



Legislation Text

File #: 20-512, **Version:** 1

RESOLUTION of the City of San Leandro City Council Approving Amendment No. 1 to the 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 Services' 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), the Director of Emergency Services is 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, 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 limited outdoor restaurant dining as well as other specified

activities, but not allowing for any indoor dining; and

WHEREAS, on October 21, 2020 the Health Officer of Alameda County revised the June 5, 2020 Order, effective October 23, 2020, to allow indoor restaurant dining as well as other specified activities, with indoor dining limited to 25% capacity or 100 people, whichever is less; and

WHEREAS, to reduce the spread of the virus and protect the public health, the Shelter In Place Order limits the indoor dining capacity of restaurants in the County and places strict operating procedures and safety measures on such 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 the Emergency Declaration, the Director of Emergency Services took action pursuant to his authority under Government Code Section 8634 and San Leandro Municipal Code Section 3-4-130(a); and

WHEREAS, the Declaration was 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 restaurant operations 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, the limited amount of indoor seating (and limited or no outdoor seating for most) and the need to implement complex and costly safety measures and staff training continues to significantly limit restaurants' ability to cover their operating costs, staff costs, and rent, which were designed for full capacity operations; 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 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, the 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 THE CITY OF SAN LEANDRO CITY COUNCIL RESOLVES that the above recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED that it is hereby declared and ordered that the Amendment Number One to the Declaration of the Director of Emergency Services of the City of San Leandro amending the time frame for the temporary limit of 15% on fees charged by third party food delivery companies to support restaurants in San Leandro during the COVID-19 pandemic, issued by the Director of Emergency Services, is hereby confirmed.

BE IT FURTHER RESOLVED by the City Council that the temporary limit of 15% on fees charged by third party food delivery companies shall be in effect until the end of the local state of emergency.

BE IT FURTHER RESOLVED by the City Council that:

1. The Declaration of the Director of Emergency Services of the City of San Leandro establishes appropriate regulations to address the temporary limit of 15% on fees charged by third party food delivery companies.
2. The Declaration of the Director of Emergency Services of the City of San Leandro will not be detrimental to the public interest, health, safety, or welfare of the City.
3. The Declaration of the Director of Emergency Services of the City of San Leandro conforms with the relevant and applicable provisions of the California Government Code and the San Leandro Municipal Code authorizing the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property.
4. During the existence of the declared local emergency, the powers, functions, and duties of

the City Manager, acting as Director of Emergency Services, and the emergency organization of this City, shall be those prescribed by State law and by ordinances and resolutions of the City of San Leandro.