



Legislation Details (With Text)

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On agenda: 9/23/2019
Final Action: 10/4/2019 **Ord. No.** Ord 125945

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.

Sponsors: Mike O'Brien

Indexes:

Attachments: 1. Att A - Seattle Department of Transportation Street Use Permit Fee Schedule, 2. Summary and Fiscal Note, 3. Presentation, 4. Signed Ordinance 125945, 5. Affidavit of Publication

Date	Ver.	Action By	Action	Result
10/4/2019	1	City Clerk	attested by City Clerk	
10/4/2019	1	Mayor	returned	
10/4/2019	1	Mayor	Signed	
9/27/2019	1	City Clerk	submitted for Mayor's signature	
9/23/2019	1	City Council	passed	Pass
9/17/2019	1	Sustainability and Transportation Committee	pass	Pass
9/16/2019	1	City Council	referred	
9/13/2019	1	Council President's Office	sent for review	
9/10/2019	1	City Clerk	sent for review	
9/10/2019	1	Mayor	Mayor's leg transmitted to Council	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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.

WHEREAS, the Seattle Department of Transportation (SDOT) Street Use Division is charged with regulating the use of the public right-of-way under Seattle Municipal Code (SMC) Title 15, Street and Sidewalk

Use code; and

WHEREAS, the primary purposes of regulating the right-of-way are to ensure mobility is maximized for the traveling public, protect the public's health and safety, ensure public infrastructure is installed or restored properly by private utilities and developments, and activate public spaces; and

WHEREAS, Street Use manages the right-of-way by reviewing and issuing permits, inspecting permitted work, and providing code enforcement for non-permitted or non-compliant uses of the right-of-way; and

WHEREAS, SMC Title 15 provides several options for code enforcement actions, including warnings, citations, notices of violation (NOV), stop work orders, emergency orders, and abatement; and

WHEREAS, SMC Chapter 15.91 authorizes SDOT to issue citations for violating specific portions of Title 15 and permit conditions, and citations fee amounts have not been holistically updated since they were first introduced in 2002; and

WHEREAS, Street Use inspectors follow SDOT's Swift and Certain enforcement process for enforcing violations in the public right-of-way to quickly address safety, access, or environmental problems and change the violator's behavior over time; and

WHEREAS, SDOT is proposing a new citation penalty structure be added to the Street Use Permit Fee Schedule that will be based on the land use zone adjacent to the violation's location to incentivize efficient and effective compliance with Title 15 and permit conditions, and to promote mobility and safety through the right-of-way; and

WHEREAS, SDOT will adjust the citation penalty fee amounts annually based on the Consumer Price Index as authorized by Ordinance 125185; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 15.91.016 of the Seattle Municipal Code, last amended by Ordinance 125492, is amended as follows:

15.91.016 Penalties

A. ~~(First violation~~

~~1. No Street Use permit obtained. The first time a person or entity is found to have violated subsection 15.91.002.A.1, except Street Use vending permits identified in subsection 15.91.016.A.4.a, by not obtaining a Street Use permit before using the public place, the person or entity shall be subject to a penalty of \$500.~~

~~2.)) Citation penalty fee schedule~~

~~The Director of Transportation shall prepare and recommend for adoption by the City Council a citation penalty fee schedule for violations of Title 15. Citation penalty fees shall increase each time the same violator has been subsequently found to have committed a violation within a one-year period, and will be based on the permit type issued and then the zoning designation adjacent to the public place where the violation occurred, if applicable.~~

~~1. Violations of Title 15 or Street Use permit. The first time a person or entity is found to have violated subsection((s)) 15.91.002.A((2 through 15.91.002.A.26, except Street Use vending permits identified in subsection 15.91.016.A.4.b;)) or violated a condition of their Street Use permit((;)) , the person or entity shall be subject to a penalty ((of \$250)) established by the citation penalty fee schedule.~~

~~((3)) 2. Violation warning. The Director may, in an exercise of discretion, issue a warning to the person or entity responsible for obtaining the Street Use permit if the person or individual has not been previously warned or cited for violating subsection 15.91.002.A.~~

~~((4. Street Use vending first violation.~~

~~a. No Street Use vending permit. The first time a person or entity is found to have violated subsection 15.91.002.A.1 for not being in possession of a Street Use vending permit, identified as subsection 15.91.002.A.6, while using the public place; the person or entity shall be subject to a penalty of \$300.~~

~~b. Insecure or unsafe vending unit. As provided for in Section 15.04.070, if the City~~

determines that a permitted food vehicle, vending cart, vending trailer, or other vending-related device (collectively a “vending unit” for this Chapter 15.91) is insecure or unsafe, the vendor shall immediately cease using the public space and shall be subject to a penalty of \$300.

e. ~~Street Use vending permit condition violation. The first time the permittee is found to have violated subsection 15.91.002.A.6 by not adhering to the conditions of their Street Use vending permit, the permittee shall be subject to a penalty of \$150. The Director may, in an exercise of discretion, issue a warning to the vendor if the person or entity has not been previously warned or cited for violating subsection 15.91.002.A.6.~~

B. ~~Second and subsequent violations~~

1. ~~No Street Use permit obtained. If, within a five-year period after a first violation has been determined to exist, a person or entity is subsequently cited for violating subsection 15.91.002.A.1, except Street Use vending permits identified in subsection 15.91.016.B.3.a, for not obtaining a Street Use permit, the person or entity shall be subject to a penalty of \$1,000 for that violation and each subsequent violation.~~

2. ~~Violations of Title 15 or Street Use permit.)~~ 3. If, within a ((five)) one-year period after a person’s or entity’s first violation of ((subsections)) subsection 15.91.002.A((2 through 15.91.002.A.26)) or violation of a Street Use permit condition has been determined to exist, a person or entity is subsequently cited for violating subsection((s)) 15.91.002.A((2 through 15.91.002.A.26, except Street Use vending permits identified in subsection 15.91.016.B.3.b,)) or subsequent violation of Street Use permit condition, the person or entity shall be subject to ((a penalty of \$500 for that violation and each subsequent violation)) further penalties established by the citation penalty fee schedule.

((3. ~~Street Use vending subsequent violations.~~

a. ~~No Street Use vending permit. The second time a person or entity is found to have violated subsection 15.91.002.A.1 by not being in possession of a Street Use vending permit, identified as subsection 15.91.002.A.6, while using the public place within one year after a first violation of subsection~~

~~15.91.002.A.1; the person or entity shall be subject to a penalty of \$600. The third time a person or entity is found to have violated subsection 15.91.002.A.1 by not being in possession of a valid Street Use vending permit, identified as subsection 15.91.002.A.6, while using the public place within one year after a first violation of subsection 15.91.002.A.1; the person or entity shall be subject to a penalty of \$1,200 and the vending unit shall be subject to abatement as provided for in subsection 15.91.025.~~

b)) B. Insecure and unsafe ((vending unit)) uses. As provided for in Section 15.04.070, if ~~((the City determines that a permitted vending unit is insecure or unsafe a second time within one year after a first violation for insecure or unsafe conditions has been determined to exist, the vendor shall immediately cease using the public space and shall be subject to a penalty of \$600. If))~~ the City determines that a permitted ~~((~~ vending unit)) site or use is insecure or unsafe following a third ((time)) upheld citation within one year after a first violation for insecure or unsafe conditions has been determined to exist; the Street Use permit ~~((shall))~~ may be immediately revoked, the permittee ((shall)) may be subject to ((a penalty of \$1,200)) additional penalties established by the citation penalty fee schedule, and the ((vending unit shall)) use may be subject to abatement as provided for in subsection ((15.91.025.A.1.e)) 15.91.030.

~~((e)) C. Street Use ((vending)) permit condition violation. ((The second time a permittee is found to have violated subsection 15.91.002.A.6 by not adhering to the conditions of their Street Use vending permit within a one-year period after a first violation of subsection 15.91.002.A.6 has been determined to exist, the permittee shall be subject to a penalty of \$300. Each subsequent violation within the one-year period shall be assessed double the amount of the previous penalty, but shall not to exceed \$1,200 in a one-year period.)) A permittee's failure to comply with their Street Use ((vending)) permit conditions after three citations related to violating subsection 15.91.002.A((6)) have been upheld by the Hearing Examiner in a one-year period ((shall)) may be grounds for permit revocation. ((If a Street Use vending permit is revoked, the vendor shall not be issued a Street Use vending permit for the revoked permit location for one year from the date the permit was revoked or most recent violation upheld, whichever is longer.~~

€)) D. Deposit of funds. Any funds received by the Hearing Examiner or collection agency for violations associated with Section 15.91.002 shall be deposited into the (~~(Transportation)~~) General Fund. (~~Funds from violations of subsection 15.91.002.A.6 may be used by other City departments for vending enforcement as authorized by the Director of Transportation and shall be used by the Department of Transportation for the following purposes: administering the vending program, including notifying property owners abutting a proposed vending site designated by the Department of Transportation; verifying property boundaries and square footage of usage; designating pre-approved vending sites by the Department of Transportation; signing and demarcating designated vending sites and food vehicle zones; attending meetings or hearings; preparing documents, legislation, forms, and notices; inspecting and enforcing permitted or illegal vending activity; or engaging in any other vending-related activity as directed by the Director of Transportation.~~)

Section 2. Section 15.91.025 of the Seattle Municipal Code, enacted by Ordinance 123659, is repealed:

~~**(15.91.025 Vending unit abatement**~~

~~A. Director's authority. The Director of the Department of Transportation, or delegee, may order the immediate removal of any vending unit that is located in a public place and that the Director determines is a threat to public health or safety.~~

~~1. The Director may also order the immediate removal of any vending unit located in a public place if:~~

~~a. The Director determines that a violation of Chapter 15.17 exists and the vendor has not taken immediate corrective action; or~~

~~b. The vendor has previously received two upheld citations for violating Chapter 15.17 for not being in possession of a Street Use vending permit as provided for in subsection 15.91.002.A.1 within a one-year period from the date the Director determines a new violation exists for not being in possession of a valid Street Use vending permit; or~~

~~c. The vendor has previously received two upheld citations for operating a vending unit that the City determines is insecure or unsafe as provided for in 15.04.070 within a one-year period from the date the Director determines that a new violation exists where the vending unit is insecure or unsafe; or~~

~~d. A person or entity is found operating a vending unit after a Street Use vending permit has been revoked as provided for in subsection 15.91.016.B.3.a.~~

~~2. An abatement warning may be issued to the person or entity that owns or operates the vending unit for the purpose of implementing subsection 15.91.025.A.1 if there is not an immediate threat to public health or safety. The warning may be mailed to the owner of the vending unit by first-class mail if the Director can determine by reasonable investigation the owner's mailing address. A warning may alternatively be hand-delivered to the operator of the vending unit; or if the operator is not present, the warning may be posted in a conspicuous manner on the vending unit. The warning shall include:~~

~~a. The Seattle Municipal Code provisions violated;~~

~~b. The date and time of the violation;~~

~~c. The location of the vending unit; and~~

~~d. A statement giving 24 hours to remedy the violations and the potential for future abatement for subsequent violations;~~

~~e. A statement that if the vending unit is removed for violating Chapter 15.17, any food in the vending unit that may pose a health or safety risk if the food remains in the unit and the unit is removed from the public place, will be disposed of if the vendor fails to remove the food from the vending unit and the public place before the vending unit being removed by the City.~~

~~B. Director's review following abatement. The owner of the vending unit may request a Director's review as provided for in subsection 15.04.112 if a vending unit has been subject to abatement.~~

~~C. Payment for costs to remove or store. The owner of the vending unit shall pay to the City all costs associated with removing and storing the vending unit. The vending unit owner shall pay all unpaid penalties~~

~~for violating Chapter 15.17 and all costs incurred by the City to remove or store the vending unit before the vending unit is released to the owner according to a Director's order to release the vending unit.~~

~~D. Street Use permit denial following abatement. If a vending unit owner has had a vending unit abated, the vendor shall be denied a Street Use vending permit for one year from the date of abatement or the date of the most recently upheld violation, whichever is most recent.))~~

Section 3. Section 15.91.030 of the Seattle Municipal Code, last amended by Ordinance 123659, is amended as follows:

15.91.030 Abatement

Any public place on which there continues to be a violation of any of the provisions referenced in Section 15.91.002 after enforcement action taken according to this Chapter 15.91 is declared a nuisance and subject to abatement by the City in the manner authorized by law. ~~((Violations of subsection 15.91.002.A.6 shall be subject to abatement according to Section 15.91.025.))~~

Section 4. The Seattle Department of Transportation (SDOT) Street Use Permit Fee Schedule, Attachment A to Ordinance 125706, is amended by adding the Citation Penalty Fee Schedule attached as Attachment A to this ordinance.

Section 5. The Director shall adjust citation penalty fees annually in Attachment A based on changes in the purchasing power of the dollar during the preceding calendar year shown by the Consumer Price Index for Urban Wage Earners and Clerical Workers for Seattle-Tacoma-Bellevue, WA, First Six Months (CPI), published in or about August of each year by the U.S. Department of Labor Bureau of Labor Statistics. This annual adjustment is consistent with the annual CPI adjustments to be made on base and hourly fees in the SDOT Street Use Permit Fee Schedule, which authority was granted by Ordinance 125185.

Section 6. No adjusted fee shall be effective unless it is included in a schedule of adjusted fees the Director files with the City Clerk. The schedule shall state the year the fees shall first be in effect. If the Director files the schedule with the City Clerk on or before December 1 of the year before the stated year, the

adjusted fees shall become effective on January 1 of the stated year. Otherwise, the fees shall become effective on the first date that is a) at least 30 days after the date of filing and b) is the first day of a calendar month.

Section 7. The failure of the Director to adjust the fees for any given year shall not limit the Director's mandate and authority to adjust the fees in subsequent years, but in no case may the Director adjust the fees upward by more than ten percent at any one time.

Section 8. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment A - Seattle Department of Transportation Street Use Permit Fee Schedule