



PROPOSED LOCAL LAW I– 2020

COUNTY OF SCHENECTADY

Introduced by Legislators Pratt, Gatta and McDonald:

A LOCAL LAW CREATING CHAPTER 51 (FOOD DELIVERY SERVICES) OF THE SCHENECTADY COUNTY CODIFIED LAWS TO REGULATE THIRD-PARTY FOOD DELIVERY SERVICE FEES DURING CERTAIN EMERGENCIES

BE IT ENACTED by the Legislature of the County of Schenectady, as follows:

SECTION 1. Chapter 51 of the Codified Local Laws is created in order to regulate the fees charged by third-party food service delivery services during certain states of emergency:

Chapter 51. FOOD DELIVERY SERVICES

Section 51.01. Title.

This law shall be known as the "Schenectady County Food Delivery Services" Law.

Section 51.02. Declaration of legislative findings and intent.

This Legislature finds that food service establishments provide essential services to the public, including providing the public access to meals and employing numerous residents of this County. While certain states of emergency may limit or modify the ability of such establishments to ordinarily operate, food service establishments remain essential. During the time of a state of emergency, in which restaurants are prohibited from operating at full capacity, residents' access to delivery and take-out services are more essential than ever. Additionally, food service establishments increasingly depend on delivery and take-out orders to remain in existence.

This Legislature finds that it is in the public interest for the County to regulate the fees charged by Third-Party Food Delivery Services during these emergencies, in order to ensure that food service establishments retain the profits necessary to ensure their continued existence in order to provide the essential service of providing food the residents of this County.

This Legislature further finds that it is imperative to protect the income of the individuals actually delivering the food orders to customers. During the period of time, determined by the Governor, that on-premise dining is deemed a threat to public health and safety, food delivery drivers, placing themselves in harm's way to deliver food, should not fear the reduction of income.

This Legislature further finds that during the period of time that on-premise dining is deemed a threat to public health and safety, it is appropriate to ensure the public has access to delivery and take-out food delivery services, without fear of price gouging.

Section 51.03. Definitions.

- A. "Declared Emergency" shall mean the period of time during which a State Disaster Emergency has been declared by the Governor of the State of New York; and
 - 1. The State of Emergency is in effect in the County of Schenectady; and
 - 2. The State of Emergency expressly limits on-premise dining at food services establishments located within the County of Schenectady

- B. "Delivery Fee" shall mean a fee charged on a per-order-basis by a third-party food delivery service for providing a food service establishment with a service that delivers food from such establishment to customers, including but not limited to commission, delivery fees, and processing fees. The term does not include any other fee that may be charged, on a basis other than per-order-basis by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food service establishment on the third-party food delivery service platform or fees related to processing the online order. This fee shall constitute the exclusive fee that may be charged on a per-order-basis on orders submitted for delivery.

- C. "Non-Delivery Fee" shall mean any fee charged by a third-party food service provider that is not included within the definition of a Delivery Fee. Credit Card Fees, as defined in this section, are hereby excluded from the calculation of "Non-Delivery Fee".

- ~~C~~.D. "Pickup Fee" shall mean a fee charged on a per-order-basis by a third-party food delivery service for providing a food service establishment with a service that allows a customer to order food for pickup from such establishment, including but not limited to commission, and processing fees. The term does not include any other fee that may be charged, on a basis other than per-order-basis by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food service establishment on the third-party food delivery service platform or fees related to processing the online order. This fee shall only apply to orders submitted for pickup and shall not be charged on a delivery order.

- ~~D~~.E. "Credit Card Fee" shall mean any fees charged by a credit card company, or other financial institution to the Third-Party Food Delivery Service and subsequently charged in the same amount by the Third-Party Food Delivery Service to such Food Service Establishment

~~E.F.~~ "Food Service Establishment" shall mean an establishment operating pursuant to 10 NYCRR 14-1.20.

~~F.G.~~ "Online Order" shall mean any order placed by a customer through, or with the assistance of, a platform provided by a third-party food delivery service, including but not limited to webpage, mobile application, or telephone order.

~~G.H.~~ "Purchase Price" shall mean the total price of the items contained in an Online Order that are listed on the menu of the food service establishment where such order is placed. Such term, does not include taxes, gratuities, and any other fees that may make up the total cost to the customer of an Online Order.

~~H.I.~~ "Customer Fee" shall mean any fee charged by Third-Party Food Delivery Service to a customer submitting an Online Order.

~~I.J.~~ "Third-Party Food Delivery Service" shall mean any website, mobile application, or other 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, food service establishments located within the County of Schenectady that are owned and operated by an entity other than the food service establishment.

~~J.K.~~ "Delivery Service Driver" shall mean any individual performing the service of actually delivering the Online Order from the restaurant to the customer, regardless of whether the individual is an employee or an independent contractor.

~~K.L.~~ "Delivery Service Driver Compensation" shall mean the amount paid by the Third-Party Food Delivery Service to a Delivery Service Driver, whether by salary, wage, per diem, flat fee, together with any gratuities paid by the customer.

~~L.M.~~ "Emergency Period" shall mean the period of time commencing on the later of the effective date of this Chapter, or the effective date of a Declared Emergency and shall expire on the ninetieth (90th) Day after the termination of the Declared Emergency.

Section 51.04. Fee Limits During Certain Declared Emergencies.

~~(A)~~ During the Emergency Period it shall be unlawful for a Third-Party Food Delivery Service to charge a Food Service Establishment a delivery fee exceeding fifteen (15%) percent of the Purchase Price of each Online Order.

~~(A)(B)~~ During the Emergency Period it shall be unlawful for a Third-Party Food Delivery Service to charge a Food Service Establishment a pickup fee exceeding five (5%) percent of the Purchase Price of each online order.

~~(B)(C)~~ During the Emergency Period shall be unlawful for a Third-Party Food Delivery Service to increase the Non-Delivery Fee in effect on the later of the effective date of this Chapter, or the effective date of a Declared Emergency.

~~(C)~~(D) During the Emergency Period It shall be unlawful for a Third-Party Food Delivery Service to reduce the Delivery Service Compensation in effect at the later of the effective date of this Chapter, or the effective date of a Declared Emergency.

~~(D)~~(E) During the Emergency Period it shall be unlawful for a Third-Party Delivery Service to increase the Customer Fee in effect on the later of the effective date of this Chapter, or the effective date of a Declared Emergency, by an amount greater than two (\$2.00) Dollars.

Section 51.05. Enforcement.

In the event that a Third-Party Food Delivery Service violates Section 51.04, the aggrieved party shall provide the Third-Party Food Delivery Service written notice of the violation, together with a demand for refund within seven (7) days of such notice. If the Third-Party Food Delivery Service fails to provide the refund within seven (7) days, or the Third-Party Food Delivery Service continues to act in violation of this Chapter, an aggrieved party may enforce this Chapter by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

Section 51.06. Severability.

If any article, section, subdivision, paragraph, subparagraph or part of this charter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the article, section, subdivision, paragraph, subparagraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 51.07. Reverse Preemption.

This Chapter shall be null and void on the day that federal or statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Chapter, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Schenectady, unless such federal or statewide action specifically excepts from preemption earlier enacted local laws in this area. This County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

SECTION 2. This Local Law shall take effect immediately.