



Mayor & Council Meeting Date: June 1, 2020
 Agenda Item Type: Discussion and Instructions
 Department: City Manager's Office
 Responsible Staff: Linda Moran

Subject

Food Delivery Fees Imposed on Restaurants During the COVID-19 Emergency

Recommendation

Staff recommends that the Mayor and Council send a letter to food delivery companies requesting a reduction in fees during the COVID emergency and that the City monitor opportunities to support County and State legislation aimed at regulating the fees.

Discussion

Restaurants have expressed concern about the rates charged by food delivery companies during the COVID-19 emergency. The requirement to limit restaurant service to pick up and delivery during the health emergency is straining restaurants' ability to remain solvent. High fees charged for delivery further impacts restaurants' finances. The long-term impact could be significant. An industry survey by the Restaurant Association of Metropolitan Washington indicated that:

- 1 in 4 restaurants will likely not reopen after Coronavirus,
- Restaurants continuing to operate are taking in 30 percent of what they usually would in sales, and
- 92 percent of the food service employee base has been let go.

Actions by Other Jurisdictions

To support the restaurant industry, some jurisdictions have instituted, or are considering, emergency orders to limit the fees charged. The Mayor and Council noted the recent action by the District of Columbia and requested information about how other jurisdictions have regulated the fees charged to restaurants by food delivery companies. A summary of research on actions by cities nationwide is provided in Attachment A.

Locally, the District of Columbia enacted legislation containing the following provisions:

- During a period of time for which the Mayor has declared a public health emergency a third-party food platform within the District shall register with the Department of Consumer and Regulatory Affairs.
- During a public health emergency, it shall be unlawful for a third-party food delivery platform to charge a restaurant a commission fee for the use of the platform's services for delivery or pick-up that totals more than 15% of the purchase price per online order.
- It shall be unlawful for a third-party food delivery platform to reduce the compensation rate paid to a delivery service driver or garnish gratuities in order to comply with the restriction on the food delivery fee charged to a restaurant.
- During a public health emergency, the third-party food delivery platform shall disclose to the customer the final price for the purchase and delivery before that transaction is completed, including any commission, fee, or any other monetary payment imposed on the restaurant by the third-party food delivery platform.
- Violators shall be subject to a fine of not less than \$250 and not more than \$1,000 for each such violation.

Authority to Regulate Fees

In Maryland, the General Assembly has not granted municipalities the authority to regulate these types of fees. Prohibited from regulating these fees, the Mayor of the City of Baltimore issued a letter to all third-party food delivery companies requesting that they voluntarily cap their fees at 15% per transaction for the duration of the health emergency.

During an online meeting with District 17 legislators, County Council President Katz and elected officials from Rockville and Gaithersburg, President Katz indicated that Montgomery County is looking into the ability to regulate third-party food delivery fees. No items on this topic appear on the County Council's future agenda at this time. City staff is monitoring for any activity.

Recommendation

Staff recommends that the Mayor and Council direct staff to send a letter to the delivery companies operating in Rockville to voluntarily cap their fees per transaction at 15% per transaction for the duration of the health emergency. A draft letter for the Mayor and Council's consideration is provided in Attachment B.

Staff also recommends monitoring activity at the County and State to cap these delivery fees, and to prepare to advocate for caps that support the viability of Rockville restaurants during the health emergency.

Mayor and Council History

This is the first time that the Mayor and Council have discussed on agenda the fees charged to restaurants by delivery companies.

Next Steps

Based on the Mayor and Council's feedback, staff will finalize the draft letter for mailing to the food delivery companies serving Rockville. Staff will continue to monitor County consideration and advocate for any measures that the County has the authority to take in support of local restaurants. Staff will also bring to the Mayor and Council's attention any opportunity to advocate for State legislation on this topic.

In further support of local restaurants, staff is exploring the concept of closing portions of streets and parking lots to enable restaurants to re-open with more space available for socially-distanced seating. This will be a topic of discussion on a future Mayor and Council agenda.

Attachments

Attachment A Research on Other Jurisdictions (DOCX)
Attachment B Final DRAFT Letter (DOCX)

Attachments

Attachment 13.a: Attachment A Research on Other Jurisdictions (DOCX)
Attachment 13.b: Attachment B Final DRAFT Letter Food Delivery Services (DOCX)

Jenny Kimball
Jenny Kimball, Deputy City Manager 5/27/2020

Research on Caps on Food Delivery Charges

Staff research identified the following jurisdictions that have taken action, or have considered action, to regulate the fees charged to restaurants by third-party delivery services.

Cambridge

The City Council of Cambridge, MA considered a cap on food delivery charges. Upon the legislature of the Commonwealth of Massachusetts taking up a bill, the Cambridge City Council voted instead to support the State bill. The legislators are currently considering making it unlawful for a food-delivery service to charge a covered establishment a fee per online order for the use of its services that totals more than 10 percent of the purchase price of such online order. It would be effective until 45 days following the termination of the COVID-19 emergency. Any third-party delivery service that violates would be punished by a fine of not less than \$100 and shall reimburse the covered establishment for all charges collected in violation.

Chicago

Beginning May 15, third-party food delivery companies in Chicago were required to disclose to the customer an itemized cost breakdown of each transaction, including the menu price of the food, any sales or other tax, delivery charge and tip, and any commission or service fee paid by the restaurant to the third-party delivery company. The intent is to show customers how much money is going to the restaurant while the stay-at-home order has closed dining rooms. Violators will face daily fines ranging from \$500 to \$10,000. The new rules will be permanent. The Chicago City Council also is considering a 5% cap on fees for delivery services.

Jersey City

The Jersey City, New Jersey Mayor issued an executive order limiting the food delivery charges to 10% while restaurant dining rooms remain closed. The executive order specifies that the services cannot offset the lower commission rates by reducing their delivery personnel's pay or garnishing any part of their tips.

New York City

The New York City Council voted to cap fees by third-party services. The Mayor signed the bill, which specifies that starting June 2 the commissions that food-delivery apps can charge New York City restaurants will be capped at 20 percent — 15 percent for delivery charges and 5 percent for any other fees. The cap is in place until 90 days after the health emergency has ended. The third-party services will be subject to a civil penalty of up to \$1,000 per restaurant per day for violations.

San Francisco

San Francisco implemented a 15% cap for the duration of the Local Emergency or until restaurants can re-open for dine-in service. The order is part of a Supplement to the Local

Emergency Declaration that the San Francisco Mayor made in February. The Office of Economic and Workforce Development was authorized to implement the order.

Santa Cruz

Effective April 16, the Santa Cruz, CA city manager signed an executive order establishing a temporary limit of 15% of the purchase price on commissions charged by third-party food delivery companies, to support Santa Cruz restaurants during the pandemic. It will terminate when restaurants are permitted to offer dine-in service. If the delivery service violates the executive order, the restaurant makes a written request for a refund within seven days. If a refund is not provided, the restaurant may enforce the order by means of a civil action seeking damages and injunctive relief.

Seattle

Restauranteurs in Seattle reported being charged up to 30% commission fee per transaction. At the end of April, the City of Seattle imposed a 15% cap on commissions that third-party, app-based services can charge to deliver food and drinks in the city. It also requires that 100% of the tip goes to the driver. Failure to comply is a misdemeanor offense. The emergency order will remain in place until the State of Washington allows dine-in service again.



City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

June __, 2020 **DRAFT**

Doordash, Inc.
c/o Registered Agent Solutions
8007 Bailey's Lane
Pasadena. MD 21122

To Whom It May Concern:

The Rockville Mayor and Council are taking this opportunity to contact you regarding fees that your company is charging City of Rockville restaurants for your services during the COVID-19 global pandemic. We are concerned about usage fees that your apps are charging, which range as high as 30% of the total order.

By Executive Order of the Governor, restaurants have been ordered to limit their activities solely to prepared food and beverages for take-out and delivery. Rockville's restaurants, as in other US cities, have been hit hard by the pandemic and the extreme disruption it has imposed on owners and their employees. Restaurants are a critical component of our local economy and community fabric. The services your company provides offer a critical lifeline to restaurants struggling to stay in business without dine-in sales. It benefits both your business and the local economy to help these struggling restaurants. A closed restaurant generates no business for your company.

As we weather this crisis together, we are asking you as corporate citizens to do the right thing and limit your fees per transaction to 15% during this health emergency. We are aware of other cities across the nation that have ordered that you reduce your fees to 15% per transaction during this emergency, and Rockville is asking you to do the same for our restaurants.

The Mayor and Council are eager to work in partnership with you to support our local restaurants. Now more than ever, in this time of need, government and businesses must unite forces in support of our communities. We welcome the opportunity to have a dialogue with you and the appropriate individuals from your company. If you have any questions, please contact Robert DiSpirito, City Manager, at 727-638-4140 at your earliest convenience.

Sincerely,

**Remainder of space needed for Mayor and Council signature block.*

MAYOR
Bridget Donnell Newton

COUNCIL
Monique Ashton
Beryl L. Feinberg
David Myles
Mark Pierzchala

CITY MANAGER
Robert DiSpirito

CITY CLERK/DIRECTOR OF
COUNCIL OPERATIONS
Sara Taylor-Ferrell

CITY ATTORNEY
Debra Yerg Daniel