# CITY OF SAN DIEGO
# EXECUTIVE ORDER NO. 2021-3
# BY THE MAYOR

This Executive Order extends the provisions of paragraph 1 of Executive Order No. 2021-1 related to capping food delivery fees for an additional 60 days to allow additional time for the local restaurant industry to recover.

COVID-19 and necessary closures have had a drastic impact on our local economy, with shutdowns most heavily impacting the restaurant industry. Previously, on-site dining was prohibited in order to stem community spread of the novel coronavirus and prevent further strain on our region's hospital systems. Currently, on-site dining has returned to 100% capacity due to the lifting of the State of California's Stay Home Order.

Restricting restaurants to takeout and delivery offerings placed a sudden and severe financial strain on many establishments, particularly 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 created a financial strain on many consumers, who paid substantially more to have meals delivered throughout the pandemic.

In light of 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.

As summarized below, the restaurant industry has been impacted by the COVID-19 pandemic and continues to be negatively impacted by the slow recovery process, challenges to hiring service workers, and a rise in COVID-19 cases.

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 for certain indoor settings and for unvaccinated individuals in certain indoor settings and businesses, including restaurants.

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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 Council has voted to extend the local emergency several times, with the most recent action to extend it occurring on August 3, 2021.

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.

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.

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. By the end of January 2021, the ICU capacity was at 0 percent and all gatherings with members of other households were prohibited in San Diego County.

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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, would remain in effect until further notice due to a surge in COVID-19 hospitalization and a lack of ICU capacity.

On January 25, 2021, Governor Newsom and the California Department of Public Health (CDPH) ended the Regional Stay at Home Order, lifting the order for all regions statewide, including the Southern California region, which encompassed San Diego County. This action allowed all counties statewide to return to the rules and framework of the Blueprint for a Safer Economy and color-coded tiers that indicate which activities and businesses are open based on local case rates and test positivity. San Diego County remained in the Purple Tier.

On January 25, 2021, Mayor Todd Gloria issued Executive Order No. 2021-1, declaring in paragraph 1 that it was temporarily unlawful for third-party food delivery companies to charge restaurants (1) delivery fees more than 15% of the purchase price of each online order and (2) 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. Pursuant to paragraph 2, paragraph 1 shall expire 60 days after the earlier of either the lifting of applicable state and local public health orders or when restaurants are permitted to resume indoor dining at 100% capacity.

On March 17, 2021, San Diego County was allowed to lift some COVID-19 restrictions and move from the most restrictive Purple Tier into the less restrictive Red Tier.

On April 6, 2021, Governor Newsom announced that the State of California would fully reopen its economy if two criteria are met: If vaccine supply is sufficient for Californians 16 years and older who wish to be inoculated; and if hospitalization rates were stable and low.

On April 7, 2021, San Diego County was allowed to further ease some COVID-19 restrictions and move from the Red Tier into the less restrictive Orange Tier.

On June 4, 2021, Governor Newsom announced that he will not lift the State of California's state of emergency when California reopens its economy on June 15, 2021, citing that the state of emergency is necessary to continue operating various programs needed to address the continued impacts of the pandemic.

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On June 8, 2021, San Diego County announced that they would be allowed to further ease some COVID-19restrictions and move from the Orange Tier into the less restrictive Yellow Tier beginning on June 9, 2021.

On June 11, 2021, San Diego County announced that nearly 2.1 million San Diegans received at least one shot of the COVID-19 vaccine.

On June 15, 2021, the State of California officially retired its Blueprint for a Safer Economy tier system, lifting capacity and physical distancing restrictions for most businesses and activities, including restaurants. Accordingly, the food delivery fee cap ordered on January 25, 2021, in Executive Order No. 2021-1 is scheduled to expired on August 14, 2021 at 11:59 p.m.

On August 12, 2021, San Diego County reported 310,596 positive cases and 3,821 deaths due to COVID-19. The rolling percentage of positive cases among COVID-19 tests administered has sharply increased from 1.5 percent on July 6, 2021 to 7.8 percent on August 11, 2021.

During the statewide Stay Home Order and Regional Stay Home Order, many restaurants and retail food establishments 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 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, Mayor Todd Gloria issued Executive Order No. 2021-1 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 (15% for delivery and 3% for all other fees or charges). Executive Order No. 2021-1 supports the legitimate public purpose of easing the financial burden on struggling businesses in our community, keeping food delivery options accessible to consumers, and was an important first step in providing relief to a struggling local industry.

The restaurant industry continues to experience hiring challenges, which does not allow for restaurants to hire sufficient staff to allow operation at 100% capacity. This is on top of their struggle to fully recover from intense economic challenges over the past year. In a legislative hearing of the California Senate's Special Committee on Pandemic Response, it was reported that nearly a third of California's restaurants permanently closed and two-thirds of workers temporarily lost their jobs due

to the pandemic. According to the California Employment Development Division, San Diego County has averaged 1,373 unemployment insurance claims in the accommodations and food service sector over the past 8 weeks.

Further, there is increased uncertainty about what will happen in the future as COVID-19 cases are on an upswing. Since July 5, 2021, the 7-day rolling average of COVID-19 cases has sharply increased. As of August 11, 2021, the 7-day rolling average is 41.1 positive cases per 100,000 people for unvaccinated individuals and 4.5 positive cases per 100,000 people for fully vaccinated individuals. Additionally, hospitalizations have sharply increased in that same period. On July 11, 2021, San Diego County reported 111 hospitalizations due to COVID-19. This number has increased to 507 hospitalizations as of August 10, 2021. Unfortunately, this pandemic is still a volatile situation with the threat of further negative impacts to our local economy.

To help address this, the City of San Diego is rolling out programming to support small businesses and restaurants and get San Diegans back to work by launching a grant program with the San Diego Foundation to provide $12 million to small businesses and nonprofits hardest hit by the pandemic. This program was adopted by the City Council at the beginning of August and will be rolled out during the summer.

Due to the lasting impacts of the pandemic, the restaurant industry's continued struggle to recover, and the continued increase in positive COVID-19 cases since the beginning of July, it is necessary to extend this temporary fee cap on third-party food delivery companies to ensure continued relief to our local restaurant industry and its consumers.

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 order to be necessary for the protection of life and property and I hereby order, effective at 11:59 p.m. on August 14, 2021, until further notice that:

1. the provisions of paragraph 1 of Executive Order No. 2021-1 shall be extended an additional 60 days and shall expire on October 13, 2021 at 11:59 p.m., to allow for continued recovery of the local restaurant industry and relief to its customers.

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: August 13, 2021

**Mayor Todd Gloria**