

AURORA BUSINESS ADVISORY BOARD

Minutes of the Special Meeting
October 6, 2020

Board Members Present:

Garrett Walls, Nosh Tarachand, Bob Fryberger, Regina Edmondson, Chance Horiuchi, Hitesh Patel, Carolyn Pace, Martin Liles

Board Members Absent:

Excused - Alok Sarwal, Michelle Reding

Staff Present: Elena Vasconez, Leslie Epperson, Laurie Womer, Trevor Vaughn

Council Members Present: CM Johnston, CM Francoise Bergan, CM Marcano, CM Berzins, and CM Gardner

Guest Present: Kevin Hougen, Mollie Steinemann,

CALL TO ORDER

Meeting called to order at 11:35 am by Garrett Walls.

APPROVAL OF THE MINUTES

Approval will be done at regular meeting.

Third-Party Delivery Fee Cap – Proposed Ordinance

A special meeting was called. Councilmember Gardner has requested that the BAB review his proposed ordinance for the third-party delivery fee CAP. The ordinance was sent that out to all last week. The BAB will be hosting that discussion this morning. We will hear from the restaurant association; the restaurant association was instrumental in helping to pass this ordinance in Denver. Mollie Steinemann will give us some insight into some background that Councilmember Gardner doesn't cover. The floor is now turned over to Councilmember Gardner.

Council member Gardner

Thank you to the BAB for your time this morning. I want to kind of go over an ordinance that I would like to propose and get your feedback and I'd like the BAB to weigh in on whether or not they could support this ordinance. A little background or context; I don't look at this as a free market issue. Because the market has really been significantly distorted by the pandemic COVID. Government has created limits on the capacity for restaurants here in Aurora; But most restaurants at current capacity levels won't be able to survive, continue to operate. The last several months, outdoor dining has been an option. Most likely outdoor dining will be extended but can be very difficult over the winter months. Especially at night when sun goes down, it gets quite a bit colder, a lot of consumers are going to turn to delivery, as opposed to eating at a restaurant. This ordinance is pretty similar to what passed Denver city council unanimously; it places a cap on the delivery fee, that the third-party delivery platforms can charge consumers right now. Those delivery fees can range anywhere from 30 to 40%, which causes the restaurants ultimately to make little or no money on delivery. There are two other elements of this ordinance; First is consent. There are several examples of restaurants that have shown up on these delivery services that didn't actually consent to be on there. And how that works is basically a consumer is going to a delivery app, placing an order for a restaurant, thinking that they're placing the order with the restaurant. But what's

happening on the back end is Doordash, Grubhub, and these other delivery services are actually placing a manual order and then going into the restaurant picking up the food from the restaurant and the restaurant never knows that it's actually a delivery service coming in. There are media reports of the delivery services telling their delivery drivers not to wear their shirts and bring in their food bags and things like that, so the restaurants don't find out. Second is a consumer disclosure; anybody who's ever used a third-party delivery service is probably aware, sometimes the total is hard for the consumer to decipher. So the ordinance would require disclosure; the receipt would disclose each of the charges that make up the total of an order from a third party delivery service. Last is really just an expiration date. The ordinance has an expiration date of March 31, 2021, which would essentially get us through the bulk of the coldest months; which would get the businesses through the coldest temperatures in the next couple of months. I want to stress the temporary nature of this because I think that is important to point out when it comes to arguments that this might be against the free market. I think because of the capacity issue that the government has placed on restaurants, it's in our best interest to act on behalf of our restaurants here in Aurora. One other thing is these aren't local delivery services necessarily. These are, in most cases, California tech companies that run platforms for data behind the scene. So essentially, the consumers are paying high delivery fees. That's my Introduction to the ordinance. We can turn it over for questions or comments. And I think Mollie from CRA would like to say a few things.

Garrett Walls

Thanks so much, Councilmember Gardner. The way that I would like to facilitate the discussion is to hear from a couple of interest groups and some of the restaurants that have joined us. First, let's hear from Mollie Steinman. and the CRA's role is and what the CRA's position is.

Mollie Steinemann

Thank you so much for having me today. The CRA is in strong support of these types of temporary relief measures for restaurants. We want to thank Councilmember Gardner for his work on this proposal. And to his point, regarding the free market, it truly is a little distorted right now. Think back, six, eight months ago, restaurants were forced to close completely for all in person dining. And they had to rely on takeout and delivery services to keep the restaurants going. If this were a year ago, and restaurants had every option available to them; in person dining, takeout and delivery, then there wouldn't be as much need for this proposal because they could look at the rates of the third party delivery companies and decide whether or not that works for them. But at this point, now today, they're in person capacity is limited to at least 50%. And if it's a larger venue, that 50-person cap might even keep them a little bit lower. They're limited so much for in person dining and their patios are about to close down for cold winter. They do have the option to put take-out delivery services in house. But that's even more expensive than working with a third-party delivery service. So really, this does present an awesome opportunity for local governments to throw a lifeline to their local restaurants so that they can use takeout and delivery through third party delivery services at a reasonable rate because truly their options are limited right now. And they're being forced into this market when they maybe weren't working with takeout and delivery services before. So that is our stance on it. And we appreciate the measures that Councilmember Gardner took to put certain things as far as menu posting consent in the language as well. That's an issue that we've been working with our members for years. And he summarized it pretty quickly. So I don't want to belabor the point. But our restaurant members have been coming to us with some sort of grievances with third party delivery companies posting their menus without their consent, jacking up the prices on the menus without their consent when they take the menus. And there is just a little bit of tension

between the restaurant industry and third-party delivery companies. Last point I'd like to make is that due to the very nature of the pandemic, certain industries have been able to flourish, while others are just struggling to survive. And I think that really is sort of illustrated with this relationship between third party delivery companies and local restaurateurs. These are nationwide delivery companies that really own the market. Consumers, the first thing they do is pull up those apps on their phone and order through third party delivery companies. And many may not even know that they can order directly with their restaurant. So while these third party delivery companies have been really doing well with through the pandemic, local independently owned restaurants have not. And we would like to make it as easy as possible for them to enter into this market at a reasonable rate. We want to thank Councilmember Gardner for his work. And I'm also available for any questions.

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Garrett Walls

Great, thanks so much, Mollie. Before moving on, let's have Laurie from the SBDC speak about some feedback she's heard from restaurants. I'd like to hear from Chance, a board member; there was at least one instance, A On Havana restaurant was a victim to being posted online. Chance can you speak to that? I think it was maybe My Favorite Muffin.

Chance Horiuchi

Hi, Chance with the Havana bid. There have been certain occasions when new restaurants open, their menus are online and then they get snatched up and put on Postmates and other delivery services. A lot of the challenges I've heard mostly is to be able to survive during the pandemic, you have to be on multiple platforms, it's really a volume game. So that's the challenge with most restaurants is if these fees are so high, or the percentage fees are so high, they're on five or six platforms. And that's where they get into trouble. A lot of the times you get locked into contracts, where you have to purchase the device as well or subsidize the device. So that's a confusion I know. This is going to really help. I know, many of the businesses on Havana are not like other places in Aurora, we can't really do as much outdoor expansions. I know we worked really hard on that earlier in the year, and only a handful of our businesses actually were able to take advantage of that outdoor expansion. Thank you, everyone, for supporting and having this conversation regarding this ordinance.

Garrett Walls

Great. Thanks, Chance.

Laurie Womer from SBDC; have you been working with any restaurateurs that have been struggling to evolve or to pivot and to offer delivery services? And, what's your feedback?

Laurie Womer

I appreciate you guys thinking about this issue. Because the people that I've been working with, like Chance was saying that the problem is it's eating into their profits, because they have to do all these different types of services so that they can just get somewhat of a volume so that they can hit a breakeven point. I think it's frustrating to the business owners because they're trying to adapt and pivot and do all these other things. And then when you talk about a new service, and all these different places, eating into their profit, it's difficult for them, and they're just trying to manage their business. I think they're just trying to figure out where they can go that's going to give them the return that they need, so that they can stay open. They can hit that breakeven so that they can be through this and be the profitable company in the end. Some of the places that I've been working with want to do the delivery, but if they were to do it in house, it gets too expensive. And then these other services get expensive. So, they've looked into doing the pickup. I think everything everybody has said has been valid and most of my clients have been mimicking the same concerns with it all. So that would be what I would bring to the table from what I've heard from my clients.

Garrett Walls

Thank you, Laurie.

Now hear from Kevin at the Aurora Chamber

Kevin Hougen

We have a couple of questions where there have been long time deliveries from Pizza Hut or Domino's. How are they doing it cost effectively? They've been doing it for years. That was one question to reach out and see what their cost is. And the second question was, once Denver has initiated this, what will be the response of Doordash and Grubhub be? Will they say, we're not going to do it at a 15%? limit? I believe I read of Denver. That was the question; are you going to cut your nose off to spite yourself? Those 40% delivery rates are just ridiculously high, but in the same breath, can they continue to have that type of service at 15% might be the question. So, would be wonderful to see Denver experienced this before we do for a week or two. But I think it's outrageous the number of rates that are being charged. People can't afford that either. So, we really are waiting for to see what happens in Denver. And then again, what would be Doordash or Grubhub's response back? Are they going out of business? I mean, we have that problem with Uber and Lyft. Right now. There's just not a market for Uber and Lyft anymore. And so those people are, unfortunately out of business.

Kevin Hougen

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Council Member Gardner

Can I address part of that, at least? I can't speak to the cost effectiveness of delivery services for Pizza Hut, why they're able to do it. But I will say there are quite a few independent and small business pizza places that are on these services that aren't able to do a delivery themselves. So, I suspect why places like Pizza Hut and Domino's are able to do it is because of the volume, their size. But as far as the second piece, the Colorado Restaurant Association worked closely with the delivery services in developing this same ordinance in Denver. And while they weren't necessarily thrilled, they understand the pandemic and reality of what restaurants are going through. And taking that a step further, there's similar ordinances that have passed all across the US. And in those cases,

as well, the delivery services worked with those municipalities to come up with delivery caps, that worked for both sides. For context, for those who don't know, these delivery services typically operate similar to an Amazon, so they don't necessarily make money, their cash flow comes from outside investors. Their business models a little bit different than what a restaurant down the street might be. But, like I said they, the Colorado restaurant association worked closely with the delivery services in developing this similar ordinance in Denver.

Garrett Walls

Thanks, council member.

Trevor Vaughn. Have you had a chance to look at the enforcement section and see if there might be any city impact? I know, there's not official study done yet.

Trevor Vaughn

It's fairly straightforward. It's similar to what we would do with other licensing and regulatory violations; I don't think there's probably a lot of players in this industry. When we're talking about these large tech companies, we can think about who they are. So the advantage there is that the industry is fairly small and this has a limited timeframe on it. If there's issues getting them to comply; I was doing a little bit of research and saw that in some places that they admitted to violating the caps, that's going to be more work. A big enforcement action is going to be a chunk of work, especially given the size of these companies. But I think overall, my intent is to handle this within existing resources should it pass and do our best to obtain compliance by the companies with this item. I think in some cases, they did cut down delivery radiuses or had additional surcharges to the customer. In some of these situations, there are a number of large cities that have passed this, including, as we heard Denver, most recently. So the hope is that with others having already led the way, it should be something that the companies are expecting and perhaps give us a little cleaner path as far as compliance and enforcement.

Garrett Walls

I'll open it up for board member questions and council member questions if anyone has a question from the BAB or city council.

Hitesh Patel

I had a question. I'm in the hospitality business. And I see two things. We also deal with third party platforms considerably. We rely on them. Expedia charges us about 25% on the reservations that they bring us but they bring us a considerable amount of reservations. We also see our guests ordering a lot of restaurant delivery services besides pizza. I'm looking at the restaurant owner's perspective, the small restaurant owner who doesn't have the larger footprint as Hilton, or Marriott. I'm thinking if the average delivery order is about \$15 to \$20 at 15%, you're looking at anywhere from \$3 to \$4 surcharges a cap. If I was a Doordash, what makes me feel profitable to deliver something at \$3 to \$4 on an order, whereas I can get a higher delivery service somewhere else. So, I think what normally happens with Expedia, you cannot cannibalize your own market share. So, the small restaurant owner in this case, will feel a bigger pinch, because they are being limited to their larger market share than your bigger franchise restaurants in this case. So, I fail to see the advantage of having a cap. If I was a restaurant owner, my fixed menu is my downfall. But I would at least disclose that there is a surcharge of \$3 or \$5 or \$10 for delivery. And my guests at the hotels are actually ordering these without any blowback. They actually don't mind paying that extra delivery fee,

just so that they don't have to go out. So, I think we need to be careful and represent the small restaurant owner well, rather than have this cap I'm kind of mixed feelings on this but I do see that the restaurant owner is on both sides of the fence here. But I think we need to have the restaurant owners also disclose that there is a \$10 fee on a \$15 order and let the person decide if they are willing to pay that but the hotels in general the guests are staying from out of town will pay that. That's all I'm saying.

Council Member Bergan

Well, so that was my thoughts as well. The percentage sounds awful but yet when you drill down to the actual cost, I had that same concern that it could possibly backfire on the smaller restaurants, where the delivery services just won't work with them at the new rate. So, my husband and I use Doordash. And we pay \$9.99 a month for any delivery. So, we figured out that we broke even. I think we would have been charged, had we not had the \$9.99 deal per month, we would have been charged \$65 versus the \$60. So, we saved \$5. From the consumer perspective, we think it's really a very good deal. So, I'm trying to understand the restaurant side of it, because I think what I'm understanding is that, then they are also being charged, as well. And I have a question for the restaurant association. Have you had conversations with Doordash or Grubhub to gauge why they're charging so much? Because I am interested in the cost for the delivery services. Obviously, to have a driver drive a certain mile area, that's not cheap. So that's my question to the restaurant association.

Mollie Steinemann

Thank you for that question, Council Member and I'm happy that answer. It sounds like there were two pieces there. The proposal that Councilmember Gardner has here is looking at the fees associated to the restaurant side. That's where the cap is. And to the point that was made earlier, this actually helps independent restaurants the most. They're the ones who have the hardest time negotiating a favorable rate for themselves with these third-party delivery companies. Because there are offers like exclusivity agreements. There's, if you have 12 different locations and you agree just to work with this one provider, they will give you a better rate. But for just the local independent Guys, if they don't have huge market power that already exists, they're getting assessed rates between 15 to 35%. And it's closer to the 30 to 35% that we see most often across the board. And what our members have told us is that around 20 to 25%, they lose all profitability. So, this really is throwing a lifeline to independent restauranteurs who maybe don't have the existing market power to negotiate a good rate for themselves, because they can't really enter an exclusivity agreement, they don't have 30 locations that they can sort of back themselves up with. So, this is truly helping them the most. The other part of the question about how much it actually costs for the third-party delivery companies to do these services, I'm hesitant to really weigh in too much because I don't work for those companies. And I don't have access to their books. But I can tell you in the conversations that we've had with them 15% was a rate that they're not pulling out of markets at 15%. They're not stopping, they're not carving cities out who have these caps in place. And we've spoken to our colleagues in other parts of the country. There's also states like New Jersey has this statewide, and they have not seen a decline in consumers using these services. In fact, they've seen a boom and using the services because restauranteurs who maybe weren't able to afford to work with these third-party delivery companies are now able to enter into the market at that 15% rate so that consumers have more options, restauranteurs are able to open another line of revenue. And I can't speak fully for third party delivery companies. I wouldn't want to, ethically. But I can tell you that we're not seeing them pulling out of markets with these 15% keycaps.

Council Member Bergan

So instead of an ordinance, that is a law until March 31, is there no way to just have conversations with these delivery services and have them work with the local independent restaurants to offer them a better situation. The other part is what have the local restaurants within a certain vicinity, tried to come together, like five restaurants come together so that they do have more volume.

Mollie Steinemann

That would be lovely if we could encourage the third-party delivery companies to work a little bit better with restauranters, especially because restauranters truly feel that their hands are tied, they feel forced into entering into this market. That would be great. And we did see some positive reaction from third party delivery companies for instance. Doordash actually capped their own fees at 15% for the month of May. But the reality is, restaurants are on their seventh or eighth month having been heavily restricted. Their revenues have been absolutely gutted. They want to negotiate their contracts. I know many that have tried. And the fact is, that the third-party delivery companies at this point are not willing to come to the table and give them a better rate. And so when these restauranters feel so forced into this market at such undesirable rates, that's kind of where we encourage local governments to really kind of help out their local restauranters, if the third party delivery fee companies won't negotiate, if their local public health departments are keeping them at such low capacities, we think that this is another alternative to allow them to bring in some more money. Third Party delivery companies are not pulling out of markets at this rate. It truly is a temporary relief measure to help restauranters, through the pandemic, at the best way possible.

Council Member Bergan

Obviously being a free market person, I really did not like the idea of government interference in the market, just I just like, I didn't like the interference with minimum wage. So, it's really been a struggle for me. But I also understand the temporary nature and the pandemic and the effects. So, I'm going to just listen for the rest of the presentation. Thank you very much.

Council Member Gardner

I want to clarify, when it comes to the expenses for these third-party delivery services, the delivery drivers are not employees of the delivery services. They're just like Uber or Lyft; they're independent contractors. They make their money from the tips that consumers add to the bill. They're not paying gas and wear and tear and mileage and things like that. Benefits and wages and all that a typical business would pay. So their costs are really the infrastructure and the computing power and things like that. Just wanted to point that out.

Council Member Bergan

So, it's just tips that they get. I guess maybe we are tipping them, hopefully, my husband and I are. I thought it was included in the cost of the delivery service.

Garrett Walls

The drivers get a very small proportion of the commission fee.

Council Member Gardner

All the money that the driver makes us from is from the tip. Most of the service fee goes back to the delivery company. And then the \$9.99; Like the example you gave, the \$9.99 that you're paying every month, that is going to the delivery service as well. That's a whole other conversation. But California just passed a law trying to make these delivery drivers employees. As it stands now, at least in Colorado, they're mainly making their money from the tips that consumers are adding.

Council Member Bergan

So, they make mostly tips, but they're also paid for some of the fees correct?

Council Member Gardner

They get a small percentage of the service fee, but the majority of what they earn from a delivery is from the tip for more to an Uber or Lyft.

Council Member Bergan

Okay, thank you.

Garrett Walls

I think it's important to note that when we talk about free market issues and control and free market, trust me, I understand that I'm definitely a free market guy as well. But the role for government is, consumer protection at the end of the day. And we do place restrictions on the free market when it involves consumer protection. And we have the case of four or five. Obviously, they're more providers than that for delivery services. But the majority of them there's four or five that control over 95% of the market share. These are large companies with zero investment in the state of Colorado or the city of Aurora that are actually preying on the most vulnerable of our restaurant members or independent restaurateurs. They're the ones that don't get any negotiation deal here. And I think, you know, Applebee's commented in our chat that our contracts are set by our corporate office, my only concern is that this was negatively impact volume that we experienced. I understand what the member from Applebee's is saying there. But it actually goes to my point that our independent restaurateurs don't have multiple locations and a lot of instances that they can take and say, Uber Eats, I have 10 locations if you want to offer me on your platform gives me a better deal. Whereas tiny little dozens on Havana street that does breakfast and lunch has none of that bargaining power. So I think that Certain free market restrictions, if that's what you want to call them, especially when we're in sort of an artificial environment with COVID, and health restrictions, they actually protect our most vulnerable businesses and give them the opportunity to flourish in the marketplace. It helps them to be more competitive against the large corporate chains. Really, if that's what we want, the Aurora restaurant scene to look like is Chipotle, McDonald's, Wendy's and Applebee's, we can certainly go that direction. But I think that it's incumbent upon all of our elected officials to make sure that the small mom and pop has every opportunity to succeed. And it was really frustrating that through a lot of the cares Act funding that came down to try and help restaurants pivot and try and survive COVID, This is one area that was completely shut out by those funds. They're not allowed to add delivery or to do any capital expenditures with that AER money or the CARES money to be able to offer delivery services. So there's simply at the mercy of these delivery companies that can charge really whatever they want to charge the small mom and pop. So I think that's predatory. We impose those controls, certainly in lending. And I don't see where there's an issue in imposing those controls when it comes to the goods and services that our restaurants are provided.

Nosh Tarachand

I have a comment, Garrett, if I may. I think we need to consider that, In this equation, the independent restaurant owner has the highest overhead. And we are adding to them. And as much as I'm a free-market person myself, and I don't like government intervention, but this is a temporary measure. It's more of a consideration than anything else. I think if we all can come to the table, Sarah, if you can do this, you lower your fee a little bit, the restaurant owner gets a little bit of business, and they stay in business. After all, don't forget, the restaurant owner is also creating a tax base for the city of Aurora. It doesn't help us if one of them shuts down. Just a consideration, just throw it in.

Garrett Walls

In case you aren't seeing the chat, the Applebee's representative did post that they're concerned about if their sales volume drops because of this cap. Their tax basis would drop with the city of Aurora. So that definitely is a concern. And I'm aware of those concerns that if we're limiting how these companies do business, then maybe they'll receive their business. But I don't think that's a valid concern. We've seen this play out now over the last three months. I think we will be the 9th or 10th major metropolitan area to instill a ban like this and they're not slowing down. Just the end of last year, the private IPO for Postmates was \$225 million. They were just purchased by Uber. This market is consolidating because it's a huge high revenue high profit market. I don't see them slowing down because they have to cap their fees. I think it'll go the opposite way. It's an incentive for them to get more restaurateurs on board. That's the way that the market works, right. So if you instill a market cap, then you have to increase the base of your market, right? They're not just going to pull out a business. I don't know any for profit company that would just say, I'm going to stop doing business, because my fees are set at this amount. I'm going to do more business on a higher volume scale.

Carolyn Pace

I wanted to jump in there too. I think I support this. I am also in support of minimizing government controls and putting a number like 15% on something feels like a really big control. The part of this bill that I really liked, on the third page where it required transparency. It seems almost like slander to me that Doordash might increase the menu prices and that's not clear to the consumers. I know if somebody were to say that my prices were 40% higher than they actually were, that would reflect really poorly on me as a business, and I'd be angry. And showing that part where it shows the transparency and where we'd be able to see Doordash is 15% Postmates is 40%, that might potentially enough. I'd like the restaurant associations thought of empowering the consumer to choose the service that's setting a reasonable rate, rather than capping the rate that a business can add. And again, whatever will support and keep our independent restaurants going that's what I'm in favor of. I'm in favor of that, too.

Mollie Steinemann

Absolutely. And thank you for that question, to speak to the first part of your concern about government control on businesses, in a normal time, I think I'd be right there with you agreeing with it. But the reality is that there's already tremendous amount of government control in restaurants right now, just due to public health orders of the safety considerations of COVID-19. In usual times, I don't even think maybe we'd be having this discussion. Because of the free market, a restaurant could work out or negotiate a rate with a third-party delivery service, if they didn't like the rate, they don't have to work with them. But just due to the existing government controls on restaurants, they feel that they really have to. If it's the choice between paying my rent this month or working my butt off to turn out orders on Uber Eats for very little profit, they're probably going to choose working with a third party delivery company. And so to your next point about allowing consumers to choose

whether or not they want to work with a third party delivery service, are you just asking if that's the right approach or help me understand what your question was really getting to so I can fully answer.

Carolyn Pace

Sorry, it wasn't clear. If this bill were to cancel out the cap on fees but include full transparency, so the third-party delivery is not allowed to work with a restaurant without getting their consent, they're not allowed to change the menu prices and they have to show what their fees are, who's getting the tip and where those that was on page. The next page down. Garrett, if you don't mind scrolling down. If it just focused on that part, do we think that we would get some of the same movement but with a little less risk of the companies addressing the Applebee's concerns that maybe it would negatively impact their volume.

Mollie Steinemann

I think that if we were to just keep the disclosure piece in there and keep the consent between the two organizations in there, it'd be a great step in the right direction. But in my mind, it really doesn't go far enough. Because I think that it would be great for consumers to read the full itemized receipt and it would be great if they saw that the fees were just really crazy high and then maybe make the next step to order from the restaurant directly. I think in a perfect world, that would be wonderful. But I think that there's also a lot of other elements that need to be considered in there; we have to rely on the consumers to read the itemized receipt, which I mean, I don't want to speak broadly for everyone, I don't know how often consumers are actually doing that. And then that it would also need to have an environment where if a consumer were to read an itemized receipt, say, well, this just doesn't seem fair, I'm going to order from the restaurant, then it kind of goes back to the original piece of this, that restauranteurs have the option to get up to takeout and delivery internally. But the prices for that are insanely high. They're even more than working with a third party delivery company, they have to hire more staff, they have to do lengthy and expensive training, they have to supplement their insurance policy to kind of limit liability for their employees and for themselves. So, I think that those two pieces are very important. I think that in the long term, maybe there's a broader discussion about making those two pieces permanent. But for right now, when we're looking at this ordinance, and that this proposal, as a relief measure to help restauranteurs survive the pandemic, I just don't think that those two pieces would go far enough.

Garrett Walls

And I think it's also important to point out Councilmember Gardner, and the way that this is drafted right here in Section 2662b, the actual provision that sets the cap. It's actually not a hard cap. If you read that last line there, that those commissions can actually upon the election of the restaurant. If you're changing your sort order within Uber Eats or Doordash or Grubhub, which would be classified as paid advertising or marketing or something like that, then this ordinance does allow for it to go beyond that 15% cap, but it requires that there's consent given before those fees can be imposed. So, I think that this is a really healthy stop gap measure. And I like that there is a sunset on this, depending on how it's implemented, assuming that it passes and giving us some months to collect data to see how restaurant sales go have the CRA survey their membership throughout the rest of the fall through the holiday season, I think that it's a good discussion for March when the sunset is up on this. And city council can take a look at this again and say, you know what this has killed our delivery business in Aurora. The CRA is reporting that restaurant deliveries down that the winter months, which are typically larger delivery months have just been terrible. I think that's a good data point for city council to get together and take a look at this and say, Did this make sense? It was a short-term thing we did to help a restaurant during COVID. Is it worth it for us to put some

market cap in our local market here? I think it's a good stop gap measure, at least we've got to start to do something for the restaurateurs, and I like to three pronged approach here: transparency, restaurateur consent, and then a measured fee cap as well. Yes, Councilmember Bergen?

Council Member Bergen

Yeah, just another question. Because I can't see the fine print. And I don't have it in front of me. On the expiration of March 31. Does it say or if COVID ends because I hope to God, this thing is not going to be with us forever. So, if the governor made a change and said, I'll just make up something, if January one you can go back to 100% capacity or 75% capacity, if there's any changes in the governor's orders towards COVID. Is there an exception for that?

Garrett Walls

I think that's a really great question, Councilmember. Councilmember Gardner, are you still on the line? I have looked at a few of these other ordinances and they are tied to some of the local health ordinances as well, rather than a hard date, or it's an either-or situation. And I was wondering if that's something that you would be open to? As it states now it says section three, the city council will evaluate the effectiveness of this ordinance and formally act to extend it or on March 31, 2021, the provisions of this section shall expire. So that's the written language, would you be willing to tying that to the health orders?

Council Member Gardner

Assuming that the health orders would allow 100% unrestricted capacity.

Council Member Bergen

I think that'd be great to add.

Council Member Gardner

The thought process of the March 31 date is because those are the cold weather months. And it's possible January 1, we're back to 100% capacity, but that's not very realistic. So I'm fine, adding that. I don't think it's really going to make a big difference. But that's fine.

Garrett Walls

I'd like to hear from some of the other board members.

Regina Edmondson

I was looking at both sides of it. My biggest concern would be around restaurants not having consent. That can damage brands; you have somebody representing your organization, that's not a part of your organization and assessing fees that you have not agreed upon. And that's the biggest part of my concern. The other part of my concern is on the tip piece. Typically, with large service fees, that tip decreases, because there's an assumption that the tip is wrapped into those service fees. And so the folks that are doing this delivery, really aren't benefiting from it. And then the last piece is a concern around the timeframe. What does that look like? As we move away from COVID, into COVID, We don't know that outcome. But what does that look like to be able to manage a timeline of how long this is in play? What's the criteria for being in play? Those would be my three primary concerns that I'm trying to internally process and work through; what do those things look like? Thank you.

Garrett Walls

Great points. Thank you, Regina.
Any other BAB members?

Robert Fryberger

I don't have anything. I'm just listening.

Martin Lyles

I do think that a lot of the restaurants aren't aware of the markups. I experienced it onsite last week at Monsoon. I was talking to the owner and one of the bartenders took an order on the phone. He was trying to explain to the individual that he did not take the previous order and the complaint was the markup on pricing. He actually had to walk the customer through, you need to call them back, cancel it, and then I can take your order directly. So I am seeing that several of the restaurants might not even be privy to the markup, which could cause loss of business.

Garrett Walls

Any other council members have any comments or questions for the board or for council member Gardner or for the CRA?

Okay, seeing none, what I would like to do because this is on a fairly fast timeline, I would like to have the BAB issue an official statement about this that can be included in with the ordinance as it's presented to M&F. We generally draft up a letter for these types of ordinances with a BAB vote, and then some of the comments and concerns that you've all voiced. I will include those in the letter as well. So, do we have a board member that would like to propose a motion of either support or not supporting or areas of concern for this ordinance?

Nosh Tarachand moved to support this ordinance with the slight change that the sunset clause is not just much March 31st but if COVID restrictions change for restaurants, that should be added if that's okay. I propose we support this ordinance, in the interest of helping the economic situation in Aurora.

Hitesh Patel seconded the motion.

None opposed.

Motion passes unanimously.

Follow-up Action: Prepare memo for M & F Committee. *Ms. Vasconez and Mr. Walls to draft letter*

Garrett Walls

Thank you so much, everyone, Molly, everyone for presenting this morning. These types of meetings, I appreciate your flexibility to be able to meet on sort of an expedited basis outside of our normally scheduled meeting on an ordinance like this, that will clearly affect the business community. So I want to thank all the board members, everybody that attended this morning, and we will see you guys at our meeting the 19th of October.
Thank you so much, everyone.

Mr. Walls moved to adjourn the meeting at 12:29 pm.

APPROVED: _____
Garrett Walls, Chairperson



Aurora Business Advisory Board

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October 12, 2020,

Mayor & City Council
City of Aurora
15151 E. Alameda Pkwy., 5th Floor
Aurora, CO 80012

Subject: Third-Party Delivery Fee Cap Ordinance

Dear Mayor Coffman & Members of City Council:

At the October 6, 2020 Business Advisory Board (BAB) meeting, Councilmember Curtis Gardner presented a proposed ordinance to cap third-party delivery platform fees charged to consumers, until March of 2021.

The Board voted to unanimously support the Third-Party Delivery Fee Cap Ordinance proposal. This proposal offers a great opportunity for City Council to throw a relatively quickly implemented lifeline to local restaurants so that they can utilize takeout and delivery through third-party delivery services at commission/fee rates that will not cause operational losses, while avoiding abuse and lack of transparency. BAB members expressed concerns regarding large tech companies with zero investment in the State of Colorado, or the city of Aurora, who are preying on the most vulnerable independent restaurants that do not have any negotiation power.

While the BAB is cognizant of the concern for interrupting B2B free market transactions, the BAB strongly encourages City Council to understand the predatory nature of these third-party delivery vendors, and their unwillingness to negotiate rates with smaller, independent restaurants. Operations restrictions put in place to mitigate the spread of CoVid-19 have severely impacted the restaurant sector within the City and have already negatively altered the "free market" within the City of Aurora. Delivery is a key component to the survival of the sector and controlling the cost of third-party delivery services will help provide access to delivery services to smaller independent restaurants for whom "in-house" delivery operations are cost prohibitive. Larger, more corporate, restaurant groups enjoy lower commission/fee rates not offered to smaller independent restaurants due to the negotiation power of multiple location implementation.

As a result of the discussion, BAB members would also like to include the following recommendation and highlight the consumer protections included in the proposed ordinance:

- In consideration of on-going free market disruption, the BAB would recommend to sunset the Ordinance earlier if COVID-19 conditions improve and the occupancy limits expire. The City Council could review/renew this ordinance on a monthly or periodic basis, much like the disaster declaration.
- Enforce transparency in charges for services offered by third-party vendors. Consumers and restaurant operators should know how much money they are paying for the delivery services versus the cost of the meal.

- Restaurant owners should consent to have their menus and restaurant information posted on third-party vendors' platforms. Menu information should not be copied and used without the permission of the business owner.
- Allows restaurant operators to elect and consent to services that would increase commissions/fees beyond 15%.

Respectfully submitted,



Garrett Walls, Chairperson

GW/ev

CC: BAB Members
Elena Vasconez, Economic and Business Development Supervisor
Trevor Vaughn, Manager of Tax & Licensing