

ORDINANCE NO. 2020-____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 ADDING ARTICLE III REFERRED TO AS “TEMPORARY CAPS ON FEES FOR FOOD DELIVERY,” AND OTHER RELATED MATTERS

WHEREAS, the City of Aurora, Colorado, (the “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 the authority to regulate matters of local concern; and

WHEREAS, currently the United States is undergoing a severe pandemic due to a respiratory illness caused by the Severe Acute Respiratory Syndrome Coronavirus 2, SARS-CoV-2, (“COVID-19”) creating a national health emergency that continues to restrict all food service establishments from operating freely within the City, and causing a severe financial impact on all food service establishments within the City; and

WHEREAS, the pandemic and the restrictions associated with it have increased the need for take-out meal services for all customers, and 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 food establishments; and

WHEREAS, the Aurora City Council (the “Council”) finds that third party delivery services contract food delivery services without the knowledge or consent of local food establishments, and therefore will represent to the consumer that they are selling meals from, or on behalf of, the local food establishment to the consumers, and in some cases the delivery platforms charge exorbitant fees to the already struggling local food establishment; and

WHEREAS, the Council finds that the fees charged by a third-party food delivery platform to local food establishments in the City should be temporarily capped, while restrictions on dine in at local food establishments remain in place, to prevent further economic harm to local food establishments within the City; and

WHEREAS, the Council finds that this ordinance is necessary to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the City and its residents.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Chapter 26, Article III, of the City Code of the City of Aurora, Colorado, is hereby added and shall read as follows:

Sec. 26-61. Definitions.

“Local Food Establishment” means a business licensed within the City as required on Chapter 86 of the City Code.

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

“Purchase price” for purposes of this ordinance, means the menu 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, 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, that is engaged in business in the City as defined in Section 130-31 of the City Code.

Sec.26-62. Third-party food delivery fee or commissions limitations. Duty to disclose fees or commissions.

- (a) A third-party food delivery platform shall not perform any service for, or disclose any information, about a local food establishment without their written consent.
- (b) No person shall cause a third-party food delivery platform to charge a local 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. In order to charge a commission or fee above the 15% established in this subsection, the third-party delivery service shall receive consent from the local food establishment.

- (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 in order to comply with subsection (b) of this section.
- (d) At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a local 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 the purchase and delivery of food from a local 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 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 associated with the transaction.
- (f) No third-party food delivery platform may charge any fee from a local 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.
- (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. 26-63. Complaints. Procedure.

- (a) *Complaints.* Subject to any rules and regulations that may be issued by the City Manager or designee, any local food establishment may submit a complaint of a violation of this section to the Manager of Tax and Licensing. Any such complaint shall be made in writing to the Manager of Tax and Licensing and shall include all information

relied upon by the retail food establishment. The local food establishment bears the burden of proving a violation under this ordinance by preponderance of the evidence.

- (b) *Investigation.* The Manager of Tax and Licensing shall investigate all written complaints, shall notify any third-party food delivery platform alleged to have violated the regulations established in this ordinance of any complaint lodged against them, and shall provide a summary of findings regarding any such complaint to both the complainant and the third-party delivery platform. Third-party food delivery platforms shall maintain books and records available for the Manager of Tax and Licensing to investigate any complaints. Such books and records shall be made available to the Manager of Tax and Licensing upon demand. Failure to provide the records as required in this section shall be prima facie rebuttable evidence of a violation.
- (c) *Civil or Administrative Penalty.* If the Manager of Tax and Licensing determines a violation of this article has occurred, the third-party food delivery platform shall be subject to a civil penalty not to exceed the amount established in Section 86-77 per violation, each day a violation of this article occurs. For purposes of this article, the continuation of a violation shall be a separate violation for each day the Manager of Tax and Licensing determines a third-party food delivery platform has violated this ordinance. Nothing in this section prevents the Manager of Tax and Licensing from reaching a settlement agreement with respect to one or multiple violations.
- (d) *Administrative Hearing.* Any person or third-party delivery service who disputes a civil penalty assessed pursuant to a violation of this Article shall request a hearing in writing pursuant to the procedure established by Section 86-77, regarding hearings before the Director of Finance. The decision of the Director of Finance shall be the final decision which may only be appealed to Arapahoe District Court under the provisions of Colorado Rule of Civil Procedure 106(a)(4) within thirty (30) days of the date the order becomes final.

Section 2. All ordinances, or parts of ordinances, of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 3. The City Council will evaluate the effectiveness of this ordinance and formally act to extend it or, on March 31, 2021, the provisions of this Section shall expire

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the Office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2020.

PASSED AND ORDERED PUBLISHED BY REFERENCE this _____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

SUSAN BARKMAN,
Interim City Clerk

APPROVED AS TO FORM

HANOSKY HERNANDEZ,
Assistant City Attorney