

**CITY COUNCIL MEETING  
SEPTEMBER 22, 2020**

**PRESENTATIONS**

## **ITEM 7 – LB 20-043**

**Temporary Limit on Third-Party Food Delivery Fees:  
Adoption of Emergency Ordinance Establishing a  
Temporary Limit of 15 Percent Limit on Fees of Food  
Delivery Service Providers to Support Restaurants in  
Hayward During the COVID-19 Pandemic  
(Report from Deputy City Manager Ott)**

**PRESENTATION**

# Temporary Limit on Third-Party Food Delivery Service Provider Fees

A nighttime photograph of Hayward City Hall, a large, multi-story building with a prominent glass entrance and a fountain in the foreground. The building is illuminated, and the fountain is lit up. The text "HAYWARD CITY HALL" is visible on the building's facade. The scene is set in an urban environment with trees and streetlights.

Paul Nguyen, Economic Development Manager  
Tuesday, September 22, 2020

# Purpose

- Recommend adoption of emergency ordinance to temporarily cap fees charged by third-party delivery services to Hayward restaurants during the COVID-19 pandemic at 15%
- Ease economic burdens and support business continuity of Hayward restaurants impacted by Shelter in Place Order requirements

# Background

## **State of Emergency (COVID-19 Pandemic):**

March 4, 2020 – State of California

March 11, 2020 – Hayward City Council

## **Shelter-In-Place Order:**

March 16, 2020 Alameda County (Delivery/takeout only)

March 20, 2020 State of California

July 15, 2020 Alameda County (Outdoor dining allowed)



# Rise of Third-Party Delivery Companies

- Provide ordering, marketing and delivery services to restaurants online and through mobile applications
- Nationwide, sales through third-party services increased over 150 percent year over year since July
- Industry consolidation leaves restaurants with less ability to negotiate service contracts



# Third-Party Delivery Service Fees

- Restaurants negotiate and enter into service contracts
- Fees range between 30 to 35 percent of the order value
- Fees vary based on contract terms, order origination, delivery distance
- Service providers use fees to pay and provide commercial insurance for delivery drivers, market restaurants, develop and maintain websites, ordering platforms

# Impacts to Restaurants

- 340 restaurant and related food establishments in Hayward with approximately half using a third-party delivery service
- Outreach via interviews and request for comments from all Hayward restaurants via business license database, Chamber of Commerce, DHIA and Downtown Merchants Groups:
  - Reliance on as much as 40 percent of their business from third-party providers
  - Fees charged have resulted in some not recouping enough net revenue to cover costs
  - Some are considering closing permanently

## Example Fee Pricing (GrubHub)

Taco Fix Pricing Example	
Marketing Commission	20%
Delivery Commission	10%
Processing Fee	3.05% + \$0.30
Delivery Tip	15%
Sales Tax	8%
<hr/>	
2 × Fish Tacos	\$8.00
3 × Carne Asada Tacos	\$10.50
1 × Carnitas Plate + Rice & Beans	\$12.50
1 × Guacamole & Chips	\$6.00
1 × Bottled Soda	\$2.00
1 × Bottled Water	\$2.00
<b>Product Total</b>	<b>\$41.00</b>
Sales Tax	\$3.28
<b>Receipt Total</b>	<b>\$44.28</b>
Marketing Commission <sup>1</sup>	(\$8.20)
Delivery Commission <sup>1</sup>	(\$4.10)
Processing Fee <sup>2</sup>	(\$1.65)
<b>Total Commissions &amp; Fees</b>	<b>(\$13.95)</b>
<b>Total Revenue<sup>3</sup></b>	<b>\$30.33</b>



# Summary of Ordinances in the Region

City	Fee Cap	Total Effective Cap	Grace Period	Termination Clause	Effective Date
<b>Berkeley</b>	15% on delivery orders No delivery fee on orders that do not involve delivery No more than 5% in other fees or costs	20%	None specified	Termination of local state of emergency	7/7/2020
<b>Fremont</b>	15%	15%	7 days	Termination of local state of emergency	7/23/2020
<b>Livermore</b>	15%	15%	7 days	When dine in service is permitted by the County	8/12/2020
<b>Oakland</b>	15% + credit card processing costs	18%-19%	30 days	90 days after end of local declared emergency	7/28/2020
<b>San Leandro</b>	15%	15%	None	When dine in service is permitted by the County or termination of the state of emergency	7/13/2020

# Proposed Emergency Ordinance

- Limit fees charged by third-party delivery services to 15 percent per order
- Establishes a grace period to October 6, 2020 provided third-party service providers refund fees charged in excess of 15 percent
- Establishes a process for restaurants to request refunds of fees above the limit within seven days of the order.
- Requires third-party service providers to issue a refund within seven calendar days of the request
- Enable restaurants to take civil action seeking damages and injunctive relief if a third-party delivery service provider refuses to provide a requested refund.

# Enforcement & Termination

- Penalties for violations in accordance with section 623 of the Charter of the City of Hayward. The fine amount for any violation of any section of the Municipal Code is set forth in the FY 2021 Master Fee Schedule:
  - First Violation - \$100.00
  - Second Violation - \$200.00
  - Third and Subsequent Violations - \$500.00
- Effective immediately upon adoption of the emergency ordinance
- Terminates 90 days after the Hayward City Council terminates the declared local emergency.

# Other Issues to Consider

- A fee cap may:
  1. Reduce the level of marketing services by third-party delivery companies for Hayward restaurants and result in reduced sales.
  2. Reduce driver tips
  3. Result in discontinued delivery service in the City of Hayward
- Overall, staff believes these risks are partially mitigated by the temporary duration of the fee cap, grace period, and right to private action model.

# Recommendation

That the City Council:

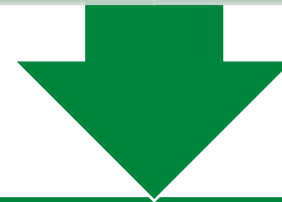
- Adopts an emergency ordinance that establishes a temporary 15 percent limit on fees charged by third-party food delivery service providers to Hayward restaurants during the COVID-19 pandemic.

# Emergency Ordinance Adoptions

## Emergency Ordinance

5 affirmative votes

Adopted and effective immediately



## Non-Emergency Ordinance

4 affirmative votes

Adopted at next Council Meeting and effective 30 days later

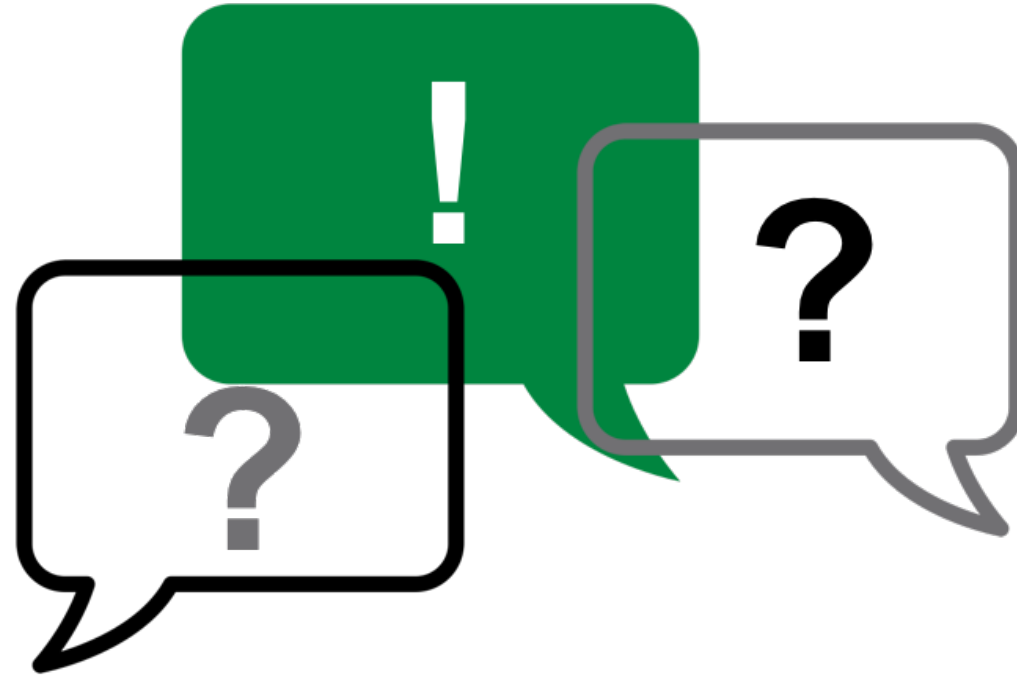


# Next Steps

If approved:

1. Send notification to all Hayward restaurants and business associations
2. Send notification to major third-party delivery service providers

# Questions



## **ITEM 8 – LB 20-045**

**Extend Commercial Evictions Moratorium:  
Adopt an Emergency Ordinance Amending  
Temporary Moratorium on Evictions to  
Extend the Moratorium for Commercial  
Evictions until January 31, 2021  
(Report from Deputy City Manager Ott)**

**PRESENTATION**



Extension of Temporary Moratorium  
on Commercial Evictions Related to  
COVID-19 until January 31, 2021

Jennifer Ott, Deputy City Manager  
Tuesday, September 22, 2020

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# Background

- **State of Emergency:** Corona Virus (COVID-19) pandemic
  - March 4, 2020 State of California
  - March 11, 2020 City of Hayward
- **Executive Order:** that enables local government to limit evictions
  - March 16, 2020 Governor of California
- **Shelter-In-Place Order:**
  - March 17, 2020 Alameda County
  - March 20, 2020 State of California
  - March 31, 2020 Alameda County
  - May 18, 2020 Alameda County
  - June 5, 2020 Alameda County
  - June 18, 2020 Alameda County
  - July 15, 2020 Alameda County
  - August 20, 2020 Alameda County

# Background (cont.)

- **Temporary Emergency Moratorium on residential rental evictions:**
  - March 24, 2020 City enacted
- **Judicial Council adopts emergency Court Rule that stops all evictions and foreclosures during the State of Emergency plus 90 days after.**
  - April 6, 2020
- **Temporary Emergency Moratorium expanded to prevent displacement of residential and commercial tenants**
  - April 7, 2020 City enacted
- **Extension of Temporary Emergency Moratorium for residential and commercial tenants until September 30, 2020**
  - June 30, 2020 City enacted



# Background (cont.)

- **State legislation called the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088)**
  - August 31, 2020 State enacted
  - Statewide moratorium on residential evictions until January 31, 2021
  - Local governments precluded from extending any existing moratoria on residential evictions beyond their already enacted expiration dates
  - City of Hayward cannot extend its temporary moratorium on residential evictions beyond September 30, 2020 or until after January 31, 2021
  - Court still not processing evictions until after the end of the year

# *Moratorium on Commercial Evictions*

**Applicability:** All commercial units (excludes residential tenants and homeowners per State law)

**Term:** Extend to January 31, 2021 (consistent with expiration of State moratorium)

## **Prohibitions:**

- Evictions for non-payment of rent related to COVID-19 and associated late fees
- No Fault evictions (except related to health and safety 'red tag' of units)
- Retaliation against tenants

# *Moratorium on Commercial Evictions*

## **Requirements:**

- Good faith effort to notify landlord
- Able to provide documentation to support claim

## **Payment of Past Due Rent:**

- Tenant liable for unpaid rent

## **Terms upon expiration:**

- No eviction for non-payment of rent during moratorium period within 180 days after expiration
- Requires meet and confer prior to initiating any action

# *Recommended Amendments to the Moratorium on Commercial Evictions*

## **Factors to Consider**

- Temporary Moratorium on Evictions expires on September 30, 2020
- State of emergency continues
- Continued restrictions on commercial businesses under the Shelter-in-Place-Order
- High unemployment rates

## **Recommendation**

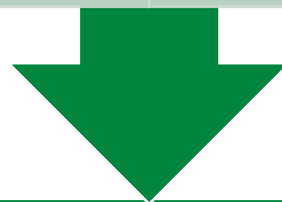
- Extend the moratorium until January 31, 2021

# Emergency Ordinance Adoptions

## Emergency Ordinance

5 affirmative votes

Adopted and effective immediately



## Non-Emergency Ordinance

4 affirmative votes

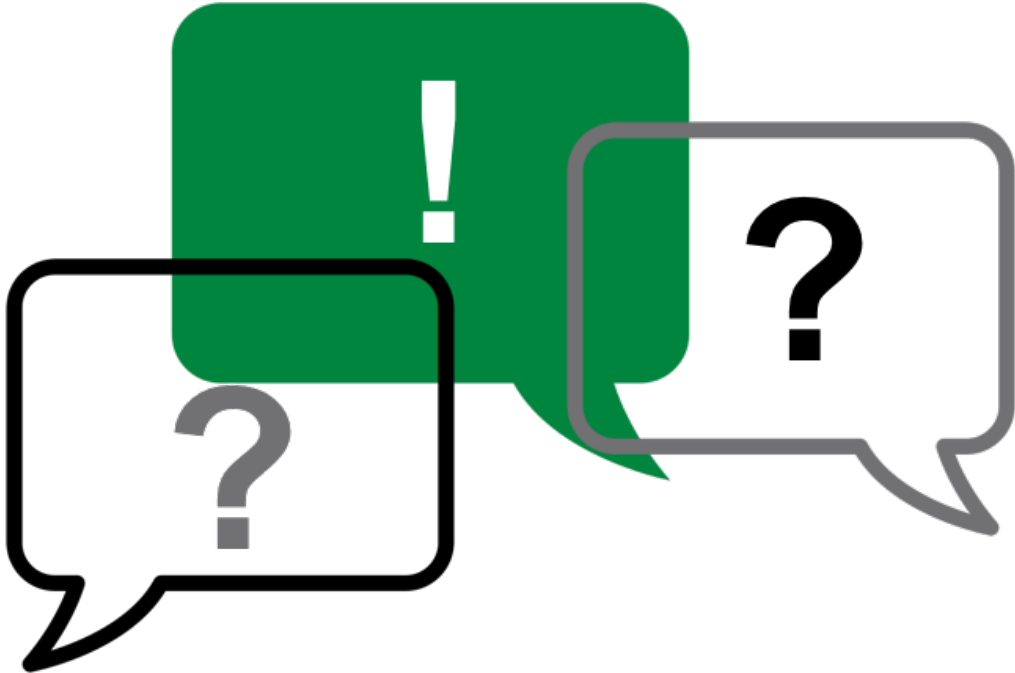
Adopted at next Council Meeting and effective 30 days later

# Next Steps

If approved, continue to inform commercial landlords and businesses of their rights and responsibilities under the Ordinance.



# Questions



## **ITEM 9 – LB 20-044**

**League of California Cities Annual Policy  
Resolutions: Adopt a Resolution  
Supporting the Singular League of  
California Cities Policy Resolution Being  
Considered at the 2020 League of  
California Cities Annual Business Meeting  
(Report from City Manager McAdoo)**

**PRESENTATION**



A photograph of Hayward City Hall at dusk. The building is illuminated from within, and the sky is a mix of orange, pink, and blue. In the foreground, there is a white tent on a lawn with some people and equipment. A street with a bus is visible on the right side.

# Adopt a Resolution Supporting the Singular League of California Cities Policy Resolution Being Considered at the 2020 League of California Cities Annual Business Meeting

**Maria A. Hurtado, Assistant City Manager**  
**September 22, 2020**



# Background

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- The **League of California Cities Annual Conference** is held virtually (October 7 – October 9, 2020)
- On July 21, 2020 the City Council designated the City's voting delegates and Alternates:
  - **Delegate:** Mayor Halliday
  - **Alternates:** Councilmembers Salinas and Wahab
- **Mayor Halliday, Councilmembers Salinas and Zermeño** will be attending the League of CA Cities Annual conference.

# Resolution for Consideration

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A Resolution Calling for an Amendment of Section 2330 of the Communications Decency Act of 1996 to Require Social Media Companies to Remove Materials Which Promote Criminal Activities

# Resolution Summary

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## *Amend Section 230 of the Federal Communications Decency Act of 1996:*

- Limit the immunity provided to online platforms where forums enable criminal activity to be promoted
- Policy objectives proposed in this resolution would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity