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# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

SACHI A. HAMAI  
Chief Executive Officer

July 20, 2020

To: Supervisor Kathryn Barger, Chair  
Supervisor Hilda L. Solis  
Supervisor Mark Ridley-Thomas  
Supervisor Sheila Kuehl  
Supervisor Janice Hahn

From: Sachi A. Hamai  
Chief Executive Officer

Board of Supervisors  
HILDA L. SOLIS  
First District  
MARK RIDLEY-THOMAS  
Second District  
SHEILA KUEHL  
Third District  
JANICE HAHN  
Fourth District  
KATHRYN BARGER  
Fifth District

## **CAPPING FEES FOR THIRD-PARTY DELIVERY SERVICE PLATFORMS IN UNINCORPORATED COMMUNITIES (ITEM NO. 7, AGENDA OF JUNE 9, 2020)**

On June 9, 2020, the Board of Supervisors (Board) adopted a Motion (Motion) by Supervisors Solis and Kuehl, as amended by Supervisor Barger, directing the Chief Executive Officer, in partnership with County Counsel, the Department of Consumer and Business Affairs (DCBA), and other relevant departments and after consideration of feedback from key stakeholders, to report back to the Board with Draft Ordinance language to cap fees for third-party delivery platforms charged to food establishments located within the unincorporated and incorporated areas of the County of Los Angeles (County). The Draft Ordinance was to investigate the following:

1. A cap on the commission fees that third-party food delivery services charge on the purchase price of the order;
2. A cap on any additional fees charged by a third-party food delivery platform beyond those fees charged for delivery of each order;
3. A fee that can be imposed on third-party food delivery platforms for all deliveries that would deposit into the County Fund for Los Angeles in the April 28, 2020 Board Motion on "Roadmap to Economic Recovery;"
4. Prohibiting third-party food delivery platforms from reducing compensation paid to delivery service drivers or garnishing any of the gratuities paid to delivery service drivers as a result of any caps or fees implemented;
5. Disclosing to the customer a clearly identified and itemized cost breakdown of each transaction, including charges and fees assessed to the customer, as well as the Retail Food Establishment; and
6. Including a sunset date of 90 days after the conclusion of the "Safer at Home" Health Officer Orders.

As a result of the COVID-19 pandemic and the emergency orders issued by the State of California (California) and the County beginning on March 4, 2020, restaurants across the County have had to either cease or severely limit dine-in services. Although the County was granted a variance on May 29, 2020 that allowed restaurants to operate dine-in services at 60 percent capacity, the subsequent surges in COVID-19 cases in California have led to further limiting dine-in activity in the hardest hit counties, including Los Angeles. Restaurants must rely heavily on delivery and pick-up services to stay in business, and many utilize third-party delivery platforms, such as Postmates, DoorDash, Grubhub, and Uber Eats, which have seen a surge in demand during the pandemic. Third-party food delivery services utilize various commission models that can charge a restaurant up to thirty percent of the purchase price or more per order for services including delivery, marketing and promotion, subscription, and processing fees. Restaurants, and particularly small family-owned establishments, have limited bargaining power and must accept steep fees or risk possible closure due to lack of business. Many small enterprises face dire financial circumstances, and take-out and delivery are essential to maintain their restaurant operations for the foreseeable future during this period of local emergency.

As directed, the Chief Executive Office (CEO) formed a workgroup with DCBA and County Counsel to engage with stakeholders and complete legal analysis to propose a Draft Ordinance as directed in the Motion. CEO and DCBA have been in contact with the third-party food delivery service providers (providers), organizations representing the interests of local restaurants, and city governments that have instituted similar ordinances. Based on the feedback obtained, the workgroup recommends establishing an aggregate cap for all fees charged by providers of no more than twenty percent of the purchase price per order, while limiting delivery fees specifically to no more than fifteen percent of the purchase price per order. This would mean a provider could charge no more than fifteen percent of the purchase price for delivery services, and no combination of any and all fees that total more than twenty percent of the purchase price of an order. A provider could, therefore, charge lower than fifteen percent of a purchase for a delivery fee and charge more than five percent for any additional fees for marketing, processing, and other fees so long as all fees charged, including for delivery, add up in aggregate to no more than twenty percent of the purchase price of an order.

The aggregate twenty percent cap is commensurate with the caps imposed by neighboring jurisdictions and is a reasonable rate that provides financial relief to struggling restaurants that are dependent on third-party delivery service providers to stay open, while also accommodating the providers' different business models and allowing flexibility in structuring agreements. This flexibility and reasonable rate of return serve the purpose of the Motion while mitigating any potential unintended consequences.

As directed by the Board, the Draft Ordinance also prohibits providers from reducing the compensation paid to delivery persons in response to the ordinance or to retain any portion of a tip or gratuity in response. The ordinance further mandates that customers receive itemized cost breakdowns of the fees, taxes, and commissions in each transaction.

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If adopted, the Draft Ordinance would be in place until at least 90 days after the lifting of the Local Emergency order by the Board and will allow for further review to determine whether it is appropriate to continue the ordinance past the lifting of the emergency order.

The Draft Ordinance does not include a separate fee on third-party delivery service providers. The workgroup believes the twenty percent aggregate cap sufficiently assists restaurants without providing an undue burden on third-party service providers. Further, legal analysis from County Counsel determined that such a fee would fall under the definition of a tax and would need approval from a majority of eligible voters.

County Counsel also determined, based on the California Constitution and settled caselaw, that this ordinance is an exercise of the County's police power, which extends only within the jurisdictional limits of the unincorporated county areas.

If you have any questions, please contact Allison E. Clark at (213) 974-8355, or [allison.clark@ceo.lacounty.gov](mailto:allison.clark@ceo.lacounty.gov).

SAH:FAD:AEC  
JO:DSK:yy

Attachment

- c: Executive Office, Board of Supervisors  
County Counsel  
Consumer and Business Affairs



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

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500 WEST TEMPLE STREET  
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MARY C. WICKHAM  
County Counsel

July 16, 2020

Sachi A. Hamai  
Chief Executive Officer  
713 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Agenda No. 7  
06/09/20

Re: **Ordinance Adding Chapter 8.203 of Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code**

Dear Ms. Hamai:

Pursuant to the Board's motion of June 9, 2020, enclosed please find the analysis and ordinance adding Chapter 8.203 to Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code, which establishes a cap on fees that a food delivery platform may charge to restaurants and requires disclosures be made by food delivery platform to customers.

The enclosed analysis and ordinance may be presented to the Board of Supervisors for consideration.

Very truly yours,

MARY C. WICKHAM  
County Counsel

By *Jason Carnevale*  
JASON CARNEVALE  
Deputy County Counsel

APPROVED AND RELEASED:

NICOLE A. DAVIS TINKHAM for  
LAWRENCE L. HAFETZ  
Chief Deputy

JC:eb  
Enclosures

## 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. \_\_\_\_\_**

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]



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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FESIA A. DAVENPORT  
Chief Executive Officer

October 14, 2021

To: Supervisor Hilda L. Solis, Chair  
Supervisor Holly J. Mitchell  
Supervisor Sheila Kuehl  
Supervisor Janice Hahn  
Supervisor Kathryn Barger

From: Fesia A. Davenport  
Chief Executive Officer

Board of Supervisors  
HILDA L. SOLIS  
First District

HOLLY J. MITCHELL  
Second District

SHEILA KUEHL  
Third District

JANICE HAHN  
Fourth District

KATHRYN BARGER  
Fifth District

## **CAPPING FEES FOR THIRD-PARTY DELIVERY SERVICE PLATFORMS IN UNINCORPORATED COMMUNITIES (ITEM NO. 7, AGENDA OF JUNE 9, 2020)**

On June 9, 2020, the Board of Supervisors (Board) adopted a motion by Supervisors Solis and Kuehl, as amended by Supervisor Barger, directing the Chief Executive Office (CEO), in partnership with County Counsel, the Department of Consumer and Business Affairs (DCBA), and other relevant departments, and after consideration of feedback from key stakeholders, to report back to the Board with draft ordinance language to cap fees for third-party delivery platforms charged to food establishments located within the unincorporated and incorporated areas of the County of Los Angeles (County).

Subsequently, on July 20, 2020, the Board approved the Ordinance language which added Chapter 8.203 to Title 8 of the County Code. This Chapter established up to a 20 percent cap on fees that a food delivery platform can charge to restaurants and required the food delivery platform to make price disclosures to customers.

The Ordinance also required a report back to the Board 90 days after the lifting of the County Health Orders, to include recommendations on whether to keep the Ordinance in place or to sunset it. To craft recommendations on the existing Ordinance, the CEO and DCBA conducted outreach to numerous restaurant owners, restaurant associations and third-party delivery platforms through direct dialogue and an online survey.

In discussions with third-party delivery apps, these businesses expressed their opposition to making the Ordinance permanent. They felt that by imposing a price control on the commissions that delivery apps can charge restaurants, the County may be impacting their ability to offer competitive pricing options. They also expressed an interest in increasing the

cap to 25 percent, which they believe would allow for more options in services offered to restaurants, as they have proposed in other cities across the County. Associations and Collectives, such as DineBlackLA and the Latino Restaurant Association, were also opposed to the Ordinance for similar reasons.

DCBA conducted an online survey of 88 small restaurant businesses and residents across the County to gather small restaurant owner feedback. DCBA received 14 responses out of 88 surveyed from restaurants located in unincorporated areas (UA) of the County. All 14 restaurants were in favor of keeping the Ordinance in place and felt that it was of value. However, the results also showed that the majority (12 out of 14) were not aware of the Ordinance which underscores the need to conduct a more robust educational campaign about these protections as specified in the Ordinance.

Although this sample size is small, given the support of the owners who responded and the fact that many businesses need time to learn about the benefits and impacts of the Ordinance, sunseting or amending the Ordinance does not appear warranted at this time.

In terms of additional outreach, the new County economic and workforce development department (name pending) will conduct multilingual and culturally sensitive outreach and create support opportunities to small, immigrant-owned, monolingual restaurant owners in the UAs, along with its workforce and customers who may not be aware of the Ordinance. This will be accomplished by working with the Department of Public Health (DPH), Department of Regional Planning (DRP), and other relevant County departments that serve small restaurants to determine how to:

- a. Identify and connect with community-based organizations who assist and support businesses in underserved communities, to include minority, women, and immigrant business owners;
- b. Create new marketing material to disseminate to relevant County departments and external partners who work with the targeted businesses;
- c. Host informational webinars targeting restaurants in UAs by promoting the Ordinance, and internal and external business resources; and
- d. Engage with delivery app providers to develop their capacity to increase their culturally specific outreach to small business restaurants and educate about the available tier systems.

The CEO also worked with County Counsel to review any potential conflicts between the Ordinance and the recently passed Proposition 22 (Prop 22), as well as potential legal challenges to the Ordinance. The new State laws created by Prop 22 apply to food delivery drivers who are defined as independent contractors under the new law, rather than employees of the food service. These laws list specific conditions for a worker to be defined

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as an independent contractor. As a result, the only area where the Prop 22 laws and the Ordinance overlap is section 8.203.030(e), where both the County Code and California State Law prohibit the taking or withholding of a customer tip which was intended for the food delivery driver. Otherwise, the Prop 22 laws tend to regulate the relationship between food delivery platform and driver, whereas the County ordinance seeks to regulate the transactional relationship between the food delivery platforms and the restaurants by the imposition of fee caps. Recently, the Superior Court in Alameda County struck down Prop 22 in the case of *Castellanos v. State of California* (Case No. RG21088725). Supporters of Prop 22 have promised to appeal the ruling, but there is no information regarding when an appellate decision is expected.

Grubhub and DoorDash recently filed a legal challenge in federal court against a San Francisco (SF) ordinance which is like the County's Ordinance. The key differences between the two ordinances are that the SF ordinance sets a fee cap of 15 percent rather than 20 percent (County), and the SF ordinance applies only to delivery platforms which regularly service more than 20 restaurants. The court has not yet held hearings in that matter, so it is unclear when a decision can be expected. On September 9, 2021, both food platforms also filed a legal challenge to a similar ordinance in New York City. As a result, the County should expect a legal challenge against its Ordinance, especially if the delivery platforms receive a favorable ruling in the SF case.

### **Next Steps**

In closing, due to the high commission fees, many restaurants find it difficult to participate in third-party delivery services which are essential to their operations at a time when the pandemic has impacted the restaurant industry so severely. Thus, it is recommended that the Board: (1) take no action relative to amending or sunseting the existing Ordinance; 2) maintain the existing protections in place; and (3) provide another review of Ordinance in 12 months.

Should you have any questions concerning this matter, please contact me or Julia Orozco, Acting Senior Manager, Economic Development and Affordable Housing Division at (213) 974-1151 or [jorozco@ceo.lacounty.gov](mailto:jorozco@ceo.lacounty.gov).

FAD:JMN:JO  
GS:yy

c: Executive Office, Board of Supervisors  
County Counsel  
Consumer and Business Affairs  
Public Health  
Regional Planning