

ORDINANCE NO. 2143

AN ORDINANCE CREATING CHAPTER 5-41 OF THE BROOMFIELD MUNICIPAL
CODE TO TEMPORARILY CAP THIRD-PARTY RESTAURANT DELIVERY FEES
WITHIN THE CITY AND COUNTY OF BROOMFIELD

WHEREAS, the recent COVID-19 crisis and emergency orders, including state executive and public health orders, continue to affect operation of food service establishments within Broomfield, thereby increasing the need for take-out meal services; and

WHEREAS, these effects include severe financial impacts on many food service establishments within Broomfield; and

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

WHEREAS, in many instances the third-party food delivery platforms and services, without the local restaurant's knowledge or consent, will purport to sell meals from the local restaurant to consumers, and sometimes charge exorbitant fees to already struggling local restaurants;

WHEREAS, the fees charged by a third-party food delivery platform should be capped for a period of time while on-premises dining remains restricted to avoid further harm to food establishments in Broomfield; and

WHEREAS, limiting the per-order fees by capping the fees at 15% will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Chapter 5-41 of the Broomfield Municipal Code is created to read as follows:

Chapter 5-41 Third-Party Restaurant Delivery Fees

5-41-010 - Definitions.

For purposes of this chapter, the term:

- (A) *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.

- (B) *Purchase price* means the menu price of an online order, as determined by the retail food establishment, excluding taxes, gratuities, or any other fees that may make up the total cost to the customer of an online order.
- (C) *Retail food establishment* means a retail operation that stores, prepares, or packages food for sale for human consumption or serves or otherwise provides food for sale for human consumption to consumers directly, or indirectly through a delivery service, whether such food is consumed on or off the premises.
- (D) *Third-party food delivery platform* means any person, 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.

5-41-020 - Delivery fee cap; disclosures.

- (A) A third-party food delivery platform shall not perform any service for or disclose any information about a retail food establishment without their consent.
- (B) Limitation on delivery fees.
 - (1) No third-party food delivery platform shall charge a retail 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.
 - (2) 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.
- (C) A third-party food delivery platform shall not reduce the compensation rates paid to the delivery service driver, or garnish gratuities in order to comply with subsection (B) of this section.
- (D) A third-party delivery food platform shall not charge any additional fee to a retail food establishment that it has not voluntarily agreed to pay;
- (E) At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a retail 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, in plain language and in a conspicuous manner, any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery platform.
- (F) After a transaction occurs for the purchase and delivery of food from a retail 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 purchase price of the food;
- (2) Any sales or other 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 covered 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, and
- (5) Any commission associated with the transaction.

5-41-030 - Complaints and investigation.

- (A) Any person may submit a complaint of a violation of this chapter to the Broomfield Police Department.
- (B) Third-party food delivery platforms shall maintain books and records sufficient to show compliance with this article.
- (C) Such books and records shall be made available to the city upon subpoena pursuant to section 2-28-050(B), B.M.C.

5-41-040 - Violation; penalty.

The penalty for violation of the terms of this chapter shall be as provided in Chapter 1-12, B.M.C.

Section 2. This ordinance shall cease to have effect on March 31, 2021, and Chapter 5-41 of the Broomfield Municipal Code shall be automatically repealed at that time, unless further legislative action is taken to extend the effective date of this ordinance.

INTRODUCED AND APPROVED after first reading on October 27, 2020, and ordered published in full.

INTRODUCED A SECOND TIME and approved on November 10, 2020, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



Mayor

ATTEST:

Samantha Monroe

Deputy City Clerk



APPROVED AS TO FORM:

Shaun Sullivan

City and County Attorney

T.S.S.

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