



City of Lowell - Law Department

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May 8, 2020

City Manager Eileen M. Donoghue
Mayor John J. Leahy
And
Members of the City Council

EMD

Christine P. O'Connor
City Solicitor

Rachel M. Brown
1st Assistant City Solicitor

Gary D. Gordon
John Richard Hucksam, Jr.
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Assistant City Solicitors

Re: Amending Chapters 150 and 222 of the Code or Ordinances

Dear Manager Donoghue, Mayor Leahy and Members of the City Council:

I write in response to Councilor Drinkwater's Motion that the Manager Work With Appropriate Departments To Determine The Feasibility Of Restricting Third Party Delivery Services From Charging Restaurants A Fee Per Online Order Of More Than 10% Of The Purchase Price, Until Such Time That The Restaurants Are Allowed To Serve Customers In Their Establishment At Full Capacity.

Attached please find an Ordinance which prohibits third-party food delivery service to charge a covered entity a fee per online order for the use of its services that totals more than ten percent (10%) of the purchase price of such online order.

The Ordinance imposes penalties of not less than \$250.00 for the first offense and \$300.00 for subsequent offenses.

In keeping with the proposed Ordinance, also attached is a second Ordinance amending our Code of Ordinances relative to the fee schedule. The amendment, if adopted by the Council, codifies the penalty provisions of the underlying Ordinance presented to the Council in response to Councilor Drinkwater's Motion.

If you have any further questions please feel free to email or call me.

Best regards,

Christine P. O'Connor

Christine P. O'Connor
City Solicitor

Enc.

cc: Eric Slagle, Director Development Services

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending "The Code of Ordinances City of Lowell, Massachusetts" With Respect to Chapter 150 thereof Entitled, "Fees" by amending certain sections.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

"The Code for the City of Lowell," hereinafter called the "Code", adopted by the City Council on December 23, 2008, is hereby amended with respect to 150 thereof, by amending certain sections:

1. By amending Chapter 150, Entitled **Fees; Division of Development Services General Penalties and Fines** by adding the following new number 8.1 as follows:

	Department/Reference	Unit/ Frequency	Fee
8.1	Delivery and Service Fees Temporarily Capped during Covid 19 Pandemic.	First Offense: Subsequent Offenses:	\$200.00 \$300.00 Enforcement of this Ordinance shall be by noncriminal disposition as provided in M.G.L. c. 40 § 21D or by filing a criminal complaint at the appropriate venue.

2. All provisions of the Lowell City Code, as amended, which are consistent with this Ordinance, shall continue in effect, but all provisions of said Code inconsistent herewith, are repealed.

3. This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 of the Massachusetts General Laws.

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Christine P. O'Connor". The signature is stylized and includes a flourish at the end.

Christine P. O'Connor
City Solicitor

Ordinanceamendfees/delivery&svcfes tempcapped

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending “Code of Ordinances, City of Lowell, Massachusetts,” with respect to Chapter 222, entitled Peace and Good Order, by adding §222-21 entitled “Delivery Service Fees on Restaurants Temporarily Capped during the COVID-19 Pandemic.”

The City Council, by virtue of the Massachusetts General Laws, Chapter 43, Section 95, has the right to general management and control of the City of Lowell; and

The City Council has an interest in promoting the health, safety, and welfare of the residents of the City of Lowell; and

On March 10, 2020, Commonwealth of Massachusetts Governor Charles Baker declared a state of emergency as a result of the COVID-19 pandemic; and

To reduce the spread of COVID-19 and protect the public health, on March 23, 2020, Governor Baker ordered the temporary closure of non-essential businesses including the provision that “restaurants, bars, and other establishments that offer food or beverages to the public shall not permit on-premises consumption of food or beverage” and “encouraged [establishments] to continue to offer food and beverages for take-out and by delivery”; and

On March 24, 2020, the Massachusetts Department of Public Health issued a stay-at-home advisory promoting social distancing and self-isolation and prescribing that residents remain at home except for essential purposes; and

The COVID-19 pandemic has caused a sudden and severe financial hardship for the City’s diverse and vibrant restaurant industry; and

Many restaurants are reliant on third-party food delivery service companies and are being forced to pay excessive and unsustainable service fees that range up to thirty percent (30%) per order; and

A handful of large third-party food delivery service companies dominate the marketplace, making it difficult for small business to negotiate reasonable service fee structures; and

It is in the public interest to enable restaurants to survive the crisis and remain as sources of employment and vitality in the City; and

Capping the third-party food delivery service fee at ten percent (10%) per order will ease the financial burden on struggling restaurants during this emergency while protecting the profits of and not unduly burdening third-party food delivery service companies.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

1. “The Code of Ordinances City of Lowell, Massachusetts” hereinafter called the “Code”, adopted by the City Council on December 23, 2008, as amended, is hereby further amended with respect to Chapter 222, entitled Peace and Good Order, by adding the following section:

§222-21. Delivery Service Fees on Restaurants Temporarily Capped during the COVID-19 Pandemic

A. Definitions.

(1) For the purposes of this ordinance, the following terms have the following meanings.

COVERED ENTITY – A restaurant or other food service establishment that offers, in a single commercial transaction over the internet, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City.

ONLINE ORDER – Any order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup within the City.

PURCHASE PRICE - The menu price of an online order, excluding taxes, gratuities, and any other fees that may make up the total cost to the customer.

SERVICE FEE – Any fee charged to the customer that is above and beyond the purchase price, tax, or gratuity.

THIRD-PARTY FOOD DELIVERY SERVICE – 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, a restaurant or other food service establishment.

B. Conduct Prohibited.

(1) It shall be unlawful for a third-party food delivery service to charge a covered entity a fee per online order for the use of its services that totals more than ten percent (10%) of the purchase price of such online order.

C. Enforcement and Penalties

(1) If a third-party food delivery service charges a covered entity fees that violate this Ordinance, the covered entity shall provide written notice to the third-party food delivery service requesting a refund within seven days. The third-party food delivery service shall have seven days after the notice to cure the violation. If the third-party food delivery service does not provide the refund within seven days of the notice, or if the third-party food delivery service continues to charge the fees in violation of this Ordinance, a covered entity has the right to enforce this Ordinance through civil action seeking damages and injunctive relief. The prevailing party in such action shall be entitled to an award of reasonable attorney fees.

(2) Any third-party food delivery service found to be in violation of this Ordinance or rules promulgated thereunder shall be subject to a fine of not less than \$250.00 for the first offense and \$300.00 for any subsequent offenses. Any fine imposed under the provisions of this Ordinance shall inure to the City of Lowell. Enforcement of this Ordinance shall be by noncriminal disposition as provided in M.G.L. c. 40, §21D or by filing a criminal complaint at the appropriate venue.

(3) At the discretion of the covered entity, third-party food delivery services shall provide on their platform a mechanism for customers to provide gratuities to covered entities. Those payments shall be provided to the covered entities in full and at the same time as the third-party food delivery service provides other payments to the covered entities.

(4) The Director of Development Services or the Director of Development Services' designee is authorized to implement this Ordinance and issue any necessary guidance or rules consistent with this Ordinance.

2. If any section, subsection, sentence, clause, phrase, word, or other portion of this ordinance is, for any reason, held to be 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 ordinance, which remaining portions shall continue in full force and effect.

3. This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 of Massachusetts General Laws. It shall terminate upon the lifting of COVID-19 pandemic-related prohibitions on restaurants such that a full-capacity dine-in service is permitted.

APPROVED AS TO FORM:

A handwritten signature in black ink that reads "Christine P. O'Connor" with a stylized flourish at the end.

Christine P. O'Connor
City Solicitor