

**Posted: 12-21-20**  
**Effective: 12-17-20**

**ORDINANCE NO. O2M20-4781**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA TO ESTABLISH A TEMPORARY LIMIT ON THE CHARGES IMPOSED BY THIRD-PARTY DELIVERY SERVICES ON RETAIL FOOD ESTABLISHMENTS DURING THE COVID-19 EPIDEMIC AND FOR 90 DAYS AFTER THE COUNTY/STATE ORDER PROHIBITING ON-PREMISES DINING IS LIFTED**

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency within the State of California ("State") due to the threat posed by Novel Coronavirus ("COVID-19");

**WHEREAS**, on March 4, 2020, the Los Angeles County Health Officer issued a Declaration of Local Health Emergency due to the introduction of COVID-19 cases to Los Angeles County;

**WHEREAS**, on March 4, 2020, Los Angeles County Board of Supervisors ("Board") concurred and issued a Proclamation ("Proclamation") declaring a local emergency within the County of Los Angeles regarding the imminent spread of COVID-19;

**WHEREAS**, on March 19, 2020 Governor Newsom issued an Executive Order that requires all persons to remain at home to the extent possible and requires all non-essential businesses to be closed;

**WHEREAS**, on March 21, 2020 the Los Angeles County Department of Public Health issued a clarifying Safer at Home order, requiring all persons to remain at home to the extent possible, unless engaged in essential businesses;

**WHEREAS**, the Governor issued an order establishing tiers that allowed counties to gradually re-open businesses, services and venues over time through a reduction in transmission rates;

**WHEREAS**, in light of worsening numbers, the Governor issued a subsequent order dividing the State into five regions, and dramatically limited businesses, services and activities based upon available intensive care hospital space;

**WHEREAS**, restaurants have been limited to only providing takeout and delivery service through at least the end of December and possibly longer under the State order. 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. Further, the cost of acquiring ingredients and supplies has also increased because of the COVID-19 crisis;

**WHEREAS**, many consumers and retail food establishments use third-party food delivery services and due to the high fees imposed by third-party food delivery services (ranging from 12

to 30 percent), must increase food prices to stay in business. Residents who rely on food delivery may not be able to absorb increased food prices. Also, some retail food establishments being charged high fees struggle to remain financially viable. Restaurants, particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third-party food delivery services given the high market saturation of third-party food delivery services and the dire financial straits small business restaurants are facing in the COVID-19 crisis. If these retail food establishments close, their workers will lose employment, which affects their ability to feed and shelter their families;

**WHEREAS**, the Los Angeles County Department of Public Health has issued an order prohibiting dine-in and outdoor dining at restaurants, which order was overturned, but is still subject to appeal by Los Angeles County. If successfully appealed, that order would again prohibit any dining at restaurants once the State order is lifted;

**WHEREAS**, California Government Code section 8630 et seq. authorize the City to declare a local emergency, which the City Council did at an emergency meeting on March 16, 2020;

**WHEREAS**, California Government Code sections 8634, 36934 and 36937 authorize the City Council to take action by ordinance to take effect immediately for the preservation of the public peace, health or safety when adopted by a four-fifths vote of the City Council;

**WHEREAS**, during this period when dining is restricted, for the reasons set forth above it is in the interest of protecting the public health and safety to limit third-party food delivery services and to do so immediately, given the strains on restaurants and customers, as well as the likelihood that dining limitations are likely to extend beyond the time that many restaurants can remain in business.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALHAMBRA DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Definitions:

a. "Covered establishment" means a retail food establishment that offers, in a single commercial transaction over the internet, whether directly or through third-party food delivery services, the sale and same-day delivery of food to customers from one or more retail locations within the City.

b. "Customer" means any person, firm, or association who makes use of a third-party food delivery service for the purpose of obtaining food from a retail food establishment.

c. "Delivery fee" means a fee charged by a third-party food delivery service for providing a retail food establishment with a service that delivers food from such establishment to customers. The term does not include any other fee that may be charged by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food service establishment on the third-party food delivery service platform or fees related to processing the online order, including but not limited to, service fees, fees for facilitating customer pick-up, and credit card processing fees.

d. "Food" means all articles and substances used for food and drink, confectionary or condiment whether simple or compound, and all ingredients and components used in the preparation thereof.

e. "Online order" means any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery service, including a telephone order.

f. "Purchase price" means the total price of the items contained in an online order that are listed on the menu of the retail food establishment where such order is placed. Such term does not include taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

g. "Retail food establishment" means and includes any restaurant, delicatessen, bakery, coffee shop, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food or beverages.

h. "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 sameday pickup of food and beverages from, no fewer than 20 food service establishments located in the city that are owned and operated by different persons.

i. "Worker" means any person working for a third-party food delivery service.

**SECTION 2.** Fee Limits. It shall be unlawful for a third-party food delivery service to charge a covered establishment:

a. Any combination of fees, commissions or costs that total more than 20 percent of the purchase price of each online order. Fees, commissions or costs includes a delivery fee.

b. A delivery fee that totals more than 15 percent of the purchase price of an online order;

c. Any fee, commission, or cost other than as permitted in subdivisions (a) and (b), above.

**SECTION 3.** Reporting of Fees. The third-party food delivery service shall disclose to the customer an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to, the following:

a. The purchase price of the food and beverages at the cost listed on the covered establishment's menu;

b. Each and every fee, commission, or cost charged to the covered establishment, including any delivery fee.

c. Each and every fee, commission, or cost charged to the customer by the third-party food delivery service; and

d. Any tip or gratuity that will be paid to the person delivering the food or beverages.

e. None of the fees, commissions, or costs in subdivisions (a) through (d) above, may be combined together.

**SECTION 4.** Protection of Gratuities. It shall be unlawful for a third-party food delivery service to reduce the compensation, including any tip or gratuity, paid to any workers as a result of the prohibitions in this Ordinance. Any tip or gratuity shall be paid by the third-party food delivery service, in its entirety, to the person delivering the food or beverages.

**SECTION 5.** Grace Period. A third-party food delivery service shall not be found in violation of this Ordinance for the first seven days after its effective date, if it imposes a fee in excess of the fee limit in Section 2, provided it refunds the excess fee to the covered establishment no later than 14 days after the effective date of this Ordinance.

**SECTION 6.** Penalties and Enforcement.

a. In addition to any existing legal remedies, if a third-party food delivery service charges a covered establishment fees that violate this Ordinance, 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 Ordinance after the initial notice and seven-day cure period, a covered establishment may enforce this Ordinance 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.

b. Violations under this Ordinance shall accrue on a daily basis for each day and for each covered establishment charged a fee in violation of this Sixth Supplement.

c. Notwithstanding any provision of this Ordinance, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this Ordinance.

**SECTION 7.** This Ordinance shall become effective immediately, and shall terminate 90 days after the County and State allow restaurants to offer dine-in service, without limitation, or upon the termination of the COVID-19 local emergency, whichever comes first. If the restrictions are lifted, but then reimposed within such 90 day period, this Ordinance shall remain in effect until a full 90 days without restrictions have transpired.

**SECTION 8.** If any provision of this Ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this Ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this Ordinance are declared to be severable. This Ordinance would have been adopted and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

**SECTION 9.** The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary in the manner required by law.

**SECTION 10.** For the reasons set forth above in the recitals, this Ordinance is an urgency ordinance and shall take effect immediately upon adoption by a 4/5 vote of the City Council, due to the immediate need to protect the public health, safety and welfare.

Signed and approved this 17<sup>th</sup> day of December, 2020.

/s/ Sasha Renée Pérez  
Sasha Renée Pérez, Mayor

Attest:

/s/ Lauren Myles  
Lauren Myles, City Clerk

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Alhambra at its meeting held on the 17<sup>th</sup> day of December, 2020 by the following vote:

AYES: LEE, MAZA, MALONEY, ANDRADE-STADLER, PÉREZ  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

/s/ Lauren Myles  
Lauren Myles, City Clerk