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# 191126

Ordinance

## Add Regulation of Third-Party Food Platforms Code related to permanent limitations on the fees third-party food platforms may charge and the terms they may impose upon restaurants and delivery persons (add Code Chapter 7.27)

Passed

Amended by Council

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 industry. 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 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.
5. 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

Introduced by

[Mayor Ted Wheeler](#)

Bureau

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

Contact

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Monday through Friday,  
8:00 to 4:30

**Requested Agenda Type**

Regular

**Date and Time Information**

**Requested Council Date**  
January 4, 2023

Changes City Code

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 restaurants increasingly vulnerable to unfair contract terms demanded by third-party food platforms.

6. 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.
7. 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.
8. 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.
9. 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.
10. In addition to high commissions, third-party food platforms often impose contract terms that prohibit restaurants from charging a higher price for delivery orders than dine-in orders, eliminating a means by which restaurants could recoup the fees charged by these companies. The companies also frequently include in restaurant contracts a "telephone order charge" that restaurants are required to pay even in cases where a customer telephone call does not result in an order.
11. On June 29, 2020, the Portland City Council adopted 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. Since adoption, the City received minimal complaints from either third-party food platforms or restaurants regarding compliance with the Temporary Cap.
12. On June 22, 2022, Portland City Council adopted Ordinance 190898, which extended the 10% temporary delivery fee cap and the 5% temporary take-out fee cap that limited the amount of commission

third-party food platforms can charge restaurants until February 29, 2023. This temporary cap was otherwise set to expire consistent with the expired City state of emergency on June 29, 2022. This extension provided Portland restaurants with an additional eight months of continued certainty, until a permanent policy could be adopted.

13. 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%.
14. Capping the fees third-party food platforms can charge restaurants for delivery and takeout services and prohibiting these companies from imposing unfair “telephone order charges” unconnected with any customer purchase are important steps to ensure that restaurants can thrive in Portland and continue to nurture vibrant, distinctive commercial districts.
15. Since June 29, 2020, third-party food platforms have operated within lower and more rigid commission caps in Portland. These same companies also nationally advertise commissions for basic delivery and takeout services that are similar to the caps proposed by this Ordinance. Given their current operations, a higher and more flexible permanent fee cap on delivery and a similar, permanent takeout service fee is a reasonable, permanent step to protect restaurants from financial collapse without unduly constraining third-party food platforms’ businesses.
16. Prohibiting third-party food platforms from providing delivery and other services to a restaurant without the restaurant’s express consent, and further requiring that third-party food platforms to terminate a contract promptly upon receiving oral or written termination notice from a restaurant, are other important steps to ensure that restaurants can exercise appropriate control over their businesses.
17. Setting standards by which Portland restaurants are treated and charged by third-party food platforms will protect local, diverse small businesses and support the cultural importance and economic opportunities generated by the City’s food services industry.

NOW, THEREFORE, the Council directs:

- A. Add Code Chapter 7.27, Regulation of Third-Party Food Platforms, as shown in Exhibit A.
- B. This Ordinance and the incorporated Chapter 7.27 take effect on March 1, 2023, upon expiration of Ordinance No. 190898.

## Documents and Exhibits

 [Exhibit A - as amended](#) (36.73 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 as amended by Council  
January 4, 2023

Auditor of the City of Portland  
Simone Rede

## 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.

In addition to high commissions, third-party food platforms also often impose contract terms that prohibit restaurants from charging a higher price for delivery orders than dine-in orders, eliminating a means by which restaurants could recoup the fees charged by these companies. Third-party food platform companies frequently include in restaurant contracts a "telephone order charge" that restaurants are required to pay even in cases where a customer telephone call does not result in an order.

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. On June 22, 2022, the Portland City Council passed Ordinance 190898 (Temporary Cap Extension) extending the temporary cap on fees through February 28, 2023, allowing time to develop a permanent solution with stakeholder input. 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.

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%.

Capping the fees third-party food platforms can charge restaurants for delivery and takeout services and prohibiting these companies from imposing unfair “telephone order charges” unconnected with any customer purchase are important steps to ensure that restaurants can thrive in Portland and continue to nurture vibrant, distinctive commercial districts.

Since June 29, 2020, third-party food platforms have operated within lower and more rigid commission caps in Portland. These same companies also nationally advertise opportunities for similar commissions for basic delivery and takeout services. Given their current operations, a higher and more flexible fee cap on delivery and takeout service fees charged to restaurants is a reasonable, permanent step to protect restaurants from financial collapse without unduly constraining third-party food platforms’ businesses.

Prohibiting third-party food platforms from providing delivery and other services to a restaurant without the restaurant’s express consent, and further requiring that third-party food delivery services terminate a contract promptly upon receiving oral or written termination notice from a restaurant, are other important steps to ensure that restaurants can exercise appropriate control over their businesses.

This ordinance will ensure that Portland restaurants and food carts have access to affordable delivery and takeout services offered by third-party food platforms that operate in the City of Portland. Its provisions also set forth a number of additional protections to ensure the fair and equitable contracting and treatment of small businesses as they use these services in an informed and empowered way. After careful consideration and compromise achieved through a robust stakeholder consultation process, this ordinance represents a sustainable permanent policy that reflects both the importance of food services industry and the value of the services that food platforms may provide.

### **Financial and Budgetary Impacts**

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

### **Community Impacts and Community Involvement**

This legislation will provide a balance of competing needs between Portland’s restaurants and Third-Party Food Platforms protecting Portland restaurants’ ability to thrive and Third-Party Food Platforms to operate profitably.

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

Both Portland's restaurant community and Third-Party Food Platforms were included in outreach and stakeholder meetings.

### **100% Renewable Goal**

The legislation has no direct impacts on this goal.

### **Budget Office Financial Impact Analysis**

The proposed code changes would be effective starting on March 1st, 2023, and should not have a material impact on City revenue or expenses. The proposed legislation would make permanent many of the prior, but temporary, Council decisions on the regulation of third-party food platforms (TPFP), but there are also some new provisions. These new provisions include requirements that a TFPF must have written agreements with restaurants prior to publishing any information on or charging fees to the restaurant and that all fees for services must be clearly disclosed in written agreements. The cap on the fee that a TFPF can charge to a restaurant for delivery service orders is being raised from 10% to 15%, while the cap on fees for non-delivery, takeout orders is being lowered from 5% to 4%. Regarding enforcement, the penalty per violation remains at \$1,000, although that amount is now a cap per restaurant per day.

### **Agenda Items**

#### **1002 Time Certain in [December 7, 2022 Council Agenda](#)**

Passed to second reading

Passed to second reading December 14, 2022 at 9:30 a.m.

#### **1059 Regular Agenda in [December 14-15, 2022 Council Agenda](#)**

Passed to second reading as amended

Motion to accept amended Exhibit A: Moved by Wheeler and seconded by Hardesty. (Y-5)

Passed to second reading January 4, 2023 at 9:30 a.m. as amended

**14 Regular Agenda in [January 4, 2023 Council Agenda](#)**

Passed

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Mayor Ted Wheeler Yea