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LOCAL LAW TO BE ENACTED BY  
THE ERIE COUNTY LEGISLATURE  
IN THE  
COUNTY OF ERIE  
LOCAL LAW INTRO. – NO. 8-1 - 2020  
LOCAL LAW – NO. \_\_\_\_\_ - 2020

This law shall be known as the “Third Party Food Delivery Services Law”

**SECTION 1. Intent**

It is the intent of this body to prevent potentially predatory rate-hikes imposed by third-party food delivery services on businesses in Erie County during a declared emergency.

**SECTION 2. Definitions**

- 1) Declared emergency – The term “declared emergency” means the period during which a state disaster emergency has been declared by 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.
- 2) Delivery fee – the term “delivery fee” means 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.
- 3) Food Service Establishment – The term "food service establishment", means any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen; luncheonette; grill; tearoom; 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 or institution, 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 or for service on the premises or elsewhere; and any other establishment or operation where food is served or provided for the public, with or without charge.
- 4) Online Order – the term “online order” means any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery services, including a telephone order.

- 5) Purchase Price – the term “purchase price” means 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.
- 6) Third-Party Food Delivery Service – the term “third-party food delivery service” means 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.

### **SECTION 3. Fee Limits during Declared Emergencies**

- 1) 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% of the purchase price of each online order.
- 2) 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 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 a maximum 5% fee per order, and a delivery fee collected pursuant to subdivision (1) 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.
- 3) 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.
- 4) 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.

### **SECTION 4. Enforcement and Penalties**

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 fails to provide a full refund for excessive fees within seven (7) days of the initial notice, the food service establishment may file proof of the notice with the Erie County Office of Consumer Protection, which shall review the claim and do everything legally permissible to ensure the third-party food delivery service refunds the food service establishment.

If the Erie County Office of Consumer Protection determines that any third-party food delivery service is in violation of this law on three (3) or more separate occasions in any seven (7) day period, the Office of Consumer Protection is authorized to issue fines of up to \$2,000 per additional occurrence against the third-party food delivery service. Fifty percent (50%) of all fines collected by the county shall be held in reserve to compensate food service establishments that the Office of Consumer Protection determines should be eligible for a refund. The amount of payment shall be determined by the Office of Consumer protection based on fund availability and third-party food delivery service overcharge; but, in no instance shall a food service establishment receive any refund in excess of the value of actual fees imposed in violation of this law. Any refunds received by a food service establishment from a third-party food delivery service shall offset any payment to the food service establishment out of this fund.

Nothing in this section shall prohibit any individual food service establishment from bringing any claim against a third-party food delivery service for a refund pursuant to this law in a court of competent jurisdiction.

#### **SECTION 5. Effective Date**

This local law shall take effect immediately upon filing with the Secretary of State.

#### **SECTION 6. Severability**

If any clause, sentence, paragraph, subdivision, section or part of this Local Law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

#### **SECTION 7. Reverse Preemption**

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

**Sponsor:** Legislator Lorigo

**Co-Sponsor:** Legislators Rath, Todaro, and Mills