

ORDINANCE NO. _____

An ordinance adding Article 6 to Chapter XX of the Los Angeles Municipal Code to establish a temporary limit on the charges imposed by third-party delivery services on retail food establishments when they are not operating at full capacity due to the COVID-19 pandemic.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Article 6 is added to Chapter XX of the Los Angeles Municipal Code to read as follows:

ARTICLE 6

LIMIT ON THIRD-PARTY FOOD DELIVERY SERVICE FEES

SEC. 200.70. DEFINITIONS.

For purposes of this ordinance, the following definitions apply:

1. **“City”** means the City of Los Angeles.
2. **“Delivery Fee”** means a fee charged by a Third-party Food Delivery Service for providing a Retail Food Establishment with a service that delivers food and beverages from such establishment to customers. The term does not include any other fee or cost that may be charged by a Third-party Food Delivery Service to a Retail Food Establishment, such as fees for listing or advertising the Retail Food Establishment on the Third-party Food Delivery Service platform or fees related to processing the Online Order, including, but not limited to, service fees, fees for facilitating Online Orders for pick-up, and credit card processing fees.
3. **“Online Order”** means an order placed by a customer through or with the assistance of a platform provided by a Third-party Food Delivery Service, including a telephone order, for delivery or pick-up within the City.
4. **“Purchase Price”** means the price, as listed on the menu, for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the customer by the Retail Food Establishment through the Third-Party Food Delivery Service. This definition does not include taxes, gratuities, and any other fees or costs that may make up the total amount charged to the customer of an Online Order.

5. **“Retail Food Establishment”** means a restaurant, delicatessen, bakery, coffee shop, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food or beverages.

6. **“Third-party Food Delivery Service”** means any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the delivery or pick-up of food and beverages from, no fewer than 20 Retail Food Establishments located in the City that are each owned and operated by different persons.

SEC. 200.71. PROHIBITIONS.

1. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment a Delivery Fee that totals more than 15 percent of the Purchase Price of each Online Order.

2. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any amount designated as a Delivery Fee for an Online Order that does not involve the delivery of food or beverages.

3. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any combination of fees, commissions, or costs for the Retail Food Establishment’s use of the Third-party Food Delivery Service that is greater than 5 percent of the Purchase Price of each Online Order. Fees, commissions, or costs do not include Delivery Fee.

4. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any fee, commission, or cost other than as permitted in Subsections 1 through 3, above.

5. It shall be unlawful for a Third-party Food Delivery Service to charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Retail Food Establishment on the Third-party Food Delivery Service or, if no price is set by the Retail Food Establishment on the Third-party Food Delivery Service, the price listed on the Retail Food Establishment’s own menu.

6. It shall be unlawful for a Third-party Food Delivery service to retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the Third-party Delivery Service, in its entirety, to the person delivering the food or beverages.

SEC. 200.72. DISCLOSURES.

The Third-party Food Delivery Service shall disclose to the customer an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to, the following:

(a) the Purchase Price of the food and beverages at the cost listed on the Retail Food Establishment's menu;

(b) the Delivery Fee charged to the Retail Food Establishment;

(c) each fee, commission, or cost, other than a Delivery Fee, charged to the Retail Food Establishment;

(d) each fee, commission, or cost, other than the Delivery Fee or the Purchase Price of the food, charged to the customer by the Third-party Food Delivery Service; and

(e) any tip or gratuity that will be paid to the person delivering the food or beverages.

SEC. 200.73. ENFORCEMENT.

A violation of this article shall subject the violator to the following:

1. An action in the Superior Court of the State of California to recover all actual damages resulting from a violation of this article.

2. Reasonable attorneys' fees and costs awarded by a court to a plaintiff that prevails in an action against a Third-party Food Delivery Service. If plaintiff fails to prevail against a Third-party Food Delivery Service, a court may award reasonable attorneys' fees and costs to the Third-party Food Delivery Service upon a determination by the court that the plaintiff's action was frivolous.

3. A civil action alleging a violation of any provision of this article shall commence only after the following requirements have been met:

(a) Written notice is provided to the Third-party Food Delivery Service of the provisions of the article alleged to have been violated and the facts to support the alleged violation; and

(b) The Third-party Food Delivery Service is provided 15 days from the date of the written notice to cure any alleged violation.

4. The remedies in Subsections 200.73.1 through 200.73.3 are non-exclusive. A violation of this article is unlawful and may be prosecuted under state and City law, including, but not limited to, Section 396 of the California Penal Code or Section 47.12 of the Los Angeles Municipal Code.

SEC. 200.74. OPERATIVE DATES.

This article shall be operative at any time during which a federal, state, or local order, resulting from the COVID-19 pandemic, limits customer capacity to less than full capacity at Retail Food Establishments in the City of Los Angeles, and for a period of 90 days after any such federal, state, or local order is lifted.

SEC. 200.75. SEVERABILITY.


If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council hereby declares that it would have adopted this article and each and every subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

Sec. 2. Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reason: The State of California and the City of Los Angeles have declared a state of emergency due to the novel COVID-19 virus pandemic. Retail Food Establishments have been closed, been limited to serving customers outside, or have been subjected to limits on indoor customer capacity, due to social distancing requirements. While Retail Food Establishments are closed or limited in their ability to utilize indoor premises at full capacity, they are highly reliant on Third-party Food Delivery Services. Due to the high fees imposed by Third-party Food Delivery Services, many Retail Food Establishments must increase food prices to stay in business. Residents who rely on food delivery may be not be able to absorb increased food prices. Also, some Retail Food Establishments being charged high fees struggle to remain financially viable. If these Retail Food Establishments close, their workers will lose employment, which affects their ability to feed and shelter their families. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
VALERIE L. FLORES
Senior Assistant City Attorney

Date 9.1.20

File No. 20-0470

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____