



[Home](#) / [Browse Council Documents](#)

190898

Emergency Ordinance

*Authorize temporary extension of commission cap on third-party food platforms delivery and takeout service fees charged to restaurants

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. Restaurants are vital to the culture and economy of the City of Portland ("City"). They reflect and nurture the cultural diversity of the City, while offering access to food, an essential foundation of human health and basis for social connection.
2. Portland's culinary scene is an important part of the social and economic fabric across all the City's business districts and neighborhoods. Portland's restaurants are also integral to Portland's reputation and tourism. Portland is consistently ranked as one of the country's best cities for dining due to its numerous, eclectic, and exceptional restaurants.
3. Most Portland restaurants are small businesses, and many are owned or operated by people of color, LGBTQ+, and recent immigrant community members. Supporting these small, diverse businesses strengthens both the economy and the social health of the City.
4. The COVID-19 emergency worsened the economic picture for City restaurants. Due to the extended ban and other restrictions on dine-in restaurant service to prevent the spread of COVID-19, the loss of restaurant workers during the pandemic, the prevalence of remote work, and the general decline of dining out, many restaurants have been severely economically impacted. Hundreds of restaurants have closed and many restaurants continue to struggle to recover. Similarly, many commercial districts in Portland also continue to struggle due to these restaurant closures despite the ending of the

Introduced by

[Mayor Ted Wheeler](#)

Bureau

[Management and Finance;](#)
[Revenue and Financial](#)
[Services; Revenue Division](#)

Contact

Don Jones

Policy Analyst

✉ Don.Jones@portlandoregon.gov

📞 [503-823-5196](tel:503-823-5196)

Monday through Thursday,
7:30 to 4:30

Requested Agenda Type

Time Certain

Date and Time Information

Requested Council Date

June 22, 2022

Requested Start Time

2:00 pm

Time Requested

45 minutes

City's state of emergency.

5. In March 2022, the level of employment in leisure and hospitality in the Portland metro area remained more than 10% lower than its pre-pandemic level. Job losses in leisure and hospitality in Multnomah County were more pronounced than neighboring counties. These labor shortages contribute to further delays in Restaurants returning to in-person dining at pre-pandemic levels. Open Table reservation data for in-person dining shows that Portland's restaurant activity was nearly 40% lower in May 2022 compared to pre-pandemic levels, which significantly lags the recovery of other peer cities.
6. COVID-19 case rates in Multnomah County remain higher than they have been during most of the previous two years. And the Multnomah County Public Health officials recommended that individuals resume voluntary indoor masking in May 2022 to help stem rising case levels. While the City's declared COVID-19 emergency has ended, COVID-19 continues to impact the activities of Portland residents and visitors.
7. Related to the decline of in-person dining, sixty percent of American consumers order takeout or delivery at least once per week. This percentage is even higher in urban markets such as Portland. In April 2022, over half of U.S. consumers had ordered food using a meal delivery service; up five percentage points from a year ago. As a result of the changes in customer behavior, many Portland restaurants remain dependent on delivery and takeout orders. This dependency makes them increasingly vulnerable to unfair contract terms demanded by third-party food platforms.
8. Third-party food platforms, which arrange for delivery or takeout of food prepared by restaurants, have become a global market worth more than \$150 billion, having more than tripled in size since 2017. In the United States, the market has more than doubled during the Covid-19 pandemic, following a historical growth rate of 8 percent. During this time, DoorDash, one of the largest third-party food platforms made its public market debut with one of the biggest initial public offerings of 2020.
9. This booming market is highly concentrated in just a handful of businesses. As of November 2019, just four third-party food platform services controlled approximately 98% of the entire market. Since that time, Uber has acquired Postmates, further consolidating this market.
10. The increasing market dominance of a small number of third-party food platforms coupled with the continuation of difficult economic conditions for City restaurants, means restaurants often must contract with these companies if they wish to access the growing

share of customers who rely on third-party food platforms to obtain meals. About 77% of U.S. restaurants offer service through third party food platforms.

11. Market dominance also gives these companies disproportionate leverage in contract negotiations with restaurants. These companies may use this leverage to extract high fees from restaurants – totaling in some instances, as much as 30%, or more, of an order total – and thereby diminishing restaurants’ already-narrow profit margins.
12. On June 29, 2020, the Portland City Council passed Ordinance 190032 (“Temporary Cap”), which capped fees that a third-party food platform could charge a restaurant at 10% of the purchase price for delivery orders and 5% of the purchase price for orders that do not include deliveries.
13. The Temporary Cap has remained in place in the City throughout the pandemic, but is set to expire on June 29, 2022. The City has received minimal formal complaints from either third-party food platforms or restaurants regarding compliance with the Temporary Caps during this time period.
14. Given the current operations of third-party food platforms and the local economic conditions in the City of Portland, a temporary extension of the current commission cap on delivery and takeout service fees charged to restaurants is a reasonable step to protect restaurants from financial collapse without unduly constraining third-party food platforms’ businesses.
15. This temporary extension will provide necessary relief to local restaurants while allowing all stakeholders to continue discussing a sustainable, long-term policy.

NOW, THEREFORE, the Council directs:

- A. Exhibit A is by this reference incorporated as if set out verbatim and is hereby enacted.
- B. This Ordinance takes effect on June 29, 2022, upon expiration of Ordinance No. 190032 and expires on February 28, 2023.
- C. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, that shall not affect the validity of any of the remaining portions of this Ordinance. Council expressly declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, and phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases of this Ordinance may be found to be invalid or unconstitutional.

Section 2. The Council declares that an emergency exists because of the imminent expiration of the Temporary Cap related to the COVID-19 emergency, which is set to expire on June 29, 2022; therefore, this Ordinance shall be in full force and effect on June 29, 2022.

Documents and Exhibits

 [Exhibit A](#) (85.62 Kb)

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
June 22, 2022

Auditor of the City of Portland
Mary Hull Caballero

Impact Statement

Purpose of Proposed Legislation and Background Information

Restaurants are vital to the culture and economy of the City of Portland ("City"). They reflect and nurture the cultural diversity of the City, while offering access to food, an essential foundation of human health and basis for social connection.

Portland's culinary scene is an important part of the social and economic fabric across all the City's business districts and neighborhoods. Portland's restaurants are also integral to Portland's reputation and tourism. Portland is consistently ranked as one of the country's best cities for dining due to its numerous, eclectic, and exceptional restaurants.

Most Portland restaurants are small businesses, and many are owned or operated by people of color, LGBTQ+, and recent immigrant community members. Supporting these small, diverse businesses strengthens both the economy and the social health of the City.

The COVID-19 emergency worsened the economic picture for City restaurants. Due to a ban on dine-in restaurant service to prevent the spread of COVID-19, the prevalence of remote work, and the general decline of dining out, many restaurants continue to struggle from the pandemic's impacts. Hundreds of restaurants have closed and many commercial districts in Portland continue to struggle due to these restaurant closures.

Related to the decline of in-person dining, sixty percent of American consumers order takeout or delivery at least once per week. This

percentage is even higher in urban markets such as Portland. In April 2022, over half of U.S. consumers had ordered food using a meal delivery service; up five percentage points from a year ago. As a result of the changes in customer behavior, many Portland restaurants have become dependent on delivery and takeout orders. This dependency makes them increasingly vulnerable to unfair contract terms demanded by third-party food platforms.

Third-party food platforms, which arrange for delivery or takeout of food prepared by restaurants, have become a global market worth more than \$150 billion, having more than tripled in size since 2017. In the United States, the market has more than doubled during the Covid-19 pandemic, following a historical growth rate of 8 percent. During this time, DoorDash, one of the largest third-party food platforms made its public market debut with one of the biggest initial public offerings of 2020.

This booming market is highly concentrated in just a handful of businesses. As of November 2019, just four third-party food platform services controlled approximately 98% of the entire market. Since that time, Uber has acquired Postmates, further consolidating this market.

The increasing market dominance of a small number of third-party food platforms coupled with the increasingly difficult economic conditions for City restaurants, means restaurants often must contract with these companies if they wish to access the growing share of customers who rely on third-party food platforms to obtain meals. About 77% of U.S. restaurants offer service through third party food platforms.

Market dominance also gives these companies disproportionate leverage in contract negotiations with restaurants. These companies may use this leverage to extract high fees from restaurants – totaling in some instances, as much as 30%, or more, of an order total – and thereby diminishing restaurants' already-narrow profit margins.

On June 29, 2020, the Portland City Council passed Ordinance 190032 ("Initial Temporary Cap"), which capped fees that a third-party food platform could charge a restaurant at 10% of the purchase price for delivery orders and 5% of the purchase price for orders that do not include deliveries. Since adoption, the City has received minimal complaints from either third-party food platforms or restaurants regarding compliance with the Initial Temporary Cap.

The Initial Temporary Cap has remained in place in the City throughout the pandemic, but is set to expire due to the expiration of the COVID-19 state of emergency on June 29, 2022.

The three largest third-party food platforms currently advertise their lowest cost fees for delivery services between 10% and 20%. These same platforms offer their lowest fees for takeout orders between 5% and 10%.

Extending the Initial Temporary Cap for an addition eight months will maintain the status quo during this economically challenging time for Portland restaurants while they navigate the economic impacts wrought by the COVID-19 pandemic and address issues with the continued rise in COVID-19 cases. The extension will also give all of the interested parties, including restaurants, third party food platforms, delivery drivers, and the City, additional time to engage in discussions and develop a well thought out, permanent policy solution that is fair to all impacted parties and promotes the social and economic well-being of Portland.

Financial and Budgetary Impacts

The proposed code changes would not have a material impact on City revenue or expenses.

Community Impacts and Community Involvement

The City has engaged in communications with interested third party food platforms, restaurants, and restaurant associations for many months. The goal of this temporary extension is to maintain the status quo to allow the City to continue to engage with all interested parties and the community before finalizing a permanent policy.

100% Renewable Goal

The legislation has no direct impacts on this goal.

Budget Office Financial Impact Analysis

No fiscal impact to the City. On June 29, 2020, the Portland City Council passed Ordinance 190032, which capped fees that a third-party food platform could charge a restaurant at 10% of the purchase price for delivery orders and 5% of the purchase price for orders that do not include deliveries. Since adoption, the City has received minimal complaints from either third-party food platforms or restaurants regarding compliance with the temporary caps. The temporary cap has remained in place in the City throughout the pandemic but is set to expire due to the expiration of the state of emergency on June 29, 2022. This legislation makes the temporary cap permanent.

Agenda Items

570 Time Certain in June 22, 2022 Council Agenda

Passed

Commissioner Dan Ryan Yea

Commissioner Jo Ann Hardesty Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Absent

Mayor Ted Wheeler Yea