

County of Santa Clara
Board of Supervisors
Supervisorial District 5
Supervisor S. Joseph Simitian



103911 A

DATE: December 8, 2020

TO: Board of Supervisors

FROM: S. Joseph Simitian, Supervisor
Cindy Chavez, Supervisor

SUBJECT: Cap on commissions and fees charged by third-party food delivery services

RECOMMENDED ACTION

Approve referral to Administration and County Counsel to report to the Board by January 12, 2021, with an ordinance for consideration relating to a temporary cap on commissions and fees charged by third-party food delivery services to local restaurants and/or their customers. (Simitian/Chavez)

REASONS FOR RECOMMENDATION

The COVID-19 pandemic continues to impose extraordinary financial hardship on local restaurants and food establishments. Many of these businesses rely on third-party delivery vendors such as DoorDash, Uber Eats and Grubhub to meet their business's delivery needs. As indoor and outdoor dining becomes even more limited due to both weather and health and safety requirements, third-party delivery services have seen a surge in business.

Third-party delivery services often charge fees and commissions for participating restaurants. While these commission and fee structures vary by company, food establishments are often charged upwards of 30% of the purchase price for delivery and as much as a 15% commission for customer pick up ordered through the third-party online platform. According to the third-party delivery company websites, commissions and fees are used to cover the costs for everything from delivery and marketing to business listing and credit card processing.

While delivery vendors provide a service, and are certainly within their rights to charge for such services, the current pandemic creates the conditions and opportunity for price gouging. In some instances, restaurants may be forced to accept excessive fees and commissions because they have no other option to get their food to customers. Moreover, restaurants and

food establishments are unable to counter these steep commissions and fees due to their lack of bargaining power. The end result is that already vulnerable, small, locally-owned businesses are at increased financial risk.

Restaurants are not the only ones paying such fees to delivery vendors. These companies also charge fees to the consumer, sometimes with little transparency as to what the fees cover. The report back from staff should also consider whether there is an opportunity to require greater transparency associated with consumer paid fees as well.

Another consideration to be taken into account in the report back is how to best mitigate any potential negative impact that a cap might have on delivery employees. Many of these companies employ more vulnerable populations as their workforce. While the County examines capping commissions and fees charged to food establishments, we must ensure that it's not at the financial expense of those on the front lines delivering the meals.

While County ordinances often apply only to the unincorporated county, Administration and County Counsel should explore whether there is an opportunity resulting from the emergency orders in place that would allow implementing this ordinance countywide. Countywide jurisdiction was possible with the eviction moratorium, and has been done in some of the counties listed below in the "background" section of this memo.

If legally supportable, the preference would be for Administration and County Counsel to report back with a countywide ordinance that provides the Board with options and a recommendation that covers the following topics:

1. A county-wide cap on commissions and fees charged by third-party delivery companies in connection with the purchase and/or delivery of an order.
2. A county-wide cap on any additional fees beyond those charged in connection with the purchase and/or delivery of an order.
3. A county-wide prohibition on a reduction of delivery driver's wages and/or a prohibition on withholding of tips to compensate for the imposed caps.
4. Other county-wide protections to explore:
 - Restaurant consent for listing and pricing structures
 - Increased transparency on customer receipts

BACKGROUND

Many other jurisdictions throughout the state have enacted similar ordinances. These include (partial list):

- Los Angeles County
- San Mateo County
- Alameda County
- Marin County
- City of San Francisco

- City of Berkeley
- City of Oakland
- City of Santa Clara
- City of Santa Cruz