



COUNCIL AGENDA: 12/15/2020

ITEM: 3.11

FILE NO: 20-1703

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Toni J. Taber, CMC  
City Clerk

**SUBJECT:** SEE BELOW

**DATE:** December 10, 2020

**SUBJECT: Fee Cap on Food Delivery Services.**

**RECOMMENDATION:**

As recommended by the Rules and Open Government Committee on December 9, 2020:

Direct the City Manager to draft and enact an urgency ordinance that:

1. Caps the delivery fee that third-party food delivery platforms can charge member establishments at 15% of the purchase price of an online order; and
2. Caps the total fee amount for the use of all services-including the delivery and processing fees-that third-party food delivery platforms can charge at 18% of the purchase price of an online order; and
3. Allows member establishments to agree to pay a third-party food delivery platform a fee that exceeds the limits in sections 1 and 2 to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs, in addition to delivery or pickup service; and
4. Prohibits the reduction of compensation to food delivery drivers, including the reduction of any amount of tips provided to delivery drivers that results from the restrictions on commission or delivery fees as set forth in this order; and
5. Exempts chain restaurants, with the exception of those franchisees who own and operate only three restaurants or fewer; and
6. Grants food-delivery companies 14 days per incident to refund any fees taken in excess of these limits; and
7. Remains in effect through June 2021, at which point the City Council may choose to extend or suspend the fee cap based on the extent of indoor restaurant capacity (e.g. 50%) and the availability of a COVID-19 vaccine for essential workers. (Mayor/Diep)

[Rules and Open Government referral 12/9/2020 - Item G.5]



# Memorandum

**TO:** Rules and Open Government  
Committee

**FROM:** Mayor Sam Liccardo  
Councilmember Lan Diep

**SUBJECT:** Fee Cap on Food Delivery  
Services

**DATE:** December 3, 2020

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**Approved:**

**Date:** 12/3/20

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## **RECOMMENDATION**

Direct the City Manager to draft and enact an urgency ordinance that:

1. Caps the delivery fee that third-party food delivery platforms can charge member establishments at 15% of the purchase price of an online order; and
2. Caps the total fee amount for the use of all services—including the delivery and processing fees—that third-party food delivery platforms can charge at 18% of the purchase price of an online order; and
3. Allows member establishments to agree to pay a third-party food delivery platform a fee that exceeds the limits in sections 1 and 2 to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs, in addition to delivery or pickup service; and
4. Prohibits the reduction of compensation to food delivery drivers, including the reduction of any amount of tips provided to delivery drivers that results from the restrictions on commission or delivery fees as set forth in this order; and
5. Exempts chain restaurants, with the exception of those franchisees who own and operate only three restaurants or fewer; and
6. Grants food-delivery companies 14 days per incident to refund any fees taken in excess of these limits; and
7. Remains in effect through June 2021, at which point the City Council may choose to extend or suspend the fee cap based on the extent of indoor restaurant capacity (e.g. 50%) and the availability of a COVID-19 vaccine for essential workers.

## **BACKGROUND**

After nearly ten months of economic impacts from the COVID-19 pandemic—with a short reprieve allowing indoor dining—restaurants are now subjected to even more restrictive rules of operation that will leave them dependent on food-delivery apps for their survival.

Sales made through the apps come at a high cost, however. Fees imposed on food delivery can cost restaurants as much as 30% per order. Given that restrictive County orders are likely to persist for several months, we must provide some relief to restaurants operating on thin margins to provide essential services. At the same time, we must carefully balance the reality that fee

Rules and Open Government Committee

December 9, 2020

**Subject: Fee Cap on Food Delivery Services**

Page 2 of 2

caps set too low will cause some companies to “opt-out” of delivery to “long-haul” destinations, such as homes in Evergreen, Alviso, or Almaden, as they have in other cities.