

TOWN OF SUPERIOR
ORDINANCE NO. O-1
SERIES 2021

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR AMENDING CHAPTER 6 OF THE SUPERIOR MUNICIPAL
CODE BY THE ADDITION OF A NEW ARTICLE VII, ENTITLED
THIRD-PARTY FOOD DELIVERY PLATFORM FEES

WHEREAS, the Board of Trustees finds and determines that the recent COVID-19 pandemic and resulting emergency orders continue to restrict food service establishments from operating freely in the Town, thereby increasing the demand for take-out meal services;

WHEREAS, while some restaurants may receive take-out orders directly, there are many third-party food delivery platforms that operate through websites or mobile phone applications used by consumers to quickly and easily order pick-up and delivery meals from local restaurants; and

WHEREAS, in some instances, the third-party food delivery platforms, without the local restaurant's knowledge or consent, will purport to sell meals from the local restaurant to consumers, and charge excessive fees to the already struggling local restaurants during the time of and following the declared emergency that restricts on-premises dining.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. Chapter 6 of the Superior Municipal Code is hereby amended by the addition of a new Article VII, to read as follows:

ARTICLE VII – Third-Party Food Delivery Platform Fees

Sec. 6-7-10. Definitions.

(a) *Food establishment* means a retail food establishment, as defined by C.R.S. § 25-4-1602(14), as amended, in the Town that holds a general business license.

(b) *Telephone order* means an order placed by a customer to a restaurant through a telephone call forwarded by a call system provided by a third-party food delivery platform for delivery or pickup within the Town.

(c) *Third-party food delivery platform* means any person, company, 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, retail food establishments located within the Town.

Sec. 6-7-20. Fee restrictions.

(a) A third-party food delivery platform shall not perform any service for or disclose any information about a retail food establishment without the retail food establishment's consent.

(b) A third-party delivery food platform shall not charge any additional fee to a retail food establishment that the retail food establishment has not voluntarily agreed to pay.

(c) At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a retail food establishment through a third-party food delivery platform and before that transaction is completed by the customer, the third-party food delivery platform shall disclose to the customer, in plain language and in a conspicuous manner, any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery platform.

(d) After a transaction occurs for the purchase and delivery of food from a retail food establishment through a third-party food delivery platform, the third-party food delivery platform shall provide an electronic or printed receipt to the customer. The receipt shall disclose, in plain and simple language and in a conspicuous manner:

- (1) The menu price of the food;
- (2) Any sales or other tax applied to the transaction;
- (3) Any delivery charge or service fee, imposed on and collected from the customer by the third-party food delivery platform and by the covered establishment, in addition to the menu price of the food;
- (4) Any tip that will be paid to the person delivering the food, and not to the third-party food delivery platform, that was added into the transaction when it occurred; and
- (5) Any commission associated with the transaction.

(e) No third-party food delivery platform may charge any fee from a retail food establishment for a telephone order if a telephone call between such retail food establishment and a customer does not result in an actual transaction during such telephone call.

Sec. 6-7-30. Violation and penalty.

(a) It is unlawful to violate any provision of this Chapter.

(b) Any person who is convicted of violating any provision of this Chapter shall be punished by a fine not to exceed four hundred ninety nine dollars (\$499.00). Each day of violation shall constitute a separate offense. The penalties specified in this Section shall be cumulative and nothing shall be construed as limiting the Town from pursuing any other remedy, including injunctive relief.

Section 2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

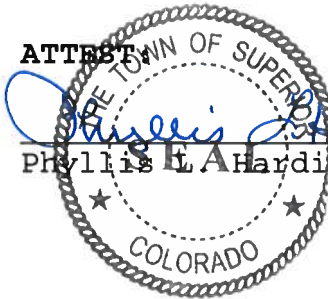
Section 3. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 11th day of January, 2021.

Clint Folsom

Clint Folsom, Mayor

ATTEST



Phyllis L. Hardin
Phyllis L. Hardin, Town Clerk-Treasurer