



Proclamation of Emergency Rule No. 4

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

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

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

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

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

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

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

26 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



1 a larger share of the business transactions for Tacoma’s restaurant industry to
2 enable these businesses to survive the impacts of the COVID-19 pandemic and
3 continue supporting a diverse workforce and contributing to the vitality of Tacoma’s
4 communities; and

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

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

14 WHEREAS, restaurants, and particularly small family-owned restaurants
15 with few locations, have limited bargaining power to negotiate lower commission
16 fees with third-party, app-based delivery platforms due to only a few companies in
17 the marketplace to provide such delivery services, and face dire financial
18 circumstances during this COVID-19 pandemic because take-out and delivery are
19 often the only options to keep the business in operation; and

20 WHEREAS, capping the commission fee to a maximum of 15% of the
21 purchase price on delivery or pick-up orders while restaurants are unable to
22 provide unrestricted dine-in service will accomplish the fundamental government
23 purpose of easing the financial burden on struggling restaurants during this public
24 health emergency while not unduly burdening third-party, app-based delivery
25 platforms; Now, Therefore,

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

SECTION 1:

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

26 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.



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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

Victoria R. Woodards
Mayor

Attest:

Doris Soum
City Clerk

Approved as to form:
William Foshe
City Attorney