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Title:	To enact new chapter 574 of the Columbus City Codes, pertaining to third-party food delivery services; to establish a limit on the commission that third parties can charge to restaurants located in the City of Columbus to 15% of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service; to prohibit a reduction in compensation for delivery drivers as a result of this limit; and to declare an emergency.		
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Date	Ver.	Action By	Action	Result
11/25/2020	2	CITY CLERK	Attest	
11/24/2020	2	MAYOR	Signed	
11/23/2020	2	COUNCIL PRESIDENT	Signed	
11/23/2020	1	Columbus City Council	Amended as submitted to the Clerk	Pass
11/23/2020	1	Columbus City Council	Approved as Amended	Pass

BACKGROUND

Due to the ongoing public health emergency resulting from COVID-19 which has placed a burden on restaurants by necessitating reduced dine-in capacity, it is in the public interest to take action to protect restaurants that have been compelled to rely upon takeout and delivery orders as a significant source of revenue. This action aims to enable restaurants to survive the crisis and remain as sources not only of food but of employment and economic vitality in the City of Columbus.

Many consumers use third-party applications and websites to place orders with restaurants for delivery and take-out, especially in light of the social distancing requirements mandated in response to COVID-19. While service agreements between restaurants and third-party delivery platforms vary, currently these agreements often include commission fees of 30% or more of the purchase price.

Capping these commission will support the goal of easing the financial burden on restaurants that are struggling during the public health emergency and promoting the availability of prepared food via delivery without unduly burdening third-party platforms or restaurants.

EMERGENCY DESIGNATION: Emergency action is requested in order to immediately ease the burden on restaurants and similar establishments suffering financial hardship during the COVID-19 pandemic.

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WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, caused by the SARS-CoV-2virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern; and

WHEREAS, on January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, on March 9, 2020, Governor Mike DeWine signed an Executive Order declaring a State of Emergency for the entire State of Ohio in relation to COVID-19 pursuant to the Governor's authority vested in him by the Constitution, the laws of the State of Ohio and in accordance with Revised Code section 5502.22; 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 service; and

WHEREAS, on March 18, 2020, the Mayor, through Executive Order 2020-01, declared a State of Emergency in Columbus based on the COVID-19 pandemic; and

WHEREAS, on April 30 2020, the Ohio Department of Health issued a Director's Order allowing businesses to reopen but requiring compliance with social distancing and safety measures; 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 to food; and

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

WHEREAS, reducing dine-in capacity for restaurants places a 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, many consumers are eager to support local restaurants and use third-party applications and websites to place orders with those restaurants and these orders may include commission fees of 30% or more of the purchase price; and

WHEREAS, restaurants, particularly small family-owned restaurants with few locations, have limited bargaining power

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to negotiate lower commission fees with third-party platforms due to there being high demand and only a few companies in the marketplace to provide online order and delivery services, and as a result, restaurants face dire financial circumstances during this COVID-19 pandemic as take-out and delivery are the main options for keeping their businesses in operation; and

WHEREAS, capping 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 will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during the public health emergency while still promoting the availability of prepared food via delivery service while not unduly burdening third-party applications and websites; and

WHEREAS, an emergency exists in the usual daily operation of the City of Columbus in that it is immediately necessary to ease the burden on restaurants during a critical time in the COVID-19 pandemic, for the immediate preservation of the public health, peace, property, safety, and welfare; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That new chapter 574 of the Columbus City Codes is hereby enacted, reading as follows:

Chapter 574 - THIRD-PARTY FOOD DELIVERY SERVICES

574.01 - Definitions

(A) “Commission” means a fee paid to a third-party food delivery service for performing a transaction or a service.

(B) “Eating and drinking establishment” means a restaurant, bar, tavern, cabaret, fast-food business, nightclub, pub, dining room, dinner theater, and similar uses.

(C) “Purchase price” means the menu price of an online order. Such terms exclude taxes, gratuities, and any other fees that make up the total cost to the consumer of an online order.

(D) “Third-party food delivery service” means any website, mobile application, or other internet service business that offers or arranges for the sale and/or delivery of food and beverages prepared by eating and drinking establishments.

574.02 - Limit on commissions

(A) No third-party food delivery service shall charge an eating and drinking establishment a commission per online delivery or pick-up order for the use of its service that totals more than fifteen percent (15%) of the purchase price of the online order.

(B) If a third-party food delivery service charges an eating and drinking establishment a commission that exceeds fifteen percent (15%) of the purchase price of a placed online order, the restaurant shall provide written notice to the third-party food delivery service requesting a refund within seven (7) days. Failure to issue a refund within seven (7) days of receipt of the notice shall constitute a violation of this chapter.

(C) "An eating and drinking establishment may agree to pay a third-party food delivery service a fee that exceeds the limits established in 574.02(A) and (B) to obtain optional products or services, including advertising, marketing, or access to customer subscription programs, in addition to delivery or pickup service.”

574.03 - Compensation

No third-party food delivery service shall reduce the compensation rates paid to any delivery service driver or garnish gratuities paid to any driver as a result of the provisions in this chapter.

574.04 - Contracts

This chapter shall not be construed or interpreted to interfere with or impair any contracts between eating and drinking establishments and third-party food delivery services that exist as of the effective date of this chapter.

574.05 - Effective dates

This chapter shall only be in effect from the effective date of a declaration of a public health emergency that contains any restrictions on the operations of eating and drinking establishments, until one-hundred twenty (120) days after eating and drinking establishments are permitted to operate at one hundred percent (100%) capacity with no restrictions.

574.06 - Penalties.

(A) A third party food delivery service that violates any provision of this chapter is guilty of a misdemeanor of the first degree.

(B) Strict liability is intended to be imposed as the culpable mental state for a violation of chapter 574.

(C) In accordance with section 2301.23 of the Columbus City Codes, organizational criminal liability in intended to be imposed for violations of chapter 574.

574.07 - Severability

The provisions of this chapter shall be deemed to be severable; and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not impair any of the remaining provisions.

SECTION 2. That for reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.

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