

**EMERGENCY ORDER  
OF THE CHULA VISTA DIRECTOR OF EMERGENCY SERVICES  
[Order No. 007-2020]**

***Delivery Service Fees***

**Effective Date: February 24, 2021**

Pursuant to CVMC section 2.14.080 [Director – Powers and Duties], Chula Vista City Council Resolution No. 2020-065, and the Proclamation of State Emergency issued on March 4, 2020 by the Governor of the State of California, the Chula Vista Director of Emergency Services (“Emergency Director”) hereby

**ORDERS AS FOLLOWS:**

Effective 12:01 a.m. on February 24, 2021:

1. **Definitions.** For purposes of this Order, the following definitions apply:
  - a. “Online Order” means an order placed by a customer through a platform provided by a Third-Party Food Delivery Service for delivery or pickup within the City of Chula Vista.
  - b. “Purchase Price” means the menu price of an online order, excluding taxes, gratuities and any other fees that make up the total cost to the consumer of an Online Order.
  - c. “Retail Food Establishment” means a restaurant, delicatessen, bakery, café, coffee shop, or any other eat-in or carry-out service of food or beverages from one or more retail locations within the City of Chula Vista.
  - d. “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 same-day delivery or same-day pickup of food and beverages from no fewer than five separately-owned Retail Food Establishments located in the City of Chula Vista.
2. **Cap on Per-Order Fees.** Subject to the terms and conditions contained in this Order, and subject to the terms of conditions of any other applicable federal, state or county law, order or regulation, it shall be unlawful for a Third-Party Food Delivery Service to do the following:
  - a. charge a Retail Food Establishment a delivery fee for an Online Order that totals more than 15% of the Purchase Price of the Online Order.
  - b. charge a Retail Food Establishment any fee other than a delivery fee for the Retail Food Establishment’s use of the Third-Party Food Delivery Service’s service greater than 3% of the Purchase Price of an Online Order.
  - c. charge a Retail Food Establishment, directly or indirectly, any fee or combination of fees, including delivery or other fees as described in subsections (a) and (b) above, that combined together totals more than 18% of the Purchase Price of the Online Order.
3. **Refund Period.** A Third-Party Food Delivery Service shall not be found in violation of this order if between February 24, 2021 and March 3, 2021, it imposes a fee per Online Order for

the use of its services that totals more than 18% of the Purchase Price of such Online Order, provided it refunds the portion of the fee that exceeds 18% of the Purchase Price to the Retail Food Establishment prior to March 10, 2021.

4. Duration of Order. The provisions of this Order shall take effect on February 24, 2021 and, unless earlier terminated by action of the Emergency Director or the City Council as provided in section 6 below, continue in effect until 60 days after Retail Food Establishments are permitted by applicable state and local public health orders to resume indoor dining at 100% capacity.
5. Violation of Order. To the maximum extent allowed by law, violation of this order by any Third-Party Food Delivery Service shall subject such Third-Party Food Delivery Service to either or both of the following remedies:
  - a. If a Third-Party Food Delivery Service charges a Retail Food Establishment fees that violate this Order, the Retail Food Establishment shall provide written notice to the Third-Party Food Delivery Service requesting a refund be paid within seven days of such notice. If the Third-Party Food Delivery Service does not provide the refund requested within such seven-day cure period or the Third-Party Food Delivery Service continues to charge fees in violation of this Order after the initial notice and seven-day cure period, a Retail Food Establishment may enforce this Order by means of a civil action seeking damages or injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney's fees.
  - b. Violations of this Order shall also constitute a violation of the Chula Vista Municipal Code and be subject to criminal, civil, and administrative penalties as set forth in Chula Vista Municipal Code sections 1.20.010 and 2.14.140.
6. Amendment, Interpretation, and Revocation. This Order may be expanded, interpreted, amended, or revoked pursuant to the independent judgment of the Chula Vista Director of Emergency Services and in accordance with Chula Vista Municipal Code section 2.14.080(F)(1), or by Resolution of the City Council.

### **GENERAL PROVISIONS**

7. This order is issued as a result of a worldwide COVID-19 pandemic declared by the World Health Organization on January 30, 2020 and a Public Health Emergency due to the COVID-19 virus declared by the United States Secretary of Health and Human Services on January 31, 2020.
8. As of the date of this order, the COVID-19 virus continues to represent a danger to the Chula Vista community (to persons, businesses, and property including both physical and economic harm), and has significantly impacted the City's personnel and financial resources. The actions required by this Order are necessary to reduce the number of individuals who will be exposed to COVID-19, and will thereby slow the spread of COVID-19 in the City of Chula Vista. By reducing the spread of COVID-19, this Order will save lives and increase public safety to persons and property, and reduces both physical and economic harm.

9. To reduce the spread of the COVID-19 virus and protect public health, state and county orders prohibit some on-site dining in the City of Chula Vista; such restrictions have heavily impacted the restaurant industry. Limitations on dine-in options at Food Service Establishments have placed a financial strain on many Food Service Establishments and on many consumers, who now pay more to have meals delivered. As a result of these COVID-19 impacts, it is necessary to support Food Service Establishments so they can continue to provide essential access to food via delivery and pick-up options, including for those who are unable to obtain food in other ways, and continue to remain sources of employment and neighborhood vitality in the City.
10. During the COVID-19 pandemic, many Retail Food Establishments have increasingly turned to Third-Party Food Delivery Services to offset the mandated reductions in on-site dining. Many Food Service Establishments have limited bargaining power to negotiate lower fees with Third-Party Food Delivery Services, particularly given the financial strains that Retail Food Establishments are facing during the pandemic. Capping the per-order fees will support the legitimate public purpose of easing the financial burden on struggling Food Service Establishments in our community and of keeping food delivery options accessible to consumers while on-site dining remains limited.
11. This Order is issued in accordance with, and incorporates by reference: the Proclamation of Local Emergency issued by the Chula Vista Director of Emergency Services on March 13, 2020; Chula Vista City Council Resolution No. 2020-065; Chula Vista City Council Emergency Ordinance No. 3484-A; the Declaration of Local Health Emergency issued by the County of San Diego Health Officer on February 14, 2020; the County of San Diego Order of the Health Officer and Emergency Regulations (Effective February 6, 2021); the Proclamation of a State of Emergency issued by the Governor of the State of California on March 4, 2020; Executive Order N-33-20 issued by the Governor of the State of California on March 19, 2020; Executive Order N-60-20 issued by the Governor of the State of California on May 4, 2020; the Order of the State Public Health Officer issued May 7, 2020; COVID-19 guidance issued by the State of California including but not limited to county-specific guidance, industry guidance, and the Face Coverings Guidance; the State of California's "Blueprint for a Safer Economy"; and Proclamation 9984 regarding COVID-19 issued by the President of the United States on March 11, 2020.
12. This Order comes after the release of substantial guidance from the County of San Diego Public Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world.
13. With this Order, the Emergency Director is hereby exercising their independent judgment to make and issue rules and regulations reasonably related to the protection of life and property, pursuant to Chula Vista Municipal Code section 2.14.080(F)(1), subject to confirmation of the City Council at the earliest practical time.

**SO ORDERED,**

BY:

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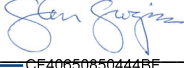
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Maria V. Kachadoorian,  
City Manager/Director of Emergency Services  
City of Chula Vista

Approved as to Form:

BY:

DocuSigned by:



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Glen R. Googins,  
City Attorney  
City of Chula Vista