Proclamation of Emergency Rule No. 4

Emergency Rule No. 4 – Capping the commission fee to a maximum of 15% of the purchase price on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service.

WHEREAS COVID-19, is a respiratory disease that can result in serious illness or death and is caused by a virus easily spread from person to person; and

WHEREAS, on March 12, 2020, the City Manager and the Mayor of Tacoma, pursuant to Chapter 1.10 of the Tacoma Municipal Code and Chapter 38.52 of the Revised Code of Washington (“RCW”), proclaimed that an emergency exists caused by COVID-19 (“Proclamation”) in the City of Tacoma, and confirmed by the City Council on March 17, 2020; and

WHEREAS, pursuant to the Proclamation, the Mayor is authorized to issue rules reasonably related to the protection of life provided, and such rules must be confirmed at the earliest practicable time by the City Council; and

WHEREAS, during the COVID-19 pandemic, it is critical that restaurants stay open because they are performing essential functions, along with grocery stores and other food services, to provide the public with access to food; and

WHEREAS, the social distancing measures required to mitigate the spread of the COVID-19 virus means that delivery and take-out options from restaurants are critical to the public’s accessibility of food and addressing any community food insecurity; and

WHEREAS, the virus spreads from person to person contact, so to reduce the spread of the virus and protect public health, State orders prohibit restaurants in Tacoma from offering unrestricted dine-in service, limiting restaurants to drive-through, take-out, COVID-19 compliant outdoor dining, or delivery options only; and

WHEREAS, the COVID-19 pandemic has had a significant impact on the local economy impacting the restaurant, food service and other related industries resulting in economic hardship for business owners due to loss of business income, layoffs, and reduced work hours for a significant percentage of this workforce; and

WHEREAS, restricting restaurant services places a sudden and severe financial strain on many restaurants, particularly those that are small, independently-owned or minority-owned businesses that already operate on thin margins, adding to financial pressures in the industry that predate the current public health crisis; and

WHEREAS, it is in the public interest to take action to maximize restaurant revenue from delivery and pick-up orders that are a lifeline and currently make up
a larger share of the business transactions for Tacoma’s restaurant industry to enable these businesses to survive the impacts of the COVID-19 pandemic and continue supporting a diverse workforce and contributing to the vitality of Tacoma’s communities; and

WHEREAS, many consumers are eager to support local restaurants and use third-party, app-based delivery platforms to place orders with those restaurants, and these third-party platforms charge commission fees to restaurants based on the purchase price; and

WHEREAS, while each service agreement between restaurants and third-party delivery platforms vary, all these agreements include delivery commission fees that can include agreements with commission fees of up to 30% or more of the purchase price while often restricting a restaurant’s ability to adjust the purchase price accordingly; and

WHEREAS, 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 due to only a few companies in the marketplace to provide such delivery services, and face dire financial circumstances during this COVID-19 pandemic because take-out and delivery are often the only options to keep the business in operation; and

WHEREAS, capping the commission fee to a maximum of 15% 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; Now, Therefore,

BE IT ORDERED BY THE MAYOR OF THE CITY OF TACOMA:

SECTION 1:

A. Effective immediately, it shall be unlawful for a third-party, app-based food delivery platform to charge a restaurant a commission fee per online, delivery or pick-up order for the use of its services that totals more than 15% of the purchase price of such online order until restaurants are allowed to offer unrestricted dine-in service and the City’s emergency order confirmed by the City Council on March 17, 2020 is rescinded.

B. It shall be unlawful for a third-party, app-based food delivery platform to reduce the compensation rates paid to the delivery service driver, or garnish gratuities, as a result of this order going into effect during the duration of this order.

C. It shall be unlawful for third-party, app-based food delivery platform to reduce or otherwise modify the areas of the City that are served by the platform, as result of this Rule going into effect during the duration of this Rule.
D. For purposes of this order, “restaurant” means a business in which food and/or beverage preparation and service is provided for individual consumption either on- or off-premise, and in which any service of alcoholic beverages is accessory to the service of food.

E. For purposes of this order, “third-party, app-based food delivery platform” means any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pick-up of food and beverages from a food service establishment.

F. For the purposes of this order, “online order” means an order placed through a platform provided by a third-party app-based food delivery platform for delivery within Tacoma.

G. For purposes of this order, “purchase price” means the menu price of an online order. Such term excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an online order.

H. Any person found to have knowingly violated this Emergency Rule No. 4 is guilty of Failure to Obey the Mayor’s Emergency Rule, Tacoma Municipal Code Section 1.10.120, and upon conviction may be punished by a fine of not more than $1,000 or by imprisonment for not more than 90 days or both such fine and imprisonment.

Dated 11/15/2020

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney