

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 965 – Extension of the Interim Regulations Authorizing Outdoor Seating on Private Property and Within Approved Public Rights-of-Way		
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 the COVID-19 pandemic. Council has adopted three extensions of the interim regulations during the course of the pandemic. Although most restrictions associated with the pandemic have been lifted, a fourth and final six-month extension is necessary as the Planning Commission continues their work on Development Code amendments for permanent regulations.

The current interim regulations will expire on June 21, 2022, if not extended. The City Council discussed and held a public hearing on proposed Ordinance No. 965, which would extend these interim regulations for another six months, on May 23rd 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. 965.

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. 965, 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. At the start of the pandemic, as were many other businesses, these establishments were required to close. This requirement pertained only to on-site consumption and did not preclude take-out, delivery, or drive-thru operations. Starting in November 2020, outdoor seating was permitted with limited indoor seating following a few months later, both subject to certain parameters. As the months passed, indoor seating moved from 25% capacity to full capacity on June 30, 2021.

While being able to operate indoor facilities at full capacity, Shoreline establishments were still subject to King County's vaccine entry requirement and the State's mask mandate until March 2022. Although restrictions have been replaced with recommendations for this industry, there is still some uncertainty for how the pandemic will unfold in the coming months and what impacts to bars and restaurants could be. As such, flexibility for outdoor seating options continues to be an important tool in helping this already decimated industry to recover while allowing the public to feel safer when dining out.

Timeline of Interim Regulations

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 three times, with adoption of Ordinance No. 917 on January 11, 2021, Ordinance No. 936 on June 21, 2021, and Ordinance No. 952 on December 13, 2021.

On May 23, 2022, the City Council discussed and held a public hearing on proposed Ordinance No. 965 (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/2022/staffreport052322-8a.pdf>.

Interim Outdoor Seating

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. The businesses that have utilized the interim regulations are:

On Aurora Avenue N:

- Goldie's Casino
- Club Hollywood
- Woody's Tavern

On 15th Avenue NE:

- Easy Monkey Taphouse
- Monka Brewing

Goldie's, Club Hollywood, and Easy Monkey Taphouse have discontinued their outdoor seating areas. The other two continue to operate.

No new applications have been filed since the interim regulations were last extended. There have not been any applications for use of the ROW. Even though there has not been widespread utilization of the interim regulations, the City Council has previously directed staff to bring forward permanent regulations. Using the interim regulations has proven to be a useful starting point as the City engages in conversations with businesses and the Planning Commission¹ on the development of permanent regulations.

DISCUSSION

As noted above, Ordinance No. 952 will expire on June 21, 2022. Extension of the interim regulations would allow for those establishments currently providing outdoor seating areas to continue to provide these areas. In addition, other eating and drinking establishments which have not previously sought to provide outdoor seating may elect to register given the potential for the permanent regulations being adopted in the coming months.

Status of Permanent Regulations

The topic of outdoor seating was introduced to the Planning Commission at their December 16, 2021 meeting. Based on the Commission's feedback and direction, a survey targeted to eating and drinking establishments was conducted in April 2022 and a focus group facilitated by staff was convened with participation from three local business owners representing Monka Brewing, the Royal Unicorn, and the Ridgcrest Pub.

The first draft of Development Code amendments for outdoor seating was discussed by the Commission at their May 19, 2022 meeting. A public hearing and potential recommendation from the Planning Commission is tentatively scheduled for July 2022.

Ordinance No. 965, if adopted, should be the final six-month extension of temporary regulations. The amendments for permanent regulations should be ready for Council consideration and action in August/September, before the expiration of this last six-month extension.

¹ The December 16, 2021 Planning Commission Staff Report can be reviewed at:
<https://www.shorelinewa.gov/home/showpublisheddocument/53613/637745719082400000>

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.

Interim regulations adopted under this section may be effective for no 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.

Under these statutory provisions, the City adopted Ordinance No. 895 and the succeeding Ordinances extending the interim regulations, each with public hearings.

Findings of Fact

The interim regulations adopted in Ordinance No. 895 have been extended on three occasions (Ordinance Nos. 917, 936, and 952), 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, even though many restrictions have been lifted.
2. On February 29, 2020, Governor Inslee signed Proclamation 20-05 declaring a State of Emergency in all counties of the State of Washington. As of the date of this Staff Report, the Governor has not yet rescinded that Proclamation.
3. Although local restrictions on indoor gatherings have been lifted, the COVID-19 pandemic is ongoing, and cases are once again rising, creating uncertainty for the future.
4. Concerned and vulnerable populations continue to take precautions and/or avoid indoor areas and flexibility for outdoor seating areas will provide additional options for those populations.
5. Continued flexibility for allowing the two (2) businesses that are currently operating registered outdoor seating areas and future potential businesses which may register to continue until permanent regulations are adopted assists in the recovery of these businesses by offering an alternative to indoor seating areas while permanent regulations are being developed.
6. On December 16, 2021 and on May 19, 2022², the Planning Commission held study sessions on draft regulations for outdoor seating areas and, following a public hearing, is tentatively scheduled to issue a recommendation to Council in Summer 2022.
7. Upon receiving the Planning Commission recommendation on permanent regulations for outdoor seating, the Council will take action on permanent regulations and will at that time repeal the interim regulations.

² The May 19, 2022 Planning Commission report can be viewed at:

<https://www.shorelinewa.gov/home/showpublisheddocument/55357/637879652503330000>

Tonight, Council is scheduled to take action on proposed Ordinance No. 965. This ordinance would extend the interim regulations for outdoor seating 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. 965, extending for another six months the interim regulations for outdoor seating.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 965 - Extension of Interim Regulations for Outdoor Seating

ORDINANCE NO. 965

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 NOS. 917, 936, and 952; 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, on June 21, 2021, by Ordinance No. 936, and on December 13, 2021, by Ordinance No. 952; these interim regulations will expire on June 21, 2022, unless extended by the City Council; and

WHEREAS, the COVID-19 pandemic continues to pose a threat to public health and the welfare of people living and working in Shoreline, but even though many restrictions have been lifted, the Washington State Governor has not yet rescinded Proclamation 20-05 which declared a State of Emergency in all counties of the State of Washington, nor has the City rescinded its Declaration of Public Health Emergency; and

WHEREAS, the City has been engaged in stakeholder outreach and research in developing permanent regulations to replace these interim regulations and has presented proposed permanent regulations to the Shoreline Planning Commission for its review and future recommendation to the City Council; and

WHEREAS, eating and drinking establishments have suffered significant financial impacts due to COVID-19, and the continued availability of interim regulations of six months in duration will provide certain outdoor space for eating and drinking establishments to utilize so as to increase the economic flow at their business and to respect the precautions that continue to be observed by concerned and vulnerable populations by allowing flexibility for outdoor seating areas so as to provide additional options for those populations; 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 May 23, 2022, 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 impacts 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, Ordinance No. 936, and Ordinance No. 952.

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.
 - i. 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 May 23, 2022. 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 JUNE 6, 2022.

Mayor Keith Scully

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: _____, 2022
Effective Date: _____, 2022