

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 952 – Extension of the Interim Regulations Authorizing Outdoor Seating on Private Property and Within Approved Public Rights-of-Way Due to COVID-19 Impacts
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Andrew Bauer, Planning Manager
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:

On July 27, 2020, the City Council adopted Ordinance No. 895, enacting interim regulations for outdoor seating areas for existing restaurants and bars due to indoor seating restrictions in place at that time related to COVID-19. On January 11, 2021, Council adopted Ordinance No. 917 to extend the interim regulations for an additional six months, and on June 21, 2021, Council adopted Ordinance No. 936 to extend them another six months. The interim regulations will expire on December 29, 2021, if not extended. COVID-19 continues to be a present part of daily lives, and some are uncomfortable with indoor gatherings such as in restaurants and bars, even with the countywide proof of vaccine requirement for indoor establishments that went into effect on October 25th. For these reasons continued flexibility for outdoor seating options may provide some relief for restaurants and bars.

The City Council discussed and held a public hearing on proposed Ordinance No. 952, which would extend these interim regulations for another six months, on November 29th and provided direction to staff to bring back this proposed Ordinance for potential action. Tonight, Council is scheduled to take action on proposed Ordinance No. 952.

RESOURCE/FINANCIAL IMPACT:

The interim regulations waive fees for temporary outdoor seating areas. The total impact on revenue will vary depending on the number of businesses establishing outdoor seating areas, which has been five businesses to date. However, 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. Additionally, by expanding occupancy, businesses will hopefully be able to increase their sales and in-turn contribute more to the flow of economic activity in the City (e.g. wages to employees, tax revenue, etc.).

RECOMMENDATION

Staff recommends that the City Council adopt proposed Ordinance No. 952, extending for another six months the interim regulations for outdoor seating.

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

BACKGROUND

Eating and drinking establishments have been severely impacted by the COVID-19 pandemic. The lifting of restrictions and reopening of the state has advanced since the summer, and on October 25th, a countywide vaccine requirement took effect for indoor seating in restaurants and bars. However, hesitation around indoor eating and drinking safety continues to exist for some people, regardless of their vaccination status. As such, flexibility for outdoor seating options continues to be an important tool to offset potential impacts of the pandemic.

On July 27, 2020, the City Council adopted Ordinance No. 895, which established six-month interim regulations for outdoor seating for restaurants and bars. The interim regulations have been extended twice, with the adoption of Ordinance No. 917 on January 11, 2021, and Ordinance No. 936 on June 21, 2021, respectively.

On November 29, 2021, the City Council discussed and held a public hearing on proposed Ordinance No. 952 (Attachment A), which would extend the interim regulations for an additional six months. The staff report for this Council discussion and public hearing can be found at the following link:
<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2021/staffreport112921-8b.pdf>.

Ordinance No. 936 is set to expire on December 29, 2021 unless it is extended by Council. 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.

To date, there have been five (5) outdoor seating registrations filed with the City. No new applications have been filed since the interim regulations were extended in June. There have not been any applications for use of the ROW.

DISCUSSION

As is noted above, Ordinance No. 936 will expire on December 29, 2021. Extension of the interim regulations would allow for continued flexibility for outdoor seating areas for existing bars and restaurants. Local restaurants and bars may benefit from the continued ability to create outdoor seating areas as the effects of the pandemic linger in people's consciousness and hesitation for indoor gatherings remains for many.

Efforts are underway to identify the most meaningful and effective components to develop draft regulations for permanent outdoor seating for Planning Commission and Council consideration in the coming months. The interim regulations will continue to be

used as a “pilot” to inform what has and has not been meaningful for the business community on the path toward preparing permanent regulations.

Interim Regulations Authority and Process

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 adopted Ordinance No. 895 without a public hearing and without review and recommendation by the Planning Commission prior to Ordinance adoption. As required by State law, a public hearing on Ordinance No. 895 was held subsequently on August 10, 2020.

Interim regulations adopted under this section may be effective for not longer than six months but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. Interim regulations may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

Findings of Fact

The interim regulations adopted in Ordinance No. 895 and extended in Ordinance Nos. 917 and 936 may be renewed for another six-month period following a public hearing, documentation of the findings of fact that support the extension, and adoption of a new ordinance. Findings of Fact supporting the continued need for these interim regulations are as follows:

1. The COVID-19 pandemic continues to pose a threat to public health and the welfare of people living and working in Washington.
2. On February 29, 2020, Governor Inslee signed Proclamation 20-05 declaring a State of Emergency in all counties of the State of Washington.
3. On March 23, 2020, Governor Inslee issued Proclamation 20—25 “Stay Home – Stay Healthy,” that prohibited all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within limitations.
4. On June 1, 2020, Proclamation 20-25 was amended for the 4th time to transition from the “Stay Home – Stay Healthy” restrictions to the “Safe Start-Stay Healthy” county by county Phased Reopening plan.
5. On November 15, 2020 Governor Inslee amended Proclamations 20-05 and 20-25 with version 20-25.8 which rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge. The restrictions effective at that time once again placed limits on social gatherings, closed indoor operations in restaurants, bars, entertainment venues, and fitness centers, and restricted occupancy in retail, grocery, professional services and other facilities.
6. On January 5, 2021, the Governor announced the Healthy Washington – Roadmap to Recovery plan.
7. On January 11, 2021, Council adopted Ordinance No. 917 which renewed the interim regulations for outdoor seating for another six months.
8. On January 18, 2021, the Governor announced a widespread vaccination plan.
9. On March 31, 2021, all adults became eligible to receive a COVID-19 vaccine. Children 12 and older were approved for the vaccine on May 12, 2021.

10. On May 13, 2021, the Governor announced all counties will move to Phase 3 of the Healthy Washington – Roadmap to Recovery reopening plan effective May 18 to June 30, and that statewide reopening would occur by June 30, 2021.
11. On October 25, 2021, proof of vaccination is required in King County for indoor seating in restaurants and bars.
12. Continued flexibility for outdoor seating areas will benefit local restaurants and bars by offering an alternative to indoor seating areas.

Tonight, Council is scheduled to take action on proposed Ordinance No. 952. This Ordinance would extend the interim regulations for outdoor seating for restaurants and bars for another six months.

RESOURCE/FINANCIAL IMPACT

The interim regulations waive fees for temporary outdoor seating areas. The total impact on revenue will vary depending on the number of businesses establishing outdoor seating areas, which has been five businesses to date. However, 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. Additionally, by expanding occupancy, businesses will hopefully be able to increase their sales and in-turn contribute more to the flow of economic activity in the City (e.g. wages to employees, tax revenue, etc.).

RECOMMENDATION

Staff recommends that the City Council adopt proposed Ordinance No. 952, extending for another six months the interim regulations for outdoor seating.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 952 - Extension of Interim Regulations for Outdoor Seating

ORDINANCE NO. 952

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON EXTENDING THE INTERIM REGULATIONS AUTHORIZING OUTDOOR SEATING ON PRIVATE PROPERTY AND WITHIN APPROVED PUBLIC RIGHTS-OF-WAY IN RESPONSE TO THE COVID-19 PANDEMIC ADOPTED BY ORDINANCE NO. 895 AND EXTENDED BY ORDINANCE NO. 917 AND ORDINANCE NO. 936; PROVIDING FOR A DURATION OF SIX MONTHS.

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 July 27, 2020, in response to the COVID-19 pandemic restrictions imposed by governmental authorities, the City Council adopted Ordinance No. 895, establishing interim regulations authorizing the extension of application deadline periods set forth in the Shoreline Municipal Code (SMC); and

WHEREAS, on January 11, 2021, the interim regulations were extended by Ordinance No. 917 and were extended on June 21, 2021, by the adoption of Ordinance No. 936; these interim regulations will expire on December 29, 2021, unless extended by the City Council; and

WHEREAS, despite public and private efforts to address the COVID-19 pandemic, including the availability of vaccines, COVID-19 continues to pose a threat to public health and customers may still be concerned with dining indoors; and

WHEREAS, eating and drinking establishments have suffered significant financial impacts due to COVID-19, and the establishment of interim regulations of six months in duration will provide certain outdoor space for eating and drinking establishments to utilize; and

WHEREAS, the extension of the previously enacted interim regulations for an additional six-month period will provide eating and drinking establishments extended occupancy thereby increasing the economic flow at their business during this unprecedented time in the City's history; and

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

WHEREAS, the City Council considered the interim regulations at its properly noticed November 29, 2021, regular meeting, at which it held the statutorily required public hearing, held

virtually via Zoom, and determined that the extension of the interim regulations is appropriate and necessary; and

WHEREAS, due to the current public health concerns resulting from COVID-19, it is in the best interests of the citizens of the City of Shoreline and its local economy to authorize the use of private property and public rights-of-way for outdoor dining;

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

Section 1. Adoption of Findings of Fact. The City Council hereby adopts the above Recitals as findings of fact to support the adoption of this Ordinance and incorporates by reference the Recitals set forth in Ordinance No. 895, Ordinance No. 917, and Ordinance No. 936.

Section 2. Interim Regulations. Legally permitted eating and drinking establishments existing as of the effective date of Ordinance No. 895 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 right-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. Any directives issued by the State of Washington, including directives from the Washington State Governor or Department of Health.
- 2. An Outdoor Seating Area Registration or an Outdoor Seating Area Right-of-Way Permit shall be effective for the duration of this Ordinance. If the City has not adopted permanent regulations permitting outdoor seating areas, use of these areas shall cease on the effective date of this Ordinance and these areas shall be removed and restored back to their original condition within seven (7) calendar days of the effective date of this Ordinance. 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 held a public hearing on the extension of the interim regulations on November 29, 2021. Pursuant to the Washington State Governor's Proclamation 20-28, as amended, and the City Council Resolution No. 459, the public hearing was held online using the Zoom Webinar platform.

Section 4. Directions to the City Clerk.

A. Transmittal to the Department of Commerce. The City Clerk is hereby directed to cause a certified copy of this Ordinance to be transmitted to the Washington State Department of Commerce as provided in RCW 36.70A.106.

B. 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.

C. Ordinance not to be Codified. Because this Ordinance adopts interim regulations, the City Clerk shall not codify this Ordinance.

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, Effective Date, and Expiration. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect

five (5) days after its publication and 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.

PASSED BY THE CITY COUNCIL ON DECEMBER 13, 2021.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie Ainsworth-Taylor, Assistant City Attorney
On behalf of Margaret King, City Attorney

Date of Publication: _____, 2021
Effective Date: _____, 2021

Date of Transmittal to Commerce: _____, 2021