DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF THIRD EMERGENCY RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs ("Department"), pursuant to the authority under Section 205 of the Coronavirus Support Temporary Amendment Act of 2020, effective October 9, 2020 (D.C. Law 23-130; 67 DCR 8622 (July 17, 2020)), the Coronavirus Public Health Extension Emergency Amendment Act of 2020, effective December 21, 2020 (D.C. Law 23-524; 67 DCR 14747 (December 25, 2020)), the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.* (2016 Repl.)), Mayor's Order 2020-079, dated July 22, 2020, and Mayor's Order 2021-004, dated January 11, 2021, hereby gives notice of a third emergency rulemaking to amend Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR) to add a new Chapter 115 (Third-Party Food Delivery Platforms).

This third emergency rulemaking amends Title 17 DCMR by creating a new chapter which establishes that third-party food delivery platforms operating within the District must register with the Department during declared a public health emergency. Additionally, these platforms shall not charge a restaurant a commission fee that totals more than fifteen percent (15%) of the purchase price of the online order; and also shall not reduce the compensation paid to delivery service drivers to comply with this requirement.

This third emergency rulemaking is necessary to protect the well-being of the District of Columbia as it responds to the COVID-19 global pandemic. At the outset of the declared public and public health emergency, restaurants were restricted to takeout and delivery offerings, and they continue to operate under sharply restricted capacity limits, conditions which have placed a sudden and severe financial strain on many restaurants. It is in the public interest to take immediate action to maximize restaurant revenue from the takeout and delivery orders that are currently a critical source of revenue for these small businesses to enable restaurants to remain as sources of employment in the District.

The Notice of Emergency Rulemaking, which was published on June 19, 2020 at 67 DCR 7779, and Second Notice of Emergency Rulemaking, which was published on October 16, 2020 at 67 DCR 12053, previously numbered this new Chapter as Chapter 107 of Title 17 of the DCMR. However, Chapter 107 of Title 17 of the DCMR is already in use. Since duplicate chapters are not permissible, chapter reassignment is necessary. The next available Chapter in Title 17 is Chapter 115, so these rules have been transferred to Chapter 115.

This Third Notice of Emergency Rulemaking was adopted on January 29, 2021 and will remain in effect for up to one hundred twenty (120) days from the date of adoption, expiring May 29, 2021.

Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

A new Chapter 115, THIRD-PARTY FOOD DELIVERY PLATFORMS, is added to read as follows:

Chapter 115

THIRD-PARTY FOOD DELIVERY PLATFORMS

11500 APPLICABILITY
11501 REGISTRATION REQUIREMENTS
11502 NOTICE TO CUSTOMERS
11503 PROHIBITED CONDUCT
11504 PENALTIES
11599 DEFINITIONS

11500 APPLICABLITY

11500.1 This chapter applies to applicants for and holders of a registration as a third-party food delivery platform as defined by this chapter, during a public health emergency.

11501 REGISTRATION REQUIREMENTS

11501.1 Any individual, corporation, partnership, or association operating a third-party food delivery platform within the District shall register with the Department as provided in this section.

11501.2 Any third-party food delivery platform operating in the District on June 5, 2020, shall register with the Department within five (5) business days of the effective date of this chapter, and all other third-party food delivery platforms shall register with the Department prior to commencing operations in the District.

11501.3 Each third-party food delivery platform shall apply for registration by completing an online form made available by the Department, which shall include the following information:

(a) The state in which the platform is licensed to do business and the applicable license number;

(b) An email address, and a physical address within the District, where papers can be served; and

(c) Contact information for one or more designated individuals with whom the Department shall be able to communicate at all times for purposes of enforcement and compliance under this title and other applicable laws, including cellphone number(s) and an email address.

11501.4 Each registered third-party delivery platform shall promptly inform the Department of either of the following occurrences in connection with its registration:

(a) A change in contact information; or

(b) A materially incorrect, incomplete, or misleading statement in any form it has filed with the Department.

11502 NOTICE TO CUSTOMERS

11502.1 During a public health emergency, a third-party food delivery platform shall, in plain language and in a conspicuous manner, disclose to a customer any commission, fee, or any other monetary payment imposed by the platform on the restaurant as a term of a contract or agreement between the platform and the restaurant in connection with the restaurant's use of the platform.

11502.2 The disclosure required under § 10702.1 must be provided to the customer at the time a final price is disclosed to the customer for the intended purchase, and intended delivery or pickup, of food from a restaurant through a third-party food delivery platform, and before that transaction is completed by the customer.

11503 PROHIBITED CONDUCT

11503.1 During a public health emergency, a third-party food delivery platform shall not:

(a) Charge a restaurant a commission fee for the use of the platform's services for delivery or pickup that totals more than fifteen percent (15%) of the purchase price per online order; or

(b) Reduce the compensation rate paid to a delivery service driver, or garnish gratuities, in order to comply with § 10703.1(a).

11504 PENALTIES

11504.1 A violation of this chapter shall be a civil infraction for purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*).

11504.2 A third-party food delivery platform that violates § 10701 of this chapter shall be liable for a Class 2 infraction under 16 DCMR § 3201.1(b).

11504.3 A third-party food delivery platform that violates § 10702 or § 10703 of this chapter shall be liable for a Class 3 infraction under 16 DCMR § 3201.1(c).

11599 DEFINITIONS

11599.1 For the purposes of this chapter, the following words and terms shall have the meanings ascribed:

"Department" -- the Department of Consumer and Regulatory Affairs or its successor agency.

"Online order" – an order placed by a customer through a platform provided by the third-party food delivery service for delivery or pickup within the District.

"Public health emergency" – a period of time for which the Mayor has declared a public health emergency pursuant to Section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01).

"Purchase price" – 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.

"Restaurant" – shall have the same meaning as provided in D.C. Official Code § 25-101(43).

"Third-party food delivery platform" – any 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 restaurants.