

Adopted
06/02/20
Kassakhian/Devine
All Ayes

RESOLUTION NO. 20-63

**A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, CALIFORNIA
ESTABLISHING A TEMPORARY LIMIT OF COMMISSIONS CHARGED BY THIRD-
PARTY FOOD DELIVERY COMPANIES UNDER THE CITY OF GLENDALE
EMERGENCY AUTHORITY REGARDING COVID-19; AND FOR OTHER RELATED
AND LAWFUL PURPOSES**

Whereas, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by the Coronavirus Disease 2019 (COVID-19), a severe acute respiratory illness caused by a novel (new) coronavirus. Symptoms of the virus include fever, cough, and shortness of breath, and infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death; 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 broader spread of COVID-19; and

Whereas, on March 4, 2020, the Los Angeles County Board of Supervisors and the Department of Public Health declared a local and public health emergency in response to increased spread of coronavirus across the country; 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 Glendale, pursuant to Glendale Municipal Code Chapter 2.84, declared the existence of a local emergency and ordered the closure of and limitation of access to certain public establishments; and

Whereas, on March 19, 2020, the Governor issued Executive Order N-33-20 and the California Public Health Officer issued a corresponding order requiring people to stay home except as needed subject certain exceptions; and

Whereas, the County of Los Angeles Department of Public Health issued a Safer at Home Order, which was revised on May 13, 2020, which requires people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses, until further notice; and

Whereas, to reduce the spread of the virus and protect the public health, the Safer at Home Order prohibits restaurants in the City from offering dine-in service, limiting restaurant delivery and takeout offerings only; 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 are currently the sole source of revenue for these small businesses to enable restaurant to survive this crisis and remain as sources of employment and neighborhood vitality in the City; and

Whereas, many consumers use third-party applications and websites to place orders with restaurants for delivery and takeout, and these third-party platforms charge restaurants fees that range between 12% to 30% of the purchase price per order and other transaction fees;

Whereas, the cost of acquiring ingredients and supplies has also increased, because of the COVID-19 crisis; and

Whereas, restaurants, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third-party platforms, given the high market saturation of third-party platforms, and the dire financial straits small business restaurants are facing in the COVID-19 crisis; and

Whereas capping the per-order fees in the amounts set forth herein will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms, as this fee is recognized as reasonable, and third-party platforms will continue to be profitable.

Whereas, such conditions of peril continue to exist, and necessitate extending the expiration deadlines of prior resolutions and public orders and adopt additional protections for the preservation of public health and safety.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE that the Council hereby adopts the following Public Order ("Order"):

SECTION 1.

A. Definitions. For purposes of this order, the following definitions apply:

1. "Covered establishment" means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a third party food delivery services, the sale and same-day delivery of food to customers from one or more retail locations within the City. Covered establishment shall not include any restaurant that meets the definition of a formula restaurant set forth below.
2. "Delivery fee" means a fee charged by a third-party food delivery service for providing a food service establishment with a service that delivers food from such establishment to customers. The term does not include any other fee that may be charged by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food

service establishment on the third-party food delivery service platform or fees related to processing the online order.

3. "Formula restaurant" means a type of restaurant 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 the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, uniform apparel, standardized signage, a trademark or a service mark.
 4. "Online order" means any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery service, including a telephone order.
 5. "Purchase price" means the total price of the items contained in an online order that are listed on the menu of the food service establishment where such order is placed. Such term does not include taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.
 6. "Restaurant" means and includes any "Restaurant, full service," "Restaurant, fast food," and "Restaurant, counter service with limited seating," as those terms are defined in Glendale Municipal Code Section 30.70.190. "Restaurant" also means and includes any other eating establishment with dine-in eating service that is prohibited or restricted from providing dine-in eating by Los Angeles County Department of Public Health's Safer at Home Orders.
 7. "Third-party food delivery service" 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 food service establishments located in the city that are owned and operated by different persons.
- B. Fee limits during declared emergency. It shall be unlawful, during the Effective Period (as defined below), for a third-party delivery service to charge a covered establishment fees, including a delivery fee, service fees, and other processing fees, that total more than 15% of the purchase price of an online order.
- C. Reporting of Fees. Each receipt generated by the third-party delivery service for either the customer or the covered establishment shall clearly state the fees charged, the gratuities paid, and any discounts offered by the covered establishment.
- D. Direct Gratuities to Covered Establishments. At the discretion of the covered establishment, third-party food delivery services shall provide on their platform a mechanism for customers to provide gratuities to covered establishments. Those payments shall be provided to the covered establishment in full and at the same

time as the third party food delivery service provides other payments to the covered establishment.

E. Effective Period. This Order shall take effect on June 3, 2020, and shall terminate at such time as the City of Glendale state of emergency related to COVID-19 terminates ("Effective Period").

F. Grace Period. A third-party food delivery service shall not be found in violation of this order if between June 3, 2020, and June 10, 2020, it imposes a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order, provided it refunds the portion of the fee that exceeds 15% of the purchase price to the covered establishment prior to June 17, 2020.

G. Penalties and Enforcement.

1. If a third-party food delivery service charges a covered establishment fees that violate this Order, the covered establishment shall provide written notice to the third-party food delivery service requesting a refund within seven days. If the third-party food delivery service does not provide the refund requested after seven days or the third-party food delivery service continues to charge fees in violation of this Order after the initial notice and seven-day cure period, 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.
2. Violations under this Order shall accrue on a daily basis for each day and for each covered establishment charged a fee in violation of this order. A proceeding to recover any civil penalty authorized pursuant to this order is subject to the administrative hearing process of the City. Any violation of this order may be referred to the Office of the City Attorney for prosecution under Glendale Municipal Code Chapter 1.20, which provides for fines not to exceed \$1,000 or imprisonment not to exceed six months. Violations may also be enforced by the provisions of Glendale Municipal Code Chapter 1.24, which shall provide, along with other enforcement mechanisms set forth therein, for fines of \$400 for the first citation, \$1,000 for the second citation, and \$2,000 for the third citation.

SECTION 2. If any provision of this order or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Orders or this Resolution which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

SECTION 3. This Order does not supersede any stricter limitation imposed by the County of Los Angeles or the State of California.

Adopted by the Council of the City of Glendale on this 2nd day of June, 2020.

H. Agajanian

Mayor

ATTEST:

Aram Adjemian

City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF GLENDALE) SS.

I, Aram Adjemian, City Clerk of the City of Glendale, hereby certify that the foregoing Resolution No. 20-63 was adopted by the Council of the City of Glendale, California, at a special meeting held on the 2nd day of June, 2020, and that the same was adopted by the following vote:

Ayes: Brotman, Devine, Kassakhian, Najarian, Agajanian

Noes: None

Absent: None

Abstain: None

Aram Adjemian

City Clerk

APPROVED AS TO FORM	
NAME:	<u>Michael J. Garcia</u>
TITLE:	<u>City Attorney</u>
SIGNATURE:	<u>Michael J. Garcia</u>
DATE:	<u>June 3, 2020</u>