

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the Coronavirus Support Temporary Amendment Act of 2020 to limit the commission fee that a third-party food delivery platform may charge a food service entity for use of the platform’s services.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Third-Party Food Pickup Commission Emergency Declaration Resolution of 2021”.

Sec. 2. (a) On March 11, 2020, the Mayor issued Mayor’s Orders 2020-45 and 2020-46, declaring a public emergency and a public health emergency in the District due to the imminent threat to the health, safety, and welfare of District residents posed by the spread of COVID-19. In the intervening months, the Mayor has issued several additional orders. Among other provisions, these orders required that restaurants operate at limited capacity to prevent the spread of COVID-19.

(b) Because restaurants are operating at limited onsite capacity, they have shifted more of their sales to pick-up or delivery. Many pick-up and delivery orders are facilitated by third-party food delivery platforms, which operate by listing local restaurants on an online platform where diners can view restaurant menus and place orders from the restaurant through the third-party food delivery platform. The customer

34 can then pick up their order at the restaurant or the platform will send a delivery person to  
35 transport the food from the restaurant to the customer. The third-party platform will  
36 collect a commission fee from the restaurant for each order.

37 (c) Before the public health emergency, third-party food delivery platforms  
38 charged very high fees, typically around 30% of an order total. These fees cut into  
39 restaurants' already-narrow profit margins. Some restaurants estimate that they lose  
40 money on orders placed through third-party platforms. As more and more sales come  
41 through these platforms, these high fees threaten the viability of the District's  
42 independent restaurants.

43 (d) On June 9, 2020, the Council passed the Coronavirus Support Temporary  
44 Amendment Act of 2020, effective October 9, 2020 (D.C. Law 23-130; 67 DCR 8622).  
45 This legislation included a provision to temporarily cap commission fees for delivery and  
46 pick-up at 15% to help limit these costs while dining rooms are closed or at limited  
47 capacity. Many restaurant owners have stated that the emergency cap provided a lifeline  
48 to their struggling businesses.

49 (e) The existing 15% cap applies to both pick-up and delivery orders, even though  
50 the costs to the third-party food delivery platform are much lower for pick-up orders. The  
51 underlying emergency would establish a lower 5% commission cap for orders that a  
52 third-party food delivery platform processes but does not provide for delivery. This  
53 would include orders that a customer picks up themselves as well as orders for which the  
54 restaurant provides its own delivery services. This lower commission cap will help  
55 restaurants make money on pick-up orders while their dining rooms are closed or

56 operating at limited capacity, and give restaurants greater choice in how they provide  
57 delivery to their customers.

58           Sec. 3. The Council of the District of Columbia determines that the circumstances  
59 enumerated in section 2 constitute emergency circumstances making it necessary that  
60 the Third-Party Food Pickup Commission Emergency Amendment Act of 2021 be  
61 adopted after a single reading.

62           Sec. 4. This resolution shall take effect immediately.