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FROM	NAME & TITLE	Robert Cename, Budget Director	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall (410) 396-4774		
	SUBJECT	City Council Bill 21-0007—COVID-19 Restaurant, Consumer, and Gig Worker Relief Act		

TO

DATE:

The Honorable President and  
Members of the City Council  
City Hall, Room 400

January 15, 2021

**Position: Does Not Oppose**

The Department of Finance is herein reporting on City Council Bill 21-0007, COVID-19 Restaurant, Consumer, and Gig Worker Relief Act, the purpose of which is establish a cap on delivery and other fees third-party food delivery services can charge restaurants and food service facilities during the COVID-19 the health emergency declared by the Governor.

**Background**

Currently, restaurants and food service facilities that partner with or use third-party food delivery services apply commissions on sales made through the service, as well as other commissions such as marketing commissions. These commissions can be as high as 30% of the orders placed through the services to restaurants. This legislation would establish a 10% cap on delivery fees charged per order by third-party food delivery services, as well as a 15% cap on all fees, including delivery, charged to restaurants and food service facilities for the sales processed through the third-party delivery services. This legislation excludes food restaurants and food service facilities with more 10 or more locations within Baltimore City and have a common business name. In addition, this legislation prohibits third-party delivery services from charging customers more for orders than prices set by the food service facility and from reducing compensation to or garnishing tips from delivery drivers.

The legislation is intended to support small businesses during the COVID-19 pandemic, as various health restrictions implemented to prevent the spread of COVID-19 have impacted businesses, such as limitations on indoor and outdoor dining services. As a result of these limitations, restaurants and food service facilities are more dependent on customers ordering take out or delivery, which has resulted in greater dependence on third-party delivery services. Several jurisdictions have enacted similar legislation, including New York City, Seattle, Washington, D.C., San Francisco, Chicago, Los Angeles, and Baltimore County.

**Fiscal Impact**

The Department of Finance does not anticipate a fiscal impact for the City. The legislation requires enforcement, which the Department believes can be absorbed in current City operations since it will only be active during the Governor's declared health emergency. However, there may be fiscal impacts for other stakeholders.

If enacted, this legislation would reduce fees paid by restaurants and food service facilities that utilize these services. Restaurants, food service facilities, and other small businesses have experienced fiscal

impacts as a result of COVID-19 and the health restrictions put in place that limit services, such as prohibiting indoor and outdoor dining. Reducing fees could increase profits for restaurants, which would benefit the employees and local economy. In addition, this legislation would prevent third-party delivery services from reducing pay and garnishing tips from delivery drivers, actions that might otherwise be taken to maintain revenues and fill any gaps created by the cap.

However, there may be negative fiscal impacts for the third-party delivery services and customers ordering through these services. With health restrictions in place, demand for delivery has increased and third-party delivery services are hiring more drivers, which requires more background checks, and are processing more credit card payments. Capping the fees for these services during the declared health emergency could impact their revenues. In addition, additional costs may be transferred directly to customers that order food through these services. However, customers have the choice of whether to order directly from the restaurant or through one of these services based on their preferences.

### **Other Considerations**

As written, this legislation requires the Department of Finance to establish the rules and regulations and enables enforcement in the form of an environment citation. However, the specific agency responsible for enforcement is unclear. The Department of Finance assumes that enforcement would be based on complaints filed by restaurants and food service facilities, customers, and delivery drivers, but the details of this process still need to be finalized.

While it is expected that there may be few complaints or enforcement issues since other jurisdictions are enacting similar legislation and there are a limited number of vendors in this market, there have been enforcement issues in other jurisdictions. When Jersey City implemented a fee cap, one vendor added a \$3 fee for customers and shrank the delivery radius. In addition, there have been reports in several jurisdictions of vendors not reducing their fees based on claims that the local regulations are unclear or that reopening measures void the caps.

### **Conclusion**

This legislation will establish a cap in the fees third-party delivery services can charge restaurants and prevents these services from reducing wages for drivers or charging customers higher prices for orders than the restaurants' prices. Small businesses have struggled during the COVID-19 pandemic due to health restrictions that have reduced services. This legislation aims to reduce the costs restaurants and food service facilities have due to increased reliance on these third-party delivery services, especially while indoor and outdoor dining are prohibited.

**For the reasons stated above, the Department of Finance does not oppose City Council Bill 21-0007.**

cc: Henry Raymond  
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