

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

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| <b>AGENDA TITLE:</b> | Discussion of Ordinance No. 969 - Amending Chapter 20.50 of the Shoreline Municipal Code to Add Regulations for Outdoor Seating and Discussion of Resolution No. 493 - Adopting a Fee for Outdoor Seating Permits |
| <b>DEPARTMENT:</b>   | Planning & Community Development  |
| <b>PRESENTED BY:</b> | Cate Lee, AICP, Senior Planner  |
| <b>ACTION:</b>       | <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion<br><input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing                  |

**PROBLEM/ISSUE STATEMENT:**

Eating and drinking establishments have been severely impacted by the COVID-19 pandemic. To provide relief for these businesses, many communities, including Shoreline, took action to ease regulations on outdoor seating areas so that lost capacity due to indoor seating restrictions were at least partially offset while still adhering to local requirements to reduce the spread of COVID-19. Shoreline’s interim regulations for outdoor seating areas went into effect on July 27, 2020 and have been extended by the City Council on four (4) occasions. Council has also previously directed staff to develop permanent regulations for outdoor seating areas.

Tonight, Council is scheduled to discuss proposed Ordinance No. 969 (Attachment A) which contains permanent regulations for onsite outdoor seating areas and would repeal the interim regulations that have been in effect since July 2020. Council is also scheduled to discuss proposed Resolution No. 434 (Attachment B), which would add a fee to the City’s Fee Schedule for an outdoor seating permit.

**RESOURCE/FINANCIAL IMPACT:**

Minimal resource impacts are anticipated as a result of this discussion. If Council adopts proposed Ordinance No. 969, the new regulations will result in fee collection related to staff processing of Outdoor Seating permit applications. However, this fee is not intended to cover the entire cost of staff time. The fee is proposed to cover only a portion of time to process the applications and to encourage these spaces, which offer a public benefit in the form of activating surface parking lots and increasing the number and types of gathering spaces. A one-hour fee will be charged to the business owner, while it’s anticipated staff will spend one to three hours reviewing the application. Proposed Resolution No. 493 provides would amend the City’s Fee Schedule to add a fee for this new permit.

## **RECOMMENDATION**

No formal action is required by Council at this time. The Planning Commission has recommended adoption of the proposed amendments to Chapter 20.50 of the Shoreline Municipal Code as shown in Exhibit A to Ordinance No. 969. Proposed Ordinance No. 969 is currently scheduled to be brought back to Council for potential action on September 12, 2022. In conjunction with the potential action of proposed Ordinance No. 969, action on proposed Resolution No. 493 is also current scheduled for September 12<sup>th</sup>.

Approved By:           City Manager ***DT***   City Attorney ***JA-T***

## **BACKGROUND**

Eating and drinking establishments have been severely impacted by the COVID-19 pandemic. To provide relief for these businesses, many communities, including Shoreline, took action to ease regulations on outdoor seating areas so that lost capacity due to indoor seating restrictions were at least partially offset while still adhering to local requirements to reduce the spread of COVID-19. Shoreline's interim regulations for outdoor seating areas went into effect on July 27, 2020 and have been extended by the City Council on four (4) occasions. Council has also previously directed staff to develop permanent regulations for outdoor seating areas.

### **Interim Outdoor Seating Regulations**

The main components of the interim regulations approved by the City Council include the following:

- Establishment of an Outdoor Seating Registration for areas on private property;
- Suspension of Temporary Use Permit provisions in Shoreline Municipal Code (SMC) Section 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 (ROW) 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 North:

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

On 15<sup>th</sup> Avenue NE:

- Easy Monkey Taphouse
- Monka Brewing

Of the five businesses that utilized this program, Monka Brewing and Woody's Tavern are the only two that continue to operate under the City's interim regulations. No new applications have been filed since the interim regulations were last extended and there have not been any applications for use of City ROW. Even though there has not been widespread utilization of the interim regulations, the City Council directed staff to bring forward permanent regulations for their consideration.

### **Proposed Permanent Outdoor Seating Regulations**

City staff researched the outdoor seating regulations of ten (10) cities. Most regulations were for traditional "sidewalk café" type of outdoor dining (in the public ROW), although a few addressed outdoor seating on private property, which is not common even in large cities. Most have temporary outdoor dining regulations, and some have permanent

sidewalk café regulations. This research is further detailed in the staff report for the December 16, 2021 Planning Commission meeting where it was a study item.

Outdoor dining regulations have historically just addressed dining in the public ROW, widely familiar as the sidewalk cafés popular in European cities and larger U.S. cities, that over time became more popular in small and mid-sized U.S. cities with historic or traditional downtowns.

In Shoreline, covered outdoor dining on private property attached to buildings have typically been reviewed and approved as part of the building permit process and do not have a separate review and approval processes. However, these areas are still subject to requirements such as parking, landscaping, etc. The proposed Code amendments acknowledge the surrounding context of many of the City's eating and drinking establishments and offer flexibility to convert parking lots into attractive outdoor seating areas while also offering an option for businesses that can adapt to the evolving pandemic.

The Planning Commission is not proposing use of the public ROW at this time because of the limited number of areas that would be suitable for such use and the additional regulatory framework associated with private use of the public ROW. However, the amendments under consideration would not preclude future amendments for seating areas in the ROW.

### **Development Code Amendments Review Process**

Amendments to SMC Title 20 (Development Code) are processed as legislative decisions. Legislative decisions are non-project decisions made by the City Council under its authority to establish policies and regulations. The Planning Commission is the reviewing authority for legislative decisions and is responsible for holding an open record Public Hearing on the proposed Development Code amendments and making a recommendation to the City Council on each amendment.

SMC 20.30.350 states, "An amendment to the Development Code is a mechanism by which the City may bring its land use and development regulations into conformity with the Comprehensive Plan or respond to changing conditions or needs of the City." The proposed amendments would establish provisions for outdoor seating and responds to changing conditions, namely the desire to safely gather during the continuing pandemic, and to convert inactive surface parking lots to vibrant gathering spaces, given the City's emerging urban context.

The decision criteria for a Development Code amendment in SMC 20.30.350(B) states the City Council may approve or approve with modifications a proposal for a change to the text of the land use code when all of the following are satisfied:

1. The amendment is in accordance with the Comprehensive Plan; and
2. The amendment will not adversely affect the public health, safety, or general welfare; and
3. The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.

### **Planning Commission Review**

The Planning Commission discussed this topic on December 16, 2021, held a study session on May 19, 2022, and a Public Hearing on July 21, 2022. The staff reports for these Planning Commission agenda items, along with the meeting minutes and public comments, can be found at the following links:

- [December 16, 2021 Meeting](#)
- [May 19, 2022 Meeting](#)
- [July 21, 2022 Meeting](#)

The Planning Commission provided input and had a number of questions at the December 16, 2021 meeting as a study topic. Generally, the input was to provide more analysis on where staff would expect to see these areas in the City, to allow it beyond just food and beverage businesses, and the desire for these areas to be safe and aesthetically pleasing. These were further detailed in the staff report for the May 19, 2022 Planning Commission meeting where it was a discussion item.

No public comments were received during the July 21<sup>st</sup> Planning Commission Public Hearing. Following the Public Hearing, the Planning Commission voted 6-0 to recommend the proposed Outdoor Seating Development Code amendments as proposed in Attachment A, Exhibit A. A memo outlining the Planning Commission's recommendation is included in Attachment C.

### **DISCUSSION**

#### **Proposed Amendments in Ordinance No. 969**

The proposed code amendments in proposed Ordinance No. 969 would allow outdoor seating on private property in conjunction with a Brewpub, Eating and Drinking Establishment, Microbrewery, or Microdistillery use. The applicant has to obtain a permit from the City, but only a minimal one-hour fee is charged. Outdoor seating areas have to comply with other codes, such as noise, building and fire, and have to meet certain standards for safety and design, but would be allowed to convert a certain amount of off-street parking to this use. The general idea with the proposed code amendments is to provide safe and attractive outdoor seating spaces, while making permitting of these spaces easy for small business owners by eliminating barriers to their creation, such as a complex permitting process with high fees, and allowing the conversion of some off-street parking.

An example of onsite outdoor seating is provided in the image below:



*Image: Example of Onsite Outdoor Seating (Photo Credit: Ryan Givens)*

### **Proposed Outdoor Seating Permitting Fee**

In addition to the proposed code amendments in proposed Ordinance No. 969, a companion Resolution, proposed Resolution No. 493 (Attachment B), is being presented tonight for Council consideration to establish a fee for the processing of Outdoor Seating Permits consistent with other fees established for the Planning and Community Development Department.

The proposed fees in proposed Resolution No. 493 are outlined below:

- Outdoor Seating – Initial permit \$217.00
- Outdoor Seating – Modification of existing permit Hourly Rate, maximum of one (1) hour

### **PUBLIC OUTREACH**

Outreach on this topic included an online survey focused on local businesses, a virtual focus group, and notification to outside agencies as part of the environmental review under the State Environmental Policy Act (SEPA).

### **Online Survey and Focus Group**

Staff contacted local business owners and operators to participate in a short online survey and a focus group. The purpose of the online survey was to better understand outdoor seating currently and how the City can better help local businesses. The survey was open from March 22 to April 10, 2022, and there were 25 responses to the survey. Following the closing and analysis of the online survey, City staff convened a focus group consisting of three (3) local business owners of restaurants, bars and breweries.

The survey results and feedback from the focus group informed the proposed Code amendments and Planning Commission recommendation. The information below is part of the proposed amendments and are based on the highest priorities stated by business owners/operators in the online survey and focus group.

- Simple, flexible regulations that aren't overly concerned with aesthetics or contain burdensome requirements;
- Allow conversion of off-street parking; and
- Streamlined permitting process.

The survey and focus group are further detailed in the staff report for the May 19, 2022 Planning Commission meeting where it was a discussion item.

**SEPA Determination and Comment**

The City determined that the proposed Development Code amendments will not have a probable significant adverse impact on the environment and, on June 8, 2022, issued a SEPA Determination of Non-Significance. On June 21, 2022, the City received a comment from staff at Public Health - Seattle/King County. The comment was a suggested addition to the proposed Development Code amendments relating to proper ventilation of these spaces. City staff has incorporated part of the suggested language into the proposed Development Code amendments.

**RESOURCE/FINANCIAL IMPACT**

Minimal resource impacts are anticipated as a result of this discussion. If Council adopts proposed Ordinance No. 969, the new regulations will result in fee collection related to staff processing of Outdoor Seating permit applications. However, this fee is not intended to cover the entire cost of staff time. The fee is proposed to cover only a portion of time to process the applications and to encourage these spaces, which offer a public benefit in the form of activating surface parking lots and increasing the number and types of gathering spaces. A one-hour fee will be charged to the business owner, while it's anticipated staff will spend one to three hours reviewing the application. Proposed Resolution No. 493 provides would amend the City's Fee Schedule to add a fee for this new permit.

**RECOMMENDATION**

No formal action is required by Council at this time. The Planning Commission has recommended adoption of the proposed amendments to Chapter 20.50 of the Shoreline Municipal Code as shown in Exhibit A to Ordinance No. 969. Proposed Ordinance No. 969 is currently scheduled to be brought back to Council for potential action on September 12, 2022. In conjunction with the potential action of proposed Ordinance No. 969, action on proposed Resolution No. 493 is also current scheduled for September 12<sup>th</sup>.

**ATTACHMENTS**

- Attachment A – Proposed Ordinance No. 969
- Attachment A, Exhibit A – Planning Commission Recommended Code Amendments to Chapter 20.50 SMC
- Attachment B – Proposed Resolution No. 493
- Attachment C - Planning Commission Recommendation Memo

**ORDINANCE NO. 969**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING CHAPTER 20.50 OF THE SHORELINE MUNICIPAL CODE TITLE 20, THE UNIFIED DEVELOPMENT CODE, TO INCLUDE DESIGN STANDARDS PERTAINING TO OUTDOOR SEATING AND REPEALING INTERIM ORDINANCE NO. 965.**

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, Title 36.70A RCW; and

WHEREAS, Shoreline Municipal Code (SMC) Title 20, sets forth the City's Unified Development Code; and

WHEREAS, 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; and

WHEREAS, on January 11, 2021, the interim regulations were extended by Ordinance No. 917, on June 21, 2021, they were extended again by Ordinance No. 936, on December 13, 2021, they were extended again by Ordinance No. 952, and on June 6, 2022, they were extended one final time by Ordinance No. 965; and these interim regulations will automatically expire on December 11, 2022; and

WHEREAS, during the pendency of these interim regulations, City staff has been developing design standards to allow outdoor seating areas at eating and drinking establishments; and

WHEREAS, on December 16, 2021, and May 19, 2022, the Planning Commission discussed the proposed amendments; and on July 21, 2022, the Planning Commission held a public hearing on the proposed amendments so as to receive public testimony; and

WHEREAS, at the conclusion of public hearing, the Planning Commission voted that the proposed amendments as presented by staff be approved by the City Council; and

WHEREAS, on August 15, 2022, the City Council held a study session on the proposed amendments; and

WHEREAS, pursuant to RCW 36.70A.370, the City has utilized the process established by the Washington State Attorney General so as to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, the City has provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendment(s) to its Unified Development Code; and



WHEREAS, the environmental impacts of the amendments resulted in the issuance of a Determination of Non-significance on June 8, 2022; and

WHEREAS, the City provided public notice of the amendments and the public hearing as provided in SMC 20.30.070; and

WHEREAS, the City Council has considered the entire public record, public comments, written and oral, and the Planning Commission's recommendation and has determined that the amendments to Title 20 are consistent with and implement the Shoreline Comprehensive Plan and serves the purpose of the Unified Development Code as set forth in SMC 20.10.020;

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

**Section 1. Amendments. Unified Development Code.** Chapter 20.50 of Title 20 of the Shoreline Municipal Code, Unified Development Code, is amended as set forth in Exhibit A to this Ordinance.

**Section 2. Repealer – Interim Ordinance No. 965.** Interim Ordinance No. 965, extending interim regulations authorizing outdoor seating, shall be repealed and have no further force and effect upon the effective date of this Ordinance.

**Section 3. Transmittal of Amendments to Washington State Department of Commerce.** Pursuant to RCW 36.70A.106, the Director of Planning and Community Development, or designee, is directed to transmit a complete and accurate copy of this Ordinance and Exhibit A to the Washington State Department of Commerce within ten (10) calendar days of the date of passage of this Ordinance.

**Section 4. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this Ordinance, including the corrections 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.

**Section 5. 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 6. Publication and Effective Dates.** A summary of this Ordinance consisting of the title shall be published in the official newspaper and shall take effect five days after publication.

**PASSED BY THE CITY COUNCIL ON SEPTEMBER 12, 2022.**

\_\_\_\_\_  
Keith Scully, Mayor

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

**SMC 20.50.260 Outdoor seating design.**

- A. Purpose. To allow outdoor seating on private property that creates an active and inviting space for people and promote economic development consistent with the vision for commercial development articulated in the Comprehensive Plan.
- B. Applicability. This section applies to outdoor seating associated with a Brewpub, Eating and Drinking Establishment, Microbrewery, or Microdistillery that is located on the same lot, or part of an interdependent site plan consisting of multiple lots.
- C. Compliance with Other Codes and Standards. All outdoor seating areas shall be operated in a safe and sanitary manner and shall comply with the following:
  - 1. 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 Electrical Code;
  - 2. SMC 9.05 Noise Control;
  - 3. All applicable licensing requirements of the Washington State Liquor and Cannabis Board;
  - 4. Accessibility requirements of the Americans with Disabilities Act (ADA); and
  - 5. 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.
- D. Permit Requirements. Outdoor seating areas shall obtain a permit. If a building permit is required for any structure(s) used for the outdoor area, then review and approval shall occur concurrent with the building permit.
- E. Use. The outdoor seating area shall comply with the following:
  - 1. It shall be accessory to a Brewpub, Eating and Drinking Establishment, Microbrewery, or Microdistillery; and
  - 2. It shall not be used exclusively for storage or accessory uses that do not meet the purpose of this section.
- F. Parking Standards.
  - 1. Outdoor seating areas permitted under this section are not subject to the minimum off-street parking requirements in SMC 20.50.390.
  - 2. On single-tenant sites, up to four required off-street parking spaces, or thirty percent (30%) of required off-street parking spaces, whichever is greater, may be converted to outdoor seating, even if the conversion causes the site to become nonconforming in regard to required off-street vehicle parking. On multi-tenant sites, up to four required off-street parking spaces per tenant, or thirty percent (30%) of required off-street parking spaces, whichever is lesser, may be converted to outdoor seating, even if

the conversion causes the site to become nonconforming in regard to required off-street vehicle parking.

G. Design Standards. Outdoor seating areas shall comply with the following:

1. If the outdoor seating area is within a building, as defined by the Development Code, then compliance with the minimum setbacks set forth in SMC 20.50.020 is required.
2. Required Barriers.
  - i. Any edge of the outdoor seating area that is within 20 feet of a right-of-way vehicle travel lane shall be enclosed with a permanent or movable barrier(s).
  - ii. Barrier(s) shall be between 30 and 42 inches in height and consist of fencing, railing, planters, or other approved elements. If alcohol is served the barrier(s) shall comply with WAC 314-03-200, as amended, which shall satisfy this code provision.
  - iii. Barrier(s) shall be constructed of finish quality materials such as steel, safety glass or finished wood, or other approved materials as determined by the Director.
  - iv. Barriers(s) shall comply with the clear sight triangle standards required by The Engineering Development Manual.
3. Tables and Seating.
  - i. Tables and seating shall not obstruct doors or exits.
  - ii. Tables and seating shall be made of durable, quality materials, including molded plastic, resin wicker, decorative metal or finish grade wood, or other approved materials as determined by the Director.
4. Weather Protection.
  - i. All tents, canopies, fabric screens, and umbrellas are subject to approval by the building official for any structural requirements and by the fire marshal for flame-retardance.
  - ii. Tents, canopies, awnings, fabric screens, and umbrellas shall be made of durable, quality materials.
5. Ventilation. Barriers, tents, fabric screens, and other vertical materials erected as part of the outdoor seating area shall allow adequate ventilation. This does not apply to exterior building walls used for interior eating or drinking areas.
6. Operation and Maintenance. Any of the elements of the outdoor seating areas are not permitted and shall be removed if they are not securely attached, create a traffic hazard, or are not maintained in good condition and free of damage, including but not limited to holes, rips, dents, or mold.

**RESOLUTION NO. 493**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, ADDING A NEW PERMIT FEE TO THE FEE SCHEDULE.**

WHEREAS, on August 15, 2022, the Shoreline City Council discussed Ordinance No. 969, adopting permanent regulations for outdoor seating areas for eating and drinking establishments; and

WHEREAS, concurrent with the discussion of Ordinance No. 969, the City Council discussed this Resolution to establish a new fee for the Fee Schedule to allow for the appropriate billing of City services;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES:**

**Section 1. Shoreline Fee Schedule.** The Fee Schedule, Planning and Community Development, Section G, Land Use is amended to add a new subsection, subsection 22 outdoor seating areas, to read as follows:

- 22.** Outdoor Seating – Initial permit \$217.00
- Outdoor Seating – Modification of existing permit Hourly Rate, maximum of one (1) hour.

**Section 2. Severability.** If any one or more sections, subsections, or sentences of this Resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Resolution and the same shall remain in full force and effect.

**Section 3. Effective Date of Resolution.** This Resolution shall take effect and be in full force immediately upon passage by the City Council. This Resolution shall remain in effect until further action of the City Council amends this Resolution or declares an end to the emergency.

**ADOPTED BY THE CITY COUNCIL ON SEPTEMBER 12, 2022.**

\_\_\_\_\_  
Mayor Keith Scully

**ATTEST:**

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Jessica Simulcik Smith, City Clerk



TO: Honorable Members of the Shoreline City Council

FROM: Pam Sager, Chair  
Shoreline Planning Commission

DATE: July 26, 2022

RE: Outdoor Seating Development Code Amendments

In July 2020, in response to the COVID-19 pandemic, the Shoreline City Council adopted Emergency Ordinance No. 895 temporarily authorizing outdoor seating areas on private property and within public rights-of-way. The City Council subsequently extended these interim regulations on four (4) occasions. The City Council directed planning staff to bring forward to the Planning Commission permanent regulations for outdoor seating, which would take the place of these interim regulations.

The Planning Commission started discussing the proposed amendments on December 16, 2021 and held a subsequent study session on May 19, 2022. A public hearing was held on July 21, 2022. For the proposed outdoor seating amendments, the Planning Commission recommended approval of those amendments as presented by Planning Staff at the July 21 public hearing with a vote of 6-0.

Based on local experience, research, and public outreach, the amendments create a process that will allow eating and drinking establishments to take advantage of additional seating by creating outdoor areas on private property. The amendments do not authorize this activity within the public right-of-way. Outdoor seating will increase opportunities for gathering spaces; promote the conversion of parking lots into active, pedestrian-oriented areas; and increase the economic vitality of local businesses.

In consideration of the City Planning Staff's recommendations, written and oral public testimony, the Planning Commission respectfully recommends that the City Council adopt the proposed amendments as attached to this recommendation.