

ORDINANCE No.

*Adopt emergency temporary limitations on the fees third-party delivery services may charge restaurants during the COVID-19 emergency (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. On March 8, 2020, Governor Kate Brown issued Executive Order 20-08 declaring an emergency under ORS 401.165 due to the public health threat posed by the novel infectious coronavirus (COVID-19).
2. On March 8, 2020, Governor Kate Brown issued Executive Order 20-07 prohibiting on-premises consumption of food or drink. The order closed restaurant dining rooms, leaving them reliant on take-out and delivery to stay open.
3. On March 12, 2020, Mayor Ted Wheeler declared the City of Portland to be in a State of Emergency due to the public health impacts of COVID-19.
4. The COVID-19 Oregon reopening plan requires distanced seating and other capacity reductions until a reliable treatment or vaccine is required.
5. Restaurants are at the heart of Portland's economy, and among the hardest hit, and most impacted by the COVID-19 crisis. As a result of the crisis, numerous cherished Portland establishments have permanently closed.
6. Many of these restaurants continue to operate by selling food and beverage through take-out and delivery, as a primary source of income during this crisis.
7. In addition to accepting the direct ordering of food and beverage from customers to these restaurants, several third-party, app-based delivery platforms allow customers to place orders through the online applications or phone, which are then transmitted to local restaurants for preparation.
8. Many consumers are eager to support local restaurants and use third-party, app-based delivery platforms to place orders with those restaurants while social distancing, and these third-party platforms charge commission fees to restaurants based on the purchase price.
9. While each service agreement between restaurants and third-party platforms vary, they can include fees of up to 30% or more of the purchase price.

10. Restaurants, and particularly small, family-owned restaurants with few locations, have limited bargaining power to negotiate lower commission fees with third-party, app-based delivery platforms because only a few companies in the marketplace that provide such delivery services, and restaurants face dire financial circumstances during this COVID-19 pandemic because take-out and delivery are the only options to keep the business in operation.
11. These excessive fees present a substantial hardship during a time of great economic uncertainty for many local small businesses.
12. Capping the fees for use of third-party, app-based food delivery platforms to a maximum of 10% of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service will accomplish the fundamental government purpose of easing the financial burden on struggling restaurants during this public health emergency while not unduly burdening third-party, app-based delivery platforms.
13. During this time of local economic shutdown and uncertainty caused by the COVID-19 pandemic, many vulnerable workers have found work opportunities as delivery drivers for these third-party delivery platforms to financially support themselves and their families.
14. Third-party, app-based delivery platforms will further undermine already vulnerable workers if the companies reduce compensation rates to these delivery drivers as a result of this Ordinance capping delivery commission fees.
15. Cities including Seattle, San Francisco, New York City, Jersey City, and the District of Columbia have already taken similar action to limit the fees for use of third-party, app-based food delivery platforms and prevent reduced compensation to delivery drivers.

NOW, THEREFORE, the Council directs:

- a. Exhibit A is by this reference incorporated as if set out verbatim and is hereby enacted as the Emergency Temporary Limitations on the Fees Third-Party Delivery Services May Charge restaurants during the COVID-19 Emergency

Section 2. The Council declares that an emergency exists because the State of Emergency, declared by Mayor Ted Wheeler on March 12, 2020, due to the impacts of the novel COVID-19 persists, which has an immediate and ongoing impact on restaurants and immediate action is required to ease the financial burdens effecting these businesses that warrants this urgent measure, which finding is based upon the facts stated in the recitals above. Therefore, this ordinance shall be immediately effective upon its passage by the Council.

Passed by the Council:

Commissioner: Chloe Eudaly
Prepared by: Andrés Oswill
Date Prepared: 6/29/2020

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

531
 Agenda No.
ORDINANCE NO.
 Title

*Adopt emergency temporary limitations on the fees third-party delivery services may charge restaurants during the COVID-19 emergency (Ordinance)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Eudaly and Wheeler</p>	<p>CLERK USE: DATE FILED <u>June 29, 2020</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p style="text-align: center;">Keelan McClymont Deputy</p> <p>Digitally signed by Keelan McClymont Date: 2020.06.29 12:29:05 -07'00'</p>
<p>Mayor—Finance & Administration - Wheeler <small>Mustafa Washington Digitally signed by Mustafa Washington Date: 2020.06.29 12:07:14 -07'00'</small></p>	
<p>Position 1/Utilities - Fritz</p>	
<p>Position 2/Works - Vacant</p>	
<p>Position 3/Affairs - Hardesty</p>	
<p>Position 4/Safety - Eudaly <small>Marshall Runkel Digitally signed by Marshall Runkel Date: 2020.06.29 12:11:33 -07'00'</small></p>	
<p style="text-align: center;">BUREAU APPROVAL</p>	
<p>Bureau: Bureau Head:</p>	
<p>Prepared by: Andrés Oswill Date Prepared: 6/29/2020</p>	
<p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: <small>Naomi Sheffield Digitally signed by Naomi Sheffield Date: 2020.06.29 12:16:28 -07'00'</small> required for contract, code, easement, franchise, comp plan, charter</p>	
<p>Council Meeting Date July 8, 2020</p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/></p> <p>Total amount of time needed: <u>20 min</u> (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Vacant	2. Vacant		
3. Hardesty	3. Hardesty		
4. Eudaly	4. Eudaly		
Wheeler	Wheeler		

A. Authority and Applicability.

Pursuant to Portland City Code 15.08.020B(3), for the duration of the State of Emergency due to the public health impacts of COVID-19 and continuing for a period of ninety-days following that State of Emergency, the following emergency temporary limitations on the fees third-party deliver services may charge restaurants will remain in place.

B. Definitions.

1. "Restaurant" has the meaning provided by ORS 624.010(9).
2. "Third-Party, App-Based Food Delivery Platform" means any website, mobile application, or other service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pick-up of food and beverages from a Restaurant.
3. "Purchase Price" means the menu price of an online or phone order. Such term excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an online order.
4. "State of Emergency" means a declared state of emergency pursuant to Portland City Code 15.04.040.

C. General Provisions.

1. It shall be unlawful for a Third-Party, App-Based Food Delivery Platform to charge a Restaurant a fee (including, without limitation, any delivery fee) for the use of its services that totals more than 10% of the Purchase Price of the order made through the Third-Party, App-Based Food Delivery Platform.
2. It shall be unlawful for a Third-Party, App-Based, Food Delivery Platform to reduce the compensation rates paid to the person making deliveries on behalf of the Third-Party, App-Based, Food Delivery Platform, or garnish gratuities, as a result of the requirements set forth in Section 15.08.035.

D. Enforcement and Penalties.

Any person that violates any provision of this order shall be subject to a civil penalties enforceable under Portland City Code 15.08.040 not exceed \$500 per violation. Violations of this order shall accrue on a daily basis for each day and for each Restaurant charged a fee in violation of this subchapter.

IMPACT STATEMENT

Legislation title: *Adopt emergency temporary limitations on the fees third-party delivery services may charge restaurants during the COVID-19 emergency (Ordinance).

Contact name: Andrés Oswill

Contact phone: Andres.Oswill@portlandoregon.gov 503.865.6266

Presenter name: Andrés Oswill

Purpose of proposed legislation and background information:

This ordinance limits third-party, app-based food delivery platform fees during the COVID-19 emergency. It restricts the fees third-party delivery services may charge restaurants and prevents third-party delivery services from reducing the compensation rates paid to the person making deliveries.

Financial and budgetary impacts: N/A

Community impacts and community involvement:

This regulation mirrors regulations other cities have taken during COVID to protect restaurants and third-party food delivery people. The need for this ordinance was raised by APANO, the Portland Independent Restaurant Alliance, and participants in Prosper Portland's listening sessions.

100% Renewable Goal:

This action has no impact on the City's renewable energy goal.

Budgetary Impact Worksheet

Does this action change appropriations?

YES: Please complete the information below.

NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount