

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adopting Ordinance No. 895 – Interim Regulations for Outdoor Seating
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Andrew Bauer, Senior Planner
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> 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 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 seating, there are regulatory barriers that are difficult or impossible for some businesses to overcome.

Proposed Ordinance No. 895 (Attachment A) would adopt interim regulations to remove regulatory barriers and fees for eating and drinking establishments to create outdoor seating areas. The components of the interim regulations were discussed at the July 20th Council meeting and Council directed that an emergency interim ordinance be brought back for potential adoption. Tonight, Council is scheduled to act on proposed Ordinance No. 895.

RESOURCE/FINANCIAL IMPACT:

Fees for temporary outdoor seating areas would be waived. The total impact on revenue would vary depending on the number of businesses establishing outdoor seating areas. Additionally, once the Outdoor Seating Registration process is implemented for seating areas on private property it is anticipated to use a smaller amount of staff time to process the registrations.

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

Staff recommends Council adopt Ordinance No. 895, establishing interim regulations to allow for outdoor seating on private property and City right-of-way.

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 allowed for the reopening of restaurants and taverns, but they were restricted to no more than 50% of their capacity and cannot serve groups larger than five. Just this week, the Governor added additional restrictions to restaurants and taverns, including:

- Limiting indoor dining at restaurants to members of the same household,
- Not allowing any indoor service at bars, breweries, and taverns, regardless of whether food is being served, and
- Requiring restaurants to close game areas, such those for video games, pool tables and darts, until Phase 4.

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.

At the July 20, 2020 Council meeting, staff presented a comparison of measures implemented in other cities that allow flexibility for outdoor seating. Staff also presented a recommendation on how to modify existing City regulations to establish flexibility for outdoor seating for bars and restaurants in Shoreline. The staff report for the July 20, 2020 Council meeting can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2020/staffreport072020-8c.pdf>.

July 20th Council Discussion

Several options and variations from the staff recommendation were discussed by Council on July 20th. Council's direction consisted of the following:

- Council acknowledged the additional considerations for seating areas on the right-of-way. As a result, Council agreed that a ROW site permit should be required, but that it should be expedited and simplified as much as possible.
- Council agreed that seating areas on private property should not require a Temporary Use Permit, but instead require a registration that is filed with the City consisting of basic information and acknowledging applicable life-safety and public health provisions will be followed.
- Council expressed an interest in businesses to be notified of the outdoor seating program, and that businesses be given adequate notice in advance of the temporary regulations expiring.
- Council consensus was to waive ROW site permit fees and ROW use fees for outdoor seating and to not charge any fees for the Outdoor Seating Registration.
- Council consensus was to waive parking requirements so that parking lots can be utilized for outdoor seating.

DISCUSSION

Ordinance No. 895 was prepared based on the discussion and direction provided by Council at the July 20th meeting. Below is a summary of the main components of the interim regulations.

Use of Public Right-of-Way

A ROW site permit will continue to be required for businesses to use City ROW for outdoor seating. The proposed interim regulations give discretion to the Director of Public Works to modify Engineering Design Manual standards in order to implement the regulations without going through a formal deviation process.

Staff have also been working to identify process efficiencies to minimize the anticipated review time for applications. A typical review time for a ROW site permit is approximately four weeks. The proposed interim regulations require the City take steps to complete the review and issue a decision on an application no more than seven business days after intake of the application. This seven-day timeline assumes up to one day to process the intake of the application and route it to Public Works. Staff will have five days to conduct the review of the application at which time there is one day for the preparation of the approval notice that is sent to the applicant.

While seven business days to review and issue a ROW site permit may still sound like a lengthy timeframe for some, there can be numerous issues to review with any permit application, particularly as they relate to the many competing uses in the ROW.

Use of Parking Lots on Private Property

Eating and drinking businesses would be allowed to establish outdoor seating areas on their privately-owned parking lots after filing an Outdoor Seating Area Registration form with the City. Information such as the business's name, location, and contact information will be requested. The registration form will also request the business acknowledge they will comply with applicable life-safety and public health provisions.

The Temporary Use Permit requirements in Shoreline Municipal Code (SMC) 20.30.295 will be suspended for outdoor seating. As such, a Temporary Use Permit will not be required. In addition, the off-street parking requirements will be suspended to allow outdoor seating areas to occupy parking lots without the need to provide parking (for either the indoor or outdoor portions of the business).

Fees

The proposed interim regulations waive the application fee and ROW use fee for the ROW site permit. They also note there is no fee for filing of an Outdoor Seating Registration on private property.

A provision is included for either reduced or waived fees for Fire Operations Permits, subject to approval by the Shoreline Fire Department. The City collects the fire permit fees on behalf of the Fire Department. Staff is continuing coordination with the Fire Department, and if they provide a waiver or reduction in permit fees for outdoor seating then the interim regulations already exist to allow the City to align with the Fire Department's assessment without needing to modify the interim regulations.

Effective Date and Duration

The interim regulations would be effective for 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. A public hearing is tentatively scheduled for the August 10, 2020 Council meeting.

Ordinance No. 895 also includes the provision for the Council to declare a public emergency and as such would take immediate effect upon its adoption by a majority vote plus one of the entire membership of the Council.

Prior to expiration of the interim regulations, the City will provide at least a 21-day notice to businesses that have either filed an Outdoor Seating Registration or obtained a ROW site permit. The notice is intended to inform businesses the regulations are expiring and, if applicable, provide them an opportunity to permanently permit the outdoor seating area by meeting permanent regulations and submitting applicable fees. Should a business be unwilling or unable to permanently permit the outdoor seating then they will be required to remove the area and restore it to its original condition.

Other

All outdoor seating areas will continue to be subject to codes related to life-safety, public health, etc. The interim regulations include provisions for these standard terms and conditions and the Outdoor Seating Registration form will include a location for businesses to confirm they will continue to comply.

STAKEHOLDER INPUT/OUTREACH

As discussed at the July 20th Council meeting, staff have engaged with ten local restaurants and bars, with seven expressing interest in the potential for outdoor seating. If adopted, notifications to businesses about the interim outdoor seating program will be included in:

1. A B&O tax deferral update scheduled to be sent by USPS mail on August 15th to all licensed businesses with a Shoreline location.
2. An update to the City's COVID-19 Business Response website (shorelinewa.gov/C19BizResponse).
3. An email to approximately 1,000 individuals signed up for COVID-19 Business Support Response Team e-Notifications.

RESOURCE/FINANCIAL IMPACT

Fees for temporary outdoor seating areas would be waived. The total impact on revenue would vary depending on the number of businesses establishing outdoor seating areas. Additionally, once the Outdoor Seating Registration process is implemented for seating areas on private property it is anticipated to use a smaller amount of staff time to process the registrations.

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

Staff recommends Council adopt Ordinance No. 895, establishing interim regulations to allow for outdoor seating on private property and City right-of-way.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 895

ORDINANCE NO. 895**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON ADOPTING INTERIM REGULATIONS TEMPORARILY AUTHORIZING OUTDOOR SEATING ON PRIVATE PROPERTY AND WITHIN APPROVED PUBLIC RIGHTS-OF-WAY IN RESPONSE TO THE COVID-19 PANDEMIC; DECLARING AN EMERGENCY; PROVIDING FOR IMMEDIATE EFFECT WITH A DURATION OF SIX MONTHS; AND SETTING A PUBLIC HEARING.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the State of Washington, and planning pursuant to the Growth Management Act, chapter 36.70A RCW; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City of Shoreline to adopt interim regulations with a duration of no more than six (6) months without review and recommendation by the Shoreline Planning Commission and without holding a public hearing; and

WHEREAS, on February 29, 2020, the Washington State Governor declared a State of Emergency in all counties. On March 4, 2020, the City Manager issued a Declaration of Local Public Health Emergency (“Declaration”). This Declaration was ratified by the City Council on March 16, 2020 by the passage of Resolution No. 454. During the first few weeks of March, Public Health – King County/Seattle and the Governor issued directions to close certain types of businesses, engage in social distancing protocols, and limit the size of gatherings to reduce the spread of COVID-19; and

WHEREAS, on March 23, 2020, the Washington State Governor issued the “Stay Home - Stay Healthy” Proclamation 20-25 and on May 31, 2020, the Governor amended that Proclamation to provide for a four phase reopening of Washington’s economy – the “Safe Start Washington Phased Reopening County-by-County Plan” (“Safe Start Plan”); and

WHEREAS, while eating and drinking establishments have been permitted to provide delivery and carry-out services during the initial months of the Proclamation and in Phase 1 of the Safe Start Plan, they are permitted to provide for indoor dining at limited capacity in subsequent phases subject to compliance with a COVID-19 exposure control, mitigation, and recovery plan; and

WHEREAS, on June 19, 2020, King County moved into Phase 2 of the Safe Start Plan, which limits indoor customer occupancy for restaurants and taverns to fifty percent (50%) of a building’s occupancy or lower as determined by fire code and, also permits outdoor dining at fifty percent (50%) of capacity and this capacity does not count towards the building’s occupancy limit; and

WHEREAS, eating and drinking establishments have suffered significant financial impacts and the establishment of interim regulations of six months in duration will provide certain outdoor space for eating and drinking establishments to utilize for seating consistent with the Safe Start Plan during this time of economic downturn; and

WHEREAS, permitting establishments to utilize certain portions of the public rights-of-way or private property for outdoor dining will assist in mitigating the impact these establishments have endured due to COVID-19; and

WHEREAS, interim regulations are exempt from SEPA review per WAC 197-11-800(19) Procedural Actions. If the City elects to replace these interim regulations with permanent regulations, SEPA review will be conducted at that time; and

WHEREAS, the City Council considered the interim regulations at its properly noticed July 20, 2020 and July 27, 2020 regular meetings held virtually via Zoom; and

WHEREAS, the City Council has determined that the use of the interim regulations is appropriate and necessary due to the current economic conditions resulting from COVID-19 and, therefore, it is in the best interests of the citizens of the City of Shoreline to provide for outdoor dining within certain public rights-of-way and on private property;

**THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. Public Emergency Ordinance and Effective Date. The City Council hereby finds and declares that this Ordinance is a public emergency ordinance necessary for the protection of the public health and safety as stated in Resolution No. 454 and shall take effect and be in full force upon its adoption by a majority vote plus one of the whole members of the City Council and that the same is not subject to a referendum (RCW 35A.11.090). The underlying facts necessary to support this emergency declaration are included in the WHEREAS clauses above, all of which are adopted by reference as findings of facts as set forth in full herein.

Section 2. Interim Regulations. Legally permitted eating and drinking establishments existing as of the effective date of this Ordinance may establish temporary outdoor seating areas as provided in the provisions set forth in this section:

A. Use of Parking Lots on Private Property.

1. Eating and drinking establishments with access to a private parking lot may use this area for outdoor seating provided:
 - a. The owner or owner's representative submits an Outdoor Seating Area Registration on official form(s) as prescribed and provided by the Department of Planning and Community Development.
 1. There shall be no submittal fee for the Outdoor Seating Area Registration.
2. Any provision contained in a Registration is not intended to interfere with or supersede any contractual obligations and Registrants are solely responsible for ensuring authorization from the property owner to utilize the area.
3. In relationship to outdoor seating areas within private parking lots, the following sections of the Shoreline Municipal Code are suspended:
 - a. SMC 20.30.295: Temporary Use Permit.
 - b. SMC 20.50.390: Minimum off-street parking requirements, provided ADA-accessible stalls are still provided, as may be necessary to comply with ADA standards.

B. Use of Public Right-of-Way.

1. Eating and drinking establishments with access to areas such as public sidewalks, on-street parking, or other public space (Public right-of-way) may use these areas for outdoor seating provided:
 - a. The owner or owner's representative shall submit a right-of-way site permit application utilizing official forms provided by the Department of Public Works as required by SMC 12.15.040.
 - b. The Departments of Public Works and Planning and Community Development shall take reasonable steps to review and render a decision on the permit application no more than seven (7) business days after application intake.
 - c. The Director of Public Works shall have discretion to modify standards set forth in the Engineering Design Manual without use of the formal deviation procedures as may be necessary to effectuate the intent of these interim regulations.
2. In relationship to outdoor seating areas within the public rights-of-way, the following sections of the Shoreline Municipal Code are suspended:
 - a. SMC 3.01.010(J)(4): Right-of-way site permit fee.
 - b. SMC 12.15.030(C)(4): Periodic Use fee.

C. Conditions Applicable to all Outdoor Seating Areas.

The following provisions are applicable to all Outdoor Seating Area Registrations or Right-of-Way Site Permits.

1. All outdoor seating areas allowed by these interim regulations shall be operated in a safe and sanitary manner and are subject to the following terms and conditions to ensure compliance with:
 - a. All applicable provisions of chapter 15.05 SMC Construction and Building Codes, including but not limited to, the International Building Code, the International Fire Code, and the National Electric Code;
 - b. SMC 9.05 Noise Control;
 - c. All applicable licensing requirements of the Washington State Liquor and Cannabis Board;
 - d. Accessibility requirements of the Americans with Disabilities Act (ADA);
 - e. All applicable provisions of the Code of the King County Board of Health, including but not limited to, Title 5 and Title 5R Food-Service Establishments;
 - f. The Seattle/King County Public Health COVID-19 guidelines for restaurants; and
 - g. Washington's Safe Start Re-Opening Phasing Plan, including any directives issued by the State of Washington.
2. An Outdoor Seating Area Registration or an Outdoor Seating Area Right-of-Way Permit shall be effective for the duration of this Ordinance and any extension thereof. If the City has not adopted permanent regulations permitting outdoor seating areas, these areas shall be removed and restored back to their original condition. If the City has adopted permanent regulations, then continued use of the outdoor seating area shall be subject to such regulations, including but not limited to, obtaining a permit and paying any required fees.
3. The failure of an eating or drinking establishment to adhere to the terms and conditions set forth in the Registration or Permit or to be found operating in a manner that creates

a public nuisance may result in modification, suspension, or revocation of the Registration or Permit. If revoked, the establishment shall not be permitted to operate another outdoor seating area during the duration of this Ordinance, and any extension thereof unless separate permit approval is granted by the Director of Planning and Community Development, which may contain additional conditions. Approval of said permit shall be in the Director's sole discretion.

D. Shoreline Fire Department.

Subject to approval by the Shoreline Fire Department, Fire Operational permit fees as set forth in SMC 3.01.020 may be waived or reduced for outdoor seating areas.

E. Liberal Construction.

The Director of Planning and Community Development and the Director of Public Works are hereby authorized to liberally administer the Outdoor Seating Area program established by this Ordinance to effectuate the City Council's intent of these interim regulations. This authority includes the imposition of any condition necessary to ensure the public health and safety and the promulgation of rules of procedures to effectuate the program.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing at 7:00 pm, or soon thereafter, on August 10, 2020, to take public testimony concerning the interim regulations. Pursuant to the Washington State Governor's Proclamation 20-28, as amended, and City Council Resolution No. 459, the public hearing will take place online using the Zoom Webinar platform.

Section 4. Directions to the City Clerk.

- A. Public Hearing.** The City Clerk is hereby directed to establish a Zoom Webinar on August 10, 2020, and to post information on the City's website informing the public how to attend and/or participate in the public hearing.
- B. Transmittal to the Department of Commerce.** The City Clerk is hereby directed to cause a certified copy of this Ordinance to be provided to the Director of Planning and Community Development who shall transmit the Ordinance to the Washington State Department of Commerce within ten (10) calendar days of passage as provided in RCW 36.70A.106.
- C. Corrections by the City Clerk.** Upon approval of the City Attorney, the City Clerk is authorized to make necessary corrections to this Ordinance, including the correction of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.
- D. Ordinance not to be Codified.** Because this Ordinance adopts interim regulations, the City Clerk shall not codify this Ordinance.
- E. Section 5. Reservation of Rights.**

- 1. The City reserves the right to inspect any outdoor seating area to ensure compliance with the terms and conditions of the Registration or Permit.
- 2. The City reserves the right, at its discretion, to suspend the provisions of this Ordinance in furtherance of the public health and safety of the residents of the City of Shoreline.

Section 6. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 7. Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper.

Section 8. Duration. This Ordinance shall be in effect for a period of six (6) months from its effective date. After which, these interim regulations shall automatically expire unless extended as provided by statute or otherwise superseded by action of the City Council, whichever occurs first. The City shall provide reasonable notice to Registrants and Permittees no less than twenty-one (21) calendar days prior to the expiration of these interim regulations.

PASSED BY THE CITY COUNCIL ON JULY 27, 2020 BY A MAJORITY VOTE PLUS ONE OF THE WHOLE MEMBERS OF THE CITY COUNCIL.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Margaret King
City Attorney

Date of Publication: _____, 2020
Effective Date: _____, 2020