

ORDINANCE NO. _____

AN ORDINANCE ADDING A NEW CHAPTER 6.53 TO THE BELLINGHAM MUNICIPAL CODE TO REGULATE THIRD PARTY FOOD DELIVERY PLATFORMS.

WHEREAS, on February 29, 2020, the Washington Governor issued Proclamation 20-05, proclaiming a state of emergency for all counties throughout the state of Washington in response to new cases of the novel coronavirus (COVID-19); and

WHEREAS, on March 11, 2020, the World Health Organization announced that COVID-19 is officially a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 23, 2020, the Washington Governor issued Proclamation 20-25, prohibiting all people in Washington State from leaving their homes and all non-essential businesses in Washington State from conducting business (“Stay Home - Stay Healthy Proclamation”); and

WHEREAS, these actions were appropriate for public health reasons but resulted in severe economic impacts on businesses, families, and individuals in Bellingham; and

WHEREAS, while restaurants are deemed an essential business, to reduce the spread of COVID-19 and protect public health, at times during the COVID-19 pandemic the Washington Governor has either restricted or prohibited indoor dining, causing Bellingham restaurants to primarily rely on outdoor dining, pick-up orders, and delivery to serve consumers; and

WHEREAS, many consumers have been eager to support local restaurants during the pandemic, resulting in sharply increased usage of third-party, app-based delivery platforms to place orders with those restaurants; and

WHEREAS, currently a restaurant may be listed on these platforms without the restaurant’s explicit permission, and

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WHEREAS, the listing of restaurants on food delivery platforms without the restaurant's permission has caused documented issues for restaurants, including the following:

- Some restaurants may not offer takeout;
- Some restaurants may not have sufficient capacity to handle new demand;
- Menus posted on platforms may contain inaccurate pricing information and menu items that are no longer offered;
- Unauthorized delivery services may fail to maintain food quality during delivery;
- A restaurant may develop its own delivery program that is forced to compete with delivery platforms that list the restaurant without permission;
- Delivery times may exceed restaurant standards; and
- Restaurants may receive bad customer reviews after a bad delivery experience; and

WHEREAS, the listing of restaurants without permission is an issue of substantial magnitude; for example, before a California law prohibiting such practices, one delivery platform in California alone was estimated to have 40,000 listings on its platform without permission; and

WHEREAS, the City of Bellingham has received numerous complaints from restaurants that have been listed on food delivery platforms without the restaurant's permission; and

WHEREAS, many restaurants are currently short-staffed and facing other challenges during the current stage of the pandemic; and

WHEREAS, consumer use of these delivery platforms is predicted to continue growing at a steady rate after the pandemic ends; and

WHEREAS, it is in the public interest that food delivery platforms be required to obtain a restaurant's permission before it can be listed.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1.

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A new Chapter 6.53 is added to the Bellingham Municipal Code as follows:

CHAPTER 6.53 FOOD DELIVERY PLATFORMS

6.53.010 Scope and purpose

This Chapter applies to all food delivery platforms operating within Bellingham. 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, with the goal of protecting the interests of the City's consumers and restaurants.

6.53.020 Definitions

"Agreement" means a written contract between a restaurant and a food delivery company or platform. Such an agreement may be executed electronically.

"Consumer" means any person or persons purchasing a food order from a restaurant using a food delivery platform.

"Food delivery platform" is an online business including, but not limited to, third-party food delivery application companies that act as an intermediary between consumers and multiple restaurants to submit food orders from a consumer to a participating restaurant, and to arrange for the delivery of such order from such restaurant to the consumer.

"Person" means any individual, firm, corporation, association, partnership, governmental entity, or their agents.

"Restaurant" means a business in which food and/or beverage preparation and service is provided for individual consumption either on- or off-premise.

6.53.030 Agreement required

- A. A food delivery platform shall not offer pick-up or delivery services from a restaurant 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 and/or beverages prepared by the restaurant.

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B. The agreement shall be terminated upon the restaurant's written request to the food delivery platform. The food delivery platform shall remove the restaurant from its list of participating restaurants within 72 hours of receiving the request for termination.

6.53.040 Remedies

Any person or class of persons that suffers injury as a result of a violation of this Chapter may bring a civil action in a court of competent jurisdiction against the person violating this Chapter and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation.

Section 2.

This ordinance shall take effect and be in force on November 1, 2021.

PASSED by the Council this ____ day of _____, 2021.

Council President

APPROVED by me this ____ day of _____, 2021.

Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

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