

ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY AUDITOR

To: Members of the County Council

From: Susan L. Smith, County Auditor

Date: December 17, 2020

Subject: Legislation to be heard or eligible for vote on December 21, 2020: Bill Nos. 86-20, 93-20, 94-20, 97-20, 100-20, 101-20, 102-20, 103-20, 104-20, 107-20, and 108-20.

Bill No. 86-20: Subdivision and Development – Site Development – Plan Review Timelines and Requirements

This bill amends plan review timelines and requirements for subdivision sketch and final plans, site development preliminary and site development plans, including clarifying when they are void; provides exemptions from preliminary and site development plans for common, minor uses of land; and requires the reservation of land for public facilities during the site development plan process as is currently done in the subdivision process. We commented on this bill in our letters dated October 28, 2020, November 11, 2020, and December 2, 2020.

At the December 7, 2020 Council meeting, in addition to a technical amendment, this bill was amended as follows:

1. Extends the time frame for when a final plan approval becomes void in Anne Arundel County Code § 17-3-304(e) from 12 to 18 months to provide consistency with the amended language in the bill for Anne Arundel County Code § 17-3-304(a) that extends the time frame for when the developer must take certain action after the final plan approval from 12 to 18 months.
2. Amends the added exemption from the site development requirements for seasonal or permanent outdoor seating areas of 10 seats or less to only be for existing establishments as of the effective date of the bill. With this amendment, additions to establishments that were not existing as of the effective date of this bill and new developments after the effective date of this bill would not have this exemption for seasonal or permanent outdoor restaurant seating areas of 10 seats or less. According to the Administration, reviews of new developments would include the review of any seasonal or permanent outdoor restaurant seating areas at the time of the new development review. However, once the development is approved, this exemption would also not apply to future additions to those developments established after the effective date of this bill.
3. Deletes the added exemption from the site development requirements for a cumulative increase of impervious surface of no more than 5,000 square feet on property outside of the critical area or designated bog area as of the effective date of this bill.
4. Changes the added exemption from the site development process for an accessory use as a produce market consisting of up to 1,200 square feet of floor area to a use accessory to farming consisting of up to a cumulative 1,200 square feet of floor area for which the

- proposed cumulative limit of disturbance is less than 5,000 square feet as of the effective date of the bill. This change provides consistency with the stormwater management requirements.
5. Amends the added exemption from the preliminary plan requirements for a development within the Parole Town Center Growth Management Area or the Odenton Growth Management Area to only those for which the Department of Inspections and Permits (I&P) has approved a concept plan for stormwater management. This additional requirement for this exemption mirrors the additional requirement for the added exemption for a site with existing impervious coverage of 40% or more.
 6. Updates the sketch plan and final plan application requirements to require the plan to be at a scale no smaller than 1"= 60' versus the current limit of no smaller than 1" = 100', removes specific requirements and refers only to those attachments on the current sketch and final plan submittal and checklists maintained by the Office of Planning and Zoning (OPZ) and I&P and other information required by OPZ and I&P. This amendment mirrors the amended language in the bill for preliminary and site development plans.
 7. Restores Anne Arundel County Code § 17-4-203(b) that allows the developer to request OPZ schedule a meeting of the Site Development Review Team Leader, OPZ reviewers, representatives of other County agencies, and the developer and its representatives to discuss reviewing agencies' comments and other matters that pertain to the submittal and approval of the plan, and additional follow-up.
 8. Changes the added site development exemption from a permit relating to improvements that do not result in leasable space to a permit relating to improvements that do not result in additional floor area.
 9. Requires that OPZ email within two days meeting summaries, reports of findings, comments, and recommendations generated during the sketch plan, final plan, preliminary plan, and site development plan review process.
 10. Allows the developer to email, in lieu of mailing by first class mail, notices of sketch and final plan approvals to the required individuals.

According to OPZ, I&P, and the Office of Law, these amendments have no fiscal impact.

Bill No. 93-20: Public Ethics – Definitions

This bill defines "usual and customary constituent services" for citizens and businesses. We commented on this bill in our letters dated November 11, 2020 and December 2, 2020. At the December 7, 2020 Council meeting, this bill was amended to change the definition for "usual and customary constituent services" as a result of discussions with the President and a subcommittee of the Anne Arundel County Ethics Commission (County Commission), and the County Office of Law.

On December 16, 2020, the County Commission approved the amendments to this bill. This bill, as amended, will be submitted by the County Commission to the Maryland State Ethics Commission for approval, as required by law, with the County Commission's recommendation for approval. This amendment has no fiscal impact.

Bill No. 94-20: Public Safety – Public Nuisances – Prohibition (As Amended)

This bill defines "public nuisance", prohibits a property owner to allow a property to be a public nuisance, and provides for enforcement and fines. We commented on this bill in our letters dated November 11, 2020 and December 2, 2020.

At the December 7, 2020 Council meeting, this bill was amended to exempt property that is under the regulatory oversight by a State agency that staffs the property at all times and reports on all crimes committed on the property. This amendment has no fiscal impact.

Bill No. 97-20: Boards, Commissions, and Similar Bodies – Veterans Affairs Commission

This bill makes certain clarifications and modifications to the Veterans Affairs Commission. We commented on this bill in our letter dated December 2, 2020. At the December 7, 2020 Council meeting, this bill was amended to add a requirement that the members from various veterans organizations are chosen from the voting committee members, to add a caveat to include other similar organizations that support veterans and their families, and to remove the language that the members serve at the pleasure of the County Executive. We have no further comments on this bill.

Bill No. 100-20: Current Expense Budget – Supplementary Appropriations – Capital Budget and Program – Fund Transfer

This bill provides \$5,680,600 of additional appropriations for three grants in the Grant Special Revenue Fund (Grant Fund), and authorizes a transfer of appropriations between three capital projects resulting in no net change to the FY2021 capital budget.

The requests for the Grant Fund provide appropriations for the following grants:

- \$330,100 for the Chief Administrative Officer (CAO) from the Center for Tech and Civic Life for the COVID-19 Response grant program for U.S. local jurisdictions. The grant is for expenses incurred during the period June 15, 2020 through December 31, 2020 for the public purpose of planning and operationalizing safe and secure election administration in Anne Arundel County in 2020, including but not limited to, personal protective equipment, ballot drop boxes, hazard pay, voter education, etc. These funds cannot supplant previously budgeted funds. This grant was not included in the FY2021 budget and does not require a matching contribution.
- \$2,875,000 for the Department of Health (Health Department) from the Maryland Department of Health's (MDH) Behavioral Health Administration for the State Opioid Response II (SORII) grant. The County was awarded a grant for \$3,833,302 for the period September 30, 2020 through September 30, 2021. The amount requested is for the FY2021 portion of this grant. The County will use these funds to establish a network of crisis stabilization service providers co-located with existing treatment programs that is geographically accessible and increases access to medication-assisted treatment and may be used to procure a crisis walk-in center for substance use disorders. A SSORII grant was included with a \$1,000 placeholder in the FY2021 budget under grant number GHL71921. The first three numbers of a Health Department grant number generally correlate with the MDH grant number. MDH awarded a SORII grant under a different grant number than the one initially discussed. According to the Administration, a change in numbers means it is technically a different award and that it often means something has changed (e.g., rules, funding source, office assigned to administer the grant). Thus, a new appropriation is being requested and a new County grant number is being created, and the grant number with the placeholder will not be utilized. This grant does not require a matching contribution.
- \$2,475,500 for the Fire Department from the U.S. Department of Homeland Security for the Staffing for Adequate Fire and Emergency Response (SAFER) grant. The County was previously awarded a SAFER grant for the period March 1, 2020 through March 1,

2023 to cover 75% of the estimated cost of salaries and benefits for up to 70 new firefighters for the first two years and 35% of their estimated cost in the third year. The grant requires that the County continue to keep all SAFER and existing positions filled. During FY2020, the County hired 50 SAFER grant firefighters that finished the academy in October 2020. During the FY2021 budget process, the Administration had planned to pause the SAFER grant and apply these positions to attrition instead of the grant, and not hold any additional classes for newly vacated positions or additional SAFER grant positions in FY2021. Therefore, the FY2021 budget did not include a grant appropriation for the SAFER grant or an appropriation for a new class, and the 50 positions were allocated 100% to the General Fund. To date, the Fire Department has experienced a much higher turnover than originally budgeted.

The Administration subsequently decided to allocate the 50 positions hired in FY2020 back to the SAFER grant, and hold an academy in February 2021 to hire 70 vacant positions in order to maintain the staffing maintenance level required by the grant. While the additional grant funds will reduce general fund salaries and benefit expenses for the 50 SAFER positions, this will be offset by the additional operational overtime needed for the additional 50 posts that will need to be maintained, and the additional costs associated with holding an academy class in February 2021 to fill the 70 vacant positions (e.g., instructor cost, uniforms, equipment, and reduction in turnover). It should be noted that the salaries and benefits for these 70 positions are already included in the FY2021 budget. We estimate that the shift in these positions back to the SAFER grant will result in a net increase in general fund expenditures totaling approximately \$5 million. This is partially offset by the additional turnover savings of approximately \$1.1 million due to the unexpected vacancies offset by pay packages in excess of budget for a net of approximately \$3.9 million. This could be further reduced by either additional cost savings or increased by unanticipated costs within the Fire Department's budget. Therefore, the Administration is not currently requesting an increase in the Fire Department's general fund budget.

This bill transfers the appropriations in the FY2021 Approved Capital Budget as follows:

- \$241,000 increase in the appropriation in the Downs Park Amphitheater (P573400) to a total project cost of \$1,445,000. This increase is due to the lowest bid proposal for the construction contract exceeding the original estimated construction contract cost by approximately \$380,000. An analysis of the bids received performed by the A/E consulting firm identified the following possible reasons for the unexpected increase in the bids received over the original estimate: (1) a redesign of the structural roof trusses, (2) conversion of one storage room into an electric distribution and IT management room and relocation of a transformer, (3) incorporation of fiber optic wiring for the TV screen and a wiremold to contain the wiring along the beams and trusses and a fiber optic cable to the ranger station for remote control, (4) the low bid included the removal of 52 piers instead of the 16 piers in the original design, (5) an increase in the price of wood, (6) access to the site is difficult, (7) working in the wetlands brings a concern as to what the Maryland Department of the Environment will require, and (8) uncertainties on the impact of the COVID-19 pandemic. While the consultant found that the fiber optic connection is an expensive ticket item and deserves re-evaluation, the consultant found that the bids received represented a reasonable cost within the marketplace.

- \$48,000 decrease in the appropriation of the B&A Ranger Station Rehab (P564900) project. This project is nearing completion, and the Department of Public Works (DPW) has determined that these funds can be released.
- \$193,000 decrease in the appropriation of the Road Resurfacing (H478600) project. To accomplish this, DPW plans to delay a portion of their repaving program until FY2022. In this regard, DPW stated this will result in an estimated reduced annual accomplishment of approximately 1.0 to 1.5 lane miles of achieved hot mix asphalt pavement rehabilitation. The hot mix asphalt rehabilitation portion of total project costs ranges from \$120k to \$165k per lane mile, exclusive of any additional costs including necessary project elements beyond pavement treatment (e.g., pavement markings, traffic signal impacts, etc.) Please note that this is not a reduction in the costs for this project, but a shift in the appropriation from FY2021 to FY2022.

The changes to the FY2021 Approved Capital Budget have been reviewed by the Planning Advisory Board and they have offered an advisory recommendation of approval.

Bill No. 101-20: Personnel – Exempt Service – Director, Equity, Diversity, and Inclusion

This bill amends the County Code to include the title Director, Equity, Diversity, and Inclusion as an E7 position in the exempt service, and to require this position to file financial disclosure statements with the Anne Arundel County Ethics Commission. This bill also adds one Director, Equity, Diversity, and Inclusion position in the Office of the County Executive's FY2021 budget. The position will lead the development and implementation of all equity, diversity, and inclusion initiatives within the government and the community. This position was not included in the FY2021 budget, and the costs for this position were not included in the FY2021 budget. The Office of the County Executive expects to fill this position during the third quarter of FY2021.

Fiscal Impact: The current pay range of an E7 position is \$103,248 to \$181,426. The annual salary, FICA, and benefits would range from \$119,859 to \$256,687. The estimate for benefits includes the cost of participating in the Employees' Retirement Pension Plan at the current pension rate of 22.65% of salaries. However, there will be no increase in pension expenses for this position until FY2022. According to the Office of the County Executive, the amount of additional appropriations needed for the FY2021 budget will depend on the ultimate hiring date, negotiated salary, and associated benefits of the position. Thus, any needed additional appropriations for FY2021 will be requested in a future bill.

Bill No. 102-20: Personnel – Positions in the Classified Service

This bill deletes one vacant GIS Specialist I and adds one Program Manager in the Office of Central Services' FY2021 Approved Operating Budget. According to the Office of Central Services, the GIS Specialist I position responsibilities will be absorbed by other Office of Central Services Real Estate Division employees that have received training on utilizing GIS and the GIS staff in other departments. The Program Manager position will be within the Facilities Maintenance Division and will manage the County's security program including contractors, access control at multiple locations, and the new work order and asset management program.

This bill also deletes four vacant Detention Officers and one Booking Officer, and adds four Detention Sergeants and one Management Assistant I position in the Department of Detention Facilities' FY2021 Approved Operating Budget. According to the Office of Personnel, these reclassifications are to provide sufficient administrative help and supervision at the recently opened Central Holding and Processing Center.

Fiscal Impact: The difference in the salary and FICA costs for these changes are noted in the table below:

Current Classification & Grade	FY2021 Budgeted Salary & FICA	Proposed Classification & FICA	Proposed Salary & FICA Range	Difference	# of Positions	Total Difference
GIS Specialist I (NR15)	\$ 54,313	Program Manager (NR19)	\$ 73,044 - 130,421	\$ 18,731 - 76,108	1	\$ 18,731 - 76,108
Detention Officer (D1)	\$ 48,692	Detention Sergeant (D3)	\$ 62,913	\$ 14,221	4	\$ 56,884
Booking Officer (OS7)	\$ 38,072	Management Assistant (NR15)	\$ 54,313 - 92,296	\$ 16,241 - 54,224	1	\$ 16,241 - 54,224
Total:					6	\$ 91,856 - 187,216

Although the FY2021 Approved Operating Budget did not include these position changes, the Department of Detention Facilities and the Office of Central Services intend to absorb any additional cost for their change in positions within their FY2021 Approved Operating Budget.

Bill No. 103-20: Payment in Lieu of Taxes – Brock Bridge Landing, Jessup, Maryland

This bill authorizes the County Executive to enter into a payment in lieu of taxes (PILOT) agreement with Brock Bridge Landing Limited Partnership (Owner) for the Brock Bridge Landing Multi-Family Rental Project for 40 years. Under this agreement, the property shall be exempt from ordinary County property taxes. The PILOT provides for a payment of \$15,200 for fiscal year 2023. For fiscal years 2024 through 2062, the annual PILOT will increase by an adjustment factor of 4% per annum.

The proposed project is located at 7902 Brock Bridge Road in Jessup, Maryland, and will be a 38 unit family-style townhouse apartment complex (6 two-bedroom units and 32 three-bedroom units), a 2,000 square foot community building (which will be made available to the broader neighborhood for meetings and activities), picnic area, playground, stormwater management ponds, landscaped area, and forest conservation areas. The project is structured to serve all levels of income. Of the 38 units, 12 units will be available to households having incomes of no more than 60% of the area median income, 6 units will be available to households having incomes of no more than 50% of the area median income, 8 units will be available to households having incomes of no more than 40% of the area median income, 8 units will be available to households having incomes of no more than 30% of the area median income, and 4 units will be unrestricted and rented at market rates.

Md. Code Ann. Tax - Property Article § 7-506.1 allows real property to be exempt from County property tax if:

1. The real property is owned by a person engaged in constructing or operating housing structures or projects;

2. The real property is used for a housing structure or project that is constructed or substantially rehabilitated, under a federal, state, or local government program that funds construction or insures its financially in whole or in part or provides interest subsidy, rent subsidy, or rent supplements;
3. The owner and governing body of the County agree that the owner shall pay a negotiated amount in lieu of the applicable County property tax; and
4. The owner of the property either:
 - a. agrees to continue to maintain the real property as rental housing for lower-income persons under the requirements of the government programs (noted above in item 2.) and agrees to renew any annual contributions contract or other agreement for rental subsidy or supplement; or
 - b. enters into an agreement with the governing body of the County to allow the entire property, or the portion of the property maintained for lower-income persons to remain as housing for lower-income persons for a term of at least five years.

Md. Code Ann. Tax - Property Article § 7-506.1 also states that if the structure and facilities of the real property are used predominantly for residential purposes, the real property may contain service facilities (non-dwelling community facilities, community rooms, dining halls, etc.) to serve its occupants and the surrounding neighborhood.

Arundel Community Development Services, Inc. (ACDS) has recommended this PILOT because it will allow the project to be financially feasible and will allow the developer to be able to maximize the private funds available. ACDS' review of the income and expenses indicate that this project would not be financially stable, nor meet the underwriting requirements of the mortgage lender without the approval of this PILOT agreement. The total project first-year annual income based on a seven percent vacancy rate is \$480,349. The operating expenses for the first year are estimated at \$279,232 without a PILOT, giving the project a low debt services coverage. With this PILOT, the annual expenses are reduced by an estimated \$15,733, and the project is able to achieve a 1.2 debt service ratio allowing the project to meet the underwriting criteria of the lender. The reduction in taxes will allow the 38 affordable rental units to be built in a location close to transportation, jobs, and services. The owner is required to submit audited financial statements and project expenses to the County every five years for review by the Office of Finance to determine if the PILOT is still needed.

The State Department of Assessments and Taxation estimates that the property value of the project will be \$3,311,976 with the assumption that the property will be approved as a Section 42 Low-Income complex. Based on that property value, the owner would pay approximately \$30,933 per year in Anne Arundel County property taxes without this PILOT agreement. The owner is requesting a PILOT of \$15,200, which would reduce the annual taxes collected from this property by approximately \$15,733.

Per the Office of the Budget's fiscal note, a PILOT agreement of this nature has no negative fiscal impact due to the County's property tax cap and the County's policy and practice of maximizing property tax revenue under the cap. The total amount of property tax collected by the County will not change, but the relative tax burden among all property taxpayers will. We agree with the information presented in the fiscal note.

Bill No. 104-20: Zoning – Cosmetic Facial Hair Salons

This bill allows cosmetic facial hair salons as an auxiliary use in the W1 and W2 industrial districts, and as a permitted use in mixed-use zoning districts and small business zoning districts. In addition, the bill allows cosmetic facial hair salons as a home occupation. As a home occupation,

cosmetic facial hair salons would be required to comply with home occupation requirements in Anne Arundel County Code § 18-10-130.

OPZ and I&P are not aware of any current projects that will be impacted by this bill, and do not expect a change in workload. This bill has no fiscal impact.

Bill No. 107-20: Emergency Ordinance – Current Expense Budget – Fund Transfer and Supplementary Appropriations

This bill transfers \$4,200,000 from the Chief Administrative Officer's (CAO) contingency account to the CAO's Community Development Fund to grant funds to the Arundel Community Development Services, Inc. (ACDS). This bill also provides supplemental appropriations of \$2,065,700 for two grants in the Grant Special Revenue Fund (Grant Fund); \$95,300 for one grant in the Partnership for Children Youth and Families Special Fund; and \$3,316,300 for two grants in the Community Development Fund. The supplementary appropriations are from revenues received from sources not anticipated in the budget and from revenues received from anticipated sources in excess of budget estimates.

Section 712 of the County Charter provides that the County Council may by ordinance make additional, supplementary, or emergency appropriations from revenues received from anticipated sources in excess of budget estimates or from sources not anticipated in the budget, provided the Controller certifies in writing that such funds are available for appropriation. The supplemental appropriation may not exceed the amount the Controller certifies. Page 2, lines 5-6 of the bill state that the Controller has certified in writing that such funds are available for appropriation; however, as of this writing, the Controller has not yet made that written certification. The \$2,065,700 appropriated in the Grants Fund, and \$95,300 appropriated in the Partnership for Children Youth & Families Special Fund have been rounded up to the nearest \$100, but these rounded amounts exceed the actual amounts the Controller is willing to certify.

The transfer of \$4.2 million from the CAO's contingency account to the CAO's Community Development Services Corporation bureau will be granted to ACDS. While the Administration and ACDS have not yet defined the terms and conditions on spending these general funds, ACDS plans to spend the funds on the County's Eviction Prevention Program (approximately \$1.9 million), Emergency Food Assistance Program (approximately \$2.1 million), and related ACDS administration costs (approximately \$200,000).

According to ACDS, since April 2020, there has been \$4 million made available for the County's Eviction Prevention Program from the Coronavirus Aid, Relief and Economic Security Act (CARES Act) funds. Approximately \$3.6 million has already been expended, with the additional \$400,000 expected to be spent by December 30, 2020. Over 1,000 households have been assisted with another 400 households on a waiting list, and ACDS continues to receive 15 to 20 new applications a day. The eviction issue is expected to worsen as the pandemic continues, and many are not going back to work. The funds for food support are based on four months of need and will be provided to the following organizations:

- Anne Arundel County Food Bank – to continue to provide produce food boxes to the Department of Aging and Disabilities to replace the ones that were previously provided by the USDA grant, and to support food procurement and staff costs;
- Feed Anne Arundel – to support a network of local restaurants throughout the County to provide approximately 33,400 meals for food insecure individuals and households in the County;

- Food Pantry Partner Support – to provide approximately eight small grants to pantry partners to support staff cost and supplies, including the production of commodity boxes for distribution to families affected by COVID; and
- Maryland Food Bank – to support the provision of four weekly “Pantry on the Go Events” locations throughout the County for approximately 22 weeks.

The requests for the Grant Fund provide \$2,065,700 appropriations for the following grants:

- \$53,900 for the Office of the State’s Attorney from the Governor’s Office of Crime Control and Prevention for the Coronavirus Emergency Supplemental Funding Program. The grant award is for \$53,834 with a term from December 1, 2020 through December 31, 2021. The Controller can only certify funds up to the amount of the grant award. The funds will be used to provide salary and fringe benefits for an Information & Technology Specialist and mobile communication tools, inclusive of cell phones and tablets with corresponding data plans. The grant requires that the position be filled within 45 days of the receipt of the sub-award package. This grant was not included in the FY2021 budget and does not require a matching contribution.
- \$2,011,800 for the Office of Transportation from the Maryland Department of Transportation’s Maryland Transit Administration (MDOT MTA) administered by the Federal Transit Administration and funded by funds provided by the CARES Act. The grant award is a four-year grant award totaling \$4,542,394, and \$2,011,800 represents the amount anticipated to be spent for FY2021. Anne Arundel County is a part of the Locally Operating Transit System (LOTS), whereby the County receives annual grant funding from the State through the Annual Transportation Plan. Being a recipient of this annual grant award allows the County to be automatically eligible for these funds. The County will use these funds for operating expenses associated with providing transportation services in response to COVID-19. This grant was not included in the FY2021 budget, and does not require a matching contribution.

The requests for the supplemental appropriation of \$3,316,300 for the Community Development Fund provides appropriations for the following grants to be administered by ACDS:

- \$1,200,000 from the Maryland Department of Housing and Community Development (DHCD) for a U.S. Department of Housing and Urban Development Community Development (HUD) Block CV II grant funded by the CARES Act. The grant is for expenses incurred during the period October 22, 2020 to December 31, 2021, and a minimum of 50% of the funds must be expended by June 19, 2021. These funds will also be used for the County’s Eviction Prevention Program administered by ACDS. Resolution No. 34-20 authorized the application for this grant. This grant was not included in the FY2021 budget, and does not require a matching contribution.
- \$2,116,300 from HUD for a Community Development Block CV III grant. The grant is an entitlement jurisdiction grant based on a national formula that does not require an application. ACDS plans to use these funds for eviction-related legal services (\$200,000); the County’s Eviction Prevention Program (\$1,043,047); remote learning for low- and moderate-income students’ virtually learning (\$250,000); the Emergency Mortgage Assistance Program (\$200,000); and administration of the grant (\$423,362). This grant was not included in the FY2021 budget, and this grant does not require a matching contribution.

The request for the Partnership for Children Youth and Families Special Fund provides appropriations for the following grant:

- \$95,300 for Partnership for Children, Youth and Families from the Governor's Office of Crime Prevention, Youth, and Victim Services for the Coronavirus Emergency Supplemental Funding program. The grant award is for \$95,245 for expenses incurred by December 31, 2021, to build a comprehensive network of partners to address the basic needs and increase connectivity for victims of violence. The Controller can only certify funds up to the amount of the grant award. This grant was not included in the FY2021 budget and does not require a matching contribution.

Items to Note: The Administration will be introducing an amendment to adjust the amounts to the actual grant awards so that the Controller can certify the availability of funds.

Bill No. 108-20: Emergency Ordinance – Third-Party Delivery Service Fees

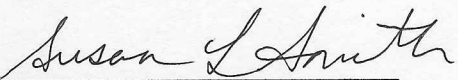
This bill prohibits a third-party food delivery service to: (1) charge a restaurant any fee or fees, including a delivery fee, for the use of the third-party food order and delivery service that exceeds 15% of the purchase price of an on-line order; (2) reduce the compensation rate paid to a delivery service driver or to garnish or reduce gratuities paid to a delivery service driver to comply with the limitation on fees charged to restaurants. This bill also makes a violation of this bill a Class B civil offense. Further, this bill allows a restaurant to agree to pay a third-party food delivery service fee that exceeds the 15% for other optional products or services, including but not limited to advertising, marketing, or access to customer subscriptions.

Third-party food delivery service models have various pricing methods. Some charge customers more than the restaurant price and some offer discounts. They typically charge the customer a small delivery and service fee. Based on our limited research, below is a couple of examples of terms between the third-party food delivery service provider and restaurants:

1. The third-party food delivery service provider provides a free listing on its website for restaurants, the restaurants pay a marketing percentage of the cost of orders and if opting for delivery, an additional percentage to cover the cost of delivery. The higher the marketing percentage paid, the more views the restaurant's menu is supposed to receive. The third-party collects from the customer and provides the restaurant with their net share.
2. The restaurant pays a one-time activation fee and weekly subscription fee for the service and can pay an optional weekly order equipment fee if they opt to use the provider's equipment. The restaurant also pays a commission and marketing percentage of the cost of orders in exchange for promoting and featuring the restaurant on its platform. The third-party service provider can also connect restaurants with independent delivery contractors, and the restaurant pays a fee per driver order if they want to take the orders themselves.
3. The restaurant pays a one-time activation fee that covers a welcome kit, tablet, restaurant software, and a professional photoshoot. The restaurant then pays a delivery service fee as a percentage of each restaurant order.

This bill may result in a shift in net profit from third party delivery service providers to restaurants, or an increase in the cost to customers. A shift in net profit would not impact income tax, but an increase in the cost to customers to maintain the same profit level would result in a combined increase in income tax for these businesses. The County only receives a percentage of individual income taxes, not corporate income taxes. This bill could result in additional revenue to the County from fines for

violations. A Class B civil offense carries a \$1,000 fine for the first violation, \$5,000 for the second violation, and \$10,000 for the third or any subsequent violation. The extent of the additional revenue from fines would be dependent on the number of violations.



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