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## EXHIBIT A

### Chapter 7.27 Regulation of Third-Party Food Platforms

#### 7.27.010 Definitions.

For the purpose of this Chapter, the following words and terms are defined and shall be construed as hereinafter set forth:

- A. "Delivery Service" means a service that:
  - 1. Lists a restaurant, and makes the restaurant discoverable, on modalities or platforms offered by a third-party food platform, including but not limited to any website, mobile application, or other internet service where a third-party food platform lists restaurants; and
  - 2. Facilitates and/or performs the delivery (through employees or independent contractors of the third-party food platform and/or such establishments) of food and/or beverages from restaurants to customers. Delivery service does not include any other service that may be provided by a third-party food platform to a restaurant, including but not limited to advertising services, search engine optimization, business consulting, or credit card processing.
- B. "Restaurant" has the meaning set forth in ORS 624.010.
- C. "Director" means the Director of the Revenue Division.
- D. "Order" means a telephone order or an order placed by a customer through a third-party food platform for delivery or pickup within the City of Portland ("City").
- E. "Purchase Price" means the menu price of an order excluding taxes, gratuities, or any other fees that may make up the total cost to the customer of an order.
- F. "Takeout Service" means a service that:
  - 1. Lists a restaurant, and makes the restaurant discoverable, on modalities or platforms offered by a third-party food platform, including but not limited to any website, mobile application, or other internet service where a third-party food platform lists restaurants; and
  - 2. Allows a customer to place an order with the restaurant through the third-party food platform, but such order does not include delivery service by the third-party food platform as described in Subsection 7.27.010 A. Takeout service does not include any other service that may be provided by a third-party food platform to a restaurant, including but not limited to advertising services, search engine optimization, business consulting, or credit card processing.

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- G. "Telephone Order" means an order placed by a customer to a restaurant through a telephone call forwarded by a call system provided by a third-party food platform for delivery or pickup within the City.
  - H. "Third-Party Food Platform" means any website, mobile application, or other internet platform, owned or operated independently of the restaurant, that offers or arranges for the ~~sale~~ order of and the same day delivery service or same day takeout service of food and beverages from a restaurant.
  - I. "Transaction Fee" means a charge for the processing of a payment for an order imposed upon a third-party food platform by a third-party payment processor.

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### **7.27.020 Third-Party Food Platform Standards.**

- A. A third-party food platform shall not list, advertise, promote, or sell a restaurant's products on, or arrange for the delivery of an order of such products through, the website, mobile application or other modalities or platforms of such third-party food platform without a written agreement between such third-party food platform and such restaurant to include the restaurant's products on such website, mobile application or other modality or platform.
- B. A third-party food delivery platform shall not impose, by written agreement or other means, any restrictions on the prices that a restaurant may charge for the restaurant's products, whether sold through the third-party food platform, sold directly from the restaurant, or sold through any other means.
- C. A third-party food platform shall not charge any fee to a restaurant that the restaurant has not voluntarily agreed to pay.
- D. A third-party food platform shall not charge a restaurant an amount for delivery service that exceeds 15 percent of the purchase price per order.
  - 1. The limitation of 15 percent of a purchase price per order for delivery service shall not apply to orders that have a purchase price of less than \$10.
  - 2. For orders that have a purchase price of less than \$10, a maximum fee of \$1.50 may be charged by a third-party food platform to a restaurant.
- E. A third-party food platform shall not charge a restaurant an amount for takeout service that exceeds 4 percent of the purchase price per order.
- F. In addition to the fees established in Subsections D. and E. above, a third-party food platform may pass onto a restaurant a transaction fee in the same amount charged by the payment processor to the third-party food platform. The third-party food platform must include in its contract with the restaurant the amount of the transaction fee and must provide to the restaurant, upon request, proof of such charge imposed by the payment processor.
  - 1. If the amount charged by a payment processor to a third-party food platform changes, the third-party food platform must notify, in writing and in a timely manner, all restaurants under contract of the amount of the change.
  - 2. No change in the amount charged by a payment processor to a third-party food platform shall authorize the third-party food platform to pass onto a restaurant a fee that is a different amount than the third-party food platform is charged by the payment processor.
- G. Beginning on March 1, 2023, the fee limits in Subsections D. and E. of this section shall not apply to a third-party food platform that does all of the following:
  - 1. Offers, in a clear and transparent manner, all restaurants the option to obtain delivery service for a total fee, commission, or charge not to exceed 15 percent of the purchase price per order, without requiring the purchase of additional services;

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2. Offers, in a clear and transparent manner, all restaurants the option to obtain takeout service for a total fee, commission, or charge not to exceed 4 percent of the purchase price per order, without requiring the purchase of additional services;
  3. The third-party food platform charges fees in excess of those set forth in Subsections D., E., and F., only for services in addition to delivery service, takeout service, and a transaction fee; and
  4. No later than April 1, 2023, notifies all restaurants in writing, that have an existing contract with the third-party food platform of the options described in Subsections D. and E. This written notification shall be available in each language spoken by approximately 1,000 or more Limited English Proficiency individuals in the City of Portland service area, as available on the City of Portland's website.

H. A third-party food platform is prohibited from refusing to provide delivery or refusing to process an order for take-out on behalf of a restaurant based solely on the restaurant's decision to select only services described in Subsections D. and E.

I. All contracts between a third-party food platform and a restaurant shall clearly define the fees, commissions, or charges associated with contracted services. For example, if a restaurant enters into a contract with a third-party food platform for only delivery service, that contract shall clearly state a fee, commission, or charge of not more than 15 percent of the purchase price per order for delivery service.

J. A third-party food platform shall not reduce the compensation rate paid to a delivery service driver or request that a delivery service driver accept lower compensation in the future or garnish gratuities to comply with the terms of this Chapter.

K. At the time a final price is disclosed to a customer for the intended order from a restaurant through a third-party food platform and before that transaction is completed by the customer, the third-party food platform shall disclose to the customer, in plain language and in a conspicuous manner, any commission, fee, or any other monetary payment charged to the customer by the third-party food platform.

L. After a transaction occurs for an order from a restaurant through a third-party food platform, the third-party food platform shall provide an electronic or printed receipt to the customer. The receipt shall disclose, in plain and simple language and in a conspicuous manner:

1. The purchase price.
2. Any delivery charge, gratuity, or service fee imposed on and collected from the customer by the third-party food platform.
3. Any delivery charge, gratuity, or service fee imposed on and collected from the customer by the restaurant, in addition to the purchase price.

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4. Any tip or gratuity that will be paid to the person delivering the food, and not to the third-party food platform or restaurant, that was added into the transaction when it occurred.

M. A third-party food platform shall not charge any fee from a restaurant for a telephone order if a telephone call between such restaurant and a customer does not result in an actual transaction during such telephone call.

N. A third-party food platform must terminate a restaurant service contract within three business days of receipt of notice from the restaurant.

#### **7.27.030 Authority, Complaints and Investigation.**

- A. The Director is authorized to adopt, amend, repeal and enforce administrative rules interpreting, applying, and administering the provisions of this Chapter.
- B. The Director is authorized and directed to enforce all provisions of this Chapter. The Director may delegate any or all authority granted under this Section to any Revenue Division officer, employee or agent (“designee”).
- C. The Director may receive complaints from restaurants and delivery service drivers by telephone or in writing.
- D. The Director shall have the power to investigate any and all complaints regarding alleged violations of this Chapter or the administrative rules.
- E. The Director shall have the authority to administer an administrative subpoena for the purpose of collecting any information necessary to investigate complaints and enforce any provisions of this Chapter. The Director may inspect, examine, and copy any books, papers, records, invoices and other data needed to investigate a complaint. Third-party food platforms shall maintain books and records for at least three years, including but not limited to all written agreements with restaurants and delivery service drivers, records listing itemized fees the third-party food platform has charged to restaurants, and records demonstrating compliance with this Chapter, sufficient for the Director to investigate complaints and issue a decision. Such books and records shall be made available to the Director immediately upon demand.
- F. Upon completing an investigation into allegations in a complaint, the Director or designee shall issue a decision that includes written findings of fact and conclusions of law to support all decisions. Such decision may also include remedies.

#### **7.27.040 Remedies.**

- A. Failure to comply with any part of this Chapter or the administrative rules may be punishable by civil penalties and payment of restitution imposed by order of the Director or designee. The Director or designee may impose a civil penalty of up to \$1,000 for violations of this Chapter or the administrative rules. The penalty is limited to \$1,000 per restaurant per day. The Director or

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designee may order payment of restitution in an amount determined by the Director or designee. For purposes of assessing penalties for violations of this Chapter, a separate violation shall accrue each time an order is processed, a restaurant is charged a fee, or a delivery service driver is compensated, or is asked to accept reduced compensation, in a manner that violates one or more of the provisions of this Chapter or the administrative rules.

- B. Civil penalties shall be payable to the City of Portland. Restitution shall be payable to the restaurant or delivery service driver.
- C. Nothing in this Section is intended to prevent any person from pursuing any available legal remedies. Any restaurant or delivery service driver claiming to be aggrieved by a third-party food platform's noncompliance with this Chapter has a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate.

#### **7.27.050 Appeals.**

- A. Any third-party food platform upon which a civil penalty or restitution has been imposed by the Director or designee, may appeal to the Director for review and issuance of a final determination. Written notice of the appeal must be received by the Division within 30 days after the Division mailed or delivered the notice of decision to third-party food platform. The time to file an appeal may be extended by the Director for good cause. Requests for extensions of time must be received prior to the expiration of the original 30-day deadline. The appeal must state the name and address of the third-party food platform, include a copy of the decision being appealed, and provide an explanation of the grounds for the appeal.
- B. The Director will respond within 60 days after the appeal is filed with a final determination unless such time is extended by the Director for good cause. If this time is extended, written notice will be given to the third-party food platform, prior to the expiration of the original 60-day deadline. The Director's determination must include written findings of fact and conclusions of law to support the final determination.
- C. Any third-party food platform upon which their appeal of civil penalty or restitution has been denied by the Director, may appeal to the Code Hearings Officer pursuant to the provisions of Chapter 22.10 of this Code.

#### **7.27.060 Severability.**

If any Section, Subsection, sentence, clause or phrase of this Code, is for any reason held to be invalid or unconstitutional, that shall not affect the validity of any of the remaining portions of the Code, including but not limited to any remaining provisions of Code Chapter 7.27. Council expressly declares that it would have passed this Code, and each Section, Subsection, sentence, clause, and phrase thereof, including but not limited to any remaining provisions of Code Chapter 7.27, regardless of the fact that any one or more Sections, Subsections,

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sentences, clauses, or phrases of this Code may be found to be invalid or unconstitutional.