

ORDINANCE NO. 21-1140U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD TO AMEND THE CAP ON COMMISSION RATES FOR FOOD DELIVERY AND NON-DELIVERY RELATED SERVICE FEES, FOR BUSINESSES, DURING A STATE OF DECLARED LOCAL EMERGENCY, AND FOR 90-DAYS AFTER, TO ASSIST IN THE REOPENING OF BUSINESSES IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19) AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. 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 which has been named "coronavirus disease 2019," abbreviated COVID- 19, ("COVID-19").
- B. 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.
- C. 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.
- D. 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.
- E. On March 16, 2020, the City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and an effective City response to the novel coronavirus ("COVID-19").
- F. On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, authorizing local governments' through their police power to impose substantive limitations residential or

commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19 through May 31, 2020.

- G. On March 16, 2020, the Los Angeles County Public Health Officer issued an order countywide that (1) prohibited gatherings where at least 50 or more people are expected to attend, (2) put limits and regulations on gatherings of 10-49 people, (3) limits restaurants to drive-through/takeout/delivery only, and (4) closes bars (that don't serve food), gyms, movie theaters, etc.
- H. 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 strict adherence to social distancing guidelines, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Other counties throughout the state have issued essentially "shelter in place" directives.
- I. On March 19, 2020 the Los Angeles County Public Health Officer issued a second countywide order, the Safer at Home For Control of COVID-19 Order, which was further clarified on March 21, 2020. This public health order prohibits all public and private group gatherings and events and requires people to stay in their homes with limited exceptions; and requires closure of all non-essential retail businesses, shopping centers, playgrounds for children, bars, nightclubs, movie theaters and all similar gathering places. The purpose of the order is to further restrict, and limit gathering of persons and require closures of non-essential retail businesses in an effort to stem or slow the spread of the virus.
- J. On March 19, 2020, the Governor of the State of California, also issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.
- K. On May 4, 2020, Governor Newsom announced that, beginning May 8, 2020, the State of California would move from Stage 1, which had been in place statewide since the issuance of the Stay at Home order, to Stage 2, which is the gradual re-opening of some lower risk workplaces.
- L. On May 26, 2020, the Los Angeles County Public Health Officer issued a countywide order, the Safer at Work and in the Community For Control of COVID-19. This public health order allowed for new standards and safe reopening in alignment with the State of

California guidelines. Among the activities now permitted under the change are faith-based services, in-store shopping at low-risk retail stores, drive-in movies and other recreational pursuits.

- M. On May 29, 2020, the Los Angeles County Health Officer issued a revised order, the Safer at Work and in the Community For Control of COVID-19. This public health order allowed for operations of hair salons, barbershops, and in-person dining to resume immediately with modified occupancy and operating procedures to ensure the safeguard of the public.
- N. On November 25, 2020, the Los Angeles County Health Officer issued a revised order restricting in-person dining at restaurants, breweries, wineries, and bars as the County's five-day Coronavirus case average reached above 4,000 cases.
- O. On January 29, 2021, the Los Angeles County Health Officer issued a revised order, Reopening Safer at Work and in the Community for Control of COVID-19. This public health order allowed for operations of in-person outdoor dining to resume immediately with modified occupancy and operating procedures to ensure the safeguard of the public.
- P. With modified capacity, many restaurants are seeing an increase in carry-out and delivery offerings, placing a sudden and severe financial strain on the industry, particularly on restaurants that are small businesses, a category of businesses which typically already operate on thin margins.
- Q. As of the date of this ordinance, many restaurant and food establishments have begun to reopen for outdoor dining and takeout and delivery, and it is critical they operate in a safe manner where social distancing can be maintained in accordance with guidance from the State of California and local health officials.
- R. Continuity of operations among the City's restaurants is critical for the delivery of essential food services to the residents of West Hollywood and to sustain these sources of employment and neighborhood vitality within the City.
- S. 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 between five and 30% of the purchase price per order, which led to the adoption of the original urgency ordinance.

- T. Restaurants, and particularly restaurants that are small businesses, have limited bargaining power to negotiate lower fees with third-party platforms given the market saturation of third-party platforms and the financial straits restaurants are facing during this period of emergency.
- U. 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 delivery service providers as a means to compete in the marketplace.
- V. Capping delivery service per-order fees at 15% and non-delivery services at 5% per order, will achieve the public purpose of ensuring the continued operation of local restaurants and third-party platforms during the period of emergency; the 15% cap and 5% cap is based on the findings and experience of other California cities that have already adopted 15% fee ceilings as reasonable emergency regulations in collaboration with food delivery companies.
- W. This Ordinance 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.
- X. This Ordinance is adopted pursuant to the City's police powers and powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and the Chapter 2.80 of the West Hollywood Municipal Code to protect the peace, health, and safety of the public. The West Hollywood City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of health, life and property.

SECTION 2. Section 2 of Urgency Ordinance No. 20-1109U is amended in its entirety to read as follows:

Food Service Commission Delivery and Non-Delivery Commission Cap

- A. Food Delivery Services. During the period of declared local emergency, and for 90-days after, it is unlawful for any person, business, or entity to sell or offer to sell third-party food delivery services for a fee of more

than 15% and non-delivery services fee of more than 5% of the purchase price per online order.

B. Definitions:

1. "Online order" means an order for a consumer food item placed through a platform provided by a third-party food delivery service for delivery or pickup within the City.
2. "Purchase price" means the menu price of an online order, excluding taxes, gratuities, and any other fees which may contribute to the total cost to the customer of an online order.
3. "Third-party food delivery service" means any website, mobile application or other internet service that offers or arranges for the sale of consumer food items for same-day delivery or same-day pickup from a restaurant or similar food facility located within the City.

SECTION 3. This ordinance shall be effective immediately upon 4/5 vote of the City Council.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 5. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). This is an emergency response measure aimed at capping delivery services fees for existing restaurants. No new development will result from the proposed action and the regulation temporary. No impact to the physical environment will result. The City Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of West Hollywood, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations).

SECTION 6. Urgency Declaration; Effective Date.

- A. The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as this ordinance is an emergency response measure aimed at ensuring the vitality and return of the restaurant industry after closure and limited operations. Continuity of operations among the City's restaurants is critical for the delivery of essential food services to the residents of West Hollywood and to sustain these sources of employment and neighborhood vitality within the City. On January 29, 2021, the Los Angeles County Health Officer issued a revised order, Reopening Safer at Work and in the Community for Control of COVID-19. This public health order allowed for operations of in-person outdoor dining to resume immediately with modified occupancy and operating procedures to ensure the safeguard of the public. As of the date of this ordinance, restaurant and food service operations have been fluctuating in response to changing health orders. Following closure of even outdoor dining, restaurant and food establishments have slowly begun to reopen, but operations are still significantly limited and online ordering and delivery service will be critical for the survival of the restaurant industry for the foreseeable future and through the period of local emergency. Restaurants have already been closed for indoor dining since mid-March and the economic devastation is significant in the industry and immediate action is needed to prevent further damage to the industry. 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 delivery service providers as a means to compete in the marketplace. Capping delivery service per-order fees at 15% and non-delivery services at 5% per order, will achieve the public purpose of ensuring the continued operation of local restaurants and third-party platforms during the period of emergency; the 15% cap and 5% cap is based on the findings and experience of other California cities that have already adopted 15% fee ceilings as reasonable emergency regulations in collaboration with food delivery companies. Recent history also shows that the risk of price gouging increases with a sustained state of emergency, and news outlets have already reported incidents of unjustified increases in fees for food delivery services threatening the continued viability of local restaurants. This relief measure also prevents 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. Under Government Code Section 8634 and WHMC Chapter 2.80, this ordinance is necessary to provide for the protection of life and property for the reasons set

out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 7. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 16th day of February, 2021 by the following vote:

AYES:	Councilmember:	D'Amico, Erickson, Shyne, Mayor Pro Tempore Meister, and Mayor Horvath.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.

DocuSigned by:


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 LINDSEY P. HORVATH, MAYOR

ATTEST:
 DocuSigned by:



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 MELISSA CROWDER, ACTING CITY CLERK

STATE OF CALIFORNIA)
 COUNTY OF LOS ANGELES)
 CITY OF WEST HOLLYWOOD)

I, MELISSA CROWDER, Acting City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 21-1140U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on this 16th day of February, 2021.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17th DAY OF FEBRUARY, 2021.

DocuSigned by:


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 MELISSA CROWDER, ACTING CITY CLERK