



City of San Leandro

Meeting Date: November 16, 2020

Staff Report

File Number: 20-509

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.J.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a City of San Leandro City Council Resolution Approving Amendment No. 1 to the Declaration of the Director of Emergency Services of the City of San Leandro Establishing a Temporary Limit of 15% on Fees Charged by Third Party Food Delivery Companies to Support Restaurants in San Leandro During the COVID-19 Pandemic

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City of San Leandro City Council approve Amendment No. 1 to the Declaration of the Director of Emergency Services, amending the timeframe of the temporary limit of 15% on fees charged by third party food delivery companies, which will continue through the local state of emergency.

BACKGROUND AND ANALYSIS

Following the initiation of the Alameda County Shelter-in-Place Order on March 17, 2020, many San Leandro businesses, including restaurants, cafés, and other food and beverage businesses, were required to be closed, or limited to pick up service only, in order to protect employees and customers and limit the spread of the COVID-19 virus. The orders' restrictions devastated local businesses, particularly small service, food, and other direct customer serving businesses.

During this time, online ordering and delivery of food has become a critical lifeline to many restaurants and food businesses. In order to assist with the ordering and delivery process, many food businesses utilize third party food delivery companies, such as DoorDash, GrubHub, Postmates, and UberEats. These food delivery services are vital to our residents and businesses alike. However, many businesses find that the delivery company fees, which normally can be over 30%, are onerous and make it hard for them to cover their costs and make any profit.

On July 9, 2020, the Director of Emergency Services of the City of San Leandro issued a declaration establishing a temporary limit of 15% on fees charged by third-party food delivery companies ("Declaration"). Such Declaration was established to be effective until restaurants were permitted to resume dine-in service, or the termination of the local state of emergency, whichever occurred first.

On October 13, 2020, the State of California announced that Alameda County entered the Orange Tier of the state's Blueprint for a Safer Economy due to decreased COVID-19 case and positivity rates. On October 23, 2020, a revised Alameda County Shelter-in-Place Order became effective that allows for expanded business and recreational activities, including limited indoor dining, up to 25% capacity or less than 100 people.

While the Shelter-in-Place Order was revised to permit limited indoor dining on October 23, 2020, it is expected that restaurants and customers will continue to rely heavily on third-party delivery services for the foreseeable future. It is expected that many patrons will continue to prefer to utilize food delivery services rather than in-person dining due to individual comfort level and safety concerns, as well as changes in habit. It is unclear how quickly restaurant patrons will return to restaurant dining and restaurants may continue to see a significant loss of revenue for an ongoing period of time.

As restaurants return to modified, lower capacity service, they must take on the increased costs and logistics of creating new, physically distanced dining areas and implementing increased training and sanitation measures. Additionally, the limited amount of indoor seating (and limited or no outdoor seating for most) continues to significantly limit restaurants' ability to cover their baseline operating and staff costs, which were designed for full capacity operations. Many restaurants were already operating with thin margins prior to the pandemic and are struggling to continue operations and cover current and past rent.

It is in the interest of public health and welfare that restaurants continue to operate and not close due to the inability to cover their fixed costs. Restaurants provide a vital source of food for those who cannot prepare their own, a source of employment for many, and contribute to the vitality of the City. It is expected that the need for limited fees from third-party delivery companies will continue until restaurants are able to resume full, normal operations, and the local state of emergency has ended, and customers feel comfortable resuming more 'normal' dining-out habits.

As such, the Declaration of the Director of Emergency Services has been amended to revise the date at which the limit on third-party delivery fees ends. Rather than ending at the sooner of indoor dining being permitted, or the end of the local state of emergency, the declaration has been amended to continue through the full local state of emergency. This timeframe is generally consistent with similar declarations in neighboring cities, including Hayward, Fremont and Dublin.

Per the declaration, the change to the ending of the temporary limit went into effect on October 23, 2020. The Director of Emergency Services recommends that the City Council confirm the Director of Emergency Services' declaration in conformance with emergency procedures.

ATTACHMENT(S)

Attachment to Resolution

- Declaration

PREPARED BY: Katie Bowman, Economic Development Manager



City of San Leandro

Meeting Date: November 16, 2020

Resolution - Council

File Number: 20-512

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: RESOLUTION of the City of San Leandro City Council Approving Amendment No. 1 to the Declaration of the Director of Emergency Services of the City of San Leandro Establishing a Temporary Limit of 15% on Fees Charged by Third Party Food Delivery Companies to Support Restaurants in San Leandro During the COVID-19 Pandemic

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus, “SARS-CoV-2,” and the disease it causes which has been named “coronavirus disease 2019,” abbreviated COVID- 19, (‘COVID-19’); and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID- 19; 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 and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, the City Council of the City of San Leandro (“City”) ratified the Director of Emergency Services’ Proclamation of Local Emergency due to the outbreak of a novel coronavirus in the City (COVID-19); and

WHEREAS, pursuant to California Government Code Section 8634 and San Leandro Municipal Code Section 3-4-130(a), the Director of Emergency Services is empowered upon the proclamation of a local emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, on March 16, 2020, the Health Officer of Alameda County issued an Order directing all individuals to shelter in place and requiring essential businesses to implement Social Distancing Protocols ('Shelter In Place Order'); and

WHEREAS, the Health Officer of the County of Alameda has issued revised Shelter In Place Orders on March 31, 2020, May 18, 2020, and June 5, 2020, extending restrictions on activities and requiring individuals to shelter at home, allowing for certain specified activities; and

WHEREAS, on June 18, 2020 the Health Officer of Alameda County revised the June 5, 2020 Order, effective June 19, 2020, to allow limited outdoor restaurant dining as well as other specified activities, but not allowing for any indoor dining; and

WHEREAS, on October 21, 2020 the Health Officer of Alameda County revised the June 5, 2020 Order, effective October 23, 2020, to allow indoor restaurant dining as well as other specified activities, with indoor dining limited to 25% capacity or 100 people, whichever is less; and

WHEREAS, to reduce the spread of the virus and protect the public health, the Shelter In Place Order limits the indoor dining capacity of restaurants in the County and places strict operating procedures and safety measures on such dining; and

WHEREAS, the City of San Leandro, pursuant to its police powers, has broad authority to maintain public peace, health, and safety of its community and preserve quality of life; and

WHEREAS, in adopting the Emergency Declaration, the Director of Emergency Services took action pursuant to his authority under Government Code Section 8634 and San Leandro Municipal Code Section 3-4-130(a); and

WHEREAS, the Declaration was issued because of the propensity of the virus to spread person-to-person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time; and

WHEREAS, restricting restaurant operations has placed a sudden and severe financial strain on many restaurants, particularly those that are small businesses that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis; and

WHEREAS, the limited amount of indoor seating (and limited or no outdoor seating for most) and the need to implement complex and costly safety measures and staff training continues to significantly limit restaurants' ability to cover their operating costs, staff costs, and rent, which were designed for full capacity operations; and

WHEREAS, it is in the public interest to take action to maximize restaurant revenue from the takeout and delivery orders that, with the exception of some limited dining operations, are currently the sole source of revenue for these small businesses to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality within the City; and

WHEREAS, many consumers use third party food delivery companies to place orders with restaurants for delivery and takeout, and these third party delivery companies charge restaurants fees; service agreements between some restaurants and third party delivery companies provide that the company charges the restaurant 30% or more of the purchase price per order; and

WHEREAS, restaurants, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third party delivery companies given the high market saturation of these companies, and the dire financial straits small business restaurants are facing during this period of emergency; and

WHEREAS, given that only a few companies in the marketplace provide such delivery services, small restaurants that do not operate their own delivery service resort to contracting with third party food delivery companies as a means to compete in the marketplace; and

WHEREAS, if retail food providers close as a result of high fees from third party food delivery companies, their workers will lose employment, thereby affecting their ability to provide for their families; and

WHEREAS, during the COVID-19 emergency, many residents rely on food delivery and may not be able to receive delivered food if the fees charged by third party food delivery companies are too high; and

WHEREAS, limiting the per-order fees at 15% will accomplish the legitimate public purpose of ensuring the continued operation of local restaurants during the period of emergency; the 15% limit is based on the findings and experience of other California cities that have already adopted 15% fee limits as reasonable emergency regulations; and

WHEREAS, the Declaration is temporary in nature and only intended to promote stability and safe and healthy operations within the restaurant and food markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable business closures thereby serving the public peace, health, safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus.

NOW, THEREFORE THE CITY OF SAN LEANDRO CITY COUNCIL RESOLVES that the above recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED that it is hereby declared and ordered that the Amendment Number One to the Declaration of the Director of Emergency Services of the City of San Leandro amending the time frame for the temporary limit of 15% on fees charged by third party food delivery companies to support restaurants in San Leandro during the COVID-19 pandemic, issued by the Director of Emergency Services, is hereby confirmed.

BE IT FURTHER RESOLVED by the City Council that the temporary limit of 15% on fees charged by third party food delivery companies shall be in effect until the end of the local state of emergency.

BE IT FURTHER RESOLVED by the City Council that:

1. The Declaration of the Director of Emergency Services of the City of San Leandro establishes appropriate regulations to address the temporary limit of 15% on fees charged by third party food delivery companies.

2. The Declaration of the Director of Emergency Services of the City of San Leandro will not be detrimental to the public interest, health, safety, or welfare of the City.

3. The Declaration of the Director of Emergency Services of the City of San Leandro conforms with the relevant and applicable provisions of the California Government Code and the San Leandro Municipal Code authorizing the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property.

4. During the existence of the declared local emergency, the powers, functions, and duties of the City Manager, acting as Director of Emergency Services, and the emergency organization of this City, shall be those prescribed by State law and by ordinances and resolutions of the City of San Leandro.

**AMENDMENT NO. 1 TO THE
DECLARATION OF THE DIRECTOR OF EMERGENCY
SERVICES OF THE CITY OF SAN LEANDRO
ESTABLISHING A TEMPORARY LIMIT OF 15% ON
FEES CHARGED BY THIRD PARTY DELIVERY
COMPANIES TO SUPPORT RESTAURANTS IN SAN
LEANDRO DURING THE COVID-19 PANDEMIC**

The Declaration of the Director of Emergency Services of the City of San Leandro Establishing a Temporary Limit of 15% on Fees Charged by Third Party Delivery Companies to Support Restaurants in San Leandro During the COVID-19 Pandemic, dated July 9, 2020 is hereby administratively amended pursuant to the authority of Jeff Kay, the Director of Emergency Services.

The conditions and limitations of the temporary limit on fees shall be amended as follows:

This language in Section 4:

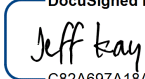
This order shall take effect on July 13, 2020 and shall terminate at such time as the Health Officer of Alameda County amends or terminates the order prohibiting restaurants from offering dine-in service or that prohibition otherwise expires, so that dine-in service is then allowed, or the termination of the local state of emergency, whichever occurs first; or as otherwise terminated, modified or extended by the San Leandro City Council. For the purposes of this order, the restoration of outdoor-only dining does not constitute the restoration of dine-in service.

Shall be replaced with:

This order shall take effect on July 13, 2020 and shall terminate following the termination of the local state of emergency.

NOW, THEREFORE, I, Jeff Kay, as Director of Emergency Services for the City of San Leandro, declare that this regulation shall become effective as of 12:01 a.m. on October 23, 2020 and remain in effect until the termination of the local state of emergency.

October 23, 2020
Date

DocuSigned by:

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Jeff Kay
Director of Emergency Services

Certificate Of Completion

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Subject: Please DocuSign: Amd 1 to Declaration - Delivery Fee Cap.docx	
Source Envelope:	
Document Pages: 2	Signatures: 1
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
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	lhalle@sanleandro.org
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Jeff Kay
 jkay@sanleandro.org
 Security Level: Email, Account Authentication (None)

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Kelly Clancy kclancy@sanleandro.org Deputy City Clerk City of San Leandro Security Level: Email, Account Authentication (None)	<div style="border: 2px solid blue; padding: 5px; display: inline-block;">COPIED</div>	Sent: 10/23/2020 1:24:06 PM
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Envelope Summary Events	Status	Timestamps
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	10/23/2020 3:03:03 PM
Completed	Security Checked	10/23/2020 3:03:03 PM

Payment Events	Status	Timestamps
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