

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER _____, ENTITLED, “_____,” BY ADDING AND ENACTING NEW SECTION _____, ENTITLED, “_____,” AND CAPPING COMMISSIONS CHARGEABLE BY THIRD-PARTY FOOD DELIVERY SERVICE BUSINESSES DURING STATES OF PUBLIC HEALTH EMERGENCIES, AND DECLARING AN EMERGENCY.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, caused by the SARS-CoV-2 virus, 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 primarily 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 19, 2020, the City of Hudson was declared to be in a state of emergency due to COVID-19 to protect the health, safety and welfare of the City and its residents; 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, the Hudson residents have been urged to comply with the Ohio Department of Health’s Stay at Home orders and recommended social practices to limit community spread in Hudson and across the state; 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 virus underlying COVID-19 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 Hudson 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 restaurants’ dine-in capacity imposes severe financial strain on

many restaurants, particularly those that are small, independently owned, and/or minority-owned. This financial strain is especially acute for those businesses already operating on thin financial margins; 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 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 a 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, the Council of the City of Hudson acknowledges that the current public health emergency necessitates immediate relief in order to ease the burden on local restaurants, and that said relief is necessary for the immediate preservation of the public health, safety, and welfare; and

WHEREAS, other Ohio cities, including Cleveland, have passed ordinances capping commissions chargeable by third-party food delivery service businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUDSON, COUNTY OF SUMMIT AND STATE OF OHIO:

SECTION 1. That all other terms and provisions of Chapter ___ not amended herein, remain unaffected, as if fully rewritten herein.

SECTION 2. That Chapter ___, entitled, “_____,” Article ____, entitled, “_____” is hereby enacted and shall read as follows:

ARTICLE ___ THIRD-PARTY FOOD DELIVERY SERVICES

___ – 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) “PERSON” MEANS ANY INDIVIDUAL, ORGANIZATION, CORPORATION FOR PROFIT OR NOT FOR PROFIT, PARTNERSHIP, LIMITED PARTNERSHIP, JOINT VENTURE, UNINCORPORATED ASSOCIATION, ESTATE, TRUST, OR OTHER COMMERCIAL OR LEGAL ENTITY.

(D) “PURCHASE PRICE” MEANS THE MENU PRICE OF AN ONLINE ORDER, MINUS ANY APPLICABLE COUPON OR PROMOTIONAL DISCOUNT PROVIDED TO THE CUSTOMER BY THE EATING AND DRINKING ESTABLISHMENT. SUCH PURCHASE PRICE EXCLUDES TAXES, GRATUITIES, AND ANY OTHER FEES THAT MAKE UP THE TOTAL COST TO THE CONSUMER OF AN ONLINE ORDER.

(E) "THIRD-PARTY FOOD DELIVERY SERVICE" MEANS ANY PERSON WHO IS ENGAGED IN OPERATING A WEBSITE, MOBILE APPLICATION, OR OTHER INTERNET SERVICE BUSINESS THAT OFFERS OR ARRANGES FOR THE SALE AND/OR DELIVERY OF FOOD AND/OR BEVERAGES PREPARED BY EATING AND DRINKING ESTABLISHMENTS.

____ - 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 EATING AND DRINKING ESTABLISHMENT 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 ARTICLE.

(C) AN EATING AND DRINKING ESTABLISHMENT MAY AGREE TO PAY A THIRD-PARTY FOOD DELIVERY SERVICE A FEE THAT EXCEEDS THE LIMITS ESTABLISHED IN _____ (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.

____ - 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 ARTICLE.

____ - EFFECTIVE DATES

THIS ARTICLE 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.

____ - PENALTIES

(A) A THIRD PARTY FOOD DELIVERY SERVICE THAT VIOLATES ANY PROVISION OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR OF THE FOURTH DEGREE.

(B) STRICT LIABILITY IS INTENDED TO BE IMPOSED AS THE CULPABLE MENTAL STATE FOR A VIOLATION OF SECTIONS _____ - _____.

(C) IN ACCORDANCE WITH SECTION _____ OF THE CODIFIED ORDINANCES OF THE CITY OF HUDSON, ORGANIZATIONAL CRIMINAL LIABILITY IS INTENDED TO BE IMPOSED FOR VIOLATIONS OF SECTIONS _____ - _____.

____.____ – SEVERABILITY

THE PROVISIONS OF THIS ARTICLE 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 3. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees or subcommittees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 4. That this ordinance was adopted pursuant to Section 4.11 of the Charter, and is hereby declared to be an emergency measure necessary for the immediate preservation of public health and safety for the reason that capping the commission fee payable to third-party food delivery businesses while local restaurants are unable to provide unrestricted dine-in service will ease the financial burden on struggling restaurants during a public health emergency, and pursuant to Section 4.13 of the Charter, shall take effect upon its adoption by Council and approval by the Mayor, otherwise at the earliest period allowed by law.

ADOPTED BY COUNCIL _____

ATTEST _____
Elizabeth Slagle
CLERK OF COUNCIL

William Wooldredge
PRESIDENT OF COUNCIL

FILED WITH MAYOR _____

APPROVED _____
Craig Shubert
MAYOR

FILED WITH CLERK _____

APPROVED AS TO FORM

EFFECTIVE DATE _____

Matthew Vazzana
CITY SOLICITOR