

**CITY OF EDINA
LOCAL EMERGENCY REGULATION NO. 2021-01**

**IMPOSING A CAP ON THIRD-PARTY FOOD SERVICE DELIVERY FEES
DURING THE COVID-19 EMERGENCY**

WHEREAS, on March 13, 2020, the Governor of the State of Minnesota issued Executive Order 20-01 Declaring a peacetime emergency and coordinating Minnesota’s strategy to protect Minnesotans from COVID-19; and

WHEREAS, on March 16, 2020, Edina Mayor Hovland issued a proclamation declaring a local emergency due to COVID-19 and on March 17, 2020, the Edina City Council adopted a resolution extending the Mayor’s proclamation; and

WHEREAS, on July 1, 2020, Edina Mayor Hovland issued an Amendment to the Declaration of Local Emergency Order #2020-02, to which the City Council consented; and

WHEREAS, Minnesota Statute §12.29 authorizes the Mayor to declare an existence of a local emergency, invoke necessary portions of the City's Emergency Operations Plans, and authorizes aid and services in accordance with mutual aid agreements. That authority is also found in Edina City Code, Section 14-23; and

WHEREAS, the COVID-19 crisis and subsequent state executive orders continue to restrict the operations of food establishments within the city, thereby increasing the need for take-out meal services; and

WHEREAS, delivery services are provided by many different third-party food service delivery platforms that operate through websites and/or mobile phone applications used by consumers to order pick-up and delivery of meals; and

WHEREAS, these third-party food service delivery platforms frequently charge excessive commissions and fees to the food establishment which further burden food establishments’ ever-thinning profit margins, often without the knowledge of the customer; and

WHEREAS, these matters create a concern for the personal safety and economic security of our community members who work in and own food establishments during this emergency because the closing of a food establishment creates public safety and welfare risks stemming from unemployment such as homelessness and hunger which exacerbate the impact of the emergency; and

WHEREAS, establishing this cap lends support to these food establishments and is necessary to protect the public safety, personal safety, economic security, and welfare of those who live and work in our community; and

WHEREAS, Minnesota Statutes Section 12.29, Minnesota Statutes Section 412.221 subdivisions 30 and 32, and the Mayor's declaration of a local emergency authorize regulations which protect public safety and welfare during a local emergency.

NOW, THEREFORE, I, JAMES HOVLAND, MAYOR OF THE CITY OF EDINA, WITH THE CONSENT OF THE EDINA CITY COUNCIL, DO HEREBY ORDER THE FOLLOWING EMERGENCY REGULATION:

1. A third-party food delivery platform shall not perform any service for or disclose any information about a food establishment licensed under Chapter 20 Article V of the Edina City Code without the consent of the same establishment.
2. A third-party delivery food platform shall not charge any additional fee to a food establishment that the food establishment has not voluntarily agreed to pay.
3. No person shall cause a third-party food delivery platform to charge a food establishment a commission fee for the use of the platform's services for delivery or pick-up that exceeds fifteen percent (15%) of the purchase price per online order. The provisions of this emergency regulation shall not limit the ability of any 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.
4. No person shall cause a third-party food delivery platform to reduce the compensation rate paid to a delivery service driver or request that a delivery service driver accept lower compensation in the future or garnish gratuities in order to comply with the terms of this emergency regulation.
5. At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a 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, in plain language and in a conspicuous manner, any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery platform.
6. After a transaction occurs for the purchase and delivery of food from a 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: (i) the menu price of the food; (ii) any sales or other tax applied to the transaction; (iii) any delivery charge or service fee, imposed on and collected from the customer by the third-party food delivery platform and by the covered establishment, in addition to the menu price of the food; (iv) any tip/gratuity

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 (v) any commission associated with the transaction as referenced in paragraph 3 of this emergency regulation, not including any agreed-upon higher commission or fee for access to additional advertising or other products or services.

7. No third-party food delivery platform may charge any fee from a food establishment for a telephone order if a telephone call between such food establishment and a customer does not result in an actual transaction during such telephone call.

8. Subject to any rules and regulations or guidance that may be issued by the licensing official, any food establishment or delivery service driver may submit a complaint of a violation of this section to the licensing official. Any such complaint shall be made in writing to the licensing official and shall include all information relied upon by the food establishment.

9. The licensing official shall investigate written complaints, shall notify any third-party food delivery platform alleged to have violated this emergency regulation of any complaint, 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 sufficient for the licensing official to conduct an investigation and issue an assessment. Such books and records shall be made available to the licensing official upon demand.

10. If the licensing official determines a violation of this emergency regulation has occurred, the third-party food delivery platform may be subject to penalties listed in paragraph 12(b) of this resolution. For purposes of this emergency regulation, the continuation of a violation shall be a separate violation for each day the licensing official determines a third-party food delivery platform has violated this article. The licensing official shall be authorized to enforce the terms of this emergency regulation through the issuance of written notices and warnings and/or through the issuance of administrative citations or referral for misdemeanor prosecution or any other legal or equitable relief authorized by law.

11. Definitions:

a. "Food establishment" shall have the meaning provided pursuant to the Minnesota State Food Code and the Edina City Code Chapter 20, Article V.

b. "Licensing official" means the licensing official which licenses food and lodging establishments within the Health Division.

c. "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 city.

d. "Person" shall have the meaning provided pursuant to Edina City Code § 1-2.

e. "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.

f. "Telephone order" means an order placed by a customer to a food establishment through a telephone call forwarded by a call system provided by a third-party food delivery platform for delivery or pickup within the city.

g. "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, food establishments.

12. Additional Terms:

a. This Emergency Regulation is effective 12:01 a.m. (CST) on January 11, 2021, and continuing until further notice or until it is extended, rescinded, superseded, or amended, or until the declaration of the local public health emergency expires or until the termination of the state's peacetime emergency declared in the Governor's Executive Order 20-01, whichever is earlier.

b. A violation of this Emergency Regulation may be enforced by the issuance of notices, warning letter(s), administrative citation(s), and/or misdemeanor prosecution or any other legal or equitable relief authorized by law. Minnesota Statute Section 12.45; Edina City Code Section 1-18. A violation shall be considered an offense subject to enforcement pursuant to Edina City Code Section 1-18.

By: _____
Mayor James Hovland
City of Edina, Minnesota
January 5, 2021