



**MICHAEL N. FEUER**  
CITY ATTORNEY

REPORT NO. R 20 - 0259

SEP 01 2020

REPORT RE:

**DRAFT 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 SERVICE FEES ON RETAIL  
FOOD ESTABLISHMENTS WHEN THEY ARE NOT OPERATING AT FULL  
CAPACITY DUE TO THE COVID-19 PANDEMIC**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 20-0470

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance would re-enact Article 6 to Chapter XX of the Los Angeles Municipal Code (LAMC), which establishes a temporary limit on the charges imposed by Third-party Delivery Services on Retail Food Establishments during the COVID-19 pandemic. The prior version of Article 6 expired pursuant to its sunset clause on August 31, 2020.

The new version of the draft ordinance restates the prior version with two amended subsections. Subsection 200.73.4 of the LAMC would be amended to make the article enforceable under state and City law, including the price gauging provisions of California Penal Code Section 396 and LAMC Section 47.12.

The new version of the draft ordinance also amends Section 200.74 of the LAMC to replace the sunset clause in the article with a provision that specifies the time periods

during the COVID-19 pandemic in which the cap on Third-party Food Delivery Service fees will be operative; namely, when the Retail Food Establishments are operating at less than full capacity due to a federal state or local order, and for a period of 90 days after the order is lifted.

The original version of Article 6, including Section 200.74, contained a sunset clause. The sunset clause provided that the article would expire 90 days after the lifting of the City's March 19, 2020, order, which prohibited on-premises dining. When the City replaced the March 19, 2020, order with an order allowing limited dining options, the replacement order had the effect of triggering the start of the 90-day sunset provision and the ordinance expired on August 31, 2020. However, the lifting of the prohibition on all dining options did not allow the Retail Food Establishments to operate at full capacity. Accordingly, the replacement order did not alleviate the reliance of Retail Food Establishments on Third-party Delivery Services during the pandemic.

The replacement provision in the draft ordinance substitutes the sunset clause in favor of a clause specifying the circumstances when the cap is applicable. Specifically, the draft ordinance would provide that whenever a federal, state, or local order tied to the COVID-19 pandemic limits Retail Food Establishments to less than full-capacity, the cap on Third-party Food Delivery Services fees would be applicable. The new provision would better respond without further Council action to a circumstance where an order limiting dining capacity was lifted, only to be reinstated due to a spike in new COVID-19 cases.

#### Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Office of the Chief Legislative Analyst with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Senior Assistant City Attorney Valerie L. Flores at (213) 978-8130. She or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By

  
DAVID MICHAELSON  
Chief Assistant City Attorney

DM:VF:ac  
Transmittal