

**FTOWN OF MORRISON, COLORADO
BOARD OF TRUSTEES
ORDINANCE NO. 503**

**AN ORDINANCE AMENDING TITLE 3 OF THE MORRISON MUNICIPAL
CODE, ADDING CHAPTER 7: “TEMPORARY CAPS ON FEES FOR FOOD
DELIVERY” AND DECLARING AN EMERGENCY**

WHEREAS, the Town of Morrison is a Colorado home rule municipality operating under a Charter approved by the electorate pursuant to Article XX of the Colorado Constitution and governed by its elected Board of Trustees; and

WHEREAS, the Board of Trustees has authority pursuant to the Home Rule Charter and C.R.S. to adopt ordinances for protection of the public safety, health and welfare, extending to the regulation of businesses; and

WHEREAS, currently the United States is undergoing a severe pandemic due to a respiratory illness caused by the Severe Acute Respiratory Syndrome Coronavirus 2, SARS-CoV-2, (“COVID-19”) creating a national health emergency that continues to restrict all food service establishments from operating freely within the Town, and causing a severe financial impact on all food service establishments within the Town; and

WHEREAS, the pandemic and the restrictions associated with it have increased the need for take-out meal services for all customers, and while some restaurants may receive take-out orders directly, there are many third-party food delivery platforms and other services that operate through websites and/or mobile phone applications used by consumers to quickly and easily order pick-up and delivery meals from local food establishments; and

WHEREAS, the Board of Trustees finds that third party delivery services contract with consumers for food delivery services without the knowledge or consent of local food establishments, and therefore will represent to the consumer that they are selling meals from, or on behalf of, the local food establishment to the consumers, and in some cases the delivery platforms charge exorbitant fees to the already struggling local food establishment; and

WHEREAS, the Board finds that the fees charged by a third-party food delivery platform to local food establishments in the Town should be temporarily capped while restrictions on dine-in at local food establishments remain in place, to prevent further economic harm to local food establishments within the Town; and

WHEREAS, the Board finds that immediate effectiveness of this ordinance is necessary to protect local businesses from excessive delivery fees and commissions and to permit such businesses to continue operations during the present COVID 19 pandemic.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Morrison, Colorado:

Section 1. Title 3 of the Morrison Municipal Code is amended to add a new Chapter 7, to read:

CHAPTER 7
TEMPORARY CAPS ON FEES FOR FOOD DELIVERY

Sec. 3-7.1. DEFINITIONS.

Local Food Establishment means a business providing food at retail and licensed within the Town as required by Title 3 Chapter 1 of the Municipal Code.

Online order means an order placed by a customer through a platform provided by the third-party food delivery platform for delivery or pickup within the Town.

Purchase price means the menu price of an online order, excluding taxes, gratuities, or any other fees that may make up the total cost to the customer of an online order.

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.

Third-party food delivery platform means any person, 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 that are engaged in business in the Town as defined in Section 3-1-1 of the Municipal Code.

Sec. 3-7-2. THIRD-PARTY FOOD DELIVERY FEE OR COMMISSION LIMITATIONS;
DUTY TO DISCLOSE FEES OR COMMISSIONS.

- A. A third-party food delivery platform shall not perform any service for, or disclose any information about, a local food establishment without their written consent.
- B. No person shall cause a third-party food delivery platform to charge a local food establishment a commission fee for the use of the platform's services for delivery or pick-up that exceeds 15% of the purchase price per online order. In order to charge a commission or fee above the 15% established in this subsection, the third-party delivery service shall receive consent from the local food establishment.
- C. No person shall cause a third-party food delivery platform to reduce the compensation rate paid to a delivery service driver or garnish gratuities or tips in order to comply with subsection B of this section.
- D. At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a local 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 any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery platform as a line item on the receipt.

- E. After a transaction occurs for the purchase and delivery of food from a local 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 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 local food 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.
- F. No third-party food delivery platform may charge any fee from a local 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.
- G. The provisions of this section shall not limit the ability of any local food establishment to choose to pay a higher commission or supplemental fee to access additional advertising or other products and services offered by any third-party food delivery platform.

Sec. 3-7-3. COMPLAINTS. PROCEDURE.

- A. *Complaints.* Subject to any rules and regulations that may be issued by the Town Manager, any local food establishment may submit a complaint of a violation of this section to the Town Manager. Any such complaint shall be made in writing and shall include all information relied upon by the retail food establishment. The local food establishment bears the burden of proving a violation under this Chapter by preponderance of the evidence.
- B. *Investigation.* The Town Manager shall investigate all written complaints, shall notify any third-party food delivery platform alleged to have violated the regulations established in this ordinance of any complaint lodged against them, and shall provide a summary of findings regarding any such complaint to both the complainant and the third-party delivery platform. Third-party food delivery platforms shall maintain books and records available for the Town Manager to investigate any complaints. Such books and records shall be made available to the Town Manager upon demand. Failure to provide the records as required in this section shall be prima facie rebuttable evidence of a violation.
- C. *Civil Penalty.* If the Town Manager determines a violation of this article has occurred, the third-party food delivery platform shall be subject to a civil penalty not to exceed \$500 per violation, each day a violation of this article occurs. The continuation of a violation shall be a separate violation for each day the Town Manager determines a third-party food delivery platform has violated this Chapter. Nothing in this Section prevents the Town Manager from reaching a settlement agreement with respect to one or multiple violations.

D. *Administrative Hearing.* Any person or third-party delivery service who disputes a civil penalty assessed pursuant to a violation of this Chapter may request a rehearing in writing. The Town Manager shall conduct the rehearing, notice of which and opportunity to present written and in-person (virtual) testimony shall be given to the appealing party and the original complaining party. The decision of the Town Manager on rehearing shall be the final decision of the Town, which may only be appealed to the Jefferson County District Court under the provisions of Colorado Rule of Civil Procedure 106(a)(4) within thirty (30) days of the date the decision becomes final.

Section 2. Expiration; Sunset Date. This ordinance shall expire and the Chapter 7 adopted hereby shall be automatically repealed on March 31, 2021, or when public health orders allow restaurants to have 100% unrestricted in-person dining capacity, whichever is sooner.

Section 3. Emergency Declared; Effective Date. The Board of Trustees finds that an emergency exists requiring immediate effectiveness of this ordinance, in that the present Covid-19 pandemic has severely restricted operations of restaurants within the Town, and protection against exorbitant delivery fees or commissions is urgently needed to enable these operations to continue. Pursuant to Charter Section 3.10, this ordinance shall take effect immediately upon final adoption, and shall be published in full as required by Section 3.14 of the Charter.

Section 4. Severability. If any article, section, paragraph, sentence, clause or phrase of this ordinance, or the standards adopted herein is held to be unconstitutional or invalid for any reason, such decision will not affect the validity or constitutionality of the remaining portions of this ordinance.

INTRODUCED, READ, PASSED AND ADOPTED this 1st day of December 2020, by a vote of 5 ayes and 0 nays.

TOWN OF MORRISON:


Sean Forey (Dec 8, 2020 15:30MST)

Sean K. Forey, Mayor

ATTEST:


Lyndsey Paavilainen, Town Clerk

Ordinance 503- Food delivery Fee

Final Audit Report

2020-12-08

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