

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 21-0007

Introduced by: Councilmember Costello, President Mosby, Councilmembers Stokes, Dorsey,
Ramos, Burnett, McCray, Middleton, Bullock, Porter, Cohen, Torrence, Glover

Introduced and read first time: January 11, 2021

Assigned to: Ways and Means Committee

Committee Report: Favorable

Council action: Adopted

Read second time: January 25, 2021

AN ORDINANCE CONCERNING

**COVID-19 Restaurant, Consumer, and Gig Worker Relief Act
(Temporary Limit on Third-Party Delivery Services Fees)**

FOR the purpose of establishing certain temporary regulations on third-party food delivery platforms; defining certain terms; authorizing the Director of Finance to adopt rules and regulations to implement and enforce this subtitle; setting forth certain prohibited conduct for third-party food delivery platforms; providing for enforcement by citation; providing for certain criminal and administrative penalties; providing for this Ordinance’s severability; setting forth a certain termination date; providing for a special effective date; and generally relating to the regulation of third-party food delivery platforms and the economic well-being of Baltimore restaurants, consumers, and gig workers during the COVID-19 pandemic.

BY adding

Article 15 - Licensing and Regulation

Sections 21-1 through 21-15, to be under the new subtitle,

“Subtitle 21. Third-Party Food Delivery Platforms”

Baltimore City Code

(Edition 2000)

BY repealing and re-ordaining, with amendments

Article 1 - Mayor, City Council, and Municipal Agencies

Section(s) 40-14(e)(2)

Baltimore City Code

(Edition 2000)

Recitals

Whereas, a state of emergency and catastrophic health emergency was proclaimed within the State of Maryland on March 5, 2020, and renewed on March 17, April 10, May 6, June 3, July 1, July 31, August 10, September 8, October 6, October 29, and November 25, 2020 to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;

EXPLANATION: CAPITALS indicate matter added to existing law.

[Brackets] indicate matter deleted from existing law.

Underlining indicates matter added to the bill by amendment.

~~Strike out~~ indicates matter stricken from the bill by

amendment or deleted from existing law by amendment.

Council Bill 21-0007

1 **Whereas**, on March 19, 2020, Mayor Bernard “Jack” C. Young of Baltimore City declared a
2 local state of emergency for Baltimore City due to the spread of COVID-19, which is still in
3 place;

4 **Whereas**, on December 9, 2020, to reduce the spread of COVID-19 and to protect the public
5 health, Mayor Brandon M. Scott issued an Executive Order restricting gatherings and indoor and
6 outdoor dining, which among other things, prohibited on-premises consumption of food or drink,
7 leaving food service establishments reliant on takeout and delivery to stay open;

8 **Whereas**, restaurants, bars, breweries, and similar establishments are at the heart of
9 Baltimore’s economy, and among the hardest hit, and most impacted by the COVID-19 crisis;

10 **Whereas**, with orders to limit seating capacity, many food service establishments have
11 experienced an increase in takeout and delivery offerings, placing a sudden and severe financial
12 strain on the industry, particularly on restaurants that are small businesses, a category of
13 businesses which typically already operate on thin margins;

14 **Whereas**, many of these food service establishments continue to operate by selling food and
15 beverage through takeout and delivery, as a primary source of income during this crisis,
16 particularly those that are small businesses that already operate on thin margins, adding to
17 financial pressures in an industry that predate the COVID-19 crisis;

18 **Whereas**, based on public input received by City officials, and surveys conducted by City
19 staff, the Baltimore Development Corporation, and the Downtown Partnership, many food
20 service establishments within the City have been relying on delivery and takeout service to
21 generate revenue, and it is critical they operate in a safe manner where social distancing can be
22 maintained in accordance with guidance from State and City public health officials;

23 **Whereas**, it is in the public interest to ensure the delivery of essential food and services to
24 the residents of Baltimore City and to maximize food service establishment revenue from the
25 takeout and delivery orders that are currently the sole source of revenue for those small
26 businesses to enable restaurants, bars, breweries, and similar facilities to survive this crisis and
27 remain as sources of employment and community vitality in the City of Baltimore;

28 **Whereas**, many consumers, eager to support local food service establishments, use
29 third-party applications and websites to place orders with food service establishments for
30 delivery and takeout, and these third-party platforms and food delivery service providers charge
31 restaurants fees, with service agreements between some establishments and third-party platforms
32 providing that the platform charge the establishment fees in excess of 30% of the purchase price
33 per order;

34 **Whereas**, food service establishments, particularly food service establishments that are small
35 businesses with few locations, have limited bargaining power to negotiate lower commission fees
36 with third-party platforms given the high-market saturation of providers and the dire financial
37 circumstances food service establishments face during the COVID-19 pandemic because takeout
38 and delivery are the sole options available to keep the business in operation;

Council Bill 21-0007

1 (B) *DELIVERY FEE.*

2 (1) *IN GENERAL.*

3 “DELIVERY FEE” MEANS A FEE CHARGED BY A THIRD-PARTY FOOD DELIVERY SERVICE
4 FOR PROVIDING A FOOD SERVICE FACILITY WITH A SERVICE THAT DELIVERS FOOD AND
5 BEVERAGES FROM THE FOOD SERVICE FACILITY TO CUSTOMERS.

6 (2) *EXCLUSIONS.*

7 “DELIVERY FEE” DOES NOT INCLUDE ANY OTHER FEE OR COST THAT MAY BE CHARGED
8 BY A THIRD-PARTY FOOD DELIVERY SERVICE TO A FOOD SERVICE FACILITY, SUCH AS
9 FEES FOR LISTING OR ADVERTISING THE FOOD SERVICE FACILITY ON THE THIRD-PARTY
10 FOOD DELIVERY SERVICE PLATFORM OR FEES RELATED TO PROCESSING THE ONLINE
11 ORDER.

12 (C) *DIRECTOR.*

13 “DIRECTOR” MEANS THE DIRECTOR OF THE DEPARTMENT OF FINANCE OR THE DIRECTOR’S
14 DESIGNEE.

15 (D) *FOOD SERVICE FACILITY.*

16 (1) *IN GENERAL.*

17 “FOOD SERVICE FACILITY” HAS THE MEANING STATED IN CITY CODE HEALTH
18 ARTICLE, § 6-101(D) {“DEFINITIONS: FOOD SERVICE FACILITY”}.

19 (2) *EXCLUSION.*

20 “FOOD SERVICE FACILITY” DOES NOT INCLUDE ANY FOOD SERVICE FACILITY THAT
21 OPERATES WITHIN A GROUP OF BUSINESSES THAT:

22 (1) HAS 10 OR MORE LOCATIONS WITHIN BALTIMORE CITY; AND

23 (2) OPERATE UNDER A COMMON BUSINESS NAME.

24 (E) *ONLINE ORDER.*

25 “ONLINE ORDER” MEANS AN ORDER PLACED BY A CUSTOMER THROUGH OR WITH THE
26 ASSISTANCE OF A PLATFORM PROVIDED BY A THIRD-PARTY FOOD DELIVERY SERVICE,
27 INCLUDING A TELEPHONE ORDER, FOR DELIVERY OR PICK-UP WITHIN THE CITY.

28 (F) *PURCHASE PRICE.*

29 (1) *IN GENERAL.*

30 “PURCHASE PRICE” MEANS THE PRICE, AS LISTED ON THE MENU OF THE FOOD SERVICE
31 FACILITY, FOR THE ITEMS CONTAINED IN AN ONLINE ORDER, MINUS ANY APPLICABLE

Council Bill 21-0007

1 COUPON OR PROMOTIONAL DISCOUNT PROVIDED TO THE CUSTOMER BY THE FOOD
2 SERVICE FACILITY THROUGH THE THIRD-PARTY FOOD DELIVERY SERVICE.

3 (2) *EXCLUSIONS.*

4 "PURCHASE PRICE" DOES NOT INCLUDE TAXES, GRATUITIES, AND ANY OTHER FEES OR
5 COSTS THAT MAY MAKE UP THE TOTAL AMOUNT CHARGED TO THE CUSTOMER OF AN
6 ONLINE ORDER.

7 (G) *THIRD-PARTY DELIVERY SERVICE.*

8 "THIRD-PARTY FOOD DELIVERY SERVICE" MEANS ANY WEBSITE, MOBILE APPLICATION, OR
9 OTHER INTERNET SERVICE THAT OFFERS OR ARRANGES FOR THE SALE OF FOOD AND
10 BEVERAGES PREPARED BY, AND THE DELIVERY OR PICK-UP OF FOOD AND BEVERAGES
11 FROM, NO FEWER THAN 5 FOOD SERVICE FACILITIES LOCATED IN THE CITY THAT ARE EACH
12 OWNED AND OPERATED BY DIFFERENT PERSONS.

13 **§ 21-2. MANDATORY, PROHIBITORY, AND PERMISSIVE TERMS.**

14 (A) *MANDATORY TERMS.*

15 "MUST" AND "SHALL" ARE EACH MANDATORY TERMS USED TO EXPRESS A REQUIREMENT
16 OR TO IMPOSE A DUTY.

17 (B) *PROHIBITORY TERMS.*

18 "MUST NOT" AND "MAY NOT" ARE EACH MANDATORY NEGATIVE TERMS USED TO
19 ESTABLISH A PROHIBITION.

20 (C) *PERMISSIVE TERMS.*

21 "MAY" IS PERMISSIVE.

22 **§ 21-3. RULES AND REGULATIONS.**

23 SUBJECT TO TITLE 4 {"ADMINISTRATIVE PROCEDURE ACT - REGULATIONS"} OF THE CITY
24 GENERAL PROVISIONS ARTICLE, THE DIRECTOR MAY ADOPT RULES AND REGULATIONS TO
25 CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

26 **§§ 21-4 TO 21-5. {RESERVED}**

27 **§ 21-6. PROHIBITED CONDUCT.**

28 A THIRD-PARTY DELIVERY SERVICE MAY NOT:

29 (1) CHARGE A FOOD SERVICE FACILITY A DELIVERY FEE THAT TOTALS MORE THAN 10
30 PERCENT OF THE PURCHASE PRICE OF EACH ONLINE ORDER ON AN INDIVIDUAL OR
31 CUMULATIVE BASIS;

Council Bill 21-0007

1 (2) CHARGE A FOOD SERVICE FACILITY ANY AMOUNT DESIGNATED AS A DELIVERY FEE FOR
2 AN ONLINE ORDER THAT DOES NOT INVOLVE THE DELIVERY OF FOOD OR BEVERAGES;

3 (3) CHARGE A FOOD SERVICE FACILITY ANY COMBINATION OF FEES, COMMISSIONS, OR
4 COSTS, INCLUDING DELIVERY FEES, FOR THE FOOD SERVICE FACILITY’S USE OF THE
5 THIRD-PARTY FOOD DELIVERY SERVICE THAT IS GREATER THAN 15 PERCENT OF THE
6 FOOD SERVICE FACILITY’S MONTHLY NET SALES PROCESSED THROUGH THE
7 THIRD-PARTY DELIVERY SERVICE;

8 (4) CHARGE A FOOD SERVICE FACILITY ANY FEE, COMMISSION, OR COST AS PROHIBITED IN
9 ITEMS (1) THROUGH (3) OF THIS SECTION;

10 (5) CHARGE A CUSTOMER ANY PURCHASE PRICE FOR A FOOD OR BEVERAGE ITEM THAT IS:

11 (I) HIGHER THAN THE PRICE SET BY THE FOOD SERVICE FACILITY ON THE
12 THIRD-PARTY FOOD DELIVERY SERVICE; OR

13 (II) IF NO PRICE IS SET BY THE FOOD SERVICE FACILITY ON THE THIRD-PARTY FOOD
14 DELIVERY SERVICE, THE PRICE LISTED ON THE FOOD SERVICE FACILITY’S OWN
15 MENU; OR

16 (6) REDUCE THE COMPENSATION RATES PAID TO THE THIRD-PARTY DELIVERY SERVICE
17 DRIVERS OR TO GARNISH GRATUITIES, AS A RESULT OF ANY FEE LIMITATIONS
18 INSTITUTED BY THIS SECTION.

19 **§§ 21-7 TO 21-8. {RESERVED}**

20 **§ 21-9. ENFORCEMENT BY CITATION.**

21 (A) *IN GENERAL.*

22 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE,
23 THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF AN ENVIRONMENTAL CITATION UNDER
24 CITY CODE ARTICLE 1, SUBTITLE 40 {“ENVIRONMENTAL CONTROL BOARD”}.

25 (B) *PROCESS NOT EXCLUSIVE.*

26 THE ISSUANCE OF A CITATION TO ENFORCE THIS SUBTITLE DOES NOT PRECLUDE PURSUING
27 ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION AUTHORIZED BY LAW.

28 (C) *EACH INSTANCE A SEPARATE OFFENSE.*

29 EACH INSTANCE IN VIOLATION OF § 21-6 {“PROHIBITED CONDUCT”} OF THIS SUBTITLE IS A
30 SEPARATE OFFENSE.

31 **§ 21-10. CRIMINAL PENALTIES.**

32 (A) “PERSON” DEFINED.

33 IN THIS SECTION, “PERSON” MEANS:

Council Bill 21-0007

1 (1) AN INDIVIDUAL;

2 (2) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
3 KIND; OR

4 (3) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR
5 REPRESENTATIVE OF ANY KIND.

6 (B) *IN GENERAL.*

7 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY PROVISION OF A
8 RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR
9 AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 FOR EACH
10 OFFENSE.

11 (C) *EACH INSTANCE A SEPARATE OFFENSE.*

12 EACH INSTANCE IN VIOLATION OF § 21-6 {"PROHIBITED CONDUCT"} OF THIS SUBTITLE IS A
13 SEPARATE OFFENSE.

14 **§§ 21-11 TO 21-12. {RESERVED}**

15 **§ 21-13. PRIVATE ACTIONS NOT PRECLUDED.**

16 NOTHING IN THIS SUBTITLE MAY BE IN ANY WAY CONSTRUED TO LIMIT OR ABRIDGE ANY
17 RIGHTS POSSESSED BY ANY FOOD SERVICE FACILITY AT COMMON LAW, BY STATUTE, OR BY
18 ORDINANCE TO BRING A CIVIL ACTION TO REDRESS CLAIMS AGAINST A THIRD-PARTY FOOD
19 DELIVERY SERVICE.

20 **§ 21-14. SEVERABILITY.**

21 ALL PROVISIONS OF THIS SUBTITLE ARE SEVERABLE. IF A COURT DETERMINES THAT A WORD,
22 PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SUBSECTION, SECTION, OR OTHER PROVISION IS
23 INVALID OR THAT THE APPLICATION OF ANY PART OF THE PROVISION TO ANY PERSON OR
24 CIRCUMSTANCES IS INVALID, THE REMAINING PROVISIONS AND THE APPLICATION OF THOSE
25 PROVISIONS TO OTHER PERSONS OR CIRCUMSTANCES ARE NOT AFFECTED BY THAT DECISION.

26 **§ 21-15. TERMINATION OF SUBTITLE.**

27 THIS SUBTITLE SHALL AUTOMATICALLY EXPIRE ON THE 91ST DAY FOLLOWING THE EXPIRATION
28 OF THE CATASTROPHIC HEALTH EMERGENCY DECLARED BY THE GOVERNOR OF MARYLAND
29 ON MARCH 5, 2020, AS AMENDED OR EXTENDED BY THE GOVERNOR.

Council Bill 21-0007

Article 1. Mayor, City Council, and Municipal Agencies

Subtitle 40. Environmental Control Board

§ 40-14. Violations to which subtitle applies.

(e) Provisions and penalties enumerated.

(2) Article 15. Licensing and Regulation

...

SUBTITLE 21: THIRD-PARTY FOOD DELIVERY PLATFORMS \$1,000

...

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted. It will remain effective through the 91st day following the expiration of the catastrophic health emergency declared by the Governor of Maryland on March 5, 2020, as amended or extended by the Governor; and, immediately after that date, with no further action by the Mayor and City Council, this Ordinance will be abrogated and of no further effect.

Certified as duly passed this ____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this ____ day of _____, 20__

Chief Clerk

Approved this ____ day of _____, 20__

Mayor, Baltimore City