

SUMMARY and FISCAL NOTE*

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** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to regulations of food delivery platforms; establishing requirements for food delivery platforms providing delivery services to restaurants; and amending Chapter 7.30 of the Seattle Municipal Code.

Summary and Background of the Legislation: A growing number of consumers use food delivery platforms to place food and/or beverage orders with restaurants. Restaurants that lack in-house capacity for delivery services rely on food delivery platforms to meet consumer demand for delivery. Food delivery platforms charge restaurants fees for their delivery services of up to 30 percent or more of the purchase price of the food and/or beverage order. As the net profit margin for many restaurants is about ten percent and can be as low as three to five percent for full-service restaurants, these fees can drastically impact restaurant profits. Further, many restaurants have limited bargaining power to negotiate lower fees due to the limited number of food delivery platform companies in the marketplace.

During the COVID-19 emergency, consumer use of food delivery platform services sharply accelerated. To ease the financial burden on restaurants struggling to pay high fees for delivery services and support consumer access to food, the Washington Governor and Mayor separately issued emergency orders¹ restricting food delivery platforms fees for delivery services. In June 2021, the Governor rescinded the state emergency order and the Mayor's emergency order will expire upon the termination of the Mayor's civil emergency.

After the pandemic ends, consumer use of food delivery platforms is predicted to continue growing at a steady rate. Data shows that sales for pick-up and delivery services have grown eight percent year over year, collectively, from 2018 through May 2022 and similar growth is projected through 2026. About 77 percent of restaurants offer services through food delivery platforms and purchases through these services account for 21 to 30 percent of restaurant sales. Without further action by The City of Seattle (City), the temporary restrictions on food delivery platform fees will expire and restaurants could again face exorbitant fees for delivery services.

This legislation would amend existing regulations of food delivery platforms in [Seattle Municipal Code \(SMC\) 7.30](#) to establish permanent caps on fees for delivery services.

¹ See [Washington Governor's Proclamation 20-76 Food Delivery Fees](#) and [City of Seattle Mayor's Emergency Order Restricting Restaurant Delivery and Pick-up Commission Fees](#).

Food delivery platforms operating in Seattle would be required to:

1. Obtain an agreement with a restaurant before charging any fees related to pick-up or delivery services; and
2. Cap fees for delivery services at 15 percent of the purchase price of each food and/or beverage order.

Restaurants could opt out of the fee limitations and pay higher fees if the food delivery platform:

1. Offers a service package option that includes delivery services for 15 percent of the purchase price of each order;
2. Provides this service package option, without penalty, within 30 days of the restaurant's written request for the option; and
3. Charges higher fees only for services in addition to delivery services (e.g., advertising, business consulting).

These requirements would take effect on the later date of:

1. The termination of the Mayor's civil emergency proclaimed on March 3, 2020; or
2. Thirty days after the Mayor approves the legislation (or when the legislation would otherwise take effect under SMC 1.04.020).

The Consumer Protection division in Finance and Administrative Services (FAS) would enforce these requirements. Violations would be a Class 1 civil infraction with a maximum penalty of \$250 plus statutory assessments. Each day of non-compliance would be a separate violation. FAS would process infractions under the procedure established by [RCW 7.80](#). Revenue from penalties would be used to provide support implementation (e.g., outreach, technical assistance for restaurants).

In addition to filing claims with FAS, restaurants could file a civil action against the food delivery platform and, upon prevailing, could be awarded attorney fees plus costs.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Enforcement of this legislation would affect three departments: the Consumer Protection division in FAS, the City Attorney's Office (CAO), and Seattle Municipal Court (Municipal Court). As the designated enforcement agency for conducting investigations and assessing penalties, FAS would likely absorb the bulk of work associated with enforcement. Currently, FAS estimates that the Consumer Protection division would not have capacity to conduct investigations without adding staffing resources or reducing compliance efforts elsewhere.

FAS states that adding as few as two or three cases a month could require many staff hours as investigations would require navigating the complexities of new legal requirements, contacting witnesses, and following-up with businesses.

Central Staff is gathering information to better understand the financial implications of this legislation on FAS, including contacting other jurisdictions with permanent restrictions on delivery service fees to learn about their enforcement. Thus far, the Seattle Police Department has indicated that the department has not received complaints of food delivery platforms violating the Mayor's emergency order restricting delivery and pick-up commission fees and FAS has confirmed that the department has not received complaints of food delivery platforms violating existing requirements in SMC 7.30 (in effect since September 15, 2021). If Council passes this legislation and the workload for FAS is significantly more than anticipated or otherwise exceeds the department's capacity, Council could consider adding resources to FAS during supplemental or annual budget deliberations.

In addition to incurring enforcement costs, the legislation could generate revenue from penalties. Each violation would constitute a Class One Civil Infraction with a maximum penalty of \$250 plus statutory assessments. Revenue² from these penalties would support outreach and education to restaurants on the legislation's requirements. The amount of revenue that would be generated by violations cannot be estimated at this time.

Are there financial costs or other impacts of *not* implementing the legislation?

There are no financial costs to the City of not implementing the resolution. However, without this legislation, the Mayor's civil emergency order restricting restaurant delivery and pick-up commission fees will expire upon the Mayor's termination of the civil emergency and restaurants could again face exorbitant fees for use of food delivery platform services

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Yes, this legislation would require FAS to enforce new regulations. There would be an undetermined number of legal referrals to the City Attorney. Municipal Court would hear appeals from respondents.

Additionally, the Office of Economic Development (OED) and other departments, such as the Department of Neighborhoods and Office of Immigrant and Refugee Affairs, could be involved in conducting outreach and education to restaurant owners on the new regulations. The Director of OED would advise the Mayor and City Council on how to use any revenues from penalties to support outreach and education to restaurants.

² Notably, the City must remit a portion of any penalty revenue to the state. See [Non-Judicial Information System Courts Remittance Guide](#).

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

This legislation is intended to support a vibrant, diverse restaurant scene in Seattle and protect the interests of consumers and businesses purchasing and/or relying upon food delivery services. Establishing requirements for food delivery platforms to engage in agreed-upon, reasonable, and transparent business transactions would support restaurant owners who identify as Black, Indigenous, and People of Color (BIPOC). Most recent available data (2016) shows that 48 percent of business owners in the food and accommodations industry in the Seattle area identify as BIPOC. Due to the racial and ethnic diversity of Seattle's restaurant owners, the City and its partners would need to conduct outreach in a wide variety of different languages to inform restaurant owners of the new regulations. Some restaurants could also need translation services to assist with executing an agreement with food delivery platforms.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

N/A

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

N/A

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

N/A

Summary Attachments: