



# *Monroe County Legislature*

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November 6, 2020

<b>OFFICIAL FILE COPY</b>
No. <u>200341</u>
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
<b>AGENDA/CHARTER -L</b>

To The Honorable  
Monroe County Legislature  
39 West Main Street  
Rochester, NY 14614

**RE: A Local Law to Establish a Temporary Limit on the Charges Imposed by Third-party Delivery Services on Restaurants during the Covid-19 Pandemic**

Honorable Legislators:

The Covid-19 pandemic has had a devastating impact on the food service industry, resulting in closures, loss of revenue, layoffs and reduced work hours. This legislation would help restaurants maximize their revenue by temporarily capping commission fees charged by third-party delivery services.

On March 7, 2020 the Governor of the State of New York declared a state of emergency due to the threat posed by Covid-19. On March 14, the Monroe County Executive declared a local state of emergency in response to Covid-19. As of November 4, 2020, New York State has had more than 500,000 cases and nearly 26,000 deaths. Monroe County has had more than 7,000 cases and more than 300 deaths.

The Governor's "New York State on Pause" executive order identified food service establishments as essential businesses and their employees as essential workers. The social distancing measures required to mitigate the spread of Covid-19, including limited on-premises dining, mean that delivery and takeout options from restaurants are critical to their ability to survive and the public's access to food.

Due to the Covid-19 pandemic, the public increasingly relies on third-party food delivery service platforms to facilitate online ordering of food from restaurants. These third-party food delivery services charge commission fees to restaurants based on the purchase price of food ordered. The commission fees charged to restaurants can be up to 30 percent or more of the

purchase price. Restaurants, particularly small independently-owned businesses, have little negotiating power to lower commission fees because few third-party food delivery companies exist in the market. Restaurants are faced with a difficult choice: participate in the platforms at a high price or lose out on potential business.

To protect public health, it is critical that restaurants remain open and offer takeout and delivery services. This Local Law, if enacted, would do the following:

- Cap the delivery fee from third-party food delivery services to food service establishments at 15 percent of the purchase price for each online order.
- Cap the third-party food delivery service's fee for use of their service to 5 percent of the purchase price for an online takeout order or when the food establishment uses their own driver.
- Prohibit third-party food delivery services from reducing the compensation rate paid to a delivery service driver or garnish gratuities in order to comply with the fee caps.

This Local Law would only apply during a declared emergency and for a period 90 days after the end of a declared emergency and only when there are restrictions on on-premises dining at food service establishments.

Third-party food delivery services argue caps on commissions hurt their ability to market the restaurants on their platforms and will lead to reduced business for participating restaurants. However, there is no independent study proving this is true. Furthermore, the caps have the support of restaurant industry associations.

The legislation accomplishes the goal of protecting the health, safety and welfare of Monroe County residents by ensuring restaurants remain open to provide the public with access to food. It also protects small businesses and their workers during a difficult time in our local economy.

**The specific legislative actions required are:**

1. Schedule and hold a public hearing.
2. Adopt the local law as attached.

This proposal will have no impact on the revenue and/or expenditures of the current Monroe County Budget.

Respectfully Submitted,



Rachel Barnhart  
Legislator – District 21

By Legislator Barnhart

Intro. No. \_\_\_\_\_

LOCAL LAW NO. \_\_\_\_\_ OF 2020

**LOCAL LAW ENTITLED “Local Law to Establish a Temporary Limit on the Charges Imposed by Third-party Delivery Services on Restaurants during the Covid-19 Pandemic**

BE IT RESOLVED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

**Section 1. Title**

This local law shall be known as the law “To Establish a Temporary Limit on the Charges Imposed by Third-party Delivery Services on Restaurants during the Covid-19 Pandemic.”

**Section 2. Definitions**

“Declared emergency” shall mean the period during which the 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 County Executive, such declaration is in effect in the County, and there are restrictions on on-premises dining at restaurants in the County.

“Delivery fee” shall mean a fee charged by a third party food delivery service for providing a restaurant with a service that delivers food from such restaurants to customers. The term does not include any other fee that may be charged by a third-party food delivery service to a restaurant, such as fees for listing or advertising the restaurant on the third-party food delivery service platform or fees related to processing the online order.

“Restaurant” shall have the same meaning as provided in §569-50 of the Monroe County Code.

“Online order” shall mean any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery service, including a telephone order.

“Purchase price” shall mean the total price of the items contained in an online order that are listed on the menu of the restaurant 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.

“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 prepared by, and the same-day delivery and same-day pickup of food and beverages from, restaurants 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 restaurant a delivery fee that totals more than 15 percent of the purchase price of each online order.

2. It shall be unlawful for a third-party food delivery service to charge a restaurant any fee or fees other than a delivery fee for the use of their service greater than 5 percent of the purchase price of each online order. Any fees or other charges from a third-party food delivery service to a restaurant beyond such maximum 5 percent fee per order, and a delivery fee collected pursuant to subdivision (1) of this section, are unlawful, provided that such a cap shall not apply to a credit card fee that is charged to a third-party food delivery service and is charged in the same amount by the third-party food delivery service to such restaurant.

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 only apply during a declared emergency and for a period of 90 days after the end of a declared emergency.

### **Section 4. Enforcement**

If a third-party food delivery service charges a restaurant fees that violate this Local Law, the restaurant shall provide written notice to the third-party food delivery service requesting a refund within seven days. If the third-party food delivery service provider does not provide the refund requested within seven days or the third-party food delivery service continues to charge fees in violation of this Local Law after the initial notice and seven-day cure period, a restaurant may enforce this Chapter by means of a civil action seeking injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

### **Section 5. Severability**

If any clause, sentence, paragraph, section, subdivision or other part of this Local Law or its application shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this Local Law which shall remain in full force and effect except as limited by such order or judgment.

### **Section 6. Preemption**

This section shall be null and void on the day statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, unless state law specifically exempts from preemption earlier enacted local laws in this area. The 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 in this section.

**Section 7. Effective Date**

This Local Law shall take effect in accordance with the provisions of the Municipal Home Rule Law and the Monroe County Charter.

File No. 20-0\_\_\_\_\_

ADOPTION: Date: \_\_\_\_\_ Vote: \_\_\_\_\_

**ACTION BY THE COUNTY EXECUTIVE**

APPROVED: \_\_\_\_\_ VETOED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

EFFECTIVE DATE OF LOCAL LAW: \_\_\_\_\_