

May 23, 2021

MEMORANDUM

To: Community Economic Development Committee
From: Yolanda Ho, Analyst
Subject: Council Bill 120092 Food Delivery Services Agreement

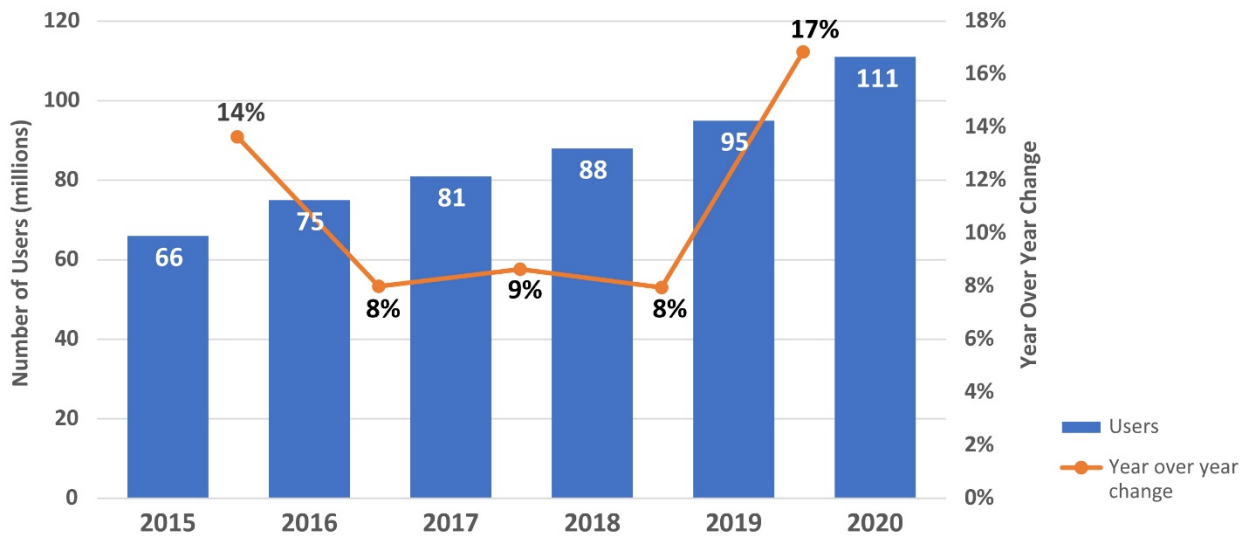
On June 3, 2021, the Community Economic Development Committee (Committee) will discuss and possibly vote on Council Bill (CB) 120092 that would require food delivery platforms operating in Seattle to first execute a written agreement with restaurants prior to offering takeout or delivery of orders to customers.

This memorandum describes: (1) the background of the proposal; (2) CB 120092; and (3) potential impacts of CB 120092.

Background

In recent years third-party online food delivery platforms, such as Grubhub, Uber Eats, and DoorDash, have been growing in popularity, with the number of users increasing nationally around 10 percent on average between 2015 and 2019. Demand for these food delivery services increased substantially as a direct result of the COVID-19 pandemic and associated restrictions on indoor dining intended to protect public health. Between 2019 and 2020, the number of users nationally grew about 17 percent (Exhibit 1).

Exhibit 1. Usage of food delivery platforms, United States, 2015 - 2020¹



¹ David Curry. (2021, February 15). Food Delivery App Revenue and Usage Statistics (2021). Retrieved from <https://www.businessofapps.com/data/food-delivery-app-market/>

Competition between food delivery platforms for greater market share and revenue has resulted in these platforms engaging in a number of business practices that have been problematic² for restaurant owners, including restaurants being listed on the platforms without the restaurant owners' awareness or permission. Food delivery platforms refer to restaurants with whom they have a contractual agreement as "partnered restaurants" and delivery commission fees are charged to the restaurant, not the customer. Restaurants listed on the food delivery platform without the owner's permission are known as "non-partnered restaurants" and delivery commission fees are charged to the customer, not the restaurant.

The platforms' stated rationale for offering delivery from non-partnered restaurants is to maximize the number of choices available to customers to the greatest extent possible and to demonstrate how the service could work for restaurants, ostensibly with the goal of eventually establishing formal agreements with interested restaurants.³ Food delivery platforms lift information from the internet, which may not be accurate, to create listings for non-partnered restaurants. When a customer submits an order via the platform, the delivery driver calls the restaurant or places the order in person on behalf of the customer. Only when delivery drivers begin appearing to deliver orders does the non-partnered restaurant owner realize they have been listed on the platform.

The recent push to expand the market of non-partnered restaurants has reportedly caused a variety of problems for both restaurants and their customers.⁴ Some restaurants may not offer takeout at all or prefer to offer solely takeout to ensure that their customers are receiving their food directly from the restaurant; allowing a food delivery platform to deliver the order instead could diminish the quality of the food. Others may not have sufficient capacity to fulfill the increased demand that can occur with being unknowingly featured on a food delivery platform. Additional issues have included inaccurate menu and pricing information, failure to maintain food quality, and excessively long delivery times.

All of these situations can result in restaurants refusing to fulfill customer orders. While these are problems created by the food delivery platforms, most customers reasonably assume restaurants have consented to being listed on the platform, and thus are to blame for any issues that arise. Consequently, restaurants can suffer damage to their reputation and income as a result of negative customer reviews following a poor delivery service experience.

² On April 27, 2020, the Council adopted [Resolution 31945](#) modifying the Mayor's Civil Emergency Order capping the commission fees charged by food delivery platforms to 15 percent to prevent restaurants from being subject to excessive commission fees (which could be as high as 35 percent) during the pandemic.

³ Jaya Saxena. (2019, October 30). Grubhub's New Strategy Is to Be an Even Worse Partner to Restaurants (Eater). Retrieved from <https://www.eater.com/2019/10/30/20940107/grubhub-to-add-restaurants-without-permission-like-postmates>

⁴ Mike Pomranz. (2020, September 28). Delivery Apps in California Will Soon Be Required to Have Permission from Restaurants (Food & Wine). Retrieved from <https://www.foodandwine.com/news/california-law-delivery-apps-permission-from-restaurants>

To address this problem, the California State Legislature passed [legislation](#), and the California Governor signed the “Fair Food Delivery Act” into law in September 2020, a requirement that food delivery platforms have an agreement in place with a restaurant prior to offering delivery services for that restaurant. The California law went into effect on January 1, 2021. The New York State Legislature is currently considering a similar [measure](#), and the Rhode Island State Legislature also considered a [proposal](#) in 2020, which ultimately died in committee, and has not be introduced again in their current legislative session.

CB 120092

CB 120092 would require that food delivery platforms operating in Seattle first obtain a written agreement with any restaurant prior to offering takeout or delivery services for that restaurant. Additionally, the legislation would do the following:

- Allow restaurants to terminate the agreement with a written request to the food delivery platform. The food delivery platform would then be required to remove the restaurant from its listing within 72 hours of receiving the request;
- Authorize the Department of Finance and Administrative Services (FAS) to impose a maximum penalty of \$250 per violation, with each day of noncompliance counting as a separate violation;
- Allocate revenues from penalties to support restaurants with five or fewer employees, based on the recommendation of the Office of Economic Development (OED); and
- Allow restaurants (as individuals or as a class) a private right of action so that they can directly sue food delivery platforms in court for failing to execute a contract before offering takeout or delivery to those restaurants.

The legislation would have a delayed effective date of September 15, 2021, to allow the City and food delivery platforms to conduct outreach to restaurants regarding the new regulation and give restaurant owners who want to continue offering takeout or delivery through these platforms time to execute an agreement that will ensure uninterrupted service.

Potential Impacts of CB 120092

Restaurant and customer impacts

After California’s law went into effect on January 1, 2021, food delivery platforms removed tens of thousands of non-partnered restaurants across the state from their listings.⁵ Seattle currently has roughly 4,000 active business licenses for restaurants, caterers, and other food industry businesses. A recent search on Grubhub offered delivery from over 4,100 restaurants in the greater Seattle area. The number of partnered restaurants in Seattle is not publicly

⁵ Eve Batey. (2021, January 1). New California Law Raptures Thousands of Restaurants From Postmates, DoorDash, and Grubhub (Eater). Retrieved from <https://sf.eater.com/2021/1/4/22213402/restaurants-removed-postmates-grubhub-california-law-2021>

available. One report estimated that only about 16 percent of the 700,000 restaurants listed on Postmates in California had agreements in place with food delivery platforms in September 2020.⁶

Based on media coverage of the massive expansion of the non-partnered restaurant market nationally,⁷ many of the restaurants that are currently listed on food delivery platforms in Seattle may not have an agreement in place. This proposed legislation could result in the removal of hundreds of restaurants from delivery platforms following the effective date. Additionally, previously non-partnered restaurants who wish to continue offering delivery will need to have an agreement in place and will then be responsible for paying the delivery commission fee instead of their customers. The financial impact may cause some restaurants to opt out of offering takeout or delivery through these platforms.

The removal of restaurants will reduce the number of options for customers, but this will also diminish the chances of customers having negative experiences with restaurants who choose to remain listed on these platforms. Restaurants who do not want to partner with the delivery platforms will no longer have to worry about suffering the potential economic and reputational consequences of being listed as an option on a platform without their permission.

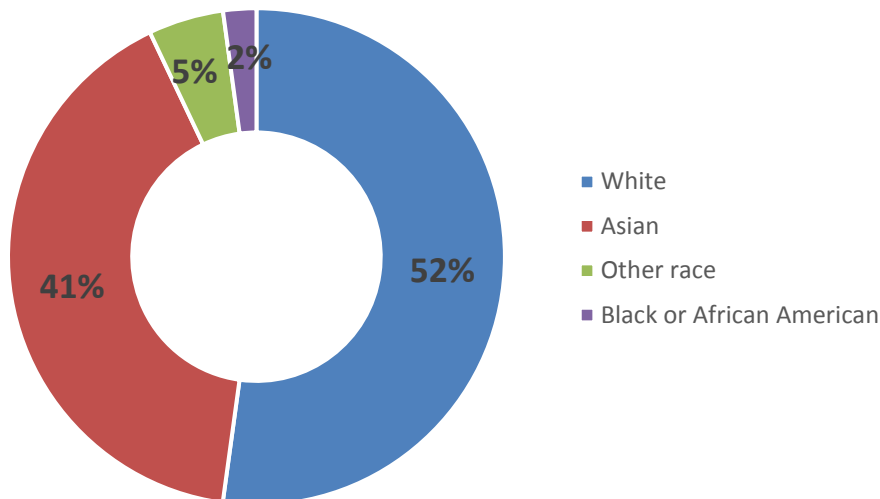
Racial equity impacts

The most recent available data shows that 48 percent of businesses in the food and accommodation services industry in Seattle metropolitan area are owned by Black, Indigenous, and other people of color, with Asian being the largest category (Exhibit 2). Given these demographics, the legislation would promote racial equity by protecting Seattle's restaurant owners and their customers from some of the practices of food delivery platforms described previously. Additionally, any revenue generated through penalties would be used to support restaurants with five or fewer employees.

⁶ Laura Forman. (2020, December 26). New California Law Could Spoil Some Growth for Food-Delivery Platforms (Wall Street Journal). Retrieved from <https://www.wsj.com/articles/new-california-law-could-spoil-some-growth-for-food-delivery-platforms-11608991201>

⁷ Khristopher Brooks. (2020, October 29). Grubhub accused of adding 150,000 restaurants to app without permission (CBS News). <https://www.cbsnews.com/news/grubhub-sued-added-150000-restaurants-without-permission-lawsuit/>

Exhibit 2. Share of owners of businesses in the food and accommodation services industry by race, Seattle metropolitan area, 2016



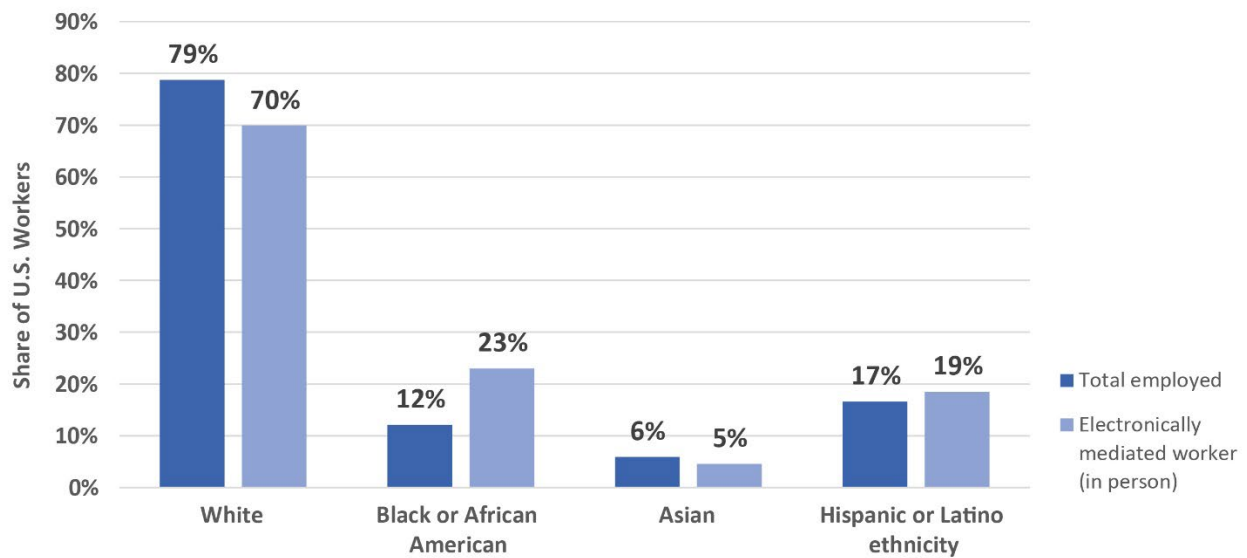
Source: U.S. Census Bureau, Annual Survey of Entrepreneurs

Another potential impact of this legislation could be on the workers who deliver orders from restaurants to customers on behalf of the food delivery platforms. These individuals are independent contractors who may also find jobs via transportation network companies, grocery delivery services, and similar internet-based gig platforms. The U.S. Bureau of Labor Statistics refers to this type of work as “electronically mediated work (in-person).”

At the national level, people who identify as Black and African American are overrepresented in this type of employment, accounting for 23 percent of workers in this category compared to their national employment share of 12 percent in 2017 (Exhibit 3). Additionally, those who identify as Hispanic and Latino are slightly more likely to be engaged in in-person gig work, as compared to their share of total employment. Recent data shared by food delivery platforms revealed that more women, particularly women with children, have been signing up to work as delivery drivers after losing their jobs due to the pandemic.⁸

⁸ Musadiq Bidar. (2021, February 25). Women who lost jobs due to COVID turn to food delivery platforms (CBS News). Retrieved from <https://www.cbsnews.com/news/women-unemployment-covid-food-delivery-door-dash-instacart-ubereats-jobs/>

Exhibit 3. Share of total workers and electronically mediated workers (in-person), United States, 2017



Source: U.S. Bureau of Labor Statistics

This legislation may decrease the number of food delivery jobs for delivery workers in the Seattle area following the removal of all non-partnered restaurant listings from the food delivery platforms. If the racial breakdown of gig workers in the Seattle area follows the national pattern, this loss of job opportunities is more likely to impact workers who are Black/African American and Hispanic/Latino and potentially women, based on available data.

However, requiring that all restaurants listed on food delivery platforms have an agreement in place will also help decrease the risk of conflicts between delivery platform drivers and non-partnered restaurants who do not want to offer delivery through the platform. An estimate of the impact on the number of delivery jobs lost due to this legislation cannot be calculated due to a lack of data. There could be a drop in jobs immediately after the legislation goes into effect, but it is not clear how significant the impact could be.

Outreach and engagement

Due to the racial and ethnic diversity of Seattle’s restaurant owners, the City would need to dedicate resources to conduct outreach in a wide variety of different languages to ensure that restaurant owners are aware of the new regulation, if it is adopted. OED, Office of Immigrant and Refugee Affairs, and other departments would be expected to lead this effort. Some restaurants may also need translation services and other technical assistance in order to execute agreements with food delivery platforms.

Enforcement and penalties

FAS would be responsible for levying penalties on food delivery platforms who violate the new requirement. If the delivery platforms are largely compliant, as has been the case in California, FAS would likely have sufficient capacity to provide enforcement. Should there be few fines, revenue from these penalties would be negligible. In addition to penalties, restaurants would also be able to pursue legal action, either individually or as a class, against the food delivery platforms to recover damages.

Next Steps

If the Committee votes to recommend approval of CB 120092 on June 3, the City Council will likely consider the legislation at its June 14 meeting.

cc: Dan Eder, Interim Central Staff Director
Aly Pennucci, Policy & Budget Manager