

ORDINANCE NO. 2300

INTRODUCED BY: ALLEN-THOMAS, FRANK, GRIMES, GUARDIOLA, HURST,
HUSEMAN, MADERA, NOBLE, SMITH

AN ORDINANCE ENACTING A NEW ARTICLE IV IN CHAPTER 9 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO ESTABLISH A TEMPORARY MAXIMUM FEE THAT CAN BE CHARGED FOR THIRD-PARTY FOOD DELIVERY SERVICES IN THE CITY OF COMMERCE CITY, COLORADO

WHEREAS, the City of Commerce City, Colorado, (“City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution, and as such the City has all legislative powers and functions of home rule municipal government as reserved to it by the Colorado Constitution and the laws of the state of Colorado;

WHEREAS, the City’s food service establishments are essential to the vitality and culture of the City and provide food to the City’s residents and businesses, employ City residents, attract visitors, and provide tax revenue;

WHEREAS, the ongoing public health crisis and the emergency orders issued by the State of Colorado and the Tri-County Health Department to control and slow the spread of the SARS-CoV-2 virus and to mitigate the effects of the disease resulting from the virus (“COVID-19”) have restricted the movement and congregation of persons in the City and have restricted food establishments from operating freely and at full on-premises capacity within the City;

WHEREAS, the COVID-19 public health emergency has had severe financial impacts on food service establishments in the City, and has caused many such establishments to struggle to survive;

WHEREAS, the COVID-19 public health emergency has increased the need for take-out and delivery meal services and the dependence of the City’s food-service establishments on the business generated through take-out and delivery orders;

WHEREAS, third-party delivery platforms and other services operating through websites and mobile phone applications offer quick and easy ordering options and allow for pick-up or delivery of food from food service establishments in the City;

WHEREAS, third-party delivery platforms and services, without the consent of food service establishments, will purport to sell meals from food service establishments in the City to consumers at prices exceeding the menu rate and sometimes charge exorbitant fees that further harm struggling establishments and deter consumers during the COVID-19 public health emergency that has restricted on-premises dining business;

WHEREAS, the City Council finds that such fees cause substantial harm to the City’s food service establishments and the City’s consumers, threaten the viability of the City’s food service establishments during and after the public health emergency, and cause substantial harm to the

general public welfare, and as such, the City Council desires to temporarily limit the fees temporarily to avoid further harm; and

WHEREAS, the City Council intends that this ordinance shall be effective only through March 31, 2021, and intends to consider a repeal of this ordinance if, at an earlier time, food establishments in the City are permitted by public health orders to return to full indoor dining.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1 - FINDINGS. The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare for the reasons set forth in this ordinance.

SECTION 2 – ENACTMENT. A new Article IV in Chapter 9 of the Commerce City Revised Municipal Code, to be entitled “Third Party Food Delivery Services,” is enacted as set forth in Exhibit A.

SECTION 3 – EXPIRATION. Chapter 9, Article IV of the Commerce City Revised Municipal Code as enacted through this ordinance shall be repealed effective March 31, 2021, unless repealed earlier by an ordinance enacted by the City Council. If before March 31, 2021, public health orders permit food establishments in the City to return to full capacity indoor dining, the City Attorney shall prepare an emergency ordinance repealing this ordinance for the Council’s consideration.

INTRODUCED AND PASSED ON FIRST READING AND PUBLIC NOTICE
ORDERED THIS 2ND DAY OF NOVEMBER 2020.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 16TH DAY OF NOVEMBER 2020.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

Sec. 9-4001. Definitions.

Restaurant delivery fee program coordinator means that person designated as such by the City Manager to perform the functions assigned in this ordinance.

Food establishment means a retail food establishment, as defined by C.R.S. § 25-4-1602(14), as amended, in the city that holds a general business license.

Online order means an order placed by a customer through a platform provided by a third-party food delivery platform for delivery or pickup within the city.

Purchase price for purposes of this ordinance, means the final price of an online order, excluding taxes, gratuities, or any other fees that may make up the total cost to the customer of an online order.

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

Third-party food delivery platform means any person, company, website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, retail food establishments located within the city.

Sec. 9-4002. Third-party food delivery platform fee restrictions.

- (a) A third-party food delivery platform shall not perform any service for, or disclose any information, about a food establishment without the food establishment's written consent.
- (b) No person shall cause a third-party food delivery platform to charge a food establishment a commission or fee for the use of the platform's services for delivery or pick-up that exceeds 15% of the purchase price per online order or telephone order.
- (c) No person shall cause a third-party food delivery platform to reduce the compensation rate paid to a delivery service driver or garnish gratuities or tips to the food establishment or its staff or any delivery service driver to comply with subsection (b) of this section.
- (d) At the time a purchase price is disclosed to a customer for the intended purchase from a food establishment through a third-party food delivery platform, and before that transaction is completed by the customer, the third-party food delivery platform shall disclose to the customer, any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery platform as a line item on the receipt.
- (e) After a transaction occurs for a purchase from a food establishment through a third-party food delivery platform, the third-party food delivery platform shall provide an electronic or printed receipt to the customer. The receipt shall disclose, in plain and simple language

and in a conspicuous manner:

- (1) The menu price of the purchases.
 - (2) Any tax applied to the transaction.
 - (3) Any delivery charge or service fee, imposed on and collected from the customer by the third-party food delivery platform and by the local food establishment, in addition to the menu price of the food.
 - (4) Any tip that will be paid to the person delivering the food, and not to the third-party food delivery platform, that was added into the transaction when it occurred.
 - (5) Any commission payable to the third-party food delivery platform associated with the transaction.
- (f) No third-party food delivery platform may charge any fee from a food establishment for a telephone order if a telephone call between such food establishment and a customer does not result in an actual transaction during such telephone call.
- (g) The provisions of this section shall not limit the ability of any retail food establishment to choose to pay a higher commission or supplemental fee to access additional advertising or other products and services offered by any third-party food delivery platform.

Sec. 9-4003. Complaints and records.

- (a) *Complaints.* The Restaurant Delivery Fee Program Coordinator shall create procedures for the submittal and review of complaints of violations of this ordinance. Any food establishment may submit a complaint of a violation of this section to the Restaurant Delivery Fee Program Coordinator. Any such complaint shall be made in writing to the Restaurant Delivery Fee Program Coordinator and shall include all information relied upon by the food establishment as the basis for the complaint.
- (b) *Investigation.* The Restaurant Delivery Fee Program Coordinator shall investigate all written complaints, shall notify any third-party food delivery platform alleged to have violated this article of any complaint lodged against it, and shall provide a summary of findings regarding any such complaint to both the complainant and the third-party delivery platform. The Restaurant Delivery Fee Program Coordinator shall also provide a summary of findings and supporting records to the city attorney and the licensing agent.
- (c) *Records.* Third-party food delivery platforms shall maintain books and records available for the Restaurant Delivery Fee Program Coordinator to investigate any complaints. Such books and records shall be made available to the Restaurant Delivery Fee Program Coordinator upon demand. Failure to provide the records as required in this section shall be prima facie rebuttable evidence of a violation.

Sec. 9-4004. Enforcement and penalties.

- (a) *Civil infractions.* A violation of any provision of this chapter shall be deemed a civil infraction and shall be prosecuted through the city's notice of violation and administrative

hearing process established in chapter 3, article II, to the extent consistent with this section. The city shall be required to prove the violation only by a preponderance of the evidence except when a defendant is charged with committing multiple civil infractions, as that term is used in chapter 1, and incarceration is a possible penalty. In such event, the city shall be required to prove beyond a reasonable doubt that the violation occurred.

- (b) *Notice of violation and hearing.* For purposes of enforcement of this chapter, the Restaurant Delivery Fee Program Coordinator may issue a notice of violation as if they were a peace officer under chapter chapter 3, article II. A notice of violation under this chapter shall not provide a compliance date and all requests for protest hearings must be properly filed within 10 days from the date of service indicated on the notice of violation. A notice of violation issued in this chapter shall be deemed effective and final and the penalty identified therein will be effective 11 days after the date of service indicated on the notice of violation if a protest is properly filed.
- (c) *Penalties.* Violations of this chapter shall be subject to the penalties set forth in section 3-2304 and chapter 1, article III. No abatement by the city is authorized. The licensing agent is authorized to take action to suspend or revoke the business license of any third-party food delivery platform pursuant to section 9-1009 based on the report and records of the Restaurant Delivery Fee Program Coordinator.
- (d) *Settlement.* The city attorney, with the approval of the Restaurant Delivery Fee Program Coordinator, is authorized to reach a settlement agreement with respect to one or more alleged violations of this chapter.

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