



# *AGENDA REPORT*

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**DATE:** 7/27/2020  
**TO:** City Councilmembers and City Administrator and Oakland Residents  
**FROM:** Councilmember Dan Kalb  
**SUBJECT: Delivery Service Fee Cap Ordinance**

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## **RECOMMENDATION**

Councilmember Dan Kalb recommend that the City Council adopt:

### **EMERGENCY ORDINANCE CAPPING THE COMMISSIONS, CHARGES, AND FEES OF FOOD DELIVERY SERVICE PROVIDERS DURING THE COVID-19 PANDEMIC EMERGENCY**

## **SUMMARY**

The COVID-19 pandemic emergency has impacted individuals and businesses across the Bay Area and around the country. Restaurants are no exception. Many counties have banned restaurants from providing dine-in service during the emergency, which makes take-out and delivery their only options for revenue generation. Some restaurants are able to perform their own deliveries while others have to partner with third-party delivery service providers in order to offer delivery service to their customers. Many Oakland restaurants have contracted with third-party delivery service providers prior to the COVID-19 pandemic emergency. However, the orders restaurants received from third-party delivery service providers in many cases only supplemented their dine-in and takeout services, which provided the majority of the restaurant's revenue and offset their smaller revenue margins from third-party delivery service provider sales. That is no longer the case. Alameda County's current shelter-in-place Order prohibits indoor dining. Thus, Oakland residents are more reliant on delivery services for both groceries and prepared foods because many do not feel safe going to restaurants or grocery stores to meet their food needs.

The increase in demand for food deliveries caused an increased demand for third-party delivery service providers. However, restaurants are currently unable to offset the costs of using these third-party service providers with revenue generated by indoor dining and are struggling financially due to this heavy reliance on third-party delivery service providers. It is Councilmember Kalb's goal to ease the financial burden that Oakland restaurants are experiencing due to this heavy reliance on third-party delivery service providers. And it is with that goal in mind that Councilmember Kalb introduces this proposed emergency Ordinance.

The attached Ordinance amends Title 5, Chapter 5 of the Oakland Municipal Code to add Chapter 5.94, which caps the commission, charges, and fees of food delivery service providers during the COVID-19 pandemic emergency.

### **BACKGROUND**

The Alameda County Public Health Department declared a local public health emergency on March 1, 2020 due to the spread of COVID-19. California Governor Gavin Newsom followed suit on March 4, 2020 and declared a state public health emergency. Then, on March 7, 2020, the Oakland City Administrator in her capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland. And on March 12, the City Council passed Resolution No. 88075 C.M.S. confirming the existence of the local emergency proclaimed by the City Administrator. The Health Officer of the County of Alameda directed all individuals to shelter in place and ordered social distancing to reduce the rate of transmission of COVID-19 on March 31, 2020. That order was superseded by the Alameda County Health Officer's April 29, 2020 order to amend, clarify, and extend certain terms of the prior order.

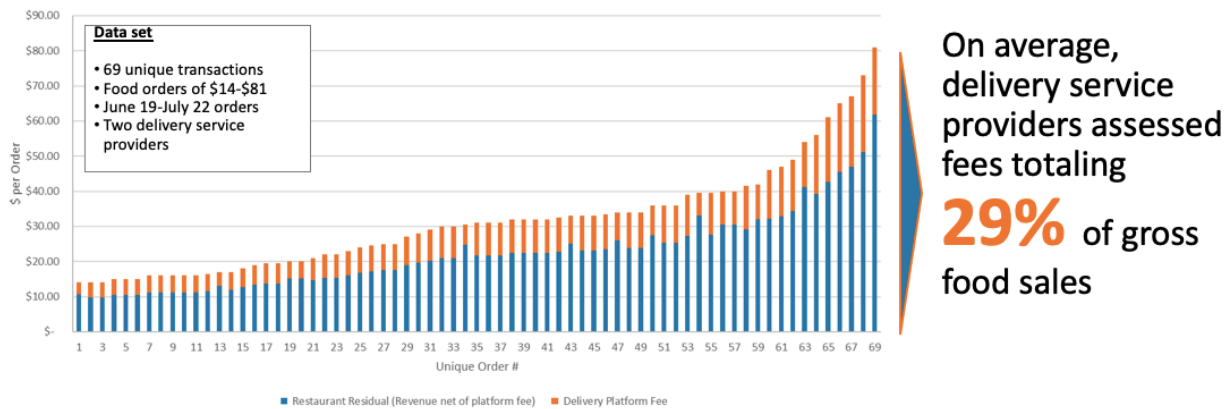
To reduce the spread of the virus and protect public health, the current order prohibits restaurants in Alameda County, which includes the City of Oakland, from offering dine-in service, limiting restaurants to delivery and takeout offerings only. This has caused many restaurants in Oakland to become more reliant on third-party delivery providers, which charge restaurants fees to facilitate ordering and delivery to customers who use their websites and mobile applications. Restaurants were able to offset these fees with revenue from their dine-in services prior to the shelter in place order and restriction of dine-in services, but they are not currently able to offset those costs. This has caused significant financial strain on many restaurant owners. Many of whom, worry that their restaurants will not survive this crisis.

Cities across the country recognized that their restaurants needed help, and a delivery service fee cap would provide some assistance. Seattle, Berkeley, Fremont, San Francisco, Los Angeles, Washington D.C. and other cities currently have a delivery service fee cap. The proposed Oakland Ordinance is modeled mostly on the San Francisco Emergency Order and the Berkeley Ordinance, with some modifications that conform to City of Oakland regulations.

### **ANALYSIS**

A survey from the National Restaurant Association found that the pandemic has caused 4 in 10 eateries to close, and some of those will not be re-opening at all. Those that are still open are feeling pressured to use third-party delivery service just to tread water. Sales from delivery service providers can currently account for more than 40% of a restaurant's total sales. And the restaurant could be paying more than 25% of those sales back to the third-party delivery service providers in delivery fees or some combination of fees.

Here are some examples of the amount of fees restaurants are paying to third-party delivery service providers:



The profit margins of restaurants usually fall between a 3-5 percent average. With such slim margins, it is easy to see how restaurants would be less likely to survive without dine-in service to offset these large delivery service provider fees.

### **PUBLIC OUTREACH/INTEREST**

This ordinance was created with input from local restaurant owners, representatives of third-party delivery service providers, and other organizations that represent the restaurant industry.

Meetings were held with representatives from third-party delivery service providers from Uber Eats, DoorDash, Grubhub, and Postmates. The feedback from those organizations was that while this ordinance would affect their revenue, they understand the urgency to pursue such legislation at this time. However, representatives from the organizations expressed the potential for this delivery service fee cap to result in somewhat higher fees to customers ordering through their platforms, fewer jobs for drivers, and/or limitations of service areas.

### **COORDINATION**

This legislation has been drafted with the assistance of and reviewed by the Office of the City Attorney.

### **FISCAL IMPACT**

No expected fiscal impact directly on the City of Oakland. Likely beneficial impact on many restaurant businesses in Oakland.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** If a third-party delivery service provider chooses to increase the fees it charges to customers ordering from its platform, there is the possibility that fewer people would use their platform and the reduced number of orders would result in fewer jobs for delivery drivers employed by the provider. It is also possible that a third-party delivery service provider would lessen the number of restaurant options available to a customer ordering from its platform in order to reduce the distance that a driver would travel to cut down on costs.

**Environmental:** There are no apparent environmental impacts associated with this ordinance.

**Social Equity:** In addition to the basic purpose of providing food and drink, restaurants contribute to the social fabric of neighborhoods. It is in the best interest of city to see that as many of these establishments survive the COVID-19 pandemic emergency as possible. Capping third-party delivery service fees will provide some relief to these important job-creating, culturally significant and tasty businesses.

### **CEQA**

The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”), including under section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

For questions regarding this report, please contact Deidra Moss, in the office of Councilmember Dan Kalb, at [dross@oaklandca.gov](mailto:dross@oaklandca.gov).

Respectfully submitted,



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