

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,  
STATE OF CALIFORNIA

ORDINANCE NO.

**AN UNCODIFIED URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SAN JOAQUIN ESTABLISHING A TEMPORARY CAP ON  
CHARGES BY THIRD-PARTY FOOD DELIVERY SERVICES FOR  
ORDERING AND DELIVERY OF FOOD FROM RESTAURANTS WITHIN  
SAN JOAQUIN COUNTY**

**Summary**

This Urgency Ordinance imposes a temporary cap on the fees that may be charged by third-party food delivery services and prevents the reduction of per-order compensation of delivery workers until the earlier of (i) applicable health guidelines allowing indoor seating at 100% capacity in restaurants or (ii) the end of the declared County health emergency.

The Board of Supervisors of the County of San Joaquin ordains as follows:

**SECTION 1. Findings.**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN FINDS  
AND DECLARES AS FOLLOWS:**

**WHEREAS**, due to the spread of COVID-19 (coronavirus) within the state, on March 4, 2020, Governor Gavin Newsom, declared local and state public health emergencies due to the spread of COVID-19 locally and within the state, pursuant to Health and Safety Code §101080 and Government Code § 8625 respectively; and

**WHEREAS**, on March 12, 2020, the County of San Joaquin (the "County") Health Officer declared a local health emergency, and the County's Director of Emergency Services proclaimed a local emergency, to respond to the COVID-19 pandemic and manage its spread throughout the County; and

**WHEREAS**, on March 17, 2020, the Board of Supervisors (the "Board") ratified the local health emergency and local emergency; and

**WHEREAS**, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of COVID-19; and

**WHEREAS**, on December 5, 2020, the County implemented the Regional Stay at Home Order ("Regional Stay at Home Order"), issued by the California State Health Officer on December 3, 2020, (a) requiring all individuals living in an affected region to stay at home or at their place of residence except as allowed under the Regional Stay at Home Order, (b) forbidding gatherings of individuals with members of other households, and (c) imposing significant additional restrictions on restaurants and food retailers; and

**WHEREAS**, prior to the imposition of the Regional Stay at Home Order, restaurants in the county have been subject to a variety of restrictions imposed by the California State Health Officer reducing their seating capacity, and at times restricting their activities to delivery and take-out only, resulting in revenue losses that have led to widespread failures of local restaurants and the closure of these businesses and are expected by restaurant business owners to result in additional restaurant failures; and

**WHEREAS**, restaurants in some areas of the county had been forced to reduce their staff by 50% or more as a result of revenue losses resulting from pandemic-caused restrictions on indoor dining and public concern over gathering in places where disease transmission is more likely; and

**WHEREAS**, in the most restrictive tier of the Blueprint for Recovery, restaurants are completely reliant on outdoor dining, takeout and delivery offerings, placing a severe financial strain on food service industry revenues, especially on restaurants that are small businesses that even under ordinary circumstances operate on thin margins; and

**WHEREAS**, some county residents are either unable to purchase and prepare food and do not have consistent and reliable access to sources of food, aside from prepared foods delivered from restaurants; and

**WHEREAS**, the social distancing measures required to mitigate the spread of COVID-19 means that delivery and take-out options from restaurants are critical to the public's ability to have consistent and reliable access to food and therefore the ability of the public to adhere to public health requirements; and

**WHEREAS**, the continued viability of the county's restaurants is critical to (a) ensure the availability of essential food services to the public, (b) sustain employment among restaurant workers, and (c) preserve the vitality of local economies and the character and prosperity of neighborhoods in the county; and

**WHEREAS**, many restaurant customers rely on third-party firms operating applications or web-based platforms to place orders with restaurants for delivery and takeout, in some cases including actual pick-up and delivery of food by employees or contract workers; and

**WHEREAS**, the firms operating such third-party platforms charge restaurants a range of fees for their order, delivery, and marketing services; and

**WHEREAS**, restaurants in the county have limited ability to negotiate fees with firms operating such third-party platforms due to the existence of only a few companies in the marketplace to provide such delivery services, the imperative need to access delivery customers to comply with State and County health orders, and the dire financial circumstances faced by restaurants as a result of the COVID-19 pandemic; and

**WHEREAS**, given that a relatively small number of firms operate such third-party platforms that provide such delivery services, small restaurants that do not operate their own delivery service lack alternatives to contracting with these firms; and

**WHEREAS**, the fees charged by firms operating such third-party platforms are in some cases so high as to threaten the profitability or the ongoing viability of county restaurants, particularly small and family-owned restaurants that are vital contributors to the employment, commerce, and identity of neighborhoods and communities; and

**WHEREAS**, the California Constitution, Article XI, Section 7, grants cities and counties the authority to enact ordinances to protect the health, safety, and general welfare of their residents; and

**WHEREAS**, Government Code Section 8634 authorizes the Board to formulate orders and regulations necessary to provide for the protection of life and property during a local emergency; and

**WHEREAS**, the Board finds and determines that there is an immediate need to preserve public health, safety, and welfare that are threatened by the consequences for restaurants of excessive fees charged to county restaurants by firms operating third-party food ordering and delivery platforms; and

**WHEREAS**, the Board finds and determines that a temporary cap on the fees charged to restaurants by firms operating third-party food ordering and delivery platforms will preserve health, safety, and public welfare by ensuring access to vital prepared food for county residents subject to the pandemic-related restrictions; and

**WHEREAS**, the Board finds and determines that this emergency regulation must apply across all cities and unincorporated areas within San Joaquin County in order to be effective; and

**WHEREAS**, the Board finds and determines that a temporary cap on the fees charged to restaurants by firms operating third-party food ordering and delivery platforms will preserve health, safety, and public welfare by preserving the economic viability of county restaurants, which provide essential contributions to employment, retail commerce, and the economic vitality and character of county neighborhoods and communities; and

**WHEREAS**, an emergency regulation that is effective immediately is necessary to avoid the continuing and immediate threat to public peace, health, and safety, and to

protect life and property, as failure to adopt such an emergency regulation would result in county residents having limited or no access to prepared food during the period in which the Regional Stay at Home Order remains in effect, the avoidable exposure of county residents to COVID-19 in the absence of delivered prepared food, and permanent damage to vital county small businesses and their contributions to employment and economic vitality.

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN ORDAINS AS FOLLOWS:**

**RESTRICTION ON RESTAURANT DELIVERY AND PICK-UP FEES AND  
PROTECTION OF DELIVERY WORKER COMPENSATION**

**SECTION 2.           Scope/Jurisdiction.**

This Ordinance is adopted to limit the fees charged by Delivery Firms. The regulations in this Ordinance shall apply to all cities within San Joaquin County and all unincorporated areas of the County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that sets a lower limit on the fees that may be charged by Delivery Firms, such lower limit shall apply in place of this Ordinance within that city, but all transactions shall otherwise be governed by this Ordinance.

**SECTION 3.           Definitions.**

For purposes of this Ordinance:

- a. "Customer" shall mean any person or entity that places an Online Order.
- b. "Delivery Firm" shall mean any person or entity that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pick-up of food and beverages from a Restaurant using a Platform.
- c. "Delivery Worker" shall mean any person who is engaged by a Delivery Firm in any capacity to deliver an Online Order to a Customer.
- d. "Fee" shall mean any fee, charge, cost, or required payment.
- e. "Listing Services" shall mean services offered by a Delivery Firm to make it possible for a Customer to place an Online Order at a given Restaurant, including (i) listing the information and/or menu of a Restaurant, (ii) processing Online Orders, and (iii) arranging payment for Online Orders, including paying any credit card processing fees.
- f. "Online Order" shall mean any order for a set of consumer food or beverage items from a Restaurant placed through or facilitated by a Platform operated by a Delivery Firm.
- g. "Platform" shall mean any website, mobile application, or other internet service.

- h. "Promotional Services" shall mean services offered by a Delivery Firm to a Restaurant for the purposes of promoting, advertising, or otherwise strengthening the business or performance of the Restaurant that are independent of order and delivery services or Listing Services.
- i. "Purchase Price" shall mean the price of food or beverage items set by a Restaurant and listed on such Restaurant's menu, excluding any taxes, tips, gratuities, or other charges imposed by the Restaurant or any Delivery Service.
- j. "Restaurant" shall mean any restaurant, delicatessen, bakery, coffee shop, or other establishment that provides eat-in or carry-out food service of beverages or prepared food that is located within San Joaquin County, whether in a city or unincorporated area.

#### **SECTION 4. Cap on Fees; Compensation of Delivery Service Workers.**

##### **A. Maximum Fees Charged to Restaurants.**

- 1. A Delivery Firm shall not impose upon a Restaurant any Fee or combination of Fees that in total constitute more than fifteen percent (15%) of the Purchase Price for order and delivery of each Online Order that is delivered to a Customer by or at the direction of the Delivery Firm.
- 2. A Delivery Firm shall not impose upon a Restaurant any Fee or combination of Fees for non-delivery services, including Listing Services, that in total constitute more than ten percent (10%) of the Purchase Price for each Online Order that is not delivered to a Customer by or at the direction of the Delivery Firm.
- 3. Nothing in Paragraph (1) or Paragraph (2) of this Subsection shall prevent a Delivery Firm from selling Promotional Services to a Restaurant at prices negotiated between the Restaurant and the Delivery Firm, provided that a Delivery Firm shall not make the provision of services included in Paragraph (1) or Paragraph (2) contingent upon the purchase by a Restaurant of Promotional Services.
- 4. A Delivery Firm shall not limit or impede in any manner the ability of a Restaurant to determine such Restaurant's Purchase Prices.

##### **B. Compensation of Delivery Workers.**

- 1. A Delivery Firm shall not reduce the compensation per delivery of Online Orders, including any tip or gratuity, paid to any Delivery Worker for any

reason related to the implementation of this Ordinance.

2. A Delivery Firm shall pass on to Delivery Workers and shall not retain any tip or gratuity paid by a Customer to a Delivery Worker.
3. Except for a collective bargaining agreement provision, any waiver by a Delivery Worker of any or all rights under this Ordinance 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 Delivery Firm to a Delivery Worker to waive such Delivery Worker's rights under this Ordinance shall be unlawful.

C. Disclosures and Other Protections.

1. Upon written request by a Restaurant, a Delivery Firm shall promptly provide a written invoice specifying in reasonable detail all Fees charged to that Restaurant by the Delivery Firm for all Listing Services, Promotional Services, and Fees per Online Order.
2. Upon written request by a Delivery Worker, a Delivery Firm shall provide documentation of all compensation received by such Delivery Worker per Online Order, including any tips or gratuities.
3. A Delivery Firm shall not list, or cause to list, any Restaurant, or the menu of the Restaurant, on any website, mobile application or other internet service, without the written consent of the Restaurant.

**SECTION 5. Enforcement.**

- A. Notice and Request for Refund of Fees. A Restaurant or Delivery Worker claiming a violation of this Ordinance shall first provide written notice to the Delivery Firm of the specific provisions of this Ordinance, which is alleged to have been violated, and the facts to support the alleged violation. The Delivery Firm shall have ten (10) business days from the date of receipt of the written notice to cure any alleged violation by providing a refund of any unlawful Fees imposed upon a Restaurant, payment of any withheld compensation for a Delivery Worker, and ceasing to engage in conduct violating this Ordinance.
- B. Civil Action. If a Delivery Firm fails to cure an alleged violation of this Ordinance pursuant to Subsection (A) above, a Restaurant or Delivery Worker claiming a violation of this Chapter may bring an action in Superior Court of the State of California, San Joaquin County against the Delivery Firm and may be awarded:



1. all actual damages suffered;
2. treble damages in the case of any violation determined to be willful knowing, or reckless;
3. other legal or equitable relief the court may deem appropriate; and
4. reasonable attorneys' fees and costs to a Restaurant or Delivery Worker prevailing in such action.

If a Restaurant or Delivery Worker fails to prevail against a Delivery Firm in an action to enforce the provisions of this Ordinance, a court may award reasonable attorneys' fees and costs to the Food Delivery Platform upon a determination by the court that the enforcement action was frivolous.

**SECTION 6. Implementation and Clarification.**

- A. The County Director of the Department of Environmental Health or designee is authorized to issue any necessary guidance or rules consistent with this Ordinance necessary for its implementation, subject to approval by County Counsel as to form and legality.
- B. Any guidance or rules issued by the County Director of the Department of Environmental Health or designee related to this Ordinance shall be published at a central location and made available electronically to the public.

**SECTION 7. CEQA Not Applicable.**

This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly).

**SECTION 8. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be held invalid.

**SECTION 9. Effective Date.**

This Ordinance shall take effect immediately upon adoption by a four-fifths vote of the

Board of Supervisors as an Urgency Ordinance. Section 3(A) shall become operative at 12:01 AM on December 19, 2020. This is based on the Board of Supervisors finding that this Ordinance is adopted in compliance with Government Code section 25123(d), that it is necessary for the protection of the public peace, health, or safety for the reasons contained in the findings set forth in the Findings for this Ordinance, which are incorporated by reference herein, and that it is necessary to prevent Santa Clara County from suffering potentially irreversible damage to the health of county residents from the spread of COVID-19 and to the economy of the county through the failure of vital businesses that affect the food supply.

**SECTION 10.      Expiration; Repeal.**

Unless earlier repealed, modified, or extended by the Board, this Ordinance shall expire and be automatically repealed upon the earlier of (i) the date that the County terminates the declared Local Health Emergency related to the spread of COVID-19 or (ii) the date upon which all applicable public health mandates allow all Restaurants in the county to seat customers at their indoor dining locations at 100% of the capacity of such dining locations.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this \_\_\_\_ of \_\_\_\_ to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
TOM PATTI  
Chairman, Board of Supervisors  
County of San Joaquin  
State of California

ATTEST: RACHÉL DeBORD  
Clerk of the Board of Supervisors  
County of San Joaquin  
State of California

By: \_\_\_\_\_  
Deputy Clerk

