

ORDINANCE NO. 2033

AN URGENCY ORDINANCE OF THE CITY OF  
PALM SPRINGS, CALIFORNIA ESTABLISHING  
LIMITATIONS ON THIRD-PARTY FOOD  
DELIVERY FEES *(four-fifths (4/5) vote required)*

*City Attorney Summary*

*An ordinance establishing a temporary limit on the charges imposed by third-party delivery services on retail food establishments during the COVID-19 epidemic and for 90 days after the City's locally declared emergency ends. The Council finds that these provisions should include a regulatory purpose for the promotion of public health, safety, and welfare by promoting the use of third-party delivery services, by making them more affordable, thereby reducing the need for in-person dining, and thereby reducing the risk of spread of the COVID-19 virus.*

WHEREAS, the City of Palm Springs 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 regulations pertaining generally to the protection and promotion of the public health, safety, and welfare; and

WHEREAS, with that purpose and intent, the City Manager acting as Director of Emergency Services issued a Proclamation of Local Emergency regarding COVID-19 on March 14, 2020 that was ratified by City Council on March 19, 2020. A similar shelter in place order was subsequently issued by the State of California; and

WHEREAS, under the very first stay at home orders in March of 2019, restaurants were prohibited from providing in-person dining, and were limited to drive through, pick-up or delivery. Although restaurants were subsequently authorized to provide in-person, indoor dining on May 12, 2020, that option was again removed by the State on July 1. After that date, and continuing until just recently--September 22--restaurants within Palm Springs were only able to provide in-person dining outdoors. As a result of the limitations placed on restaurants being able to provide in-person dining, there has been a significant increase in the use of third-party food delivery services, and reports of high delivery fees, which would tend to have the effect of discouraging the use of third party delivery services; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the hearing on this proposed Urgency 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 Urgency Ordinance would accomplish the following:

1. Make the use of third-party delivery services more affordable, thereby enabling an increase in their use by consumers, and thereby reducing the potential for spread of COVID-19 from in-person dining.
2. Reduce the economic impacts to retail food establishments and food consumers.

NOW, THEREFOR, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. That the findings and determinations reflected above are true and correct, and are incorporated by this reference herein as the cause and foundation for the action taken by and through this Urgency Ordinance. The City Council hereby finds that this Urgency Ordinance is necessary for the current and immediate protection of the public health, safety and welfare of the City and its residents.

SECTION 2. Adoption of Limits on Third Party Food Delivery Services.

A. DEFINITIONS.

For purposes of this ordinance, the following definitions apply:

1. "City" means the City of Palm Springs.
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 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.
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 of 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. PROHIBITIONS.

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 that is to be paid to the Third-party Food Delivery Service, 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 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.

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.

7. 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. Nor can the

Third-party Food Delivery Service charge the restaurant more than \$1.50 as a Delivery Fee. Nor can the Third-party Food Delivery Service 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, if the customer agrees to provide the delivery person a \$2.00 tip, that tip must go to the delivery person; not the Third-party Food Delivery Service company.

#### C. DISCLOSURES.

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:

- (a) the Purchase Price of the food and beverages at the cost listed on the Retail Food Establishment's menu;
- (b) the Delivery Fee charged to the Retail Food Establishment;
- (c) each fee, commission, or cost, other than a Delivery Fee, charged to the Retail Food Establishment;
- (d) 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
- (e) any tip or gratuity that will be paid to the person delivering the food or beverages.

#### D. ENFORCEMENT.

A violation of this ordinance shall subject the violator to the following:

1. A civil action in the Superior Court of the State of California to recover all actual damages resulting from a violation of this ordinance.
2. Reasonable attorneys' fees and costs awarded by a court to a plaintiff that prevails in an action against a Third-party Food Delivery Service. If plaintiff fails to prevail against a Third-party Food Delivery Service, a court may award reasonable attorneys' fees and costs to the Third-party Food Delivery Service upon a determination by the court that the plaintiff's action was frivolous.
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 the 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.

4. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this ordinance, nor shall it be enforced as a violation of a City ordinance or emergency order.

#### E. SUNSET.

This ordinance shall automatically sunset on the date that is 90 days following the end of the locally declared emergency, unless extended by the City Council or Emergency Services Director.

SECTION 3. Severability. If any section or provision of this Urgency Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Urgency Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Urgency Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 4. CEQA. The City Council determines that the adoption of this Urgency Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to the following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a "project" under CEQA, and will not result in direct or indirect physical changes in the environment.

SECTION 5. Urgency Findings. Pursuant to City Charter Section 312 and California Government Code Section 36937, this Ordinance is designed to protect the health, safety and welfare of the citizens of the City of Palm Springs and becomes effective immediately upon adoption by a four-fifths (4/5) vote of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to eliminate the current and immediate threats set forth above.

SECTION 6. Severability. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more



section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 7. Adoption, Certification, and Publication. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Urgency Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law.

PASSED, APPROVED, AND ADOPTED THIS 8TH DAY OF OCTOBER, 2020.



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GEOFF KORS  
MAYOR

ATTEST:



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ANTHONY J. MEJIA, MMC  
CITY CLERK

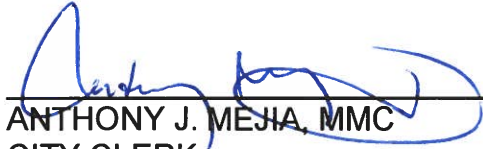
#### CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, ANTHONY J. MEJIA, City Clerk of the City of Palm Springs, California, do hereby certify that Urgency Ordinance No. 2033 is a full, true, and correct copy, and was adopted without introduction at a regular meeting of the City Council held on October 8, 2020 by the following vote:

AYES: Councilmembers Garner, Middleton, Woods, Mayor Pro Tem Holstege, and Mayor Kors  
NOES: None  
ABSENT: None  
ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this 20<sup>th</sup> day of October, 2020.



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ANTHONY J. MEJIA, MMC  
CITY CLERK