

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA
RATIFYING THE SIXTH SUPPLEMENT TO DECLARATION OF LOCAL
EMERGENCY PLACING A TEMPORARY CAP ON COMMISSIONS
CHARGED BY THIRD-PARTY DELIVERY SERVICE PROVIDERS**

WHEREAS, on July 20, 2020, the City Manager issued a Sixth Supplement to the Declaration of a Local Emergency, a signed version of which is attached to this resolution as Exhibit A, and the City Council has received a report on the conditions described therein; and

WHEREAS, Pasadena Municipal Code Section 2.370.080 requires the City Council to ratify the proclamation within seven days thereafter, or the proclamation shall have no further force or effect.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena as follows:

1. That the Sixth Supplement to the Declaration of a Local Emergency is hereby ratified and confirmed by the City Council; and
2. That said local emergency shall be deemed to continue to exist until its termination is proclaimed by the City Council of the City of Pasadena.

Adopted at the special meeting of the City Council on the ____ day of July,
2020, by the following vote:

AYES:


NOES:

ABSENT:

ABSTAIN:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Javan N. Rad
Chief Assistant City Attorney

0000162257C031

Exhibit A

SIXTH SUPPLEMENT TO DECLARATION OF LOCAL EMERGENCY
PLACING A TEMPORARY CAP ON COMMISSIONS CHARGED BY THIRD-
PARTY DELIVERY SERVICE PROVIDERS

By virtue of the authority vested in me as Director of Disaster Emergency Services, and pursuant to Chapter 2.370 of the Pasadena Municipal Code, specifically Section 2.370.080, I hereby find that:

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

On March 4, 2020, the Health Officer declared the existence of a local health emergency in Pasadena, and on March 9, 2020, the City Council adopted a resolution ratifying the Health Officer’s declaration;

On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19;

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 broader spread of COVID-19;

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;

On March 17, 2020, the City Council ratified the declaration of a local emergency to allow the City of Pasadena to address the COVID-19 pandemic;

On March 19, 2020, the Governor issued Executive Order N-33-20, directing all California residents to stay at home indefinitely except for workings in the 16 critical infrastructure sectors identified by the Department of Homeland Security Cybersecurity and Infrastructure Security (CISA) who are required to maintain continuity of operations for these vital systems and facilities;

On March 19, 2020, the Health Officer issued a Safer at Home Order for Control of COVID-19, which has since been revised from time to time, most recently, on May 26, 2020;

The Centers for Disease Control and Prevention, the California Department of Health, and the Los Angeles County Department of Public Health have all issued recommendations including but not limited to social distancing, staying home if sick,

canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus;

The California Public Health Officer has articulated a four-stage framework for re-opening – which includes provisions for the re-opening of lower-risk businesses and spaces (“Stage Two”), to be followed by the re-opening of higher-risk businesses and spaces (“Stage Three”) – to allow Californians to gradually resume various activities while continuing to preserve public health in the face of COVID-19;

The threat posed by COVID-19 is dynamic and ever-changing, and the City of Pasadena’s response to COVID-19 should likewise retain the ability to be dynamic and flexible;

It is essential that the spread of COVID-19 be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety;

To reduce the spread of COVID-19 and protect the public health, Pasadena restaurants are presently prohibited from offering dine-in service, limiting restaurants to delivery and takeout offerings only;

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;

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 restaurant to survive this crisis and remain as sources of employment and neighborhood vitality in the City;

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 that range between 12 percent to 30 percent of the purchase price per order and other transaction fees;

The cost of acquiring ingredients and supplies has also increased, because of the COVID-19 crisis;

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 businesses restaurants are facing in the COVID-19 crisis; and

Capping the per-order fees in the amounts set forth herein 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 will continue to be profitable, as this fee is recognized as reasonable, and third-party platforms will continue to be profitable;

Government Code Section 8634 empowers the City to promulgate orders and regulations necessary to provide for the protection of life and property during a local emergency;

In the interest of public health and safety, as affected by the emergency caused by the COVID-19 pandemic, it is necessary to exercise my authority to issue this regulation related to the protection of life and property;

NOW THEREFORE, I HEREBY ISSUE the following Sixth Supplement to the declaration of a local emergency to become effective immediately, subject to ratification as soon as practicable by the City Council.

IT IS HEREBY ORDERED THAT:

1. **Definitions.** For purposes of this Sixth Supplement, 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 services, the sale and same-day delivery of food to customers from one or more retail locations within the City.
 - b. “Delivery fee” means a fee charged by a third-party food delivery service for providing a food service 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.
 - c. “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.
 - d. “Purchase price” means the total price of the items contained in an online order that are listed on the menu of the food service 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.
 - e. “Restaurant” means and includes any restaurant, as that term is used in Section 17.80.020 of the Pasadena Zoning Code.
 - f. “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 food service establishments located in the city that are owned and operated by different persons.

2. **Fee Limits.**
 - a. It shall be unlawful for a third-party delivery service to charge a covered establishment a delivery fee that totals more than 15 percent of the purchase price of an online order.
3. **Reporting of Fees.** Each receipt generated by the third-party delivery service for either the customer or the covered establishment shall clearly state the fees charged, the gratuities paid, and any discounts offered by the covered establishment.
4. **Direct Gratuities to Covered Establishments.** At the discretion of the covered establishment, third-party food delivery services shall provide on their platform a mechanism for customers to provide gratuities to covered establishments. Those payments shall be provided to the covered establishment in full and at the same time as the third party food delivery service provides other payments to the covered establishment.
5. **Grace Period.** A third-party food delivery service shall not be found in violation of this Sixth Supplement 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 Sixth Supplement.
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 Sixth Supplement, 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 Sixth Supplement after the initial notice and seven-day cure period, a covered establishment may enforce this Sixth Supplement 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 Sixth Supplement shall accrue on a daily basis for each day and for each covered establishment charged a fee in violation of this Sixth Supplement.
7. This Sixth Supplement shall become effective immediately, and shall terminate at such time as the Pasadena Health Officer allows restaurants to offer dine-in service, without limitation, or upon the termination of the COVID-19 local emergency, whichever comes first.
8. If any provision of this Sixth Supplement is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this chapter which can be implemented without the invalid provisions, and to this end, the provisions of this chapter are declared to be severable. This declaration would have been adopted and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

9. This supplements and does not supersede any prior local emergencies or local public health emergencies related to COVID-19.

I FURTHER DIRECT that this Sixth Supplement shall take effect immediately and that widespread publicity and notice shall be given of said declaration through the most feasible and adequate means of disseminating such notice throughout the City.

Dated: July ____, 2020, at Pasadena, California.

By:

Steve Mermell
City Manager
Director of Disaster Emergency Services

Attest:

Mark Jomsky, CMC
City Clerk