



Legislation Text

File #: Res 31966, **Version:** 1

CITY OF SEATTLE

RESOLUTION _____

A RESOLUTION modifying the City Council's adoption by Resolution 31945 of a modified civil emergency order issued by the Mayor on April 24, 2020, relating to capping restaurant delivery and pick-up commission fees.

WHEREAS, the World Health Organization (WHO) has declared that COVID-19 disease is a global pandemic, which is particularly severe in high-risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease; and

WHEREAS, on February 29, 2020, Governor Jay Inslee declared a statewide state of emergency in response to outbreaks of COVID-19 in Washington; and

WHEREAS, on March 3, 2020, the Mayor Jenny Durkan (Mayor) proclaimed a civil emergency related to the spread of COVID-19, authorizing the Mayor to exercise the emergency powers necessary for the protection of the public peace, safety, and welfare; and

WHEREAS, on March 5, 2020, the Council adopted Resolution 31937 affirming the civil emergency, modifying orders transmitted by the Mayor related to the emergency, and establishing Council's expectations related to future orders and reporting by the Mayor during the civil emergency; and

WHEREAS, on March 23, 2020, Governor Jay Inslee issued Proclamation 20-25, Stay Home - Stay Healthy, prohibiting all people in Washington State from leaving their homes or participating in social, spiritual, or recreational gatherings of any kind regardless of the number of participants, except to conduct or participate in essential activities and/or for employment in essential business services; and

WHEREAS, while restaurants are deemed an essential business, to reduce the spread of the virus and protect

the public health, the Stay Home - Stay Healthy Order prohibited restaurants in Seattle from offering dine-in service, limiting restaurants to delivery and takeout only; and

WHEREAS, the COVID-19 crisis has had a significant impact on the local economy, impacting the retail, restaurant, construction, gig economy, and other industries, and resulting in loss of income for small businesses; and

WHEREAS, a survey conducted in late March by the National Restaurant Association of 5,000 restaurant owners and operators found that: sales were down 47 percent from March 1 to March 22; 54 percent of restaurant owners have switched to take-out or delivery service only; seven in ten operators have had to lay off employees and reduce the number of hours worked, and roughly half anticipate more layoffs and reductions in hours over the next 30 days; three percent of restaurant operators have permanently closed their restaurant; and 11 percent of operators anticipate permanently closing within 30 days; and

WHEREAS, in June 2020, the Washington State Employment Security Department reported, based on a survey by the Bureau of Labor Statistics, that the number of jobs in food services and drinking places decreased by 11,300 from February 2020 to March 2020; and

WHEREAS, as of August 10, 2020, the Washington State Employment Security Department has consistently reported that the accommodation and food services sector is among the sectors experiencing the highest number of initial regular unemployment insurance claims during the COVID-19 emergency; and

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 firms in the accommodation and food services industry in the Seattle-Tacoma-Bellevue Metropolitan area are owned by Black, Indigenous, and People of Color; and

WHEREAS, the economic disruptions to restaurants caused by COVID-19 have placed a sudden and severe financial strain on many restaurants and will increase the likelihood of restaurants struggling to meet

existing financial commitments and remain open during and after the COVID-19 crisis; and

WHEREAS, many consumers are eager to support local restaurants and use third-party, app-based delivery services to place orders with those restaurants, and these third-party platforms charge delivery service fees to restaurants based on the purchase price; and

WHEREAS, while service agreements between restaurants and third-party delivery service companies vary, all of these agreements include delivery service fees and most agreements include commission fees, sometimes in excess of 30 percent of the purchase price; and

WHEREAS, restaurants, particularly small, family-owned restaurants with few locations, have limited bargaining power to negotiate lower fees with third-party, app-based delivery service companies, due to only a few companies existing in the marketplace to provide such delivery services, and because take-out and delivery can be critical options for keeping businesses in operation during the COVID-19 pandemic; and

WHEREAS, the U.S. Small Business Administration's Paycheck Protection Program (PPP) is an important step to provide relief to the restaurant industry, but as currently designed it does not address the unique and evolving challenges of the restaurant industry and their path to recovery, resulting in a growing number of restaurant owners concluding that the PPP is not going to prevent them from permanently closing operations, underscoring the need for other actions, such as capping restaurant delivery and pick-up commission fees, to provide some financial relief to the industry; and

WHEREAS, capping delivery and pick-up commission fees to a maximum of 15 percent of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service make it feasible for more restaurants to transition to take-out and delivery service, allowing some restaurants that have been closed during the COVID-19 crisis to reopen or to pursue different ways to increase revenue; and

WHEREAS, on April 27, 2020, the City Council (Council) adopted a modified civil emergency order issued by

the Mayor on April 24, 2020 that made it unlawful for third-party, app-based food delivery platforms to charge restaurants a commission fee per online, delivery or pick-up order for the use of its services that totals more than 15 percent of the purchase price of such online order; and

WHEREAS, the sole method for enforcing violations of the Mayor's civil emergency order capping restaurant delivery and pick-up commission fees is a criminal penalty that requires a conviction of a third-party, app-based food delivery platform before imposing a fine of not more than \$500 fine or imprisonment for not more than 180 days, or both such fine and imprisonment; and

WHEREAS, Section 10.02.110 of the Seattle Municipal Code authorizing the criminal penalty for a violation of a Mayor's civil emergency order has not been substantively updated since 1973 and does not reflect the current penalties for a misdemeanor; and

WHEREAS, the current penalties for a misdemeanor are a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both such fine and imprisonment; and

WHEREAS, a civil infraction is an enforcement tool that is necessary to provide the Mayor with an additional option for responding to violations of civil emergency orders including the Mayor's civil emergency order capping restaurant delivery and pick-up commission fees; and

WHEREAS, a private right of action is an enforcement tool that is necessary to provide the public with a means for obtaining legal and equitable relief for violations of civil emergency orders including the Mayor's civil emergency order capping restaurant delivery and pick-up commission fees; and

WHEREAS, The City of Seattle (City) intends to make it clear that failing to comply with civil emergency orders is a significant violation subject to criminal penalties, civil penalties, and/or a private right of action; and

WHEREAS, establishing enforcement actions for violations of the Mayor's civil emergency orders is a subject of vital and imminent concern to the people of this City and requires appropriate action by the City Council; and

WHEREAS, Seattle Municipal Code subsection 10.02.020.B provides that the Seattle City Council can either ratify and confirm, modify, or reject such an emergency order; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE THAT:

Section 1. The Civil Emergency Order relating to restaurant delivery and pick-up commission fees, issued by Mayor Jenny A. Durkan on April 24, 2020 and adopted as modified by the Council on April 27, 2020 by Resolution 31945, is modified to: reflect the current criminal penalties for a misdemeanor; and add a class 1 civil infraction and a private right of action as civil enforcement actions, as shown in Exhibit C to this resolution, provided these enforcement actions are available under, and the misdemeanor penalty is amended by, the ordinance introduced as Council Bill 119869.

Adopted by the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its adoption this _____ day of _____, 2020.

President _____ of the City Council

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Exhibit A - Emergency Order Issued April 24, 2020

Exhibit B - Modified Emergency Order Adopted April 27, 2020

Exhibit C - Modified Emergency Order