

July 22, 2022

MEMORANDUM

To: Economic Development, Technology & City Light Committee
From: Karina Bull, Analyst
Subject: CB 120379: Cap on Delivery Service Fees

On July 27, 2022, the Economic Development, Technology & City Light Committee (Committee) will discuss and possibly vote on [Council Bill \(CB\) 120379](#), that would permanently cap food delivery platform fees for delivery services. This memo provides background and a summary of the legislation, including an analysis of impacts, and identifies next steps. The Committee received a briefing and discussed a pre-introduction draft of the legislation on July 13, 2022.

Background

A growing number of consumers use food delivery platforms to place food and/or beverage orders with restaurants. Restaurants lacking in-house capacity to perform deliveries or grappling with labor shortages rely on food delivery platforms to meet consumer demand for these services. Food delivery platforms charge restaurants commission fees of up to 30 percent or more for delivery services. 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.¹ Further, some restaurants have limited bargaining power to negotiate lower fees due to the restaurant's size and the limited number of food delivery platform companies in the marketplace.²

During the COVID-19 emergency, consumer demand for 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 during stay-at-home orders and other pandemic-related public health restrictions, the Mayor and Governor separately issued emergency orders restricting delivery fees charged by food delivery platforms to 15 percent of the purchase price of the order.³ In June 2021, the Governor rescinded the State's emergency order and the Mayor's emergency order will expire upon the termination of the Mayor's civil emergency.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. 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

¹ Popper, Nathaniel. [As Diners Flock to Delivery Apps, Restaurants Fear for Their Future](#). *The New York Times*, June 9, 2020; Walters, Stefon. [The Average Profit Margin for a Restaurant](#). *AZCentral*, August 22, 2019.

² In May 2022, DoorDash, UberEats, and GrubHub earned 96 percent of U.S. consumers' meal delivery sales. Larger partners, such as top chain restaurants, generally paid lower fees for delivery services than other restaurants. Perri, Janine. [Which Company is Winning the Restaurant Food Delivery War?](#) *Bloomberg Second Measure*, June 15, 2022.

³ [Mayor's Civil Emergency Order \(as modified by City Council\) Restricting Delivery and Pick-Up Commission Fees](#), April 27, 2020. [Proclamation the Governor 20-76 – Food Delivery Fees](#), November 25, 2020.

2026.⁴ Recognizing an ongoing need to protect the interests of restaurants and consumers, other jurisdictions, including Minneapolis, New York City, Philadelphia, and San Francisco, have passed ordinances permanently capping delivery services fees and establishing other regulations for food delivery platforms. In a similar spirit, this legislation recognizes that without further action, Seattle’s temporary restrictions on food delivery platform fees will expire and restaurants could again face exorbitant fees for delivery services.

CB 120379

Legal Requirements

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.

The legislation would define “delivery services” to focus on the core aspects of delivery and the most logistically demanding and resource-intensive services provided by food delivery platforms. “Delivery services” would mean services provided by a food delivery platform that (1) list the restaurant and make the restaurant discoverable on the food delivery platform’s modalities or platforms and (2) facilitate and/or perform delivery of food and/or beverage orders to locations within Seattle city limits. Delivery services would not include other services provided by food delivery platforms to restaurants, including but not limited to advertising services, search engine optimization, business consulting, or credit card processing.

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 to locations within Seattle city limits at 15 percent of the purchase price of each order.

Restaurants could opt out of the fee limitation and pay more than 15 percent of the purchase price of the order 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](#)).

⁴ Perri, [Which Company is Winning the Restaurant Food Delivery War?](#); Dalin-Kaptzan, Zahava. [Food Delivery: Industry Trends for 2022 and Beyond](#). BRINGG, 2022; [Online Food Delivery](#). Statista, 2022.

Enforcement

Consistent with SMC 7.30, the Consumer Protection division in Finance and Administrative Services (FAS) would enforce this legislation. 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](#) and remit a portion of penalty revenue to the State.⁵ 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.

Outreach

Revenue retained by the City from penalties would support outreach and education to restaurants. The Director of the Office of Economic Development (OED) would make a recommendation to the Mayor and Council on how to spend these funds.

Potential Impacts of CB 120379

This legislation is intended to support a vibrant, diverse restaurant scene in Seattle, helping business owners to afford basic delivery services, support a diverse and healthy workforce, and continue contributing to the vitality of the community. Below is an analysis of potential impacts, including racial equity impacts, of the proposal.

Restaurants

Restaurants were among the most hard-hit businesses during the height of the pandemic, and continue to experience challenges, particularly labor shortages, as the economy recovers. Establishing requirements for food delivery platforms to engage in agreed-upon, predictable, and transparent business transactions for delivery services could help restaurant owners respond to consumer demands for delivery, address chronic understaffing, and provide a foundation for long-term recovery.

Setting a price ceiling for basic delivery services could especially help BIPOC business owners. Most recent available data (2016) shows that 48 percent of business owners in the food and accommodations industry in the Seattle area identify as Black, Indigenous, and People of Color (BIPOC). Prior to the pandemic, BIPOC small business owners, in aggregate, faced greater challenges than white-owned firms.⁶ According to surveys of small business owners, the COVID-19 pandemic exacerbated these challenges. The highest rates of small business owners reporting financial hardship during the pandemic were reported by Black business owners: 92 percent, followed by 89 percent of Asian-American-owned firms, 85 percent of Latino- or Hispanic-owned firms, and 79 percent of white-owned firms.⁷

⁵ [Non-Judicial Information System Courts Remittance Guide](#). August 22, 2008.

⁶ [Small Business Credit Survey: 2021 Report on Firms Owned by People of Color](#). Federal Reserve Banks, 2021.

⁷ Perry, Andre M.; Seo, Regina; Barr, Anthony; and Broady, Kristen. *Id*; [Black-owned businesses in U.S. cities: The challenges, solutions, and opportunities for prosperity](#). Brookings, February 14, 2022

Workers

Impacts on workers in the food delivery and restaurant industry could vary. If this proposal goes into effect, food delivery platform workers, who are disproportionately Black and Latinx,⁸ could experience similar levels of food delivery work if restaurants continue to purchase delivery services at the same rate and customer demand remains stable. There could also be an increase in job opportunities if more restaurants elect to use food delivery services due to long-term predictability of delivery costs. Under legislation recently passed by Council ([Ordinance 126595](#)), food delivery platform workers would also have a right to minimum payment from food delivery platforms beginning in January 2024.

Workers who are directly employed by restaurants could experience fewer employment opportunities if restaurants choose to reduce in-house dining and outsource labor needs to delivery services. Conversely, a permanent cap on delivery fees could help restaurants stabilize spending on delivery services, allowing them to maximize revenue from in-house dining and create more employment opportunities. Notably, workers of color, who represent 46 percent of the employed restaurant workforce and 30 percent of the employed population in Seattle, would be disproportionately impacted by significant changes to employment opportunities.⁹

Consumers

Permanently capping fees charged to restaurants for delivery services could help restaurants to meet consumer demand for these services. Consumers relying on or preferring delivery would benefit from restaurants continuing to offer delivery services for the long-term. However, food delivery platforms could charge consumers higher fees or add surcharges to recoup lost revenue. Following a national wave of temporary orders capping delivery service fees, food delivery platforms added surcharges of \$1.00 to \$2.50 (e.g., often called a “regulatory response fee”) to consumer bills.¹⁰ The proposal’s inclusion of a “restaurant opt out” provision, allowing restaurants to pay more than the 15 percent cap by purchasing additional, non-delivery services, could mitigate the risk that food delivery platforms would offset the cost of the regulations by raising costs for consumers.

Food Delivery Platforms

Currently, the leading food delivery platforms offer a variety of service package options for restaurants, including options to purchase basic delivery services (although potentially

⁸ Black and Latinx workers comprise almost 42 percent of app-based, platform workers but less than 29 percent of the overall labor force. [Labor Force Statistics from the Current Population Survey: Electronically Mediated Employment](#). U.S. Bureau of Labor Statistics, May 2017.

⁹ [Great Service Divide: Occupational Segregation, Inequality, and the Promise of a Living Wage in the Seattle Restaurant Industry](#). Restaurant Opportunities Centers United, 2020.

¹⁰ Farivar, Cyrus. [DoorDash pushes back against fee delivery commissions with new charges: NBC News discovered 68 jurisdictions that imposed food delivery caps; DoorDash tacked on additional fees in 57 of them](#). NBC News, March 28, 2021.

restricted to certain delivery areas) for 15 percent or less of the purchase price of the order.¹¹ Thus, food delivery platforms have shown some capacity to operate within the proposed limitations of this legislation. Further, allowing restaurants to pay higher fees for non-delivery services would give food delivery platforms the flexibility to adjust pricing for certain services. However, food delivery platforms could use this flexibility to charge restaurants significantly higher fees for non-delivery services.

Enforcement

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 absorb the bulk of enforcement work. The CAO would receive an undetermined number of legal referrals to support FAS's enforcement. Municipal Court would hear appeals of FAS findings from respondents.

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.

To better understand the potential financial implications of this legislation on FAS, Central Staff gathered information on enforcement of similar regulations: (1) the Mayor's emergency order restricting delivery and pick-up commission fees, (2) regulations of food delivery platform in SMC 7.30, and (3) permanent caps on delivery service fees in other jurisdictions.¹² Table 1 summarizes enforcement information.

¹¹ [DoorDash Products and Pricing](#), [UberEats Pricing for Merchants: Pricing Tailored for Your Business](#), [GrubHub Profit Calculator](#).

¹² Central Staff is seeking enforcement information on the Governor's Proclamation 20-76.

Table 1. Enforcement information

Jurisdiction	Effective Date	Enforcement	Resolution
Minneapolis	December 10, 2021	Four complaints	No findings of violation or citations
New York	January 24, 2022	Fewer than five complaints	n/a
Philadelphia	January 18, 2022	No complaints	n/a
San Francisco	December 21, 2020	Two complaints	<ul style="list-style-type: none"> One finding of violation with no penalty (the food delivery platform reimbursed the restaurant) One investigation is on-going
Seattle Mayor's emergency order	April 27, 2020	No complaints	n/a
Seattle Regulations of food delivery platforms in SMC 7.30	September 15, 2021	No complaints	n/a

This information reveals no complaints in Seattle and few complaints in other jurisdictions, suggesting that enforcement costs could be low to negligible. If Council passes this legislation and the workload for FAS exceeds the department's capacity, Council may want to consider adding resources to FAS during supplemental or annual budget deliberations.

Outreach

Since enforcement would be complaint-driven, outreach to restaurants on the new regulations would be an important aspect of implementation. Due to the racial and ethnic diversity of Seattle's restaurant owners, providing the outreach in a wide variety of languages would have the greatest impact. City departments that regularly engage with restaurants (e.g., OED, Department of Neighborhoods, Office of Immigrant and Refugee Affairs) could potentially incorporate outreach (e.g., details on the fee limitations, information on how to report a violation¹³) into their existing contacts with restaurants.

During the pandemic, OED provided substantial outreach to businesses, including restaurants, on emergency orders that could impact their operations. OED reports that the office is interested in new, sustainable outreach strategies and is seeking to standardize language access services (i.e., translation, interpretation, ethnic media ad placements) with existing resources. OED also reports that with additional resources, the office could leverage relationships with partners and provide language access services for new regulations. Revenue generated from

¹³ The FAS "Business Regulations" webpage provides information on how to report violations of food delivery platform requirements in SMC 7.30. [Filing a complaint – Food Delivery Platforms](#).

penalties is intended to offset any costs for outreach. However, the amount of revenue would be negligible if food delivery platforms are largely compliant as indicated by enforcement in other jurisdictions, resulting in the City issuing few fines (a portion of which must be remitted to the State).

Related, the Seattle Restaurant Alliance (SRA), a localized/chapter member organization of the Washington Hospitality Association (WHA), represents about 2,700 restaurants in Seattle and provides regular updates on issues impacting the industry in weekly newsletters, monthly meetings, and online toolkits. The SRA has indicated plans to distribute information on any forthcoming regulations that would impact restaurants and has expressed interest in partnering with the City on outreach efforts.

Next Steps

If the Committee votes to recommend approval of CB 120379 on July 27, the City Council could consider the legislation on August 2. If passed by Council, the legislation would likely go into effect between September 1 and 11.

If the Committee extends deliberations of CB 120389 until the next Committee meeting on August 10, Council could consider the legislation on August 16. If passed by Council, the legislation would likely go into effect between September 15 and 25.

Please contact me if you have questions about this proposed legislation.

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