

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
LEG	Karina Bull / x6-0078	n/a

** 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: A RESOLUTION modifying the City Council’s adoption by Resolution 31945 of a modified civil emergency order issued by the Mayor on April 24, 2020, relating to capping restaurant delivery and pick-up commission fees.

Summary and background of the Legislation: On April 24, 2020, the Mayor issued a civil emergency order that made it unlawful for third-party, app-based food delivery platforms to charge restaurants a commission fee per online, delivery or pick-up order for the use of its services that totals more than 15 percent of the purchase price of such online order (See Exhibit A). On April 27, 2020 the City Council (Council) issued a resolution that adopted a modified version of the Mayor’s civil emergency order (See Exhibit B).

This resolution would further modify the Mayor’s civil emergency order to reflect the current criminal penalties for a misdemeanor; and add a civil infraction and a private right of action as additional enforcement actions, provided these enforcement actions are available under, and the misdemeanor penalty is amended by, the ordinance introduced as Council Bill 119869.

As specified in the modified emergency order (see Exhibit C), the first and second violations of the civil emergency order would be a Class 1 civil infraction, for which the maximum penalty is \$250 plus statutory assessments. The civil infractions would be processed under the procedure established by RCW 7.80 and notices of infraction would be issued by the Department of Finance and Administrative Services (FAS). Each third or subsequent violation of the civil emergency order could be prosecuted as a misdemeanor, for which the penalty is a fine of not more than \$1,000 and/or imprisonment of not more than 90 days. To prosecute a third or subsequent violation as a misdemeanor, the Director of FAS could request that the City Attorney prosecute such violations criminally as an alternative to the civil infraction procedure.

Violations of the civil emergency order could also be enforced by an individual or class private right of action. Upon prevailing, the individual or class bringing the private right of action could be awarded legal or equitable relief, as appropriate to remedy the violation, and reasonable attorney fees.

These enforcement actions are contingent upon the Council’s passage of Council Bill 119869, which proposes to codify a Class 1 civil infraction and private right of action as additional enforcement tools and the current penalties for a misdemeanor. If Council does not pass Council Bill 119869, then the penalties for violations would remain as originally

established in the civil emergency order modified by Council on April 27, 2020. Specifically, the penalties would be a \$500 fine and/or imprisonment for not more than 180 days.

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

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?

Implementation of the modified emergency order would affect three departments: the Consumer Protection division in FAS, the City Attorney's Office (CAO), and Seattle Municipal Court (Municipal Court). These departments estimate that enforcing a limited number of civil infractions, such as five cases a month, would not have a financial impact on their resources. If the workload is significantly higher or otherwise exceeds capacity, the City could either (1) require these entities to reprioritize their existing portfolios of work or (2) add resources to support the additional workload during the 2021 budget adoption process.

Is there financial cost or other impacts of *not* implementing the legislation?

There are no financial costs to the City of not implementing the resolution. However, not implementing the resolution would not provide the Mayor and members of the public with additional tools for enforcing violations of a civil emergency order that is intended to protect the financial well-being of businesses during the COVID-19 emergency.

4. OTHER IMPLICATIONS

- a. **Does this legislation affect any departments besides the originating department?**
This legislation would affect FAS, CAO, and Municipal Court. These departments estimate that, depending on the volume of civil infractions, enforcing civil infractions would not require additional resources.
- b. **Is a public hearing required for this legislation?**
No.
- c. **Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?**
No.
- d. **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

e. Does this legislation affect a piece of property?

No

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 City's Race and Social Justice Initiative is the City's commitment to eliminate racial disparities and achieve racial equity in Seattle. Almost half of firms in the accommodation and food services industry in the Seattle metropolitan area are owned by Black, Indigenous, and People of Color (BIPOC). Modifying the Mayor's civil emergency order capping restaurant delivery and pick-up fees to include civil enforcement actions would provide BIPOC business owners with additional ways to respond to violations of the order and, as penalties have the capacity to deter violations, could encourage greater compliance.

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).

Not applicable.

List attachments/exhibits below:

Exhibit A – Emergency Order Issued April 24, 2020

Exhibit B – Modified Emergency Order Adopted April 27, 2020

Exhibit C – Modified Emergency Order