

CITY & COUNTY OF DENVER, COLORADO

DEPARTMENT OF FINANCE

TREASURY TAX RULE 008

RULES GOVERNING THIRD-PARTY DELIVERY FEE CIVIL PENALTIES AND HEARINGS BEFORE THE MANAGER OF FINANCE

EFFECTIVE 4/12/2021

The following Rules are promulgated in accordance with the requirements of Section 53-3 of the Denver Revised Municipal Code (“D.R.M.C.”) and by virtue of the authority vested in the Manager of Finance by Article X of Chapter 53 of the D.R.M.C.

1. Definitions

As used in these Rules, the definitions in Article X, Chapter 53 of the D.R.M.C. shall apply, unless the context clearly requires a different meaning. The following terms shall have the following meanings:

- (a) “Hearing Officer” means the Manager of Finance or any person designated by the Manager of Finance to conduct hearings.
- (b) “Manager” means the Manager of Finance of the City and County of Denver or the Manager of Finance’s designee.
- (c) “Person” means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.
- (d) "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, retail food establishments.
- (e) "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.

- (f) "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.
- (g) "Retail Food Establishment" shall have the same meaning as provided in section 23-2(30) of the Denver Revised Municipal Code.
- (h) "Telephone order" means an order placed by a customer to a restaurant through a telephone call forwarded by a call system provided by a third-party food delivery platform for delivery or pickup within the city.

2. Complaints

- (a) Any retail food establishment may submit a complaint alleging a violation of D.R.M.C. § 53-471 to the Manager.
- (b) Complaints filed with the Manager shall be in writing and must contain the following information:
 - (1) The name, business address, telephone number, and e-mail address for the retail food establishment making the complaint;
 - (2) A plain, concise summary of the facts that the retail food establishment believes demonstrates a violation of D.R.M.C. § 53-471. For each alleged violation, the retail food establishment must provide the following:
 - a. the name of the retail food establishment;
 - b. name of the third-party food delivery platform;
 - c. date of the alleged violation;
 - d. a copy of the billing statement and/or invoice from the third-party delivery platform;
 - e. a copy of any agreement with the third-party food delivery platform that addresses the charges or fees for the use of the third-party food delivery platforms services, advertising, or other products or services; and
 - f. a copy of any other document relevant to the alleged violation.

The Manager encourages the retail food establishment making the complaint to provide documentary evidence (paper, electronic, or any other format) of the alleged violation.

- (3) Name and contact information for the third-party food delivery platform that allegedly violated D.R.M.C. § 53-471.

- (c) A complaint must contain all of the required information in Paragraph 2.(b) before it will be deemed complete.
- (d) Within 7 days of receiving a complaint, the Manager will notify the retail food establishment whether the complaint is complete.

3. Investigations

- (a) Within 7 days of receiving a complete application, the Manager will initiate an investigation of the complaint to determine whether a violation of D.R.M.C. § 53-471 has occurred.
- (b) The Manager shall notify the third-party food delivery platform of the complaint and the alleged violation(s) of D.R.M.C. § 53-471, whereupon, the third-party food delivery platform shall have 10 days to respond to the complaint and any alleged violations.
- (c) The retail food establishment making the complaint shall have the burden of proof to show by a preponderance of the evidence that a violation of D.R.M.C. § 53-471 has occurred.
- (d) If the Manager determines that a violation of D.R.M.C. § 53-471 has occurred, the Manager shall notify the third-party food delivery platform of the violation and direct the third-party food delivery platform to comply with D.R.M.C. § 53-471. Any third-party food delivery platform who disputes a notice of violation may file an appeal with the Manager in the manner provided in Paragraph 5 of these Rules.

4. Issuance of Civil Penalties

- (a) If the Manager determines that a violation of D.R.M.C. § 53-471 has occurred, the third-party food delivery platform shall be subject to a civil penalty of not more than \$999.00 per violation, each day a violation occurs.
- (b) A civil penalty may be issued by the Manager to any third-party food delivery platform who has violated D.R.M.C. § 53-471, but only after the third-party food delivery platform has provided notice of the violation and time to comply as provided in the notice of violation. Any third-party food delivery platform who disputes the issuance of a civil penalty may file an appeal with the Manager in the manner provided in Paragraph 5 of these Rules.
- (c) For each violation, the Manager may, in the Manager's discretion, issue a warning in lieu of a civil penalty.
- (d) If a third-party food delivery platform fails to pay a civil penalty within the time specified in the citation, there shall be added as a penalty fifteen percent (15%) of the total amount of the civil penalty, but not less than twenty-five dollars (\$25.00),

and interest in such cases shall be collected at the rate of one percent (1%) each month, or fraction thereof, on the amount due on the civil penalty from the time the civil penalty was due to the date the civil penalty is paid. Payments of part but less than all of the civil penalty, including interest, or interest and penalty, shall be first applied to penalty, if any, secondly to accrued interest and, lastly, to the civil penalty itself.

5. Appeals

- (a) Form of Appeals. Appeals filed with the Manager shall be in writing, shall be clearly designated as an appeal, and shall contain the following information:
- (1) The reason(s) the third-party food delivery platform believes the notice of violation or the issuance of the civil penalty is objectionable, incorrect or illegal.
 - (2) A copy of the notice of violation or civil penalty that is being appealed.
 - (3) The name, address, telephone number and e-mail address for the third-party food delivery platform; the third-party food delivery platform's agent; and the third-party food delivery platform's legal representative.
 - (4) A signed statement or attestation by the person filing the appeal that the information contained in the appeal is true and correct based upon the information and belief of that person.

Compliance with the above requirements is mandatory, and in the event of noncompliance, the Manager may impose any appropriate sanction, including, but not limited to, issuing an order for a more definite statement or dismissing the appeal.

- (b) Time for Filing Appeals. Appeals shall be filed with the Manager within ten (10) days from the date of the notice of violation or the issuance of the civil penalty. Neither the Manager nor the Manager's employees or agents, including the Hearing Officer, is empowered to extend the deadline for filing an appeal.
- (c) Methods for Filing Appeals. Appeals may be filed with the Manager by hand-delivery at the physical location designated by the Manager; by e-mail using the e-mail address designated by the Manager; or by mail at the general mailing address designated by the Manager.

6. Docketing Appeals

- (a) If an appeal meets all the requirements of Paragraph 5 above, the Manager shall assign the appeal a case number. If an appeal does not meet all the requirements of Paragraph 5 above, it shall be rejected.

7. Service and Proof of Service of Documents

- (a) All pleadings, motions, briefs, or documents filed with the Manager shall be served upon every party in the case. The filing party may serve the opposing party by e-mail, mail, or hand-delivery to the party's last known address, or if represented, to their attorney's last known address.
- (b) All filings with the Manager shall include a certificate of service.
- (c) A certificate of service shall create rebuttable presumption of the matter served.

8. Documents Must Be Legible

- (a) All appeals, pleadings, motions, briefs, and other documents filed with the Manager shall be legible and if Manager determines that they are not legible, the Manager may refuse to accept the filing. If the Manager refuses to accept the filing, the Manager shall promptly notify the party of such refusal and the reasons therefore. Neither the Manager nor any of the Manager's employees or agents, including the Hearing Officer, is empowered to extend the deadline for the filing which has been refused.

9. Representation Before the Manager

- (a) A third-party food delivery platform that is a natural person may appear at the hearing on his or her own behalf or be represented by an attorney admitted to practice in any of the United States.
- (b) A third-party food delivery platform that is not a natural person must be represented at the hearing by an attorney admitted to practice in any of the United States unless it is a Closely Held Entity.
- (c) A third-party food delivery platform that is a closely held entity may be represented at the hearing by an officer of the closely held entity, if: (1) the amount at issue before the Manager does not exceed ten thousand dollars (\$10,000.00), exclusive of costs, interest, or penalties; and (2) the officer provides the Manager, at or prior to the hearing, with evidence satisfactory to the Manager of the authority of the officer to appear on behalf of the Closely Held Entity in all matters within the jurisdiction of the Manager.

10. Hearing Officers

- (a) Unless the Manager orders otherwise, all matters submitted to the Manager for review shall be referred to a Hearing Officer.
- (b) Upon being assigned a petition, the Hearing Officer shall have the sole responsibility for making a final determination regarding the appeal. The Hearing Officer shall be charged with performing all functions necessary and incidental to making the final determination, including, but not limited to: administering oaths;

taking testimony; hearing arguments; ruling on motions; ruling on objections; and issuing subpoenas.

11. Motions

- (a) Written motions involving a contested issue of law shall be accompanied by a statement of supporting legal authority. The responding party shall have seven (7) days, or such other time as the Hearing Officer may allow, in which to file a response.

12. Dismissal of Appeal

- (a) Whenever it appears that a matter pending before the Manager involves a question over which the Manager does not have jurisdiction, the matter may be dismissed on the Manager's own motion or on a motion of any party.

13. Hearing Location and Notice of Hearing

- (a) All hearings shall be conducted at the Wellington E. Webb Building (201 West Colfax Avenue, Denver, Colorado), unless the Hearing Officer orders otherwise. In addition, hearings may be conducted by telephone, video, or other means of communication.
- (b) The Hearing Officer shall notify the third-party food deliver platform and the City Attorney's Office in writing of the time and place and/or manner fixed for the hearing, at least twenty (20) calendar days prior to the hearing.

14. Requests to Continue Hearing

- (a) All requests to continue a hearing shall be for good cause, in writing, and received by the Hearing Officer not less than seven (7) days prior to the date scheduled for the hearing.

15. Order of Proceedings at Hearing

- (a) The order of proceedings in hearings shall be as follows:
 - (1) Docket call by the Hearing Officer.
 - (2) Opening statement by the third-party food delivery platform followed by an opening statement by the City, unless waived by either party or reserved by City until the opening of the City's case.
 - (3) Presentation of evidence by the third-party food delivery platform, allowing cross-examination by the City.

- (4) Presentation of evidence by the City, allowing cross-examination by the third-party food delivery platform.
- (5) The Hearing Officer may at any time ask questions of any witness.
- (6) Rebuttal and surrebuttal evidence, if any.
- (7) Closing argument by the third-party food delivery platform followed by closing argument from the City with the opportunity to reply by the third-party food delivery platform. Either party may elect to submit written briefs in addition to or in lieu of closing argument. If either party elects to submit a written brief, then the other party shall be permitted to file an answer brief. The schedule for filing such briefs shall be set by the Hearing Officer.

16. Formal Rules of Procedure and Evidence Not Applicable

- (a) The conduct of the hearing and the admission of evidence shall generally be in accordance with these rules without regard to whether they conform to common-law or statutory rules of procedure or evidence or other technical rules. The admissibility of evidence shall be encouraged and the Hearing Officer shall consider all evidence of probative value commonly acceptable by reasonable and prudent persons in the conduct of their affairs. The Hearing Officer may use his or her experience, technical competence, and specialized knowledge in evaluation of evidence presented.

17. Burden of Proof

- (a) In all matters, the third-party food delivery platform shall have the burden of proof to show by a preponderance of the evidence that the notice of violation or the civil penalty was issued in error.

18. Testimony Under Oath

- (a) All testimony shall be given under oath administered by the Hearing Officer.

19. Copies

- (a) Properly authenticated copies may be admitted into evidence or substituted in evidence in place of original documents.

20. Hearing Shall Be Recorded

- (a) All hearings shall be recorded in any manner permitted by law, including but not limited to, a certified court reporter or by electronic means. A transcript need not be made unless requested by a party. Transcripts of such record shall be made at the expense of the party requesting the transcript. The non-requesting party shall

pay the copy fee if a copy is requested.

21. Failure to Attend Hearing

- (a) Absent good cause, if a third-party food delivery platform fails to attend a hearing, the Hearing Officer shall dismiss the appeal, award costs and such other relief as the Hearing Officer finds appropriate.

22. Hearing Decisions

- (a) All decisions of the Manager shall be in writing and shall be mailed to all parties.

23. Review of the Hearing Decisions

- (a) Should a third-party food delivery platform be aggrieved by a final decision of the Manager, the third-party food delivery platform may proceed to have the same reviewed under Colorado Rules of Civil Procedure 106(a)(4) by the district court for the second judicial district of the state.

BY ORDER OF THE MANAGER OF FINANCE

BRENDAN J. HANLON
Manager of Finance

Approved by the City Attorney this 31st day of March of 2021.

KRISTIN M. BRONSON City Attorney

By
CHARLES T. SOLOMON
Assistant City Attorney