



SARATOGA COUNTY BOARD OF SUPERVISORS

RESOLUTION 58 - 2021

Introduced by Supervisors Schopf, Barrett, Gaston, Tollisen, Veitch, Winney and Wood

**INTRODUCING A PROPOSED LOCAL LAW IDENTIFIED AS
INTRODUCTORY NO. 2 OF 2021, PRINT NO. 1, ENTITLED
“A LOCAL LAW LIMITING THIRD-PARTY FOOD DELIVERY SERVICE
FEES DURING A DECLARED EMERGENCY”, AND SETTING A DATE FOR A
PUBLIC HEARING THEREON**

WHEREAS, a proposed Local Law, identified as Introductory No. 2 of 2021, Print No. 1, entitled “A Local Law Limiting Third-Party Food Delivery Service Fees During a Declared Emergency” is being introduced before this Board and is attached hereto as SCHEDULE A, which if adopted will, among other things, enact rules and regulations limiting third-party food delivery services during a declared emergency; and

WHEREAS, Municipal Home Rule Law §20(5) requires this Board of Supervisors to hold a public hearing on said proposed Local Law; now, therefore, be it

RESOLVED, that a proposed Local Law, identified as Introductory No. 2 of 2021, Print No. 1, entitled “A Local Law Limiting Third-Party Food Delivery Service Fees During a Declared Emergency”, which is attached hereto as SCHEDULE A, is hereby introduced before the Saratoga County Board of Supervisors, and the Board of Supervisors shall hold a Public Hearing on March 10, 2021 at 3:35 p.m., or as soon thereafter as the Board can convene, in the Meeting Room of the Saratoga County Board of Supervisors at 40 McMaster Street, Ballston Spa, New York 12020, on the matter of the adoption of such proposed Local Law; and be it further

RESOLVED, due to public health and safety concerns related to COVID-19, and in accordance with Governor Cuomo’s Executive Order 202.1, as last extended by Executive Order 202.72, public comment will be received via email to: publiccomment@saratogacountyny.gov, or by written correspondence addressed to: Clerk of the Board, Saratoga County Board of Supervisors, 40 McMaster Street, Ballston Spa, NY, 12020, which public comment must be received by March 10, 2021 at 3:35 p.m.; and, be it further

RESOLVED, that the Clerk of the Board shall publish a notice of this public hearing in the official County newspapers; and, be it further

RESOLVED, that the Clerk of the Board shall post the notice of this public hearing on the home page of the County of Saratoga’s website.

BUDGET IMPACT STATEMENT: No budget impact.

SCHEDULE A

INTRODUCTORY NO. 2 OF 2021

PRINT NO. 1

INTRODUCED BY: Supervisors Schopf, Barrett, Gaston, Tollisen, Veitch, Winney and Wood

**COUNTY OF SARATOGA
LOCAL LAW NO. OF 2021**

**A LOCAL LAW LIMITING THIRD-PARTY FOOD DELIVERY
SERVICE FEES DURING A DECLARED EMERGENCY**

BE IT ENACTED by the Board of Supervisors of the County of Saratoga as follows:

SECTION 1. Title. This Local Law shall be known as “A Local Law Limiting Third-Party Food Delivery Service Fees During a Declared Emergency”.

SECTION 2. Definitions.

A. The following words when used in this local law, shall have the meanings ascribed to them except in those instances where the context clearly indicated otherwise:

- a. The term “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 or a state of emergency has been declared by the Chairman of the Board of Supervisors of Saratoga County, and such declaration is in effect in the County, and there are restrictions imposed on on-site dining at food service establishments in the County.
- b. The term “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 food service 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 an online order.
- c. The term “food service establishment” shall mean any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order café; delicatessen; luncheonette; grill; tea room; sandwich shop; soda fountain; bar; tavern; cocktail lounge; night club; roadside stand; take-out prepared food place; retail bakery; industrial feeding establishment; private, public, or nonprofit organization, including: schools; nursing homes; day care centers and hospitals; religious and fraternal organizations routinely serving food; catering kitchens; commissary or similar places in which food is prepared for sale on the premises or elsewhere; and any other establishment or operation where food is served or provided to the public, with or without charge.

- d. The term “online order” shall mean any order placed by a customer through or with the assistance of a platform provided by a third-party food deliver service, including a telephone order.
- e. The term “purchase price” shall mean the total price of the items contained in the 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 fee that make up the total cost to the customer of an online order.
- f. The term “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 offered by food service establishments, 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.

B. Unless otherwise indicated above or by the context in which they might be used, all words used herein shall have the meanings ascribed to them by the General Construction Law of the State of New York.

SECTION 3. 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 fifteen percent (15%) 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 their service greater than five percent (5%) 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 (5%) per online 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 to 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 service 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 shall only apply during a declared emergency and for a period of ninety (90) days after the end of the declared emergency.

SECTION 4. Enforcement. If a third-party food delivery service charges a food service establishment fees in violation of this law, the food service establishment shall provide written notice to the third-party food delivery service requesting a refund within seven (7) days. If the third-party food delivery service does not provide the refund requested within seven (7) days of receipt of the written notice or the third-party food delivery service continues to charge fees in violation of this law after the initial written notice and seven-day cure period, a food service establishment may enforce this law 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 5. Severability. In the event any section, part of section, sentence, clause or phrase of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect the validity of any other provision of this local law.

SECTION 14. Effective Date. This local law shall take effect upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.