

SUMMARY and FISCAL NOTE*

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** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to citations and penalties in the Street and Sidewalk Use code; assessing citation penalties based on land use zoning and permit type; adding citation fee amounts to the Street Use Permit Fee Schedule; granting authority to annually adjust citation penalty fees; and amending Sections 15.91.016 and 15.91.030 and repealing Section 15.91.025 of the Seattle Municipal Code.

Summary and background of the Legislation: The ability for Seattle Department of Transportation (SDOT) to issue citations was first introduced into the Seattle Municipal Code (SMC) in 2002 as a tool for inspectors to gain compliance for code enforcement actions. The citation amounts vary depending on the type of violation and the number of previous violations, with a violator subject to escalating citations within a five-year period. The current citation penalty structure is shown in the table below:

Permit Type	First Citation	Second Citation	Third Citation
Public Space Management	\$250-\$500	\$500-\$1,000	\$1,000
Street Use Vending	\$150-\$300	\$300-\$600	\$1,200
All other Street Use Citations	\$250	\$500	\$1,000

In 2015, the SDOT Street Use Division developed a standard progressive enforcement process to both provide contractors clear expectations on enforcement procedures and to quickly correct any non-compliant locations (see table below). SDOT did not update the citation fee amounts at that time because the department wanted to see what effect the progressive enforcement strategy had on compliance.

Violation Number	Progressive Enforcement Action
1st	Written warning and follow-up inspection
2nd	Citation and follow-up inspection
3rd	Citation and follow-up inspection
4th	Citation and follow-up inspection
5th	Stop Work or Emergency Order
6th	Notice of Violation

Since adopting the progressive enforcement strategy, SDOT has found that it is often the threat of the stop work order that brings larger contractors into compliance because the current citation

penalties do not provide enough incentive for the larger contractors to correct problems. In fact, the cost of a citation is now lower than the cost of a typical permit for use of the right-of-way for construction, so a stop work order, and not a citation, is the incentive to come into compliance. Therefore, Street Use is not providing enforcement at the right monetary level to disincentivize noncompliance.

The proposed legislation will update the current citation fee amounts based on the type of use of the right-of-way and the adjacent zoning for private development projects to ensure that the fee is high enough to encourage compliance, but does not disproportionately affect individuals and small business owners. A violator may be subject to escalating citations within a one-year period. The following table describes the proposed penalty fee schedule:

Permit Type	Single-Family Zones	All Other Areas
Public Space Management Vending Maintenance	Action: Reduce citation fees in all areas of the city Proposed: \$250 /\$500/\$1,000 (for first/second/third violation)	
Utility	Action: Increase citation fees in all areas of the city Proposed: \$1,000/\$2,000/\$4,000 (for first/second/third violation)	
Construction	Action: Maintain citation fees in SF zones Proposed: \$250 /\$500/\$1,000 (for first/second/third violation)	Action: Increase citation fees in all other areas Proposed: \$1,000/\$2,000/\$4,000 (for first/second/third violation)
Snow and Ice Removal	Proposed \$50 (for first violation)	Proposed: \$250 /\$500/\$1,000 (for first/second/third violation)

The proposed legislation would also give us the authority to change the penalties for failing to clear snow and ice from the right of way adjacent to private property (e.g. sidewalks). We would like to lower the penalty in single-family zones and increase it in all other areas, and will not be implementing this new type of citation until we have analyzed it as part of the 2019/2020 Snow and Ice plan.

The legislation directs citation fees to the General Fund rather than the Transportation Fund, which is consistent with current practice.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Appropriation change (\$):	General Fund \$		Other \$	
	2019	2020	2019	2020
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2019	2020	2019	2020
	\$0	\$189,500	\$0	\$0
Positions affected:	No. of Positions		Total FTE Change	
	2019	2020	2019	2020

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?
 No

Is there financial cost or other impacts of *not* implementing the legislation?
 No

3.a. Appropriations

___ This legislation adds, changes, or deletes appropriations.

3.b. Revenues/Reimbursements

X This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Dept	Revenue Source	2019 Revenue	2020 Estimated Revenue
General Fund	0100	Street Use Citations	\$0	\$189,500
TOTAL			\$0	\$189,500

Is this change one-time or ongoing?
 This change is on-going.

Revenue/Reimbursement Notes:

In 2018, Street Use issued 373 construction-related citations in the amount totaling \$168,700 and 30 Public Space Management (PSM)-related citations in the amount totaling \$12,300. Assuming the same number of violations in the same locations in 2020, we anticipate a total assessment of \$362,750 for construction-related citations and \$7,750 for PSM-related citations based on the proposed citation penalty schedule. Due to the timing of this

legislation, we do not anticipate any additional revenue resulting from this legislation for 2019.

Fiscal Impact on 2018 Citations	Number of Citations Issued	2018 Average Citation Penalty	2018 Penalty Total	Projected Penalty Total with Code Amendment
Construction-related Citations	373	\$419	\$168,700	\$362,750
PSM-related Citations	30	\$410	\$12,300	\$7,750

Due to increased citation penalty fees, we anticipate that the number of issued citations for construction-related violations would decrease after the new rates are effective and permit compliance will increase; however, we cannot project the elasticity of citation penalty fees. SDOT plans to monitor the impacts of the new citation penalty fee schedule, tracking the number of citations issued and permits issued to see if the changes are having the intended impact. SDOT will evaluate the citation penalty fees and plans to adjust the penalties accordingly. The citation penalty fees will be amended to the Street Use Permit Fee Schedule as Table E1. As authorized by Ordinance 125185, SDOT has proposed to annually adjust citation penalty fee amounts by the Consumer Price Index.

While SDOT has had the ability to issue citations for snow and ice removal and maintaining a clear and clean sidewalk, historically, SDOT has only issued warning notices and has not followed up with citations. SDOT will not be implementing this new type of citation until after the department has analyzed it as part of the 2019/2020 Snow and Ice plan. SDOT has not identified financial impacts at this time.

Citations and payments are processed by the Hearing Examiner and it is up to the Hearing Examiner on whether to uphold, dismiss, or lower the assessed citation amount. A number of citations are also not paid or defaulted and are then referred to collections. Based on these variables, SDOT is unable to calculate the true recovery or revenue rate.

3.c. Positions

_____ **This legislation adds, changes, or deletes positions.**

4. OTHER IMPLICATIONS

- a. Does this legislation affect any departments besides the originating department?**
 This legislation may affect the Hearing Examiner’s office. The impact would be operational. The Hearing Examiner processes mitigation and contested hearings, citations, and payments, and if the number of issued citations decreases, the Hearing Examiner should experience a reduction in payments to process.

b. Is a public hearing required for this legislation?

A public hearing is not required.

c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?

No, this legislation does not require landlords or sellers of real property to provide information regarding the property to a buyer or tenant.

d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No, a published notice is not required.

e. Does this legislation affect a piece of property?

No, this legislation does not affect a piece of property.

f. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

The intention of the proposed new citation penalty fee structure is to incentivize compliance with the Street Use permit application process and permit conditions and reduce penalties for individuals and small business owners with public space management (PSM) uses like vending, many of whom are from immigrant or minority groups. In the racial equity toolkit, SDOT defined the most important racially equitable community outcome to be: Citation penalty fees incentivize compliance with Street Use's permitting procedures while people of color, low-income communities, and English-as-a-second-language communities are not disproportionately burdened by penalties for use of the right-of-way without a permit or noncompliance with permit conditions.

When SDOT considers the root causes or factors creating racial inequities with their current citation penalty fee structure, SDOT acknowledges that people of color and people from immigrant communities may get citations due to lack of racially- and language-inclusive engagement which translates into a lack of understanding of Street Use's requirements to make use of the right-of-way.

Citations and payments are processed by the Hearing Examiner and SDOT does not currently maintain complete data on whether citations were upheld, dismissed, mitigated, or referred to collections. To help mitigate the potential racially inequitable impacts of this proposal, SDOT will take two courses of action:

- 1) Continue to first provide a warning before issuing a monetary citation to ensure that the inspectors are increasing awareness and knowledge of the regulations and requirements for use of the right-of-way.
- 2) Conduct specific outreach to contractors and vendors of color with guidance from SDOT's WMBE advisor.

The following table shows the projected effect of the new fees for various examples:

	Current Citation Amount	Proposed Citation Amount
Sidewalk Café without permit	\$500	\$250
Hot dog vendor without permit	\$300	\$250
Mixed-Use Development in an Urban Center without a sidewalk closure permit	\$250	\$1,000
Utility company downtown without a Traffic Control Plan	\$250	\$1,000

Of the 30 PSM citations issued in 2018, 24 were for use of the right-of-way without a permit. These violations were subject to higher citation amounts, \$500 and \$300 for vending-related violations, respectively. Moving forward, PSM will issue citations of \$250 when citing for the first time for use of the right of way without a permit. While we do not collect demographic information on the individuals we cite, we know that nationally food trucks tend to be owned by individuals from minority and immigrant communities (in Chicago, roughly 80% of food truck owners come from minority groups, according to a 2018 report published by the U.S. Chamber of Commerce Foundation). Reducing vending-related citation penalties has the potential to increase racial equity. Therefore, the proposed citation penalty schedule may help improve racial equity.

With respect to our language access plan, SDOT will make materials related to the citation penalty update available in the City’s Tier 1 languages and use the City’s resources for interpretation services when necessary.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s).

Issuing citations is part of SDOT’s progressive enforcement process. The goal of the change in citation penalty fees is to increase compliance and reduce the number of citations, while also standardizing the amounts related to the impacts to the public right-of-way. Currently, the citation amounts are lower than many of the permits required for working in the public right-of-way. SDOT will track progress on this goal by comparing the number of issued citations, particularly for construction-related violations. We also expect the number of permits issued to increase.

List attachments/exhibits below: