JAY INSLEE
Governor

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PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05

20-76

Food Delivery Fees

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, I issued Proclamations 20-25, et seq., first entitled "*Stay Home – Stay Healthy*," in which I initially prohibited all people in Washington State from leaving their homes except under certain circumstances, and later amended to "*Safe Start – Stay Healthy" County-By-County Phased Reopening*, gradually relaxing those limitations based on county-by-county phasing, and on November 16, 2020 I again amended 20-25, et seq., to "*Stay Safe– Stay Healthy - Rollback of County-By-County Phased Reopening Responding to a COVID-19 Outbreak Surge*", in response to a surge of new cases of COVID-19 in Washington State, thereby rolling back the reopening of businesses and reestablishing limitations on community gatherings, which includes a prohibition against indoor dining, among other things; and

WHEREAS, the COVID-19 pandemic has caused a sustained economic slowdown for Washington State, resulting in layoffs and reduced work hours for a significant percentage of our workforce and reductions in business activity impacting our commercial sectors that support our state's economic vitality, including severe impacts to the large number of small businesses that make the state's economy thrive; and

WHEREAS, access to food is essential, and it is therefore necessary to take steps to support restaurants and other food providers so they may continue to perform an essential function of providing access to food via delivery and pick-up options and to address food insecurity to those who are unable to obtain food in other ways; and

WHEREAS, for the above stated reasons, it is necessary to take action to maximize restaurants' revenue from delivery and pick-up orders that are a lifeline and currently the sole source of revenue for the

state's restaurant and food industry to enable these businesses to survive the impacts of the COVID-19 pandemic and continue supporting the workforce and contributing to the vitality of the state's economy; and

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

WHEREAS, while the service agreement between restaurants and third-party delivery platforms vary, all of these agreements include delivery commission fees that can include commission fees of up to 30% or more of the purchase price, creating an economic hardship for these food providers; and

WHEREAS, capping the delivery commission fees on delivery or pick-up orders while restaurants are unable to provide unrestricted dine-in service will ease the economic hardship for these essential service providers, while not unduly burdening third-party, app-based delivery platforms; and

WHEREAS, during this time of local economic shutdown and uncertainty caused by the COVID- 19 pandemic, many vulnerable workers have found work as delivery drivers for these third-party delivery platforms to financially support themselves and their families, and may be economically impacted if third-party, app-based delivery platforms reduce compensation rates to these delivery drivers as a result of the cap on delivery commission fees, and therefore, it is necessary to take action to prevent such under-compensation; and

WHEREAS, COVID-19, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and remains a significant health risk to all of our people, especially among our most vulnerable populations; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), I hereby prohibit third-party, app-based delivery platforms from charging covered establishments certain commissions and fees on food deliveries, as

set forth in this order. I further prohibit the reduction of compensation to food delivery drivers, including the reduction of any amount of tips provided to delivery drivers that results from the restrictions on commission or delivery fees as set forth in this order. These prohibitions apply in any county where indoor dining is prohibited and until indoor dining is again permitted in the county at a capacity of at least 50%.

Definitions

1. "Covered establishment" means a restaurant, or a similar retail food establishment, that sells ready to eat food or beverages from one or more locations in the State. This term does not include grocery stores or convenience stores.

2. "Delivery fee" means a fee charged by a third-party food delivery service for providing a covered establishment with a service that delivers food or beverages from the covered establishment to customers. The term does not include any other fee that may be charged by a third-party food delivery platform to a covered establishment, such as optional fees paid to obtain additional products or services, or fees related to processing the online order.

3. "Online order" means an order placed by a customer through a platform provided by the third-party food delivery service, including a telephone order.

4. "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 an online order.

5. "Third-party food delivery platform" means a website, mobile application, or other internet service that facilitates the sale and same-day delivery or same-day pickup of ready to eat food or beverages provided by covered establishments in the State.

Fee Structure

1. A third-party food delivery platform shall not charge a covered establishment a delivery fee that totals more than 15% of the purchase price of an online order.

2. A third-party food delivery platform shall not charge a covered establishment a total fee amount for the use of their all services, including the delivery fee, that totals more than 18% of the purchase price of an online order.

3. A covered establishment may agree to pay a third-party food delivery platform a fee that exceeds the limits in sections 1 and 2 to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs, in addition to delivery or pickup service.

ADDITIONALLY, nothing in this proclamation shall be construed to limit a local government entity from imposing a similar cap on third-party, app-based delivery platforms provided it is not less prohibitive than this proclamation.

FURTHERMORE, I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State

agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

This order is effective at 12:01 a.m. on Wednesday, November 25, 2020. Unless extended or amended, upon expiration or termination of this amendatory proclamation the provisions of Proclamation 20-76, will continue to be in effect until the state of emergency, issued on February 29, 2020, pursuant to Proclamation 20-05, is rescinded.

Signed and sealed with the official seal of the state of Washington on this 19th day of November, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State