

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING ALAMEDA MUNICIPAL CODE ARTICLE XVIV (THIRD-PARTY FOOD DELIVERY SERVICES) OF CHAPTER VI (BUSINESSES, OCCUPATIONS AND INDUSTRIES) TO MODIFY THE SUNSET PROVISION SUCH THAT THE CAP ON FOOD DELIVERY SERVICE FEES WILL REMAIN IN PLACE UNTIL THE STATE EMERGENCY IS RESCINDED

WHEREAS, on March 1 and 5, 2020, the Alameda County Public Health Officer issued Declarations of Local Health Emergency, and on March 10, 2020, the Alameda County Board of Supervisors adopted a Resolution ratifying the Declarations of Local Health Emergency, and on March 17, 2020, the Alameda County Board of Supervisors adopted a Resolution ratifying the Declaration of Local Emergency; 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 and addressing the effects of COVID-19; and

WHEREAS, the CDC, the California Department of Health, and the Alameda County Department of Public Health have all issued recommendations including but not limited to strict adherence to social distancing guidelines, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Other counties throughout the state have similar directives; and

WHEREAS, on March 17, 2020, the City Council made findings that due to the COVID-19 pandemic, conditions of extreme peril to the health, safety and welfare of persons have arisen in the City of Alameda and, based thereon, adopted an urgency ordinance (Ordinance No. 3267) declaring a local emergency exists in the City as a result of the COVID-19 pandemic, and on April 7, 2020, the City Council made findings that a local emergency continues to exist in the City as a result of the COVID-19 pandemic and, based thereon, adopted an urgency ordinance (Ordinance No. 3272) extending the declaration of the existence of a local emergency; and

WHEREAS, the County of Alameda has more than 1,200 full-service restaurants, more per capita than the State average, and the City of Alameda is home to a diverse and vibrant food and beverage scene; and

WHEREAS, during the COVID-19 pandemic restaurants, a critical component of the US food supply chain, have more heavily relied upon takeout or delivery offerings, and reduced dining capacity, which has placed a sudden and severe financial strain on these local businesses, particularly those that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis; and

WHEREAS, restaurants have had to pivot to and ramp up delivery and takeout options to continue to provide these essential services to the public; and

WHEREAS, even if indoor dining is authorized by law, many persons, especially persons with special vulnerabilities to COVID-19, such as the elderly or immunocompromised individuals, will continue to be precluded from engaging in indoor dining during the COVID-19 pandemic; and

WHEREAS, such vulnerable individuals are often also most unable to absorb price increases, especially when those increases relate to life sustaining materials such as food; and

WHEREAS, many consumers use third-party applications and websites to place food and beverage orders with these establishments for delivery and takeout; and many do so out of necessity because they lack the ability or capacity to obtain life sustaining food through any other means; and

WHEREAS, these third-party platforms charge restaurants fees and surcharges for use of their services; and

WHEREAS, service agreements between some restaurants and third-party platforms provide for the payment of fees and charges that can range from 15 percent of the purchase price per order to up to 31 percent of the purchase price per order; and

WHEREAS, while some restaurants negotiated such fees and surcharges prior to the COVID-19 pandemic, the pandemic and the ensuing emergency has made deliveries a principal means of restaurant operations; and

WHEREAS, restaurants and residents reported that these fees and surcharges were unsustainable, given the dire financial straits these establishments now face, their limited bargaining power to negotiate a reduction with third party platforms and residents' similar inability to afford such surcharges for life sustaining food; and

WHEREAS, if Alameda restaurants close as a result of high fees from third-party delivery services, their workers will lose employment and vulnerable customers will lose essential services, thereby affecting their ability to provide for their families and to remain safe during the COVID-19 pandemic; and

WHEREAS, other cities have adopted limits on delivery service fees, and in response online platforms have fought back by increasing fees to consumers and reduced

delivery radius thereby frustrating local regulation adopted to address impacts to consumers who are sheltering in place and restaurant workers; and

WHEREAS, any such end-run actions by third-party food service delivery companies and restaurant closures due to exorbitant delivery fees will also further limit food options for residents, could place vulnerable residents in untenable positions of not being able to obtain life sustaining food, and further disrupt US food supply chain; and

WHEREAS, California Penal Code section §396 (1) prohibits price-gouging during an emergency, (2) does not preempt local legislative bodies from prohibiting by ordinance the same or similar conduct or imposing more severe penalties for the same conduct; and (3) the California Legislature explicitly intended that Penal Code section 396 be liberally construed so that its beneficial purposes may be served; and

WHEREAS, adopting a combined cap on per-order fees charged to consumers and restaurants at 15 percent will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants, their employees, and consumers while safeguarding their health and welfare, and that of their employees and consumers, during this emergency and not unduly burdening third-party platforms; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers and powers afforded to the City in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law, the City Charter and the Alameda Municipal Code ("AMC") to protect the public welfare, health, and safety, and to protect life and property as affected by the emergency; and

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act ("CEQA") under CEQA Guidelines Sections 15378 (not a project) and 15061(b)(3) (no significant environmental impact); and

WHEREAS, the State of California has continued to maintain a state of emergency due to COVID-19.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALAMEDA as follows:

Section 1: Alameda Municipal Code Article XIV (Third-Party Delivery Services) SECTION 6-62.8 is hereby amended as follows (in redline; otherwise, no change):

6-62.8 Sunset

This Article shall sunset and be of no further force or effect upon the ~~City Council~~Governor of the State of California taking affirmative action to terminate the ~~local~~statewide state of

emergency due to the COVID-19 pandemic ~~or when businesses may restore in-person service to 100% capacity, whichever is later.~~

Section 2: IMPLIED REPEAL

Any provision of the AMC inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 3: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 4: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 5: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ___ day of _____ 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ___ day of _____ 2022.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda