

# CITY OF BURLINGAME

City Hall – 501 Primrose Road  
Burlingame, California 94010-3997



## COMMUNITY DEVELOPMENT DEPARTMENT

Economic Development Division

PH: (650) 558-7264

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### Economic Development Subcommittee Meeting

Wednesday, October 14, 2020, 8:15 a.m.

Zoom Conference Call

***On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings telephonically or by other electronic means. Pursuant to the Shelter-in-Place Order issued by the San Mateo County Health Officer on March 16, 2020, the statewide Shelter-in-Place Order issued by the Governor in Executive Order N-33-20 on March 19, 2020, and the CDC's social distancing guidelines which discourage large public gatherings, Conference Room A will not be open to the public for the October 14, 2020 Burlingame Economic Development Subcommittee meeting. Members of the public may view the meeting by logging onto the Zoom meeting listed below.***

***Members of the public may provide written comments by email to [jsanfilippo@burlingame.org](mailto:jsanfilippo@burlingame.org).***

***Emailed comments should include the specific agenda item on which you are commenting, or note that your comment concerns an item that is not on the agenda. The length of the emailed comment should be commensurate with the three minutes customarily allowed for verbal comments, which is approximately 250-300 words. To ensure your comment is received and read to the Economic Development Subcommittee for the appropriate agenda item, please submit your email no later than 5:00 p.m. on October 13, 2020. The City will make every effort to read emails received after that time, but cannot guarantee such emails will read into the record. Any emails received after the 5:00 p.m. deadline which are not read into the record will be provided to the Economic Development Subcommittee after the meeting.***

**Topic: Economic Development Subcommittee Meeting**

**Time: Oct 14, 2020 08:15 AM Pacific Time (US and Canada)**

<https://us02web.zoom.us/j/81868364011?pwd=MDVIYIU4RUN6R084eko2WWVxL1VDZz09>

Meeting ID: 818 6836 4011

Passcode: 756434

One tap mobile

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## **Agenda**

**CALL TO ORDER – 8:15 a.m.**

**READ AND APPROVE MINUTES FROM SEPTEMBER 9 MEETING**

### **DISCUSSION ITEMS**

1. Discussion of Live Music
2. Discussion of Commission Fee Caps for Delivery Companies
3. Request to Extend Façade Improvement Program Deadlines

**Future Agenda Topics:** Confirmation of future agenda topics and dates:  
To be determined

### **Public Comments**

**The Next Regular Meeting of the City Council's Economic Development Subcommittee will be held on date TBD, Location TBD**



## City Council Economic Development Subcommittee

### MINUTES (DRAFT)

Conference Room A

City Hall, 501 Primrose Road – Burlingame, California  
Wednesday, September 9, 2020 – 8:15 a.m.

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### **ATTENDANCE**

**Members Present:** Vice Mayor Ann O'Brien Keighran, Councilmember Ricardo Ortiz

**Members Absent:** None

**Staff Present:** City Manager (CM) Lisa Goldman, Community Development Director (CDD) Kevin Gardiner, Economic Development Specialist (EDS) Joseph Sanfilippo, Senior Civil Engineer (SCE) Andy Wong, Streets, Storm Drains and Sewers Division Manager (SDSDM) Michael Heathcote, Parks and Recreation Director (PRD) Margaret Glomstad, Finance Director (FD) Carol Augustine

**Members of the Public Present:** John Kevranian (President of Broadway Business Improvement District), Georgette Naylor (Burlingame SFO/Chamber of Commerce), Amanda Williams (Pizzeria Delfina), Jana Gage, Kevin Kretsch (Hyatt Regency SFO), Lisa Kershner (San Francisco Airport Marriott Waterfront), John Hutar (CEO of San Mateo County/Silicon Valley Convention and Visitors Bureau), Fettah Aydin (Embassy Suites)

### **READ AND APPROVE MINUTES FROM AUGUST 12 MEETING**

- Approved.

### **DISCUSSION ITEMS**

#### Review of Street Closures on Broadway and Burlingame Avenue

CM Goldman introduced the topic. Public Works staff noted that there are no problems with the overall the Broadway closure. (The closure of the 1100 block was discussed later.)

SDSDM Heathcote noted that the Burlingame Avenue closure has ended, and parklets are anticipated to be available by Saturday evening for all interested merchants on Burlingame Avenue. There are 15 merchants with their Encroachment Permit paperwork completed, with more to potentially come. Public Works staff has marked out spaces for parklets.

Vice Mayor O'Brien questioned how parklets were being measured. SCE Wong noted a preference for consistency, allowing approximately 300 feet per business. This is equivalent to two parallel parking spaces or three angled parking spaces.

CM Goldman noted a difficulty with several merchants (Pizzeria Delfina and the nearby retailers) having limited space due to street frontage. SCE Wong explained the challenges facing nearby merchants for restaurants with limited store frontage and an issue with a nearby bulbout for building out a more robust parklet.

Amanda Williams (Pizzeria Delfina) mentioned a preference to combine the two parklets for Pizzeria Delfina and Sixto's Cantina, and SCE Wong noted that this is possible for staff to do. SDSDM Heathcote noted that one barrier could be placed in the midpoint of the combined parklet, providing a formal delineation. Ms. Williams mentioned that they will likely build a parklet with a small barrier to minimize the space taken up by the barrier.

Vice Mayor O'Brien advocated for a compromise to be made between the restaurants and the Public Works Department to complete the parklet; a consensus was reached during the meeting.

a) 1100 Block of Broadway

CM Goldman introduced the topic, noting that the restaurants on that block have not been utilizing it to its fullest extent. EDS Sanfilippo mentioned a survey distributed to the 15 merchants on the block, gauging their opinions on the block closure. Two were in favor, two were opposed to the closure.

SDSDM Heathcote noted that there are concerns with delivery trucks turning onto Laguna Avenue, should the block be open, as the street is very narrow, and there have been collisions in the area in the past.

John Kevranian (President of the Broadway BID) noted that business is great for several merchants on the block, and he advocated to continue the closure without changes. He also noted that many merchants on the 1100 block are not open on Saturday and Sunday.

Vice Mayor O'Brien advocated for additional outreach to the merchants to get a better sampling, but she nonetheless supported continuing the closure without modifications.

Forecast Discussion with Hoteliers

EDS Sanfilippo introduced the topic, followed by a brief presentation by John Hutar (CEO of the San Mateo County/Silicon Valley Convention and Visitors Bureau (SMCCVB)).

The analysis presented by Mr. Hutar showed a large drop in revenue across all geographic areas in the U.S., with nearly 80% of business lost in the Bay Area. San Mateo County occupancy grew to 40% in July, but the coastside properties are disproportionately successful compared to the Bayside properties. Due to the recent CZU fires, marketing has been shifted towards Bayside properties to promote refuge and leisure travel, but occupancy is still low.

He noted that April was the month with the most number of hotels closed (25% of the total inventory); only 11% are now closed.

The overall U.S. travel and hospitality market is down 52%, with CBRE's 2021 projections showing 48% growth next year. The SMCCVB will host a webinar with CBRE on October 7 with more advanced data. CBRE speculates the 58% drop in San Francisco hotel travel will ramp up to 60% growth in 2021, though Mr. Hutar expressed caution in this optimism.

Mr. Hutar noted that Burlingame hotels are particularly suited for group travel and events, and small meetings (up to 50) may be an opportunity to gain some of this market back. He also hoped to avoid losing crew travel to other hotel districts with competitive rates.

Vice Mayor O'Brien expressed dismay that the County is still on the widespread purple tier of the State's Blueprint for a Safer Economy, noting that gatherings will likely be difficult until the County is moved to a less restrictive tier.

Mr. Hutar noted a call with Cal Travel implied that the State may soon allow smaller group meetings and events to occur throughout the state, though this discussion is quite preliminary. The Subcommittee expressed interest in sending a letter to the Governor's Office to advocate for this change.

Kevin Kretsch (Hyatt SFO) mentioned a great need for conventioners and noted a pivot in marketing to leisure has shown an increase in business, albeit at a reduced rate. He noted a need to highlight outdoor amenities, particularly the Bayfront and Downtown businesses. He also commended his fellow hoteliers for their exceptional sanitation standards and improvements.

Lisa Kershner (Marriott) hoped to identify other ways to beautify the Bayfront to attract both leisure travelers and airline crews. She mentioned several suggestions:

- 1) Bike-sharing stations on the Bayfront
- 2) Introduction of art programs along the Bay Trail or other options

Ms. Kershner noted that the SMCCVB and the hoteliers are happy to lead the charge in beautifying the area with some of the above suggestions. She also mentioned an issue with trash on the Bayfront and requested the City's assistance in reaching out to other property owners along the Bay Trail for their assistance.

Councilmember Ortiz queried what form the art projects would take. Ms. Kershner noted that several art pieces would be placed every quarter mile with a description of the art, a QR code, etc. She mentioned that fundraising was required to commission and install the art on a similar project she had worked on in Oakland, and it was successful.

CM Goldman noted that this would have to be spearheaded by the private hoteliers, and she is unsure if the art installation would be an issue with be a Bay Conservation and Development Commission (BCDC). She also mentioned potential opportunities to contact Oculus for help with the bike-sharing initiative. Oculus is expected to begin occupancy of their office development in Q1 2021.

Councilmember Ortiz suggested that bike stations be installed near the Millbrae BART station and at the Oculus development. Fettah Aydin (Embassy Suites) noted that bike-sharing was successful when previously implemented. Mr. Kevranian mentioned that a similar bike-sharing station would be of interest on Broadway, even though it would requiring taking away some parking spaces.

Mr. Hutar mentioned a webinar for hybrid meetings that the SMCCVB is hosting next week that may present additional opportunities to gain some business for the Bayfront hotels that are generally at 20% occupancy or less.

SDSDM Heathcote noted that Bay Trail maintenance is the responsibility of private property owners, though City staff have recently cleaned up problem areas that were posing a health hazard.

Mr. Kevranian asked Mr. Hutar how the business districts can help the hoteliers. Mr. Hutar suggested that “staycation marketing” may be effective. Ms. Kershner suggested a combination of the districts’ marketing efforts. Mr. Aydin noted that the downtown districts are already a major attraction.

Mr. Kretsch suggested a flyer of businesses that are open with hours of operation from the BIDs and Chamber. Ms. Kershner noted that delivery options should also be noted on the list for guests that are hesitant to venture into the City proper.

Vice Mayor O’Brien suggested pictures of the districts to highlight that business is still successful in Burlingame.

Councilmember Ortiz questioned whether the lower tiers allowed for smaller gatherings, and Mr. Hutar noted that there is not clear guidance stated in the Blueprint. CM Goldman noted that the red tier allowed for cultural, religious or ceremonial gatherings of 25% occupancy or 100 persons, whichever is fewer.

### **Future Agenda Topics**

There will be discussion of other jurisdictions capping commission fees from delivery companies (such as DoorDash, Grubhub, etc.) The Subcommittee will examine the City of South San Francisco’s recent adoption as a model.

Several applicants for the Façade Improvement grant have requested an extension to their façade improvement implementations previously approved in late March and early April. All of them have noted reduced revenue from the COVID-19 pandemic as the cause for the request. As the approval terms revoke the approved funding at the expiration date of October 31, the item will be brought to the Subcommittee to formally request an extension for applicants that have not completed their improvements.

### **Miscellaneous Discussion**

All discussion was related to the agenda items.

### **Action Items**

- The Broadway closure will remain unchanged, and Burlingame Avenue parklets will be implemented beginning Saturday, September 12.
- CDD Gardiner will reach out to BCDC to see if there are any regulations regarding installing art along the Bay Trail and follow-up with Lisa Kershner.

- EDS Sanfilippo will contact the City’s Code Enforcement for additional enforcement of property maintenance along the Bay Trail. The City will attempt to identify the property owners to connect a joint venture of beautification and parking sharing.
- EDS Sanfilippo, SCE Wong and Sustainability Coordinator Sigalle Michael will research bike-sharing companies and forward the information to John Hutar for disbursement to the hoteliers.
- EDS Sanfilippo and CDD Gardiner will draft a staff report for the City Council authorizing the Mayor to send a letter to the Governor’s Office advocating that the hotels be allowed to host small gatherings with masks and social distancing in place..
- The SMCCVB, Chamber, and BIDs will contact each other for joint marketing opportunities. Mr. Hutar will send marketing to CM Goldman for inclusion in the eNews.

### **FUTURE AGENDA TOPICS**

- October 14, 2020- Request for extension of approvals for Façade Improvement Program; Discussion of commission fee caps for delivery companies

### **PUBLIC COMMENTS**

There were no further public comments.

### **ADJOURNMENT**

Meeting adjourned at 9:42 a.m.

Respectfully submitted,

Joseph Sanfilippo  
Economic Development Specialist



# City of South San Francisco

P.O. Box 711 (City Hall,  
400 Grand Avenue)  
South San Francisco, CA

## City Council

**Ordinance: ORD 1603-2020**

**File Number: 20-563**

**Enactment Number: ORD 1603-2020**

**URGENCY ORDINANCE OF THE CITY OF SOUTH  
SAN FRANCISCO TO ESTABLISH A TEMPORARY  
CAP ON COMMISSION CHARGED BY  
THIRD-PARTY FOOD DELIVERY SERVICES ON  
LOCAL RESTAURANTS DURING THE COVID-19  
PANDEMIC.**

WHEREAS, 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"); and

WHEREAS, on January 30, 2020, the World Health Organization ("WHO") declared COVID-19 a Public Health Emergency of International Concern, and on January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on March 2, 2020, the County of San Mateo activated its Emergency Operations Center (EOC) to support the local County Health response to COVID-19; and

WHEREAS, on March 3, 2020, the County of San Mateo Director of Emergency Services issued a proclamation Declaring the Existence of a Local Emergency in the County and the County of San Mateo Health Officer issued a Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom 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. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death; and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of San Mateo adopted a resolution Ratifying and Extending the Declaration of a Local Health Emergency; and

WHEREAS, on March 11, 2020, due to an escalating increase in the number of cases in San Mateo County, under South San Francisco Municipal Code Chapter 2.72, the City Council of the City of South San Francisco ("City") adopted a resolution proclaiming a local State of Emergency related to the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 11, 2020, the San Mateo County Health Officer issued a legal order barring unauthorized visitors and non-essential personnel from licensed skilled nursing facilities in the County; and



WHEREAS, on March 12, 2020, San Mateo County Health Officer issued an order prohibiting mass gatherings of 250 or more persons and as defined in the order, applicable to public and private gatherings and includes exceptions for houses of worship, museums, malls, hospital and medical facilities, and the normal operations of hotels and airports; and

WHEREAS, 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; and

WHEREAS, on March 13, 2020, San Mateo County Health Officer issued a School Operations Modification Order requiring all schools to dismiss students from regular attendance; and

WHEREAS, on March 14, 2020, San Mateo County Health Officer issued an update regarding the legal order prohibiting mass gatherings, further limiting public or private gatherings of more than 50 persons as defined in the order; and

WHEREAS, on March 16, 2020, seven health officers within six Bay Area counties, including San Mateo County, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020 ("Shelter-in-Place Order"). The order limits activity, travel and business functions to only the most essential needs. The guidance comes after substantial input from the U.S. Centers for Disease Control and Prevention (CDC) and best practices from other health officials around the world; and

WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20 ordering waiver of time limitations set forth in Penal Code section 396(f) concerning protections against residential evictions, and suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions related to COVID-19. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a *et seq.*; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 *et seq.*; and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N- 3 33-20, which, imposed a State Shelter Order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities; and

WHEREAS, the County of San Mateo previously requested and was approved for a variance allowing the County to re-open businesses and activities in accordance with the re-opening stages outlined in the State Resilience Roadmap for California; however, since the State and County began re-opening, the number of identified COVID-19 cases continues to grow; and

WHEREAS, on July 13, 2020, all counties statewide were mandated to shut down indoor activities such as museums, zoos, dining and theaters, and bars, both inside and outside, were also required to close, and the State Public Health Officer issued an order closing all indoor restaurant dining; and

WHEREAS, the State Department of Health is maintaining a watch list of counties that are being monitored for worsening COVID-19 trends, and if a county is on the watch list for three days or longer, the State will order them to further roll back reopening; and

WHEREAS, as of July 29, 2020, San Mateo County has been placed on the watch list, and if it remains on the watch list for three consecutive days, it will be required to roll back some of its re-opening steps; and

WHEREAS, as of July 30, 2020, there have been 5,306 confirmed COVID-19 cases, and 118 COVID-19 related deaths, within the County, and 488,000 confirmed COVID-19 cases, and 8,908 COVID-19 related deaths, State-wide; and

WHEREAS, both large and smaller events across the Bay Area and in South San Francisco are cancelling or being postponed due to the County's and State's Orders and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses including eating and drinking establishments that rely on such events to bring in patrons to their businesses; and

WHEREAS, 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; and

WHEREAS, restricting restaurants to takeout or delivery offerings, and limited indoor and outdoor dining with decreased capacity, has placed a sudden and severe financial strain on many restaurants, particularly those that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis; and

WHEREAS, based on surveys conducted by City staff and the South San Francisco Chamber of Commerce as of the date of this ordinance, many restaurant and food establishments within the City have been relying on delivery and pick up to generate revenue, 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; and

WHEREAS, continuity of operations among the City's restaurants is critical for the delivery of essential food services to the residents of South San Francisco and to sustain these sources of employment and neighborhood vitality within the City; and

WHEREAS, 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 percent (5%) to thirty percent (30%) of the purchase price per order; and

WHEREAS, restaurants, eating and drinking establishments, and particularly those 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; and

WHEREAS, 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; and

WHEREAS, capping delivery service per-order fees at 15% and non-delivery services at 10% 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 10% cap is based on the findings and experience of other California cities and cities nationwide that have already adopted 15% fee ceilings or similar caps as reasonable emergency regulations in collaboration with food delivery companies; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, the City Council finds and determines that there is an immediate need to preserve public health, safety and welfare given the negative economic impacts derived from the COVID-19 pandemic, and that regulating the relations between landlords and tenants is essential to preventing the spread of COVID-19 in the City and thereby serve the public peace, health, and safety; and

WHEREAS, it is in the public interest to take action to ensure the delivery of essential food services to residents of South San Francisco and to maximize restaurant revenue from the takeout and delivery orders that, with the exception of limited dining operations, are currently one of the primary sources of revenue for these businesses to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality in the City; and

WHEREAS, as restaurants return to modified, lower capacity restaurant service, it is unclear how restaurants will fare, as restaurants must create new, physically distanced dining areas and implement increased training and sanitation measures; and

WHEREAS, it is unclear how quickly restaurant patrons will return to restaurant dining and restaurants may continue to see a significant loss of revenue for an ongoing period of time; and

WHEREAS, 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; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the continuing and immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance would result in the avoidable displacement or exposure to COVID-19 of the City's small businesses and to the amplification of the factors that lead to the spread of the virus, as described in these Recitals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH SAN FRANCISCO, DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1. Findings**

1. The City Council of the City of South San Francisco finds that all Recitals are true and correct and incorporated herein by reference.
2. The City Council of the City of South San Francisco hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the Recitals above, the accompanying staff report, and any oral and written testimony at the August 26, 2020 City Council meeting.
3. The City Council finds and declares that the adoption and implementation of this ordinance is an urgency measure 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. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

**SECTION 2. Food Service Delivery and Non-Delivery Commissions Cap**

- A. Commissions Cap and Prohibitions. During the period of declared local emergency, and for one hundred and eighty (180) days thereafter, it shall be unlawful for any third-party food delivery service to do any of the following:
  1. Charge a restaurant, eating or drinking establishment, or similar food facility located within the City:
    - a. A fee, commission, or cost of more than fifteen percent (15%) of the purchase price per online order for delivery services; and
    - b. A fee, commission or cost of more than ten percent (10%) of the purchase price per online order for non-delivery services.
    - c. As used in this section, fee, commission or cost includes fees charged for listing, delivery, and marketing services, as defined herein.
  2. Limit or impede in any manner the ability for a restaurant, eating or drinking establishment, or similar food facility to otherwise determine the purchase price for food or beverage items listed in their respective menus.

3. List any restaurant, eating or drinking establishment, or similar food facility, or their respective menus in the delivery service's website, mobile application or other internet service, without the specific consent of the restaurant, establishment or facility.

**B. Tips and Gratuities; no reduction of compensation.**

1. A third-party food delivery service shall offer customers the option to, as a part of an online order for delivery or non-delivery service, authorize a tip or gratuity to be paid to food delivery service workers and any restaurant, eating or drinking establishment, or similar food facility from which the customer places an order through the third-party food delivery service.
2. It shall be unlawful for a third-party food delivery service to reduce the compensation, including any tip or gratuity, paid to any food delivery service worker, or to reduce any tip or gratuity authorized by a customer to be paid to any restaurant, eating or drinking establishment, or similar food facility, as a result of the prohibitions stated in this ordinance.

**C. Enforcement.**

1. A restaurant, eating or drinking establishment, or similar food facility, or food delivery service worker claiming a violation of this ordinance shall first provide written notice to the third-party food delivery service of the specific section of this ordinance which is alleged to have been violated and the facts to support the alleged violation. The third-party food delivery service shall have seven (7) business days from the date of receipt of the written notice to cure any alleged violation including but not limited to providing a refund of any charges exceeding the caps imposed herein.
2. If, after written notice is provided pursuant to subsection (D)(1) above and the third-party food delivery service fails to cure the alleged violation, including failing to provide a refund or continuing to charge fees in violation of this ordinance, the person or entity claiming a violation of this ordinance may bring a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney's fees.
3. This ordinance is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of South San Francisco, its departments, officers, or employees.

**D. Definitions. For the purposes of this ordinance, the following definitions shall apply:**

1. "Customer" means any person, firm, or association who makes use of a third-party food delivery service for the purpose of obtaining food or beverage items from a restaurant, eating or drinking establishment, or similar food facility located within the City.

2. "Listing services" means services offered by a third-party food delivery service to list the information and/or menu of a restaurant, eating or drinking establishment, or similar food facility located within the City and processing online orders including paying any credit card processing fees.
3. "Marketing services" means services offered by a third-party food delivery service to a restaurant, eating or drinking establishment, or similar food facility located within the City for the purposes of promoting, advertising, or otherwise strengthening the business or performance of the restaurant, establishment or facility on the mobile application, website or other internet services of the third-party food delivery service.
4. "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.
5. "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.
6. "Third-party food delivery service" means any individual, firm, association, corporation or entity through website, mobile application or other internet service that offers or arranges for the sale of consumer food or beverage items for same-day delivery or same-day pickup from a restaurant, eating or drinking establishment, or similar food facility located within the City.

### **SECTION 3. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

### **SECTION 4. Effective Date and Term.**

This Urgency Ordinance shall become effectively immediate upon its adoption pursuant to California Government Code Section 36937. This Urgency Ordinance shall expire one hundred and eighty (180) days from the date that the South San Francisco City Council terminates the local emergency proclaimed pursuant to Resolution No. 35-2020 related to COVID-19, unless such term is otherwise specifically amended by the City Council. The City Council shall review this ordinance prior to its expiration and determine whether to extend its provisions.

### **SECTION 5. Compliance with the California Environmental Quality Act.**

The City Council hereby finds approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, "CEQA," and 14 Cal. Code Reg. §§ 15000 *et seq.*, "CEQA Guidelines") under Section 15061(b)(3) of the CEQA Guidelines. 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.

**SECTION 6. Publication.**

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.


\* \* \* \* \*


Introduced and adopted at a regular meeting of the City Council of the City of South San Francisco held the 26<sup>th</sup> day of August 2020.

At a meeting of the City Council on 8/26/2020, a motion was made by Councilmember Matsumoto, seconded by Councilmember Nicolas, that this Ordinance be adopted. The motion passed.

**Yes:** 5 Mayor Garbarino, Vice Mayor Addiego, Councilmember Nagales, Councilmember Nicolas, and Councilmember Matsumoto

Attest by

  
Rosa Govea Acosta, City Clerk

  
Richard Garbarino, Mayor



## ORDINANCE NO. 2020-\_\_

CITY OF MILLBRAE, COUNTY OF SAN MATEO  
STATE OF CALIFORNIA

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**ADOPTING AN URGENCY ORDINANCE ESTABLISHING A TEMPORARY  
LIMIT ON THE CHARGES IMPOSED BY THIRD-PARTY DELIVERY SERVICES ON  
FOOD PURVEYORS DURING THE DECLARED LOCAL  
EMERGENCY RESULTING FROM THE COVID-19 PANDEMIC**

**WHEREAS**, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease, COVID-19, caused by a novel coronavirus ("COVID-19"); and

**WHEREAS**, on March 4, 2020, the Board of Supervisors of the County of San Mateo proclaimed a local state of emergency and the Health Officer of County of San Mateo declared a local health emergency in response to the COVID-19 outbreak; and

**WHEREAS**, the Centers for Disease Control and Prevention, the California Department of Health, and the San Mateo 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; and

**WHEREAS**, 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; and

**WHEREAS**, on March 19, 2020 the City Council adopted Resolution No. 2020-18 proclaiming the existence of an emergency and a local emergency within the City; and

**WHEREAS**, on March 19, 2020, the Governor of the State of California, through Executive Order N-33-20, imposed a statewide shelter in place order except as needed to maintain continuity of operations of the federally-defined critical infrastructure sectors or to access necessities such as food, prescriptions, and health care or other authorized activities; and

**WHEREAS**, the County of San Mateo previously requested and was approved for a variance allowing the County to re-open businesses and activities in accordance with the re-opening stages outlined in the State Resilience Roadmap for California; however, since the State and County began re-opening, the number of identified COVID-19 cases continues to grow; and

**WHEREAS**, on July 13, 2020, the State Public Health Officer issued an order closing all bars, pubs, breweries, brewpubs, dine-in restaurants, wineries and tasting rooms, family entertainment centers, zoos, museums, and cardrooms; and

**WHEREAS**, since July 29, 2020, San Mateo County has been on the State Department of Health's watch list of counties that are being monitored for worsening COVID-19 trends, resulting in further restrictions on reopening; and



**WHEREAS**, restricting restaurants to takeout or delivery offerings, and limited indoor and outdoor dining with decreased capacity, has placed a sudden and severe financial strain on many restaurants, particularly those that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis; and

**WHEREAS**, it is in the public interest to take action to maximize restaurant revenue from the takeout and delivery orders that, with the exception of limited dining operations, are currently one of the primary sources of revenue for these businesses to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality in the City; and

**WHEREAS**, as restaurants return to modified, lower capacity restaurant service, it is unclear how restaurants will fare, as restaurants must create new, physically distanced dining areas and implement increased training and sanitation measures; and

**WHEREAS**, it is unclear how quickly restaurant patrons will return to restaurant dining and restaurants may continue to see a significant loss of revenue for an ongoing period of time; and

**WHEREAS**, 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; and

**WHEREAS**, service agreements between some restaurants and third-party platforms provide that the platform charges the restaurant 10 percent of the purchase price per order while others charge up to 30 percent of the purchase price per order; and

**WHEREAS**, restaurants 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 restaurants are facing in this COVID-19 emergency; and

**WHEREAS**, risk of price gouging increases with a sustained state of emergency, and news outlets have reported incidents of unjustified increases in fees for food delivery services threatening the continued viability of local restaurants; and

**WHEREAS**, state anti-gouging laws do not provide any protections in the market for food delivery services; and

**WHEREAS**, capping the per-order fees at 15 percent will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms; and

**WHEREAS**, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

**WHEREAS**, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary for immediate preservation of the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MILLBRAE ORDAINS AS FOLLOWS:**

**Section 1. INCORPORATION OF RECITALS.** The City Council finds that the facts in the foregoing recitals and the agenda report presented with this Ordinance are true and correct and are incorporated into this Ordinance by this reference and adopted as findings of the City Council.

**Section 2. URGENCY ORDINANCE.** The City Council hereby finds, determines, and declares based on the facts in the foregoing recitals, the agenda report, and all testimony and evidence presented to the Council that this Ordinance is needed for the immediate preservation of the public peace, health, safety, or welfare pursuant to Section 36937 of the California Government Code. Capacity for indoor dining is severely restricted. Many food purveyors use third-party food delivery services, and due to the high fees imposed by third-party food delivery services, 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 food purveyors being charged high fees struggle to remain financially viable. If these food purveyors close, their workers will lose employment, which affects their ability to feed and shelter their families.

**Section 3. DEFINITIONS.** For purposes of this Ordinance, the following definitions apply:

- (a) "Online Order" means an 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, for delivery or pick-up.
- (b) "Purchase Price" means the price, as listed on the menu, for the items contained in an online order, minus any applicable coupon or promotional discount provided to the customer by the covered establishment through the third-party food delivery service. This definition does not include taxes, gratuities, and any other fees or costs that may make up the total amount charged to the customer of an online order.
- (c) "Covered Establishment" means any purveyor of processed or prepared raw and ready-to eat food or beverages located in the City, including, without limitation, restaurants, delicatessens, bakeries, coffee shops, and other eat-in, catering, or carry-out services.
- (d) "Services" means all services provided by the third-party food delivery service to the covered establishment, including, without limitation, promoting, advertising, or otherwise strengthening the business or performance of the restaurant, credit card processing, listing, and delivery.
- (e) "Third-Party Food Delivery Service" means any individual, firm, association, corporation or entity through website, mobile application or other internet service that offers or arranges for the sale of consumer food or beverage items for same-day delivery or same-day pickup from a restaurant, eating or drinking establishment, or similar food purveyor.

**Section 4. LIMITATION ON FEES.**

- (a) A third-party food delivery service may not charge a covered establishment a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order where the order is delivered to the customer.
- (b) A third-party food delivery service may not charge a covered establishment a fee per online order for the use of its services that totals more than 10% of the purchase price of such online order where the order is not delivered to the customer.
- (c) A third-party food delivery service may not charge a covered establishment any fee, commission, or cost for use of its services other than as permitted in Subsections A and B, above.



- (d) A third-party food delivery service may not charge a customer any purchase price for a food or beverage item that is higher than the price set by the covered establishment on the third-party food delivery service or, if no price is set by the covered establishment on the third-party food delivery service, the price listed on the covered establishment's own menu.
- (e) A third-party food delivery service may not reduce the compensation rates paid to the delivery service driver or retain any portion of amounts designated as a tip or gratuity as a result of this Ordinance. The third-party delivery service must pay any tip or gratuity, in its entirety, to the person delivering the food or beverages.
- (f) Each receipt generated by the third-party food delivery service for both the customer or the covered establishment must clearly state each fee charged, the gratuities paid, and any discounts offered by the covered establishment.

## **Section 5. REMEDIES.**

- (a) Violation of this Ordinance subjects the violator to a civil action to recover all actual damages resulting from the violation, and for injunctive relief.
- (b) A court must award reasonable attorneys' fees and costs to a plaintiff that prevails in an action against a third-party food delivery service. If plaintiff fails to prevail against a third-party food delivery service, a court must award reasonable attorneys' fees and costs to the third-party food delivery service upon a determination by the court that the plaintiff's action was frivolous.
- (c) A civil action alleging a violation of any provision of this Ordinance may commence only after the plaintiff has provided written notice to the third-party food delivery service of the provisions of the ordinance alleged to have been violated and the facts to support the alleged violation, and the third-party food delivery service fails to cure the alleged violation within seven days, or continues to violate the same provision of the Ordinance with respect to the plaintiff.
- (d) Violations of this order is punishable as set forth in Chapters 1.05 of the Millbrae Municipal Code. For the purposes of Section 1.05.020, the Community Development Director has citation authority for this Ordinance.
- (e) This order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of Millbrae, its departments, officer, or employees.

**Section 6. DELEGATION OF AUTHORITY.** The City Manager, or designee, is authorized to implement this order and issue any necessary guidance or rules consistent with this order.

**Section 7. CEQA NOT APPLICABLE.** This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

**Section 8. SEVERABILITY.** In the event any section, clause or provision of this Ordinance is determined invalid or unconstitutional, such section, clause or provision is deemed severable and all other sections or portions hereof remain in full force and effect. The intent of the City Council is that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be

invalid or unconstitutional.

**Section 9. PUBLICATION.** The City Clerk is directed to promptly cause the Ordinance to be posted in the City Clerk's office; posted on the City's website; and be published once in a newspaper of general circulation published in the County of San Mateo and circulated in the City of Millbrae.

**Section 10. EFFECTIVE TERM.** This Ordinance is introduced and adopted on September 22, 2020 and is effective on October 3, 2020 in accordance with Government Code Section 36937, and remains in full force and effect for 180 calendar days after the expiration of any emergency or local emergency related to COVID-19 declared by the City Council under Chapter 2.25 of the Millbrae Municipal Code and/or Section 8630 *et seq.* of the California Government Code, unless repealed, extended or replaced by an affirmative vote of the City Council.

The foregoing ordinance was adopted by the City Council of the City of Millbrae, County of San Mateo, State of California by the following vote:

AYES:

NOES:

ABSENT:

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Mayor

ATTEST:

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City Clerk