



Legislation Text

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to violations of civil emergency orders; amending Section 10.02.110 of the Seattle Municipal Code to establish enforcement actions for violations of civil emergency orders; adding a new Section 10.02.120 to the Seattle Municipal Code to establish a severability clause to Chapter 10.02; repealing Chapter 12A.26 of the Seattle Municipal Code to consolidate provisions related to civil emergency orders; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, on February 29, 2020, Governor Jay Inslee proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and

WHEREAS, on March 3, 2020, the Mayor Jenny Durkan (Mayor) proclaimed a civil emergency in response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to prevent death or injury of person and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering; and

WHEREAS, the Mayor has since issued seven civil emergency orders relating to the COVID-19 civil emergency; and

WHEREAS, on April 27, 2020, the City Council (Council) adopted a modified civil emergency order issued by the Mayor on April 24, 2020 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 that totals more than 15 percent of the purchase price of such online order; and

WHEREAS, the sole method for enforcing violations of a civil emergency order, including the civil emergency order capping restaurant delivery and pick-up commission fees, is a criminal penalty that requires a conviction of a third-party, app-based food delivery platform before imposing a fine of not more than \$500 or imprisonment for not more than 180 days, or both such fine and imprisonment; and

WHEREAS, Section 10.02.110 of the Seattle Municipal Code authorizing the criminal penalty for violations of a civil emergency order has not been substantively updated since 1973 and does not reflect the current penalties for a misdemeanor; and

WHEREAS, the current penalties for a misdemeanor are a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both such fine and imprisonment; and

WHEREAS, a civil infraction is an enforcement tool that is necessary to provide the Mayor with an additional option for responding to violations of civil emergency orders including the civil emergency order capping restaurant delivery and pick-up commission fees; and

WHEREAS, a private right of action is an enforcement tool that is necessary to provide the public with a means for obtaining legal and equitable relief for violations of civil emergency orders including the civil emergency order capping restaurant delivery and pick-up commission fees; and

WHEREAS, The City of Seattle (City) intends to make it clear that failing to comply with a civil emergency order is a significant violation subject to criminal penalties, civil penalties, and/or a private right of action; and

WHEREAS, establishing enforcement actions for violations of the Mayor's civil emergency orders is a subject of vital and imminent concern to the people of this City during the COVID-19 emergency and requires appropriate action by the City Council; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council (Council) finds and declares that:

A. In the exercise of The City of Seattle's (City's) police powers, the City is granted authority to pass regulations designed to protect and enhance the health, safety, environment, and general welfare of the people.

B. Under the Charter of the City of Seattle, Article V, Section 2 and Seattle Municipal Code (SMC) Chapter 10.02, the Mayor is authorized to proclaim a civil emergency and perform such other duties and exercise such other authority as may be prescribed by law.

C. Under SMC Chapter 10.02, the Mayor is authorized to proclaim certain orders during the existence of a civil emergency. Currently, the sole enforcement action for violations of a Mayor's civil emergency order is a criminal penalty that may result in a fine or imprisonment, or both.

D. This legislation protects and enhances the health, safety, environment, and general welfare of the people during the new coronavirus 19 (COVID-19) emergency by authorizing additional enforcement actions for responding to violations of the Mayor's civil emergency orders.

E. On January 30, 2020, the World Health Organization (WHO) declared that COVID-19 constituted a Public Health Emergency of International Concern.

F. On February 29, 2020, Washington Governor Jay Inslee proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

G. On March 3, 2020, Mayor Jenny Durkan proclaimed a civil emergency in response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering.

H. On March 16, 2020, Washington Governor Jay Inslee and the Public Health - Seattle & King County Local Health Officer issued parallel orders temporarily shutting down restaurants, bars, and other entertainment and food establishments, except for take-out food.

I. On March 23, 2020, Washington Governor Jay Inslee issued a “Stay Home - Stay Healthy” proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes through April 6, 2020. In addition to healthcare, public health and emergency services, the “Stay Home - Stay Healthy” proclamation identified delivery network companies, such as third-party, app-based food delivery platforms, and restaurant carry-out and quick serve food operations as essential business sectors critical to protecting the health and well-being of all Washingtonians and designated their workers as essential critical infrastructure workers.

J. On April 2, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 4, 2020.

K. On April 27, 2020, the Council adopted a modified civil emergency order issued by Mayor Jenny Durkan on April 24, 2020 that capped restaurant delivery and pick-up fees. This civil emergency order made it unlawful for a third-party, app-based food delivery platform to charge a restaurant 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 until restaurants are allowed to offer unrestricted dine-in service and the Governor’s “Stay Home - Stay Healthy” Proclamation is rescinded, or the Mayor’s proclamation of civil emergency dated March 3, 2020 is rescinded, whichever proclamation is rescinded later.

L. On May 1, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 31, 2020 in recognition that the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace.

M. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan that reopens Washington’s economy in phases and has restrictions on the seating capacity of restaurants during three of the four phases and physical distancing for high-risk populations and worksites during all four phases.

N. On June 19, 2020, Washington State Secretary of Health John Wiesman approved King County to move to Phase 2 of the “Safe Start” plan. Under Phase 2, restaurants must comply with health and safety requirements that include limiting guest occupancy to 50 percent or less of the maximum building occupancy, limiting table size to five guests or fewer, and prohibiting bar seating.

O. On July 23, Governor Jay Inslee and Washington State Secretary of Health John Wiesman announced changes to the “Safe Start” plan to slow COVID-19 exposure, including a new requirement that restaurants limit indoor parties to members of the same household. The announcement also confirmed that takeaway remains available for small parties from different households.

P. As of August 10, 2020, the WHO Situation Report reported a global total of 19,718,030 cases of COVID-19, including 728,013 deaths; the Washington State Department of Health and Johns Hopkins University reported 63,072 cases of COVID-19, including 1,688 deaths in Washington State; and Public Health - Seattle & King County reported 16,601 cases of COVID-19, including 674 deaths, in King County.

Q. Seattle has over 4,000 active business licenses for restaurants, caterers, and other businesses in the food industry.

R. The 2016 Annual Survey of Entrepreneurs estimates that nearly 48 percent of the firms in the accommodation and food services industry in the Seattle-Tacoma-Bellevue Metropolitan area are owned by Black, Indigenous, and People of Color.

S. During the COVID-19 emergency, restaurants providing delivery and take-out options are increasing the public’s accessibility to food and supporting community efforts to engage in physical distancing measures that mitigate the spread of the virus. However, the economic disruptions caused by COVID-19 have placed a sudden and severe financial strain on many restaurants and has increased the likelihood of such restaurants struggling to meet existing financial commitments and remain open during the COVID-19 crisis.

T. It is critical for restaurants to stay open and it is in the public’s interest to maximize restaurant revenue from delivery and pick-up orders to enable these businesses to survive the impacts of the COVID-19

emergency and continue supporting a diverse workforce and contributing to the vitality of the community.

U. Many consumers are eager to support local restaurants and use third-party, app-based food delivery services to place restaurant orders, and these third-party, app-based food delivery platforms charge delivery and pick-up commission fees to restaurants based on the purchase price of these orders.

V. Compliance with the Mayor's civil emergency order capping restaurant delivery and pick-up commission fees accomplishes the fundamental governmental purpose of easing the financial burden on struggling restaurants during this public health emergency while not unduly burdening third-party, app-based food delivery platforms.

W. Restaurants have reported violations of the Mayor's civil emergency order, but enforcement is limited when the sole consequence for violations is a criminal penalty.

X. Establishing authority to impose civil enforcement actions for violations of a civil emergency order, such as a civil infraction or a private right of action, provides options for more efficient and/or accessible enforcement methods.

Y. Legislation authorizing a civil infraction and private right of action for violations of civil emergency orders is immediately necessary to provide a legal basis for amending the Mayor's civil emergency order capping restaurant delivery and pick-up commission fees to include civil enforcement options, thereby providing the Mayor and the public with critical tools for initiating enforcement of an order that eases the financial burden on struggling restaurants during the COVID-19 public health emergency.

Section 2. Section 10.02.110 of the Seattle Municipal Code, last amended by Ordinance 124849, is amended as follows:

10.02.110 Violation - Penalty

~~((It is unlawful for anyone to fail or refuse to obey an order proclaimed by the Mayor pursuant to the provisions of this Chapter 10.02. Anyone convicted of a violation of this Section 10.02.110 shall be punishable by a fine of not more than \$500 or by imprisonment for not more than 180 days, or both such fine and imprisonment.))~~

A. It is unlawful for any person to fail to comply with an order proclaimed by the Mayor pursuant to the provisions of this Chapter 10.02. For the purposes of this Section 10.02.110, “person” means any individual, partnership, corporation, trust, unincorporated or incorporated association, marital community, joint venture, or other entity or group of persons however organized.

B. Failing to comply with an order constitutes a violation. A violation is subject to one or more of the following enforcement actions as specified in the order:

1. A misdemeanor for knowing violations, subject to the provisions of Chapters 12A.02 and 12A.04.

2. A Class 1 civil infraction under chapter 7.80 RCW, for which the maximum penalty is \$250 plus statutory assessments.

3. A civil action, in a court of competent jurisdiction against the person violating an order, brought by any person or class of persons that suffers injury as a result of a violation of an order. Upon prevailing, the person or class of persons that brought the action may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation.

Section 3. A new Section 10.02.120 is added to the Seattle Municipal Code as follows:

10.02.120 Severability

The provisions of this Chapter 10.02 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 10.02, or the application thereof to any hiring entity, gig worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 10.02, or the validity of its application to other persons or circumstances.

Section 4. Chapter 12A.26 of the Seattle Municipal Code, last amended by Ordinance 120606, is repealed:

~~(CHAPTER 12A.26 MAYOR’S EMERGENCY POWERS~~

~~12A.26.040 – Failure to obey.~~

~~A person is guilty of failure to obey the Mayor's emergency order when he or she knowingly violates any order issued under authority of Sections 10.02.010 or 10.02.020.))~~

Section 5. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the protection of the public health, safety, and welfare.

Section 6. By reason of the findings set out in Section 1, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon its passage by a 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of the Charter of the City.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)