

File No. 201171

Committee Item No. _____

Board Item No. 44

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: October 20, 2020

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OTHER

- Mayoral Proclamation - Twenty Ninth Supplement - 9/30/20
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Prepared by: Lisa Lew

Date: October 16, 2020

Prepared by: _____

Date: _____

1 [Concurring in Actions to Meet Local Emergency - Coronavirus Response - Twenty-Ninth
2 Supplement]

2

3 **Motion concurring in actions taken by the Mayor in the Twenty-Ninth Supplement to the**
4 **Proclamation of Emergency to meet the ongoing local emergency related to the novel**
5 **coronavirus COVID-19 pandemic by regulating the fees charged restaurants by third-**
6 **party food delivery services.**

7

8 WHEREAS, On February 25, 2020, Mayor London N. Breed declared a local
9 emergency to exist in connection with the spread of the novel coronavirus COVID-19; and

10 WHEREAS, The Mayor transmitted a copy of that Proclamation Declaring the
11 Existence of a Local Emergency to the Board of Supervisors (the "Proclamation"), and on
12 March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions
13 taken by the Mayor to meet the emergency; the Proclamation and the Board's concurring
14 Motion are on file with the Clerk of the Board of Supervisors in File No. 200228; and

15 WHEREAS, On September 30, 2020, the Mayor took additional steps to meet the
16 emergency by issuing the Twenty-Ninth Supplement to the Proclamation, ordering one action
17 to meet the emergency; the Twenty-Ninth Supplement is on file with the Clerk of the Board of
18 Supervisors in Board File No. 201171; and

19 WHEREAS, Government Code, Sections 8550 et seq. and Charter, Section 3.100
20 provide for the concurrence by members of the Board of Supervisors in such emergency
21 declaration and in action taken by the Mayor to meet the emergency; now, therefore, be it

22 MOVED, That the Board of Supervisors concurs with the following action taken by the
23 Mayor to meet the local emergency included in the Mayor's Twenty-Ninth Supplement to the
24 Proclamation, dated September 30, 2020, as such action is described in full in the Twenty-
25 Ninth Supplement and summarized as follows:

1 Action #1: Revising and replacing the Nineteenth Supplement to the
2 Emergency Proclamation, dated June 13, 2020, to prohibit third-party food delivery services
3 from charging restaurants a fee of more than 15% of the purchase price per online order until
4 such time as the Health Officer authorizes restaurants to allow the number of patrons indoors
5 to be at least 50% of the establishment’s maximum indoor occupancy.

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**TWENTY-NINTH SUPPLEMENT TO MAYORAL PROCLAMATION
DECLARING THE EXISTENCE OF A LOCAL EMERGENCY
DATED FEBRUARY 25, 2020**

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the “Proclamation”) declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus (“COVID-19”); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

WHEREAS, On March 16, 2020, the City’s Health Officer issued a stay safe at home order, Health Officer Order No. C19-07 (the “Stay Safer At Home Order”), requiring most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses; the Health Officer has amended the Stay Safer At Home Order to modify the ongoing restrictions; and

WHEREAS, There have been over 11,000 confirmed cases of COVID-19 within the City and 104 COVID-19-related deaths in the City; there have been more than 810,000 confirmed cases in California and more than 15,000 COVID-19-related deaths in California; and



WHEREAS, To reduce the spread of the virus and protect the public health, the Stay Safer At Home Order prohibited restaurants in the City from serving patrons indoors prior to September 30, 2020, limiting restaurants to delivery, takeout, and outdoor dining. Many restaurants in the City were unable to offer outdoor dining due to locational and physical space limitations. On September 30, 2020, the Health Officer amended the Stay Safer At Home Order to allow restaurants to serve patrons indoors, but restaurants must limit the number of patrons inside the indoor space of the establishment to the lesser of (1) 25% of the maximum occupancy, or (2) 100 patrons. It may be economically infeasible for some restaurants to resume on-site dining given the continuing restrictions; and

WHEREAS, In the Ninth Supplement to the Proclamation of Local Emergency, dated April 10, 2020, the Mayor issued an order capping the fees that third-party applications and websites can charge restaurants per online order, and in the Nineteenth Supplement to the Proclamation of Local Emergency, the Mayor clarified the termination provision of that order. Given the extreme financial pressures that the COVID-19 emergency has placed on restaurants, it is in the public interest to revise the termination provision of the order to provide additional relief to restaurants that are attempting to continue operations consistent with the restrictions imposed by the Health Officer's orders. The success of these businesses has a direct impact on the health and safety of the many City workers employed by these establishments; supporting them will contribute to the health and housing stability of such workers; and

WHEREAS, For the reasons stated in the Ninth and Nineteenth Supplements, it is in the public interest for the order capping fees that third-party applications and websites can charge restaurants per order to remain in place until restaurants are allowed to offer indoor dining at 50% or more of the establishment's maximum occupancy;

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

In addition to the measures outlined in the Proclamation and in the Supplements to the Proclamation issued on various dates, it is further ordered that:



The Nineteenth Supplement to the Emergency Proclamation, dated June 13, 2020, is revised and replaced as follows:

It shall be unlawful for a third-party food delivery service to charge a covered establishment a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order.

(a) For purposes of this Order, the following definitions apply:

“Covered establishment” means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City. Covered establishment shall not include any restaurant that meets the definition of a formula retail use under Section 303.1 of the Planning Code.

“Online order” means an order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup within the City.

“Purchase price” means the menu price of an online order. Such term therefore excludes taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

“Restaurant” shall have the meaning provided in Section 451 of the Health Code.

“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 same-day delivery or same-day pickup of food and beverages from, no fewer than 20 separately owned and operated food service establishments.

(b) The Director of the Office of Economic and Workforce Development, or the Director’s designee, is authorized to implement this Order and issue any necessary guidance or rules consistent with this Order.

(c) This Order shall terminate at such time as the Health Officer amends or terminates the Stay Safer At Home Order or any subsequent order regulating restaurants so that restaurants may allow the number of patrons present in the indoor space of the dining establishment to be at least 50% of the establishment’s maximum occupancy.



(d) If a third-party food delivery service charges a covered establishment fees that violate this Order, the covered 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 Order after the initial notice and seven-day cure period, a covered establishment may enforce this Order 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.

DATED: September 30, 2020

A handwritten signature in blue ink that reads "London N. Breed".

London N. Breed
Mayor of San Francisco

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Yee

Subject:

Concurring in Actions to Meet Local Emergency - Coronavirus Response

The text is listed:

Motion concurring in actions taken by the Mayor in the Twenty-Ninth Supplement to the Proclamation of Emergency to meet the ongoing local emergency related to the novel coronavirus COVID-19 pandemic.

Signature of Sponsoring Supervisor:

For Clerk's Use Only