



Memorandum

DATE: July 1, 2020

TO: Debbie Tarry, City Manager

FROM: Andrew Bauer, Senior Planner
Nate Daum, Economic Development Program Manager
Rachael Markle, Planning & Community Development Director
Alisa Nguyen, Development Review Engineer

RE: Options for Temporary Outdoor Uses – COVID-19

INTRODUCTION

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 several retail and service uses, but with restrictions. Restaurants and taverns cannot exceed 50% of their capacity, with groups no larger than five, and retail may provide for in-store purchase so long as shoppers are at a maximum of 30% of capacity. Many communities are creating flexibility to allow for businesses such as restaurants and retail to expand outside to increase their capacity while still adhering to the Safe Start Washington Plan.

The purpose of this memo is to provide background on Shoreline's current permit processes that could allow for outdoor uses and to provide a brief analysis of alternatives to create regulatory flexibility and streamline the process for temporary outdoor uses with the goal of providing regulatory relief to Shoreline's business community during the COVID-19 economic recovery.

EXISTING PROCESSES & FEES

There are two primary permits within the SMC which could allow for outdoor uses:

1. Temporary Use Permit (TUP)
2. Right-of-Way (ROW) Site 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 or by which the City may permit seasonal or transient uses not otherwise permitted." However, a TUP is not typically required in instances where a ROW site permit is also required.

Provisions for ROW site permits are identified in SMC 12.15.030.C and may be issued for activities of extended duration that don't 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.

Primary Permit Processes

PERMIT	PROCESS	APPROVAL TIMEFRAME	FEE	NOTES
Temporary Use	Type A Ministerial	60 days; PCD Director may extend up to 12 months	\$1,632	Ability to deviate from development standards (e.g. minimum parking, setbacks, etc.)
Right-of-Way Site	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 or enclosures would be 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.

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.

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.

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).

OPTIONS AND ALTERNATIVES

Below is a summary of the options identified by staff. All the options could be implemented through either a TUP (for uses on private property) or a ROW site permit (for uses on ROW).

Summary of Options – Pros & Cons

Option		Action Required	Pros	Cons
1)	Modify or waive permit review fees for all permits associated with outdoor uses	City Council approval of code amendment	<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
2)	Issue TUP/ROW permit approval for at least 6 months with provisions to extend as needed	PCD/PW Director administrative approval	<ul style="list-style-type: none"> - Certainty for businesses - Enables City to reassess after 6 months 	<ul style="list-style-type: none"> - Potential for impacts to increase as King County advances through Phase 2 and beyond
<i>Temporary Use Permit – Uses on Private Property</i>				
3)	Allow parking reductions of up to 50% for restaurants and 70% for retail to accommodate outdoor dining/shopping in parking lots	PCD Director administrative approval if parking is “adequate” OR City Council code amendment	<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"> - May result in off site parking impacts

ROW Site Permit – Uses on City ROW				
4)	Target commercial areas in Ridgecrest and North City as preferred areas allowing commercial use of ROW	PW Director administrative approval OR Potentially City Council (policy decision on locations)	- Relief for businesses - Provides opportunities for more residents to enjoy socially distant dining and shopping	- Could result in an inequity if not all restaurants/shops can effectively expand into ROW - Crest theater reopening could increase demand for on-street parking in Ridgecrest
5)	North City: limit ROW uses which remove on-street parking to off-peak hours (e.g. after 5 pm and weekends)	PW Director administrative approval OR Potentially City Council (policy decision on timing/use of on-street parking)	- Relief for businesses - Provides opportunities for more residents to enjoy socially distant dining and shopping	- Could result in an inequity if not all restaurants/shops can effectively expand into ROW - Parking is contentious in North City. There could be increased burden on staff responding to complaints.

OTHER CONSIDERATIONS

Identified below are other codes and regulations which should be 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.

RECOMMENDATION

Staff recommends all the options (#1-5) discussed above be implemented. Some of the options discussed above can be implemented without further action, while options #1 and #3 need action by the City Council. Options #4-5 may warrant direction/action by the City Council with regard to the potential of targeting allowable corridors within the City that would be most suitable for outdoor uses on the ROW.

Permit Type

Outdoor uses would be reviewed through either a TUP (for uses on private property) or ROW site permit (for uses on ROW). The specific options discussed above, such as parking reductions, would be reviewed and conditioned through the permit review process.

For example, a retail use could obtain a 6-month TUP to expand their retail area into their parking lot and reduce up to 70% of their parking to do so. A reduced/waived fee would be charged for the permit review.

Meanwhile, a restaurant in Ridgecrest could include outdoor seating on City ROW. A reduced/waived fee would be charged for the permit review and use of the ROW.

Fee Modification

Staff recommends the permit application fees for TUPs and ROW site permits be temporarily reduced to provide relief to businesses (option #1). A reduction in fees requires action by the Council.

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 occupancy outdoors.

Staff will also explore whether the City can accept and begin review of applications at the earliest possible and prior to Council consideration and action.

NEXT STEPS

Action must be taken to enact some of the options discussed above. An interim ordinance may be used to adopt the necessary changes to the SMC and is authorized by RCW 36.70A.390 and RCW 35A.63.220. An interim ordinance may be adopted without holding a public hearing if one is held within 60 days of adoption of interim regulations. Interim regulations can be effective for up to six-months and renewable in six-month increments. Provisions would take effect five days after publication.

Alternative Action

At least one jurisdiction (Issaquah) adopted an emergency ordinance. The Council can adopt a public emergency ordinance under RCW 35A.12.130 when necessary for protection of public health, public safety, public property, or public space. Passage of an emergency ordinance requires a majority plus one vote of the Council as a whole (e.g. five votes). An emergency ordinance takes effect immediately.

A compelling argument would need to be made that the provisions being adopted are within the scope of an emergency ordinance and would need further discussion with staff and the City Attorney's Office to ensure consistency with applicable statutes.