



**SALISBURY CITY COUNCIL
WORK SESSION AGENDA**

MARCH 1, 2021

ZOOM MEETING

- 4:30 p.m. Chesapeake Utilities Corporation- Somerset Natural Gas Project update- Department of Infrastructure & Development Director Amanda Pollack
- 4:35 p.m. Commercial Real Estate Services Introduction- Procurement Director Jennifer Miller
- 4:45 p.m. Ordinance capping the commission that 3rd party delivery companies can collect during a State of Emergency- Business Development Director Laura Soper
- 4:55 p.m. Administration and Council Remarks
- 5:00 p.m. Adjournment

*Times shown are approximate. Council reserves the right to adjust the agenda as circumstances warrant.
The Council reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland 3-305(b).*

Join Zoom Meeting
<https://us02web.zoom.us/j/5362772908>
Meeting ID: 536 277 2908
Phone: 1.301.715.8592



February 19, 2021 Somerset Project Update

- **Work completed in past month**

- Contractor has mobilized
- Clearing work is completed
- Grading work has started
- Pipe and material deliveries are underway
- HDD under the Wicomico River is planned to start 2/15/21

- **Work to be completed in next month**

- Pipe and material deliveries to continue
- Construction continues, including but not limited to:
 - Grading work
 - HDD installations
 - Direct bury installations

Pavement repairs and general restoration as needed

- **Work performed in Salisbury**

- Construction has started, including but not limited to:
 - Clearing work is completed
 - Grading work has begun
 - HDD installation under Wicomico was moved to 2/17/21
 - Direct bury installations to start once Wicomico HDD is completed
- Pavement repairs and general restoration as needed

- **Anticipated project completion date (Salisbury specific)**

- Construction completion estimates are weather dependent
- HDD complete: Late 2Q21
- North Salisbury Tie-ins: Late 2Q21 or early 3Q21
- Restoration will be completed as construction is completed in sections

- **Coordination with Salisbury City Staff on Rails to Trails**

- A small Chesapeake Utilities team is working directly with Will White, of the City of Salisbury
- The team is sharing information on conducting business with the railroad and contacts at Norfolk Southern
- We rescheduled a meeting (due to a team member's illness) to 02/26/21



To: Mayor and City Council
From: Jennifer Miller
Director of Procurement
Date: March 1, 2021
Subject: Commercial real estate services - introduction

As a result of RFP A-21-103, the City entered into a contract in December 2020 with KLN Commercial Real Estate Services for the purpose of assisting the City with the sale, lease and/or purchase of commercial properties within the City of Salisbury.

Recently, the City met with the KLN team to discuss the preliminary property initiatives and key processes that will support the program:

- Preliminary property initiatives (all require City Council declaration of surplus):
 - 621 Short Street
 - 501 Anne Street
 - 503 Anne Street
 - 505 Anne Street
 - 407 Anne Street
- Key processes:
 - Use of the traditional Request for Proposal method is no longer necessary for the sale of City-owned property but remains an available tool when a particular development outcome may be desired
 - All City-owned parcels identified as having no further value to municipal operations will proceed through the declaration of surplus process, as approved by City Council
 - KLN will provide competitive analytics and active property marketing to achieve optimum buy or sell pricing
 - Listings will be active for 30 days, during which time public offers will be accepted
 - KLN will be provided a range of authority to negotiate as determined by the Executive Office
 - Offers will be vetted by the Executive Office and presented to the City Council for final approval
 - KLN will handle the entire transaction through closing
 - KLN is able to provide additional commercial real estate consulting services as needed

The City looks forward to this new partnership with KLN for commercial real estate services. This initiative will bring the necessary efficiencies, reach and expertise to effectively manage commercial property sales and acquisitions for the City, thereby achieving long-range municipal land-planning goals.



MEMORANDUM

To: Julia Glanz
From: Laura Soper, Director of Business Development
Subject: 3rd Party Delivery Commission Fee Caps
Date: 2/18/21

I began researching 3rd Party Delivery Commission caps at the request of one of our local restaurant owners. 3rd party delivery companies (UberEats, DoorDash, GrubHub, Postmates) have been on the rise for years, with many local restaurants from our community opting in to those services well in advance of the COVID pandemic. Many agreed to pay commissions for deliveries made by these companies that ranged from 30-35% of each sale, but at that time, it was not as concerning because they were operating at full indoor capacity at their location. However, when COVID began, many restaurants were forced to reduce their indoor dining capacity and pivot to pick-up/delivery as a lifeline. When this occurred, the 30-35% commission structure came under greater scrutiny, causing many restaurants to operate at a loss or barely break even on a majority of their sales. Many municipalities and counties have enacted commission caps throughout the U.S. since the COVID outbreak, with caps ranging from 10% to 20% (to last through the public health emergency). The legislation proposed mirrors Baltimore's mandate, capping commission fees at 15%, protecting delivery driver pay, and allowing restaurants to opt in to paying more (if they so choose).

In conversations with our local restaurant community, they are generally supportive of these commission fee cap measures. The fees are astronomical, but many restaurants have cited that 3rd party delivery systems *do* drive a fair amount of business and helps them rotate the stock. For that reason, most are in the position whereby they would not want to opt out of 3rd party delivery completely.

Before approaching this legislation, I sent letters/emails to several 3rd party delivery companies that operate in the Salisbury area asking them to voluntarily cap their commission fees. Unsurprisingly, all have declined to do so.

Thank you for your consideration of this legislation, and I look forward to putting more funds in the hands of our locally owned restaurant.

1 AN ORDINANCE OF THE CITY OF SALISBURY TO AMEND TITLE 5-
2 BUSINESS LICENSES AND REGULATIONS OF THE SALISBURY
3 MUNICIPAL CODE BY ADDING CHAPTER 5.53 IN ORDER TO PLACE A
4 LIMIT ON THIRD-PARTY RESTAURANT DELIVERY FEES AND TO
5 PROTECT THE THIRD-PARTY DRIVER'S INCOME DURING THE
6 CURRENT COVID-19 PANDEMIC.
7

8 WHEREAS, the ongoing application, administration and enforcement of the City of
9 Salisbury Municipal Code demonstrates the need for periodic review, evaluation and
10 amendment; and
11

12 WHEREAS, a State of Emergency and Catastrophic Health Emergency was proclaimed
13 on March 5, 2020 by the Governor of the State of Maryland, and renewed on March 17, 2020,
14 April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, August 10, 2020, September 8, 2020,
15 October 6, 2020, October 29, 2020, November 25, 2020, and December 23, 2020 to control and
16 prevent the spread of COVID-19 within the State, and the State of Emergency and Catastrophic
17 Health Emergency still exists; and
18

19 WHEREAS, COVID-19, is an infectious and contagious respiratory disease that may
20 spread easily from person to person and may result in serious illness or death, is a public health
21 catastrophe; and
22

23 WHEREAS, The U.S. Centers for Disease Control and Prevention has advised that social
24 distancing is necessary to contain the spread of COVID-19 and as a result of COVID-19, there is
25 limited seating capacity at Food Service Establishments which have been required to enforce
26 social distancing measures to contain the spread of this potentially deadly infectious disease at
27 such establishments; and
28

29 WHEREAS, the restaurant industry contributes to the vitality and personality of the
30 City of Salisbury, provides necessary meals to the patrons, and employs local and regional
31 residents; and
32

33 WHEREAS, the social distancing measures required to mitigate the spread of the
34 COVID-19 virus mean that delivery, curbside pickup and take-out options from restaurants are
35 critical to the public's access to prepared food to assist in responding to a potential shortage of
36 food; and
37

38 WHEREAS, the COVID-19 pandemic has had a significant negative impact on the local
39 economy and has impacted small local restaurants, resulting in economic hardship for business
40 owners and their employees due to loss of business income, layoffs, and economic hardship for
41 the staff due to reduced work hours and income; and
42

43 WHEREAS, public health orders have resulted in limited indoor dining capacity at Food
44 Service Establishments, which has increased the utilization of take-out and delivery services and
45 limited capacity has placed a necessary, but sudden and severe financial strain on many food

46 service establishments that already operate on thin margins, adding to financial pressures in the
47 industry that predate the current public health crisis; and
48

49 WHEREAS, while each service agreement between a Food Service Establishment and a
50 third-party delivery service or platform may vary, all such agreements routinely include delivery
51 commission fees that can include agreements with commission fees of up to 30 percent or more
52 of the purchase price, which can also result in the increase of food prices paid by vulnerable
53 citizens in need of delivery and pickup services from Food Service Establishments due to
54 COVID-19; and
55

56 WHEREAS, Food Service Establishments, particularly small family-owned restaurants or
57 food trucks with few locations, have limited bargaining power to negotiate lower commission
58 fees with third-party food and drink delivery services including application based delivery
59 platforms due to only a few companies in the marketplace providing such delivery services, and
60 face dire financial circumstances during this COVID-19 pandemic because takeout and delivery
61 are the only options to keep such businesses in operation when shelter in place restrictions occur
62 or many customers are not permitted in said locations due to seating capacity limitations; and
63

64 WHEREAS, on a temporary basis, capping the Delivery Fee and/or commission fee to a
65 maximum of 15 percent of the purchase price on delivery or pick-up orders while Food Service
66 Establishments are unable to provide unrestricted dine-in service will accomplish a fundamental
67 government purpose of easing the financial burden on struggling restaurants during this public
68 health emergency while not unduly burdening third-party delivery services including web
69 application-based delivery platforms and commission based food and drink delivery services to
70 help temporarily secure the economy; and
71

72 WHEREAS, it is in the public interest to take action to maximize Food Service
73 Establishment revenue affected by current delivery and pick-up order fees, which affect a lifeline
74 and a predominate source of revenue for the City of Salisbury's Food Service Establishments to
75 enable these businesses to survive the impacts of the COVID-19 pandemic and continue
76 contributing to the vitality of Salisbury's community during this temporary crisis, and to ensure
77 all citizens can access food on a reasonably priced basis; and
78

79 WHEREAS, SC5-1(21) of the City of Salisbury Municipal Code grants the City the
80 power to regulate any business or calling; and
81

82 WHEREAS, nothing herein shall be construed to limit or conflict with any order or
83 authority of the local Health Officer, Secretary of the Maryland Department of Health or
84 Governor of the State of Maryland; and
85

86 WHEREAS, during this time of local economic disruption and uncertainty caused by the
87 COVID-19 pandemic, many vulnerable workers have found work opportunities as delivery
88 drivers for these third-party food delivery platforms to financially support themselves and their
89 families, and may be economically impacted if third-party food delivery platforms seek to reduce
90 compensation rates to those delivery drivers as a result of the limitations placed on Delivery Fees
91 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 ordinance; and

WHEREAS, these prohibitions and restrictions are temporary and apply only where indoor dining is prohibited or limited to less than full seating capacity; and

WHEREAS, third-party food delivery services or platforms may further undermine already vulnerable workers if the business owners reduce compensation rates to these drivers as a result of this ordinance which caps 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 services or platforms; and

WHEREAS, the City of Salisbury hereby desires to amend its Municipal Code to address the aforementioned concerns until Food Service Establishments are authorized to operate at unrestricted, full seating capacity.

NOW, THEREFORE, be it enacted and ordained by the City of Salisbury, that Chapter 5.53 be added to Title 5-Business Licenses and Regulations of the Salisbury Municipal Code as follows:

Chapter 5.53-THIRD-PARTY FOOD SERVICE ESTABLISHMENT DELIVERY FEE LIMITS

5.53.010-Definitions.

For the purposes of this chapter, the following words shall have the meanings indicated:

"Delivery Fee" means, however characterized, a fee or commission charged by a third-party food delivery service or platform for providing a Food Service Establishment with a service that delivers or facilitates the ordering or delivery of food or beverages from 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 service or platform to Food Service Establishments, such as optional fees paid to obtain additional products or services, or fees related to processing the online order.

"Food Service Establishment" means a restaurant as defined in Section 5.52.010, including bars, nightclubs, and other similar establishments that sell food or beverages for consumption on-premises, and Social Clubs with dining facilities (collectively, "Food Service Establishments") that may serve food and beverages to customers for consumption in outdoor seating areas; sell food and beverages that are promptly taken from the premises, i.e., on a carry-out or drive-through basis; deliver food and beverages to customers off the premises; and serve food and beverages to customers for consumption in indoor seating areas. Convenience stores that utilize third-party food delivery services or platforms are also included within the above definition and are subject to the limitations set forth herein.

138 *"Online Order" or "Order" means an order placed by a customer through a platform*
139 *provided by the third-party food delivery service or platform including a telephone order,*
140 *email, SMS or mobile order of any kind.*

141
142 *"Purchase price" means the menu price of an online order as set on a Food Service*
143 *Establishment's menu, excluding taxes, gratuities or any other fees that may make up the*
144 *total cost to the customer of an online order.*

145
146 *"Third-Party Food Delivery Service or Platform" means a computer, telephone, SMS,*
147 *website, mobile application, or other internet service that facilitates the sale and same-*
148 *day delivery or same-day pickup of ready to eat food or beverages provided by Food*
149 *Service Establishments in the State.*

150
151 *5.53.020-Limitation of Fees/Charges.*
152

153 *A. It shall be unlawful for a third-party food delivery service or platform to*
154 *charge a Food Service Establishment a Delivery Fee or a mandatory gratuity or*
155 *donation fee, for the use of the third-party food delivery service or platform that exceeds*
156 *fifteen percent (15%) of the purchase price of any food delivery order including an*
157 *Online Order. This chapter does not limit a Delivery Fee for alcohol, unless purchased*
158 *with food.*

159
160 *B. It shall be unlawful for a third-party food delivery service or platform to*
161 *reduce the gratuity or compensation rate paid to a delivery service driver or individual*
162 *picking up food on foot for delivery or to garnish or reduce gratuities paid to a delivery*
163 *service driver or other delivery individual to comply with this chapter, such that the*
164 *compensation paid to the third-party food delivery service person by a Food Service*
165 *Establishment may not exceed 15 percent of the purchase price of an Online Order for*
166 *food or food delivery order.*

167
168 *C. A Food Service Establishment may agree to pay a third-party food*
169 *delivery service platform a fee or charge that exceeds the limits set forth above to obtain*
170 *optional products or services, including, but not limited to, advertising, marketing, or*
171 *access to customer subscription programs, in addition to delivery or pickup service. All*
172 *such agreements shall be in writing.*

173
174 *5.53.030-Violation and Penalties.*
175

176 *The provisions of this chapter shall be enforced by the _____*
177 *Department or his/her designee. A person who violates this chapter after written notice to*
178 *take corrective action is guilty of a municipal infraction and shall be fined two hundred*
179 *fifty dollars (\$250.00) for the first offense and shall be fined up to five hundred dollars*
180 *(\$500.00) for each subsequent offense. Each day a violation exists shall be a separate*
181 *offense.*
182
183

184 5.53.040-Expiration.
185

186 *The restrictions and prohibitions contained within this chapter shall automatically expire*
187 *on the first day after the less than full occupancy seating restrictions tied to the current*
188 *pandemic are lifted for Food Establishments. The City of Salisbury shall post on its*
189 *website confirmation of the expiration of the restrictions covered in this chapter.*
190

191 **Explanation:**
192

193 * *ITALICIZED PRINT INDICATES MATERIAL ADDED TO EXISTING LAW.*
194

195 AND BE IT FURTHER ORDAINED AND ENACTED BY THE CITY OF
196 SALISBURY, MARYLAND THAT this ordinance shall take effect immediately upon adoption.

197 THIS ORDINANCE was introduced and read at a meeting of the Council of the City of
198 Salisbury held on this ____ day of _____ 2021, and thereafter, a statement of
199 the substance of the Ordinance having been published as required by law, was finally passed by
200 the Council on the ____ day of _____, 2021.

201 ATTEST:
202

203 _____
204 Kimberly R. Nichols
205 CITY CLERK
206

John R. Heath
PRESIDENT, City Council

207 APPROVED BY ME THIS ____ day of _____, 2021
208
209

210 Julia Glanz, City Administrator
211 for and at the direction of Jacob R. Day, Mayor