

**LOCAL LAW NO. OF 2021
COUNTY OF ROCKLAND
STATE OF NEW YORK**

(Introduced by: Hon. Harriet D. Cornell)

(Co-Sponsors: Hon. Christopher J. Carey, Hon. Toney L. Earl, Hon. Charles J. Falciglia,
Hon. James J. Foley, Hon. Michael M. Grant, Hon. Lon M. Hofstein, Hon. Jay Hood, Jr.,
Hon. Douglas J. Jobson, Hon. John W. McGowan, Hon. Laurie A. Santulli,
Hon. Philip Soskin, Hon. Aron B. Wieder, Hon. Aney Paul, Hon. Alden H. Wolfe)

WOLFE/CORNELL: UNAN.

A local law to restrict third-party food delivery service fees during certain emergencies.

Be it enacted by the legislature of the county of Rockland as follows:

Section 1. Name of Local Law

This law shall be known as the “Rockland County Emergency Restaurant Protection Act.”

Section 2. Chapter 363 of the laws of Rockland County is hereby added as follows:

Chapter 363: Third-Party Food Delivery Services

Article I: Rockland County Emergency Restaurant Protection Act

§ 363-1. Title

This Article shall be known as the “Rockland County Emergency Restaurant Protection Act.”

§ 363-2. Legislative Findings and Intent

Since the start of the global pandemic, New York restaurants have been forced to limit in-person dining which has had a devastating impact to the restaurant industry and those they employ. The New York State Restaurant Association reports that sales decreased 44% between January 2020 and January 2021. Most restaurant operators do not expect business conditions to improve in the next several weeks and most New York restaurant operators do not expect a return to normal business conditions any time soon. These worsening business conditions have led to additional losses in recent weeks with 54% of New York operators saying they laid off or furloughed employees in December 2020 and January 2021.

Third-party delivery services are charging restaurants fees, sometimes more than 30%, which further reduce the profits of an already struggling industry. The Rockland County Legislature finds that it is necessary to regulate and cap the fees that third party delivery services may charge restaurants during declared states of emergency when in-person dining has been limited or restricted altogether. This local law is intended to prohibit third party delivery services from charging more than a 15% delivery service fee per order and more than a 5% fee per order for

other types of charges. Furthermore, this local law offers protections to delivery services drivers and others that receive gratuities by prohibiting third-party delivery service platforms from reducing compensation paid to them. The Rockland County Legislature believes that restricting fees will aid over-burdened and struggling restaurants in Rockland County and will offer the necessary protections to the most-vulnerable front-line workers so that their compensation is not reduced in any way.

§ 363-3. Definitions.

For the purposes of this title, the following definitions shall apply to the following terms:

Declared emergency shall mean the period during which a State disaster emergency has been declared by the Governor of the State of New York or a state of emergency has been declared by the County Executive, such declaration is in effect in the County, and there are restrictions on on-premises dining at food service establishments in the County.

Delivery fee shall mean a fee charged by a third-party food delivery service for providing a food service establishment with a service that delivers food from such establishment to customers. The term does not include any other fee that may be charged 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.

Food service establishment shall mean a place where food is prepared and intended for individual portion service and includes the site at which the individual portions are provided whether consumption occurs on or off the premises. The term excludes food processing establishments, retail food stores, private homes where food is prepared or served for family consumption, and food service operations where a distinct group mutually provided, prepared, serves and consumes the food such as a "covered-dish supper" limited to a congregation, club or fraternal organization.

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 a telephone order.

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.

Third-party food delivery service shall mean any 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 food service establishments located in the County that are owned and operated by different persons.

§ 363-4. Fee Limits during declared emergencies.

- A. It shall be unlawful for a third-party food delivery service to charge a food service establishment a delivery fee that totals more than 15 percent of the purchase price of each online order.
- B. It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee or fees other than a delivery fee for the use of its service greater than five percent of the purchase price of each online order. Any fees or other charges from a third-party food delivery service to a food service establishment beyond such maximum five percent fee per order, and a delivery fee collected pursuant to subdivision (A) of this section, are unlawful, provided that such cap shall not apply to a credit card fee that is charged to the third-party food delivery service and is charged in the same amount by the third-party food delivery service to such food service establishment.
- C. It shall be unlawful for a person to cause a third-party food delivery platform to reduce the compensation rate paid to a delivery service driver or garnish gratuities in order to comply with this section.
- D. The requirements of this section apply only during a declared emergency and for a period of 90 days after the end of a declared emergency.

§ 363-5. Enforcement.

If a third-party food delivery service charges a food service establishment fees that violates this Article, the food service establishment shall provide written notice to the third-party food delivery service requesting a refund within seven days. If the third-party food delivery service does not provide the refund requested after seven days or the third-party food delivery service continues to charge fees in violation of this order after the initial notice and seven-day cure period, a food service establishment may enforce this Article 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.

§ 363-6. Severability.

If any section, subsection, sentence, clause, phrase or other portion of this Article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Article, which remaining portions shall continue in full force and effect.

§ 363-7. Reverse preemption.

This section shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, unless state law specifically excepts from preemption earlier enacted local laws in this area. The County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation, or pertinent preempting state or federal regulations has been enacted for the purposes of triggering the provisions of this section.

§ 363-8. Effective Date.

This local law shall take effect immediately upon being filed with the New York Secretary of State.

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