

ORDINANCE NO. 4229

AN EMERGENCY AND INTERIM ORDINANCE OF THE CITY OF HUNTINGTON
BEACH ESTABLISHING LIMITATIONS ON THIRD-PARTY FOOD
DELIVERY FEES

WHEREAS, the City of Huntington Beach is a charter city organized pursuant to Article XI of the California Constitution and pursuant to the authority so granted, the City has the power to make and enforce within its limits all ordinances and regulations with respect to municipal affairs not in conflict with its own charter. Such police powers include without limitation the ability to adopt emergency ordinances for the immediate preservation of the public peace, health, or safety pursuant to Section 501 of the City Charter; and

WHEREAS, due to the spread of COVID-19 (coronavirus) within the State, on March 4, 2020, Governor Gavin Newsom, declared local and state public health emergencies due to the spread of COVID-19 locally and within the State, pursuant to Health & Safety Code Section 101080 and Government Code Section 8625, respectively; and

WHEREAS, as a result of the spread of COVID-19, restaurants were prohibited from providing in-person dining, and were limited to drive through, pick-up or delivery. Pursuant to California Health and Safety Code sections 101030, 101040, 101470, 120175, and 120130, on December 17, 2020, the County of Orange Health Officer issued Orders and Strong Recommendations providing that the only businesses and activities allowed to open are those under the purple tier assigned to Orange County, provided that such businesses and activities comply with all applicable restrictions for the purple tier. The purple tier prohibits indoor dining at restaurants, and permits only outdoor dining with modifications. Further, to help prevent the spread of droplets containing COVID-19, all County residents and visitors shall wear face coverings when outside of the home, and comply with the Limited Stay At Home Order, issued by California Department of Public Health, effective November 21, 2020 10:00 pm PST; and

WHEREAS, the County Health Officer's Strong Recommendations state that all Orange County residents who are 65 years old or older; have serious underlying medical conditions, or have a compromised immune system should remain at home;

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the hearing on this Emergency and Interim Ordinance, including, but not limited to, the staff report, and all written and oral testimony presented; and

WHEREAS, the City Council finds that approval of this Ordinance would not only make the use of third-party delivery services more affordable, thereby enabling an increase in their use by consumers, and reducing the potential for spread of COVID-19 from in-person dining, but also reduce COVID-19's economic impacts on retail food establishments and food consumers.

The City Council of the City of Huntington Beach does hereby ordain as follows:

ADOPTION OF LIMITS ON THIRD PARTY FOOD DELIVERY SERVICES.

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following definitions apply.

- A. "City" means the City of Huntington Beach.
- B. "Delivery Fee" means a fee charged by a Third-party Food Delivery Service for providing a Retail Food Establishment with a service that delivers food and beverages from such establishment to customers. The term does not include any other fee or cost that may be charged by a Third-party Food Delivery Service to a Retail Food Establishment, such as fees for listing or advertising the Retail Food Establishment on the Third-party Food Delivery Service platform or fees related to processing the online order, including, but not limited to, service fees, fees for facilitating Online Orders for pick-up, and credit card processing fees.
- C. "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 within the City.
- D. "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 Retail Food 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
- E. "Retail Food Establishment" means a restaurant, delicatessen, bakery, coffee shop, or other eat-in or carry-out service of processed, or prepared raw and ready-to-eat food or beverage.
- 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 delivery or pick-up of food and beverages from, no fewer than twenty (20) Retail Food Establishments located in the City that are each owned and operated by different persons.

SECTION 2. PROHIBITIONS.

- A. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment a Delivery Fee that totals more than fifteen (15) percent of the Purchase Price of each Online Order.
- B. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any amount designated as a Delivery Fee for an Online Order that does not involve the delivery of food or beverages.
- C. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any combination of fees, commissions, or costs for the Retail Food Establishment's use of the Third-party Food Delivery Service that is greater than five (5) percent of the Purchase Price of each Online Order. Fees, commissions, or costs do not include the Delivery Fee.
- D. It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any fee, commission, or cost that is to be paid to the Third-party Food Delivery Service, other than as permitted in Subsections A through C, above.
- E. It shall be unlawful for a Third-party Food Delivery Service to charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Retail Food

Establishment on the Third-Party Food Delivery Service or, if no price is set by the Retail Food Establishment on the Third-Party Food Delivery Service, the price listed on the Retail Food Establishment's own menu.

F. It shall be unlawful for a Third-party Food Delivery service to retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the Third-party Delivery Service, in its entirety, to the person delivering the food or beverages.

G. As an example, if a customer orders a meal that is advertised for \$10.00 on the Third-party Food Delivery Service's app, the Third-party Food Delivery Service cannot charge the customer more than \$10.00 for the meal, or charge the restaurant more than \$1.50 as a Delivery Fee. In addition, the Third-party Food Delivery Service may not charge the restaurant more than .50¢ as a fee or commission for the restaurant's placement on the Third-party Food Delivery Service's app. Finally, any tip the customer pays the delivery person shall not be paid to the Third-party Food Delivery Service.

SECTION 3. DISCLOSURES.

A. The Third-party Food Delivery Service shall disclose to the customer an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to the following:

1. The Purchase Price of the food and beverages at the cost listed on the Retail Food Establishment's menu;
2. The Delivery Fee charged to the Retail Food Establishment;
3. Each fee, commission, or cost, other than a Delivery Fee, charged to the Retail Food Establishment;
4. Each fee, commission, or cost, other than the Delivery Fee or the Purchase Price of the food, charged to the customer by the Third-party Food Delivery Service; and,
5. Any tip or gratuity that will be paid to the person delivering the food or beverages.

SECTION 4. ENFORCEMENT.

A. A violation of this Ordinance shall subject the violator to the following:

1. Notwithstanding any other provision in this Code, each violation of the provisions of this Chapter may be enforced alternatively as a misdemeanor or an infraction at the discretion of the City Attorney, or the City Attorney may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this Chapter.
2. A civil action in the Superior Court of the State of California to recover all actual damages resulting from a violation of this ordinance.
3. A civil action alleging a violation of any provision of this Ordinance shall commence only after the following requirements have been met:

- a. Written notice is provided to the Third-party Food Delivery Service of the Provisions of this Ordinance alleged to have been violated and the facts to support the alleged violation; and
- b. The Third-party Food Delivery Service is provided 15 days from the date of the written notice to cure any alleged violation.

SECTION 5. ADOPTION AND SUNSET. Pursuant to Charter Section 501, this Ordinance is hereby declared to be an emergency measure for the immediate preservation of the public peace, health or safety during the COVID 19 pandemic and becomes effective immediately upon adoption by at least five affirmative votes. This Ordinance shall automatically expire automatically after 120 days or repeal by the City Council.

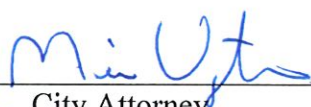
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2021.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

INITIATED AND APPROVED:

City Manager