

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING A TEMPORARY LIMIT ON THE CHARGES IMPOSED BY THIRD-PARTY FOOD DELIVERY SERVICES ON COVERED ESTABLISHMENTS DURING THE COVID-19 EMERGENCY

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Santa Clara (“City”) may make and enforce all regulations and ordinances using its police powers;

WHEREAS, Santa Clara Charter Section 811 authorizes the adoption of an emergency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency;

WHEREAS, international, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19;

WHEREAS, on March 11, 2020, pursuant to “The Code of the City of Santa Clara, California” (“SCCC”) section 2.140.060, City Manager Deanna Santana, as the City’s Director of Emergency Services, signed a Proclamation of Local Emergency to help ensure the City’s continuity of essential operations and services available for the City of Santa Clara to respond to the COVID-19 emergency;

WHEREAS, on March 16, 2020, the County of Santa Clara joined Contra Costa, Marin, San Francisco, San Mateo counties and the City of Berkeley on a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020 (“Shelter-in-Place Order”). The Shelter-in-Place Order also requires all businesses except

essential businesses as described in the Order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel;

WHEREAS, the County of Santa Clara's Public Health Officer has issued subsequent orders that continue to restrict movement and public and private gatherings as set forth in the Health Officer Risk Reduction Order; including restrictions on restaurant dining;

WHEREAS, on July 13, 2020, the Statewide Public Health Officer issued an order closing all indoor restaurant dining;

WHEREAS, restricting restaurants to pick-up or delivery offerings, and limited outdoor dining with decreased capacity, has placed a sudden and severe financial strain on many restaurants;

WHEREAS, capping the per-order fees at 15 percent will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms; and

WHEREAS, the adoption of this emergency ordinance is necessary for the immediate preservation of the public peace, health, and safety. Social distancing and Risk Reduction Health Orders are expected to remain in force for the foreseeable future, threatening loss of employment to more residents and loss of income. As state anti-gouging laws do not provide any protections in the market for food delivery services, this ordinance is necessary to enable the City to ensure continuity of essential food services for its residents and to protect against predatory activity during the period of emergency.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: Temporary Limit on Third Party Food Delivery Service Charges

(A) It shall be unlawful for a Third-Party Food Delivery Service to charge a Covered Establishment a fee per online order for the use of its services that totals more than 15 percent of the purchase price of each online order.

(B) It shall be unlawful for a Third-Party Food Delivery service to reduce the compensation rates paid to the delivery service driver or 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.

SECTION 2: Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section.

(a) “Covered Establishment” means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a Third-Party Food Delivery Service, the sale and same-day delivery of food to customers from one or more retail locations within the Santa Clara city limits.

(b) “Online order” means the menu price of an online order. Such term therefore excludes taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

- (c) “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 same-day delivery or same-day pickup of food and beverages from no fewer than 20 separately owned and operated Covered Establishments.

SECTION 3: Disclosures. Each receipt generated by the Third-Party Food Delivery Service for either the customer or Covered Establishment shall clearly state the fees charged, the gratuities paid, and any discounts offered by the Covered Establishment.

SECTION 4: 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 by the Covered Establishment 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.
5. A Third-Party Food Delivery Service shall not be found in violation of this ordinance if between September 2, 2020 and September 9, 2020 it imposes 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, provided it refunds the portion of the fee that exceeds 15 percent of the purchase price to the Covered Establishment prior to September 16, 2020.

SECTION 5: Immediate threat to health, safety and welfare. Based on the findings set forth herein, this ordinance is adopted pursuant to City Charter Section 811 and is required to address a current and immediate threat to public health, safety, and welfare. The City Council has determined that this ordinance is necessary to ensure continuity of essential food services for its residents and to protect against predatory activity during the period of the COVID-19 Emergency.

SECTION 6: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 7: This Ordinance shall not be codified in the Santa Clara City Code.

SECTION 8: Effective date. This Ordinance shall become effective immediately upon its adoption pursuant to Section 811 of the Charter of the City of Santa Clara and shall remain in effect until the City Council rescinds this Ordinance or terminates the proclamation declaring the COVID-19 Local Emergency, as extended.

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2020, by the following vote:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None