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Item No. 7

MAR 17 2021

City of South Gate
CITY COUNCIL

CITY OF SOUTH GATE
OFFICE OF THE CITY MANAGER

2:05pm

AGENDA BILL

For the Regular Meeting of: March 23, 2021

Originating Department: Administration

Management Assistant: NSC for
Giselle Mares

Interim City Manager: CJM
Chris Jeffers

SUBJECT: INTERIM URGENCY ORDINANCE ESTABLISHING A TEMPORARY LIMIT ON THE CHARGES IMPOSED BY THIRD-PARTY FOOD DELIVERY SERVICES DURING THE COVID-19 PANDEMIC

PURPOSE: To adopt Interim Urgency Ordinance No. 2021-02-CC to continue the temporary limit on third-party food delivery charges. During the regularly scheduled City Council Meeting of February 9, 2021, the City Council adopted Interim Urgency Ordinance No. 2021-02-CC for a term of forty-five (45) days.

RECOMMENDED ACTION: The City Council will consider waiving the reading in full and adopt an Interim Urgency Ordinance establishing a temporary limit on the charges imposed by third-party food delivery services on local restaurants during the ongoing COVID-19 pandemic.

FISCAL IMPACT: None.

ANALYSIS: Many consumers in the City are eager to support local restaurants and use third-party food delivery services, especially during the COVID-19 pandemic, as restaurants are prohibited from offering on-premises dining. As a result, restaurants and customers have experienced financial hardships, while third-party food delivery services have experienced an increase in profitable margins. Third-party food delivery services utilize various commission models that can charge a restaurant up to thirty-percent or more per order, including delivery, marketing and promotion, subscription, and processing fees. Restaurants, and particularly small family-owned restaurants with few locations, have limited bargaining power to negotiate lower commission fees with third-party food delivery services. Given that only a few restaurants in the marketplace provide their own food delivery services, small restaurants that do not operate their own food delivery service resort to contracting with third-party food delivery service providers as a means to keep afloat during these challenging times. Many small enterprises face dire financial circumstances, and take-out and delivery are essential to maintaining their restaurant operations for the foreseeable future during the ongoing COVID-19 pandemic.

In order to further clarify the term of this Interim Urgency Ordinance, the City desires to adopt a modification to Interim Urgency Ordinance 2021-02-CC directing the City Manager/Interim City Manager and the City Attorney to undertake all actions legally necessary to extend this Interim

Urgency Ordinance in the event: (1) the studies and reports desired by this City Council will not be concluded, to allow restaurants to offer dine-in service, without limitation, or (2) upon the termination of the COVID-19 Local Emergency, whichever comes first, on or before the forty-fifth (45th) day subsequent to the adoption of this Interim Urgency Ordinance.

BACKGROUND: At the January 12, 2021, regularly scheduled City Council Meeting, Council Member Diaz requested this item to be considered by the City Council to consider the adoption of an ordinance temporarily limiting the fees charged by third-party food delivery services.

At the February 9, 2021, regularly scheduled City Council Meeting, the City Council unanimously adopted Interim Urgency Ordinance No. 2021-02-CC. As a result of the declarations and ensuing Federal, State and County orders, restaurants and similar businesses have been prohibited from offering on-premises dining and are only allowed to sell food and beverages to customers for delivery and pick-up in an attempt to limit and control the spread of COVID-19.

The Los Angeles County Public Health Department has adopted a similar order that was challenged in court, but is still subject to appeal. If the court action is successfully appealed, it is likely that the order restricting restaurants would extend beyond the State order.

Takeout and delivery only options for restaurants severely strain their viability. Many restaurants rely on third party delivery services that charge fees that further jeopardize the continued operation of those restaurants. Further negative impacts of such circumstances are set forth in the recitals of the proposed Ordinance attached. If adopted, the Ordinance will continue the temporary limit on the delivery fees that can be charged by a third-party food delivery service to civil liability, enforceable via court action by any restaurant aggrieved by the failure to comply with the ordinance. It is unknown if any restaurant has availed itself of this ordinance restriction.

Similar ordinances have been adopted by surrounding communities, including Alhambra, South Pasadena, and Los Angeles.

ATTACHMENT: Proposed Interim Urgency Ordinance

INTERIM URGENCY ORDINANCE NO. _____

**CITY OF SOUTH GATE
LOS ANGELES COUNTY, CALIFORNIA**

**INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF SOUTH GATE, CALIFORNIA, ESTABLISHING A
TEMPORARY LIMIT ON THE CHARGES IMPOSED BY THIRD-PARTY
FOOD DELIVERY SERVICES ON LOCAL RESTAURANTS DURING THE
ONGOING COVID-19 PANDEMIC**

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 the Coronavirus Disease 2019 ("COVID-19"); the Los Angeles County Health Officer issued a Declaration of Local Health Emergency due to the COVID-19 cases in Los Angeles County; and the 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, pursuant to California Government Code Section 8630(c), a governing body shall declare a local emergency and shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency;

WHEREAS, on March 18, 2020, in his role as the Director of Emergency Services, the City Manager of the City of South Gate proclaimed the existence of a local emergency within the City ("Local Emergency") to ensure authority to take measures necessary to protect and preserve public health and safety, including seeking aid from state and federal authorities as necessary;

WHEREAS, thereafter on March 24, 2020, the City Council adopted Resolution No. 2020-07-CC ratifying the declaration of the existence of a Local Emergency by the Director of Emergency Services on March 18, 2020;

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

WHEREAS, as a result of those declarations and ensuing orders, restaurants and similar businesses have been prohibited from offering on-premises dining and are only allowed to sell food and beverages to customers for delivery and pick-up;

WHEREAS, limiting restaurants to only takeout and delivery service has placed a sudden and severe financial strain on many restaurants, particularly those that are small businesses that already operate on limited resources, adds financial pressures with the increased cost of acquiring ingredients and supplies due to the ongoing COVID-19 surges;

WHEREAS, many restaurants use third-party food and beverage delivery services and persons living and working in South Gate rely on these delivery services, must experience the high fees charged by third-party delivery services (ranging between 12 and 30 percent);

WHEREAS, many restaurants and similar businesses operating in South Gate are small businesses with few locations, which have limited bargaining power to negotiate lower fees with third-party food delivery services and no ability to independently provide such delivery services, may be unable to continue operating;

WHEREAS, capping delivery fees charged by third-party food delivery service providers will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during the ongoing COVID-19 pandemic will not unduly burden the third-party food delivery services, as the cap proposed by this ordinance is reasonable and will allow the third-party food delivery services to continue to be profitable;

WHEREAS, the need to cap such fees will likely continue beyond the expiration of the State and County emergency declarations, as it is unclear how quickly thereafter restaurant patrons will return to in-restaurant dining, and restaurants may continue to see a significant loss of revenue for an ongoing period of time thereafter;

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, on February 9, 2021, the City Council unanimously adopted Interim Urgency Ordinance No. 2021-02-CC adopting new Section 2.10.380 (COVID-19 Restrictions – Food Delivery Charges), to Chapter 2.10 (Business Regulation), to Title 2 (Licenses – Business Regulations), of the South Gate Municipal Code establishing a temporary limit on the charges imposed by third-party food delivery services on local restaurants during the ongoing COVID-19 pandemic, effective immediately; and

WHEREAS, in order to further clarify the term of this Interim Urgency Ordinance, the City desires to adopt a modification to Interim Urgency Ordinance 2021-02-CC directing the City Manager/Interim City Manager and the City Attorney to undertake all actions legally necessary to extend this Interim Urgency Ordinance in the event: (1) the studies and reports desired by this City Council will not be concluded, to allow restaurants to offer dine-in service, without limitation, or (2) upon the termination of the COVID-19 Local Emergency, whichever comes first, on or before the forty-fifth (45th) day subsequent to the adoption of this Interim Urgency Ordinance.

WHEREAS, although on March 11, 2021, Governor Newsom announced that indoor dining at restaurants would be allowed commencing March 15, 2021 due to the COVID-19 vaccine target being reached, it is still in the interest of protecting the public health and safety to continue limiting charges imposed by third-party food delivery services, given the strains on restaurants and customers.

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

SECTION 1. The City Council does hereby declare that the above recitals are true and correct and incorporated herein by reference.

SECTION 2. The City Council does hereby adopt this Interim Urgency Ordinance establishing a temporary limit on the charges imposed by third-party food delivery services on local restaurants during the ongoing COVID-19 pandemic.

SECTION 3. This Interim Urgency Ordinance shall become effective immediately upon its adoption by a four-fifths (4/5) vote of the City Council due to the immediate need to protect the public health, safety and welfare. It shall be of no further force or effect forty-five (45) days from the date of adoption unless extended following a public hearing, as provided in Government Code Section 65858.

SECTION 4. The City Manager/Interim City Manager and the City Attorney shall undertake all actions legally necessary to extend this Interim Urgency Ordinance in the event: (1) the studies and reports desired by this City Council will not be concluded, to allow restaurants to offer dine-in service, without limitation, or (2) upon the termination of the COVID-19 Local Emergency, whichever comes first, on or before the forty-fifth (45th) day subsequent to the adoption of this Interim Urgency Ordinance.

SECTION 5. If any provision of this Interim Urgency 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 Interim Urgency Ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this Interim Urgency Ordinance are declared to be severable. This Interim Urgency 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 6. The City Clerk shall certify to the adoption of this Interim Urgency Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED and ADOPTED this 23rd day of **March 2021**.


CITY OF SOUTH GATE:

By: _____
Maria Davila, Mayor

ATTESTED:

By: _____
Carmen Avalos, City Clerk
(SEAL)

APPROVED AS TO FORM:

By:  _____
Raul F. Salinas, City Attorney