



CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

AGENDA ITEM

Report: Review and Reconsideration of Temporary Cap on Fees Charged by Third-Party Food Delivery Applications

1. Motion to Note and File
2. Resolution Repealing Resolution No 20-63 and Terminating the Emergency Public Order Imposing a Temporary Limit on Commission Fees Charged by Third-Party Delivery Applications on Businesses in Glendale
3. Motion Providing Direction to Staff

COUNCIL ACTION

Item Type: Action Item

Approved for August 9, 2022 **calendar**

EXECUTIVE SUMMARY

The Council has been asked to consider whether to terminate the cap on delivery fees charged by third party delivery platforms for the delivery of food from restaurants to customers who make an online order.

COUNCIL PRIORITIES

N/A

RECOMMENDATION

It is recommended that the Council decide whether to terminate the temporary limit on commission fees charged by third-party delivery platforms.

BACKGROUND

The Council adopted a resolution on June 2, 2020 establishing a “temporary” limit of commissions charged by third party food delivery companies (“Fee Cap”). The resolution was adopted under the City’s emergency authority pertaining to the COVID-19 State of Emergency. It was enacted during the period of time that Los Angeles County was operating under the Safer at Home Order which prohibited restaurants in Los Angeles County from offering dine-in service, limiting restaurants to delivery and take out offerings only. At the time the Fee Cap was enacted, the City determined that third-party delivery platforms, e.g. Grubhub, DoorDash, etc., were charging fees ranging from 12% to 30%. Given utilization of delivery platforms’ predominance during the period of the Safer at Home Order, the Council determined that the local restaurants had limited bargaining power to negotiate lower fees with third-party platforms, and were therefore overly burdened with excessive fees imposed by third-party platforms.

The Fee Cap applies to any restaurant in Glendale that offers, via the internet, the sale and same-day delivery of food to customers from one or more restaurant locations in the City, excluding formula or chain restaurants (a restaurant chain with eleven or more locations anywhere in the world). It caps all fees, including delivery fees and processing fees, at 15% of the purchase price of the online order. The resolution establishing the Fee Cap under the City’s emergency order provides that it will remain in effect while the City’s state of emergency remains in effect.

ANALYSIS

Starting in March 2021, the County of Los Angeles relaxed its in-person dining restrictions with a partial reopening, with in-person dining allowed at 100% capacity in June 2021. With restaurants fully re-opened and, in some cases, additional capacity available due to outdoor dining, the question has been raised whether it is still necessary to cap delivery fees whereby restaurants now have the capacity to operate at full capacity.

After enacting temporary caps on fees, some cities have allowed them to continue or extended them, while others allowed them to expire:

- Burbank (15% cap) – expired 90 days after public health orders allowed 100% capacity at restaurants (September 30, 2021).
- Long Beach (15% cap) – ordinance required City Manager to report on cap every 90 days, with Council to determine necessity based on reports.
- Los Angeles (15% cap) – provided that whenever a federal, state or local health order keeps restaurants from operating at less than 100% capacity, the cap shall remain in place.

- Pasadena (20% cap) – written to expire 90 days after County health order allowed 100% capacity at restaurants (September 2021)
- Santa Monica (15% cap) - issued as part of the City's 16th supplement to its declaration of a local emergency.

Conversely, the cities of San Francisco, New York, Philadelphia and Minneapolis have made their fee caps permanent. A number of the prominent third party delivery platforms have challenged San Francisco's and New York's permanent bans in court. Those cases are pending.

Staff seeks Council's direction on whether to terminate the Fee Cap in light of the lifting of County restrictions limiting indoor seating at restaurants. While the Fee Cap is currently tied to the City's state of emergency, which remains in effect, the Council can decouple the Fee Cap and provide for an immediate or earlier termination. Those in favor of letting third party platform fee caps expire or terminate contend that restaurants are in the same position now as before COVID, and thus the unfair bargaining position created by COVID and restrictions on in-person dining no longer exists. Additionally, the Fee Cap applies to all fees associated with an online order including service fees and online processing fees, which may have the unintended effect of limiting charges that may be assessed for other services provided by third party platforms.

Arguments for maintaining the fee cap include the fact that third party delivery platforms still maintain an economic advantage over small, local restaurants still recovering from the economic losses suffering during COVID. Additionally, populations vulnerable to COVID may still need to utilize the third party platforms to order restaurant food.

A resolution to terminate the Fee Cap is provided as one of the options available for Council action.

STAKEHOLDERS/OUTREACH

No additional stakeholder outreach, including discussion with local restaurants, has been conducted at this point. If it desires, Council can decide to direct staff to conduct stakeholder outreach prior to considering whether to terminate the Fee Cap.

FISCAL IMPACT

There is no fiscal impact associated with this report.

ENVIRONMENTAL REVIEW (CEQA/NEPA)

This item is exempt from the CEQA because there is no reasonable possibility that terminating the Delivery Fee Cap will have a significant effect on the environment.

CAMPAIGN DISCLOSURE

This item is exempt from campaign disclosure requirements.

ALTERNATIVES

1. The Council can adopt the resolution terminating the Fee Cap.
2. The Council can note and file this Report.
3. The Council can provide direction to staff.
4. The Council can choose an alternative not identified by staff.

ADMINISTRATIVE ACTION

Prepared by:

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Approved by:

Roubik R. Golanian, P.E., City Manager

EXHIBITS/ATTACHMENTS

1. Resolution No. 20-63.