



# City of Culver City

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## Staff Report

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### **CC - ACTION ITEM: Discussion and Direction to Staff Related to Limitation on Third Party Food Delivery Fees**

**Meeting Date:** May 22, 2023

**Contact Person/Dept.:** Jesse Mays, Assistant City Manager

**Phone Number:** (310) 253-6000 City Manager's Office

**Fiscal Impact:** Yes  No       **General Fund:** Yes  No

**Attachments:** Yes  No

**Commission Action Required:** Yes  No       **Date:**  
**Commission Name:**

**Public Notification:** (E-Mail) Meetings and Agendas - City Council (05/18/23)

**Department Approval:** John Nachbar, City Manager (05/18/23)

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### **RECOMMENDATION**

Staff recommends the City Council discuss and direct staff related to a limitation on third party food delivery fees.

### **BACKGROUND**

On October 30, 2020, based on City Council's direction at its October 26, 2020 meeting, the City Manager issued the Twenty-Ninth Supplement to Public Order, during the COVID-19 local emergency (Local Emergency), which temporarily limited third party food service fees, effective November 6, 2020. The limitation was that no third party food delivery service may charge a retail food establishment a delivery fee that totals more than 15% of the purchase price of an online order, or any combination of fees, commissions or costs, that is greater than 5% of the purchase price of each online order, as detailed in Exhibit A to the Order (Attachment 1).

The Thirty-Fifth Supplement to Public Order issued on March 25, 2021 continued the fee limitations on third party food delivery services to the end of the Local Emergency. The City Council terminated the Local Emergency effective April 1, 2023, at which point the fee limitations also terminated.

At its meeting on February 27, 2023, the City Council directed staff to obtain input from Culver City restaurants regarding this issue before returning to City Council for additional direction on whether to make the limitations permanent or not.

## **DISCUSSION**

Staff outreached to over 5,485 businesses via GovDelivery, and directly contacted the Downtown Business Association, the Culver City Arts District and the Culver City Chamber of Commerce. Additionally, outreach was conducted to third-party delivery companies including DoorDash, Uber and Grubhub.

Although outreach was extensive, only 13 responses were received (Attachment 2). The majority of the responses indicated their opposition to terminating existing limitation on third-party delivery fees. These responses point to rising labor and food costs overall, as well as to the fact that the limitations enacted during the Local Emergency didn't prevent third-party delivery companies from applying fees. According to respondents, combined, these three reasons have contributed to making it difficult for restaurants to fully recover since the peak of the pandemic.

Responses from two food delivery companies advocated for not making permanent the City's limitation on third-party food delivery fees. Their responses indicated they wanted to allow the market to move to the food delivery companies' post-COVID policies (Attachments 3 and 4). DoorDash's response stipulated that the City's limit on fees to third-party platforms is no longer necessary based on new pricing options available to restaurants and the resolution of the Local Emergency. Additionally, DoorDash alleged that making the policy permanent could lead to potential litigation.

DoorDash and GrubHub filed litigation against San Francisco alleging limitations on third-party food delivery fees violated the companies' private property rights. San Francisco and the food delivery companies settled the lawsuit after San Francisco adopted a new ordinance removing the cap on third party delivery fees for companies that offered restaurants a new, lower cost, pricing option. DoorDash informed City staff that it would not oppose a similar ordinance in Culver City.

If the City Council is interested in pursuing permanent regulations, staff recommends such regulations be modeled after San Francisco's current ordinance.

## **FISCAL ANALYSIS**

There is no fiscal impact from giving direction to staff on these issues.

## **ATTACHMENTS**

1. 2023-05-22 ATT Exhibit A to 29<sup>th</sup> Supplement to Public Order Regarding Food Delivery Fees
2. 2023-05-22 ATT Summary of Public Input on Third Party Food Delivery Fees
3. 2023-05-22 ATT Letter from Uber
4. 2023-05-22 ATT Email from DoorDash

**MOTIONS**

That the City Council:

Discuss and provide direction to the City Manager related to limitation on third party food delivery fees.