

BOARD OF COUNTY COMMISSIONERS FOR
ADAMS COUNTY, STATE OF COLORADO

RESOLUTION ADOPTING REGULATIONS ESTABLISHING LIMITS ON FEES THAT
THIRD-PARTY FOOD DELIVERY SERVICES MAY CHARGE TO RESTAURANTS IN
UNINCORPORATED ADAMS COUNTY, RESTRICTING OTHER PRACTICES OF THIRD-
PARTY FOOD DELIVERY SERVICES, AND ESTABLISHING PENALTIES FOR
VIOLATIONS THEREOF IN ACCORDANCE WITH HOUSE BILL 20B-1005

Resolution 2020-700

WHEREAS, the ongoing COVID-19 pandemic has created myriad economic distress and unanticipated costs in American society to individuals and families, to businesses, and to the state and local governments addressing the pandemic's effects; and,

WHEREAS, the ongoing COVID-19 public health emergency is restricting retail food establishments from operating freely and at full on-premises capacity and is increasing the need for third-party food delivery services; and,

WHEREAS, these restrictions have caused significant financial harm to retail food establishments and consumers within the state, and these challenges are likely to continue in the future; and,

WHEREAS, during the 2020 Colorado special legislative session, the Colorado General Assembly passed HB20B-1005 (Local Authority To Impose Food Delivery Fee Restrictions) which allows Adams County to adopt, administer, and enforce ordinances and resolutions in the unincorporated portions of the county that limit the fees that a third-party food delivery service may charge to a retail food establishment located in unincorporated Adams County, and place other restrictions on food delivery services.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners, County of Adams, State of Colorado, that the Regulations Establishing Limits on Fees that Third-Party Food Delivery Services May Charge to Restaurants in Unincorporated Adams County, Restricting Other Practices of Third-Party Food Delivery Services, and Establishing Penalties For Violations Thereof in Accordance with House Bill 20B-1005, that are attached hereto as Exhibit A and fully incorporated herein, are hereby approved and adopted.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Henry _____ Aye
Tedesco _____ Aye
Pinter _____ Aye
O'Dorisio _____ Aye
Hodge _____ Aye
Commissioners

STATE OF COLORADO)
County of Adams)

I, Josh Zygielbaum, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Order is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Adams County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Brighton, Colorado this 15th day of December A.D. 2020.

County Clerk and ex-officio Clerk of the Board of County Commissioners

Josh Zygielbaum:



By:



Deputy

Exhibit A

REGULATIONS ESTABLISHING LIMITS ON FEES THAT THIRD-PARTY FOOD DELIVERY SERVICES MAY CHARGE TO RESTAURANTS IN UNINCORPORATED ADAMS COUNTY, RESTRICTING OTHER PRACTICES OF THIRD-PARTY FOOD DELIVERY SERVICES, AND ESTABLISHING PENALTIES FOR VIOLATIONS THEREOF IN ACCORDANCE WITH HOUSE BILL 20B-1005

Section 1. Definitions.

Retail food establishment means a retail food establishment, as defined by C.R.S. § 25-4-1602(14), as amended, located in unincorporated Adams County that holds a license from the State of Colorado.

Online order means an order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup.

Purchase price for purposes of this resolution, means the final 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 service for delivery or pickup within the city.

Third-party food delivery service 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 unincorporated Adams County.

Section 2. Third-party food delivery service fee restrictions.

- (a) A third-party food delivery service shall not perform any service for, or disclose any information about, a retail food establishment without the retail food establishment's written consent.
- (b) No person shall cause a third-party food delivery service to charge a retail food establishment a commission or fee for the use of the third-party food delivery services for delivery or pick-up that exceeds 15% of the purchase price per online order or telephone order.
- (c) No person shall cause a third-party food delivery service to reduce the compensation rate paid to a delivery service driver or garnish gratuities or tips to the retail food establishment or its staff or any delivery service driver to comply with subsection (b) of this section.
- (d) At the time a purchase price is disclosed to a customer for the intended purchase from a retail food establishment through a third-party food delivery service, and before that transaction is completed by the customer, the third-party food delivery service shall disclose to the customer, any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery service as a line item on the receipt.
- (e) After a transaction occurs for a purchase from a retail food establishment through a third-party delivery service, the third-party food delivery service 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 purchases.
 2. Any 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 service and by the retail 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 service, that was added into the transaction when it occurred.
 5. Any commission payable to the third-party food delivery service associated with the transaction.
- (f) No third-party food delivery service may charge any fee to a retail food establishment for a telephone order if a telephone call between such 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 service.

Section 3. Complaints and records.

- (a) *Complaints.* The Community and Economic Development Department (CED) shall create procedures for the submittal and review of complaints or violations of this resolution. Any retail food establishment may submit a complaint of a violation of this section to CED. Any such complaint shall be made in writing or via email, and shall include all information relied upon by the retail food establishment as the basis for the complaint.
- (b) *Investigation.* CED shall investigate all written complaints, shall notify any third-party food delivery service alleged to have violated this article of any complaint lodged against it, and shall provide a summary of findings regarding any such complaint to both the complainant and the third-party delivery service. CED shall also provide a summary of findings and supporting records to the County Attorney.
- (c) *Records.* Third-party food delivery service shall maintain books and records available for CED to investigate any complaints. Such books and records shall be made available upon demand. Failure to provide the records as required in this section shall be prima facie rebuttable evidence of a violation.

Section 4. Enforcement and penalties.

- (a) *Notice of violation and hearing.* For purposes of enforcement of this chapter, CED may issue a notice of violation.
- (b) *Penalties.* If CED determines there is a violation of this section, the third-party food delivery service shall be subject to a civil penalty of one hundred dollars (\$100.00) per violation instance, plus the amount of commission or fee that the third-party food delivery service charged the retail food establishment that exceeds 15% of the purchase price.
- (c) *Hearing.* A third-party food delivery service may request a hearing in front of the Board of County Commissioners (BoCC) for any alleged violations to the provisions of this Resolution. The BoCC shall grant the request for a hearing within 15 days of receipt of such request.
- a. The Hearing shall be set within 90 days of the request.
 - b. The Director of CED shall appear as a party in all hearings adjudicating decisions made under this Resolution.
 - c. The Director of CED shall have the same right to judicial review as other parties.
 - d. All testimony must be under oath or affirmation.
 - e. A full and complete record of proceedings and testimony presented shall be taken and filed.
 - f. The BoCC shall make a decision within 30 days of completion of the hearing.

- g. The burden of proof is on the Director of CED to show with a preponderance of evidence that there is a violation of this Resolution.

(d) Judicial Review.

- a. Final orders or determinations of the BoCC are subject to judicial review.
- b. Any proceeding for judicial review shall be filed in the district court for Adams County, Colorado.

- (e) Settlement.* The County Attorney is authorized to reach a settlement agreement with respect to one or more alleged violations of this chapter.

Section 5. Expiration.

This resolution shall expire once the indoor capacity restrictions imposed on retail food establishments due to the COVID-19 pandemic are removed.