

ORDINANCE No. 190032 As Amended

*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: July 8, 2020

Commissioner: Chloe Eudaly

Prepared by: Andrés Oswill

Date Prepared: 6/29/2020

Mary Hull Caballero
Auditor of the City of Portland

By *Keelan McClymont*
Deputy

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 Agenda No.
ORDINANCE NO. 190032 As Amended
 Title

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

INTRODUCED BY Commissioner/Auditor: Eudaly and Wheeler	CLERK USE: DATE FILED <u>June 29, 2020</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler <small>Digitally signed by Mustard Washington Date: 2020.06.29 12:07:14 -0700</small>	Mary Hull Caballero Auditor of the City of Portland Keelan McClymont <small>Digitally signed by Keelan McClymont Date: 2020.06.29 12:29:05 -0700</small> Deputy ACTION TAKEN:
Position 1/Utilities - Fritz	
Position 2/Works - Vacant	
Position 3/Affairs - Hardesty	
Position 4/Safety - Eudaly <small>Digitally signed by Marshall Runkel Date: 2020.06.29 12:11:25 -0700</small>	
BUREAU APPROVAL Bureau: Bureau Head:	
Prepared by: Andrés Oswill Date Prepared: 6/29/2020	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: <small>Digitally signed by Naomi Sheffield Date: 2020.06.29 12:16:24 -0700</small> required for contract, code, easement, franchise, comp plan, charter	
Council Meeting Date July 8, 2020	

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
CONSENT <input type="checkbox"/> REGULAR <input checked="" type="checkbox"/> Total amount of time needed: <u>20 min</u> (for presentation, testimony and discussion)			
	1. Fritz	1. Fritz	✓
	2. Vacant	2. Vacant	
	3. Hardesty	3. Hardesty	✓
	4. Eudaly	4. Eudaly	✓
	Wheeler	Wheeler	✓