



Legislation Text

File #: 21-0007, Version: 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

**City of Baltimore
Council Bill**

Introduced by: Councilmember Costello and President Mosby

A Bill Entitled

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;

Whereas, on March 19, 2020, Mayor Bernard "Jack" C. Young of Baltimore City declared a local state of

emergency for Baltimore City due to the spread of COVID-19, which is still in place;

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

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

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

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

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

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

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

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

Whereas, these excessive fees present a substantial hardship during a time of great economic uncertainty for many local small businesses at a time when certain third-party delivery platforms are reaching market valuations of tens of billions of dollars;

Whereas, capping the fees for use of third-party, app-based food delivery platforms to a maximum of 15% of the purchase price on delivery or pick-up orders while food service establishments are unable to provide unrestricted dine-in service will accomplish the fundamental government purpose of easing the financial burden on struggling establishments during this public health emergency while not unduly burdening third-party, app-based delivery platforms as this fee is recognized as reasonable, and third-party platforms continue to earn

significant revenue; the 15% cap on fees charged to food service establishments is based on the findings and experience of other cities and counties across the country that have already adopted such fee ceilings as reasonable emergency regulations on food delivery services;

Whereas, during this time of local economic shutdown and uncertainty caused by the COVID-19 pandemic, many vulnerable workers have found work opportunities as delivery drivers for these third-party delivery platforms to financially support themselves and their families;

Whereas, third-party, app-based delivery platforms will further undermine already vulnerable workers if the companies reduce compensation rates to these delivery drivers as a result of this Ordinance capping delivery commission fees and it is critically important that we protect these workers' wages during this economic downturn;

Whereas, Article II, Section 17 of the City Charter gives the Mayor and City Council the authority to license, tax, and regulate businesses, trades, vocations, or professions, and Article II, Section 47 of the City Charter authorizes the Mayor and City Council to pass any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City;

Whereas, the City Council finds and declares that the passage of this Ordinance is necessary for the protection of the public health and welfare.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 15. Licensing and Regulation

Subtitle 21. Third-Party Food Delivery Platforms

§ 21-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *Delivery fee.*

(1) *In general.*

“Delivery fee” means a fee charged by a third-party food delivery service for providing a food service facility with a service that delivers food and beverages from the food service facility to customers.

(2) *Exclusions.*

“Delivery fee” does not include any other fee or cost that may be charged by a third-party food delivery service to a food service facility, such as fees for listing or advertising the food service facility on the third-party food delivery service platform or fees related to processing the online order.

(c) *Director.*

“Director” means the director of the Department of Finance or the Director’s designee.

(d) *Food service facility.*

(1) *In general.*

“Food service facility” has the meaning stated in City Code Health Article, § 6-101(d) {“Definitions: Food service facility”}.

(2) *Exclusion.*

“Food service facility” does not include any food service facility that operates within a group of businesses that:

(1) has 10 or more locations within Baltimore City; and

(2) operate under a common business name.

(e) *Online order.*

“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 the City.

(f) *Purchase price.*

(1) *In general.*

“Purchase price” means the price, as listed on the menu of the food service facility, for the items contained in an online order, minus any applicable coupon or promotional discount provided to the customer by the food service facility through the third-party food delivery service.

(2) *Exclusions.*

“Purchase price” 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.

(g) *Third-party delivery service.*

“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, no fewer than 5 food service facilities located in the City that are each owned and operated by different persons.

§ 21-2. Mandatory, prohibitory, and permissive terms.

(a) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(b) *Prohibitory terms.*

“Must not” and “may not” are each mandatory negative terms used to establish a prohibition.

(c) *Permissive terms.*

“May” is permissive.

§ 21-3. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act - Regulations”} of the City General Provisions Article, the Director may adopt rules and regulations to carry out the provisions of this subtitle.

§§ 21-4 to 21-5. {Reserved}

§ 21-6. Prohibited conduct.

A third-party delivery service may not:

- (1) charge a food service facility a delivery fee that totals more than 10 percent of the purchase price of each online order on an individual or cumulative basis;
- (2) charge a food service facility any amount designated as a delivery fee for an online order that does not involve the delivery of food or beverages;
- (3) charge a food service facility any combination of fees, commissions, or costs, including delivery fees, for the food service facility’s use of the third-party food delivery service that is greater than 15 percent of the food service facility’s monthly net sales processed through the third-party delivery service;
- (4) charge a food service facility any fee, commission, or cost as prohibited in items (1) through (3) of this section;
- (5) charge a customer any purchase price for a food or beverage item that is:
 - (i) higher than the price set by the food service facility on the third-party food delivery service; or
 - (ii) if no price is set by the food service facility on the third-party food delivery service, the price listed on the food service facility’s own menu; or
- (6) reduce the compensation rates paid to the third-party delivery service drivers or to garnish gratuities, as a result of any fee limitations instituted by this section.

§§ 21-7 to 21-8. {Reserved}

§ 21-9. Enforcement by citation.

(a) *In general.*

In addition to any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of an environmental citation under City Code Article 1, Subtitle 40 {“Environmental Control Board”}.

(b) *Process not exclusive.*

The issuance of a citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

(c) *Each instance a separate offense.*

Each instance in violation of § 21-6 {"Prohibited conduct"} of this subtitle is a separate offense.

§ 21-10. Criminal penalties.

(a) "Person" defined.

In this section, "person" means:

- (1) an individual;
- (2) a partnership, firm, association, corporation, or other entity of any kind; or
- (3) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(b) *In general.*

Any person who violates any provision of this subtitle or any provision of a rule or regulation adopted under this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 for each offense.

(c) *Each instance a separate offense.*

Each instance in violation of § 21-6 {"Prohibited conduct"} of this subtitle is a separate offense.

§§ 21-11 to 21-12. {Reserved}

§ 21-13. Private actions not precluded.

Nothing in this subtitle may be in any way construed to limit or abridge any rights possessed by any food service facility at common law, by statute, or by ordinance to bring a civil action to redress claims against a third-party food delivery service.

§ 21-14. Severability.

All provisions of this subtitle are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision.

§ 21-15. Termination of subtitle.

This subtitle shall automatically expire on 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.

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**

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Subtitle 21: Third-Party Food Delivery Platforms	\$1,000
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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.