Legislation Details (With Text)

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On agenda:	8/2/2022		
Final Action:	8/3/2022	**Ord. No.**	Ord 126639
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.		
Sponsors:	Alex Pedersen, Dan Strauss		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Presentation, 3. Central Staff Memo, 4. Amendment 1 (added; 7/27/22), 5. Amendment 2 (added; 7/27/22), 6. Proposed Amendment A, 7. Proposed Amendment A v 2 (added; 8/2/22), 8. Signed Ordinance 126639		

Date	Ver.	Action By	Action	Result
8/3/2022	3	City Clerk	attested by City Clerk	
8/3/2022	3	Mayor	returned	
8/3/2022	3	Mayor	Signed	
8/3/2022	3	City Clerk	submitted for Mayor's signature	
8/2/2022	2	City Council	passed as amended	Pass
7/27/2022	1	Economic Development, Technology, and City Light Committee	pass as amended	Pass
7/26/2022	1	City Council	referred	
7/20/2022	1	Council President's Office	sent for review	
7/13/2022	1	City Clerk	sent for review	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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.

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

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

WHEREAS, on June 21, 2021, the Washington Governor rescinded Proclamation 20-76 in anticipation of easing restrictions on indoor dining capacity and other activities on June 30, 2021, while remaining in a state of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

WHEREAS, without further action by the City, the Mayor's civil emergency order restricting restaurant pick-up and delivery 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; and

WHEREAS, recognizing the 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 service fees and establishing other regulations for food delivery platforms; and

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

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council ("Council") finds and declares that:

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

B. This ordinance protects and promotes public health, safety, and welfare by clarifying requirements for food delivery platforms to obtain agreements with restaurants for food delivery platform services; regulating fees for delivery services that food delivery platforms charge restaurants; and prohibiting food delivery platforms from reducing the compensation of food delivery platform workers to offset the costs of compliance to protect the interests of consumers, restaurants, and workers.

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

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

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

F. 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, leaving little room for fees that food delivery platforms charge for their services.

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

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

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

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

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

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

beverage order.

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

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

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

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

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

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

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

of the community.

T. It is in the public's interest to prevent food delivery platforms from reducing the compensation of food delivery platform workers to offset any costs of implementing this ordinance because these workers perform services that are fundamental to delivering food and/or beverages from restaurants to consumers. Preventing pay reductions for food delivery platform workers will stabilize their incomes, support their continued provision of delivery services, ensure that they can better support and care for their families, and encourage their full participation in Seattle's civic, cultural, and economic life.

U. As the use of food delivery platform services grows and evolves, clarifying requirements for agreements between food delivery platforms and restaurants and establishing permanent yet flexible caps on delivery service fees charged to restaurants will accomplish the legitimate government purpose of easing the financial burden on struggling restaurants and will ensure that restaurants can exercise appropriate control over their businesses.

V. Requiring food delivery platforms to retain records on food delivery platform agreements and charges will support the City's efforts to verify compliance with food delivery platform requirements.

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

7.30.010 Scope and purpose

This Chapter 7.30 applies to all food delivery platforms operating within Seattle. The purpose of this Chapter 7.30 is to ((~~require that food delivery platforms establish an agreement with restaurants prior to offering pick-up or delivery from such restaurants on the food delivery platform and delivering orders from such restaurants to consumers, with the goal of protecting~~)) require food delivery platforms to engage in agreed-upon, predictable, and transparent business transactions when operating in Seattle to protect the interests of the City's consumers, ((~~and~~)) restaurants, and workers relying upon the services and opportunities provided by food delivery platform services.

7.30.020 Definitions

"Agreement" means a written contract between a restaurant and a food delivery platform.

"Compensation" means the total amount of payment owed to a food delivery platform worker by reason of performing work facilitated or presented by a food delivery platform, including but not limited to payments for delivering food and/or beverage orders and other services, bonuses, incentives, and tips earned from customers.

"Consumer" means any person or persons purchasing a food and/or beverage order from a restaurant using a food delivery platform.

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

"Director" means the Director of Finance and Administrative Services.

"Fee" means any fee, commission, cost, or monetary payment charged to restaurants or consumers by food delivery platforms.

"Food and/or beverage order" means an order for food and/or beverages from a restaurant that is placed by a consumer through a food delivery platform for pick-up or delivery to any location within Seattle city limits.

"Food delivery platform" means a person that (1) provides a means through which a consumer may submit a food and/or beverage order to a restaurant((,)) and ((~~arranges for the~~)) (2) facilitates and/or performs delivery of the order from the restaurant to the consumer.

"Food delivery platform worker" means a person affiliated with and accepting offers to perform

delivery of a food and/or beverage order for compensation from a food delivery platform.

"Person" means any individual, firm, corporation, association, partnership, governmental entity, or their agents.

"Purchase price" means the menu price of a food and/or beverage order, excluding taxes, tips, or any other fees that may comprise the total cost to the consumer of a food and/or beverage 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.

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

7.30.030 Agreement required

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

B. A food delivery platform shall not impose, by agreement or other means, any restrictions on the prices that a restaurant may charge for food and/or beverages, whether sold through the food delivery platform, sold directly from the restaurant, or sold through any other means.

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

7.30.032 Fees and charges

A. Subject to subsection 7.30.032.B, a food delivery platform shall not charge a restaurant a fee for

delivery services to any location within Seattle city limits that totals more than 15 percent of the purchase price of each food and/or beverage order.

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

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

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

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

7.30.033 Food delivery platform worker protections

A. A food delivery platform shall not reduce the compensation of a food delivery platform worker to comply with the requirements of this Chapter 7.30.

B. It shall be a violation of this Section 7.30.033 if compliance with this Chapter 7.30 is a motivating factor in a food delivery platform's decision to reduce the compensation of a food delivery platform worker.

7.30.034 Food delivery platform records

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

7.30.040 Remedies

A. Violations of this Chapter 7.30 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 ((~~or the Director's~~

~~designees~~)). Each day of noncompliance shall be a separate violation of this Chapter 7.30.

B. Any person or class of persons that suffers injury as a result of a violation of this Chapter 7.30 may bring a civil action in a court of competent jurisdiction against the person violating this Chapter 7.30 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.

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

7.30.042 Severability

The provisions of this Chapter 7.30 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 7.30, or the application thereof to any food delivery platform, restaurant, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 7.30, or the validity of its application to other persons or circumstances.

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

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

_____

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President _____ of the City Council

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

_____

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachments: