

DECLARATION OF THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

DECLARATION NO. 2020-002

DECLARATION OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF SAN LEANDRO ESTABLISHING A TEMPORARY LIMIT OF 15% ON FEES CHARGED BY THIRD PARTY FOOD DELIVERY COMPANIES TO SUPPORT RESTAURANTS IN SAN LEANDRO DURING THE COVID-19 PANDEMIC

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus, “SARS-CoV-2,” and the disease it causes which has been named “coronavirus disease 2019,” abbreviated COVID- 19, (‘COVID-19’); and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID- 19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, the City Council of the City of San Leandro (“City”) ratified the Director of Emergency Service’s Proclamation of Local Emergency due to the outbreak of a novel coronavirus in the City (COVID-19); and

WHEREAS, pursuant to California Government Code Section 8634 and San Leandro Municipal Code Section 3-4-130(a), I am empowered upon the proclamation of a local emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, on March 16, 2020, the Health Officer of Alameda County issued an Order directing all individuals to shelter in place and requiring essential businesses to implement Social Distancing Protocols (‘Shelter In Place Order’); and

WHEREAS, the Health Officer of the County of Alameda has issued revised Shelter In Place Orders on March 31, 2020, and May 18, 2020, and June 5, 2020, extending restrictions on activities and requiring individuals to shelter at home, allowing for certain specified activities; and

WHEREAS, on June 18, 2020 the Health Officer of Alameda County revised the June 5, 2020 Order, effective June 19, 2020, to allow outdoor restaurant dining as well as other specified activities, but not allowing for any indoor dining; and

WHEREAS, to reduce the spread of the virus and protect the public health, the Shelter In Place Order prohibits restaurants in the County from offering indoor dining; and

WHEREAS, the City of San Leandro, pursuant to its police powers, has broad authority to maintain public peace, health, and safety of its community and preserve quality of life; and

WHEREAS, in adopting this Emergency Declaration, the City is taking action pursuant to its authority under Government Code Sections 8634 and San Leandro Municipal Code Section 3-4-130(a); and

WHEREAS, this Declaration has been issued because of the propensity of the virus to spread person-to-person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time; and

WHEREAS, restricting restaurants to takeout and delivery offerings only has placed a sudden and severe financial strain on many restaurants, particularly those that are small businesses that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis; and

WHEREAS, it is in the public interest to take action to maximize restaurant revenue from the takeout and delivery orders that, with the exception of some limited outdoor dining operations, are currently the sole source of revenue for these small businesses to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality within the City; and

WHEREAS, many consumers use third party food delivery companies to place orders with restaurants for delivery and takeout, and these third party delivery companies charge restaurants fees; service agreements between some restaurants and third party delivery companies provide that the company charges the restaurant 30% or more of the purchase price per order; and

WHEREAS, restaurants, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third party delivery companies given the high market saturation of these companies, and the dire financial straits small business restaurants are facing during this period of emergency; and

WHEREAS, given that only a few companies in the marketplace provide such delivery services, small restaurants that do not operate their own delivery service resort to contracting with third party food delivery companies as a means to compete in the marketplace; and

WHEREAS, if retail food providers close as a result of high fees from third party food delivery companies, their workers will lose employment, thereby affecting their ability to provide for their families; and

WHEREAS, during the COVID-19 emergency, many residents rely on food delivery and may not be able to receive delivered food if the fees charged by third party food delivery companies are too high; and

WHEREAS, limiting the per-order fees at 15% will accomplish the legitimate public purpose of ensuring the continued operation of local restaurants during the period of emergency the 15% limit is based on the findings and experience of other California cities that have already adopted 15% fee limits as reasonable emergency regulations; and

WHEREAS, this Declaration is temporary in nature and only intended to promote stability and safe and healthy operations within the restaurant and food markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable business closures thereby serving the public peace, health, safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus.

NOW, THEREFORE, BE IT RESOLVED, I, Jeff Kay, as Director of Emergency Services, declare that the City shall, temporarily limit fees charged by Third Party Food Delivery Companies, subject to the conditions and limitations contained below:

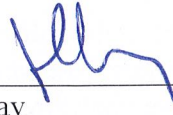
1. It shall be unlawful for a Third Party Food Delivery Service to charge a covered establishment a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order.
2. For purposes of this order, the following definitions apply:
 - a. "Covered Establishment" means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a Third Party Food Delivery Company, the sale and same-day delivery of food to customers from one or more retail locations within the City of San Leandro. Covered Establishment shall not include any restaurant that meets the definition of a Formula Restaurant set forth below.
 - b. "Online order" means an order placed by a customer through a platform provided by a third party food delivery company for delivery or pickup within the City.
 - c. "Purchase price" 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.
 - d. "Formula Restaurant" means a type of restaurant establishment that has eleven or more other locations in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the eleven establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.
 - e. "Third Party Food Delivery Company" 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 food service establishments.
3. The Director of Emergency Services, or designee, is authorized to implement this order and issue any necessary guidance or rules consistent with this order.

4. This order shall take effect on July 13, 2020 and shall terminate at such time as the Health Officer of Alameda County amends or terminates the order prohibiting restaurants from offering dine-in service or that prohibition otherwise expires, so that dine-in service is then allowed, or the termination of the local state of emergency, whichever occurs first; or as otherwise terminated, modified or extended by the San Leandro City Council. For the purposes of this order, the restoration of outdoor-only dining does not constitute the restoration of dine-in service.
5. If a Third Party Food Delivery Company charges a covered establishment fees that violates this order, the covered establishment shall provide written notice to the Third Party Food Delivery Company requesting a refund; the refund shall be paid within seven calendar days. If the Third Party Food Delivery Company does not provide the refund requested after seven days or the Third Party Food Delivery Company continues to charge fees in violation of this order after the initial notice, a covered establishment may enforce this order by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

This order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of San Leandro, its elected and appointed officials, its departments, officers, or employees.

July 8, 2020

Date



Jeff Kay

Director of Emergency Services