

MILWAUKEE CITY COUNCIL

Wednesday, January 8

Hearing on ordinance relating to a municipal service fee on food delivery network services.

Written Testimony for Uber Technologies Inc.

Uber Eats launched in Milwaukee in 2017, helping Milwaukeeans get food from their favorite local restaurants delivered to their doorsteps. Uber Eats now partners with hundreds of local restaurants, helping them grow their businesses and reach new customers.

Uber Eats strongly opposes ordinance number 191476 which proposes a new fee on delivery orders in Milwaukee. While we support the city's objectives of improving street repairs and maintenance, the proposal creates an unfair playing field that rewards large delivery companies, punishes small businesses as well as local residents, and does little to nothing to improve road quality.

We strongly urge Milwaukee City Council to reject this ordinance, and instead pursue a comprehensive and evidence-based approach to tackling the broader issue of road maintenance funding.

Hurts small businesses while rewarding many big chains

A tax of \$0.60 per delivery will hurt hundreds of Milwaukee businesses, by reducing demand from customers. We know that many restaurants depend on the revenue generated by their food delivery sales. We hear from restaurants that they use apps like Uber Eats to keep business rolling in, particularly during traditionally "slow" times. For example, over 70% of food deliveries via Uber Eats take place outside traditional peak hours for restaurants (6-9pm). Instead of introducing new taxes, cities like Milwaukee should invest in supporting locally owned small businesses, and advocate services that can support thriving streets and communities.

It is particularly concerning that this fee penalizes small restaurants that use technology to grow their businesses. Whether restaurants deliver food via an app, website or telephone has no bearing on the purported wear and tear on the roads. It is therefore surprising that this ordinance does not include food companies such as Dominoes or Jimmy John's who are also involved in the food delivery business. In fact, the ordinance does just the opposite. Customers that decide to patronize large chains like Dominoes or Jimmy Johns, which can afford to have full time delivery personnel will not have to pay the new fee, while customers who make a decision to order from a small local restaurant will have to pay the fee.

There are Constitutional Concerns with the Proposed Ordinance

The proposed ordinance may violate the Equal Protection Clauses of the Wisconsin and U.S. Constitutions, which require that similarly situated persons and businesses be given similar treatment by the government. It makes no difference if your delivery order is placed through an app or over the phone; the impact of the delivery driver on the roads is the same and should be treated as such. But this ordinance would impermissibly target only the former, without any legitimate legislative purpose. Indeed, two people in the same apartment building can both order pizza from restaurants that are equally far away (meaning their

delivery drivers will travel the same distance and have the same impact on the roads), yet only one transaction is subject to the new fee.

Additionally, large chain restaurants with the resources to own delivery fleets and hire drivers are exempted from application of the ordinance even though many have their own proprietary smartphone apps to effectuate food orders, while neighboring small businesses down the block using a third-party app to compete would have their transactions taxed. These arbitrarily exempted entities use essentially identical methods and means as those restaurants whose transactions will be subject to the fee.

This is the type of arbitrary fee assessment that is normally prohibited under commonly accepted principals.

Fails to include other bigger users of public streets

The ordinance points to the “proliferation of on-demand food delivery services” as grounds for this tax. This is wrong. Delivery of prepared food from restaurants via apps constitutes a very small portion of road and curb usage.

It is surprising that an ordinance with the objective of taxing businesses using public streets and curb space for repairs and maintenance fails to include commercial delivery companies - which make up a far larger portion of road use. The city has exempted companies like FedEx, Amazon and UPS and instead chosen to raise revenue from city residents who decide to patronize local establishments. This is particularly disconcerting when you compare the hours driven and vehicles used between third party apps and delivery companies. Delivery of prepared food via third party delivery apps are conducted by delivery people using their own personal vehicles (which are primarily small sedans), mopeds or bikes, a far cry from heavier trucks used by delivery companies which have a far greater impact on road damage and general wear and tear.

Fails to account for gas & wheel taxes already paid by delivery people

Delivery people who use their personal vehicle are already subject to Wisconsin 30.9 cents per gallon gas tax. Revenue collected from the gas tax is dedicated to transportation purposes. Additionally, delivery people in Milwaukee who use their personal vehicle are already subject to both a County wheel tax & a City wheel tax.

Impacts consumers that stand most to benefit from food delivery

The new tax could also harm Milwaukee residents who have come to depend on third party delivery apps. Lower-income communities that live in food deserts often have few other options when compared to wealthier areas where residents can easily walk to restaurants. The disabled and elderly who are not able to drive could also face greater impacts than able bodied individuals who can get in their cars and avoid the new fee. Working parents with small children, who often rely on the convenience of third-party apps will also incur the cost of the city’s new tax. The City’s proposal rewards Milwaukee residents who own a car at the expense of those who don’t. In doing so it eliminates any benefit to road improvements and hurts those residents who either cannot drive or who chose not to own a car.

Support for an approach to public street maintenance grounded in evidence.

Damage to roads and general wear and tear has many causes. Any serious consideration of a tax to fund road maintenance should start from a broad understanding of the factors that drive road damage and wear and tear. Type of vehicle, weight, and trip characteristics impact road usage differently. We urge the Council to consider demand for road and curb space by all users, rather than focusing on a singular, narrow cause.

Uber Eats is supportive of sensible, comprehensive approaches to issues such as road maintenance for all users of the road.