

September 9, 2020

## MEMORANDUM

**To:** Seattle City Council  
**From:** Karina Bull, Analyst  
**Subject:** Resolution 31966: Enforcement Actions for Civil Emergency Order Relating to Restaurant Delivery and Pick-Up Commission Fees

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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 Resolution 31966. A separate memo discusses Council Bill 119869.

### Summary

On April 24, 2020, the Mayor issued a civil emergency order prohibiting third-party, app-based food delivery platforms (food delivery platforms) from charging restaurants a commission fee per online, delivery or pick-up order that totals more than 15 percent of the purchase price of the online order ([Exhibit A](#)). On April 27, 2020, the City Council (Council) passed [Resolution 31945](#) adopting a modified version of the civil emergency order ([Exhibit B](#)).

Resolution 31966 would further modify the civil emergency order by (1) adding a civil infraction and a private right of action as enforcement actions; and (2) amending the criminal penalty ([Exhibit C](#)). Currently, enforcement is limited to a criminal penalty that requires conviction of the food delivery platform to impose fine up to \$500 and/or imprisonment up to 180 days.

Under the proposed modifications in Resolution 31966, the Consumer Protection Division in the Department of Finance and Administrative Services (FAS) would enforce a food delivery platform's first and second violations of the civil emergency order as Class 1 civil infractions, for which the maximum penalty would be \$250 plus statutory assessments. The Director of FAS would have discretion to enforce a food delivery platform's third or subsequent violations as a civil infraction or as a misdemeanor. The updated penalty for a misdemeanor would be a fine up to \$1,000 and/or imprisonment up to 90 days.

An individual person, or class of persons, could also file a private right of action against the food delivery platform to enforce violations of the civil emergency order. 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.

Notably, these enforcement actions would be contingent upon the Council's passage of Council Bill 119869, which proposes to add a Class 1 civil infraction and private right of action as enforcement options for civil emergency orders and establish the current penalties for a misdemeanor. If Council does not pass Council Bill 119869, enforcement would remain as established in Resolution 31945 – a criminal penalty that requires conviction to impose a fine up to \$500 and/or imprisonment up to 180 days.

### **Financial Impacts**

Implementation of Resolution 31966 would affect up to 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.

### **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