

CIVIL EMERGENCY ORDER

CITY OF SEATTLE

RESTRICTING RESTAURANT DELIVERY AND PICK-UP COMMISSION FEES

WHEREAS, in my capacity as Mayor, I proclaimed a civil emergency exists in the City of Seattle in the Mayoral Proclamation of Civil Emergency dated March 3, 2020; and

WHEREAS, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to: the Charter of the City of Seattle, Article V, Section 2; Seattle Municipal Code (SMC) Chapter 10.02; and chapter 38.52 RCW; and

WHEREAS, the facts stated in that proclamation continue to exist, as well as the following additional facts:

WHEREAS, the World Health Organization (WHO) has declared that COVID-19 disease is a global pandemic, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level requiring dramatic interventions to disrupt the spread of this disease; and

WHEREAS, as of April 23, 2020, Public Health – Seattle & King County announced a total of 5,427 cases of COVID-19 in King County residents, including 379 deaths; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency to allow the government to marshal additional resources to combat the virus; and

WHEREAS, on March 16, 2020, the Governor of Washington state and the Public Health – Seattle & King County Local Health Officer issued parallel orders temporarily shutting down restaurants, bars, and other entertainment and food establishments, with the exception of take-out food and essential businesses such as groceries, pharmacies and convenience stores among others; and

WHEREAS, on March 23, 2020, the Governor of Washington state issued a proclamation to “Stay Home – Stay Healthy” ordering all people from leaving their homes or participating in social, spiritual, and recreational gatherings of any kind regardless of the number of participants, and closing all non-essential businesses in Washington state; and

WHEREAS, in addition to healthcare, public health, emergency services, the Governor’s “Stay Home – Stay Healthy” proclamation identifies food sectors as essential businesses, services and their employees as essential workers; and

WHEREAS, during the COVID-19 pandemic, it is critical that restaurants stay open because they are performing essential functions, along with grocery stores and other food services, to provide the public with access to food; and

WHEREAS, the social distancing measures required to mitigate the spread of the COVID-19 virus means that delivery and take-out options from restaurants are critical to the public’s accessibility of food and addressing any community food insecurity; and

WHEREAS, the virus spreads from person to person contact, so to reduce the spread of the virus and protect public health, the Governor’s “Stay Home – Stay Healthy” proclamation prohibits restaurants in Seattle from offering dine-in service, limiting restaurants to drive-through, take-out or delivery options only; and

WHEREAS, the COVID-19 pandemic has had a significant impact on the local economy impacting the restaurant, food service and other related industries resulting in economic hardship for business owners due to loss of business income, layoffs, and reduced work hours for a significant percentage of this workforce; and

WHEREAS, restricting restaurants to take-out and delivery service places a sudden and severe financial strain on many restaurants, particularly those that are small, independently-owned or minority-owned businesses that already operate on thin margins, adding to financial pressures in the industry that predate the current public health crisis; and

WHEREAS, it is in the public interest to take action to maximize restaurant revenue from delivery and pick-up orders that are a lifeline and currently the sole source of revenue for Seattle’s restaurant industry to enable these businesses to survive the impacts of the COVID-19 pandemic and continue supporting a diverse workforce and contributing to the vitality of Seattle communities; and

WHEREAS, many consumers are eager to support local restaurants and use third-party, app-based delivery platforms to place orders with those restaurants, and these third-party platforms charge commission fees to restaurants based on the purchase price; and

WHEREAS, while each service agreement between restaurants and third-party delivery platforms vary, all these agreements include delivery commission fees that can include agreements with commission fees of up to 30% or more of the purchase price; and

WHEREAS, restaurants, and particularly small family-owned restaurants with few locations, have limited bargaining power to negotiate lower commission fees with third-party, app-based delivery platforms due to only a few companies in the marketplace to provide such delivery services, and face dire financial circumstances during this COVID-19 pandemic because take-out and delivery are the only options to keep the business in operation; and

WHEREAS, capping the commission fee to a maximum of 15% of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service will accomplish the fundamental government purpose of easing the financial burden on struggling restaurants during this public health emergency while not unduly burdening third-party, app-based delivery platforms; and

WHEREAS, this public health emergency has resulted in a significant number of employment layoffs, reduced work schedules, and record-breaking unemployment claims of almost half a million (485,000) in the state, including 135,000 unemployment claims in King County alone; and

WHEREAS, the premise of Paycheck Protection Program (PPP) is an important step to provide relief to the restaurant industry but as currently designed it does not address the unique and evolving challenges of the restaurant industry and their path to recovery, resulting in a growing number of restaurant owners concluding that the PPP is not going to prevent them from permanently closing operations, underscoring the need for other actions, such as capping restaurant delivery and pick-up commission fees, to provide some financial relief to the industry; and

WHEREAS, capping delivery and pick-up commission fees to a maximum of 15 percent of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service will make it feasible for more restaurants to transition to take-out and delivery service, allowing some restaurants that have been closed during the COVID-19 crisis to reopen; and

WHEREAS, during this time of local economic shutdown and uncertainty caused by the COVID-19 pandemic, many vulnerable workers have found work opportunities as delivery drivers for these third-party delivery platforms to financially support themselves and their families; and

WHEREAS, third-party, app-based delivery platforms will further undermine already vulnerable workers if the companies reduce compensation rates to these delivery drivers as a result of this Emergency Order capping delivery commission fees; and

WHEREAS, the Charter of the City of Seattle, Article V, Section 2, gives the Mayor authority to protect and maintain public peace and order in the city under a declared civil emergency and perform such other duties and exercise such other authority as may be prescribed by law; and

WHEREAS, SMC 10.02.020.A.15 authorizes the Mayor to make and proclaim an order that she believes is imminently necessary for the protection of life and property; and

WHEREAS, pursuant to SMC 10.02.025, this order is based on the facts described above; the Mayor believes it is in the best interest of public safety, rescue and recovery efforts, and the protection of property that the exercise of certain rights be temporarily limited; and the conditions of this order are designed to provide the least necessary restriction on those rights; NOW, THEREFORE,

BE IT PROCLAIMED BY THE MAYOR OF THE CITY OF SEATTLE THAT:

I, **JENNY A. DURKAN**, MAYOR OF THE CITY OF SEATTLE, ACTING UNDER THE AUTHORITY OF SEATTLE MUNICIPAL CODE SECTIONS 10.02.020.A.15 AND 10.02.025, AND MY MAYORAL PROCLAMATION OF CIVIL EMERGENCY, DATED MARCH 3, 2020, HEREBY ORDER:

SECTION 1:

Civil Emergency Order – Restricting Restaurant Delivery and Pick-Up Commission Fees
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A. Effective immediately, it shall be unlawful for a third-party, app-based food delivery platform to charge a restaurant a commission fee per online, delivery or pick-up order for the use of its services that totals more than 15% of the purchase price of such online order until restaurants are allowed to offer unrestricted dine-in service and the Governor’s Stay Home - Stay Healthy Proclamation (20-25.1 amending 20.25) is rescinded or the Mayoral Proclamation of Civil Emergency dated March 3, 2020 is rescinded, whichever proclamation is rescinded later.

B. It shall be unlawful for a third-party, app-based food delivery platform to reduce the compensation rates paid to the delivery service driver, or garnish gratuities, as a result of this order going into effect during the duration of this order.

C. It shall be unlawful for a third-party, app-based food delivery platform to reduce or otherwise modify the areas of the City that are served by the platform, as a result of this order going into effect during the duration of this order.

D. For purposes of this order, “restaurant” means a business in which food and/or beverage preparation and service is provided for individual consumption either on- or off-premise, and in which any service of alcoholic beverages is accessory to the service of food, based on the definition in SMC 23.84A.010.

E. For purposes of this order, “third-party, app-based food delivery platform” means 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 pick-up of food and beverages from a food service establishment.

F. For the purposes of this order, “online order” means an order placed through a platform provided by a third-party app-based food delivery platform for delivery within Seattle.

G. For purposes of this order, “purchase price” means the menu price of an online order. Such term excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an online order.

SECTION 2:

A. All mayoral proclamations and orders presently in effect shall remain in full force and effect except that, insofar as any provision of any such prior proclamation is inconsistent with any provision of this order, then the provisions of this order shall control.

~~((B. Any person found to have knowingly violated this Civil Emergency Order is guilty of Failure to Obey the Mayor’s Emergency Order, and upon conviction may be punished by a fine of not more than \$500 or by imprisonment for not more than 180 days or both such fine and imprisonment. SMC 10.02.110; 12A.26.040.))~~

B. It is unlawful for any person to violate this Civil Emergency Order.

1. If Council Bill 119869 becomes an ordinance and is in effect:

a. The first and second violations of this Civil Emergency Order shall be a Class 1 civil infraction under chapter 7.80 RCW, for which the maximum penalty is \$250 plus statutory assessments. The civil infraction shall be processed under chapter 7.80 RCW and notices of infraction for such violations may be issued by the Director of Finance and Administrative Services of the City, or the Director’s designees. SMC 10.02.110.

b. Each third or subsequent violation of this Civil Emergency Order is a misdemeanor, for which the penalty is a fine of not more \$1,000 or imprisonment of not more than 90 days or both such fine and imprisonment. The Director of Finance and Administrative Services of the City, or the Director’s designees, may request that the City Attorney prosecute such violations criminally as an alternative to the civil infraction procedure. SMC 10.02.110; 12A.02.070.B.

c. Any person or class of persons that suffers injury as a result of a violation of this Civil Emergency Order may bring a civil action in a court of competent jurisdiction against the person violating this Civil Emergency Order and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation. SMC 10.02.110.

2. If Council Bill 119869 does not become an ordinance and go into effect, any person found to have knowingly violated this Civil Emergency Order is guilty of Failure to Obey the Mayor’s Emergency Order, and upon conviction may be punished by a fine of not more than \$500 or by imprisonment for not more than 180 days or both such fine and imprisonment. SMC 10.02.110; 12A.26.040.

SECTION 3:

A copy of this Civil Emergency Order shall be delivered to the Governor of the State of Washington and to the County Executive of King County. To the extent practicable, a copy of this Civil Emergency Order shall be made available to all news media within the City and to the general public. In order to give the widest dissemination of this Civil Emergency Order to the public, as many other available means as may be practical shall be used, including but not limited to posting on public facilities and public address systems pursuant to SMC 10.02.100.

SECTION 4:

This Civil Emergency Order shall immediately, or as soon as practical, be filed with the City Clerk for presentation to the City Council for ratification and confirmation, modification or rejection, and if rejected this Civil Emergency Order shall be void. The City Council shall consider the statements set forth in Section 10.02.025 and may, by resolution, modify or reject the order. If the Council modifies or rejects the order, such modification or rejection shall be prospective only, and shall not affect any actions taken prior to the modification or rejection of the order, as set forth in Seattle Municipal Code subsection 10.02.020.B.

DATED this 24th day of April, 2020, at 3:10pm.

JENNY A. DURKAN
MAYOR OF THE CITY OF SEATTLE