CITY OF SAN DIEGO
EXECUTIVE ORDER NO. 2021-1
BY THE MAYOR

On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to SARS-CoV-2, also known as COVID-19.

On February 19, 2020, the County of San Diego Board of Supervisors ratified the Declaration of Local Health Emergency.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic.

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic, which at the time claimed 118,000 cases of COVID-19 in over 110 countries.

On March 12, 2020, the San Diego County Public Health Officer issued orders directing the public to take certain actions to protect the public health from COVID-19. The Public Health Order was amended several times and is in effect until further notice. The current public health order mandates the use of face coverings, prohibits gatherings with members of other households, and order all persons to remain in their homes or in their place of residence except for certain exceptions such as traveling to or from an essential business or participating in a permitted individual or family outdoor activity.

On March 12, 2020, the City of San Diego, acting through the Mayor, issued a proclamation of local emergency in preparation and response to the spread of the COVID-19 virus in our community, which the City Council ratified on March 17, 2020. The City Council has extended the local emergency, with the most recent action to extend it, on December 9, 2020, by Resolution R-313389.

On March 13, 2020, President Donald Trump issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

On March 19, 2020, in Executive Order N-33-20, Governor Gavin Newsom issued a Stay Home Order that directed all California residents to stay home or at their place of residence except as needed to facilitate authorized activities or to maintain the continuity of operations of the federal critical infrastructure sectors. The order is in place until further notice.

On June 18, 2020, Governor Gavin Newsom issued guidance that mandated the use of face coverings for people in California when they are indoors or in other areas where physical distancing is not possible.

On July 6, 2020, due to an increased number of confirmed COVID-19 infections in the San Diego region, San Diego County was placed on the State's County Monitoring List.

On July 13, 2020, the State of California ordered the closure of indoor activities for the following industries and activities within counties on the County Monitoring List, which includes San Diego County: restaurants, bars, fitness centers, places of worship, indoor protests, offices for non-essential sectors, personal care services, hair salons, barbershops, and indoor malls.

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On August 28, 2020, Governor Gavin Newsom announced the Blueprint for a Safer Economy, which permits the gradual reopening of certain businesses and activities.

On November 16, 2020, Governor Gavin Newsom updated existing guidance for the use of face coverings, requiring Californians to use face coverings at all times when outside the home, with limited exceptions.

On November 21, 2020, the State Public Health Officer issued a Limited Stay at Home Order that directs residents in counties in the Widespread (Purple) tier, which includes San Diego County, to stop non-essential activities between 10:00 p.m. and 5:00 a.m.

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.

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.

On December 12, 2020, Mayor Todd Gloria launched the #ShopLocalSD campaign to encourage citizens to purchase food, services, and goods from local small businesses, in order to support the local economy and help small businesses survive the impacts of the novel coronavirus and subsequent government shutdowns.

On December 21, 2020, the State Public Health Officer issued a Supplemental Order that directs counties under the Regional Stay Home Order, which includes San Diego County, to stop non-essential retail activities between 10:00 p.m. and 5:00 a.m.

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.

On January 25, 2021, San Diego County reported 227,195 positive cases and 2,375 deaths due to COVID-19.

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.

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.

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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.

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.

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.

While restaurants have pivoted their business models to adapt to curbside pickup and delivery, third-party food delivery companies have imposed commissions, fees, and services charges of 30% and upwards to restaurants, creating economic hardship for small businesses throughout the City of San Diego. 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.

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 business 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.

By virtue of authority vested in me as Mayor of the City of San Diego pursuant to the provisions of the City Charter, San Diego Municipal Code section 51.0105, and California Government Code section 8634 to promulgate, issue, and enforce rules, regulations, and orders, I hereby declare the following orders to be necessary for the protection of life and property and I hereby order, effective at 11:59 p.m. tonight until further notice that:

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 are unlawful.

2. The City of San Diego shall allow storefront businesses to erect temporary curbside pickup parking signage for parking spaces immediately adjacent to their storefront linear footage, that is not already occupied by an outdoor dining establishment. Each storefront business may erect the temporary signs for no more than 2 parking spaces immediately adjacent to the storefront business or within the same street block if parking spaces adjacent to the business are already occupied. Temporary signage may be erected by an individual business, or as part of a Curbside Dining program via a local parking district or business improvement district. Parking spaces designated as temporary curbside pickup parking shall not violate any provisions of the San Diego Municipal Code, including, but not limited to Chapter 8, Article 6, Division 1 "General Parking Regulations." The temporary curbside pickup parking signs must be no smaller than 11 inches by 16 inches, and state "Temporary Curbside Pickup Parking – 30 Minutes or Less." No temporary curbside pick up parking shall be located within an ADA accessible parking or loading space, or in a manner that would obstruct existing curb ramps intended for ADA compliance. The City of San Diego will not enforce on metered spaces marked with temporary curbside pickup signage. 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 sooner. The authority to allow storefront businesses to erect temporary curbside pickup parking spaces is within the Mayor's discretion pursuant to San Diego Municipal Code sections 86.0106 and 86.0108.

   The provisions of this paragraph 1 of this Order shall expire 60 days after the earlier of either the lifting of the above-referenced state and local public health orders or when restaurants are permitted to resume indoor dining at 100% capacity.

3. All of the requirements contained in the City's Executive Order No. 2020-1, dated March 16, 2020, except those superseded here or by order of the Governor or Public Health Official remain in effect.

4. All of the requirements contained in the City's Executive Order No. 2020-2, dated March 30, 2020, except those superseded here or by order of the Governor or Public Health Official remain in effect.

5. All of the requirements contained in the City's Executive Order No. 2020-3, dated April 30, 2020, except those superseded here or by order of the Governor or Public Health Official remain in effect.

6. All of the requirements contained in the City's Executive Order No. 2020-4, dated May 21, 2020, except those superseded here or by order of the Governor or Public Health Official remain in effect.

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7. All of the requirements contained in the City's Executive Order No. 2020-5, dated May 29, 2020, except those superseded here or by order of the Governor or Public Health Official remain in effect.

8. All of the requirements contained in the City's Executive Order No. 2020-6, dated June 5, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect.

9. All of the requirements contained in the City's Executive Order No. 2020-7, dated June 30, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect.

10. All of the requirements contained in the City's Executive Order No. 2020-8, dated July 7, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect.

11. All of the requirements contained in the City's Executive Order No. 2020-9, dated July 20, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect.

12. All of the added provisions contained in the City's Executive Order No. 2020-10, dated August 18, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect, and the provisions extending the time for payment of park permit fees are extended through January 31, 2021, or until the City Council acts upon an emergency ordinance to waive the referenced fees, which shall be presented for the City Council's consideration at the earliest practicable time.

13. All of the requirements contained in the City's Executive Order No. 2020-11, dated October 22, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect.

14. All of the requirements contained in the City's Executive Order No. 2020-12, dated December 30, 2020, except those superseded here or by order of the Governor or the Public Health Official, remain in effect.

Any violation of the above prohibitions may be referred for prosecution to the fullest extent of the law. Each individual officer should use their discretion in enforcing this order and always keep the intent of the order in mind.

Dated: January 25, 2021

Mayor Todd Gloria