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**Twenty-Ninth Supplement to Public Order Under
City of Culver City Emergency Authority**

Issue Date: October 30, 2020

Subject: Modified Indoor Operation of Personal Care Establishments; Clarification Regarding Food Court Dining Areas in Indoor Malls and Shopping Centers; Conditional Outdoor Operation of Miniature Golf, Batting Cages, and Go Cart Racing; Percentage of Students Permitted on K-12 Campus with IEPs and Els and Other High Needs Increased to 25%; Conditional Opening of Wineries and Breweries for Outdoor Dining Operations; and Temporary Limit on Third Party Food Delivery Service Fees

This Twenty-Ninth Supplement to Public Order addresses the reopening of various business sectors and recreational activities with modifications, in alignment with recent announcements by the County of Los Angeles Department of Public Health, as well as additional requirements regarding temporary Third Party Food Delivery Service Fees, as set forth herein and in the attached Exhibit A.

On March 14, 2020, the City Manager, as Director of Emergency Services, issued a Proclamation of Local Emergency, due to the outbreak and spread of the Coronavirus Respiratory Disease (COVID-19), which was ratified by the City Council on March 18, 2020 by Resolution No. 2020-R015. Such action followed the Los Angeles County Department of Public Health's and the Chair of the Board of Supervisor's declarations of a local health emergency and the State of California's declaration of a State of Emergency on March 4, 2020, and the President's declaration of a National Emergency on March 13, 2020.

Beginning on March 16, 2020, the City Manager issued a number of public orders closing many businesses and significantly restricting the operations of others, consistent with various supplemental orders that were issued by the State of California and the Los Angeles County Department of Public Health, as well as a number of neighboring communities.

In the early part of May 2020, the County of Los Angeles announced its Roadmap to Recovery, A Phased Approach to Reopening Safely, which allowed certain businesses and activities to slowly reopen and resume, subject to strict public health protocols. Although this phased reopening allowed some businesses to open and some activities to resume, many other businesses remained closed and activities were not permitted.

In late June and early July, 2020, due to increases in the daily reported COVID-19 cases, hospitalizations, and the testing positivity rates, the Los Angeles County Public Health Officer issued revised orders, in alignment with the California Governor's announcements, requiring the closure of specific activities and business sectors, superseding previous orders (which had allowed many businesses to reopen), to address the serious regression of COVID-19 indicators within Los Angeles County. Such closures of certain higher risk businesses, recreational sites, commercial properties, and activities, where more frequent and prolonged person-to-person contacts are likely to occur, superseded any previous openings permitted in Culver City.

In early October 2020, the County of Los Angeles Public Health Officer revised its Order and protocols to phase in various limited reopenings and recreational activities. On October 14, 2020, the County of Los Angeles Public Health Officer revised its Order to allow private gatherings of persons from no more than three households, subject to public health protocols. On October 23, 2020, the Los Angeles County Public Health Officer issued two updated Safer at Work and in the Community Orders: a Blueprint for a Safer Economy – Tier 1, and an Order specific to the conditional reopening of wineries and breweries for outdoor dining operations.

Additionally, neighboring cities, including Beverly Hills, Santa Monica, West Hollywood, and the City of Los Angeles, have set maximum fees that Third Party Food Delivery Services may charge to Retail Food Establishments.

To align with the County of Los Angeles Public Health Officer's Orders, and to support the safe reopening of businesses and safe participation in recreational activities within the City, by virtue of authority vested in me as the Director of Emergency Services, pursuant to the provisions of CCMC Section 3.09.020.B.1.h(2), to make and issue rules and regulations on matters reasonably related to the protection of persons, property and the environment as affected by such emergency, I hereby order:

1. Modified Indoor Operation of Personal Care Establishments.

Personal Care Establishments may reopen for indoor operations with modifications. These establishments include hair salons, nail salons, barbershops, esthetic, skin care, electrology, body art professionals, tattoo parlors and piercing shops, tanning salons, and massage therapy (in non-healthcare settings). The owner, manager, or operator of a Personal Care Establishment shall, prior to reopening, prepare, implement and post the most recent required Los Angeles County Department of Public Health Reopening Protocol for Personal Care Establishments (Appendix R) posted at <http://publichealth.lacounty.gov/media/Coronavirus/>.

2. Clarification Regarding Food Court Dining Areas in Indoor Malls and Shopping Centers. Food court dining areas located within a Mall or Shopping Center must remain closed to the public until further notice.

3. Conditional Outdoor Operation of Miniature Golf, Batting Cages, and Go Cart Racing. Miniature golf, batting cages, and go cart racing may reopen for outdoor operations only. The indoor portions of these businesses must remain closed to the public. Arcade and other amusement games may not be operated outside. Food and beverages may not be consumed during use of the miniature golf course, batting cages or go carts. The owner, manager, or operator of an establishment that offers miniature golf, batting cages, or go cart racing shall, prior to reopening, prepare, implement and post the most recent required Los Angeles County Department of Public Health Reopening Protocol for Miniature Golf, Batting Cages, and Go Cart Racing (Appendix V) posted at <http://publichealth.lacounty.gov/media/Coronavirus/>.

4. Percentage of Students Permitted on K-12 Campus with IEPs and Els and Other High Needs Increased to 25%. As authorized by the County, beginning September 14, 2020, K-12 schools were permitted to offer in-school services for a small, stable cohort of students with individualized Education Programs (IEPs) or English Learners (ELs) needing assessments and/or specialized in-school services, with priority given to students with disabilities. The number of students with IEPs and ELs, and other prioritized students allowed at any one time on campus for essential assessments and/or specialized in-school services, is increased from 10% to 25% or less of the total student body. In addition, schools may reopen KT-2nd grades for classroom instruction with a waiver application approved by the County Department of Public Health. All schools providing the permitted, limited in-school services as provided for herein, shall comply with all State of California Public Health Orders and Guidance, local laws, rules and regulations, and the most recent version of the required Los Angeles County Department of Public Health Reopening Protocol for K-12 Schools and the Protocol for COVID-19 Exposure Management Plan in K-12 Schools (Appendix T1 and T2), posted at <http://publichealth.lacounty.gov/media/Coronavirus/>.

5. Conditional Opening of Wineries and Breweries for Outdoor Dining Operations. Pursuant to the County of Los Angeles Order issued October 9, 2020, and modified on October 23, 2020, wineries and breweries that produce their own wine or beer may open for outdoor dining operations. Wineries that do not serve food may serve wine to customers outdoors with modifications in compliance with the most recent version of the required Los Angeles County Department of Public Health Protocols for Restaurants, Breweries and Wineries (Appendix I). Wineries and breweries may continue to remain open for retail sales in compliance with the most recent version of the required Los Angeles County Department of Public Health Protocols for Retail Establishments Opening for In-person Shopping (Appendix B) posted at <http://publichealth.lacounty.gov/media/Coronavirus/>.

6. Temporary Limit on Third Party Food Delivery Service Fees. Effective November 6, 2020, and consistent with the City Council's October 26, 2020 direction, no Third Party Food Delivery Service may charge a Retail Food

Establishment a Delivery Fee that totals more than 15% of the purchase price of an online order, or any combination of fees, commissions or costs, that is greater than 5% of the purchase price of each online order, attached as Exhibit "A" to this Public Order and incorporated herein by reference as though fully set forth herein. This Section 6 shall expire January 31, 2021, unless extended by further public order.

7. This Twenty-Ninth Supplement to Public Order supersedes any provision in a previous Order where there is a conflict between the Orders; otherwise all Stay at Home orders remain in place. Except as specifically provided in this Public Order, or existing County reopening protocols, all other public and private gatherings continue to be prohibited.

8. Additional social distancing, infection control, and health and safety measures and guidelines may be imposed at any time, in my sole discretion, in order to ensure the protection of the public's health and safety, and the intent of each and every Public Order is carried out.

Any violation of this Twenty-Ninth Supplement to Public Order may be enforced under the Culver City Municipal Code, which provides for fines not to exceed \$1,000 or imprisonment not to exceed six months. Each individual officer and City official should use their discretion in enforcing this order and always keep the intent of the order in mind.

This Twenty-Ninth Supplement to Public Order shall be effective immediately and shall remain in effect until superseded, amended, modified, or rescinded.

Date: 10/30/2020



John M. Nachbar, City Manager
Director of Emergency Services
City of Culver City

**EXHIBIT A
TO
TWENTY-NINTH SUPPLEMENT TO PUBLIC ORDER**

**TEMPORARY LIMIT ON THIRD-PARTY FOOD DELIVERY SERVICE FEES
EFFECTIVE NOVEMBER 6, 2020 THROUGH JANUARY 31, 2021**

Pursuant to Section 6 of the Twenty-Ninth Supplement to Public Order (Public Order), the following provisions shall apply to Third-Party Food Delivery Service Fees:

Section 1. Definitions.

- A. *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 Retail Food 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.
- B. *Online Order*** means an order placed by a customer through or with the assistance of a platform provided by a Third-Party Food Delivery Service, including a telephone order, for delivery or pick-up within Culver City.
- C. *Purchase Price*** means the price, as listed on the menu, for the items contained in an Online Order, minus any applicable coupon or promotional discount provided to the customer by the Retail Food Establishment through the Third-Party Food Delivery Service. This definition does not include taxes, gratuities, and any other fees or costs that may make up the total amount charged to the customer of an Online Order.
- D. *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.
- E. *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 Retail Food Establishments located in Culver City.

Section 2. Prohibitions.

- A.** No Third-Party Food Delivery Service shall charge a Retail Food Establishment a Delivery Fee that totals more than fifteen percent (15%) of the Purchase Price of each Online Order.

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- B.** No Third-Party Food Delivery Service shall 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.** Except as otherwise provided, no Third-Party Food Delivery Service shall 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. Fees, commissions, or costs do not include the Delivery Fee. This Subsection 2.C does not preclude a Retail Food Establishment from consenting to pay any combination of fees, commissions, or costs greater than five percent (5%) for specific and additional services provided by Third-Party Delivery Service. Such consent must be in writing.

- D.** No Third-Party Food Delivery Service shall charge a Retail Food Establishment any fee, commission, or cost other than as permitted in Subsections 2.A through 2.C, above.

- E.** No Third-Party Food Delivery Service shall charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Retail Food Establishment on the Third-Party Food Delivery Service or, if no price is set by the Retail Food Establishment on the Third-Party Food Delivery Service, the price listed on the Retail Food Establishment's own menu.

- F.** No Third-Party Food Delivery service shall retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the Third-party Delivery Service, in its entirety, to the person delivering the food or beverages.

Section 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;

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- 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; and
- E. Any tip or gratuity that will be paid to the person delivering the food or beverages.

Section 4. Private Action. In addition to other penalties set forth in this Public Order, a violation of Sections 2 or 3, above, shall subject the Third-Party Food Delivery Service to the following:

- A. An action in the Superior Court of the State of California to recover all actual damages resulting from a violation of Sections 2 or 3, above.
- B. Reasonable attorneys' fees and costs awarded by a court to a plaintiff that prevails in an action against a Third-Party Food Delivery Service. If plaintiff fails to prevail against a Third-Party Food Delivery Service, a court may award reasonable attorneys' fees and costs to the Third-party Food Delivery Service upon a determination by the court that the plaintiff's action was frivolous.
- C. A civil action alleging a violation of any provision of Sections 2 or 3, above, shall commence only after the following requirements have been met:
 - i. Written notice is provided to the Third-Party Food Delivery Service of the provisions of Sections 2 and 3, above, alleged to have been violated and the facts to support the alleged violation; and
 - ii. The Third-Party Food Delivery Service is provided fifteen (15) days from the date of the written notice to cure any alleged violation.