

INTRODUCED: 2/22/2021

REFERRED TO: Metropolitan and Economic Development Committee

SPONSOR: Councillors Barth and Potts

DIGEST: adds a new Chapter 812 to temporarily limit charges and fees during the COVID-19 pandemic

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**SOURCE:**

Initiated by: City-County Council

Drafted by: Office of the Mayor

**LEGAL REQUIREMENTS FOR ADOPTION:**

Subject to approval or veto by Mayor

**PROPOSED EFFECTIVE DATE:**

Adoption and approvals

GENERAL COUNSEL APPROVAL: \_\_\_\_\_ Date: February 18, 2021

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CITY-COUNTY GENERAL ORDINANCE NO. \_\_\_\_\_, 2021

A PROPOSAL FOR A GENERAL ORDINANCE to add a new Chapter 812 to temporarily limit charges and fees imposed by Third-Party Delivery Services on Retail Food Establishments during the COVID-19 pandemic and preventing those charges from being borne by customers and drivers for Third-Party Delivery Services.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Title IV of the "Revised Code of the Consolidated City and County," regarding business and commercial regulations and licenses, hereby is amended by the addition of a NEW Chapter 812 to read as follows:

**Sec. 812-1.01. Purpose.**

This chapter is adopted for the purpose of establishing a temporary limit on the charges and fees imposed by Third-Party Delivery Services on Retail Food Establishments during the COVID-19 pandemic and preventing those charges from being borne by customers and drivers for Third-Party Delivery Services

**Sec. 812-1.02. Definitions.**

As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

*Retail Food Establishment* shall have the meaning ascribed thereto in Indiana Administrative Code under 410 IAC 7-24-79, including but not limited to a restaurant, a catering operation, a grocery store, a tavern, or a food bank.

*Third Party Food Delivery Service* means any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the delivery or pick-up of food and beverages from, no fewer than 20 Retail Food Establishments located in the Consolidate City-County that are each owned and operated by different persons.

*Delivery Fee* means a fee charged by a Third-Party Food Delivery Service for providing a Retail Food 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 Retail Food

Establishment, such as fees for listing or advertising the Retail Food Establishment on the Third-Party Food Delivery Service platform or fees related to processing the online order, including, but not limited to, service fees, fees for facilitating Online Orders for pick-up, and credit card processing fees.

*Online Order* means an 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, for delivery or pick-up within the City.

*Purchase Price* means the price, as listed on the menu, for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the customer by the Retail Food Establishment through the Third-Party Food Delivery Service. This definition does not include taxes, gratuities, and any other fees or costs that may make up the total amount charged to the customer of an Online Order.

#### **Sec. 812-1.03. Prohibited Actions.**

It shall be unlawful for a Third-Party Food Delivery Service to:

- (1) Charge a Retail Food Establishment a Delivery Fee that totals more than 15 percent of the Purchase Price of each Online Order on an individual or cumulative basis;
- (2) Charge a Retail Food Establishment 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 from a Third-Party Food Delivery Service to a Retail Food Establishment beyond such maximum 5 percent, and a Delivery Fee collected pursuant to subdivision (1) of this section are unlawful;
- (3) Charge a customer any price for a food or beverage item that is higher than the Purchase Price; or
- (4) Reduce the compensation rates paid to the Third-Party Delivery Service drivers or to garnish gratuities, as a result of any fee limitations instituted by this section.

#### **Sec. 812-1.04. Enforcement and Penalties.**

(a) This chapter shall be enforced by the department of business and neighborhood services or its designee.

(b) A Third-Party Food Delivery Service which fails to comply with the provisions of this chapter shall be subject to admission of violation and payment of the designated civil penalty as provided in chapter 103-52 of this Code.

(c) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

(d) Violations under this subchapter shall accrue daily for each day and for each Retail Food Establishment charged a fee in violation of the subchapter of any rule promulgated pursuant to this subchapter.

#### **SEC. 812-1.05. Sunset.**

This article shall sunset 90 days after the Health and Hospital Corporation of Marion County's Public Health 2020 Order limiting capacity of indoor dining at Retail Food Establishments is either rescinded or expires, and Retail Food Establishments can operate at 100% capacity indoors.

SECTION 2. Section 103-52 of the "Revised Code of the Consolidated City and County," regarding Validation and Enforcement, hereby is amended by the addition of the language that is underscored, to read as follows:

**Sec. 103-52. - Schedule of Code provisions and penalties.**

The following Code (or ordinance) provisions and their respective civil penalties are designated for enforcement through the ordinance violations bureau:

Code Section	Subject Matter	Civil Penalty
293-321	Failure to file economic statement of interest—First offense	50.00
321-1	Swimming in unguarded waters—First offense in calendar year	50.00
361-108	Littering on premises of another	45.00
361-201	Vehicle losing its load—First offense in calendar year	50.00
361-304(a)	Maintenance of areas around business in clean condition—First offense in a 12-month period	100.00
361-304(a)	Maintenance of areas around business in clean condition—Second offense in a 12-month period	250.00
361-304(b)	Maintenance of areas around business in clean condition—First offense in a 12-month period	100.00
361-304(b)	Maintenance of areas around business in clean condition—Second offense in a 12-month period	250.00
361-305	Loading or unloading docks—First offense in a 12-month period	100.00
361-305	Loading or unloading docks—Second offense in a 12-month period	250.00
361-306	Construction sites—First offense in a 12-month period	100.00
361-306	Construction sites—Second offense in a 12-month period	250.00
361-307	Maintenance of sidewalks and alleys in litter-free condition—First offense in a 12-month period	100.00
361-307	Maintenance of sidewalks and alleys in litter-free condition—Second offense in a 12-month period	250.00
361-308	Maintenance at municipal bus stops, shelters and stations—First offense in a 12-month period	100.00
361-308	Maintenance at municipal bus stops, shelters and stations—Second offense in a 12-month period	250.00

361-309	Responsibility of owners of premises relative to uncollected refuse containers—First offense in a 12-month period	100.00
361-309	Responsibility of owners of premises relative to uncollected refuse containers—Second offense in a 12-month period	250.00
361-310	Responsibility of contractor to remove refuse containers; remedies for violation—First offense in a 12-month period	100.00
361-310	Responsibility of contractor to remove refuse containers; remedies for violation—Second offense in a 12-month period	250.00
361-401	Litter Receptacles, Public places—First offense in a 12-month period	100.00
361-401	Litter Receptacles, Public places—Second offense in a 12-month period	250.00
361-402	Litter Receptacles, Parking lots—First offense in a 12-month period	100.00
361-402	Litter Receptacles, Parking lots—Second offense in a 12-month period	250.00
361-403	Litter Receptacles, Private premises—First offense in a 12-month period	100.00
361-403	Litter Receptacles, Private premises—Second offense in a 12-month period	250.00
361-404	Litter Receptacles, Municipal bus stops, shelters and stations—First offense in a 12-month period	100.00
361-404	Litter Receptacles, Municipal bus stops, shelters and stations—Second offense in a 12-month period	250.00
361-405	Litter Receptacles, Specifications—First offense in a 12-month period	100.00
361-405	Litter Receptacles, Specifications—Second offense in a 12-month period	250.00
361-406	Litter Receptacles, Periodic emptying of receptacles—First offense in a 12-month period	100.00
361-406	Litter Receptacles, Periodic emptying of receptacles—Second offense in a 12-month period	250.00
391-302	Unlawful noise—First offense in calendar year	50.00
407-103	Loitering—First offense in calendar year	50.00
407-201	Unlawful fireworks use, ignition or discharge—First offense	100.00

431-108	Parking prohibited for street repairs and cleaning	20.00
431-314	Premises address violation—Second offense in calendar year	25.00
431-602	Bicycles—Second violation in a twelve-month period regarding children under twelve	50.00
431-603	Unlawful operation of bicycle—First violation in a twelve-month period	50.00
431-604	Unattended bicycle or bicycle not in operation—First violation in a twelve-month period	50.00
431-604	Unattended bicycle or bicycle not in operation—Second violation in a twelve-month period	100.00
431-604	Unattended bicycle or bicycle not in operation—Third violation in a twelve-month period	200.00
431-702	Prohibited activity in roadways—First violation in twelve-month period	25.00
431-703	Interference with vehicular traffic—First violation in twelve-month period	25.00
441-108	Pedestrian violations	12.50
441-214	Parking when temporarily prohibited	20.00
441-318	Unlawful use of horn or sounding device	15.00
441-321	Electric foot scooters on sidewalks, greenways or multimodal paths	25.00
441-374	Bicycle path or lane—First violation in a twelve-month period	50.00
441-363	Unlawfully parked trailer	20.00
441-382	Bus-only or bus-and-turn lanes—First violation in a twelve-month period	50.00
441-382	Bus-only or bus-and-turn lanes—Second and subsequent violations in a twelve-month period	100.00
441-407	Display of unauthorized traffic controls	15.00
441-408	Interference with traffic control devices	15.00
441-503	Consumption or possession by operator of motor vehicle—First offense in calendar year	50.00

441-504	Operating motor vehicle containing open alcoholic beverages—First offense in calendar year	50.00
511-702	Open burning	50.00
531-102	Animal at large—First offense in twelve-month period	50.00
531-202	No dog or cat permanent identification—First offense	50.00
531-202	No dog or cat permanent identification—Second and subsequent offenses	100.00
531-301	No dog or cat antirabies vaccination—First offense	100.00
531-302	No antirabies vaccination tag on dog or cat—First offense in twelve-month period	25.00
531-302	No antirabies vaccination record for feral cat colony—First offense in twelve-month period	25.00
575-206	Violation of graffiti ordinance	50.00
611-403	Unlawful loading or unloading of private bus	15.00
611-501	Unlawful stopping of food vendor vehicle	15.00
611-502	Violation of noise restriction on food vendors	15.00
611-504	Failure of food vending vehicle to display required warnings	15.00
611-506	Unlawful vending from other than curbside of vending vehicle	15.00
616-402	Violation of restrictions on smoking in certain areas	100.00
621-106	Unlawful parking on sidewalk, in crosswalk, or adjacent yard	25.00
621-107	Unlawful parking in certain school areas	20.00
621-108	Unlawful manner of parking	20.00
621-109	No required lights on certain parked vehicles	20.00
621-110	Violation of handicapped parking restrictions	100.00
621-111	Unlawful parking in handicapped parking meter zone	100.00
621-112	Unloading perpendicular to curb without permit	20.00

621-113	Unlawful use of bus stops and taxicab stands	20.00
621-114	Unlawful use of passenger and loading zones	20.00
621-115	Unlawful parking adjacent to certain buildings	20.00
621-116	Unlawful parking for display for sale or advertising	20.00
621-117	Unlawful parking for more than six (6) hours	20.00
621-118	Unlawful parking of commercial vehicles at night	20.00
621-119	Unlawful parking in alleys or on certain narrow streets	20.00
621-120	Unlawful parking in designated special parking areas	20.00
621-121	Parking on certain streets where prohibited at all times	20.00
621-122	Stopping, standing or parking on streets where prohibited at all times	20.00
621-123	Parking on certain streets where prohibited at all times on certain days	20.00
621-124	Parking on certain streets when prohibited at certain times on certain days	20.00
621-125	Stopping, standing or parking during prohibited hours on certain days on certain streets	25.00
621-126	Parking longer than permitted on certain streets at certain times on certain days	20.00
621-127	Unlawful outdoor storage of inoperable motor vehicle—First offense in a twelve-month period	50.00
621-127	Unlawful outdoor storage of inoperable motor vehicle—Second offense in a twelve-month period	250.00
621-128	First violation in twelve-month period	50.00
621-128	Second violation in twelve-month period	100.00
621-221	Parking in parking meter space when prohibited	20.00
621-226	Parking in excess of maximum time permitted in parking meter space	20.00
621-227	Expired parking meter	20.00

621-306	Unlawful parking during snow emergency	25.00
621-404	Leaving taxicab unattended	20.00
621-405	Unlawful parking in certain mailbox zones	20.00
621-430(a)	Unlawful use of loading zone in Regional Center by non-eligible vehicle	25.00
621-430(b)	Unlawful use of loading zone in Regional Center—Non-permitted use	25.00
621-430(c)	Unlawful use of loading zone in Regional Center in excess of posted time limits	25.00
621-430(d)	Unlawful obstructing traffic in the Regional Center	25.00
621-430(e)	Unlawful parking in alleys or on certain narrow streets in the Regional Center	25.00
621-501	Unlawful stopping, standing or parking near fire hydrant	75.00
621-502	Unlawful obstruction of fire lane	75.00
621-603	Violation of residential permit parking restrictions	50.00
631-102	In park after hours—First offense in calendar year	50.00
631-109	Alcohol in park—First offense in calendar year	50.00
645-528	Skateboard or similar play device—First offense in calendar year	50.00
706-105	Water conservation violation—First offense in twelve-month period	100.00
706-105	Water conservation violation—Second offense in twelve-month period	250.00
730-505	Civil zoning violations—First offense in calendar year	50.00
811-214	Alarm business failure to report monitoring information	100.00
811-502	Second false alarm in calendar year	50.00
811-502	Third false alarm in calendar year	75.00
811-502	Fourth false alarm in calendar year	100.00



811-502	Fifth false alarm in calendar year	125.00
811-502	Sixth and subsequent false alarms in calendar year	200.00
<u>812-1.04</u>	<u>Third-Party Food Delivery Service violation for each occurrence</u>	<u>500.00</u>
851-107(a)	Failure to register as a landlord	500.00
851-107(b)	Failure to update the landlord registration upon change in ownership	250.00
851-107(c)	Failure to renew annual registration as a landlord	100.00
851-107(d)	Failure to update the landlord registration upon change in information, other than ownership	100.00
875-702	Construction activity without required license, listing or registration—First offense in twelve-month period	250.00
Ch. 895	Horse-drawn carriage violation—First offense in twelve-month period	100.00
Ch. 903	Pedal cab violation—First offense in twelve-month period	100.00
905-107	Removal of a Shared Mobility Device	100.00 plus 10.00 per day
905-108	Illegally Parked Shared Mobility Device	25.00
931-305	Excessive parking charge at commercial parking facility—First offense in twelve-month period	100.00
996-77	No monthly taxicab certificate—First offense in twelve-month period	25.00
996-123	Failure to maintain public vehicle for hire—First offense in twelve-month period	25.00
996-124	Taxicab operator dress code violation—First offense in twelve-month period	25.00
996-126	Failure to display licenses or fare schedule—First offense in twelve-month period	25.00
996-138	Taxicab operator exceeding limitation on hours—First offense in twelve-month period	25.00

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_ p.m.

ATTEST:

\_\_\_\_\_  
Vop Osili  
President, City-County Council

\_\_\_\_\_  
SaRita Hughes  
Clerk, City-County Council

Presented by me to the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
SaRita Hughes  
Clerk, City-County Council

Approved and signed by me this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Joseph Hogsett, Mayor