

San Mateo County Food Delivery Service Fee Cap – Q&A

What is the San Mateo County Food Delivery Service Fee Cap?

An emergency regulation that the San Mateo County Board of Supervisors adopted on November 17, 2020 imposes a Fee Cap that limits the fees that food delivery service companies – such as DoorDash, Uber Eats, or Grubhub – can charge restaurants. Many restaurants are relying on take-out and delivery orders to stay afloat amid restrictions on in-person dining due to the COVID-19 pandemic. The Fee Cap is designed to help these restaurants remain viable while contending with the COVID-19 public health emergency.

Under the Fee Cap, how much can a food delivery service company charge a restaurant?

The Fee Cap for delivery orders is 15 percent, while the Fee Cap for pick-up orders (i.e., orders that are placed through a food service delivery company’s online platform but which are picked up by a customer, rather than being delivered) is 10 percent. This means that if a customer places an order for delivery through one of these online platforms, the company cannot charge the restaurant fees that exceed 15 percent of the purchase price of that order, in total. And if a customer places an order for pick-up, the fees cannot exceed 10 percent of the purchase price.

What fees are subject to the Fee Cap?

The Fee Cap applies to fees or commissions charged by the food service delivery company to a restaurant for delivery, listing, marketing, and other similar services. These fees, when combined, must not exceed 15 percent of the purchase price for delivery orders and 10 percent for pickup orders.

The Fee Cap does not, however, apply to fees related to optional services that go beyond the company’s core delivery, pick-up, and listing services – for example, DoorDash’s Dash Pass program. If a restaurant chooses to participate in an optional program like this, the restaurant may have to pay supplemental fees that exceed the Fee Cap.

Which restaurants are covered by the Fee Cap, and where does the Fee Cap apply?

The Fee Cap protects all “Retail Food Establishments” in San Mateo County. This covers restaurants, coffee shops, bakeries, delis, and other establishments that serve prepared food or beverages.

The Fee Cap applies throughout all of San Mateo County, including in all of the cities in the County and in the unincorporated areas. Additionally, the Fee Cap applies even if the delivery destination is outside San Mateo County, as long as the restaurant from which the delivery is made is located in San Mateo County.

How long is the Fee Cap in effect?

This temporary emergency regulation was adopted in response to the COVID-19 public health emergency. The Fee Cap came into effect immediately upon adoption on November 17, 2020, when the San Mateo County Board of Supervisors adopted it. It will remain in effect until June 30, 2021, or until the County is no longer in a state of emergency due to COVID-19, whichever comes first.

How does the Fee Cap affect the compensation of drivers who work for the food delivery service companies?

The emergency regulation should not affect the compensation paid to drivers who work for food delivery service companies because it prohibits the reduction of such compensation in response to the Fee Cap.

How does the Fee Cap affect customers who order food through the food delivery service companies' online platforms?

The Fee Cap regulation does not address the fees customers pay when they order food through these online platforms. Since the Fee Cap went into effect, some companies have imposed, or are considering imposing, surcharges on customers ordering from restaurants in San Mateo County.

The regulation requires companies to give each customer a receipt that itemizes all of the charges, fees, and tips paid by both the customer and the restaurant.

Besides the Fee Cap, how does this regulation protect restaurants?

In addition to imposing the Fee Cap, the regulation protects restaurants by prohibiting the food delivery service companies from charging customers higher prices than those set by the restaurant, or from listing a restaurant without its consent.

The Fee Cap also requires the companies to give customers the option to tip the restaurant.

What should I do if a food delivery service company violates the Fee Cap?

You should first notify the company of the violation in writing. If the company does not fix the violation within seven days, you can bring a lawsuit against the company. If you are successful, the court may award you attorney's fees.

If you have questions, please email Lauren Carroll with the San Mateo County Counsel's Office at lcarroll@smcgov.org.