

AN ORDINANCE CREATING CHAPTER 18, ARTICLE XX OF THE CODE OF THE CITY OF PEORIA RELATING TO THE TEMPORARY IMPOSITION OF A FEE CAP FOR THIRD-PARTY FOOD DELIVERY SERVICES

WHEREAS, in late 2019, a new and highly communicable type of Coronavirus, now commonly known as COVID-19, emerged and began to spread rapidly. Despite efforts to contain COVID-19, it continues to spread throughout Peoria and the State of Illinois; and

WHEREAS, Since March 2020, restaurants have been closed or have been limited to serving customers outdoors, or have been subjected to limits on indoor customer capacity, due to social distancing requirements; and

WHEREAS, while restaurants are closed or limited in their ability to utilize indoor premises at full capacity, they are highly reliant on third-party food delivery services; and

WHEREAS, due to the high fees imposed by third-party food delivery services, many restaurants must increase food prices to stay in business, and Peoria residents who rely on food delivery may not be able to absorb increased food prices; and

WHEREAS, many local restaurants being charged high fees struggle to remain financially viable. If these restaurants are forced to close, their workers will lose employment, which affects their ability to feed and shelter their families; and

WHEREAS, it is vital that the City's government continues to act swiftly and effectively to help and support our local businesses, their employees and our residents during this public health emergency, including supporting and providing relief for the suffering business community within the City; and

WHEREAS, COVID-19 presents an extraordinarily severe and unprecedented threat to the City of Peoria and State of Illinois. It is necessary and appropriate for the City Council to take immediate measures to protect the health, safety, and welfare of its residents by the passage of the regulations ordained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, as follows:

Section 1. Chapter 18, Article XX of the Code of the City of Peoria is hereby created by adding the following underlined language:

SECTION 1.

(a) Definitions.

For purposes of this ordinance, the following definitions apply:

"City" means the City of Peoria.

"Delivery fee" means a fee charged by a Third-Party Food Delivery Service for providing a Food Dispensing Establishment with a service that delivers food and beverages from such establishment to customers. The term does not include any other fee or cost that may be charged by a Third-Party Food Delivery Service to a Food Dispensing Establishment, such as fees for listing or advertising the Food Dispensing Establishment on the Third-Party Food Delivery Service platform or fees related to processing the Online Order.

"Food Dispensing Establishment" means any fixed location where food or drink is routinely prepared and served or provided for the public for consumption on or off the premises with or without charge. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, taverns, bars, cocktail lounges, nightclubs, industrial feeding establishments, take-out establishments, private institutions or organizations routinely serving food, catering kitchens, commissaries or any other eating or drinking establishment or operation.

"Online Order" means an order placed by a customer through or with the assistance of a platform provided by a Third-Party Food Delivery Service, including a telephone order, for delivery or pick-up within the City.

"Purchase Price" means the price, as listed on the menu of the Food Dispensing Establishment, for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the customer by the Food Dispensing Establishment through the Third-Party Food Delivery Service. This definition does not include taxes, gratuities, and any other fees or costs that may make up the total amount charged to the customer of an Online Order.

"Third-Party Food Delivery Service" means any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the delivery or pick-up of food and beverages from, no fewer than 10 Food Dispensing Establishments located in the City that are each owned and operated by different persons.

(b) Prohibitions

(1) It shall be unlawful for a Third-Party Food Delivery Service to charge a Food Dispensing Establishment a Delivery Fee that totals more than 10 percent of the Purchase Price of each Online Order on an individual or cumulative basis.

(2) It shall be unlawful for a Third-Party Food Delivery Service to charge a Food Dispensing Establishment any amount designated as a Delivery Fee for an Online Order that does not involve the delivery of food or beverages.

(3) It shall be unlawful for a Third-Party Food Delivery Service to charge a Food Dispensing Establishment any combination of fees, commissions, or costs for the Food Dispensing Establishment's use of the Third-Party Food Delivery Service that is greater than 15 percent of the Food Dispensing Establishment's monthly net sales processed through the Third-Party Delivery Service. For purposes of this subsection (b)(3), the term "fees, commissions, or costs" includes Delivery Fees.

(4) It shall be unlawful for a Third-Party Food Delivery Service to charge a Food Dispensing Establishment any fee, commission, or cost other than as permitted in Subsections 1 through 3, above.

(5) It shall be unlawful for a Third-Party Food Delivery Service to charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Food Dispensing Establishment on the Third-Party Food Delivery Service or, if no price is set by the Food Dispensing Establishment on the Third-Party Food Delivery Service, the price listed on the Food Dispensing Establishment's own menu.

(6) It shall be unlawful for a Third-Party Food Delivery service to reduce the compensation rates paid to the Third-Party Delivery Service drivers, or to garnish gratuities, as a result of any fee limitations instituted by this section.

(c) Enforcement and Rules.

The City Manager is authorized to (i) administer and enforce this ordinance, and (ii) promulgate rules necessary or useful to assist in the implementation and administration of this ordinance.

(d) Violation - Penalty.

Any person who violates any provision of this section shall be fined not less than \$500.00 nor more than \$1,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

SECTION 2. This ordinance shall not apply to any Chain Restaurant. For purposes of this ordinance only, the term "Chain Restaurant" means any group of businesses licensed as a Food Dispensing Establishment in the City with three or more locations and operating under a common business name.

SECTION 3. In light of the urgent need to ensure the proper regulation of Third-Party Delivery Service fees imposed upon Food Dispensing Establishments during the public health emergency caused by COVID-19, pursuant to 65 ILCS 5/1-2-4, this ordinance shall take effect immediately upon its passage and approval, if such passage is by a vote

of at least two-thirds of the members of this Council. In the event this ordinance passes by a majority vote of less than two-thirds of the members of this Council, it shall take effect ten days after passage and publication.

Section 2. This ordinance shall be repealed of its own accord, without further action of the City Council when indoor dining in food dispensing establishments is allowed at fifty percent (50%) or greater capacity in the City for 60 consecutive days.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this _____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED:

Jim Ardis, Mayor

ATTEST:

Beth Ball, City Clerk

EXAMINED AND APPROVED:

Corporation Counsel