

EMERGENCY

City of Cincinnati

CMZ

AWB

An Ordinance No. _____

- 2020

CONTINUING the cap on the fee that third parties can charge to restaurants located in the City of Cincinnati for delivering food originally established by Ordinance 155-2020, which cap shall be no more than 15% of the total food cost charged by the restaurant to the customer, in order to protect the viability of restaurants which are essential to the health and well-being of City residents and the City's economy and further prohibiting a reduction in compensation for food delivery drivers as a result of this cap.

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency to allow the government to marshal additional resources to combat the virus; and

WHEREAS, on March 9, 2020, the Governor of the State of Ohio declared a State of Emergency in Executive Order 2020-01D; and

WHEREAS, on March 11, 2020, Mayor of the City of Cincinnati, John Cranley, declared a state of emergency in response to the spread of COVID-19; and

WHEREAS, effective March 15, 2020, the Governor and the Ohio Department of Health issued an order closing all bars and restaurants to onsite food and beverage service and limiting restaurants to providing only carry-out and delivery service; and

WHEREAS, on March 22, 2020, after multiple instances of community spread of the virus that causes COVID-19, the Ohio Department of Health issued a Director's Order prohibiting gatherings of more than 10 individuals, closing non-essential businesses, and ordering all persons to stay in their residences unless on essential business; and

WHEREAS, on April 2, 2020, the Ohio Department of Health issued a Director's Order to extend the March 22, 2020 order due to the rapid spread of COVID-19 in the region; and

WHEREAS, on April 30, 2020, the Ohio Department of Health issued a Director's Order allowing limited businesses to reopen subject to compliance with social distancing and safety measures and otherwise extending the March 22, 2020 order's prohibition on social gathering and stay-at-home requirements; and

WHEREAS, on June 23, 2020, Mayor John Cranley issued a revised declaration of emergency effective June 29, 2020, which was renewed at the Council meeting on August 5, 2020; and

WHEREAS, during the COVID-19 pandemic, it is critical that restaurants stay open because they are performing essential functions, along with grocery stores and other food services, to provide the public with access to food; and

WHEREAS, the social distancing measures required to mitigate the spread of the COVID-19 virus means that delivery and take-out options from restaurants are critical to the public's accessibility of food and addressing any community food insecurity; and

WHEREAS, the COVID-19 pandemic has had a significant impact on the local economy impacting the restaurant, food service, and other related industries resulting in economic hardship for business owners due to loss of business income, layoffs, and reduced work hours for a significant percentage of this workforce; and

WHEREAS, restricting restaurants to take-out and delivery service places a sudden and severe financial strain on many restaurants, particularly those that are small, independently-owned, or minority-owned businesses that already operate on thin financial margins, adding to economic pressures in the industry that predate the current public health crisis; and

WHEREAS, it is in the public interest to take action to maximize restaurant revenue from delivery and take-out orders that are a lifeline and currently the sole source of revenue for Cincinnati's restaurant industry to better enable these businesses to survive the impacts of the COVID-19 pandemic and continue supporting a diverse workforce and contributing to the vitality of Cincinnati's neighborhoods; and

WHEREAS, many consumers are eager to support local restaurants and use third-party, app-based delivery platforms to place orders with those restaurants, and these third-party platforms charge commission fees to restaurants based on the purchase price; and

WHEREAS, while each service agreement between restaurants and third-party delivery platforms vary, all these agreements include delivery commission fees that can be up to 30% or more of the purchase price; and

WHEREAS, restaurants, and particularly small family-owned restaurants with few locations, have limited bargaining power to negotiate lower commission fees with third-party, app-based delivery platforms due to the limited number of companies that provide such delivery services, and these restaurants face dire financial circumstances during this COVID-19 pandemic because take-out and delivery are the only options to keep the business in operation; and

WHEREAS, during this time of local economic shutdown and limited reopening resulting from the COVID-19 pandemic, many vulnerable workers have found work as food delivery drivers for third-party food delivery services to support themselves and their families; and

WHEREAS, third-party food delivery services will further undermine already vulnerable workers if these services reduce compensation rates to these drivers as a result of this ordinance capping food delivery fees; and

WHEREAS, on May 21, 2020, Council passed Ordinance 155-2020 that capped the commission fee to a maximum of 15% of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service to accomplish the fundamental government purpose of easing the financial burden on struggling restaurants during this public health emergency and promoting the availability of prepared food via delivery service while not unduly burdening third-party, app-based delivery platforms; and

WHEREAS, restaurants in Cincinnati have saved thousands of dollars and kept employees on payroll who would not have remained employed as a result of the cap on third-party delivery fees imposed by Ordinance 155-2020; and

WHEREAS, restaurants are still unable to provide unrestricted dine-in service or unrestricted outdoor dining service so that restaurants and delivery drivers continue to need the economic protection provided by Ordinance 155-2020, especially because the colder weather will prevent outdoor dining from being a viable option and further reduce restaurants' income; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That, as of the effective date of this ordinance, third-party food delivery services are prohibited from charging a restaurant a commission fee per online, delivery, or pick-up order for the use of its services that totals more than 15% of the purchase price of such online order. This delivery fee cap shall remain in place for 120 days after the effective date of this Ordinance.

Section 2. That, for purposes of this ordinance, the following definitions apply:

- a. "Purchase price" means the menu price of an online order. Such term excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an online order.
- b. "Restaurant" means a business in which food and/or beverage preparation and service is provided for individual consumption either on- or off-premises, and in which any service of alcoholic beverages is accessory to the service of food, based on the definitions in CMC § 1401-01-E1 (b) and (c).
- c. "Third party food delivery services" means any website, mobile application, or other internet service that offers or arranges for the sale and/or delivery of food and beverages prepared by restaurants.

Section 3. That if a third-party food delivery service charges a restaurant a fee that exceeds the amount specified in Section 1 of this ordinance, the restaurant shall provide written notice to the third-party food delivery service requesting a refund within seven days of the notice. If the third-party food delivery service does not provide the refund within seven days of the request from a restaurant or the third-party food delivery service continues to charge fees in violation of this

ordinance, a restaurant can enforce this ordinance by means of a civil action seeking damages and injunctive relief.

Section 4. That no third-party food delivery service may reduce the compensation rates paid to any delivery service driver or garnish gratuities paid to any driver as a result of this ordinance going into effect.

Section 5. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the provisions of Sections 1 through 4 hereof.

Section 6. That this ordinance shall not be construed or interpreted to interfere with or impair any contracts between restaurants and third-party food delivery services that exist as of the effective date of this Ordinance. This Ordinance applies to all contracts that are begin on or after the effective date of this Ordinance and any renewals or extensions of contracts when those renewals or extensions occur during the effective period of this Ordinance, even if the extension or renewal is on the same terms as or authorized by the original contracts.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need for the City to continue to provide economic relief to restaurants that are providing an essential service to the residents of Cincinnati and surrounding areas and also suffering as a result of being able to provide only delivery or carry-out service.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk