



## Agenda Report

20-779

Agenda Date: 9/1/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on an Emergency Ordinance Establishing a Temporary Limit on Third-Party Food Delivery Service Fees During the COVID-19 Emergency [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

#### BACKGROUND

The City of Santa Clara has been severely impacted by the ongoing COVID-19 Public Health Emergency (COVID-19) and proclaimed a Local State of Emergency on March 11, 2020. The effects on the global economy and supply chains are impacting many Bay Area small businesses and restaurants. Santa Clara is committed to supporting small businesses and restaurants during this time.

On April 8, 2020, the City Council approved the Small Business Assistance Grant Program to offer immediate financial assistance to nonprofits and small businesses to aid in maintaining their business and workforce during the County of Santa Clara's Shelter in Place Order of March 16, 2020. On June 9, 2020 the City Council passed a resolution to support outdoor dining at local restaurants to benefit from a free and streamlined permitting process, and on July 28, the City Manager in her role as Director of Emergency Services, authorized consideration of specific land uses for the duration of the Local State of Emergency for small businesses to operate outdoors.

Under the July 13, 2020 Statewide Public Health Officer Order, indoor dining, movie theaters, family entertainment centers and additional indoor operations in all counties, including Santa Clara County are not allowed, amid a statewide spike on COVID-19 cases, restricting restaurants to outdoor dining, pick-up and delivery.

While some restaurants can pivot and offer outdoor dining, the primary source of revenue continues to come from takeout orders which often requires the businesses to rely on third-party food delivery service companies for convenient, contactless delivery of restaurant meals. City staff has conducted restaurant visits and learned that although some restaurants had agreements established with the third-party companies prior to the pandemic, the fees, at times as high as 30%, are causing an additional burden for businesses during this economic crisis.

#### DISCUSSION

During the COVID-19 Public Health Emergency, restaurants and consumers are relying on third-party delivery services like UberEats/Postmates, DoorDash/Caviar, and Grubhub for convenient, contactless delivery of restaurant meals. Several fees are associated with using the food delivery services, some paid by the restaurant, and others paid directly by the consumer. Total fees paid by restaurants typically range from 20%-30%. Fees that companies charge restaurants typically include a service fee, delivery fee and credit card fee. Fees that consumers pay include taxes and delivery

fees, as well as optional gratuity.

Staff conducted research and found that numerous other cities have established temporary caps on fees that third-party delivery service companies can charge to support local restaurants during the COVID-19 Public Health Emergency. California cities that have capped delivery service fees at 15 percent (15%) include Los Angeles, San Francisco, Berkeley, San Leandro, Santa Cruz and Fremont. The cities of Los Angeles, and Berkeley also require that drivers receive the entire gratuity paid by the customer. All cities have set the duration of the cap on third-party food delivery service fees to be either the remainder of the local emergency after which dine-in services will resume, or until 90 days after the same.

It should be noted that establishing a cap on third-party delivery service companies can pose potential unintended impacts such as: 1) higher delivery costs for customers; 2) reduced marketing services for restaurants; 3) reduced delivery areas; 4) reduced company workforce and 5) reduced driver pay.

The ordinance presented for City Council's consideration would cap the per-order fees at 15%, deem it unlawful to retain any portion of the driver's gratuities, and require the third-party delivery service to disclose the fees charged, the gratuities paid, and any discounts offered by the restaurants; which will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency, while not unduly burdening third-party platforms.

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, staff is recommending that the City Council adopt an emergency ordinance 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, which will go into effect immediately upon adoption.

As the ordinance would be effective immediately upon adoption, the ordinance also provides that third-party delivery service companies would not be in violation of the ordinance if between September 2, 2020 and September 9, 2020 it imposes a fee that totals more than 15 percent of the purchase price, provided it refunds the portion of the fee that exceeds 15 percent of the purchase price to the restaurant prior to September 16, 2020. If approved by Council, staff would work on a communications plan to widely advise our small business and third-party providers notice that this local regulation is in place.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **FISCAL IMPACT**

There is no fiscal impact associated with this action.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office and the Finance Department.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**ALTERNATIVES**

1. Adopt an Emergency Ordinance Establishing a Temporary Limit on Third-Party Food Delivery Service Fees During the COVID-19 Emergency.
2. Do not adopt an Emergency Ordinance Establishing a Temporary Limit on Third-Party Food Delivery Service Fees During the COVID-19 Emergency.

**RECOMMENDATION**

Alternatives 1:

Adopt an Emergency Ordinance Establishing a Temporary Limit on Third-Party Food Delivery Service Fees.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Emergency Ordinance Establishing a Temporary Limit on Third-Party Food Delivery Service Fees