

CITY MANAGER'S OFFICE MEMORANDUM
#85-2020

DATE: December 21, 2020

TO: Honorable Mayor Meredith Leighty and City Council Members

FROM: Heather Geyer, City Manager *hmg*
Debbie Tuttle, Economic Development Director *DT*

SUBJECT: CB-1964 – Food Delivery Fee Cap Emergency Ordinance

PURPOSE

To consider CB-1964, an emergency ordinance adding Article 3 to Chapter 20 of the Municipal Code, that places a 15% fee cap on third-party food delivery fees until March 31, 2021. This ordinance seeks to provide relief to restaurants that have experienced severe financial impacts as a result of COVID-19 restrictions.

BACKGROUND

On March 16, 2020, restaurants in Colorado were ordered to close their dining rooms due to COVID-19 restrictions enacted by the Colorado Department of Public Health and Environment. They remained closed until June 19, 2020. When restaurants reopened, they could operate at 50% capacity. Currently, restaurants cannot seat their customers and can only offer take-out, curbside or delivery services.

As a result of the restrictions, restaurants increased their use of third-party delivery services such as Grubhub, DoorDash, Postmates and Uber Eats. Generally speaking, this is how the third-party delivery app business model works:

- Customer pays a delivery fee (\$5-10 per order).
- Customer pays a tip to the delivery driver (typically 15-30%).
- Restaurant pays a 15-35% commission on each order.
- Restaurant may pay additional fees for online marketing support.
- Platform pays for the driver, driver background check and app technology.
- The driver earns around \$1+ per delivery and 100% of the tip.
- Drivers use their own vehicle and are responsible for their own expenses (ie. gas, insurance, phone).

Currently, Northglenn has approximately 54 restaurants operating. Based on a review of a couple of third-party services, it is estimated that only 10 of those restaurants are not utilizing them.

HB20B-1005

During the extraordinary Colorado Legislative Session this November and December, Governor Jared Polis signed into law HB20B-1005 - Local Authority To Impose Food Delivery Fee Restrictions. This bill allows local governments to control how much of those fees can be charged during a declared public health emergency. Specifically, the bill does the following:

- “The bill allows the governing body of municipalities and counties to limit the fee that a third-party food delivery service may charge to a retail food establishment, and place other restrictions on delivery services by ordinance or resolution, including a civil penalty.”
- “Local governments that choose to impose restrictions on food delivery services will have increased regulatory costs of enforcement. These local governments may also receive

revenue from civil penalties in the event of noncompliance by third-party food delivery services.”

- The bill also immunizes any county or municipality that enacts an ordinance or a resolution as authorized by the bill from liability for economic damage suffered as a result.

Northglenn’s proposed ordinance prohibits the following actions:

- Performing a 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 pickup) 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.

Enforcement

To enforce the ordinance, Economic Development staff will investigate complaints and initiate notices of violation if necessary.

Violation & Penalty

Violation of this ordinance would be considered a civil infraction.

To date, the following entities have passed a 15% temporary fee cap: Adams County, City of Aurora, City of Commerce City, City & County of Broomfield, City of Boulder, and the City and County of Denver. The cities of Brighton and Westminster are considering the fee cap.

STAFF RECOMMENDATION

Staff recommends approval of CB-1964.

BUDGET/TIME IMPLICATIONS

There are no financial impacts to the City. The emergency ordinance requires only one reading and will take effect upon adoption.

STAFF REFERENCE

If Council members have any questions, they may contact City Manager Heather Geyer at hgeyer@northglenn.org or 303.450.8706.

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1964
Series of 2020

Series of 2020

A BILL FOR AN EMERGENCY ORDINANCE TO ADD A NEW ARTICLE 3 TO CHAPTER 20 OF THE NORTHGLENN MUNICIPAL CODE REGARDING THIRD-PARTY FOOD DELIVERY PLATFORM FEES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Northglenn Municipal Code is amended by the addition thereto of a new Article 3 to the existing Chapter 20, to read as follows:

ARTICLE 3

THIRD-PARTY FOOD DELIVERY PLATFORM FEES

Section 20-3-1. Findings and Intent. The City Council finds and determines as follows:

(a) The City Council finds and determines that the recent COVID-19 pandemic and resulting emergency orders continue to restrict food service establishments from operating freely in the City of Northglenn (the "City"), thereby increasing the demand for take-out meal services;

(b) The City Council finds and determines that the restrictions from freely operating within the City have had severe financial impacts on all food service establishments within the City;

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

(d) The City Council finds that in most 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 the already struggling local restaurants during the time of and following the declared emergency that restricts on-premises dining; and

(e) The City Council finds that the fees charged by a third-party food delivery platform should be immediately capped for the immediate preservation of health and safety and for the protection of public convenience and welfare while on-premises dining remains restricted to avoid further harm to food establishments in the City.

Section 20-3-2. Definitions. As used in this Article, the following terms shall have the following meanings:

Food establishment or retail food establishment means a retail food establishment, as defined by C.R.S. § 25-4-1602(14), that is located in the City.

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 Article, means the final price of an online order of prepared food or beverages, 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.

Section 20-3-3. Fee Restrictions.

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

(b) No person shall cause a third-party food delivery platform to charge a retail food establishment a commission 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; provided that 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) No person shall cause a third-party food delivery platform to reduce the compensation rate paid to a delivery service driver or garnish gratuities in order to comply with subsection (b) hereof.

(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 menu 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 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; and
- (5) Any commission associated with the transaction.

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

(h) No third-party food delivery platform may charge any fee to a retail food establishment for an online order if the online order between such retail food establishment and a customer does not result in an actual transaction during such online order.

Section 20-3-4. Violation and penalty.

(a) Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Article 1 of Chapter 1 of this Code.

(b) For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limited the City from pursuing other such remedies or penalties, including an action at law or equity.

Section 20-3-5. Sunset. This Article 3 of Chapter 20 shall be repealed effective March 31, 2021, unless extended by the City Council by separate ordinance.

Section 2. Authority. The City Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police powers); (ii) Section 31-15-401, C.R.S. (concerning municipal police powers); (iii) Section 31-15-501 C.R.S. (concerning municipal power to regulate businesses); (iv) C.R.S. § 31-15-904 (concerning specific authority to cap delivery fees; (v) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in

the City of Northglenn Home Rule Charter (the "Charter").

Section 3. Emergency Declared. Pursuant to Section 4.11 of the Charter, the City Council finds, determines and declares that passage of this Ordinance is necessary for the immediate preservation of public property, health, peace and safety in order to prevent exorbitant fees from being imposed during the COVID-19 pandemic on the delivery of food to consumers within the City.

Section 4. The City Council finds and determines that this Ordinance is necessary for the immediate preservation of public property, health, peace, or safety based on the emergency declaration set forth herein. Accordingly, pursuant to Section 4.11 of the Northglenn City Charter, **this Ordinance shall take effect immediately upon enactment.**

PASSED ON FIRST AND FINAL READING this ____ day of _____, 2020.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney