

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: August 14, 2020

TO: Honorable Members of the City Council

FROM: Sharon M. Tso *KET for* Council File No. 20-0470  
Chief Legislative Analyst Assignment No. 20-05-0555

SUBJECT: Status of Ordinance to Limit Third-Party Food Delivery Service Fees

## SUMMARY

On June 10, 2020, the Council adopted the Limit on Third-Party Food Delivery Service Fees Ordinance No. 186665 (Ordinance). The Ordinance, among other actions, makes it unlawful for a third-party food delivery service to charge a restaurant a fee per online order for the use of its services that totals more than 15 percent of the purchase price of such online order during the local public health emergency related to COVID-19. The Ordinance will sunset 90 days after the prohibition of on-premises dining has been lifted. Concurrently, the Council adopted Amending Motion (O'Farrell, Price - Krekorian) requesting the Chief Legislative Analyst (CLA), with the assistance of the Economic and Workforce Development Department (EWDD), to report on the effects of the Ordinance no later than 30 days after the prohibition of on-premises dining has been lifted.

Just prior to the adoption of the Ordinance, on May 29, 2020, Governor Gavin Newsom, and subsequently the Board of Supervisors of Los Angeles County (County), lifted the prohibition of on-premises dining, triggering the expiration of the Ordinance to occur on August 31, 2020. However, on July 1, 2020, these restrictions were reimplemented to combat the rapid spread of COVID-19. Due to the developing nature of this pandemic, we recommend that the Ordinance be amended to extend the expiration date from August 31, 2020 to a time when the City of Los Angeles is no longer under a locally declared State of Emergency as related to the COVID-19 pandemic. In addition, due to reports of violations of the Ordinance, it is recommended that the City Attorney prepare additional amendments that would provide a means to enforce the Ordinance including a monetary penalty structure and a reporting mechanism for restaurants that have been overcharged.

## RECOMMENDATIONS

That City Council, subject to the approval of the Mayor, request the City Attorney to:

1. Prepare and present an amendment to the Limit on Third-Party Food Delivery Service Fees Ordinance No. 186665, to extend the expiration date from August 31, 2020 to a time when the City of Los Angeles is no longer under a locally declared State of Emergency as related to the COVID-19 pandemic; and,

2. Prepare additional amendments that would provide a means to enforce the Ordinance including a monetary penalty structure and a reporting mechanism for restaurants that have been overcharged.

## BACKGROUND

On April 22, 2020, Motion (O'Farrell - Krekorian) was introduced to address onerous commission fees charged to restaurants by third-party food delivery companies, fees which can reach up to 30 percent of a delivery order. The Motion requested the City Attorney to prepare and present an Ordinance that will make it unlawful for a third-party food delivery service to charge a restaurant a fee per online order for the use of its services that totals more than 15 percent of the purchase price of such online order during the local public health emergency related to COVID-19.

On May 20, 2020, Amending Motion (O'Farrell, Price - Krekorian) was introduced to include additional requirements to the requested Ordinance. These requirements would:

1. Cap the delivery fee to restaurants at 15 percent;
2. Cap the non-delivery fee to the restaurant at five percent;
3. Ensure that 100 percent of customer tips go to the delivery person;
4. Sunset the ordinance 90 days after the prohibition of on-premises dining has been lifted;
5. Allow for private right of action if the third-party delivery company does not hear the alleged violation within 15 days from the receipt of the notice; and,
6. Add an urgency clause to this Ordinance.

The Amending Motion also instructs the Chief Legislative Analyst (CLA), with assistance from the Economic and Workforce Development Department (EWDD), to report on the effectiveness of the provisions of the article protecting restaurants and platform delivery workers no later than 30 days after the prohibition of on-premises dining has been lifted, including recommendations for additional protections that further the intent of this article, possible solutions to improve transparency in transactions, and whether the provisions of the article are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic. The City Attorney transmitted the Ordinance to Council on May 26, 2020. Council adopted Motion (O'Farrell - Krekorian) as amended by Motion (O'Farrell, Price - Krekorian) on June 3, 2020, and the Ordinance was adopted and became effective on June 10, 2020.

On May 29, 2020, Governor Gavin Newsom, and subsequently the County, announced that dining rooms at food businesses in the State and County could reopen for on-premises dining provided that these businesses follow protocols such as spacing tables at least six feet apart, shifting dining room capacity to 60 percent for at least three weeks, providing personal protective equipment to employees, and building physical barriers between tables where social distancing is otherwise not possible. This action triggered expiration of the Ordinance 90 days after the date of the announcement, to occur on August 31, 2020.

On July 1, 2020, in response to the rapidly escalating number of confirmed COVID-19 cases and deaths in the County and State, Governor Newsom announced that food businesses in the County and 18 other counties in the state would be required to move all on-premises dining to outdoor

tables or revert to takeout- and delivery-only models once again. While the original need for the Ordinance is still an active concern for food businesses, the Ordinance itself is close to expiration.

**IMPACT OF THE ORDINANCE**

Since the Ordinance contained an urgency clause, it went into immediate effect upon adoption on June 10, 2020. However, on July 9, 2020, nearly a month after adoption of the Ordinance, Eater.com reported that numerous local restaurants were continuing to be charged commission fees of over 15 percent on food delivery orders. According to the owners, these restaurants have lost hundreds of dollars each due to the failure or refusal of third-party food delivery companies to comply with the Ordinance.

In order to better understand the impacts of this Ordinance on the restaurant industry, EWDD, with the assistance of the CLA, developed a survey to query restaurants on their awareness of the Ordinance and their experience with third-party food delivery companies. The survey, which was open to businesses from July 29, 2020 to August 10, 2020, delivered the following results:

- 72.9% of restaurants have reported being overcharged the 15% Delivery Fee
- 55.9% of restaurants have reported being overcharged the 5% Additional Benefits Fee
- 72.9% of restaurants report that the Ordinance has been beneficial during COVID-19
- 94.9% of restaurants would like the Ordinance to be extended past August 31, 2020


In the survey, a large majority of restaurants noted that the Ordinance has been beneficial to their business and requested that the action be extended beyond the August 31, 2020 deadline. Additionally, most restaurants reported being overcharged by third-party food delivery companies that are failing or refusing to comply with the Ordinance.

**NEXT STEPS**

As of August 11, 2020, the County has reported 210,424 confirmed cases and 4,996 deaths attributed to COVID-19. Nationally, the United States has surpassed five million confirmed cases of COVID-19. The surging totals, continually changing nature of the pandemic, and absence of a vaccine to combat the virus make it unclear when the City may be able to reopen to a pre-COVID-19 state. Since the circumstances of the pandemic have not improved and State and local officials have indicated that a full lockdown may be necessary if there is no improvement in the infection and death rates, the need for the Ordinance remains in effect.

The Ordinance is scheduled to sunset on August 31, 2020. Inasmuch as the provisions of the article are still necessary due to the City's current state of recovery from the impacts of the COVID-19 pandemic, we recommend that the Ordinance be extended to a time when the City of Los Angeles is no longer under a locally declared State of Emergency as related to the COVID-19 pandemic. In addition, in order to eliminate violations of the Ordinance by food delivery businesses, we recommend the City Attorney be requested to prepare additional amendments that would provide a means to enforce the Ordinance including a monetary penalty structure and a reporting mechanism for restaurants that have been overcharged.

The Council additionally requested the CLA and EWDD to report on the effectiveness of the provisions of the article protecting restaurants and platform delivery workers no later than 30 days after the prohibition of on-premises dining has been lifted. The CLA, with assistance from EWDD, will continue to monitor and report on the provisions of the Ordinance as necessary.



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Alex Whitehead  
Legislative Analyst

ATTACHMENT

The Limit on Third-Party Food Delivery Service Fees Ordinance No. 186665

**ORDINANCE NO. 186665**

An ordinance adding Article 6 to Section 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 during the COVID-19 epidemic and for 90 days after the City's Order prohibiting on-premises dining is lifted.

**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;

(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. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

#### **SEC. 200.74. SUNSET.**

This article shall sunset 90 days after the City's Public Order, first issued March 19, 2020, prohibiting on-premises dining 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. Residents are subject to "Safer at Home" orders and Retail Food Establishments are closed for on-premises dining and can only sell food to customers for delivery and pick-up. Many Retail Food Establishments use Third-party Food Delivery Services, and due to the high fees imposed by Third-party Food Delivery Services, 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 5/26/20

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

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Ordinance Passed 06/03/2020

Approved 06/05/2020

Published Date: 06/10/2020  
Ordinance Effective Date: 06/10/2020  
Council File No.: 20-0470