

# MEMO

**To:** Mayor Huseman, Mayor Pro Tem Frank and Members of City Council  
**From:** Michelle Claymore, Economic Development Director  
**CC:** Interim City Manager Tinklenberg; City Attorney Robert Sheesley  
**Date:** November 12, 2020  
**RE:** **Ord. 2300 – Temporary fee cap for third party food delivery companies**

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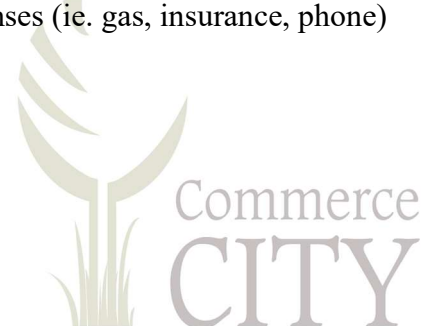
Restaurants all around the world are struggling during the COVID-19 pandemic and many are in danger of closing. The National Restaurant Association estimates that the pandemic will result in \$225B in lost revenue and the elimination of 5-7 million jobs in the restaurant industry.

There are over 80 restaurants in Commerce City, including full-service, quick service and fast food. All restaurants in Colorado are ordered to close their dining rooms on March 16, 2020 and they remained closed until June 19, 2020. At this time, the Colorado Department of Public Health and Environment (CDPHE) allowed restaurants to reopen their dining rooms at 50% their normal capacity. CDPHE began the DIAL or county-tiered system on September 15, 2020 and on October 28, 2020, due to rising COVID cases, Adams County went to a Safer at Home Level 3 tier, further limiting in-dining capacity from 50% to 25%.

Due to restaurants in Commerce City currently only able to have 25% of their normal in-dining capacity, many have or are looking at increasing food delivery options. Some restaurants are utilizing third party delivery app companies to offer delivery service to customers, such as GrubHub, Postmates, Door Dash or Uber Eats.

Reportedly, this is how the delivery app business model works:

- Customer pays a delivery fee (\$5-10 per order)
- Customer pays a tip to delivery driver (typically 15-20%)
- Restaurant pays up to 15-35% commission on each order
- Restaurant may pay additional fees for on-line marketing support
- Platform pays the driver, driver background check, app technology  
--Driver earns around \$1+ per delivery and 100% of tip. Drivers use their own vehicle and are responsible for their own expenses (ie. gas, insurance, phone)



Restaurant owners that use these services have shared that there are growing issues when using a third party delivery app company, including rising commissions/fees (up to 35% of food charge), which are turning off some customers and shrinking restaurant revenues.

When staff asked about third party delivery app companies and if Commerce City restaurant owners would support an ordinance that places temporary cap on fees, these are the comments/testimonials shared:

- “The percentage of third party apps is high, and it is a complicated situation for businesses like ours that can’t offer delivery service. Any profit you have as a business, you are practically giving it to them. Your profit margin is pretty much nothing. This is hurting our businesses. It’s almost like practically working for them but at the same time there is no choice, because if you don’t they will give your business to another competitor in your area and you lose a sale. I didn’t want to include them in any of the platforms because I analyzed it and found out it was a good income for them, and not us. For every \$10,000 in sales on those platforms, \$2500 is for them. And you only get about 70 or so percent to cover all other expenses in the restaurant leaving a profit margin of next to nothing.” --**Martin Vargas, Manager, Las Tortugas**

- “When we had the (delivery) apps we observed the companies would charge 30% of the order. After third party apps took their fees, there was little profit left for the business. We started to offer this app, but then we cancelled it because of the little profit. One client commented that they ordered on the Door Dash or Grub Hub app and it said the food was going to be there in 70 minutes, but at that time we didn’t even have that app. That customer was going to pay \$80 for the order. When that same customer called to order from us directly the food was ready in 10 minutes. The customer paid \$40 at the food truck, instead of \$80. We didn’t even know that menu was online with one of those apps, and was shocked to find out when a customer told me. We believe the apps may have caused us to lose clients because of the high menu prices they were posting that I didn’t know about. I’m ok that they charge something, but it’s just so much for just delivery and we are enduring the costs of operating a restaurant. And they charge the customer also. Due to the pandemic, we are offering customers a pick up option and believe we have to survive by offering the call in/carry out model. I know how important the delivery aspect is during this time to my business and I have considered hiring a delivery staff person but that wouldn’t work. It’s impossible due to the logistics of orders being placed on opposite ends of town resulting in cold food delivered. Would love to have lots of drivers, which is not feasible.” --**Martha Gonzalez, Owner, El Lechon food truck.**

- “The few (customers) that have used these delivery services have made complaints about the fees. This reflects on our business negatively because customers call us to complain.” --**Elsa Rojo, Owner, El Camaron**
- “Uber Eats and GrubHub charge 30%. The salesman claimed it would be 15% or 20% and we tried to negotiate back and forth on getting that lowered. Would be nice if they could work out a fair rate. Other companies like Doordash, will call and make an order and we are not sure what they are trying to order because it is from a menu we have no knowledge about. In one instance, they came in and placed an order from the menu posted on the app. We happened to see the Doordash menu prices and the prices were incorrect and upscaled.” --**David Warstler, Owner, Wortlewoods Smoke Pit**
- “We use GrubHub, DoorDash and Uber Eats. Their fees are too high (28-33%) and can be misleading. We had to increase prices on online orders just to make up for the app charges. We implemented offering a 20% discount based on the online menu when people dine-in or do carry-out to encourage more visits, as opposed to customers using the (third party delivery) app. But at the same time we have no choice other than joining the third party apps. If apps could reduce fees to a decent amount, we could take a 10-15% hit, but 30% off is a lot. So depending on the items ordered—(for example) if drinks or appetizers, that doesn't cost as much and we can absorb the fees. But if a meal or something like a burger is ordered, it requires more labor and we spend more money making the food. We would definitely support a temporary cap on fees.” --**Theodoro Castrejon, Owner, Ted's Philly Cheesesteaks and Mexican Grill**
- “We don't (currently) use third party delivery app companies because of the high fees. When we refused to use services from Uber Eats, their website started listing us as closed. When we did use them, the company would post our menu and increase the prices of the menu items (without our consent).” --**Ben Martinez, Owner, El Jardin**
- “Third party apps have reached out to us but we decided to not use them because the initial 25% and now 30% fees was too high to even consider.” --**Jaqueline Granados, Owner, Las Margs**
- “We would support a temporary cap of 15%. When Denver's ordinance took effect, we saw an increase in the total number of sales because people were paying less.” --**Gabe Wheeler, Owner, G's Tacos.**

To support restaurants during the COVID pandemic, when many restaurants need to increase food delivery services, the Colorado Restaurant Association is asking municipalities to place temporary caps on third party delivery fees and include other restrictions, including language

in ordinances that ensures 100% of the tips go to delivery drivers. This is to protect drivers so driver pay can't be decreased to cover fee caps.

Several local municipalities have or are in the process of passing food delivery fee cap-related ordinances, including Aurora, Broomfield and Denver. Staff supports placing a temporary cap of 15% on third party delivery fees as a way to bring some financial relief to Commerce City's restaurants during the pandemic. Commerce City's proposed ordinance prohibits the following actions:

- Performing delivery or other service or offering that service for a restaurant without the restaurant's consent.
- Charging commissions or fees for the delivery platform service (for delivery or pick up) exceeding 15% of the purchase price (based on the restaurant menu price, not including taxes, tips, or other fees).
- Garnishing tips to cover the fee limit.
- Charging fees for phone orders through the platform that don't result in a transaction.

The ordinance also requires clear disclosures of fees and other costs prior to concluding the order and on receipts.

The ordinance provides for a civil penalty consistent with the City's existing civil infraction penalties. A violation will be investigated and may be cited by a designee of the city manager. A platform cited for a violation of this section may protest the citation using the City's existing administrative hearing process. Revocation or suspension of a business license may be sought.

The ordinance is effective through March 31, 2021. The ordinance requires the city attorney to prepare an ordinance repealing the ordinance if restaurants are permitted to operate at full capacity before that date.

To enforce the ordinance, Commerce City will name a staff person as a restaurant delivery fee program coordinator to investigate complaints and initiate notices of violation if necessary.