

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

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802

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 (31<sup>st</sup>) 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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Lona Beach, CA 90802

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at its meeting of \_\_\_\_\_, 20\_\_\_\_, the ordinance was declared to be an emergency by the following vote:

Ayes:	Councilmembers:	_____
		_____
		_____
		_____
Noes:	Councilmembers:	_____
		_____
Absent:	Councilmembers:	_____
		_____
Recusal(s)	Councilmembers:	_____
		_____

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

Ayes:	Councilmembers:	_____
		_____
		_____
		_____
Noes:	Councilmembers:	_____
		_____
Absent:	Councilmembers:	_____
		_____
Recusal(s)	Councilmembers:	_____
		_____

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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: \_\_\_\_\_

\_\_\_\_\_

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Noes: Councilmembers: \_\_\_\_\_

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Absent: Councilmembers: \_\_\_\_\_

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Recusal(s) Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_

Mayor