-party food delivery platform
26 should be capped for a period of time while on-premises dining remains restricted to avoid further
27 harm to food establishments in the city.

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29 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
30 **DENVER:**

31 **Section 1. That Chapter 53, Article X, of the Denver Revised Municipal Code shall be deleted**
32 **and restated to as follows:**
33

1 **ARTICLE X. THIRD PARTY FOOD DELIVERY FEES**

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

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

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

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

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

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

16 (e) At the time a final price is disclosed to a customer for the intended purchase and delivery of
17 food from a retail food establishment through a third-party food delivery platform and before that
18 transaction is completed by the customer, the third-party food delivery platform shall disclose to the
19 customer, in plain language and in a conspicuous manner, any commission, fee, or any other
20 monetary payment charged to the customer by the third-party food delivery platform.

21 (f) After a transaction occurs for the purchase and delivery of food from a retail food
22 establishment through a third-party food delivery platform, the third-party food delivery platform will
23 provide an electronic or printed receipt to the customer. The receipt shall disclose, in plain and simple
24 language and in a conspicuous manner:

25 (1) The menu price of the food;

26 (2) Any sales or other tax applied to the transaction;

27 (3) Any delivery charge or service fee, imposed on and collected from the customer by the third-
28 party food delivery platform and by the covered establishment, in addition to the menu price of the
29 food;

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

32 (5) Any commission associated with the transaction.

33 (g) No third-party food delivery platform may charge any fee from a retail food establishment for
34 a telephone order if a telephone call between such retail food establishment and a customer does not

1 result in an actual transaction during such telephone call.

2 (h) For purposes of this section, the term:

3 (1) "Manager" means the manager of finance or designee.

4 (2) "Online order" means an order placed by a customer through a platform provided by the
5 third-party food delivery platform for delivery or pickup within the city.

6 (3) "Purchase price" means the menu price of an online order, excluding taxes, gratuities, or
7 any other fees that may make up the total cost to the customer of an online order.

8 (4) "Retail Food Establishment" shall have the same meaning as provided in section 23-2(30) of
9 the Revised Municipal Code.

10 (5) "Telephone order" means an order placed by a customer to a restaurant through a telephone
11 call forwarded by a call system provided by a third-party food delivery platform for delivery or pickup
12 within the city.

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

16 (i) *Complaints.* Subject to any rules and regulations that may be issued by the manager, any
17 retail food establishment may submit a complaint of a violation of this section to the manager. The
18 burden of demonstrating to the manager's satisfaction that a violation has occurred rests with the retail
19 food establishment making the complaint and shall be demonstrated by a preponderance of the
20 evidence. Any such complaint shall be made in writing to the manager and shall include all information
21 relied upon by the retail food establishment.

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

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

34 (l) *Administrative Hearing.* Any person who disputes an assessment arising out of or regarding

1 a civil penalty assessed pursuant to this Article shall be resolved by administrative hearing pursuant to
2 the procedure established by section 53-50, regarding hearings before the manager. The decision of
3 the manager is the final decision which may only be appealed to Denver district court under the
4 provisions of Colorado Rule of Civil Procedure 106(a)(4) within thirty (30) days of the date the order
5 becomes final.

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

8 **Sec. 53-472. Sunset.**

9 Chapter 53, Article X shall be repealed effective February 9, 2021.

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11 COMMITTEE APPROVAL DATE: September 15, 2020

12 MAYOR-COUNCIL DATE: September 22, 2020

13 PASSED BY THE COUNCIL _____

14 _____ - PRESIDENT

15 APPROVED: _____ - MAYOR _____

16 ATTEST: _____ - CLERK AND RECORDER,
17 EX-OFFICIO CLERK OF THE
18 CITY AND COUNTY OF DENVER
19

20 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

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22 PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: September 14, 2020

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24 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
25 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
26 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
27 3.2.6 of the Charter.
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29 Kristin M. Bronson, Denver City Attorney

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31 BY: Kristin J. Crawford, Assistant City Attorney DATE: Sep 23, 2020