



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-24

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January 19, 2021

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare an Ordinance amending Title 5, Regulation of Businesses, Trades and Professions of the Long Beach Municipal Code, by adding Chapter 5.95, related to third-party food delivery service fees, and declaring the urgency thereof, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION:

At its meeting of December 8, 2020, the City Council requested an Urgency Ordinance related to third-party food delivery service fees. A draft Ordinance, Chapter 5.95, "Third-Party Food Delivery Service Fees," of the Long Beach Municipal Code is attached hereto for the City Council's consideration and approval.

Consistent with the City Council's direction, Chapter 5.95 would prohibit a third-party food delivery service from charging a retail food establishment a delivery fee that totals to more than 15% of the total purchase price of each order.

Chapter 5.95 would further institute the following prohibitions:

- A third-party food delivery service shall not 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;
- A third-party food delivery service shall not charge a customer any purchase price for a food or beverage item that's higher than the price set by the retail food establishment on that platform or, if no price is set, the price listed on the retail food establishment's own menu; and
- A third-party food delivery service shall not reduce the compensation rates paid to its drivers, or to garnish gratuities, as a result of these fee limitations.

Third-party food delivery services would also be required to disclose, in plain language and in a conspicuous manner, any commission or fee charged to the customer by the service at the time a final price is disclosed to the customer. A violation of Chapter 5.95 may result in civil and/or criminal penalties.

Finally, the City Manager, or designee, would provide a report to the City Council every 90 days to determine whether the Chapter is still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic. The City Council would decide the expiration date of this Chapter following such reports.

The proposed Ordinance is deemed an urgency due to the economic hardships faced by retail food establishments, and their employees and customers, during the COVID-19 pandemic.


SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By



MONICA J. KILAITA
Deputy City Attorney

Attachments:
City Council Ordinance

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 5.95, RELATED
TO THIRD-PARTY FOOD DELIVERY SERVICE FEES; AND
DECLARING THAT THIS ORDINANCE SHALL TAKE
EFFECT IMMEDIATELY

WHEREAS, on March 4, 2020, the Governor of California proclaimed a
State of Emergency as a result of the novel coronavirus (COVID-19) global pandemic;
and

WHEREAS, shortly thereafter, on March 10, 2020, the City Council of the
City of Long Beach recognized that a local emergency existed and unanimously passed a
Resolution ratifying the Long Beach City Manager's Proclamation of a Local Emergency
and the Public Health Officer's Declaration of Local Health Emergency; and

WHEREAS, since then, both the State of California and the City of Long
Beach have issued health orders, which have been amended from time to time, to
mitigate the effects of COVID-19; and

WHEREAS, these health orders have placed limits on operations of
businesses, including the restaurant and retail food establishment industry, resulting in
economic hardship on these businesses; and

WHEREAS, on December 3, 2020, the State of California issued a revised
Regional Stay At Home Order, and issued a supplemental order signed December 6,
2020, which goes into effect if intensive care unit (ICU) capacity drops below 15% in a
region for at least 3 weeks, and which includes restrictions such as prohibiting the sale of
food or drink for on-site consumption; and

WHEREAS, the Regional Stay At Home Order became effective for the

1 Southern California region, including the City of Long Beach, at 11:59 p.m. on
2 December 6, 2020, and the region continues to not meet criteria to exit the Order; and

3 WHEREAS, due to the continuous economic hardships faced by retail food
4 establishments, on August 18, 2020, the City Council requested the Director of Economic
5 Development and other relevant City departments to develop a Long Beach Restaurant
6 Retention Plan designed to improve the economic survival of Long Beach retail food
7 establishments impacted by the COVID-19 pandemic; and

8 WHEREAS, in response to such request, the Economic Development and
9 Finance Committee reviewed and recommended to the City Council various actions to
10 assist local retail food establishment owners; and

11 WHEREAS, one of the recommended actions, supported by the City
12 Council on December 8, 2020, was to cap online, app-based delivery fees charged to
13 retail food establishments at 15% of the total food order; and

14 WHEREAS, many local retail food establishments rely heavily on third-party
15 delivery platforms, such as Postmates, Door Dash, Grub Hub, Uber Eats, and the like, to
16 meet their delivery needs, and these companies have experienced a surge in demand
17 during the COVID-19 pandemic; and

18 WHEREAS, these third-party delivery services typically charge fees or
19 commissions for their services and, while each service agreement or commission model
20 varies, restaurants and other retail food establishments are often charged as much as
21 30% of the purchase price per order for services from the platforms; and

22 WHEREAS, retail food establishments, particularly small, independently-
23 owned, family-owned, or minority-owned businesses, must accept the steep fees or risk
24 closing due to lack of business, and many of these restaurants have limited bargaining
25 power to negotiate lower fees due to the limited number of companies that provide such
26 services which keep these restaurants in operation; and

27 WHEREAS, these steep fees or commissions on retail food establishments
28 often force such establishments to increase their prices for customers, which in turn also

1 places economic hardship on residents who rely on restaurant food delivery; and

2 WHEREAS, for these reasons, this ordinance to, among other things, limit
3 third-party food delivery service fees is immediately necessary to protect the health,
4 safety, and general welfare of the City of Long Beach; and

5 WHEREAS, the need for the continuation of this ordinance shall be
6 reviewed every 90 days by the City Council following a report by the City Manager;

7 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
8 follows:

9 Section 1. The Long Beach Municipal Code is amended by adding
10 Chapter 5.95 to read as follows:

11 CHAPTER 5.95

12 THIRD-PARTY FOOD DELIVERY SERVICE FEES

13
14 5.95.010 Definitions.

15 A. "City" means the City of Long Beach.

16 B. "Delivery Fee" means a fee charged by a Third-Party Food
17 Delivery Service for providing a Retail Food Establishment with a service
18 that delivers food and beverages from such establishments to customers.
19 The term does not include any other fee or cost that may be charged by a
20 Third-Party Delivery Service to a Retail Food Establishment, such as fees
21 for listing, marketing, or advertising the Retail Food Establishment on the
22 Third-Party Food Delivery Service platform or fees related to processing the
23 Online Order.

24 C. "Online Order" means an order placed by a customer through
25 or with the assistance of a platform provided by a Third-Party Food Delivery
26 Service, including a telephone order, for delivery or pick-up within the City.

27 D. "Purchase Price" means the price, as listed on the menu of
28 the Retail Food Establishment, for the items contained in an Online Order,

1 minus any applicable coupon or promotional discount provided to the
2 customer by the Retail Food Establishment through the Third-Party Food
3 Delivery Service. This definition does not include taxes, gratuities, and any
4 other fees or costs that may make up the total amount charged to the
5 customer of an Online Order.

6 E. "Retail Food Establishment" means a restaurant,
7 delicatessen, bakery, coffee shop, or other eat-in or carry-out service of
8 processed or prepared raw and ready-to-eat food or beverages.

9 F. "Third-Party Food Delivery Service" means any website,
10 mobile application, or other internet service that offers or arranges for the
11 sale of food and beverages prepared by, and the delivery or pick-up of food
12 and beverages from, Retail Food Establishments located in the City.

13
14 5.95.020 Prohibitions.

15 A. It shall be unlawful for a Third-Party Food Delivery Service to
16 charge a Retail Food Establishment a Delivery Fee that totals to more than
17 fifteen percent (15%) of the total Purchase Price of each Online Order.

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

22 C. It shall be unlawful for a Third-Party Food Delivery Service to
23 charge a customer any Purchase Price for a food or beverage item that is
24 higher than the price set by the Retail Food Establishment on the Third-
25 Party Food Delivery Service platform or, if no price is set by the Retail Food
26 Establishment on the Third-Party Food Delivery Service platform, the price
27 listed on the Retail Food Establishment's own menu.

28 D. It shall be unlawful for a Third-Party Food Delivery Service to

1 reduce the compensation rates paid to the Third-Party Food Delivery
2 Service drivers, or to garnish gratuities, as a result of any fee limitations
3 instituted by this section.

4
5 5.95.030 Required disclosures.

6 At the time a final price is disclosed to a customer for the intended
7 purchase and delivery of food from a restaurant through a Third-Party Food
8 Delivery Service and before that transaction or Online Order is completed
9 by the customer, the Third-Party Food Delivery Service shall disclose to the
10 customer, in plain language and in a conspicuous manner, any commission,
11 fee, or any other monetary payment charged to the customer by the Third-
12 Party Food Delivery Service.

13
14 5.95.040 Enforcement.

15 Each day that a violation continues shall constitute a separate and
16 distinct offense. A violation of this Chapter is subject to the following:

17 A. An action in the Superior Court of the State of California to
18 recover actual damages resulting from a violation of this Chapter.

19 B. Reasonable attorneys' fees and costs awarded by a court to a
20 plaintiff that prevails in an action against a Third-Party Food Delivery
21 Service. If a plaintiff fails to prevail against a Third-Party Food Delivery
22 Service, a court may award reasonable attorneys' fees and costs to the
23 Third-Party Food Delivery Service upon a determination by the court that
24 the plaintiff's action was frivolous.

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

27 1. Written notice is provided to the Third-Party Delivery
28 Service of the provisions of the Chapter alleged to have been violated and

1 the facts to support the alleged violation; and

2 2. The Third-Party Food Delivery Service is provided at
3 least 15 days from the date of the written notice to cure any alleged
4 violation.

5 D. A criminal penalty for each offense pursuant to Chapter 1.32
6 of this Code.

7
8 5.95.050 Expiration of Chapter.

9 Following adoption of this Chapter, and every ninety (90) days
10 thereafter, the City Manager, or designee, shall report back to the City
11 Council and Mayor on whether the provisions of this Chapter are still
12 necessary based on the City's recovery from the health and economic
13 impacts of the COVID-19 pandemic. The City Council will determine the
14 sunset date of this Chapter based on relevant information contained in the
15 ninety (90) day reports.

16
17 Section 2. Declaration of Urgency. This ordinance is urgently required to
18 provide economic relief to retail food establishments, including small, independently-
19 owned, family-owned, or minority-owned businesses, in light of the COVID-19 pandemic
20 and related state and local "Safer at Home" health orders limiting business operations.
21 Currently, Southern California faces a prohibition of on-site consumption of food or drink
22 and, as a result, retail food establishments may only sell food to customers for delivery
23 and pick-up. These establishments often rely heavily on third party delivery services and
24 are forced to accept the steep fees charged by such platforms or risk closing due to lack
25 of business. Due to steep fees, many of these establishments must also increase food
26 prices to stay in business, and residents who rely on food delivery may not be able to
27 absorb increased food prices. If these establishments close, their workers will lose
28 employment, which affects their ability to feed and shelter their families. For these

1 reasons, a limit on delivery fees charged to restaurants and other food establishments is
2 immediately necessary.

3 Section 3. This ordinance is an emergency ordinance duly adopted by
4 the City Council by a vote of five of its members and shall take effect immediately. The
5 City Clerk shall certify to a separate roll call and vote on the question of the emergency of
6 this ordinance and to its passage by the vote of five members of the City Council of the
7 City of Long Beach, and cause the same to be posted in three (3) conspicuous places in
8 the City of Long Beach, and it shall thereupon take effect and shall be operative
9 immediately.

10 Section 4. This ordinance shall also be adopted by the City Council as a
11 regular ordinance, to the end that in the event of any defect or invalidity in connection
12 with the adoption of this ordinance as an emergency ordinance, the same shall,
13 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
14 the Mayor. The City Clerk shall certify to the passage of this ordinance by the City
15 Council of the City of Long Beach and shall cause the same to be posted in three (3)
16 conspicuous places in the City of Long Beach.

17 I hereby certify that on a separate roll call and vote which was taken by the
18 City Council of the City of Long Beach upon the question of emergency of this ordinance

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1 at its meeting of _____, 20____, the ordinance was declared to be an
2 emergency by the following vote:

3 Ayes: Councilmembers: _____
4 _____
5 _____
6 _____

7 Noes: Councilmembers: _____
8 _____

9 Absent: Councilmembers: _____
10 _____

11 Recusal(s) Councilmembers: _____
12 _____
13 _____

14 I further certify that thereafter, at the same meeting, upon a roll call and
15 vote on the adoption of the ordinance, it was adopted by the City Council of the City of
16 Long Beach by the following vote:

17 Ayes: Councilmembers: _____
18 _____
19 _____
20 _____

21 Noes: Councilmembers: _____
22 _____

23 Absent: Councilmembers: _____
24 _____

25 Recusal(s) Councilmembers: _____
26 _____

27 //

28 //

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
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I further certify that the foregoing ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of _____, 20____, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s) Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor