

ORDINANCE NO. 5482

ORDINANCE TO ESTABLISH CHAPTER 5.151 OF THE CODE OF THE CITY OF ELIZABETH ENTITLED "FOOD HANDLING ESTABLISHMENTS, REGULATION OF DELIVERY FEES", REGULATING FEES CHARGED TO RESTAURANTS BY THIRD-PARTY TAKE-OUT AND DELIVERY SERVICE APPLICATIONS AND INTERNET WEBSITES DURING SUCH TIMES WHEN THE RESTRICTIONS UPON SUCH FEES IMPOSED BY STATE LAW ARE SUSPENDED.

WHEREAS, on June 26, 2020, the governor signed into law Senate Bill 2437 (S. 2437) restricting the fees charged to restaurants by third-party delivery applications and internet websites for take-out and delivery services; and

WHEREAS, by its terms the restrictions imposed by S. 2437 apply during and after "the first day of the third month following any state of emergency declared by the governor in response to Covid-19 that restricts restaurant dine-in service to less than 25% of the maximum capacity allowed by law"; and

WHEREAS, on September 1, 2020, the governor signed Executive Order 183 allowing restaurants to increase the capacity of indoor dining to 25% of the maximum capacity allowed by law; and

WHEREAS, the effect of Executive Order 183 is to remove the restrictions on third-party fees imposed by S. 2437; and

WHEREAS, increasing the indoor dining capacity of restaurants to 25% will not significantly reduce the financial hardship suffered by restaurants, which must still rely upon third-party delivery services to remain open; and

WHEREAS, the Council concludes that it is in the public interest to restrict the fees charged by third-party delivery services whenever the restrictions imposed by S. 2437 are removed as long as the state of emergency caused by Covid-19 remains in effect; now, therefore,

**BE IT ORDAINED**, by the City Council of the City of Elizabeth, New Jersey, as follows:

SECTION - 1. - The above recitals are incorporated into this section of the Ordinance as if specifically set forth at length herein.

PRESENTED TO THE MAYOR FOR  
APPROVAL OR DISAPPROVAL ON  
JUN 10 2021  
CITY CLERK

**SECTION – 2.** – During such times when the limits imposed on third-party take-out and delivery service fees imposed by S. 2437 are not in effect and the state of emergency caused by Covid-19 remains in effect, it shall be unlawful for any third-party food takeout and delivery service application or internet website to charge a service fee to a restaurant for take-out or delivery service greater than:

- a. 15% of the cost of the individual order; or
- b. 5% of the cost of the individual order when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

**SECTION – 3.** – It shall be unlawful to reduce the compensation rates or gratuities paid to a delivery service driver because of the limits on fees imposed by this ordinance.

**SECTION – 4.** – Notwithstanding any existing agreement in effect prior to the effective date of this ordinance, it shall be unlawful for a third-party delivery service application or internet website to charge a restaurant a fee per order greater than the fee allowed by this ordinance for services, including but not limited to, fees for promotions, advertising, marketing, or delivery. Any fees in a pre-existing agreement greater than those permitted by this ordinance shall be void and unenforceable against a restaurant. The provisions of this section shall not be construed to limit the right of any restaurant to choose by agreement to pay an additional 5% percent of the cost of the individual order to access additional advertising or other services offered by any third-party food takeout and delivery service application or Internet website. However, any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this ordinance shall be required to affirmatively elect to pay that fee regardless of any contract that is in effect on the effective date of this ordinance.

**SECTION – 5.** – For the purpose of section 4, the parties to an agreement to pay for additional services may define the term “cost of the individual order” to include tips, service charges and any additional fees associated with an individual order.

SECTION - 6. - Violations of this ordinance shall be subject to the general penalty provision of the Code of the City of Elizabeth. Each order for which a fee charged exceeds the fee permitted by this ordinance shall be considered a separate offense.

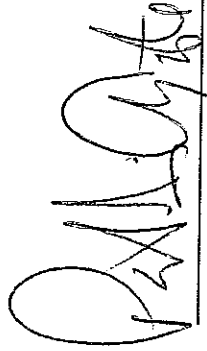
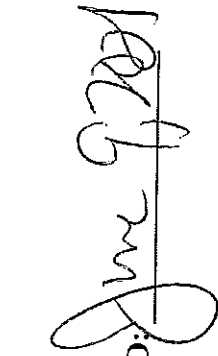
SECTION - 7. - The Division of Central Licensing shall enforce this ordinance.

SECTION - 8. - All ordinances or parts of ordinances inconsistent with the provisions of this ordinance be and the same are hereby repealed.

SECTION - 9. - If any portion or clause of this ordinance is declared invalid for any reason whatsoever, same shall not affect the validity or constitutionality of any other part or portion of this ordinance.

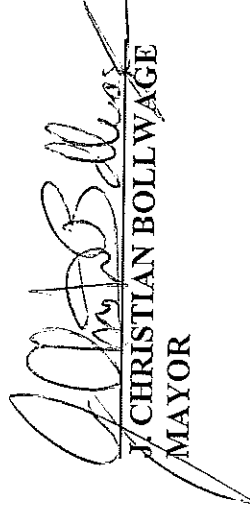
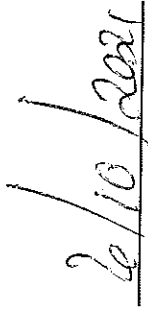
SECTION - 10. - The effective date of this ordinance shall be twenty (20) days after its final passage by City Council and approval by the Mayor at the time and in the manner provided by law.

PASSED:



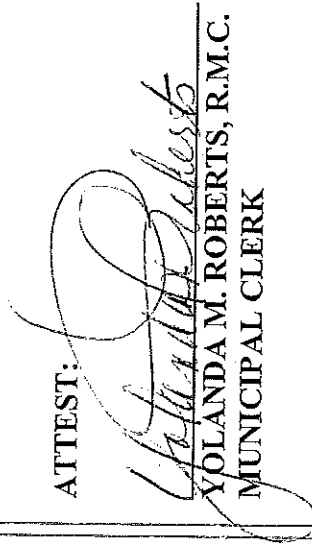
PATRICIA PERKINS-AUGUSTE  
PRESIDENT OF CITY COUNCIL

APPROVED:



CHRISTIAN BOLLWAGE  
MAYOR

ATTEST:



YOLANDA M. ROBERTS, R.M.C.  
MUNICIPAL CLERK