



**CITY OF
LA MESA**
JEWEL of the HILLS

INTEROFFICE MEMO

DATE: February 23, 2021

TO: Mayor and Members of the City Council

FROM: Megan Wiegelman, City Clerk *MW*

VIA: Greg Humora, City Manager *GH*
Glenn Sabine, City Attorney

SUBJECT: Consideration and Possible Adoption of a Resolution Confirming and Ratifying the Rules and Regulations Included in Executive Order No. 6-2021 as Issued by the Director of Emergency and Disaster Pursuant to LMMC Section 2.56.060 for the Direct Protection and Benefit of the Citizens of the City of La Mesa

On March 4, 2020, the Governor of California proclaimed a statewide emergency regarding the novel COVID-19 virus ("Virus"). Since that time, conditions and threatened conditions of extreme peril to the safety of persons or property have arisen within the City of La Mesa either caused by the expanding threat of the Virus; the potential existence of Virus positive persons and patients in the City; and, potential threatened isolation and quarantine of residents, employees and public safety workers.

On April 14, 2020, the City Council adopted Resolution No. 2020-033 confirming the Mayor's appointment of the City Manager as the Director of Emergency and Disaster ("Director") and the Director of Finance as the Assistant Director of Emergency and Disaster ("Assistant Director") and Director's Proclamation of the Existence of a Local Emergency Pursuant to La Mesa Municipal Code ("LMMC") Section 2.56.050. On June 23, 2020, the City Council adopted Resolution No. 2020-069 confirming the Mayor's appointment of the Assistant City Manager as the Assistant Director of Emergency and Disaster ("Assistant Director") pursuant to LMMC Section 2.56.050.

LMMC Section 2.56.060 empowers the Director to promulgate and issue rules and regulations on matters reasonably related to the protection of life and property related to a proclaimed emergency. These rules and regulations must be confirmed by the City Council thereafter. On January 28, 2021, the Director issued Executive Order 6-2021 to temporarily cap fees third-party delivery companies may charge restaurants as follows:

1. It shall be unlawful for a third-party food delivery company to do the following:
 - a. Charge a restaurant a delivery fee that totals more than 15% of the purchase price of each online order.
 - b. Charge a restaurant any fee other than a delivery fee for the restaurant's use of their service greater than 3% of the purchase price of each online order. Any other fees or charges from a third-party food delivery company to a restaurant

beyond such maximum 3% fee per order and a delivery fee collected pursuant to subparagraph "1.a" are unlawful.

2. This Order shall expire 60 days after the public health orders are lifted or when restaurants are permitted to resume indoor dining at 100% capacity, whichever occurs first.

Staff recommends the City Council:

Approve and adopt the Resolution confirming and ratifying the rules and regulations included in Executive Order No. 6-2021 as issued by the Director pursuant to LMMC Section 2.56.060 for the direct protection and benefit of the Citizens of the City of La Mesa.

Attachment A - Resolution Confirming Director Rules and Regulations
Attachment B – Executive Order No. 6-2021

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA MESA
CONFIRMING AND RATIFYING THE RULES AND REGULATIONS AS ISSUED
BY THE DIRECTOR OF EMERGENCY AND DISASTER PURSUANT TO
LA MESA MUNICIPAL CODE SECTION 2.56.060 FOR THE DIRECT
PROTECTION AND BENEFIT OF THE CITIZENS OF THE CITY OF LA MESA

WHEREAS, On March 13, 2020, the Mayor appointed the City Manager as the Director of Emergency and Disaster ("Director") pursuant to La Mesa Municipal Code ("LMMC") Section 2.56.050, absent the advice and consent of the La Mesa City Council ("City Council"), because the City Council was not in session;

WHEREAS, LMMC Section 2.56.050 empowers the Director to proclaim a local emergency if the City Council is not in session and requires that the City Council take action to ratify the proclamation at the earliest practicable time thereafter;

WHEREAS, on March 4, 2020, the Governor of California proclaimed a statewide emergency regarding the novel COVID-19 virus ("Virus") and since that time conditions have continued to worsen;

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the City of La Mesa as a result of the Virus which continues to this date;

WHEREAS, the Director proclaimed the existence of a local emergency within the City on the 13th day of March, 2020;

WHEREAS, LMMC Section 2.56.060 empowers the Director to promulgate and issue rules and regulations on matters reasonable related to the protection of life and property as affected by such emergency;

WHEREAS, such rules and regulations must be confirmed at the earliest practicable time by the City Council thereafter;

NOW, THEREFORE, BE IT RESOLVED, by the City Council that it confirms and ratifies the following rules and regulations as promulgated and issued by the Director pursuant to LMMC Section 2.56.060 for the protection of the Citizens of La Mesa:

1. It shall be unlawful for a third-party food delivery company to do the following:
 - a. Charge a restaurant a deliver fee that totals more than 15% of the purchase price of each online order.
 - b. Charge a restaurant any fee other than a delivery fee for the restaurant's use of their service greater than 3% of the purchase price of each online order. Any other fees or charges from a third-party food delivery company to a restaurant beyond such maximum 3% fee per order and a delivery fee collected pursuant to subparagraph "1.a" are unlawful.
2. The Order shall expire 60 days after the public health orders are lifted or when restaurants are permitted to resume indoor dining at 100% capacity, whichever occurs first.

PASSED AND ADOPTED at a Regular meeting of the City Council of the City of La Mesa, California, held the 23rd day of February 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2021-_____, duly passed and adopted by the City Council of said City on the date and by the vote therein recited.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)

EXECUTIVE DEPARTMENT
CITY OF LA MESA, CALIFORNIA

DIRECTOR OF EMERGENCY AND DISASTER
EXECUTIVE ORDER NO. 6-2021
(LA MESA MUNICIPAL CODE CHAPTER 2.56)

WHEREAS, the economic impacts of COVID-19 have been significant, and could threaten to undermine the stability of La Mesa businesses;

WHEREAS, on March 12, 2020, the County Public Health Officer issued orders directing the public to take certain actions to protect the public health from COVID-19;

WHEREAS, on March 13, 2020 the Director of Emergency and Disaster issued a proclamation of local emergency related to the spread of the COVID-19 virus in our community, which the City Council ratified on April 14, 2020, and the local emergency will continue until its termination;

WHEREAS, on March 19, 2020 pursuant to Executive Order N-33-20, the Governor directed all California residents to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, under the Order of the State Public Health Officer until further notice;

WHEREAS, on December 3, 2020, the State of California announced a Regional Stay Home Order that would be triggered for three weeks if a region's Intensive Care Unit (ICU) capacity drops below 15 percent in a given region. San Diego County was assigned into the Southern California region with 11 other counties.

WHEREAS, on December 5, 2020, the Southern California region's ICU capacity dropped below the threshold to 13.1 percent, triggering a three-week Regional Stay at Home order for the San Diego County. The ICU capacity is currently at 0 percent. All gatherings with members of other households are prohibited in San Diego County.

WHEREAS, on December 29, 2020, Health and Human Services Agency Secretary Dr. Mark Ghaly announced that Southern California's Regional Stay Home Order, which includes San Diego County, will remain in effect until further notice due to a surge in COVID-19 hospitalization and a lack of ICU capacity.

WHEREAS, COVID-19 and necessary closures have had a drastic impact on our local economy, with shutdowns most heavily impacting the restaurant industry. Currently some on-site dining is prohibited in order to stem community spread of the novel coronavirus and prevent further strain on our region's hospital systems.

WHEREAS, restricting restaurants to takeout and delivery offerings placed a sudden and severe financial strain on many establishments, particularly those that are small businesses already operating on thin margins, adding to financial pressures in the industry that predate the COVID-19 pandemic. Similarly, limited dine-in options at restaurants has created a financial strain on many consumers, who now pay substantially more to have meals delivered;

WHEREAS, in light of the substantial added challenges due to COVID-19, it is necessary to support neighborhood restaurants and retail food establishments so they may continue to perform an essential function of providing access to food via delivery and pick-up options and to address food insecurity to those who are unable to obtain food in other ways.

WHEREAS, during the statewide Stay Home Order and Regional Stay Home Order, many restaurants and retail food establishments have increasingly turned to third-party food delivery companies to supplant dine-in and outdoor dining due to restrictions mandated by public health orders. A third-party food delivery company means any website, mobile application, or other internet service that offers or facilitates the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food or beverages from, five (5) or more separately-owned retail food establishments located in the City.

WHEREAS, restaurants generally, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third-party food delivery companies, and this only becomes more significant given the high market saturation of these third-party food delivery companies, and the dire financial straits that small business restaurants are facing during the COVID-19 emergency.

WHEREAS, while restaurants have pivoted their business models to adapt to curbside pickup and delivery, third-party food delivery companies have imposed commissions, fees, and service charges of 30% and upwards to restaurants, creating economic hardship for small businesses throughout the City of La Mesa. In order to protect our local restaurant industry and its consumers, it is necessary to restrict temporarily the fees imposed by third party food delivery companies to no more than 18% of the purchase price for an online order. The purchase price of an online order includes the total price of the items contained in the order, but does not include taxes, gratuities, or any other fee that may make up the total cost to the customer of an online order. An online order means any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery company, including a telephone order, or orders for delivery or pickup within the City. A restaurant as used in this Order 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 beverages.

WHEREAS, capping the per-order fees to a total combined amount of 18% (15% for delivery and 3% for all other fees or charges) will support the legitimate public purpose of easing the financial burden on struggling businesses in our community, will keep food delivery options accessible to consumers, and is an important first step in providing relief to a struggling local industry.

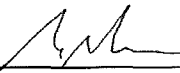
NOW, THEREFORE, I, Greg Humora, Director of Emergency and Disaster of the City of La Mesa, California, pursuant to La Mesa Municipal Code Chapter 2.56, hereby issue this Executive Order to do the following:

1. It shall be unlawful for a third-party food delivery company to do the following:
 - a. charge a restaurant a delivery fee that totals more than 15% of the purchase price of each online order.


- b. charge a restaurant any fee other than a delivery fee for the restaurant's use of their service greater than 3% of the purchase price of each online order. Any other fees or charges from a third-party food delivery company to a restaurant beyond such maximum 3% fee per order and a delivery fee collected pursuant to subparagraph "1.a" are unlawful.
2. This order shall expire 60 days after the public health orders are lifted or when restaurants are permitted to resume indoor dining at 100% capacity, whichever occurs first.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed with the City Clerk, posted on the City's website and that widespread publicity and notice be given of this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Seal of the City of La Mesa to be affixed this 28th day of January, 2021.



Greg Humora
Director of Emergency and Disaster

ATTEST:


Megan Wiegelman
City Clerk