

ORDINANCE NO. 859

AN ORDINANCE TO ADOPT EMERGENCY TEMPORARY LIMITATIONS ON THE COMMISSIONS AND FEES THIRD-PARTY ORDERING AND DELIVERY SERVICES MAY CHARGE RESTAURANTS DURING THE COVID-19 EMERGENCY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

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 16, 2020, Mayor Ryan declared the City of Troutdale to be in a State of Emergency due to the public health impacts of COVID-19.
4. On June 30, 2020, Governor Kate Brown extended Executive Order 20-08 for an additional 60 days, until September 4, 2020.
5. On July 2, 2020, Multnomah County Commissioners extended the state of emergency to September 30, 2020.
6. The COVID-19 Oregon reopening plan requires distanced seating and other capacity reductions until a reliable treatment or vaccine is required.
7. Restaurants are a key part of Troutdale's economy and social fabric, and among the hardest hit, and most impacted by the COVID-19 crisis. As a result of the crisis, all Troutdale food establishments have suffered temporary closures and loss of business, and numerous cherished Troutdale establishments are at risk of permanently closing, or have permanently closed.
8. Many of these restaurants continue to operate by selling food and beverages through take-out and delivery, as a primary source of income during this crisis.
9. 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.

10. Many consumers are eager to support local restaurants and use third-party, app based delivery platforms to place orders with those restaurants while at the same time maintaining social distancing, and these third-party platforms charge commissions and fees to restaurants based on the purchase price.
11. 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.
12. Restaurants, and particularly small, family-owned restaurants with few locations, have limited bargaining power to negotiate lower commissions and fees with third-party, app-based delivery platforms because only a few companies in the marketplace provide such delivery services, and restaurants face dire financial circumstances during this COVID-19 pandemic with limited take-out and delivery as the only options to keep the business in operation.
13. These commissions and fees are excessive and present a substantial hardship during a time of great economic uncertainty for many local small businesses. Loss of these small businesses will have a substantial, long-term negative impact on the public.
14. Capping the fees for services charged by third-party, app-based food delivery platforms at a maximum of 10% of the purchase price for all services, including 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 that offer services to the public during this public health emergency and will not unduly burden the third-party, app-based delivery platforms.
15. 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.
16. Third-party, app-based delivery platforms will further undermine already vulnerable workers if the companies reduce compensation rates paid to these delivery drivers as a result of this Ordinance capping delivery commissions and fees.
17. Cities including Seattle, San Francisco, New York City, Jersey City, Portland, and the District of Columbia have already taken similar action to limit the commissions and fees charged for use of third-party, app-based food delivery platforms and prevent reduced compensation to delivery drivers.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Attachment 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 Ryan on March 16, 2020, and ratified by Council, 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.

**YEAS: 7
NAYS: 0
ABSTAINED: 0**



**Casey Ryan, Mayor
Date: July 15, 2020**



**Sarah Skroch, City Recorder
Adopted: July 14, 2020**

A. Authority and Applicability.

For the duration of the State of Emergency due to the public health impacts of COVID-19 and continuing for the duration of the state ordered state of emergency, and terminating at 12:01 am on the first day of the first month following the end of that State of Emergency, the following emergency, temporary limitations on the commissions and fees that third-party order and/or delivery 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/or 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 Resolution 2490 of the City of Troutdale.

C. General Provisions.

1. It shall be unlawful for a Third-Party, App-Based Food Delivery Platform to charge a Restaurant a fee or commission, however characterized, (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 this Ordinance.

D. Enforcement and Penalties.

Any person that violates any provision of this order shall be subject to a civil penalties enforceable under the Troutdale Municipal Code of \$500 per violation. Violations of this order shall accrue on a daily basis, and a separate violation shall occur for each day and for each Restaurant charged a fee in violation of this ordinance.