

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE 2021-17

**AN ORDINANCE SUPPLEMENTING THE BOROUGH'S
REVISED GENERAL ORDINANCES WITH NEW
CHAPTER 418 ENTITLED "THIRD-PARTY TAKE-OUT
AND DELIVERY SERVICE FEES" TO LIMIT THE
SERVICE FEES ALLOWED TO BE CHARGED LOCAL
RESTAURANTS BY THIRD-PARTY FOOD DELIVERY
VENDORS DURING COVID-19 STATE OF EMERGENCY**

Mayor Fox offered the following Ordinance and moved its introduction:

WHEREAS, the Borough of Bradley Beach (the "Borough") is well-known for its varied and high-quality restaurants, which form the foundation of the Borough's business district; and

WHEREAS, the Borough's restaurants have suffered tremendously as a result of the COVID-19 crisis; and

WHEREAS, third-party, app-based food delivery services typically charge between 15% and 30% of a customer's total bill back to the local restaurant as a service fee; and

WHEREAS, the Borough's restaurants are already facing unprecedented financial challenges as a result of the COVID-19 crisis;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Bradley Beach, County of Monmouth, and State of New Jersey as follows:

SECTION 1. The Revised General Ordinances of the Borough of Bradley Beach are hereby supplemented with *new* Chapter 418, entitled "Third-Party Take-Out and Delivery Service Fees", as follows:

CHAPTER 418

THIRD-PARTY TAKE-OUT AND DELIVERY SERVICE FEES

§ 418-1 Regulation of Third-Party Take-Out and Delivery Service Fees

- A. During such times when the limits imposed on third-party take-out and delivery service fees imposed by State law (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:

1. 15% of the cost of the individual order; or
 2. 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.
- B. 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.
- C. 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.
- D. 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.
- E. For the purpose of section D above, the parties to an agreement to pay for additional services may define the term "cost of an order" to include tips, service charges and any additional fees associated with an individual order.
- F. This ordinance shall not apply to restaurants with 10 or more locations in the state.
- G. Penalties. Each violation of this Section shall be punishable by a fine of up to two thousand dollars (\$2,000.00) and/or imprisonment for a period of up to ninety (90) days and/or a period of community service not exceeding ninety (90) days. Each day a violation shall continue shall constitute a separate offense.
- H. The Office of Emergency Management shall enforce this ordinance.

SECTION 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

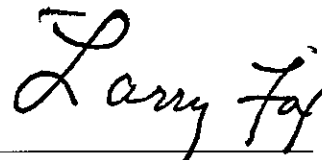
SECTION 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Bradley Beach, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 4. This Ordinance shall take effect upon adoption and publication in accordance with the laws of the State of New Jersey.

SO ORDAINED as aforesaid.



ERICA KOSTYZ
Borough Clerk



LARRY FOX
Mayor

Introduced: May 11, 2021

Date of Hearing and Adoption: May 25, 2021