

April 17, 2020

Dear Members of the Boston City Council-

On behalf of the Massachusetts Restaurant Association, we are urging you to consider implementing an ordinance which would cap commission rates that third party delivery systems can charge restaurants, as your colleagues in San Francisco did last week. Additionally, ordinances have been filed across the country including in New York, Chicago and Providence.

As you know, the restaurant industry in Massachusetts has been dealt a devastating blow during the COVID-19 crisis. The Massachusetts restaurant industry has lost nearly \$1 billion in sales and approximately 200,000 employees have been laid off. This is felt particularly hard in Boston, where activity was brought to a standstill even before the official government shutdown. Under normal circumstances, take-out and delivery account for less than 20% of sales at most restaurants and there are those operations with no history of take out, it is hard to build a platform from scratch.

Even before the pandemic, third party delivery companies were a source of frustration for our industry, with many of these delivery platforms charging up to 30% commission on individual orders. Many of these platforms have faced lawsuits from the industry, after implementing various businesses practices designed to upcharge commissions for local restaurants. Some of these tactics include fake domains that resemble real restaurants, listing restaurants that haven't yet agree to partner, and swapping out phone numbers for third-party delivery platform-affiliated ones to bill higher commissions.

Due to the current situation, regulating these platforms is more important than ever. As restaurants look for new ways to survive solely on takeout and delivery, third party delivery companies have seen this as an opportunity to further exploit the industry. Many of these companies have launched PR campaigns, positioning themselves in the public's eye as good community partners to struggling small businesses.

Last month, Grubhub made an announcement stating that it was "helping" the industry by "temporarily foregoing" its usual commission rates for restaurants. However, a few days later, they were forced to clarify that they weren't forgiving these payments – only deferring them. By then, they had reaped the benefits of a misleading ad campaign with the public, but leaving the restaurants to read the very fine print on the offer. Grubhub also announced a promotion to customers, offering consumer discounts for orders placed during certain times, however they neglected to tell the customer that the restaurant itself was being forced to pay for the promotional offering, and then went on to base its commission based on the total cost of the order before the discount.

It should be noted that earlier this month, DoorDash announced that it would reduce all commission fees for restaurants with five or less locations by 50 percent between April 13, 2020 and the end of May. While this action is appreciated by the local restaurant community, it is important that these protections remain in place permanently.

Earlier this month, third party delivery companies, Grubhub, DoorDash, UberEats and Postmates have been named in a class action lawsuit alleging that the companies are in violation of federal antitrust laws by requiring that the restaurants charge customers the same price for dining in and delivery. The customers have also taken issue with the high commission fee third party services charge restaurants.

As we prepare for this pandemic to stretch on for an undetermined period of time, restaurants are now facing the daunting prospect of developing a business plan for a new reality. We hope that the Council will consider working to ensure that small restaurant businesses are protected from predatory actions of national corporations looking to profit from a crisis.

Please do not hesitate to contact the MRA if we can provide further information.

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MA Restaurant Association