

ORDINANCE NO. 20-O- 2818

AN URGENCY ORDINANCE OF THE CITY OF BEVERLY HILLS  
ADOPTING EMERGENCY REGULATIONS RELATED TO RESIDENTIAL  
AND COMMERCIAL TENANT EVICTIONS, AND OTHER MEASURES,  
REPEALING ORDINANCE NO. 20-O-2817, AND DECLARING THE  
URGENCY THEREOF

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS  
FOLLOWS:

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”); and

WHEREAS, on March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for the broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread and addressing the effects of COVID-19; and

WHEREAS, on March 15, 2020, the City Manager, in his role as the Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Section 2-4-107 of the Beverly Hills Municipal Code to ensure the availability of mutual aid and an effective City response to the novel coronavirus (“COVID-19”) and that state of emergency was ratified by the City Council on March 16, 2020; and

WHEREAS, the California Department of Public Health and the Los Angeles County Department of Public Health have all issued orders including, but not limited to, social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many tenants in Beverly Hills have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19, and individuals directly affected by COVID-19 may experience loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, further economic impacts are anticipated, leaving tenants vulnerable to eviction; and

WHEREAS, the City of Beverly Hills is redoubling its efforts to maintain hand hygiene, respiratory etiquette, and social distancing. It is absolutely critical that the City does everything possible to slow the pace of community spread and avoid unnecessary strain on our medical system. To aid in these efforts, the City Council is ordering a series of temporary restrictions be placed on certain establishments throughout the City in which large numbers of people tend to gather and remain in close proximity and is requiring the wearing of face coverings; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, commercial tenants who operate businesses within the City may have to close their businesses in response to emergency orders, which will substantially decrease or eliminate their income, and businesses that are permitted to remain open also are likely to experience a significant loss of income while the emergency orders are in effect; and

WHEREAS, restaurants were prohibited from offering dine-in service, limiting restaurants to delivery and takeout offerings only, which 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 takeout and delivery orders that to assist restaurants in surviving 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 such third-party platforms charge restaurants fees ranging from 30% to 40% of the purchase price per order; and

WHEREAS, restaurants, and particularly restaurants that are small businesses with few locations, have limited bargaining power to negotiate lower fees with third-party 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, temporarily capping the per-order fees will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms that have seen an increase in demand; and

WHEREAS, in the interest of public peace, health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the City Council to exercise its authority to issue these regulations related to the protection of the public peace, health or safety.

Section 1. The City Council of the City of Beverly Hills does adopt the recitals and the following emergency regulations which shall take effect immediately:

1. A temporary moratorium on eviction for non-payment of rent by residential tenants substantially impacted by the COVID-19 crisis is imposed as follows:

a. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant in either of the following situations: (1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to substantial financial impacts related to COVID-19, or (2) for a no-fault eviction, unless necessary for the health and safety of tenants, neighbors, or the landlord, other than based on illness of the tenant or any other occupant of the residential rental unit. A landlord who receives notice that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord receives notice of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, within seven (7) days after the date that rent is due, notifies the landlord in writing, of lost income or extraordinary expenses related to COVID-19 and inability to pay full rent due to substantial financial impacts related to COVID-19, and within thirty (30) days after the date the rent is due, provides written documentation to the landlord to support the claim, using the form provided by the City. A copy of both the seven-day notice and the documentation to support the claim shall also be provided by email (or if email is not feasible by mail along with notification by telephone) to the City's Rent Stabilization office. For purposes of this Ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative if that is the method of written communication that has been used previously, or correspondence by regular mail, if that is the method of written communication that has been used previously and the parties have not agreed to use email or text messaging. Any medical or financial information provided to the landlord shall be held in confidence, and shall be used only for evaluating the tenant's claim.

b. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency, and which the tenant must pay in full within one year of the expiration of the local emergency. One year after the end of the emergency, unless if the rent is paid in full, a landlord may charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance; or a landlord may seek rent that

is delayed for the reasons stated in this Ordinance through the eviction or other appropriate legal process. No fee for the late payment of rent shall be charged by a landlord during the period of the emergency or one year after the end of the emergency. If a landlord makes an accommodation with respect to rent forbearance from a tenant pursuant to subsection 1.a, and the tenant is in conformance with the tenant's obligations under that subsection, then the landlord shall not make a negative report to a credit bureau so long as the tenant remains in compliance with those obligations.

c. For purposes of this Section 1, "financial impacts related to COVID-19" include, but are not limited to, lost household income or extraordinary expenses as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other substantial income reduction resulting from business closure or other economic or employer impacts of COVID-19 including for tenants who are salaried employees or self-employed; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses related to COVID-19; or (5) child care needs arising from school closures related to COVID-19.

d. For purposes of this Ordinance, "no-fault eviction" refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to, eviction notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1161b, use by landlord or relatives as specified in Beverly Hills Municipal Code Chapters 5 and 6, demolition or condominium conversion, major remodeling, and the Ellis Act, which is called withdrawal of residential rental structure from the rental market in the Beverly Hills Municipal Code.

e. During this emergency, any notice served by a landlord on a tenant under Section 4-5-513 or Section 4-6-6 L of the Beverly Hills Municipal Code is hereby tolled.

f. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which a local emergency was proclaimed on March 15, 2020.

g. For purposes of this Section 1, "substantial" shall be defined as a material decrease of monthly income, the incurring of extraordinary expenses related to COVID-19, or any other circumstance which causes an unusual and significant financial impact on the tenant.

h. Because some tenants may not be aware of this Ordinance's provisions, the Deputy Director of the Rent Stabilization may extend the seven (7) day deadline for notifying the landlord for up to thirty (30) days.

2. If a landlord disagrees with the residential tenant's assertion regarding: (1) whether a substantial financial impact exists; (2) whether the substantial financial impact is related to COVID-19; or (3) the amount of rent that the tenant will pay, then the landlord shall notify the tenant of the disagreement in writing within ten (10) days of receipt of the written documentation

from the tenant. The residential tenant may file a written appeal to the City, on a form provided by the City, within ten (10) days of receipt of the landlord's written determination and shall provide a copy of the appeal to the landlord. Appeals will be heard by the Standing Committee of the City Council appointed to hear disruptive tenant hearings or other Members of the City Council as designated by the Mayor, to make a final determination of the dispute, until fifteen (15) days after the Rent Stabilization Commission is appointed and sworn into office, in which case the Rent Stabilization Commission shall make a final determination of the dispute. If the Rent Stabilization Commission cannot render a decision by a majority vote, then the Standing Committee or other Members of the City Council, as designated by the Mayor, will make a final determination of the dispute. Final Decisions of the Subcommittee, Council Members designated by the Mayor, or the Rent Stabilization Commission are subject to judicial review filed pursuant to Section 1094.6 of the California Code of Civil Procedure. The hearing procedures shall be established by the City Attorney.

Section 2. The following regulations shall apply to commercial tenancies:

1. The following definitions shall apply to this Section 2:

“Affiliate” shall mean the commercial tenant and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the commercial tenant.

“Amnesty Date” shall mean August 1, 2020 for Large Commercial Tenants, and September 1, 2020 for all other commercial tenants.

“Large Commercial Tenants” shall mean a business that, together with its Affiliates, (1) employs more than 100 employees, or (2) has average annual gross receipts of more than \$15 million over the previous three years, or (3) has business operations, other than sales conducted solely through online channels, in three or more countries, including the United States; or (4) a business whose payment of rent is guaranteed by a business falling within the scope of subsections (1) or (2) or (3) of this subsection.

“Rent Recommencement Date” shall mean August 1, 2020 for Large Commercial Tenants and October 1, 2020 for all other commercial tenants.

“Repayment Date” shall mean the date by which all forborne rent shall be due.

2. Landlords and their commercial tenants shall work together during this time of emergency caused by the spread of COVID-19 to make a good faith attempt to develop a payment strategy for rent that accounts for the substantial financial impacts related to COVID-19 that may be faced by some tenants. Any payment strategy negotiated between a landlord and a commercial tenant shall take precedence over the provisions of this Ordinance. Absent such a payment strategy, commercial tenants shall be required to pay their rent under the following provisions of this Section 2.

The following paragraphs (a) through (d) of this Section 2, subsection 2 shall not apply to Large Commercial Tenants.

a. In order to assure that the landlords and commercial tenants will meet to attempt to develop a payment strategy for rent that accounts for the substantial financial impacts related to COVID-19, the landlord shall send a notice to any commercial tenant who has not agreed to a payment strategy with the landlord or who is not otherwise paying full rent, substantially in the form provided by the City, and by certified mail with return receipt, overnight courier service, or by any other delivery method that provides written evidence of receipt, which informs the commercial tenant of the requirement to meet and requesting that the tenant contact the landlord within ten (10) days to arrange a meeting and meet with the landlord within forty five (45) days to discuss a payment strategy that accounts for the substantial financial impacts related to COVID-19. A copy of this notice shall be provided to the City. This notice must be mailed by July 10, 2020.

b. If the landlord fails to send the notice or otherwise fails to meet with the commercial tenant, then the Repayment Date shall be September 1, 2021.

c. If the commercial tenant fails to contact the landlord in response to the notice or otherwise fails to meet with the landlord, then the Repayment Date shall be December 1, 2020.

d. If either party has attempted to schedule a meeting, but the other party appears to be unwilling to meet, either party may call the Rent Stabilization Office of the City of Beverly Hills and a City staff member will schedule such meeting or will determine that one or both parties are unwilling to meet. If the Rent Stabilization Office determines that either or both parties are unwilling to meet than the parties shall follow the provisions set forth below in this Section 2. The Rent Stabilization Office's determination that either or both parties are unable to meet shall create a rebuttable presumption in any unlawful detainer action or other action which seeks to recover rent.

3. A temporary moratorium on eviction for non-payment of rent by commercial tenants and Large Commercial Tenants substantially impacted by the COVID-19 crisis is imposed as follows:

a. During the period of local emergency declared in response to COVID-19, and up until the date described in subsection d below, no landlord shall endeavor to evict a commercial tenant or Large Commercial Tenant in either of the following situations: (1) for nonpayment of some or all of the rent if such commercial tenant demonstrates that the commercial tenant is unable to pay rent due to substantial financial impacts related to COVID-19; or (2) for a no-fault eviction unless necessary for the health and safety of tenants, neighbors, or the landlord, other than based on illness of the tenant, the tenant's family or any of tenant's employees. A landlord who receives notice that a commercial tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice or otherwise seek to evict a tenant for nonpayment of rent.

b. A landlord receives notice of a commercial tenant's inability to pay rent within the meaning of this Ordinance if the commercial tenant, within seven (7) days after the date that rent is due, notifies the landlord in writing of lost income or extraordinary expenses related to COVID-19 and inability to pay full rent due to substantial financial impacts related to COVID-19, and within thirty (30) days after the date the rent is due, provides written documentation to the landlord to support the claim. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the commercial tenant's claim. For purposes of this Ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative if that is the method of written communication that has been used previously, or correspondence by regular mail, if that is the method of written communication that has been used previously and the parties have not agreed to use email or text messaging.

c. Nothing in this Ordinance shall relieve any commercial tenant or Large Commercial Tenant of liability for the unpaid rent.

d. Forbearance of rent shall end on the Rent Resumption Date.

e. A Large Commercial Tenant must pay forborne rent on September 1, 2020 and all other commercial tenants must pay forborne rent on March 1, 2021 if such commercial tenant and the landlord have met pursuant to this Section 2 but have not come to an agreement regarding a payment strategy.

f. For Large Commercial Tenants, with regard to forborne rent a landlord may charge either the late fee or the interest that is provided in the lease between the landlord and the tenant from the time that the first rental payment was missed until the forborne rent is paid. No other late fee, interest or other penalty shall be charged by the landlord during the emergency or before the Repayment Date. After the Repayment Date, and if the forborne rent has not been repaid, a landlord may charge the full amount of the late fee, interest and other penalty that is provided in the lease beginning on the Repayment Date. However, the full amount of the late fees, interest and other penalty shall only run from the Repayment Date.

For all other commercial tenants, with regard to the forborne rent, a landlord may charge one half the amount of either the late fee or the interest that is provided in the lease between the landlord and the tenant capped at five percent (5%) from the time that the first rental payment was missed until the forborne rent is paid. No other late fee, interest or other penalty shall be charged by the landlord during the emergency or before the Repayment Date. After the Repayment Date, and if the forborne rent has not been repaid, a landlord may charge the full amount of the late fee, interest and other penalty that is provided in the lease beginning on the Repayment Date. However, the full amount of the late fees, interest and other penalty shall only run from the Repayment Date.

g. For any commercial tenant who is covered by this Ordinance and wishes to avoid the payment of late fees or interest on the tenant's forborne rent, the tenant may pay some or all of their forborne rent, with no late fees, interest or other penalties, no later than the Amnesty

Date. If the tenant pays all forborne rent by that Amnesty Date, the landlord shall not charge any late fees, interest, or other penalty.

h. For purposes of this Section 2, “financial impacts related to COVID-19” include, but are not limited to, a tenant who lost substantial business income or has extraordinary expenses as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses related to COVID-19; or (5) child care needs arising from school closures related to COVID-19.

i. For purposes of this Section 2, “substantial” shall be defined as a material decrease of monthly income, the incurring of extraordinary expenses related to COVID-19, or any other circumstance which causes an unusual and significant financial impact on the tenant.

j. This Ordinance shall not apply to any commercial tenant that is a publicly traded entity, an entity that is listed on the Fortune 1000, or any entity that employs more than 500 employees or any commercial tenant that owned by another entity that is publicly traded, listed on the Fortune 1000 or combined with the commercial tenant and other subsidiaries employs more than 500 employees. As used in the preceding sentence, the term “owned” shall mean ownership of a majority of the ownership interest of the commercial tenant. This exemption shall not apply to a franchisee or similar small business owner who is the responsible tenant on the lease unless such small business owner meets the criteria of this exemption.

(1) Any commercial tenant covered by the exemption set forth in this subsection j, and who otherwise complied with this Ordinance, shall have until 10 days, after the tenant has received notice as provided below, to pay all forborne rent that became due since March 16, 2020. The landlord shall not charge a late fee or interest in connection with such unpaid rent. If a commercial tenant fails to pay all forborne rent within 10 days after the tenant has received written notice delivered by certified mail with return receipt, overnight courier service, or by any other delivery method and provides written evidence of receipt, the landlord may charge a late fee or interest from that date.

(2) A landlord may give notice to any commercial tenant covered by the exemption set forth in this subsection j at any time.

k. A dispute as to whether the commercial tenant has demonstrated facts sufficient to result in a temporary payment reduction or other legal remedy shall be determined according to civil law.

Section 3. In addition to the requirements of the Governor’s Executive Order and the requirements of the Los Angeles County Department of Health order, the following regulations



related to businesses, located in the City of Beverly Hills are adopted in order to implement recommended practices as a result of the COVID-19 pandemic:

a. Business located in the City with self-service unwrapped food items such as buffets are prohibited.

b. Enforcement of City codes and regulations may be relaxed as City staff deems appropriate in connection with commercial signs and banners displayed on or adjacent to restaurants, bars or other businesses that are permitted to remain open pursuant to this Ordinance.

c. The City shall provide for additional loading zones near businesses that are authorized to be open in order to facilitate curbside pickup.

d. The City shall waive fees associated with a Special Event Permit for temporary outdoor dining and shall waive the minimum ten (10) day period for filing an application for a Special Event Permit for temporary outdoor dining.

e. The City Manager is authorized to issue street closure permits and any other permits necessary to allow for temporary outdoor dining.

f. To the extent that Beverly Hills Municipal Code Sections 5-10-2 through 5-10-7 prohibit retail establishments from providing without charge reusable bags or recycled paper bags to customers at the point of sale, Beverly Hills Municipal Code Sections 5-10-2 through 5-10-7 are hereby suspended.

Section 4. During the period of local emergency declared by the Director of Emergency Services on March 15, 2020 and affirmed by the City Council on March 16, 2020, in response to the COVID-19 pandemic, a temporary moratorium is hereby imposed on the annual rent increases authorized by Sections 4-5-303(c) and 4-6-3 of the Beverly Hills Municipal Code. This moratorium on rent increases shall be applied to any rent increase scheduled to take effect on or after March 15, 2020. Nothing in this Ordinance shall alter the date of annual rent increases in future years.

Section 5. During the period of local emergency declared by the City Council on March 16, 2020, in response to the COVID-19 pandemic, there shall be no increase in Internet access fees or reduction in service.

Section 6. For those establishments offering food pickup options, and other essential businesses, proprietors are directed to establish social distancing practices for those patrons in the queue for pickup and other reasons, as well those allowed in the premises or otherwise working. Such restaurants and essential businesses shall establish health and safety measures for their employees and customers, including but not limited to appropriate gloves and masks.

Section 7. Face Coverings. All persons shall wear face coverings that cover their mouth and nose openings such as scarves (dense fabric, without holes), bandannas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities, such as taking a walk through their neighborhood, if that person has potential to come

within six feet of another person not a member of their household. All persons, including non-medical essential workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for non-medical reasons.

Exceptions: These following exceptions will apply to this Section 6:

- (1) Children under the age of 2 are not required to wear face coverings.
- (2) Persons who must remove the face covering in order to receive medical services.
- (3) Persons who are directed to remove the face covering by a law enforcement officer.

For the purposes of this Ordinance, the terms “essential business,” “essential workers,” and “essential activity” shall have the same meanings as they do under State law.

**Section 8. Business Tax.** No penalties or interest shall accrue on outstanding business tax during the period that the City of Beverly Hills has declared an emergency related to the COVID-19 pandemic. The Director of Finance is authorized in his sole discretion to waive any penalties and/or interest on business tax imposed prior to the March 15, 2020 declaration of emergency, upon a request by a business owner and a demonstration by the business owner of economic hardship due to COVID-19.

**Section 9. Hoarding.** The City Council urges residents not to hoard essential goods such as hand sanitizer, cleaning supplies, toilet paper, canned food, frozen food and other needed supplies. The City Council strongly condemns hoarding. Retail establishments located in the City shall be responsible for limiting the sales of such items, as they see fit to provide greater accessibility to a larger group of customers.

**Section 10. Third Party Food Delivery Service Commission.**

1. Definitions. For purposes of this Section, the following definitions apply:

"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.

"Online Order" means an order placed by a customer, including a phone order, for delivery or pick-up from a restaurant located within the City.

"Purchase Price" means the menu price of the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the customer by the restaurant through the Third-Party Food Delivery Service. Such term therefore excludes taxes,

gratuities and any other fees or costs that may make up the total amount charged to the customer of an Online Order.

"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.

"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 separately owned and operated food service establishments.

2. Prohibitions. So long as the local emergency is in effect, it shall be unlawful for a Third-party Food Delivery Service to do the following:

- a. charge a Retail Food Establishment a Delivery Fee that totals more than fifteen percent (15%) of the Purchase Price of each Online Order.
- b. 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.
- c. 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 five percent (5%) of the Purchase Price of each Online Order or to charge any amount of fees, commissions, or costs for the Retail Food Establishment's use of the Third-Party Food Delivery Service unless the contract between the Retail Food Establishment and the Third-Party Food Delivery Service allows for fees, commissions, and costs other than a Delivery Fee. For the purpose of this subsection c, fees, commissions, or costs do not include the Delivery Fee, which is capped at fifteen percent (15%).
- d. charge a Retail Food Establishment any fee, commission, or cost other than as permitted in subsections a through c, above.
- e. charge a customer any Purchase Price for a food or beverage item that is higher than the price imposed by the Retail Food Establishment on the Third-Party Food Delivery Service or, if no price is imposed by the Retail Food Establishment on the Third-Party Food Delivery Service, the price listed on the Retail Food Establishment's own menu.
- f. retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the Third-party Food Delivery Service, in its entirety, to the person delivering the food or beverages.

3. 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;
- e. any tip or gratuity that will be paid to the person delivering the food or beverages.

4. A Third-Party Food Delivery Service shall not be found in violation of this Section if between June 17, 2020 and June 24, 2020, it imposes a Delivery Fee per Online Order that totals more than fifteen percent (15%), and other fees, commissions, and costs that total more than five percent (5%), of the Purchase Price of such Online Order, provided that the Third-Party Food Delivery Service refunds the portion of the fee that exceeds those amounts to the Retail Food Establishment prior to July 3, 2020.

5. If a Third-Party Food Delivery Service charges a Retail Food Establishment fees that violate this Section, the Retail Food Establishment shall provide written notice to the Third-Party Food Delivery Service requesting a refund within seven days. If the Third-Party Food Delivery Service does not provide the refund requested after seven days or the Third-Party Food Delivery Service continues to charge fees in violation of this Section after the initial notice and seven-day cure period, a Retail Food Establishment may enforce this Section by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

**Section 11. Violations.** Violations of this Ordinance shall be punishable as set forth in Section 2-4-111 and Chapter 3 of Title 1 of the Beverly Hills Municipal Code except violations of Section 7, which shall be solely subject to the administrative citation process set forth in Chapter 3 of Title 1 of the Beverly Hills Municipal Code. Violations of any public health order duly issued by the Los Angeles County Public Health Officer may be cited and prosecuted as an infraction or may be subject to the administrative citation process set forth in Chapter 3 of Title 1 of the Beverly Hills Municipal Code. In addition, this Ordinance provides a defense to a tenant, in the event that an unlawful detainer action is commenced in violation of this Ordinance.

**Section 12. Remain in Effect.** This Ordinance shall remain in effect for the duration of the local emergency.

**Section 13.** Ordinance No. 20-O-2817 is hereby repealed and replaced by this Ordinance.

**Section 14. Uncodified.** This Ordinance shall not be codified.

Section 15. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

Section 16. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 17. Effective Date. This Ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b), and therefore shall be passed immediately upon its introduction and shall become effective at 12:01 a.m., September 2, 2020 upon its adoption by a minimum 4/5 vote of the City Council.

Section 18. Duration. This Ordinance shall remain in effect until it is superseded by another Ordinance adopted by the City Council.

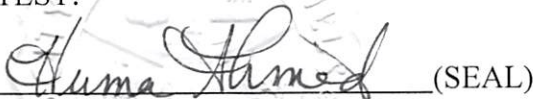
Section 19. Certification. The City Clerk shall certify to the adoption of this Ordinance.

Adopted: September 1, 2020  
Effective: September 2, 2020



LESTER J. FRIEDMAN  
Mayor of the City of Beverly Hills,  
California

ATTEST:

 (SEAL)

HUMA AHMED  
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:



GEORGE CHAVEZ  
City Manager

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