

**ORDINANCE NO. C-\_\_\_\_\_**

An Ordinance relating to regulation of food delivery platform fees, which shall be called "The Fair Meal Delivery Ordinance," adopting a new chapter 10.515 of the Spokane Municipal Code.

**WHEREAS**, a primary purpose of city government is protecting the health, safety, and welfare of its residents; and

**WHEREAS**, restaurants are vital to the character and community fabric of Spokane, reflecting and nurturing the cultural diversity of the community; Spokane has 1,239 active business licenses for restaurants, caterers, and other businesses in the food industry; and

**WHEREAS**, restaurants offer access to food as well as social connection; many City residents are eager to support the local economy by ordering food or beverages from restaurants using third party delivery platforms; and

**WHEREAS**, food delivery platforms charge restaurants commission fees for use of their services, such as the facilitation of pick-up and delivery of food or beverage orders; and

**WHEREAS**, sometimes such third party delivery platform fees total up to 30 percent or more of the price of the food or beverage order, drastically impacting restaurant profits; and

**WHEREAS**, the average net profit margin for a restaurant is four percent of the total order value; and

**WHEREAS**, beginning in early 2020, to reduce the spread of Covid-19 and protect public health, the governor of Washington state issued a series of restrictions on indoor dining capacity that caused Spokane restaurants to rely more on takeout and delivery to serve customers; and

**WHEREAS**, on November 25, 2020, the Washington governor enacted Proclamation 20-76, prohibiting food delivery platforms from charging restaurants, or similar food establishments, a delivery fee totaling more than 15 percent of the purchase price of an online order or a total fee amount for the use of all food delivery platform services totaling more than 18 percent of the purchase price of an online order; and

**WHEREAS**, on June 21, 2021, the Washington governor rescinded Proclamation 20-76 in anticipation of easing restrictions on indoor dining capacity and other activities on June 30, 2021, while remaining in a state of emergency; and

**WHEREAS**, the use of food delivery platforms by consumers is predicted to continue growing and many restaurants have limited bargaining power to negotiate lower commission fees due to the limited number of such platforms in the marketplace; and

**WHEREAS**, from May 2018 through May 2022 data shows that sales for food pick-up and delivery services have grown eight percent year over year, with three platforms providing service to 96 percent of U.S. meal delivery sales in May 2022; and

**WHEREAS**, 77 percent of restaurants offer services through food delivery platforms, food delivery platforms account for 21 to 30 percent of current restaurant sales, and continued growth is expected at a rate of eight percent each year through 2026; and

**WHEREAS**, the Washington Hospitality Association reports that the average full-service restaurant in Washington incurred \$160,000 in debt because of the Covid-19 pandemic, an amount equivalent to more than three years of profit based on industry averages, and nearly 2,500 restaurants closed across Washington during the pandemic; and

**WHEREAS**, nationally, food delivery platforms offer delivery services, the most logistically demanding and resource-intensive service, for a baseline of 15 percent of the purchase price of food or beverage orders, with additional services such as marketing opportunities to increase sales at a higher cost of up to 25 to 30 percent, and

**WHEREAS**, recognizing the ongoing need to protect the interests of restaurants and consumers, other jurisdictions, including Seattle, Minneapolis, New York City, Philadelphia, and San Francisco, have passed ordinances permanently capping delivery service fees and establishing other regulations for food delivery platforms; and

**WHEREAS**, the City Council finds that the regulatory requirements within this ordinance are necessary to promote public health, safety, and welfare by eradicating the unequal bargaining dynamic between food delivery platforms and restaurants.

**NOW THEREFORE**, the City of Spokane does ordain:

**Section 1.** That new chapter entitled “Fair Meal Delivery Requirements” 10.515 is adopted into title 10 of the Spokane Municipal Code to read as follows:

**10.515.010 Scope and Purpose**

This chapter applies to all food delivery platforms operating within the City of Spokane. The purpose of this chapter is to require that food delivery platforms establish an agreement with restaurants prior to offering pick-up or delivery from such restaurants on the food delivery platform and delivering orders from such restaurants to consumers.

The establishment of such agreements will result in predictable and transparent business transactions that protect the interests of the City's consumers and restaurants.

As more consumers choose pick-up and delivery rather than in-house dining, establishing food delivery platform fee caps is critical for restaurants to stay open and flourish. The availability of reasonably priced options for delivery services will support a vibrant and diverse restaurant scene where restaurants can thrive and respond to the evolving consumer needs and interests. This chapter seeks to eliminate the unequal bargaining power in the negotiation between restaurants and food delivery platforms; assisting restaurants that would be less likely to stay in business under the weight of high fees for delivery services.

It is in the public's interest to maximize restaurant revenue from pick-up and delivery orders to help these businesses earn a profit, support a diverse and healthy workforce, and continue contributing to the vitality of the local economy and community. As the use of food delivery platform services grows and evolves, clarifying requirements for agreements between food delivery platforms and restaurants and establishing permanent yet flexible caps on delivery service fees charged to restaurants will accomplish the legitimate government purpose of easing the financial burden on the struggling restaurant industry. Requiring food delivery platforms to retain records on food delivery platform agreements and charges will support the City's efforts to verify compliance with food delivery platform requirements in accordance with this chapter.

#### **10.515.020 Registration Required**

No person may operate a food delivery platform within the City of Spokane without first obtaining a food delivery business registration under the Spokane Municipal Code.

#### **10.515.025 Definitions**

- A. "Agreement" means a written contract between a restaurant and a food delivery platform.
- B. "Business" means any individual, firm, corporation, association, partnership, governmental entity, or their agents.
- C. "Consumer" means any person or persons purchasing a food or beverage order from a restaurant using a food delivery platform.
- D. "Delivery services" means services provided by a food delivery platform that (1) list the restaurant and make the restaurant discoverable on the food delivery platform's modalities or platforms and (2) facilitate or perform delivery of food or beverage orders to any location within City of Spokane limits. Delivery services do not include other services that may be provided by food delivery platforms to restaurants, including but not limited to advertising services, search engine optimizations, business consulting, or credit card processing.

- E. "Fee" means any fee, commission, cost, or monetary payment charged to restaurants or consumers by food delivery platforms.
- F. "Food or beverage order" means an order for food, beverages, or food and beverages from a restaurant that a consumer places through a food delivery platform for pick-up or delivery to any location within City of Spokane limits.
- G. "Food delivery platform" means a business, other than a restaurant, that (1) provides a means through which a consumer may submit a food or beverage order to a restaurant and (2) facilitates, performs, or facilitates and performs pick-up of the order from the restaurant by the consumer or delivery of the order from the restaurant to the consumer.
- H. "Purchase price" means the menu price of an online order, excluding taxes, gratuities, or any other fees that may make up the total cost to the customer of a food or beverage order.
- I. "Restaurant" means a business in which food or beverage, or both, are prepared 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.
- J. "Written" means a printed or printable communication in physical or electronic format, including but not limited to a communication that is transmitted through email, text message, or a computer or mobile system, or that is otherwise sent and maintained electronically.

**10.515.030 Agreement required**

- A. A food delivery platform shall not offer consumers pick-up or delivery services from a restaurant, or charge a restaurant any fee for services related to pick-up or delivery services, without first obtaining an agreement with the restaurant expressly authorizing the food delivery platform to take orders and offer delivery or pick-up of the food or beverage orders prepared by the restaurant.
- B. A food delivery platform shall not impose, by agreement or other means, any restrictions on the prices that a restaurant may charge for food or beverage orders, whether sold through the food delivery platform, sold directly from the restaurant, or sold through any other means.
- C. The agreement required pursuant to subsection (A) of this section shall be terminated upon the restaurants written request to the food delivery platform. The food delivery platform shall remove the restaurant from its list of participating restaurants within three business days of receiving the request for termination.

#### **10.515.040 Fees and charges**

A. As part of the agreement between restaurants and food delivery platforms required pursuant to section 10.515.030, food delivery platform shall not charge a restaurant a fee for delivery services to any location within City of Spokane limits that totals more than 15 percent of the purchase price of each food or beverage order.

B. Exceptions:

1. The provisions of this ordinance shall not limit the ability of any restaurant to choose to pay a higher commissioner or supplemental fee to access additional advertising or other products and services offered by any food delivery platform.
2. The limits on fees in (A) of this subsection will not apply to a food delivery platform that offers licensed food establishments the option to obtain delivery services for a total fee that does not exceed 15% of the purchasing price of each online order. This provision allows food delivery platforms to provide services to a restaurant with fees that exceed the 15% limit, so long as food delivery platforms also provide restaurants the option of obtaining delivery services that do not exceed the 15% fee limit.
3. Food delivery platforms are prohibited from refusing to provide service to a restaurant based solely on the restaurant's decision to select the 15% fee option for delivery services.

#### **10.515.050 Food delivery platform records**

Food delivery platforms shall retain records that document compliance with this chapter for a period of two years. Records may be kept electronically.

#### **10.515.060 Violation and penalty**

- A. It is a violation of this chapter to fail to comply with any provision of this chapter.
- B. This chapter is subject to the administrative provisions of chapter 4.04 SMC. In the event of an appeal, the hearing officer shall be the City of Spokane hearing examiner.
- C. Violation of this chapter by any business is a Class 1 Civil Infraction and subject to the penalties set forth in chapter 1.05 SMC.
- D. Each day of a continuing violation is a separate offense.

#### **10.515.070 Severability**

The provisions of this chapter are declared to be separate and severable. If any part, provision, or section of this chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

**PASSED** by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date