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STEUART PITTMAN
County Executive

EXECUTIVE ORDER NUMBER 45

REVISING AND RESTATING CERTAIN RESTRICTIONS

WHEREAS, a state of emergency and catastrophic health emergency was proclaimed by Lawrence J. Hogan, 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, November 25, 2020, December 23, 2020, January 21, 2021, and February 19, 2021, 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 13, 2020, County Executive Steuart Pittman issued Executive Order No. 16 proclaiming a civil emergency in Anne Arundel County due to the rapid onset of the COVID-19 pandemic, which Executive Order was extended by the County Council on March 20, 2020, to continue for the duration of the Governor's state of emergency proclamation;

WHEREAS, on March 30, 2020, the Governor issued Executive Order No. 20-03-30-01 which ordered all nonessential employees in the State to stay at home for an undetermined period of time and imposed operating restrictions on business in the State in an effort to arrest the increase in the number of residents contracting the virus (the "Stay At Home" Order);

WHEREAS, since March 30, 2020, both the Governor and the County Executive have issued various Executive Orders relaxing the provisions of the Governor's Stay At Home Order and allowing certain businesses formerly ordered to be closed to reopen, under certain conditions to ensure public safety;

WHEREAS, on March 9, 2021, the Governor issued Executive Order No. 21-03-09-01, restating and revising portions of the Governor's prior Executive Orders, lifting use restrictions on most restricted businesses and terminating the delegation of authority to local jurisdictions to issue executive orders stricter than the State executive orders;

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 and social distancing, there is limited capacity at restaurants;

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;

WHEREAS, public health orders limiting indoor dining capacity at restaurants has increased the utilization of take-out and delivery services;

WHEREAS, this limitation has resulted in many restaurants utilizing third-party food delivery services, by telephone or through web-based delivery application platforms, which charge commissions and fees to customers and the Food Service Establishments;

WHEREAS, the fees charged by third-party food and drink delivery services may be so high that they result in financial burden for the restaurants and may limit their ability to continue to provide the essential service of feeding the citizens of the County through pick-up and delivery services that minimize contact and provide protection from the COVID virus;

WHEREAS, it is in the best interests of the citizens of the County that restaurants continue to provide food in ways that minimize contact, including pick-up and delivery, at a reasonable fee;

WHEREAS, while arrangements between restaurants and third-party delivery services vary, all these agreements include fees of up to 30 percent or more of the purchase price, which increases the price for vulnerable citizens in need of delivery and pick-up services from restaurants due to COVID-19;

WHEREAS, limiting the fees charged by third-party food delivery services accomplishes the fundamental government purposes of easing the financial burden on struggling restaurants and their customers, allowing restaurants to provide the essential service of providing food to County citizens, including vulnerable populations, and allowing County citizens to obtain food at a reasonable price while avoiding or minimizing exposure to the potentially deadly COVID virus;

WHEREAS, the County Executive and the Department of Health constantly review the health care metrics, case trends, hospital capacity, positivity rate, and other factors to ensure that the restrictions imposed are fairly applied, effective, and reasonable and necessary to save lives or prevent the spread of COVID-19;

NOW, THEREFORE, I, Stuart Pittman, County Executive, by virtue of the authority vested in me by the Charter and laws of Anne Arundel County, Maryland, and §§ 1-6-101 et. seq. of the Anne Arundel County Code, and to save lives or prevent further exposure to the COVID-19 virus within Anne Arundel County and the State of Maryland, do hereby proclaim and order on this 12th day of March, 2021:

1. Local Executive Order Nos. 25, 27, 29, 32, 33, 35, 37, 38, 39, 40, 41, 42, Amended and Restated Executive Order 42, and 43 are hereby further amended, the intent being that all restrictions imposed by Local Executive Orders are set out in full herein and shall control in the event of a conflict with any previous Local Executive Order.

2. As used in this Executive Order No. 45: (a) “Maximum Occupancy” and “Face Coverings” have the meaning as set forth in the Governor’s Executive Order No. 21-03-09-01; (b) “Mandatory Health & Safety Protocols” means social distancing of at least 6 feet, wearing Face Coverings as required by the Governor’s Executive Order No. 21-03-09-01, and complying with the latest guidance from the Centers for Disease Control (“CDC”) and the Maryland Department of Health (“MDOH”) regarding social distancing.

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

A. “Delivery fee” means a fee charged by a third-party food delivery service for providing a service delivering or facilitating the ordering or delivery of food or beverages from a restaurant to a customer, including food that is picked up by the customer, but does not include any optional fees that may be charged by a third-party food delivery platform or third-party food delivery service to a restaurant to obtain additional products or services;

B. “Delivery” includes curbside delivery of restaurant orders, restaurant orders picked up by customers, and restaurant orders delivered to a customer’s location;

C. “Online order” means any restaurant 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;

D. “Purchase price” means the total price of an online restaurant order based on prices contained on the restaurant’s menu, exclusive of taxes and gratuities;

E. “Restaurant” means an establishment that prepares or serves food and beverages for consumption onsite, through take-out, or through delivery; and

F. “Third-party delivery service” means any website, mobile application, internet, or other service that offers or arranges for the sale and same-day delivery or pick-up of food or beverages from restaurants.

4. All persons at any establishment, facility or venue covered under this Executive Order No. 45 shall comply with the Mandatory Health & Safety Protocols.

5. The County Executive strongly recommends that all persons within Anne Arundel County continue following the latest guidance from the CDC and the MDOH regarding social distancing, including, without limitation, avoidance of large gatherings and crowded places.

6. It shall be unlawful for a third-party food delivery service to charge a restaurant any fee or fees, including a delivery fee, for the use of the third-party food delivery service that exceeds 15% of the purchase price of an online restaurant order.
7. It shall be unlawful for a third-party food delivery service to 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 Paragraph 6, such that the compensation paid to the third-party food delivery service by a restaurant may not exceed 15% of the purchase price of an online order.
8. A restaurant may agree to pay a third-party food delivery service a fee that exceeds the limit in Paragraph 6 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.
9. The “Occupancy and Operating Requirements” set forth in the Governor’s Executive Order No. 21-03-09-01 are adopted by reference herein; specifically, the capacity restrictions for Religious Facilities, Retail Establishments, Personal Services Establishments, Indoor Recreation Establishments, Bars and Restaurants, Fitness Centers, Gaming Facilities, and Racing Facilities (as such terms are defined in Executive Order 21-03-09-01) imposed by the County Executive’s Executive Order No. 43 are terminated. Convention and Banquet Facilities, Indoor Venues, and Outdoor Venues (as such terms are defined in Executive Order 21-03-09-01) may open but the total number of persons permitted in each such facility at any one time may not exceed 50% of that facility’s Maximum Occupancy.
10. Indoor social gatherings of more than 10 people are hereby prohibited. Outdoor social gatherings of more than 25 people are hereby prohibited. For the purpose of this Executive Order No. 45, “social gatherings” does not include any use included in Paragraph 9, but does include family gatherings, parties, cookouts, and similar social gatherings, unless it is an organized event held at an Indoor or Outdoor Venue (as defined in Executive Order 21-03-09-01).
11. Local annual license fees for Foodservice Establishments assessed under § 11-6-101 of the County Code are waived and deemed paid for calendar year 2021.
12. Any other use or activity not expressly covered by this Executive Order No. 45 is not restricted, except as may be required by Executive Order 21-03-09-01 or applicable Orders from the MDOH.
13. This Executive Order No. 45 shall control in the event of a conflict between the terms of this Local Executive Order and any previous Local Executive Order.
14. All businesses and uses permitted to be open under the Governor’s Executive Order No. 21-03-09-01 or any other State or local Executive Order, shall also comply with:

A. All previous Local Executive Orders and all Orders and guidance from the County Health Officer, including any “Order for Public Safety” issued by the County Health Officer, to the extent such Orders are not inconsistent with this Executive Order No. 45;

B. All State Executive Orders (as amended), as modified by this Executive Order No. 45;

C. Any applicable directives from the State Secretary of Health;

D. Mandatory Health & Safety Protocols and any additional guidance published by the CDC and the MDOH, and requirements for Face Coverings as set forth in the Governor’s Executive Order No. 21-03-09-01; and

E. All applicable Federal, State and local laws.

15. All other provisions of the Governor’s Executive Order No. 21-03-09-01 shall apply in Anne Arundel County, unless specifically modified herein.

16. The County Health Officer or their designee may enter and inspect any facilities for compliance with the terms of this Executive Order, or any other Executive Order in effect, in the performance of official duties pursuant to Section 3-307(b) of the Health General Article of the Maryland Code. Any attempt to prevent that entry or inspection is a violation of this Executive Order.

17. In addition to the authority of the County Health Officer to order the closure of any business, organization, establishment or facility for a violation of any State or Local Executive Order or Order for Public Safety, the owner of a business that violates this Executive Order No. 45 is guilty of a misdemeanor under the Governor’s Executive Order No. 21-01-28-01 and shall be subject to imprisonment not exceeding one year and a fine not to exceed \$5,000, based on the following fine schedule: \$500 for a first offense, \$1,000 for a second offense, and \$5,000 for a third offense.

18. In addition to any authority of the State or the County Health Officer to take any action for any violation of State or local law or Executive Order, a violation of Paragraphs 6 through 8 of this Executive Order shall be a misdemeanor and upon conviction, the person is subject to a fine not exceeding \$1,000 or imprisonment not exceeding six months or both, in accordance with §§ 1-6-105 and 9-1-101 of the County Code.

19. This Executive Order No. 45 shall take effect at 5:00 p.m. Friday, March 12, 2021, and shall continue until terminated by subsequent Executive Order or until the local proclamation of emergency expires or is terminated, whichever occurs first.

20. The County Public Information Office shall immediately disseminate notice of this Executive Order to the appropriate news media and to the general public.

This Executive Order shall be archived at the Office of Law.



STEUART PITTMAN
County Executive

Approved as to form and legal sufficiency:



Gregory J. Swain
County Attorney