



**COVID-19 Emergency Declaration – City of Santa Cruz Executive Order No. 2020-06
(Establishing a Temporary Limit of 15% on Commissions Charged by Third-Party Food Delivery
Companies to Support Santa Cruz Restaurants During the COVID-19 Pandemic)**

- A. WHEREAS, in light of the current COVID-19 pandemic, the Santa Cruz City Council declared a local health emergency re: Coronavirus (COVID-19) by Resolution No. NS-29,640 on March 10, 2020; and
- B. WHEREAS, under Santa Cruz Municipal Code (SCMC) § 2.20.030, the City Manager serves as the Emergency Services Director; and
- C. WHEREAS, in the event of an emergency declaration, as the Emergency Services Director, the City Manager has the authority to take various actions in the City’s interest, including making and issuing “rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency” (SCMC § 2.20.040(1)) and requiring “emergency services of any city officer or employee”[.] (SCMC§ 2.20.040(3)); and
- D. WHEREAS, as the Emergency Services Director, the City Manager also has the authority to “[e]xecute all of his or her ordinary powers as a city officer, all of the special powers conferred upon him or her by this chapter or by resolution adopted pursuant thereto, all powers conferred upon him or her by any statute, agreement approved by the city council, or by any other lawful authority, and in conformity with Section 38791 of the Government Code, to exercise complete authority over the city and to exercise all police power vested in the city by the Constitution and general laws.” SCMC 2.20.040(5); and
- E. WHEREAS, On March 19, 2020, the Governor issued Executive Order N-33-20 and the California Public Health Officer issued a corresponding order requiring people to stay home except as needed subject to certain exceptions; and
- F. WHEREAS, as of today’s date, the County of Santa Cruz’s Health Officer has issued two “Shelter In Place” orders; the first is dated March 16, 2020, and the second and currently operative order is dated March 31, 2020. Furthermore, the County of Santa Cruz issued a “Supplemental Order,” dated April 8, 2020.
- G. WHEREAS, the March 31, 2020 County “Shelter in Place” order requires most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses, through May 3, 2020; and

- H. WHEREAS, this order and the previous orders issued during this emergency have all been 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
- I. WHEREAS, to reduce the spread of the virus and protect the public health, the Shelter In Place Order prohibits restaurants in the City from offering dine-in service, limiting restaurants to delivery and takeout offerings only; and
- J. WHEREAS, restricting restaurants to takeout and delivery offerings only 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
- K. WHEREAS, the National Restaurant Association has reported that, due to the COVID-19 pandemic and resultant Shelter In Place orders, at least three percent (3%) of restaurants nationwide have already permanently closed, and anticipates that this closure rate could rise above ten percent (10%) before this crisis is over; and
- L. WHEREAS, it is in the public interest to take action to maximize restaurant revenue from the takeout and delivery orders that 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 in the City; and
- M. WHEREAS, many consumers use third-party applications and websites to place orders with restaurants for delivery and takeout, and these third-party platforms charge restaurants fees; service agreements between some restaurants and third-party platforms provide that the platform charges the restaurant 10% of the purchase price per order, while some agreements provide for higher per-order fees; and
- N. WHEREAS, restaurants, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third-party platforms, given the high market saturation of third-party platforms, and the dire financial straits small business restaurants are facing in this COVID-19 emergency; and
- O. WHEREAS, capping the per-order fees at 15% will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms, as this fee is recognized as reasonable, and third-party platforms continue to earn significant profits.

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NOW, THEREFORE, I, MARTIN BERNAL, City Manager, in accordance with the authority provided to me as Emergency Services Director under the Santa Cruz Municipal Code, and in particular SCMC Chapter 2.20, hereby issue the following Order, to become effective immediately.

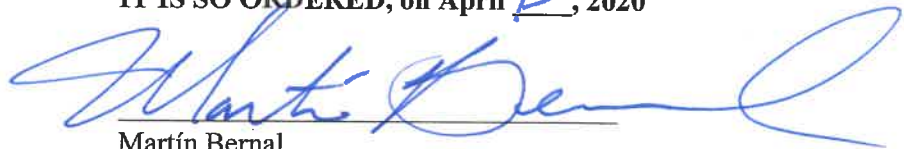
IT IS HEREBY ORDERED THAT:

1. It shall be unlawful for a third-party food delivery service to charge a covered establishment a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order.
2. For purposes of this order, the following definitions apply:
 - a. "Covered establishment" means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City. Covered establishment shall not include any restaurant that meets the definition of a formula restaurant set forth below.
 - b. "Online order" means an order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup within the City.
 - c. "Purchase price" means the menu price of an online order. Such term therefore excludes taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.
 - d. Formula Restaurant means a type of restaurant establishment that has eleven or more other locations in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the eleven establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.
 - e. "Third-party food delivery service" means any website, mobile application or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, no fewer than 20 separately owned and operated food service establishments.
3. Any City employee authorized by Santa Cruz Municipal Code Section 4.02.021 or identified in the Director's April 8, 2020 Executive Order Director No. 2020-05 is authorized to implement this order and issue any necessary guidance or rules consistent with this order.
4. This order shall take effect on April 16, 2020 and shall terminate at such time as the Health Officer 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.

5. A third-party food delivery service shall not be found in violation of this order if between April 16, 2020 and April 23, 2020, it imposes a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order, provided it refunds the portion of the fee that exceeds 15% of the purchase price to the covered establishment prior to April 30, 2020.
6. If a third-party food delivery service charges a covered establishment fees that violate this order, the covered establishment shall provide written notice to the third-party food delivery service requesting a refund within seven days. If the third-party food delivery service does not provide the refund requested after seven days or the third-party food delivery service continues to charge fees in violation of this order after the initial notice and seven-day cure period, a covered establishment may enforce this order by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of Santa Cruz, its departments, officer, or employees.

IT IS SO ORDERED, on April B, 2020



Martín Bernal
City Manager / Emergency Services Director