

MEMORANDUM

CPC

Agenda Item No. 1(G)4

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 11, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to food delivery platforms; creating article XXIII of chapter 8A of the Code; providing for legislative intent, applicability, and definitions; requiring food delivery platforms to provide certain information to customers and public food service establishments relating to transactions completed on food delivery platforms; prohibiting a food delivery platform from taking certain actions regarding a public food service establishment without prior written consent; prohibiting a food delivery platform from limiting disputes by a public food service establishment under certain circumstances; prohibiting a food delivery platform from restricting a public food service establishment from marketing to or contacting a customer under certain circumstances; amending section 8CC of the Code; providing for enforcement by civil penalty

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee.



Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: June 21, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 4(E)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(E)
6-21-23

ORDINANCE NO. _____

ORDINANCE RELATING TO FOOD DELIVERY PLATFORMS; CREATING ARTICLE XXIII OF CHAPTER 8A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR LEGISLATIVE INTENT, APPLICABILITY, AND DEFINITIONS; REQUIRING FOOD DELIVERY PLATFORMS TO PROVIDE CERTAIN INFORMATION TO CUSTOMERS AND PUBLIC FOOD SERVICE ESTABLISHMENTS RELATING TO TRANSACTIONS COMPLETED ON FOOD DELIVERY PLATFORMS; PROHIBITING A FOOD DELIVERY PLATFORM FROM TAKING CERTAIN ACTIONS REGARDING A PUBLIC FOOD SERVICE ESTABLISHMENT WITHOUT PRIOR WRITTEN CONSENT; PROHIBITING A FOOD DELIVERY PLATFORM FROM LIMITING DISPUTES BY A PUBLIC FOOD SERVICE ESTABLISHMENT UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A FOOD DELIVERY PLATFORM FROM RESTRICTING A PUBLIC FOOD SERVICE ESTABLISHMENT FROM MARKETING TO OR CONTACTING A CUSTOMER UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 8CC OF THE CODE; PROVIDING FOR ENFORCEMENT BY CIVIL PENALTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, public food service establishments provide an important service to residents and visitors in Miami-Dade County; and

WHEREAS, customers ordering takeout or delivery from food service establishments frequently do so via third-party food delivery service platforms; and

WHEREAS, in such food delivery transactions, the third-party food delivery service platforms act as intermediaries, but certain details of each transaction may be omitted from view of the customer and the public food service establishment; and

WHEREAS, providing a regulatory framework that would create a greater degree of transparency in transactions completed on food delivery service platforms would inure to the benefit of all parties involved,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Article XXIII of Chapter 8A of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

CHAPTER 8A. BUSINESS REGULATIONS

* * *

>>**ARTICLE XXIII. REGULATION OF FOOD DELIVERY PLATFORMS**

Sec. 8A-431. Declaration of legislative intent and determination of applicability.

(a) Intent. It is the intent of the Board of County Commissioners that the County enact this article to preserve the safety of delivered food, maintain the continuity between customers and public food service establishments, and protect and enhance the opportunity for customers to make fair and informed food delivery purchasing decisions within Miami-Dade County.

(b) Applicability.

(1) This article shall create a uniform standard and shall apply to both the incorporated and unincorporated areas without regard to municipal boundaries.

(2) The penalties in chapter 8CC for violations of this article shall also be uniform and shall apply to both the incorporated and unincorporated areas without regard to municipal boundaries.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Sec. 8A-432. Definitions.

For purposes of this article, the following definitions shall apply:

- (a) “Alcoholic Beverage” includes any beverage with more than one (1) percent of alcohol by weight.
- (b) “Food delivery platform” means an online business that acts as an intermediary between customers and multiple food facilities to submit food and beverage orders, including alcoholic beverages, from a customer to a participating public food service establishment, and to arrange for the delivery of the order from the public food service establishment to the customer.
- (c) “Public food service establishment” has the same meaning as provided in Section 14B-12.
- (d) “Purchase price” means the price, as listed on the menu, for the items contained in an order, excluding fees, gratuities, and taxes that may make up the total amount charged to the customer of an order.

Sec. 8A-433. Customer disclosures.

- (a) A food delivery platform shall itemize and prominently and clearly disclose the cost breakdown of each transaction to the customer, including, but not limited to, the following information:
 - 1. The purchase price of the food and beverage.
 - 2. Any commission, surcharge, delivery fee, or promotional fee charged to the customer by the food delivery platform.
 - 3. Any tip or gratuity charged to the customer.
- (b) A food delivery platform shall prominently and clearly disclose to the customer the ultimate recipient of the purchase price, commissions and fees, and tips described in subsection (a) of this section, as well as any other amounts charged to the customer.
- (c) A food delivery platform shall clearly and regularly disclose the status of the order to the customer, including, but not limited to:

1. The method of delivery, including, if applicable, the identification of the individual performing the delivery.
2. The anticipated date and time of the delivery of the order.
3. The address to which the order will be delivered.
4. Confirmation that the order has been successfully delivered or that the delivery cannot be completed.

(d) With the approval of the public food service establishment to share, a food delivery platform shall provide the contact information of the public food service establishment to the customer, including, but not limited to, the primary phone number or email address of the public food service establishment.

Sec. 8A-434. Food delivery platform policies.

(a) A food delivery platform may not list, promote, or accept orders from a public food service establishment without the prior written consent of such public food service establishment.

(b) A food delivery platform shall provide information regarding each customer's order to the public food service establishment, including, but not limited to, the following:

1. The customer's name and other identifying information provided to the food delivery platform by the customer, including, but not limited to, the contact information of the customer.
2. The date and content of the customer's order, including whether the order is from a new or repeat customer.
3. The origination of the order, including, but not limited to, whether the order was tied to a promotion and whether the order was placed through the food delivery platform's application or website.
4. The delivery time after the order has left the public food service establishment.

(c) A food delivery platform shall clearly provide to each public food service establishment its current terms and conditions, including, but not limited to:

1. The fees charged by the food delivery platform, including, but not limited to, the specific rates for marketing, delivery, and order processing.
2. The policies of the food delivery platform, including, but not limited to, policies related to alcoholic beverages, marketing, menus and prices, payment, and prohibited conduct.
3. The insurance requirements for delivery partners of the food delivery platform and the identification of the party that is responsible for the cost of such insurance.
4. The identification of the party that is responsible for collecting and remitting applicable sales taxes.
5. The penalties that may be assessed for violations of the food delivery platform's policies, rules, or other requirements, including the penalty rate and the process for appeal of the penalty.

(d) A food delivery platform may not limit the value or number of transactions that may be disputed by a public food service establishment with respect to order, goods, or delivery errors for determination of responsibility and reconciliation with respect to such errors.

(e) Subject to applicable privacy laws, a food delivery platform may not unreasonably restrict a public food service establishment from directly marketing to or contacting a customer obtained through the food delivery platform and must use reasonable efforts to assist the public food service establishment in its compliance with applicable privacy laws, which at a minimum shall include the ability to post a privacy policy of the public food service establishment.<<

Section 2. Section 8CC-10 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

Section 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

* * *

Code Section	Description of Violation	Civil Penalty
	* * *	
>>8A-433(a)	<u>Failure to itemize or prominently display and disclose the cost breakdown of a transaction to a customer.</u>	<u>\$100.00 per transaction not to exceed \$10,000.00</u>
8A-433(b)	<u>Failure to prominently and clearly disclose to customer the commissions and fees described in section 8A-433(a), as well as any other amounts charged to the customer.</u>	<u>\$100.00 per transaction not to exceed \$10,000.00</u>
8A-433(c)	<u>Failure to provide the contact information of the food establishment to the customer, providing that approval is obtained from the public food service establishment.</u>	<u>\$100.00 per transaction not to exceed \$10,000.00</u>
8A-434(a)	<u>Listing, promoting, or accepting orders from a public food service establishment without the prior written consent of such food service establishment.</u>	<u>\$10,000.00 per violation, per day</u>
8A-434(b)	<u>Failure to provide information regarding each customer's order to the public food service establishment, including the information required by section 8A-433(b)(1)-(4).</u>	<u>\$100.00 per transaction not to exceed \$10,000.00</u>

<u>8A-434(c)</u>	<u>Failure of food delivery platform to clearly provide its terms and conditions to each public food service establishment, including the information required by section 8A-433(c)(1)-(5).</u>	<u>\$10,000.00 per violation</u>
<u>8A-434(d)</u>	<u>Food delivery platform's limiting of the value or number of transactions that may be disputed by a public food establishment.</u>	<u>\$10,000.00 per violation</u>
<u>8A-434(e)</u>	<u>Food delivery platform's unreasonable restriction of a public food service establishment from marketing to or contacting a customer obtained through the food delivery platform.</u>	<u>\$10,000.00 per violation</u>
	<u>All other violations of Chapter 8A, Article XXIII.</u>	<u>\$10,000.00 per violation <<</u>

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

EW for

Prepared by:

D.P.C

Dale P. Clarke

Prime Sponsor: Commissioner Kionne L. McGhee