

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..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.

..body

WHEREAS, Seattle has over 4,000 active business licenses for restaurants, caterers, and other businesses in the food industry; and

WHEREAS, the 2016 Annual Survey of Entrepreneurs estimates that nearly 48 percent of the owners of firms in the accommodation and food services industry in the Seattle metropolitan area identify as Black, Indigenous, and People of Color; and

WHEREAS, many restaurants use food delivery platforms to access the growing share of consumers who rely on delivery platforms to obtain meals from restaurants and these food delivery platform charge restaurants fees to facilitate pick-up and delivery of food and/or beverage orders; and

WHEREAS, beginning in early 2020, to reduce the spread of COVID-19 and protect public health, the Washington Governor issued a series of restrictions on indoor dining capacity that caused Seattle restaurants to rely more on takeout and delivery to serve consumers; and

WHEREAS, on April 27, 2020, the Council adopted a modified civil emergency order issued by the Mayor on April 24, 2020, prohibiting food delivery platforms from charging restaurants a commission fee exceeding 15 percent of the purchase price of an online pick-up or delivery order; and

1 WHEREAS, on November 25, 2020, the Washington Governor enacted Proclamation 20-76,
2 prohibiting food delivery platforms from charging restaurants, or similar food
3 establishments, a delivery fee totaling more than 15 percent of the purchase price of an
4 online order or a total fee amount for the use of all food delivery platform services
5 totaling more than 18 percent of the purchase price of an online order; and

6 WHEREAS, on June 21, 2021, the Washington Governor rescinded Proclamation 20-76 in
7 anticipation of easing restrictions on indoor dining capacity and other activities on June
8 30, 2021, while remaining in a state of emergency; and

9 WHEREAS, without further action by the City, the Mayor’s civil emergency order restricting
10 restaurant pick-up and delivery commission fees will expire upon the Mayor’s
11 termination of the civil emergency and restaurants could again face exorbitant fees for
12 use of food delivery platform services; and

13 WHEREAS, recognizing the ongoing need to protect the interests of restaurants and consumers,
14 other jurisdictions, including Minneapolis, New York City, Philadelphia, and San
15 Francisco, have passed ordinances permanently capping delivery service fees and
16 establishing other regulations for food delivery platforms; and

17 WHEREAS, the City intends to establish permanent regulations for food delivery platforms
18 providing pick-up and delivery services to Seattle restaurants to protect the interests of
19 restaurants and consumers; NOW, THEREFORE,

20 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

21 Section 1. The City Council (“Council”) finds and declares that:

22 A. In the exercise of The City of Seattle’s (City’s) police powers, the City is granted
23 authority to pass regulations designed to protect and promote public health, safety, and welfare.

1 B. This ordinance protects and promotes public health, safety, and welfare by clarifying
2 requirements for food delivery platforms to obtain agreements with restaurants for food delivery
3 platform services and regulating fees for delivery services that food delivery platforms charge
4 restaurants to protect the interests of consumers and restaurants.

5 C. Restaurants are vital to the character and community fabric of Seattle, reflecting and
6 nurturing the cultural diversity of the community; offering access to food, an essential foundation
7 of human health and basis for social connection; and serve as important engines of the local
8 economy by providing jobs and operating as commercial anchors in neighborhoods across
9 Seattle.

10 D. Many consumers, eager to support local restaurants and obtain ready access to food,
11 use food delivery platforms to place food and/or beverage orders with restaurants.

12 E. Food delivery platforms charge restaurants commission fees for use of their services,
13 sometimes totaling up to 30 percent or more of the purchase price of the food and/or beverage
14 order, which can drastically impact restaurant profits.

15 F. The net profit margin for many restaurants is about ten percent and can be as low as
16 three to five percent for full-service restaurants, leaving little room for fees that food delivery
17 platforms charge for their services.

18 G. Before the pandemic, food delivery platform sales were increasing at roughly twice
19 the pace of the U.S. restaurant industry growth.

20 H. The use of food delivery platforms by consumers is predicted to continue growing at a
21 steady rate after the pandemic ends and many restaurants have limited bargaining power to
22 negotiate lower commission fees with food delivery platforms due to the limited number of food
23 delivery platform companies in the marketplace.

1 I. Data shows that sales for pick-up and delivery services have grown eight percent year
2 over year, collectively, from 2018 through May 2022, and that the food delivery market is
3 dominated by a small number of companies with just three food delivery platforms providing
4 about 96 percent of U.S. meal delivery sales in May 2022.

5 J. According to multiple sources, online food delivery sales are climbing and becoming a
6 standard business operation for restaurants: 77 percent of restaurants offer services through food
7 delivery platforms; food delivery platforms account for 21 to 30 percent of current restaurant
8 sales; and continued growth is expected at a rate of eight percent each year through 2026.

9 K. To remain competitive, restaurants are contracting with food delivery platforms to
10 access the growing number of consumers who expect the convenience and safety that take-out
11 and delivery offers and who rely on food delivery platforms for delivery services, but the market
12 dominance of a few food delivery platforms gives these companies disproportionate leverage to
13 negotiate high fees for delivery services that diminish the already narrow profit margins of
14 restaurants.

15 L. Nationally, food delivery platforms offer delivery services, the most logistically
16 demanding and resource-intensive service provided to restaurants, at levels within the fee
17 limitations of the Mayor's civil emergency order capping food delivery platform fees at 15
18 percent of the purchase price of the food and/or beverage order.

19 M. Sample contracts and advertisements show that leading food delivery platforms offer
20 baseline delivery services for 15 percent of the purchase price of the food and/or beverage order
21 and offer additional services to increase sales and provide more marketing opportunities for
22 higher commission fees of 25 to 30 percent or more.

1 N. Economic disruptions caused by COVID-19 have placed a severe financial strain on
2 businesses, families, and individuals in Seattle, and have increased the likelihood of restaurants
3 struggling to meet existing financial commitments and remain open.

4 O. The Washington Hospitality Association reports that the average full-service
5 restaurant in Washington incurred \$160,000 in debt because of the pandemic, an amount
6 equivalent to more than three years of profit based on industry averages, and nearly 2,500
7 restaurants closed across Washington during the pandemic.

8 P. According to data from OpenTable, the online booking platform, restaurant bookings
9 in Seattle have yet to return to pre-pandemic levels and two and one-half years later are
10 noticeably lower than restaurant bookings statewide or across the country, indicating more
11 reliance on delivery services or lower numbers of consumers in general.

12 Q. As more consumers choose take-out and delivery rather than in-house dining in the
13 near and long term, it is critical for restaurants to stay open and flourish.

14 R. The availability of reasonably priced options for delivery services will support a
15 vibrant and diverse restaurant scene where all restaurants can thrive and respond to evolving
16 consumer needs and interests, including those that have unequal bargaining power to negotiate
17 acceptable fees with food delivery platforms and those that would be less likely to stay in
18 business under the weight of high fees.

19 S. It is in the public's interest to maximize restaurant revenue from pick-up and delivery
20 orders to help these businesses earn a profit, support a diverse and healthy workforce, and
21 continue contributing to the vitality of the community.

22 T. As the use of food delivery platform services grows and evolves, clarifying
23 requirements for agreements between food delivery platforms and restaurants and establishing

1 permanent yet flexible caps on delivery service fees charged to restaurants will accomplish the
2 legitimate government purpose of easing the financial burden on struggling restaurants and will
3 ensure that restaurants can exercise appropriate control over their businesses.

4 U. Requiring food delivery platforms to retain records on food delivery platform
5 agreements and charges will support the City’s efforts to verify compliance with food delivery
6 platform requirements.

7 Section 2. Chapter 7.30 of the Seattle Municipal Code, enacted by Ordinance 126367, is
8 amended as follows:

9 **7.30.010 Scope and purpose**

10 This Chapter 7.30 applies to all food delivery platforms operating within Seattle. The purpose of
11 this Chapter 7.30 is to ~~((require that food delivery platforms establish an agreement with
12 restaurants prior to offering pick-up or delivery from such restaurants on the food delivery
13 platform and delivering orders from such restaurants to consumers, with the goal of protecting))~~
14 require food delivery platforms to engage in agreed-upon, reasonable, and transparent business
15 transactions when operating in Seattle to protect the interests of the City’s consumers and
16 restaurants purchasing or relying upon food delivery platform services.

17 **7.30.020 Definitions**

18 “Agreement” means a written contract between a restaurant and a food delivery platform.

19 “Consumer” means any person or persons purchasing a food and/or beverage order from
20 a restaurant using a food delivery platform.

21 “Delivery services” means services provided by a food delivery platform that (1) list the
22 restaurant and make the restaurant discoverable on the food delivery platform’s modalities or
23 platforms and (2) facilitate and/or perform delivery of food and/or beverage orders to locations

1 within Seattle city limits. Delivery services do not include other services that may be provided by
2 food delivery platforms to restaurants, including but not limited to advertising services, search
3 engine optimization, business consulting, or credit card processing.

4 “Director” means the Director of Finance and Administrative Services.

5 “Fee” means any fee, commission, cost, or monetary payment charged to restaurants or
6 consumers by food delivery platforms.

7 “Food and/or beverage order” means an order for food and/or beverages from a restaurant
8 that is placed by a consumer through a food delivery platform for pick-up or delivery to locations
9 within Seattle city limits.

10 “Food delivery platform” means a person that provides a means through which a
11 consumer may submit a food and/or beverage order to a restaurant((;)) and arranges for the
12 delivery of the order from the restaurant to the consumer.

13 “Person” means any individual, firm, corporation, association, partnership, governmental
14 entity, or their agents.

15 “Purchase price” means the menu price of a food or beverage order, excluding taxes, tips,
16 or any other fees that may comprise the total cost to the consumer of a food or beverage order.

17 “Restaurant” means a business in which food and/or beverage preparation and service is
18 provided for individual consumption either on- or off-premise, and in which any service of
19 alcoholic beverages is accessory to the service of food.

20 “Written” means a printed or printable communication in physical or electronic format,
21 including but not limited to a communication that is transmitted through email, text message, or
22 a computer or mobile system, or that is otherwise sent and maintained electronically.

23 **7.30.030 Agreement required**

1 A. A food delivery platform shall not offer consumers pick-up or delivery services from a
2 restaurant or charge a restaurant any fee for services related to pick-up or delivery services,
3 without first obtaining an agreement with the restaurant expressly authorizing the food delivery
4 platform to ~~((take orders and offer delivery or pick-up of the food and/or beverages prepared by~~
5 ~~the restaurant)) engage in such actions.~~

6 B. The agreement required by subsection 7.30.030.A shall be terminated upon the
7 restaurant's written request to the food delivery platform. The food delivery platform shall
8 remove the restaurant from its list of participating restaurants within 72 hours of receiving the
9 request for termination.

10 **7.30.032 Fees and charges**

11 A. Subject to subsection 7.30.032.B, a food delivery platform shall not charge a
12 restaurant a fee for delivery services that totals more than 15 percent of the purchase price of
13 each food and/or beverage order.

14 B. A restaurant may opt-out of the fee limitation in subsection 7.30.032.A and enter into
15 an agreement with a food delivery platform charging higher fees for food delivery platform
16 services contingent upon the following conditions:

17 1. The food delivery platform offers the restaurant a service package option that
18 includes delivery services and meets the fee limitations in subsection 7.30.032.A;

19 2. The food delivery platform provides a service package option that includes
20 delivery services and meets the fee limitations in subsection 7.30.032.A, without refusing service
21 or otherwise penalizing the restaurant, within 30 days of receiving the restaurant's written
22 request for this option;

1 3. The food delivery platform charges fees that exceed the fee limitations in
2 subsection 7.30.032.A only for services in addition to delivery services.

3 **7.30.034 Food delivery platform records**

4 Food delivery platforms shall retain records that document compliance with this Chapter 7.30 for
5 a period of two years.

6 **7.30.040 Remedies**

7 A. Violations of this Chapter 7.30 shall be a Class 1 civil infraction under chapter 7.80
8 RCW, for which the maximum penalty is \$250 plus statutory assessments. The civil infraction
9 shall be processed under chapter 7.80 RCW and notices of infraction for such violations may be
10 issued by the Director (~~or the Director's designees~~). Each day of noncompliance shall be a
11 separate violation of this Chapter 7.30.

12 B. Any person or class of persons that suffers injury as a result of a violation of this
13 Chapter 7.30 may bring a civil action in a court of competent jurisdiction against the person
14 violating this Chapter 7.30 and, upon prevailing, may be awarded reasonable attorney fees and
15 costs and such legal or equitable relief as may be appropriate to remedy the violation.

16 C. An account shall be established in the City's General Fund to receive revenue from
17 penalties under this Section 7.30.040. Revenue from penalties under subsection 7.30.040.A shall
18 be used to support outreach and education to restaurants on this Chapter 7.30 (~~with five or fewer~~
19 ~~employees operating in Seattle~~). The Director of the Office of Economic Development shall
20 recommend to the Mayor and City Council how these funds should be allocated.

21 **7.30.042 Severability**

22 The provisions of this Chapter 7.30 are declared to be separate and severable. If any clause,
23 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 7.30, or the

- 1 application thereof to any food delivery platform, restaurant, person, or circumstance, is held to
- 2 be invalid, it shall not affect the validity of the remainder of this Chapter 7.30, or the validity of
- 3 its application to other persons or circumstances.

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1 Section 3. This ordinance shall take effect and be in force upon the later of: the
2 termination of the civil emergency proclaimed by the Mayor on March 3, 2020; or 30 days after
3 its approval by the Mayor, but if not approved and returned by the Mayor within ten days after
4 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

5 Passed by the City Council the _____ day of _____, 2022,
6 and signed by me in open session in authentication of its passage this ____ day of
7 _____, 2022.

8 _____
9 President _____ of the City Council

10 Approved / returned unsigned / vetoed this ____ day of _____, 2022.

11 _____
12 Bruce A. Harrell, Mayor

13 Filed by me this ____ day of _____, 2022.

14 _____
15 Monica Martinez Simmons, City Clerk

16 (Seal)
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21 Attachments: