

RECEIVED

Agenda Items: ID#20-001201 (4-B)

Date: 9/17/2020

2020 SEP 14 P 3:09

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Additional Information

Item(s)

Title: BILL (for introduction and adoption) – Adopting as an emergency ordinance the “Business is Essential to Local Economies Act,” adding Section 2-516 and amending Section 2-514 of the Fresno Municipal Code (Requires 5 affirmative votes)

Contents: Ordinance

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk’s Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk’s website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk’s Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

BILL NO. _____

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, ADOPTING THE "BUSINESS IS ESSENTIAL
TO LOCAL ECONOMIES ACT," ADDING SECTION 2-516
AND AMENDING SUBSECTIONS (g) AND (m) OF 2-514 OF
THE FRESNO MUNICIPAL CODE TO PROTECT
BUSINESSES AFFECTED BY COVID-19

WHEREAS, on March 13, 2020, President Trump declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak; and

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency in the State of California related to COVID-19; and

WHEREAS, the City has declared a State of Emergency related to COVID-19; and

WHEREAS, on March 17, 2020, the Director of Emergency Services, pursuant to Fresno Municipal Code Section 2-505, and by the powers invested in the director pursuant to Fresno Municipal Code Section 2-506, issued Emergency Order 2020-01 which prohibited all on-premise food consumption at restaurants, food courts and other establishments that offered on-premises dining. Delivery, drive-thru, and pick-up options were still allowed; and

WHEREAS, on March 26, 2020, the Director of Emergency Services issued Emergency Order 2020-08 calling for all individuals living in the City to Shelter at their place of residence except to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and government services; and

1 of 10

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: _____

Ordinance No.

WHEREAS, on August 28, 2020, Governor Newsom introduced the Blueprint for a Safer Economy, a Statewide, Stringent and Slow Plan for Living with COVID-19; and

WHEREAS, to reduce the spread of the virus and protect the public health, the Blueprint for a Safer Economy, a Statewide, Stringent and Slow Plan for Living with COVID-19 plan prohibits restaurants in the City from offering dine-in service, limiting restaurants to delivery, takeout and outdoor dining only; and

WHEREAS, restricting restaurants to takeout, delivery, and outdoor offerings only has placed a sudden and severe financial strain on many restaurants, particularly those that are small businesses that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis; and

WHEREAS, it is in the public interest to take action to maximize restaurant revenue from the limited offerings that are currently the sole source of revenue for these small businesses to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality in the City; and

WHEREAS, many consumers use third-party applications and websites to place orders with restaurants for delivery and takeout, and these third-party food delivery service platforms charge restaurants fees that range between 12% and 30% of the purchase price per order and other transaction fees; and

WHEREAS, the cost of acquiring ingredients and supplies has also increased because of the COVID-19 crisis; and

WHEREAS restaurants, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate a lower fee with third-party Food Delivery Service platforms, given the high market saturation of third-party platforms, and

the dire financial straits small business restaurants are facing in this COVID-19 emergency; and

WHEREAS capping the per-order fees in the amounts set forth herein will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms, as this fee is recognized as reasonable, and third-party platforms will continue to be profitable; and

WHEREAS local businesses are taking precautions to keep employees and customers safe from COVID-19; and

WHEREAS, despite best efforts, businesses cannot entirely control the behavior of patrons, and need greater protection from lawsuits by customers or workers who become infected with COVID-19 and claim the business was the source of the infection; and

WHEREAS, the Council now wishes to implement certain protections to to benefit businesses suffering as a result of the COVID-19 pandemic.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2-516 is added to the Fresno Municipal Code to read:

SECTION 2-516. THIRD PARTY FOOD DELIVERY SERVICE CHARGES.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) "City" means the City of Fresno.

(2) "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 establishments 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.

(3) "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.

(4) "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 or an Online Order.

(5) "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 beverages.

(6) “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 20 Retail Food Establishments located in the City that are each owned and operated by different persons.

(b) Fee limits. The following limits shall apply any time Retail Food Establishments are restricted by law from allowing indoor dining, and for a period of 90 days after Retail Food Establishments are allowed to reopen at 50% or greater indoor customer capacity:

(1) It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment a Delivery Fee that totals more than 15 percent of the Purchase Price of each Online Order.

(2) 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.

(3) 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 5 percent

of the Purchase Price of each Online Order. Fees, commissions, or costs do not include Delivery Fee.

(4) It shall be unlawful for a Third-party Food Delivery Service to charge a Retail Food Establishment any fee, commission, or cost other than as permitted in Subsections 1 through 3, above.

(5) 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 without the approval of the Retail Food Establishment.

(6) 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.

(c) Penalties and Enforcement

(1) A violation of this section is a misdemeanor punishable by imprisonment for a period not exceeding one year, or by a fine of not more than \$1,000, or by both fine and imprisonment. Alternatively, an administrative citation may be imposed pursuant to Section 1-308 of this code with an administrative fine of up to \$10,000 per violation.

(2) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The

remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions code, and the remedies or penalties available under all other laws of this state.

SECTION 2. Subsection (g) of Section 2-514 of the Fresno Municipal Code is amended to read:

(g) Rent Deferral, Eviction Moratorium, and Foreclosures.

(1) To the extent allowed by State law, no residential tenant, including, without limitation, a mobile home tenant, in the City shall be evicted for nonpayment of rent during the state of emergency caused by the COVID-19 outbreak.

(2) To the extent allowed by State law, commercial landlords in the City are hereby prohibited from evicting commercial tenants for nonpayment of rent during the state of emergency caused by COVID-19[, and for a period of 90 days after the declaration of local emergency is terminated].

(3) A tenant, whether residential or commercial, must notify their landlord in writing they cannot pay rent due to a COVID-19 related impact. Within ten days of this notice, the tenant must provide documentation to support the claim that they cannot pay rent. For purposes of this section, "in writing" includes e-mail or text communication to the landlord. Any documentation provided to support the claim is deemed to be adequate for this purpose in

accordance with state law. Any medical or financial information provided to the landlord shall be held in confidence and used only for purposes of evaluating the tenant's claim.

(4) Tenants will have up to six months after the termination of the emergency declaration to repay any back-due rent. No interest, late fees, or other penalties shall accrue or be owed as a result of rent deferrals pursuant to this Section.

(5) This eviction moratorium shall be in effect continuously for so long as the City's declaration of local emergency is in effect¹, and for commercial tenants, for a period of 90 days following termination of the declaration of local emergency].

(6) A tenant may use this order as a legal defense in any action for unlawful detainer.

(7) Residents and businesses should not face foreclosure as a result of COVID-19. Lenders are encouraged to provide a forbearance agreement for up to six months for borrowers impacted by COVID-19, without impacting the borrower's credit. The city will follow all laws and orders of the State with respect to foreclosure protection.

SECTION 3. Subsection (m) of Section 2-514 of the Fresno Municipal Code is amended to read:

(m) Upon confirmation of a positive COVID-19 case among an employee or customer of a business, the employer shall notify all

employees of the possible exposure within 24 hours. Such notification shall maintain confidentiality of the individuals involved or affected, in compliance with Americans with Disability Act and privacy laws. An employer shall follow all local, state and federal public health requirements and recommendations, including sanitizing, and cooperating with contact tracing protocols. [No cause of action shall exist against a business for COVID-19 infections alleged to stem from the business, so long as the business is in full compliance with State and local mandatory safety measures related to COVID-19.]

SECTION 4. Severability.

(a) If any provision of this order or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Orders or this Resolution which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

(b) This Ordinance shall be immediately translated into Spanish, Hmong, and Punjabi, and accommodations made for all disabled persons to read its contents; it shall also be distributed to all local media and made prominently available on the City's website.

SECTION 5. Pursuant to Sections 603 and 610 of the Charter of the City of Fresno, this Ordinance shall take effect immediately upon passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2020.

AYES :
NOES :
ABSENT :
ABSTAIN :

YVONNE SPENCE, MMC CRM
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Katie Doerr Date
Deputy City Attorney