

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Ordinance No. 893 – Adopting Interim Regulations to Allow for Additional Extensions of Application Deadlines Beyond Those Provided for in Shoreline Municipal Code Due to COVID-19 Impacts
DEPARTMENT:	Planning and Community Development City Attorney’s Office
PRESENTED BY:	Rachael Markle, Director, Planning and Community Development; Julie Ainsworth-Taylor, Assistant City Attorney
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

The COVID-19 pandemic has impacted the ability of permit customers and Planning and Community Development Department (PCD) staff to process permit applications, which in turn, has caused delays for the commencement of development activities. Recognizing the impacts this had on applicants, the City Manager enacted Temporary Emergency Order No. 6 on May 4, 2020, temporarily suspending application and permit deadlines related to development, effective for approved permits and applications in process as of March 4, 2020. Proposed Ordinance No. 893 (Attachment A) would rescind/terminate this Temporary Emergency Order and replace it with interim regulations that provide relief for applicants by creating additional extensions of application and permit deadlines due to the economic impacts of COVID-19. Tonight, Council will discuss proposed Ordinance No. 893. This proposed Ordinance is scheduled to be brought back to Council for adoption on July 27, 2020 and if approved by Council, a Public Hearing will be scheduled for August 10, 2020.

RESOURCE/FINANCIAL IMPACT:

Approval of proposed Ordinance No. 893 has the potential to protect the time and financial investment of applicants and permit holders. Supporting the viability of permit applications, approved ready to issue permits and issued permits supports the greater economy and community with little or no impact on the City’s resources.

RECOMMENDATION

No action is required tonight on proposed Ordinance No. 893. Following Council’s discussion, staff anticipates updating Ordinance No. 893, if necessary, and returning on July 27, 2020 for adoption.

Approved By: City Manager City Attorney

BACKGROUND

Starting in early March 2020, the ability of the City Staff to provide permitting and inspection services became heavily impacted by the COVID-19 pandemic. On March 23, 2020, the Washington State Governor issued Proclamation 20-25, the Stay Home, Stay Healthy proclamation, that required people to stay home and limit activities to only those that were deemed essential.

On March 25, 2020, the Governor issued a memorandum that provided guidance on construction during the pandemic in Washington State. Based on the restrictions highlighted in that memorandum, coupled with Proclamation 20-25, most construction activities and non-essential business that support the industry, such as consultants and material suppliers, ceased operations. For many applicants having an application before the City, they were simply not able to respond to the City's comment review letters within the deadline period, to pick-up an approved permit, or to even begin construction on a newly permitted activity .

On May 4, 2020, the City Manager issued Temporary Emergency Order No. 6 (Attachment B). This order provided relief from certain development related application and permit deadlines set forth in the Shoreline Municipal Code (SMC) due to the processing and construction delays caused by COVID-19. This "tolling" relief was retroactive to valid permits and submitted applications in process as of March 4, 2020, and was intended to be effective until the Declaration of Local Public Health Emergency was rescinded or terminated by the City Manager or City Council. However, the Governor's Safe Start Stay Healthy phased plan for reopening Washington's economy has permitted much of the development industry to proceed. Given this, City Staff has found the task of tracking and calculating individual tolling periods to be cumbersome and time consuming.

DISCUSSION

Rather than utilizing Temporary Emergency Order No. 6's tolling, proposed Ordinance No. 893 would adopt interim regulations that will be effective for six (6) months and proactively provide applicants with additional time to respond to the City's comments or requests for information and pick up approved permits that are ready to be issued. In utilizing these regulations as opposed to a tolling period, applicants will have greater certainty on the deadline that they need to satisfy.

Under the City Manager's Emergency Order No. 6, deadlines for action by an applicant or permittee were stayed and the number of days that remained in the deadline prior as of March 4 were "tolled." The intent was when Emergency Order No. 6 was terminated, that applicants and permittees would be in the same position they were on March 4 – they would have the same amount of days remaining. While this has benefited both applicants and permittees, given the Governor's subsequent actions with the phrased reopening of Washington, almost all construction and supporting activities have been permitted to restart. Thus, there has been some confusion about what tolling period applied and what was the new deadline an applicant was expected to satisfy.

To provide greater certainty in deadlines, Staff is proposing to no longer use a tolling period but, rather, to provide applicants with an additional extension beyond that which is currently provided in the SMC. The SMC currently provides for applicants to request extensions if additional time is needed. However, the number of extensions an applicant whose permit is under review or has been approved and ready to pick-up is limited by the SMC. The intent of the proposed interim regulations is to provide an additional extension for those applicants who may have already used their existing codified extension or who just need additional time to address the City's comments. In addition, by adding an additional extension period the City will be prepared for continued or increased COVID-19 impacts over the next several months.

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, the same statutory provisions that permit a moratorium. Under these statutory provisions, the City may adopt an ordinance without a public hearing and without review and recommendation by the Planning Commission.

If interim regulations are adopted, a public hearing must be scheduled within at least 60 days of ordinance adoption. If the City Council does not adopt findings of fact justifying its action before this public hearing, then the City Council is required to do so immediately after the public hearing. Interim regulations may remain in effect for no more than six (6) 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 area made prior to each renewal. Staff would propose that Council consider adoption of Ordinance No. 893 on July 27, 2020, and a Public Hearing on August 10, 2020.

Interim Regulation Code Sections

An applicant has two primary deadlines – a deadline for responding to comments or information requests by City Staff and a deadline for picking up an approved application.

- SMC 20.30.100(D) sets a 180-day deadline for applicants to pick up permits that are ready to issue; and
- SMC 20.30.110(C) sets a 90-day deadline for the applicant to respond to requests for additional information and review comment letters.

However, both of these SMC provisions limits the applicant to a single extension if they need more time beyond the initial deadline period. The consequences of missing this deadline is that the application becomes null and void. If the applicant wants to continue the project, they need to file a new application and pay all related costs, included those incurred under the expired application. In addition, the applicant will lose any vested rights the project was benefiting from.

Staff is proposing to provide applicants one (1) additional extension. Thus, applicants would have the ability to receive two (2) extensions. As noted above, providing for an

additional extension will assist in preventing the expiration of an application under review and an approved application that is ready to be issued; potentially saving the applicant not only money but additional delays in their project. In addition, an additional extension will assist staff tasked with permit intake, issuance, and review to provide better customer service as they strive to catch up with the backlog of permit reviews and adapt to performing this work and serving customers remotely and or via delivery and pick-up service for plans and working documents.

Chapter 12.15 SMC addresses Right of Way permits. Unlike SMC 20.30.100 and 20.30.110, this chapter does not expressly address extensions for applications under review or approved applications ready to issue in SMC 12.15.040 Applications and Processing of Permits. Rather it only addresses the renewal of issued permits or those consolidated with a development permit. Many right-of-way permit applications are filed in conjunction with a building permit application and, therefore, are considered part of a consolidated review package with all permits issued concurrently. However, some are filed independently, such as for a driveway. Either way, PCD is responsible for intake and issuance of these permits with Public Works doing the review and approval. As such, interim regulations are proposed to address these types of permits as well.

Staff is not proposing an additional extension for building permits as SMC 15.05.030 sets a 180-day deadline to commence work on an issued permit. Building and construction permits subject to SMC Title 15 are regularly extended 180 days each time the permit holder schedules and receives a valid inspection on work-in-progress. Thus, there is no need to provide for additional extensions for issued permits to avoid expiration because the SMC already provides for the authority of unlimited extensions.

Stakeholder Notice of Interim Regulations

Staff proposes that City Council should rescind or otherwise terminate Temporary Emergency Order No. 6 on September 1, 2020. The time between the estimated effective date of proposed Ordinance No. 893 and September 1, 2020, will be used to notify applicants and permit holders that the tolling period has ended; determine their new deadline dates; and allow them the ability to request an application extension to avoid expiration.

ALTERNATIVES ANALYSIS

In addition to adopting proposed Ordinance No. 893 to establish interim regulations, the following alternatives exist for Council consideration:

End Tolling and Provide No Additional Relief from Processing Deadlines

The “do nothing” alternative to providing for an additional extension period and applying tolling may result in the expiration of applications under review or applications ready to be issued. Expiration of an application that the applicant intends to pursue creates a financial hardship for the applicant, consumes City staff resources without yielding development, and can have a negative impact on jobs and the economy. Development is one of the ways investment is demonstrated locally. Redevelopment plays an important role in helping the City implement goals and realize its vision.

Continue Tolling Under the City Manager’s Emergency Order

As was noted above, tolling as per Temporary Emergency Order No. 6, which was just intended to be a stop gap measure, is tied to the end of the Local Public Health Emergency unless rescinded or terminated earlier by the City Manager or City Council. Given the current state of COVID-19, there is no certainty in this date. The longer tolling continues, the less clear applicants may become about expiration deadlines for responding to comments or picking up an approved permit when tolling finally ends. In addition, administration of the tolling consumes limited Staff resources.

Adjust the Number of Extensions or Length of Extension Periods

In lieu of Staff’s proposal, the Council could consider increasing the number of extensions (e.g. two additional extensions rather than one) or modifying the number of days in any permitted extension (e.g. 200 days in the first extension, 90 days in the second).

RESOURCE/FINANCIAL IMPACT

Approval of proposed Ordinance No. 893 has the potential to protect the time and financial investment of applicants and permit holders. Supporting the viability of permit applications, approved ready to issue permits and issued permits supports the greater economy and community with little or no impact on the City’s resources.

RECOMMENDATION

No action is required tonight on Interim proposed Ordinance No. 893. Following Council’s discussion, staff anticipates updating Ordinance No. 893 and returning on July 27, 2020 for adoption.

ATTACHMENTS

- Attachment A – Proposed Ordinance No. 893
- Attachment B - Temporary Emergency Order of the City Manager No. 6

ORDINANCE NO. 893

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
ADOPTING INTERIM REGULATIONS FOR THE EXTENSIONS OF
APPLICATION DEADLINE PERIODS IN RESPONSE TO THE COVID-19
PANDEMIC; PROVIDING FOR 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, effectively closing all but those businesses deemed to be essential until at least April 6, 2020. On March 25, 2020, the Governor issued a memorandum providing guidance on construction, stating that “[I]n general, commercial and residential construction is not ... an essential activity” with three (3) exceptions – construction related to an essential facility; construction to further a public purpose of a public entity, including publicly-funded low-income housing; and repair construction to prevent spoliation or avoid damage at both non-essential businesses and residential structures; and

WHEREAS, the Washington State Governor has subsequently issued Proclamations and industry-specific guidance allowing most construction activities to occur subject to a COVID-19 exposure control, mitigation, and recovery plan; and

WHEREAS, these restrictions on most construction activities and non-essential business that support the industry, such as consultants and material suppliers, may have resulted in an inability for an applicant to timely respond to the City’s comment review letter or to pick up an approved application; and

WHEREAS, the establishment of interim regulations of six months in duration will provide applicants with additional time to act upon applications currently under review and/or approved applications awaiting issuance so as to prevent expiration of those applications during this time of economic downturn; and

WHEREAS, the expiration of applications can have significant financial impacts on the applicant as well as financial institutions or investors that have provided financing for a project and the City's tax revenue from the increase in property values; 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 regular meeting held virtually via Zoom and has determined that the use of the interim regulations is appropriate and necessary; and

WHEREAS, due to the current economic conditions resulting for COVID-19, it is in the best interests of the citizens of the City of Shoreline and its local economy to authorize the Director of Planning and Community Development and the Director of Public Works to temporarily grant extensions of the application deadlines to preclude expiration;

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.

Section 2. Interim Regulations. These interim regulations relate to Type A, Type B, and Type C applications administered through Title 20 SMC and chapter 12.15 SMC that were valid on March 4, 2020:

- A. SMC 20.30.100(D) In addition to the one extension authorized by this provision, the Director Planning and Community Development, or designee, is authorized to grant one additional extension of no more than 180 days, for a total possible extension period of 360 calendar days.
- B. SMC 20.30.110(C) In addition to the one extension authorized by this provision, the Director Planning and Community Development, or designee, is authorized to grant one additional extension of no more than 90 days, for a total possible extension period of 180 calendar days.
- C. SMC 12.15.040(C) The Director of Public Works or designee is authorized to grant an applicant for a right-of-way permit extension, in the same number and duration as provided for in Section 1(A) and Section 1(B) of this Ordinance.
- D. An applicant must submit a written request for extension providing justification related to the COVID-19 pandemic, Washington State Governor's Proclamation 20-25, as clarified or amended, or other related federal, state, or local governmental action. The request must be submitted to the City before the expiration of the application for which the extension is being sought.

- E. The applicable Director shall have the authority to grant an extension as provided in this Section for a period of time no more than that provided for in the applicable SMC provision. A Director may grant an extension for less time, may deny an extension in its entirety, or may shorten or revoke a temporary extension for good cause. The decision to approve, deny, shorten, or revoke an extension is a discretionary act and a final decision of the City subject to appeal under chapter 36.70C RCW Land Use Petition Act.
- F. Any temporary extension shall be calculated from the initial expiration date of the application. If a development has multiple applications with differing expiration dates, the later expiration date shall be used for the purpose of calculating these extension provisions.

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 transmitted to the Washington State Department of Commerce 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.

Section 5. Termination of Temporary Emergency Order No. 6. The City Council hereby terminates the City Manager's Temporary Emergency Order No. 6 as of 11:59 pm September 1, 2020.

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 _____, 2020

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Margaret King
City Attorney

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



TEMPORARY EMERGENCY ORDER of the City Manager

<h2 style="margin: 0;">COVID-19</h2> <h3 style="margin: 0;">Public Health Emergency</h3> <h3 style="margin: 0;">Suspension of Development-Related Application and Permit Deadlines</h3>			Category: COVID-19
			Number: 6
			Classification: Planning and Community Development Public Works
Effective Date: 03/04/2020 – Rescission of Declaration of Local Public Emergency	Waiver/ Suspends: SMC 20.30.100(D) SMC 20.30.110(C) SMC 20.30.165 SMC 15.05.030 (105.3.2/R105.3.2) SMC 15.05.040 (105.5/R105.5)	Policy Originator: PCD Director PW Director Planning Manager	Approved By: City Manager <hr style="width: 100%; border: 0; border-top: 1px solid black;"/> Debbie Tarry

1. PURPOSE:

The purpose of this Temporary Emergency Order is to provide relief from development-related application and permit deadlines set forth in the Shoreline Municipal Code (SMC) due to the impact of the COVID-19 Public Health Emergency and the Governor’s Stay Home Stay Healthy Proclamation.

2. ELIGIBILITY CRITERIA:

As of 11:59 pm Local Time, March 4, 2020:

- Any applicant that had a pending, valid permit application under review;
- Any applicant that had a valid, approved permit application awaiting issuance; or
- Any permittee that had a valid, issued permit.

3. ORDER:

Several provisions of the SMC establish deadlines by which an applicant or a permittee must take action. The SMC establishes three (3) categories of deadlines: 90 days for an applicant to respond to a City request for information or comment review letter; 180 days for an applicant to pay fees and satisfy conditions so that an approved permit can be issued; and 180 days for construction to commence and remain active under an issued permit. If an applicant/permittee fails to act by the deadline, their application or permit will expire and any vesting that the applicant/permittee had would be lost along with the financial investment in the application process.

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.

On March 23, 2020, the Washington State Governor issued the “Stay Home Stay Healthy” Proclamation 20-25, effectively closing all but those businesses deemed to be essential until at least April 6, 2020. On March 25, 2020, the Governor issued a memorandum provided guidance on construction. In this memorandum, the Governor stated that “[I]n general, commercial and residential construction is not ... an essential activity” with three (3) exceptions – construction related to an essential facility; construction to further a public purpose of a public entity, including publicly-funded low-income housing; and repair construction to prevent spoliation or avoid damage at both non-essential businesses and residential structures. Moreover, even if essential, social distancing and public health protocols needed to be adhered to. These restrictions on most construction activities and non-essential business that support the industry, such as consultants and material suppliers, may have resulted in an inability for an applicant to timely respond to the City’s comment review letter or a permittee to ensure construction is actively proceeding. On April 2, 2020, the Governor extended the Stay Home Stay Healthy Proclamation until May 4, 2020.

However, on April 24, 2020, the Governor issued an addendum to Proclamation 20-25 – “Implementation of Phase 1 Construction Restart.” Which this addendum, authorized construction projects that developed and implemented a COVID-19 exposure control, mitigation, and recovery plan (due May 1 for current projects) and met all of the jobsite/worker safety recommendations of the Governor’s Construction Working Group could restart construction activities. On April 29, 2020, the Governor issued guidance in relationship to the meaning of “authorized construction” – projects previously permitted under Proclamation 20-25 or projects “in existence” as of March 25, 2020, with this encompassing contractually-obligated projects and those for which a permit had been issued. Thus, for projects meeting the criteria established by the Governor, the tolling period ended at 11:59 pm Local Time May 1, 2020.

To temporarily stay the deadline for action during the duration of the City’s Declaration (turn off the clock) and to restart the clock when the Declaration has been rescinded or otherwise terminated or impacted by action of the Governor, is an equitable approach to applicants and permittees as it preserves (tolls) the number of days remaining in their original deadline period as the basis for calculating the new deadline. For example, if an applicant had 23 days left to respond to a City comment letter on the effective date of the Declaration, then those 23 days would re-commence on the day the City’s Declaration is rescinded/terminated.

For pending applications and applications pending issuance, strict compliance with the SMC deadlines may result in non-essential business activities in conflict with the Governor’s Proclamation. In addition, by allowing for the stay of an issued permit deadline, compliance with the Proclamation is furthered in that for all but a few existing

construction projects continuing to operate is contrary to the Proclamation. Therefore, relief from strict compliance with the SMC deadlines is necessary to ensure compliance with the Governor's Proclamation that was issued to preserve and maintain public health and prevent actions that may hinder or delay the control of COVID-19.

THEREFORE, for the reasons set forth above and pursuant to the authority granted to the City Manager by the City Council under Resolution No. 456, this Temporary Emergency Order is issued providing the following:

1. The deadlines set forth in the following SMC provisions are stayed for a period of time equal to that of the Declaration of Local Public Health Emergency:
 - SMC 20.30.100(D), regarding the need to take substantial steps on an application to meet permit approval within 180 days of issuance of the determination of completeness;
 - SMC 20.30.110(C), regarding the need to respond to a City request for additional information within 90 days of the request;
 - SMC 15.05.030, adopting the International Building Code Section 105.3.2, and SMC 15.05.040, adopting the International Residential Code Section R105.3.2, both regarding abandonment of an application after 180 days of filing;
 - SMC 20.30.100 (D), regarding the expiration of an approved and still valid permit within 180 days of approval;
 - SMC 20.30.165, regarding the need to commence work authorized by a Clearing and Grading Permit or a Site Development Permit within 180 days of issuance;
 - SMC 15.05.030, adopting the International Building Code Section 105.5, and SMC 15.05.040, adopting the International Residential Code Section R105.5, both regarding the need to commence work within 180 days of permit issuance.
2. Once the Declaration of Local Public Health Emergency is rescinded or otherwise terminated, the duration of the Declaration shall be calculated and an applicant's/permittee's deadline for action shall be recalculated based on the number of days the Declaration was in effect. EXCEPT, that for construction not previously authorized under Proclamation 20-25 that was in existence on March 23, 2020, as those terms are defined in the Governor's April 29, 2020 addendum, the tolling period ends on May 1, 2020.
3. This Temporary Emergency Order shall not apply to construction previously authorized under Proclamation 20-25.

4. Nothing in this Temporary Emergency Order prohibits an applicant or a permittee from requesting a deadline extension as provided in the applicable provisions of SMC 15.05.030, 15.05.040, or chapter 20.30 SMC.
5. As provided in Section 2 of Resolution 454, this Temporary Emergency Order shall be in effect until such time as the Declaration of Local Public Health Emergency is rescinded or otherwise terminated by the City Manager or City Council.

Dated this 4th day of May, 2020.



Debbie Tarry
City Manager