



**EXECUTIVE ORDER
No. 2020-025**

AMENDING EXECUTIVE ORDER NO. 2020-025 AND EXTENDING EXECUTIVE ORDER 2020-002 TO RESTRICT THIRD-PARTY FOOD DELIVERY SERVICE FEES, FOOD SERVICE ESTABLISHMENT DELIVERY FEES AND PICK-UP COMMISSION FEES

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020 by the Governor of the State of Maryland, on March 5, 2020, and renewed on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, August 10, 2020, September 8, 2020, October 6, 2020, October 29, 2020, 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, A state of emergency was declared on March 13, 2020 by the County Executive of Baltimore County, Maryland to control and prevent the spread of COVID-19 within Baltimore County, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, an infectious and contagious respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe;
- WHEREAS, The U.S. Centers for Disease Control and Prevention has advised that social distancing is necessary to contain the deadly spread of COVID-19. And as a result of COVID-19, there is limited capacity at Food Service Establishments with enforced social distancing measures to contain the spread of this potentially deadly infectious disease;
- WHEREAS, The Governor and the County Executive and other federal, State, and local agencies have recommended that citizens of the County limit contact and utilize various options, such as curbside delivery and home delivery, for purchases, including prepared food from restaurants; and
- WHEREAS, In addition to certain health care, public health, emergency services, and public safety services, Food Service Establishments (as defined in Baltimore County Executive Order 2020-23) play an important role in

giving the public access to food, in particular vulnerable, quarantine or isolated, and immune compromised citizens who may have limited ability to travel freely during COVID-19, and it is important that these services remain open; and

WHEREAS, The COVID-19 pandemic has had a significant impact on the local economy impacting Food Service Establishments and other related industries resulting in economic hardship for business owners due to loss of business income, layoffs, and reduced work hours for a significant percentage of this workforce; and

WHEREAS, Public health orders limiting indoor dining capacity at Food Service Establishments has increased the utilization of take-out and delivery service and limited capacity has placed a necessary but sudden and severe financial strain on many food service establishments, particularly those that are small, independently-owned or minority-owned businesses that already operate on thin margins, adding to financial pressures in the industry that predate the current public health crisis; and

WHEREAS, This limitation has resulted in many Food Service Establishments utilizing third-party food and drink delivery services often by phone or with web based mobile or home computer delivery application platforms, which charge a commission and delivery fee based on the purchase price to the customer and the Food Service Establishment; and

WHEREAS, The fees charged by third-party food and drink delivery services may be so high that they result in financial burden for the Food Service Establishments and may limit their ability to continue to provide the essential service of feeding the citizens of the County; and

WHEREAS, It is in the best interests of the citizens of the County that Food Service Establishments continue to provide food in ways that minimize contact, including curbside and home delivery, at a reasonable fee at times when some citizens may be in quarantine or isolation or restricted movements due to an immune compromised status; and

WHEREAS, While each service agreement between Food Service Establishments and third-party delivery services vary, all these agreements include delivery commission fees that can include agreements with commission fees of up to 30 percent or more of the purchase price, which can also increase the price for vulnerable citizens in need of delivery and pickup services from Food Service Establishments due to COVID-19; and

WHEREAS, Food Service Establishments, and particularly small family-owned restaurants or food trucks with few locations, have limited bargaining power to negotiate lower commission fees with third-party food and drink delivery

services including application based delivery platforms due to only a few companies in the marketplace to provide such delivery services, and face dire financial circumstances during this COVID-19 pandemic because take-out and delivery are the only options to keep the business in operation when shelter in place restrictions occur or many customers are not permitted in their location due to capacity limitations; and

WHEREAS, Capping the Delivery Fee and/or commission fee to a maximum of 15 percent of the purchase price on delivery or pick-up orders while Food Service Establishments are unable to provide unrestricted dine-in service will accomplish a fundamental government purpose of easing the financial burden on struggling restaurants during this public health emergency while not unduly burdening third-party delivery services including web application based delivery platforms and commission based food and drink delivery services to help temporarily secure the economy; and

WHEREAS, It is in the public interest to take action to maximize Food Service Establishment revenue from delivery and pick-up orders that are a lifeline and a predominate source of revenue for Baltimore County's Food Service Establishments to enable these businesses to survive the impacts of the COVID-19 pandemic and continue supporting a diverse workforce and contributing to the vitality of Baltimore County communities during this temporary crisis, and to ensure all citizens can access food on a reasonably priced basis; and

WHEREAS, Pursuant to Baltimore County Code, §3-1-504, the County Executive hereby has all authority necessary to protect the health, safety, and welfare of persons within the County to control the spread of COVID-19 including, but not limited to, the right to control traffic, including public and private transportation, designate zones in which the occupancy and use of buildings and vehicles may be controlled; establish requirements to shelter in place, control the sale, transportation, and use of alcoholic beverages, control individuals on public streets, and control places of amusement and places of assembly and this emergency order protects the health, safety and welfare of persons within the County; and

WHEREAS, Nothing herein shall be construed to limit or conflict with any order or authority of the local Health Officer, Secretary of the Maryland Department of Health or Governor of the State of Maryland; and

WHEREAS, During this time of local economic disruption and uncertainty caused by the COVID-19 pandemic, many vulnerable workers have found work opportunities as delivery drivers for these Third-party food delivery platforms to financially support themselves and their families, and may be economically impacted if Third-party food delivery platforms reduce compensation rates to these delivery drivers as a result of the cap on

Delivery Fees and commission fees herein and it is necessary to take action to prevent such under compensation including, but not limited to new restrictions on the amount of tips provided to delivery drivers as a result of restrictions on commissions as set forth in this Executive Order; and

WHEREAS, These prohibitions and restrictions are temporary and apply only where indoor dining is prohibited or limited by capacity to less than 75 percent; and

WHEREAS, Third-party food delivery platforms and third party food and drink delivery services will further undermine already vulnerable workers if the business owners reduce compensation rates to these delivery drivers as a result of this emergency Executive Order capping Delivery Fees and commission fees for Online Orders and Orders and the restriction to 15 percent commission fees will not unduly burden Third-party food delivery platforms and/or third party food delivery services; and

WHEREAS, The Charter and Baltimore County Code authorizes the County Executive to make and proclaim an order that he believes is imminently necessary for the public health and safety of the County, which includes the protection of life and property; and

WHEREAS, The County Executive believes it is in the best interest of public safety, health, welfare, rescue and recovery efforts, and the protection of property that the exercise of certain rights be temporarily limited during the duration of the Declaration of Emergency or one year from December 22, 2020, whichever is shorter; and the conditions of this Order are designed to provide the least necessary restriction on those rights;

NOW, THEREFORE, I, JOHN A. OLSZEWSKI, JR., COUNTY EXECUTIVE OF BALTIMORE COUNTY, MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY SECTION 3-1-504 OF THE BALTIMORE COUNTY CODE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN BALTIMORE COUNTY, MARYLAND, DO HEREBY ORDER THAT:

I. For the purposes of this Executive Order, the following terms have the meanings stated:

1. "Food Service Establishment" is as defined in Baltimore County Executive Order 2020-23. Convenience stores that utilize Third-party food delivery platforms are also subject to the limitations set forth in this Executive Order and are defined as "Food Service Establishments" for the purpose of this Executive Order only.

2. "Delivery fee" means a fee charged by a third-party food delivery service for providing a Food Service Establishment with a service that delivers or

facilitates the ordering or delivering of food or beverages from the Food Service Establishments to customers including, but not limited to those picked up by Customers in person. The term does not include any other fee that may be charged by a third-party food delivery platform or third party food delivery service to a Food Service Establishment, such as optional fees paid to obtain additional products or services, or fees related to processing the online order.

3. "Online order" or "order" means an order placed by a customer through a platform provided by the third party food delivery service and Third-party food delivery platform including a telephone order, email, SMS or mobile order of any kind.

4. "Purchase price" means the menu price of an online order as set on the Food Service Establishment's menu, excluding taxes, gratuities or any other fees that may make up the total cost to the customer of an online order.

5. "Third-party food delivery platform" means a computer, telephone, SMS, website, mobile application, or other internet service that facilitates the sale and same-day delivery or same-day pickup of ready to eat food or beverages provided by Food Service Establishments in the State.

II. It shall be temporarily unlawful for a third-party food delivery service to charge a Food Service Establishment any fee or fees, including a Delivery Fee or Commission Fee or a mandatory gratuity or donation fee, for the use of the Third-Party food delivery platform or third-party food delivery service that exceeds 15 percent of the purchase price of any food delivery order including an Online Order. This Executive Order does not set a limit on the Delivery Fees for alcohol, unless purchased with food.

III. It shall be temporarily unlawful for a third-party food delivery service or Third-Party food delivery platform to reduce the gratuity or compensation rate paid to a delivery service driver or individual picking up food on foot or to garnish or reduce gratuities paid to a delivery service driver or individual to comply with this Executive Order, such that the compensation paid to the third-party food delivery service by a Food Service Establishment may not exceed 15 percent of the purchase price of an Online Order for food or food delivery order.

IV. A Food Service Establishment may agree to pay a third-party food delivery service or Third-Party food delivery platform a fee or charge that exceeds the limits set forth above to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs, in addition to delivery or pickup service.

V. A violation of this Executive Order shall be a violation fined with a civil penalty under Baltimore County Code § 1-2-217. A person who violates a provision of the Code, or an ordinance, law, rule, or regulation of the county for which no specific penalty is provided is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment for not more than 90 days. A person who violates a provision of the Code, or an ordinance, law, rule, or regulation of the county which is punishable by a civil penalty but for which no specific civil penalty is provided is subject to a civil penalty not exceeding \$1,000. A civil penalty imposed as part of a citation issued under Title 3, Subtitle 6 of the Code may not exceed \$500 per violation. Each day a violation of a provision of the Code or of an ordinance, law, rule, or regulation continues shall constitute a separate offense. A corrective notice may be first issued in accordance with Title 3, Subtitle 6 of the Baltimore County Code if a civil penalty is issued, or it may be administered by the Department of Permits, Approvals, and Inspections pursuant to Baltimore County Code 3-6-101(ix).

VI. The restrictions and prohibitions contained herein will automatically expire on December 22, 2021 or after the day the Baltimore County state of emergency is lifted, whichever date occurs first.

VII. This Order remains effective until rescinded, superseded, amended, or revised by additional orders.

VIII. The effect of any statute, rule or regulation of any agency of Baltimore County, Maryland inconsistent with this Order is hereby suspended.

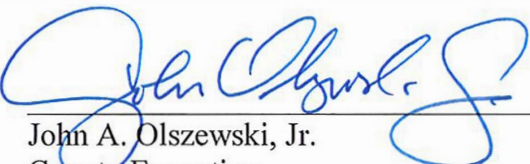
IX. A copy of this Executive Order shall be made available on-line at www.baltimorecountymd.gov for the public.

ISSUED under My Hand this 22nd day of December, 2020, **EFFECTIVE IMMEDIATELY.**

ATTEST:

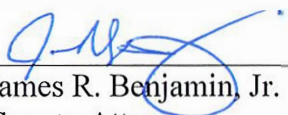


Dawn Kile
Executive Secretary



John A. Olszewski, Jr.
County Executive

Reviewed for Form and Legal Sufficiency and approved for Execution.



James R. Benjamin, Jr.
County Attorney