

September 9, 2020

## MEMORANDUM

**To:** Seattle City Council  
**From:** Karina Bull, Analyst  
**Subject:** CB 119869: Enforcement Actions for Civil Emergency Orders under SMC 10.02.110

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On September 11, 2020, the Governance and Education Committee will discuss and may act on the following legislation sponsored by Councilmember Lewis:

- [Council Bill 119869](#) – Enforcement Actions for Civil Emergency Orders under SMC 10.02.110
- [Resolution 31966](#) – Enforcement Actions for Civil Emergency Order Relating to Restaurant Delivery and Pick-Up Commission Fees

This memo discusses Council Bill 119869. A separate memo discusses Resolution 31966.

### Summary

Chapter 10.02 of the Seattle Municipal Code (SMC), authorizes the Mayor to proclaim the existence of a civil emergency and issue civil emergency orders. Under [SMC 10.02.110](#), the sole method for enforcing violations of a civil emergency order is a criminal penalty that requires a conviction of a misdemeanor to impose a \$500 fine or imprisonment of no more than 180 days of imprisonment, or both such fine and imprisonment.

This legislation would amend SMC 10.02.110 to (1) authorize a Class 1 civil infraction and private right of action as additional options for enforcing violations of a civil emergency order; and (2) establish the current penalties for a misdemeanor. These changes would become effective immediately if authorized by a three-quarters supermajority of the Council and signed by the Mayor.

### Class 1 Civil Infraction

Establishing a civil infraction as enforcement option would provide the Mayor with a civil option for responding to violations of civil emergency orders. Civil infractions would be processed under the procedure established by [RCW 7.80](#) and would subject violators to a maximum penalty of \$250 plus statutory assessments. As specified in an order, the Department of Finance and Administrative Services (FAS), the Seattle Police Department (SPD), or the City Attorney's Office (CAO) would review reports of noncompliance with an order and issue notices of infractions. The CAO would represent the City at any contested hearing requested by a defendant. The Municipal Court would facilitate a mitigation conference, contested settlement conference or contested hearing before a magistrate.

### Private Right of Action

Establishing a private right of action would provide members of the public with a civil remedy for violations of civil emergency orders. Upon prevailing, the individual or class bringing the private right of action against a party violating the civil emergency order could be awarded legal or equitable relief, as appropriate to remedy the violation, and reasonable attorney fees.

### Criminal Penalties

Updating the criminal penalties in SMC 10.02.110 would subject a person convicted of a misdemeanor for violating a civil emergency order to a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both such fine and imprisonment. The existing penalties in SMC 10.02.110 have not been updated since 1973 and do not reflect these current penalties for a misdemeanor.

Notably, the proposed amendments to SMC 10.02.110 would provide a legal basis for amending the Mayor's civil emergency order relating to restaurant delivery and pick-up commission fees, as adopted and modified by Council in [Resolution 31945](#), to include a Class 1 civil infraction and a private right of action as additional enforcement actions and updated criminal penalties.

### **Financial Impacts**

The financial impacts of adding civil infractions as an enforcement tool for violations of civil emergency orders would need to be analyzed a case-by-case basis for each order. Generally, implementation of civil infractions would affect up to four departments: FAS, SPD, CAO and Seattle Municipal Court (Municipal Court).

If the Mayor's civil emergency order relating to restaurant delivery and pick-up commission fees is modified to include civil infractions as an enforcement tool, 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 departments to reprioritize their existing portfolios of work or (2) add resources to support the additional workload during the 2021 budget adoption process.

### **Next Steps**

Council action could occur at the Governance and Education Committee meeting on September 11, 2020.

Please contact me if you have questions.

cc: Dan Eder, Interim Director