



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 1
File #: 20-877

Board Meeting Date: 11/17/2020

Special Notice / Hearing:None
Vote Required:Majority

To: Honorable Board of Supervisors
From: Supervisor David Pine, District 1
Supervisor Carole Groom, District 2
Subject: Emergency Regulation to Cap Fees Charged by Food Delivery Services

RECOMMENDATION:

Adopt an emergency regulation of the County of San Mateo to establish a temporary cap on commissions and fees charged by third-party food delivery services on local restaurants during the time period in which the proclamation of local emergency related to COVID-19 remains in effect.

BACKGROUND:

Over the past several months, numerous California jurisdictions have adopted local regulations that cap the fees that third-party food delivery service companies (e.g., Uber Eats, Grubhub, and DoorDash) are permitted to charge restaurants during the pendency of the COVID-19 state of emergency. Limitations on indoor dining have forced many restaurants to rely to an increased extent on takeout and delivery for much of their business, and fees charged by third party delivery services have cut significantly into many restaurants' revenue during a time when many restaurants struggle to remain viable. Keeping restaurants in business is important for the local economy, and robust restaurant delivery options ensure that people who are homebound during this pandemic can get fresh meals brought to their doors.

Absent a cap on delivery fees, third-party delivery service companies regularly charge restaurants up to 30 percent per order to use their online services. For example, Uber Eats imposes thirty percent of the cost of an order fee for delivery using Uber drivers, and charges fifteen percent of the cost of an order if a customer orders through the Uber Eats platform and picks up the order directly from the restaurant. Fees charged by Grubhub appear to be of a similar amount. A 2018 pricing overview indicates that restaurants are charged a twenty percent marketing commission, a ten percent delivery commission, and a credit card processing fee, for a total fee of approximately 31.5 percent for each order. Finally, while DoorDash does not make its standard restaurant fees public, publicly available information indicates that if a customer orders via the "DashPass" subscription service, the restaurant is charged a fee equal to twenty eight percent of the cost of the order.

DISCUSSION:

As noted above, in response to the COVID-19 emergency, many jurisdictions throughout the State and the country have adopted temporary measures to limit the fees imposed by third-party food delivery services. They have done so as a means of promoting stability and safe and healthy operations within the restaurant sector during the COVID-19 state of emergency and to minimize closures of viable restaurant businesses, thereby helping to address the COVID-19 emergency and serving the public peace, health, safety, and public welfare and preserving jobs and economic vitality.

The proposed emergency regulation would cap fees charged by third-party food delivery services operating throughout San Mateo County. The key provisions of the proposed emergency regulation are the following:

- Third-party food delivery services would be authorized to charge no more than fifteen percent (15%) of the order amount for any order delivery.
- Third-party food delivery services would be authorized to charge no more than ten percent (10%) of the order amount for any order placed through the services that are picked up by customers.
- Third-party food delivery services may not limit the ability of any restaurant to determine the price for any item listed on the restaurant's menu, nor list a restaurant on its websites or any application without the restaurant's written consent.
- Third-party food delivery services must offer customers the option to tip restaurant and/or the delivery driver.
- Third-party food delivery services must not reduce driver pay as a result of the regulation.
- Third-party food delivery services must provide customers with an itemized breakdown of all charges and fees.
- Restaurants alleging a violation of the emergency regulation may seek to enforce it through a private legal action filed in superior court and prevailing parties may recover reasonable attorney's fees.
- The emergency regulation would apply County-wide, and the cap would apply to restaurants located in both the incorporated and unincorporated areas of San Mateo County.
- The emergency regulation would remain in effect until June 30, 2021, or until the proclamation of local emergency related to COVID-19 ends, whichever is earlier.

Numerous Bay Area jurisdictions have adopted similar fee caps, including South San Francisco, Millbrae, San Francisco, Berkeley, Fremont, San Leandro, and Marin County as well as cities around the country, such as Seattle, Los Angeles, and New York City.

The proposed emergency regulation is consistent with the fee caps already in place in Millbrae and South San Francisco, to promote consistency across the County. The regulation also reflects input received from local restaurants and third-party food delivery service companies.

FISCAL IMPACT:

There is no fiscal impact associated with this emergency regulation, with the exception of staff time to educate Retail Food Establishments and Third-Party Delivery Services.