

AMENDED COPY AS OF 5/6/2021

Intro. Res. No. 1184-2021

Laid on Table 3/16/2021

Introduced by Legislators Hahn and Gonzalez

**RESOLUTION NO. -2021, ADOPTING LOCAL LAW
NO. -2021, A LOCAL LAW TO CAP FEES CHARGED BY
THIRD-PARTY FOOD DELIVERY SERVICES DURING
CERTAIN EMERGENCY SITUATIONS**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 16, 2021, a proposed local law entitled, "**A LOCAL LAW TO CAP FEES CHARGED BY THIRD-PARTY FOOD DELIVERY SERVICES DURING CERTAIN EMERGENCY SITUATIONS**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2021, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO CAP FEES CHARGED BY THIRD-PARTY
FOOD DELIVERY SERVICES DURING CERTAIN EMERGENCY
SITUATIONS**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the recent declared emergency due to the COVID-19 crisis has temporarily shut down vital operations of food service establishments in New York State.

This Legislature also finds and determines that, due to the pandemic, on-premises dining was initially prohibited in 2020, with limited reopening of restaurants to on-premises dining that are still in effect presently.

This Legislature further finds and determines that the repercussions of closing and then limiting on-premises dining have had severe financial impacts on restaurants across Suffolk County.

This Legislature finds that while some restaurants may receive take-out orders directly, there are many third-party food delivery services which a majority of consumers use to quickly and easily order pick-up and delivery meals from local restaurants.

This Legislature determines that these third-party food delivery services charge fees for delivery and other services provided to local restaurants when an online order is placed through said third-party delivery service's mobile phone application and/or website.

This Legislature also finds that third-party food delivery services should not be permitted to take advantage of already struggling local restaurants during the time of and immediately following a declared emergency which prohibits on-premises dining.

This Legislature further finds that the fees that third-party food delivery services charge restaurants should be capped during and immediately following those types of declared emergency to avoid the exploitation of food service establishments.

Therefore, the purpose of this law is to cap the fees charged by third-party food delivery services in Suffolk County during, and for 90 days after, a declared emergency that prohibits on-premises dining.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

DECLARED EMERGENCY - the period during which a 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 for the County of Suffolk, and such declaration restricts in-person dining at food service establishments in the County.

DELIVERY FEE - 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.

FOOD SERVICE ESTABLISHMENT - as defined in Article 13, § 760-1300(3)(X) of the Suffolk County Sanitary Code.

PERSON - any natural person, individual, firm, partnership, association, corporation, company, or business organization of any kind.

PURCHASE PRICE - 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.

THIRD-PARTY FOOD DELIVERY SERVICE - any website, mobile application, and/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.

Section 3. Fee limits during declared emergencies.

- A. 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.
- B. It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee(s), other than a delivery fee, for the use of their service which is 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 the maximum 5% fee per order and a delivery fee collected pursuant to paragraph A of this section shall be unlawful. The service fee shall not include any credit card fee that is

charged to the third-party food delivery service and is charged back as a pass-through cost at the same rate to the food service establishment.

- C. It shall be unlawful for a third-party food delivery service to reduce the compensation rate paid to a delivery driver or to garnish gratuities in order to comply with the requirements of paragraphs A and B of this section.

Section 4. Exemptions.

A covered establishment may agree to pay a third-party food delivery platform a fee which exceeds the limits set in Section 3 of this law to obtain optional products or services, including, but not limited to, advertising or marketing, in addition to delivery or pickup service.

Section 5. Penalties.

- A. Any third-party food delivery service that violates any provision of this law shall be subject to a civil penalty of up to one thousand dollars (\$1,000) per violation.
- B. Violations of this law shall accrue on a daily basis for each day and for each food service establishment charged a fee in violation of this law.
- C. A civil action may be brought by the Suffolk County Attorney's Office on behalf of the County in any court of competent jurisdiction to recover any or all of the following:
 - 1. any civil penalty authorized pursuant to this section;
 - 2. injunctive relief to restrain or enjoin any activity in violation of this section;
 - 3. restitution of an amount not to exceed the amount of fees collected by a third-party food delivery service that exceeded the maximum amounts permitted pursuant to this law; and
 - 4. such other remedies as the court may deem appropriate.
- D. The Suffolk County Department of Labor, Licensing and Consumer Affairs may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

Section 6. Enforcement.

- A. This law shall be enforced by the Suffolk County Department of Labor, Licensing and Consumer Affairs.
- B. This law shall only be enforced during the period of a declared emergency during which on-premises dining at food service establishments is restricted as defined in Section 2 of this law, and for 90 days after such declared emergency's expiration.

Section 7. Rules and Regulations.

The Commissioner of the Suffolk County Department of Labor, Licensing and Consumer Affairs is authorized, empowered and directed to promulgate such rules and regulations as he or she shall deem necessary to implement the provisions of this law.

Section 8. Applicability.

This law shall apply to all actions by third-party food delivery services occurring during a declared emergency as defined in Section 2 of this law, and for 90 days after the end of such declared emergency, on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this 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 or 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 law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: