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# CITY OF CHICAGO

## RULES

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### **THIRD-PARTY FOOD DELIVERY SERVICES**



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Mayor Lori E. Lightfoot

Commissioner Rosa Escareño

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BY AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION PURSUANT TO CHAPTERS 2-25 AND 4-276 OF THE MUNICIPAL CODE OF CHICAGO, THE FOLLOWING RULES REGARDING THIRD-PARTY FOOD DELIVERY SERVICES ARE HEREBY ADOPTED.

By Order of the Commissioner:

Signed:

A handwritten signature in black ink, appearing to read "Rosa Escareño", written over a horizontal line. The signature is fluid and cursive.

Commissioner Rosa Escareño

Date: May 11, 2020

Published: May 12, 2020

Effective: May 22, 2020

## **SECTION I. PURPOSE OF RULES**

The Commissioner finds that the complexity of the third-party food delivery marketplace poses challenges to consumers in understanding a party's fee structure. A diversity of third-party delivery services and companies encourages competition and innovation in the marketplace. However, third-party delivery companies offer a diversity of fee structures to the restaurants whose products they deliver. These structures include commissions, subscription fees, and other fees to varying degrees. These structures and fees may not be obvious or transparent to the consumer.

The Commissioner also finds that consumers may have the option of purchasing food for carry-out, delivery by the restaurant, or delivery through a third-party delivery service. The menu price may be the same for all three options, with a disclosed delivery charge. However, the third-party delivery services may charge a commission or other fee to the restaurant, so that the restaurant does not receive the full menu price of the food from the customer. In many cases this commission is a substantial percentage of the menu price. And this commission is usually not disclosed to the consumer.

Consumers have an interest in understanding how the third-party delivery services they use impact the local restaurants they patronize in their communities. A material factor in the decision-making process for many consumers is the desire to support local businesses, or "Shop Local," an interest that is heightened amidst the current COVID-19 pandemic, which has forced restaurants to cease in-house dining operations and thereby imperils their existence. And a material fact to such consumers is how much of their money is going to the local business, as opposed to other entities. Given the choice between carry-out, delivery by the restaurant, or delivery by a third-party, the consumer may wish to choose the method that maximizes the amount of the consumer's money that is retained by the local restaurant.

Without the information that the local restaurant does not receive the full menu price for food purchased through a third-party delivery service, however, the consumer cannot make an informed choice, and such information is a therefore a material fact to the consumer. Moreover, showing a menu price without disclosing that the local restaurant does not receive the full menu price on an order through a third-party delivery service, when the restaurant would receive the full menu price when it delivers the food itself or the food is carried-out, causes consumer confusion and misunderstanding as to the value of the purchase that is received by the local restaurant. Additional consumer confusion is caused by the fact that these third-party services frequently add a service charge to the transaction that *is* explicitly disclosed to the consumer, suggesting to the consumer that the disclosed service charge fully covers the cost of the third-party service and omitting the material fact that there may be additional fees being taken out of the revenue received by the local restaurant.

Therefore, the Commissioner finds that, to avoid consumer confusion and misunderstanding and to ensure that all material facts are disclosed to the consumer in transactions through third-party delivery services so that consumers may make informed choices as to whether and how they wish to support local restaurants, these services must disclose commissions or other fees that are charged to the restaurant in connection with the transaction through the third-party service but are not otherwise disclosed by the third-party service to consumers during their transactions.

## **SECTION II. DEFINITIONS.**

As used in these rules, the following terms have the following meanings:

“Commission” means any fee or any other monetary payment, under whatever name, that is charged by the third-party food delivery service to the covered establishment for the covered establishment’s use of the third-party food delivery service to effect a sale and same-day delivery of food to customers from the covered establishment, and that is not otherwise explicitly disclosed to the customer as part of the transaction. “Commission” includes any portion of any annual fee imposed in part or in whole for the provision of these services and attributable to the delivery transaction. “Commission” does not include any fee that is charged by the third-party food delivery service for services provided as a general or indirect cost of doing business, unrelated to delivery, including but not limited to, fees for order-taking and credit card processing that also apply to in-house and carry-out orders, or for advertising in a restaurant directory

“Covered establishment” means any food dispensing establishment that offers, in a single commercial transaction over the internet, whether directly or through a third-party application, the sale and same-day delivery of food to customers from one or more retail locations within the city.

“Food dispensing establishment” has the same meaning as in Municipal Code of Chicago Section 4-8-010.

“Third-party food delivery service” means any website, mobile application or other internet service that offers or arranges via internet or telephone for the sale and same-day delivery or same-day pickup of food and beverages from no fewer than twenty separately owned and operated food dispensing establishments.

## **SECTION III. GENERAL RULES**

### **Rule 1.01 Commission disclosure**

When a final price is disclosed to a customer, and before a transaction occurs, for the purchase and delivery of food from a covered establishment through a third-party food delivery service,

the third-party food delivery service shall disclose to the customer, 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 or collected from the customer by the third-party food delivery service or 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 service, to be added into the transaction when it occurs, and
- (5) any commission associated with the transaction.

### **Rule 1.02 Receipts**

After a transaction occurs for the purchase and delivery of food from a covered establishment through a third-party food delivery service, and when the food is delivered to the customer, if the third-party food delivery service provides a 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 or collected from the customer by the third-party food delivery service or 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 service, that was added into the transaction when it occurred, and
- (5) any commission associated with the transaction.

### **Rule 1.03 Requirements for commission disclosure**

The commission disclosure required in Rules 1.01 and 1.02 shall substantially conform to the following:

- (1) The disclosure shall indicate that it is a commission to be paid by the covered establishment to the third-party food delivery service in connection with the transaction.
- (2) A single aggregate number shall be provided for the total of all commissions applicable to the transaction.
- (3) If feasible, the total commission actually attributable to the specific transaction should be disclosed.
- (4) The total commission may be indicated as a dollar amount or as a percentage of the transaction. If the total commission is indicated as a percentage of the transaction, it shall

be indicated whether it is a percentage of the menu price, the menu price plus tax, the menu price plus tax plus disclosed delivery charge. Examples of such disclosure include

- a. “[Third-Party Food Delivery Service] will charge [Covered Establishment] a commission of \$x.xx for this delivery”
  - b. “[Third-Party Food Delivery Service] will charge [Covered Establishment] a commission xx% of the total price for this delivery”
  - c. “[Third-Party Food Delivery Service] will charge [Covered Establishment] a commission of xx% of the menu price for this delivery”
- (5) If it is not feasible for the third-party food delivery service to calculate the total commission actually attributable to the specific transaction, because that information is not available in real time or because the commission depends on factors such as sales volume, dollar volume, distance travelled, or periodic fixed charges such as an annual fee, the third-party food delivery service may disclose a good-faith estimate of the commission, as a dollar amount, a percentage, an average percentage or a range of percentages, based on the most recent periodic payout from the third-party food delivery service to the covered establishment. It shall not be required that the third-party food delivery service specify what period is covered by the disclosure. Examples of such disclosure include:
- a. “It is estimated that [Third-Party Food Delivery Service] will charge [Covered Establishment] a commission of \$x.xx for this delivery”
  - b. “It is estimated that [Third-Party Food Delivery Service] will charge [Covered Establishment] a commission xx% of the total price for this delivery”
  - c. “Based on previous history it is estimated [Third-Party Food Delivery Service] will charge [Covered Establishment] a commission of xx% to xx% of the menu price for this delivery”
- (6) If it is not feasible for the third-party food delivery service to calculate and disclose the commission by any of the foregoing methods, the third-party food delivery service may calculate and disclose the commission in an alternative manner approved by the Commissioner.

#### **Rule 1.04 Additional disclosures**

Nothing in these Rules prohibits or restricts a third-party food delivery service from including other information, or a link to other information, in addition to the disclosures required by Rules 1.01, 1.02 and 1.03.

#### **Rule 1.05 Implementation**

Third-party food delivery services shall comply with these rules no later than ten days after they are promulgated.

**Rule 1.06 Violation**

Failure to comply with these rules is declared to be a deceptive practice under Municipal Code of Chicago Sections 2-25-090 and 4-276-470.