ORDINANCE NO. ORD-21-0005

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 5.95, RELATED
TO THIRD-PARTY FOOD DELIVERY SERVICE FEES; AND
DECLARING THAT THIS ORDINANCE SHALL TAKE
EFFECT IMMEDIATELY

WHEREAS, on March 4, 2020, the Governor of California proclaimed a
State of Emergency as a result of the novel coronavirus (COVID-19) global pandemic;
and
WHEREAS, shortly thereafter, on March 10, 2020, the City Council of the
City of Long Beach recognized that a local emergency existed and unanimously passed a
Resolution ratifying the Long Beach City Manager's Proclamation of a Local Emergency
and the Public Health Officer's Declaration of Local Health Emergency; and
WHEREAS, since then, both the State of California and the City of Long
Beach have issued health orders, which have been amended from time to time, to
mitigate the effects of COVID-19; and
WHEREAS, these health orders have placed limits on operations of
businesses, including the restaurant and retail food establishment industry, resulting in
economic hardship on these businesses; and
WHEREAS, on December 3, 2020, the State of California issued a revised
Regional Stay At Home Order, and issued a supplemental order signed December 6,
2020, which goes into effect if intensive care unit (ICU) capacity drops below 15% in a
region for at least 3 weeks, and which includes restrictions such as prohibiting the sale of
food or drink for on-site consumption; and
WHEREAS, the Regional Stay At Home Order became effective for the
Southern California region, including the City of Long Beach, at 11:59 p.m. on December 6, 2020, and the region continues to not meet criteria to exit the Order; and

WHEREAS, due to the continuous economic hardships faced by retail food establishments, on August 18, 2020, the City Council requested the Director of Economic Development and other relevant City departments to develop a Long Beach Restaurant Retention Plan designed to improve the economic survival of Long Beach retail food establishments impacted by the COVID-19 pandemic; and

WHEREAS, in response to such request, the Economic Development and Finance Committee reviewed and recommended to the City Council various actions to assist local retail food establishment owners; and

WHEREAS, one of the recommended actions, supported by the City Council on December 8, 2020, was to cap online, app-based delivery fees charged to retail food establishments at 15% of the total food order; and

WHEREAS, many local retail food establishments rely heavily on third-party delivery platforms, such as Postmates, Door Dash, Grub Hub, Uber Eats, and the like, to meet their delivery needs, and these companies have experienced a surge in demand during the COVID-19 pandemic; and

WHEREAS, these third-party delivery services typically charge fees or commissions for their services and, while each service agreement or commission model varies, restaurants and other retail food establishments are often charged as much as 30% of the purchase price per order for services from the platforms; and

WHEREAS, retail food establishments, particularly small, independently-owned, family-owned, or minority-owned businesses, must accept the steep fees or risk closing due to lack of business, and many of these restaurants have limited bargaining power to negotiate lower fees due to the limited number of companies that provide such services which keep these restaurants in operation; and

WHEREAS, these steep fees or commissions on retail food establishments often force such establishments to increase their prices for customers, which in turn also
places economic hardship on residents who rely on restaurant food delivery; and

WHEREAS, for these reasons, this ordinance to, among other things, limit third-party food delivery service fees is immediately necessary to protect the health, safety, and general welfare of the City of Long Beach; and

WHEREAS, the need for the continuation of this ordinance shall be reviewed every 90 days by the City Council following a report by the City Manager;

NOW, THEREFORE, the City Council of the City of Long Beach ordains as follows:

Section 1. The Long Beach Municipal Code is amended by adding Chapter 5.95 to read as follows:

CHAPTER 5.95

THIRD-PARTY FOOD DELIVERY SERVICE FEES

5.95.010 Definitions.

A. “City” means the City of Long Beach.

B. “Delivery Fee” means a fee charged by a Third-Party Food Delivery Service for providing a Retail Food Establishment with a service that delivers food and beverages from such establishments to customers. The term does not include any other fee or cost that may be charged by a Third-Party Delivery Service to a Retail Food Establishment, such as fees for listing, marketing, or advertising the Retail Food Establishment on the Third-Party Food Delivery Service platform or fees related to processing the Online Order.

C. “Online Order” means an 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, for delivery or pick-up within the City.

D. “Purchase Price” means the price, as listed on the menu of the Retail Food Establishment, for the items contained in an Online Order,
minus any applicable coupon or promotional discount provided to the
customer by the Retail Food Establishment through the Third-Party Food
Delivery Service. This definition does not include taxes, gratuities, and any
other fees or costs that may make up the total amount charged to the
customer of an Online Order.

E. “Retail Food Establishment” means a restaurant,
delicatessen, bakery, coffee shop, or other eat-in or carry-out service of
processed or prepared raw and ready-to-eat food or beverages.

F. “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 delivery or pick-up of food
and beverages from, Retail Food Establishments located in the City.

5.95.020 Prohibitions.

A. It shall be unlawful for a Third-Party Food Delivery Service to
charge a Retail Food Establishment a Delivery Fee that totals to more than
fifteen percent (15%) of the total Purchase Price of each Online Order.

B. It shall be unlawful for a Third-Party Food Delivery Service to
charge a Retail Food Establishment any amount designated as a Delivery
Fee for an Online Order that does not involve the delivery of food or
beverages.

C. It shall be unlawful for a Third-Party Food Delivery Service to
charge a customer any Purchase Price for a food or beverage item that is
higher than the price set by the Retail Food Establishment on the Third-
Party Food Delivery Service platform or, if no price is set by the Retail Food
Establishment on the Third-Party Food Delivery Service platform, the price
listed on the Retail Food Establishment’s own menu.

D. It shall be unlawful for a Third-Party Food Delivery Service to
reduce the compensation rates paid to the Third-Party Food Delivery Service drivers, or to garnish gratuities, as a result of any fee limitations instituted by this section.

5.95.030 Required disclosures.

At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a restaurant through a Third-Party Food Delivery Service and before that transaction or Online Order is completed by the customer, the Third-Party Food Delivery Service shall disclose to the customer, in plain language and in a conspicuous manner, any commission, fee, or any other monetary payment charged to the customer by the Third-Party Food Delivery Service.

5.95.040 Enforcement.

Each day that a violation continues shall constitute a separate and distinct offense. A violation of this Chapter is subject to the following:

A. An action in the Superior Court of the State of California to recover actual damages resulting from a violation of this Chapter.

B. Reasonable attorneys' fees and costs awarded by a court to a plaintiff that prevails in an action against a Third-Party Food Delivery Service. If a plaintiff fails to prevail against a Third-Party Food Delivery Service, a court may award reasonable attorneys' fees and costs to the Third-Party Food Delivery Service upon a determination by the court that the plaintiff’s action was frivolous.

C. A civil action alleging a violation of any provision of this article shall commence only after the following requirements have been met:

1. Written notice is provided to the Third-Party Delivery Service of the provisions of the Chapter alleged to have been violated and...
the facts to support the alleged violation; and

2. The Third-Party Food Delivery Service is provided at least 15 days from the date of the written notice to cure any alleged violation.

D. A criminal penalty for each offense pursuant to Chapter 1.32 of this Code.

5.95.050 Expiration of Chapter.

Following adoption of this Chapter, and every ninety (90) days thereafter, the City Manager, or designee, shall report back to the City Council and Mayor on whether the provisions of this Chapter are still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic. The City Council will determine the sunset date of this Chapter based on relevant information contained in the ninety (90) day reports.

Section 2. Declaration of Urgency. This ordinance is urgently required to provide economic relief to retail food establishments, including small, independently-owned, family-owned, or minority-owned businesses, in light of the COVID-19 pandemic and related state and local "Safer at Home" health orders limiting business operations. Currently, Southern California faces a prohibition of on-site consumption of food or drink and, as a result, retail food establishments may only sell food to customers for delivery and pick-up. These establishments often rely heavily on third party delivery services and are forced to accept the steep fees charged by such platforms or risk closing due to lack of business. Due to steep fees, many of these establishments must also increase food prices to stay in business, and residents who rely on food delivery may not be able to absorb increased food prices. If these establishments close, their workers will lose employment, which affects their ability to feed and shelter their families. For these
reasons, a limit on delivery fees charged to restaurants and other food establishments is immediately necessary.

Section 3. This ordinance is an emergency ordinance duly adopted by the City Council by a vote of five of its members and shall take effect immediately. The City Clerk shall certify to a separate roll call and vote on the question of the emergency of this ordinance and to its passage by the vote of five members of the City Council of the City of Long Beach, and cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and it shall thereupon take effect and shall be operative immediately.

Section 4. This ordinance shall also be adopted by the City Council as a regular ordinance, to the end that in the event of any defect or invalidity in connection with the adoption of this ordinance as an emergency ordinance, the same shall, nevertheless, be and become effective on the thirty-first (31st) day after it is approved by the Mayor. The City Clerk shall certify to the passage of this ordinance by the City Council of the City of Long Beach and shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach.

I hereby certify that on a separate roll call and vote which was taken by the City Council of the City of Long Beach upon the question of emergency of this ordinance //
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at its meeting of January 19, 2021, the ordinance was declared to be an emergency by the following vote:

Ayes: Councilmembers: Zendejas, Allen, Price, Supernaw,

Mungo, Saro, Uranga, Austin,

Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s) Councilmembers: None.

I further certify that thereafter, at the same meeting, upon a roll call and vote on the adoption of the ordinance, it was adopted by the City Council of the City of Long Beach by the following vote:

Ayes: Councilmembers: Zendejas, Allen, Price, Supernaw,

Mungo, Saro, Uranga, Austin,

Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s) Councilmembers: None.

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I further certify that the foregoing ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of ___________, 20___, by the following vote:

Ayes: Councilmembers: __________________________

Noes: Councilmembers: __________________________

Absent: Councilmembers: ________________________

Recusal(s) Councilmembers: ______________________

Approved: __________________________ (Date)

Mayor

City Clerk
AFFIDAVIT OF POSTING

STATE OF CALIFORNIA ss
COUNTY OF LOS ANGELES )
CITY OF LONG BEACH )

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 21st day of January, 2021, I posted three true and correct copies of Emergency Ordinance No. ORD-21-0005 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the lobby of Civic Chambers; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.

Subscribed and sworn to before me
This 21st day of January 2021.

[Signature]
CITY CLERK