

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on Ordinance No. 895 – Interim Regulations for Outdoor Seating
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Andrew Bauer, Senior Planner
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input checked="" 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. Ordinance No. 895 (Attachment A) was adopted by the City Council on July 27, 2020 and reduces regulatory barriers such as parking requirements and fees for outdoor seating areas. It also establishes a registration for seating areas on private property as well as an expedited Right-of-Way Site Permit review for seating areas on City right-of-way (ROW).

The City Council adopted Ordinance No. 895 without first holding a public hearing, consistent with the authority granted in state law for interim zoning controls. Tonight, the City Council is conducting the required public hearing within the mandated 60-day timeframe of adopting Ordinance No. 895.

RESOURCE/FINANCIAL IMPACT:

Ordinance No. 895 waives fees for temporary outdoor seating areas. The total impact on revenue will vary depending on the number of businesses establishing outdoor seating areas. With the Outdoor Seating Registration process now implemented for private property areas it is anticipated to use a smaller amount of staff time to process the registrations.

By expanding occupancy, businesses will 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 hold a public hearing to receive testimony on Ordinance No. 895, which establishes interim regulations to allow for outdoor seating on private property and City ROW.

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. On July 23, 2020, 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 the Council took 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>.

On July 27, 2020, the Council adopted Ordinance No. 895. The Council approved this Ordinance prior to holding a Public Hearing. The Council is given this authority under RCW 35A.63.220 and RCW 36.70A.390. The staff report can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2020/staffreport072720-8a.pdf>.

DISCUSSION

Ordinance No. 895 was adopted July 27, 2020 and is effective for six (6) months, establishing interim regulations for outdoor seating areas for existing eating and drinking establishments. The main components of the interim regulations include the following:

- Establishment of an Outdoor Seating Registration for areas on private property;
- Suspension of Temporary Use Permit provisions in SMC 20.30.295 for outdoor seating areas;
- Suspension of minimum off-street parking requirements in SMC 20.50.390 for existing eating and drinking establishments;
- Expedited review for Right-of-Way Site Permits for outdoor seating areas on City ROW; and
- Waiver for application fees and ROW use fees.

As noted above, the City Council has statutory authority to adopt interim regulations pursuant to RCW 35A.63.220 and under the Growth Management Act (GMA) at RCW 36.70A.390. Under these statutory provisions, the City may adopt an ordinance without a Public Hearing and without review and recommendation by the Planning Commission. A Public Hearing must be held within 60 days of the adoption of interim regulations. Tonight's Public Hearing on the interim regulations adopted by Ordinance No. 895 was advertised in the Seattle Times and on the City's website at least 10 days prior to the hearing, as required by the Council Rules of Procedure.

Pursuant to the Governor's Emergency Proclamation 20-28 the Public Hearing will be held electronically only due to health concerns from COVID-19. All interested persons are encouraged to listen and/or attend the remote online public hearing and to provide oral and/or written comments. Information on how to join the meeting is posted on <http://www.shorelinewa.gov/government/council-meetings>.

Written comments should be submitted to Andrew Bauer at abauer@shorelinewa.gov by no later than 4:00 p.m. local time on August 10, 2020. Any person wishing to provide oral testimony at the hearing should register via the Remote Public Comment Sign-in form on the City's website at least thirty (30) minutes before the start of the meeting. A request to sign-up can also be made directly to the City Clerk. Any person requiring a disability accommodation should also contact the City Clerk in advance for more information.

RESOURCE/FINANCIAL IMPACT

Ordinance No. 895 waives fees for temporary outdoor seating areas. The total impact on revenue will vary depending on the number of businesses establishing outdoor seating areas. With the Outdoor Seating Registration process now implemented for private property areas it is anticipated to use a smaller amount of staff time to process the registrations.

By expanding occupancy, businesses will 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 hold a public hearing to receive testimony on Ordinance No. 895, which establishes interim regulations to allow for outdoor seating on private property and City ROW.

ATTACHMENTS

Attachment A – 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.

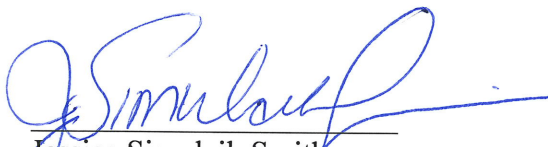
PASSED BY THE CITY COUNCIL ON JULY 27, 2020 BY A MAJORITY VOTE PLUS ONE OF THE WHOLE MEMBERS OF THE CITY COUNCIL.



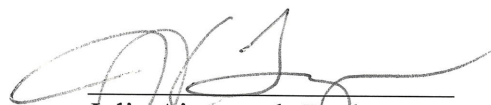
Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:



Jessica Simulcik Smith
City Clerk



Julie Ainsworth-Taylor
Assistant City Attorney

Date of Publication: July 30, 2020
Effective Date: July 27, 2020

