

RECEIVED ON: October 13, 2020

Council Meeting 10/13/2020
Agenda Item No. 10

From: [Corner Place](#)
To: [WebMail - CCD](#)
Subject: Fwd: Affirmative Litigation Division - Business and Professions Code 17200 - Postmates and Grubhub delivery fees
Date: Tuesday, October 13, 2020 1:35:56 PM
Attachments: [Los Angeles County, CA Code of Ordinances.pdf 2020-0039.pdf](#)
[Gmail - Re Postmates Account Inquiry.pdf](#)
[Los Angeles City Ordinance 200.70.docx](#)

Dear Council Members:

We are a small coffee and tea cafe located at 14838 Whittier Blvd, Whittier, CA 90605. I am writing to request that you consider a Delivery Service Fee Cap similar to the ones promulgated by the Los Angeles County Board of Supervisors in Ordinance 8.203.010 et seq. and Los Angeles City Ordinance 200.70 et seq. Like most independent restaurants in Los Angeles County, we have had to drastically alter our business model due to COVID-19. Whereas we previously offered dine in for community members to enjoy, in an effort to minimize the risk of transmission of COVID-19, we have closed our dine in and switched to a take out style cafe.

As part of this transition, we have relied heavily upon Food Delivery Service Platforms such as Postmates, Doordash, and Grubhub. These Platforms charge upwards of 33% commission to our store simply for connecting us with one of their drivers so that we can deliver our food to our customers. Restaurant profit margins are typically challenging in non-pandemic times. Having to rely upon Delivery Service Platforms which then take 33% of our sales as fees during this pandemic places a huge strain on our ability to remain open for business.

Accordingly, I respectfully request that you consider a Delivery Service Fee Cap to be enacted for the city of Whittier.

Sincerely,

Stephen Chang
Corner Place

----- Forwarded message -----

From: **Stephen Chang** <changst@gmail.com>
Date: Thu, Sep 24, 2020 at 11:03 AM
Subject: Corner Place, Whittier, CA - Fees - Los Angeles County Ordinance 8.203.030
To: <restaurants@grubhub.com>

Dear Account Manager,

It appears that Grubhub is charging fees in excess of the 20% amount currently allowed in Los Angeles County. I am attaching a copy of Los Angeles County Ordinance 2020-0039, which became effective September 3, 2020, and which, as codified under Los Angeles County Code of Ordinances Section 8.203.030(A), states:

It shall be unlawful for a Food Delivery Platform to charge
a Restaurant any combination of fees, commissions, or

CC: CM; ACM; CA; Council; Original to CC; Public Binder; Department

costs that totals more than 20 percent of the Purchase Price of each Online Order. Fees, commissions, or costs includes a Delivery Fee.

(emphasis added)

To better understand the amount Grubhub owes, I have attached Grubhub's CSV file of the transactions from 9/4/2020 to present, indicating that Grubhub retained an excess of \$45.95 in a combination of commission, delivery, and processing fees as of Grubhub Order 583212892065164, in contravention of Section 8.203.030. In accordance with Los Angeles County Code of Ordinances Section 8.203.050, please consider this correspondence as notice of Grubhub's violation. Please confirm receipt of this correspondence, and correct the violation by no later than November 9, 2020. When correcting the violation, please be mindful of your obligation under Section 8.203.040 to provide an accurate, clearly identified, and itemized cost breakdown for each fee, commission, or cost you are charging. Thank you.

Stephen Chang

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[**NOTICE:** This message originated outside of City of Whittier -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Chapter 8.203 - COVID-19 FOOD DELIVERY PLATFORMS

Sections:

8.203.010 - Purpose.

As a result of the COVID-19 pandemic, restaurants and food establishments are confronting significant economic insecurity. The Los Angeles County Health Officer's "Safer at Home" orders restricted in-person dining at restaurants leading to a surge in the use of third-party food delivery platforms. In addition to fees that may be charged to the customer, the food delivery platforms also charge restaurants and food establishments fees, which may not be obvious or transparent to the customer. Restaurants and food establishments have limited bargaining power to negotiate lower fees with the food delivery platforms and must accept these fees or risk closure. Restaurants and food establishments are essential to the public health and welfare, particularly during the upheaval resulting from the pandemic. Therefore, the County hereby enacts legal protections for the restaurants and food establishments by addressing the fees that food delivery platforms may charge restaurants and food establishments and requiring disclosure of such fees to customers.

(Ord. 2020-0039 § 1, 2020.)

8.203.020 - Definitions.

The following definitions shall apply to this Chapter:

- A. "County" means the unincorporated areas of the County of Los Angeles.
- B. "Customer" means any person, firm, or association who makes use of a Food Delivery Platform for the purpose of obtaining Food from a Restaurant.
- C. "Delivery Fee" means a fee charged by a Food Delivery Platform to a Restaurant for the act of delivering the Food from the Restaurant to a Customer. The term does not include any other fee or cost that may be charged by the Food Delivery Platform to a Restaurant, such as listing, subscription, or advertising fees, or fees related to processing an Online Order, including, but not limited to, service fees, fees for facilitating customer pick-up, and credit card processing fees.
- D. "Food" shall have the same meaning as set forth in Section 11.02.250 of the Los Angeles County Code.
- E. "Food Delivery Platform" means any person, firm, or association that utilizes an online website, mobile application, or other similar presence to interact with Customers, to act as an intermediary between its Customers and a Restaurant, and offers or arranges for the sale, delivery, or pick-up of Food sold or prepared by a Restaurant located in the County.
- F. "Online Order" means an order placed by a Customer through or with the assistance of a Food Delivery Platform, including telephone orders, orders made over the internet through a website, and orders made via a mobile application, for delivery to, or pick-up by, the Customer.
- G. "Purchase Price" means the price for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the Customer by the Restaurant through the Food Delivery Platform. This definition does not include taxes, gratuities, or any other fees or costs that may make up the total amount charged to the Customer of an Online Order.
- H. "Restaurant" shall have the same meaning as set forth in Section 8.04.400 of the Los Angeles County

Code.

- I. "Worker" means any person working for a Food Delivery Platform, including as an employee or an independent contractor.

(Ord. 2020-0039 § 1, 2020.)

8.203.030 - Prohibitions.

- A. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any combination of fees, commissions, or costs that totals more than 20 percent of the Purchase Price of each Online Order. Fees, commissions, or costs includes a Delivery Fee.
- B. It shall be unlawful for a Food Delivery Platform to charge a Restaurant a Delivery Fee that totals more than 15 percent of the Purchase Price of each Online Order.
- C. It shall be unlawful for a Food Delivery Platform to charge a Restaurant a Delivery Fee for an Online Order that does not involve the delivery of Food.
- D. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any fee, commission, or cost other than as permitted in Subsections A through C, above.
- E. It shall be unlawful for a Food Delivery Platform to reduce the compensation, including any tip or gratuity, paid to any Worker as a result of the Prohibitions in this Chapter.

(Ord. 2020-0039 § 1, 2020.)

8.203.040 - Disclosures.

- A. A Food Delivery Platform shall disclose to the Customer an accurate, clearly identified, and itemized cost breakdown for each and every Online Order, including the following:
 1. The Purchase Price of any Food.
 2. Each and every fee, commission, or cost charged to the Customer.
 3. Each and every fee, commission, or cost charged to the Restaurant, including any Delivery Fee.
 4. Any tip or gratuity authorized by the Customer to be paid to the Worker delivering the Food.
- B. None of the fees, commissions, or costs in Subsection A, above, may be combined together.

(Ord. 2020-0039 § 1, 2020.)

8.203.050 - Enforcement.

- A. A Restaurant, Customer or Worker claiming a violation of this Chapter may bring an action in Superior Court of the State of California against a Food Delivery Platform and may be awarded:
 1. All actual damages suffered.
 2. Other legal or equitable relief the court may deem appropriate.
 3. The court shall award reasonable attorneys' fees and costs to a Restaurant, Customer, or Worker who prevails in any such enforcement action. If a Restaurant, Customer, or Worker fails to prevail against a Food Delivery Platform, a court may award reasonable attorneys' fees and costs to the Food Delivery Platform upon a determination by the court that the action was frivolous.
- B. A civil action alleging a violation of any provision of this Chapter shall commence only after the following

requirements have been met:

1. The Restaurant, Customer or Worker provides written notice to the Food Delivery Platform of the specific Section of this Chapter which is alleged to have been violated and the facts to support the alleged violation; and
2. The Food Delivery Platform is provided 45 days from the date of receipt of the written notice to cure any alleged violation.

(Ord. 2020-0039 § 1, 2020 .)

8.203.060 - No Waiver of Rights.

Except for a collective bargaining agreement provision, any waiver by a Worker of any or all provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a Food Delivery Platform to a Worker to waive rights given by this Chapter shall be a violation of this Chapter.

(Ord. 2020-0039 § 1, 2020 .)

8.203.070 - Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

(Ord. 2020-0039 § 1, 2020 .)

8.203.080 - Report.

Within 90 days of the expiration of the "Safer at Home" order issued by the Los Angeles County Health Officer restricting indoor in-person dining at Restaurants, the Chief Executive Office shall report to the Board of Supervisors on the effectiveness of the provisions of this Chapter, recommendations for additional protections that further the intent of this Chapter, and whether the provisions of this Chapter are still necessary based on the County's recovery from the impacts of the COVID-19 pandemic.

(Ord. 2020-0039 § 1, 2020 .)

FOOTNOTES FOR TITLE 8

1. For regulations on noncommercial weighing and measuring devices, see Ch. 2.40 of this code.
3. For statutory provisions on automobile dismantlers, see Vehicle Code § 11500 et seq.
5. See also Ord. 11918, prohibiting the obstruction of service station premises by parked cars during periods of fuel shortage (not codified)
7. Ord. 11539, as amended by Ord. 11548, and Ord 11548 as extended by Ord. 11607 contain related provisions on businesses selling sexually explicit materials, but are not codified.
9. For other regulations concerning businesses, see Title 7 of this code; for highway permits and other

regulations concerning streets and highways, see Title 16 of this code.

11. Before being entirely amended by Ord. 12148, the rent regulation provisions of Ord. 11950 were amended by Ordinances 11960, 11981, 11986, 12107, 12030, 12031, 12035, 12044, 12048, 12073, 12099 and 12100. These ordinances are still in effect but they cannot be accurately shown in legislative history notes for each section owing to the extensive changes made by Ord. 12148.

ANALYSIS

This ordinance adds to the Los Angeles County COVID-19 Worker Protection Ordinance by adding Chapter 8.203 to Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code, establishing a cap on fees that a food delivery platform may charge to restaurants and requiring disclosures to be made by the food delivery platform to customers.

MARY C. WICKHAM
County Counsel

By 

JASON CARNEVALE
Deputy County Counsel
Government Services Division

JC:eb

Requested: 6/9/20
Revised: 7/14/20

ORDINANCE NO. 2020-0039

An ordinance adding Chapter 8.203 (Food Delivery Platforms) to Division 5 – COVID-19 Worker Protections of Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, establishing a cap on fees that a food delivery platform may charge to restaurants and requiring disclosures to be made by the food delivery platform to customers.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 8.203 is hereby added to read as follows:

Chapter 8.203 COVID – 19 Food Delivery Platforms

8.203.010 Purpose.

8.203.020 Definitions.

8.203.030 Prohibitions.

8.203.040 Disclosures.

8.203.050 Enforcement.

8.203.060 No Waiver of Rights.

8.203.060 Severability.

8.203.070 Report.

8.203.010 Purpose.

As a result of the COVID-19 pandemic, restaurants and food establishments are confronting significant economic insecurity. The Los Angeles County Health Officer's "Safer at Home" orders restricted in-person dining at restaurants leading to a surge in the use of third-party food delivery platforms. In addition to fees that may be charged to

the customer, the food delivery platforms also charge restaurants and food establishments fees, which may not be obvious or transparent to the customer. Restaurants and food establishments have limited bargaining power to negotiate lower fees with the food delivery platforms and must accept these fees or risk closure. Restaurants and food establishments are essential to the public health and welfare, particularly during the upheaval resulting from the pandemic. Therefore, the County hereby enacts legal protections for the restaurants and food establishments by addressing the fees that food delivery platforms may charge restaurants and food establishments and requiring disclosure of such fees to customers.

8.203.020 Definitions.

The following definitions shall apply to this Chapter:

- A. "County" means the unincorporated areas of the County of Los Angeles.
- B. "Customer" means any person, firm, or association who makes use of a Food Delivery Platform for the purpose of obtaining Food from a Restaurant.
- C. "Delivery Fee" means a fee charged by a Food Delivery Platform to a Restaurant for the act of delivering the Food from the Restaurant to a Customer. The term does not include any other fee or cost that may be charged by the Food Delivery Platform to a Restaurant, such as listing, subscription, or advertising fees, or fees related to processing an Online Order, including, but not limited to, service fees, fees for facilitating customer pick-up, and credit card processing fees.
- D. "Food" shall have the same meaning as set forth in Section 11.02.250 of the Los Angeles County Code.

E. "Food Delivery Platform" means any person, firm, or association that utilizes an online website, mobile application, or other similar presence to interact with Customers, to act as an intermediary between its Customers and a Restaurant, and offers or arranges for the sale, delivery, or pick-up of Food sold or prepared by a Restaurant located in the County.

F. "Online Order" means an order placed by a Customer through or with the assistance of a Food Delivery Platform, including telephone orders, orders made over the internet through a website, and orders made via a mobile application, for delivery to, or pick-up by, the Customer.

G. "Purchase Price" means the price for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the Customer by the Restaurant through the Food Delivery Platform. This definition does not include taxes, gratuities, or any other fees or costs that may make up the total amount charged to the Customer of an Online Order.

H. "Restaurant" shall have the same meaning as set forth in Section 8.04.400 of the Los Angeles County Code.

I. "Worker" means any person working for a Food Delivery Platform, including as an employee or an independent contractor.

8.203.030 Prohibitions.

A. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any combination of fees, commissions, or costs that totals more than 20 percent of the

Purchase Price of each Online Order. Fees, commissions, or costs includes a Delivery Fee.

B. It shall be unlawful for a Food Delivery Platform to charge a Restaurant a Delivery Fee that totals more than 15 percent of the Purchase Price of each Online Order.

C. It shall be unlawful for a Food Delivery Platform to charge a Restaurant a Delivery Fee for an Online Order that does not involve the delivery of Food.

D. It shall be unlawful for a Food Delivery Platform to charge a Restaurant any fee, commission, or cost other than as permitted in Subsections A through C, above.

E. It shall be unlawful for a Food Delivery Platform to reduce the compensation, including any tip or gratuity, paid to any Worker as a result of the Prohibitions in this Chapter.

8.203.040 Disclosures.

A. A Food Delivery Platform shall disclose to the Customer an accurate, clearly identified, and itemized cost breakdown for each and every Online Order, including the following:

1. The Purchase Price of any Food.
2. Each and every fee, commission, or cost charged to the Customer.
3. Each and every fee, commission, or cost charged to the

Restaurant, including any Delivery Fee.

4. Any tip or gratuity authorized by the Customer to be paid to the Worker delivering the Food.

B. None of the fees, commissions, or costs in Subsection A, above, may be combined together.

8.203.050 Enforcement.

A. A Restaurant, Customer or Worker claiming a violation of this Chapter may bring an action in Superior Court of the State of California against a Food Delivery Platform and may be awarded:

1. All actual damages suffered.
2. Other legal or equitable relief the court may deem appropriate.
3. The court shall award reasonable attorneys' fees and costs to a

Restaurant, Customer, or Worker who prevails in any such enforcement action. If a Restaurant, Customer, or Worker fails to prevail against a Food Delivery Platform, a court may award reasonable attorneys' fees and costs to the Food Delivery Platform upon a determination by the court that the action was frivolous.

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

1. The Restaurant, Customer or Worker provides written notice to the Food Delivery Platform of the specific Section of this Chapter which is alleged to have been violated and the facts to support the alleged violation; and

2. The Food Delivery Platform is provided 45 days from the date of receipt of the written notice to cure any alleged violation.

8.203.060 No Waiver of Rights.

Except for a collective bargaining agreement provision, any waiver by a Worker of any or all provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a Food Delivery Platform to a Worker to waive rights given by this Chapter shall be a violation of this Chapter.

8.203.070 Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

8.203.080 Report.

Within 90 days of the expiration of the "Safer at Home" order issued by the Los Angeles County Health Officer restricting indoor in-person dining at Restaurants, the Chief Executive Office shall report to the Board of Supervisors on the effectiveness of the provisions of this Chapter, recommendations for additional protections that

further the intent of this Chapter, and whether the provisions of this Chapter are still necessary based on the County's recovery from the impacts of the COVID-19 pandemic.

[CH8203CCJC]

SECTION 2 This ordinance shall be published in The Daily Commerce a newspaper printed and published in the County of Los Angeles.



Chair

ATTEST:

Celia Zavala
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of August 4, 2020 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes

Noes

Supervisors Hilda Solis
Mark Ridley-Thomas
Sheila Kuehl
Janice Hahn
Kathryn Barger

Supervisors None

Effective Date: September 3, 2020
Operative-
Date: _____

Celia Zavala
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

APPROVED AS TO FORM:
MARY C. WICKHAM
County Counsel



By _____
Lawrence L. Hafetz
Chief Deputy County Counsel



Stephen Chang <changst@gmail.com>

Re: Postmates Account Inquiry

1 message

Alexandra Rasmussen <alexandra.rasmussen@postmates.com>
To: Stephen Chang <changst@gmail.com>
Cc: Corner Place delivery <whittiercpdd@gmail.com>

Wed, Sep 16, 2020 at 3:47 PM

Hi Stephen,

Los Angeles county does have a fee cap, however, it is separate from the city fee cap. Postmates has not yet complied with the fee cap in Los Angeles county but is working with the county government to see how we will be moving forward with this! We will follow-up with updates.

Best,
Alex

Alex Rasmussen

Account Associate, Merchant Team

@postmates | Postmates



On Wed, Sep 16, 2020 at 9:35 AM Stephen Chang <changst@gmail.com> wrote:

Yes, that's because the ordinance is a county ordinance as opposed to the Los Angeles city ordinance. Both county and city passed fee cap ordinances. Whittier is in Los Angeles County.

Sent from my iPhone

On Sep 16, 2020, at 7:32 AM, Alexandra Rasmussen <alexandra.rasmussen@postmates.com> wrote:

Hi Stephen,

Thanks for getting back to me and for passing along that information! Postmates is aware of the Los Angeles fee cap and is working with the Los Angeles municipality to ensure we are complying with the fee cap within the proper city limits. Unfortunately, the Corner Place located in Whittier,

CA does not meet the city boundary requirements that Postmates has worked through with the city of Los Angeles. If you would like to offset your current rate, I would recommend adding a menu markup or a \$1 service fee to your account. Many merchants have found success with this!

Regards,
Alex

Alex Rasmussen

Account Associate, Merchant Team

@postmates | Postmates



On Tue, Sep 15, 2020 at 3:33 PM Corner Place delivery <whittiercpdd@gmail.com> wrote:

Alex,

It appears that Postmates is charging a delivery fee in excess of the 15% amount currently allowed in Los Angeles County. For your reference, I am attaching a screenshot of Postmates Order 460 which states a delivery commission of 33%. This 33% rate appears consistent during the duration of our association with Postmates for delivery orders. I am also attaching a copy of Los Angeles County Ordinance 2020-0039, which became effective September 3, 2020, and which precludes, under Los Angeles County Code of Ordinances Section 8.203.030(A)&(B), restaurant delivery services from charging any combined amount inclusive of fees, commissions, or costs in excess of 20% of the Purchase Price of an order, and from charging a delivery fee in excess of 15% of the Purchase Price of an order. I have also attached a copy of the ordinance as codified for your reference.

To better understand the amount Postmates owes, I have compiled the attached spreadsheet indicating that Postmates retained an excess of \$32.40 as of Postmates Order 460, in contravention of Section 8.203.030. In accordance with Los Angeles County Code of Ordinances Section 8.203.050, please consider this correspondence as notice of Postmates' violation. Please confirm receipt of this correspondence, and cure the violation by no later than October 31, 2020. When curing the violation, please be mindful of your obligation under Section 8.203.040 to provide an accurate, clearly identified, and itemized cost breakdown for each fee, commission, or cost you are charging. Thank you.

Stephen Chang

On Tue, Sep 15, 2020 at 9:15 AM Alex Rasmussen <alexandra.rasmussen@postmates.com> wrote:

Hi Stephen,

We received your support request regarding your commission rate. Let me know what questions you have and I would be happy to help!

Best,
Alex

Alex Rasmussen

9/24/2020

Gmail - Re: Postmates Account Inquiry

Account Associate, Merchant Team
@postmates | Postmates

ARTICLE 6
LIMIT ON THIRD-PARTY FOOD DELIVERY SERVICE FEES

(Added by Ord. No. 186,665, Eff. 6/10/20.)

Section

- 200.70 Definitions.
- 200.71 Prohibitions.
- 200.72 Disclosures.
- 200.73 Enforcement.
- 200.74 Sunset.
- 200.75 Severability.

SEC. 200.70. DEFINITIONS.

For purposes of this ordinance, the following definitions apply:

1. "City" means the City of Los Angeles.
2. "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 establishment to customers. The term does not include any other fee or cost that may be charged by a Third-party Food Delivery Service to a Retail Food Establishment, such as fees for listing or advertising the Retail Food Establishment on the Third-party Food Delivery Service platform or fees related to processing the online order, including, but not limited to, service fees, fees for facilitating Online Orders for pick-up, and credit card processing fees.
3. "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.
4. "Purchase Price" means the price, as listed on the menu, 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.

5. “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.

6. “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, no fewer than 20 Retail Food Establishments located in the City that are each owned and operated by different persons.

SEC. 200.71. PROHIBITIONS.

1. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment a Delivery Fee that totals more than 15 percent of the Purchase Price of each Online Order.

2. 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.

3. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any combination of fees, commissions, or costs for the Retail Food Establishment’s use of the Third-party Food Delivery Service that is greater than 5 percent of the Purchase Price of each Online Order. Fees, commissions, or costs do not include Delivery Fee

4. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any fee, commission, or cost other than as permitted in Subsections 1. through 3., above.

5. 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 or, if no price is set by the Retail Food Establishment on the Third-Party Food Delivery Service, the price listed on the Retail Food Establishment’s own menu.

6. It shall be unlawful for a Third-party Food Delivery service to retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the Third-party Delivery Service, in its entirety, to the person delivering the food or beverages.

SEC. 200.72. DISCLOSURES.

The Third-party Food Delivery Service shall disclose to the customer an accurate, clearly identified, and itemized cost breakdown of each transaction, including but not limited to the following:

- (a) the Purchase Price of the food and beverages at the cost listed on the Retail Food Establishment's menu;
- (b) the Delivery Fee charged to the Retail Food Establishment;
- (c) each fee, commission, or cost, other than a Delivery Fee, charged to the Retail Food Establishment;
- (d) each fee, commission, or cost, other than the Delivery Fee or the Purchase Price of the food, charged to the customer by the Third-party Food Delivery Service;
- (e) any tip or gratuity that will be paid to the person delivering the food or beverages.

SEC. 200.73. ENFORCEMENT.

A violation of this article shall subject the violator to the following:

1. An action in the Superior Court of the State of California to recover all actual damages resulting from a violation of this article.
2. 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 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.
3. A civil action alleging a violation of any provision of this article shall commence only after the following requirements have been met:
 - a. Written notice is provided to the Third-party Food Delivery Service of the provisions of the article alleged to have been violated and the facts to support the alleged violation; and

b. The Third-party Food Delivery Service is provided 15 days from the date of the written notice to cure any alleged violation.

4. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.74. SUNSET.

This article shall sunset 90 days after the City's Public Order, first issued March 19, 2020, prohibiting on-premises dining is lifted.

SEC. 200.75. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council hereby declares that it would have adopted this article and each and every subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.