

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Discussion of Interim Regulations for Temporary Outdoor Dining
DEPARTMENT: Planning and Community Development
PRESENTED BY: Andrew Bauer, Senior Planner
ACTION: ☐ Ordinance ☐ Resolution ☐ Motion
 ☒ Discussion ☐ Public Hearing

PROBLEM/ISSUE STATEMENT:

Eating and drinking establishments have been severely impacted by the COVID-19 pandemic. Phase 2 of the Safe Start Washington Plan allows these businesses to resume table service, but with seating and capacity restrictions. One way to allow expanded seating while still adhering to the plan's limits is to allow for outdoor dining and seating areas on both private property (e.g. parking lots) and on City right-of-way (ROW). While the City's existing regulations could allow for outdoor dining, there are regulatory barriers that could be difficult or impossible for some businesses to overcome. As such, staff have reviewed the City's current regulations and identified options for Council consideration to provide interim regulations to better accommodate outdoor dining on both private property and on City ROW. Tonight, staff is seeking Council direction on the final options to include as part of a potential interim ordinance which would adopt interim regulations.

RESOURCE/FINANCIAL IMPACT:

The potential for revenue from Temporary Use Permit and Right-of-Way Site Permit application fees would not be realized if fees are either reduced or waived entirely. However, the impact would vary depending on the number of businesses establishing outdoor dining areas. Staff time for reviewing permit applications would also increase commensurate with the number of applications submitted by businesses. Fees may not cover the cost of staff time if they are reduced or waived.

By expanding occupancy, businesses would hopefully be able to increase their sales and in-turn contribute more to the flow of economic activity (e.g. wages to employees, tax revenue, etc.).

RECOMMENDATION

Council action is not being requested at the July 20th meeting. Instead, this meeting is intended for staff to present their recommendation and for Council to direct staff on the final options to include as part of a potential interim ordinance which would adopt interim regulations.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

On June 19, 2020, King County transitioned to Phase 2 of the Governor's Safe Start Washington Plan. Phase 2 allows for the reopening of restaurants and taverns, but they are restricted to no more than 50% of their capacity and cannot serve groups larger than five. To provide relief for these businesses, many communities are taking action to ease regulations on outdoor seating and dining areas so that lost capacity due to seating restrictions can be at least partially offset while still adhering to the Safe Start Washington Plan.

In reviewing how other cities have been responding, two areas most commonly discussed for allowing outdoor seating are privately-owned parking lots and public ROW.

Table 1 below provides an overview of nearby cities that have taken action to allow more flexibility for temporary outdoor seating and dining during the Safe Start Washington phased reopening.

Table 1: Comparison of Cities

City	Action	Use	Permit Fees	Adopted	Note
Bothell	Interim Ordinance	Outdoor seating/dining on private parking lots	Waived	6/9/20	Parking requirements waived
Burien	Director's Interpretation	Outdoor seating on parking lots ROW permit required for outdoor seating on ROW	Temp. Use and ROW Permit Fees Waived	6/3/20	Adequate on street and off street parking required – expansions of uses in Downtown typically don't require new parking
Issaquah	Interim Emergency Ordinance	Outdoor seating on parking lots, sidewalks, public ROW	Waived	6/22/20	Parking requirements waived
Redmond	Interim Ordinance	Outdoor seating on parking lots, ROW	Reduced temp. use fee to \$198.89	6/16/20	

The Municipal Research and Services Center (MRSC) has also compiled resources on the use of public ROW:

Creative Use of Street ROW During the COVID-19 Pandemic:

<http://mrsc.org/Home/Stay-Informed/MRSC-Insight/June-2020/Creative-Use-of-the-ROW-During-the-Pandemic.aspx>

MRSC response to question: *“Can cities temporarily close streets to motor vehicles and allow the streets to be used by pedestrians, non-motor vehicles and for outdoor seating for restaurants that would meet social distancing requirements? If so, what rules apply to consumption of alcohol in such a seating area?”*

<http://mrsc.org/Home/Research-Tools/Ask-MRSC-Archives/Public-Works.aspx#Can-cities-temporarily-close-streets-to-motor-vehi>

Existing City Processes & Fees

There are two primary permits within the Shoreline Municipal Code (SMC) which could currently allow for outdoor seating:

1. Temporary Use Permit (TUP)
2. ROW Site Permit

Temporary Use Permit

TUPs are identified in SMC 20.30.295 and establish “a mechanism by which the City may permit a use to locate within the City (on private property or on the public rights-of-way) on an interim basis, without requiring full compliance with the Development Code Standards...” However, a TUP is not typically required in instances where a ROW Site Permit is also required.

A TUP is reviewed for consistency with five criteria, of which include the requirement that adequate parking be provided for the temporary use and that it does not create a parking shortage for existing uses on the site.

ROW Site Permit

Provisions for ROW Site Permits are identified in SMC 12.15.030.C and may be issued for activities of extended duration that do not physically disturb the existing or planned public use of the ROW. These activities include sales structures, including sidewalk cafes.

The key differentiating factor between the two processes is a TUP is typically required on private property, while the ROW Site Permit is only required when uses are on City ROW. Table 2 provides an overview of the two permits.

Table 2: Existing Permit Processes

PERMIT	PROCESS	APPROVAL TIMEFRAME	FEE	NOTES
Temporary Use Permit	Type A Ministerial	60 days; PCD Director may extend up to 12 months	\$1,632	Ability to deviate from development standards Adequate parking for temp. use required
Right-of-Way Site Permit	Ministerial – Director's Decision	Up to 5 years; Public Works Director discretion	Application fee: \$816 (hourly, 4-hour minimum; additional hours at \$204/hour) Plus ROW use fee equivalent to rental value	Specifically allows sidewalk cafes, sales structures, sale of food or beverages and other items

Additional Permits

In addition to either a TUP or ROW Site Permit, building and/or fire permits to allow for the safe occupancy of temporary structures and enclosures are required. Building permit application fees vary based on the value of the improvements, while most fire permit fees (such as a temporary tent and operations permit) are \$204 each. A temporary structure/enclosure is not required but would be optional at the discretion of the business.

Permit Fees

The City's fees for a TUP and a ROW Site Permit are set forth in SMC 3.01.010, Planning and Community Development. Operational Fire Permit fees are set forth in SMC 3.01.020.

In addition to the ROW site permit application fee and fire operational permit fee, uses such as sidewalk cafes are required to pay a periodic use fee for the ROW equivalent to the rental value of the ROW used (SMC 12.15.030.C.4).

SMC 3.01.800 grants the City Manager the authority to waive ROW permit fees as a City contribution toward events which serve the community and are consistent with adopted City programs. Otherwise, the City Manager does not have authority to waive fees set forth in SMC 3.01.010 or those of the Fire Department in SMC 3.01.020.

DISCUSSION

Allowing outdoor seating and dining could be achieved through the City's existing regulations provided certain permit approval criteria can be met and application fees are paid. However, for some struggling businesses the existing permit approval criteria and application fees are a barrier. As such, there is opportunity for the City to ease regulations to provide relief for businesses during the Safe Start Washington phased reopening.

Staff is recommending the options identified in Table 3 below be implemented through interim regulations. The interim regulations would be adopted through an interim ordinance and would be effective for up to six-months and renewable in six-month increments. Interim ordinances are authorized by RCW 36.70A.390 and RCW 35A.63.220 and may be adopted without holding a public hearing provided one is held within 60 days of adoption of the interim regulations. The interim regulations would take effect five days after publication.

The options in Table 3 are categorized into outdoor dining on private property (TUP) and outdoor dining on City ROW (ROW Site Permit). It should be noted there are numerous alternatives within each option which Council may wish to discuss and modify, as necessary.

Table 3: Options for Interim Regulations

Outdoor Dining on Private Property – Temporary Use Permit			
Option		Pros	Cons
1)	Fees: Waive permit fees for TUPs for outdoor seating and dining	<ul style="list-style-type: none">- Relief for businesses- Provides opportunities for more residents to enjoy socially distant dining	<ul style="list-style-type: none">- Reduces permit revenue- Increases permit review time for all applications
2)	Parking: Allow private parking lots to be used for outdoor dining by Waiving parking requirements for <i>outdoor</i> seating and dining uses on private property Waiving parking requirements for existing <i>indoor</i> uses on site (e.g. outdoor dining area in parking lot)	<ul style="list-style-type: none">- Relief for businesses- Provides opportunities for more residents to enjoy socially distant dining	<ul style="list-style-type: none">- May result in offsite parking impacts

3)	TUP permit approval for duration of interim regulations	<ul style="list-style-type: none"> - Certainty for businesses - Enables City to reassess in 6-month intervals 	- Potential for impacts to increase as King County advances through Phase 2 and beyond
<i>Outdoor Dining on City ROW – ROW Site Permit</i>			
	Option	Pros	Cons
4)	Fees: Waive ROW permit review and ROW use fees for permits associated with outdoor seating and dining	<ul style="list-style-type: none"> - Relief for businesses - Provides opportunities for more residents to enjoy socially distant dining and shopping 	<ul style="list-style-type: none"> - Reduces permit revenue - Increases permit review time for all applications
5)	ROW Site Permit approval for duration of interim regulations	<ul style="list-style-type: none"> - Certainty for businesses - Enables City to reassess in 6-month intervals 	- Potential for impacts to increase as King County advances through Phase 2 and beyond

Permit Review Streamlining

Staff also recommends a streamlining effort to simplify the application submittal requirements and review/approval process and to reduce the time to obtain an approval. Streamlining could include creation of an easy-to-understand application submittal checklist for businesses seeking to expand their dining and seating areas outside. The permit review streamlining does not require specific Council action.

Other Considerations

Identified below are other codes and regulations which have been considered. This list is not comprehensive.

Building Code

Outdoor uses would need to continue to comply with the adopted Building Code. Generally speaking, uncovered areas could not block building exits, while covered areas would need to comply with the Fire Code (see below). Permanent attachments to buildings such as an awning or similar structure would require a building permit.

Fire Code

Outdoor uses would need to continue to comply with the adopted Fire Code. A fire operational permit would be required for expansion of uses outside. Temporary structures or tents would also require a permit.

Americans with Disabilities Act (ADA)

ADA standards need to be met regardless of whether a permit is required. The most applicable ADA standards related to outdoor uses would likely relate to maintaining accessible routes of travel. Review for compliance with applicable ADA standards would occur as part of the permit review.

Liquor License

The Washington Liquor and Cannabis Board (LCB) is responsible for regulating the retail sale of alcohol in restaurants, public houses, and taverns. A business may be required to secure an endorsement to an existing liquor license to expand service outside. WAC 314-03-200 addresses outside or extended alcohol service and sets forth standards for demarcation barriers (e.g. 42 inches in height) and operational standards.

The LCB has also issued guidance for adding or extending liquor service outside (on private property or ROW) in light of the occupancy limitations associated with the Safe Start Washington Plan. The LCB guidance can be found here:

https://lcb.wa.gov/sites/default/files/publications/temp_links/Coronavirus-Extending-Outside-Liquor-Service-6-11-20.pdf.

Traffic Control

Use of the ROW would require temporary traffic control in some instances. Initial setups would need to be inspected by ROW inspectors. Depending on the complexity of the location and traffic control setup ongoing inspections may be required. This would be determined on a case-by-case basis for each permit.

STAKEHOLDER INPUT/OUTREACH

Staff have engaged with ten local restaurant and bars, with seven expressing interest in the potential for outdoor dining. Of those businesses interested, their focus was on the City allowing for outdoor seating on private property without having to provide parking. Permitting (i.e. fees, review time) were also of interest particularly to take advantage of the warmer weather during the summer months. While there was some interest in use of the ROW, most interest was focused on what could be accomplished on existing private property.

RESOURCE/FINANCIAL IMPACT

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