



# MONROE CITY COUNCIL

## Agenda Bill No. 20-081

<b>SUBJECT:</b>	<b><i>Consideration of an Interim Ordinance to allow Temporary use of Private Property/Parking Areas for Outdoor Dining</i></b>
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<b>DATE:</b>	<b>DEPT:</b>	<b>CONTACT:</b>	<b>PRESENTER:</b>	<b>ITEM:</b>
6/16/2020	Community Development	Ben Swanson	Ben Swanson	Discussion Item #2

**Discussion:** 6/16/2020  
**Attachments:** 1. Example Ordinance – Outdoor Dining

**REQUESTED ACTION:** Provide policy direction to City staff regarding the proposed interim ordinance to allow temporary use of private property/parking areas for outdoor dining.

### POLICY CONSIDERATIONS

*The Council is being asked to consider two policy issues and provide direction to staff:*

1. *Whether to temporarily waive certain requirements of the Monroe Municipal Code (MMC) to allow private property, particularly parking areas, to be used for outdoor dining; and*
2. *If those requirements are waived, whether to charge or waive the fee that would be associated with the permit.*

### DESCRIPTION/BACKGROUND

The purpose of this action would be to allow eating and drinking establishments throughout Monroe to expand their capacity for serving dine-in customers temporarily during phases 2 and 3 of Governor Inslee’s plan for reopening businesses in response to the COVID-19 pandemic. If Council decides to pursue this policy, City staff would draft an interim ordinance similar to Attachment 1 for action at the June 23, 2020 City Council meeting.

Most businesses have been severely economically impacted by the pandemic and some may not reopen. Phase 2 of the reopening approach will allow eating and drinking establishments to offer table service again. In order to protect the health of the public and reduce the risk of exposure to the virus, there will be limitations on table size (maximum 5 people), spacing and serving capacity (maximum 50% of pre-pandemic capacity). Phase 3 increases table size to 10 and serving capacity to 75%. While reopening is a positive step for these businesses and the community, the capacity limitations will have an economic impact on businesses and the community.

One way to allow these businesses to expand their serving capacity is to allow the temporary use of private property, primarily required parking areas, for outdoor dining service. The reduced capacity should have the effect of reducing the parking needed through phases 2 and 3. These temporary provisions are well timed for the summer months, assuming phases 2 and 3 will cover at least some portions of June and July. When phase 4 is in effect, the businesses will be able to return to pre-pandemic capacity and the temporary provisions will no longer be needed.



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In order to ensure that life, safety and access requirements would be met by the temporary dining areas, a permit and inspection would be required. The interim ordinance would direct staff to create a permit process that is basic and brief. Staff would recommend Council not impose fees for the permit processing and inspection time.

If City Council directs staff to proceed with drafting an interim ordinance, staff would develop a permit with minimal submittal requirements and a consolidated review/inspection process referred to as "subject to field inspection." Submittal requirements will include a diagram indicating location and type of delineation of the temporary dining area, including canopy if applicable; number of parking spaces temporarily displaced; guidance for applicants to determine restricted occupant loads under the International Building Code; adequate and accessible circulation to and within the dining area; and accessible routes to restrooms. Staff believes this information is necessary to maintain life, safety and accessibility standards for customers and the community. This does not affect any requirements of other agencies that regulate eating and drinking establishments.

### **FISCAL IMPACTS**

Collecting permit fees could cover city processing and permitting costs during the short duration of the interim ordinance. If City Council chooses not to collect permit fees it would likely have limited impacts on city costs and may encourage more businesses to expand their capacity and increase sales tax revenues. The value of the foregone fees, if this item is approved, is difficult to determine in advance of applications being received, but is not expected to have a significant impact on the General Fund budget. Staff does not think lost revenues would qualify under the provisions of the CARES Act. However, staff will explore potential reimbursement under any future state or federal programs.

### **TIME CONSTRAINTS**

N/A

### **ALTERNATIVES**

1. None. This proposal is intended to provide the City Council with information and receive feedback and policy direction.

**ORDINANCE NO. \_\_\_\_\_ (2020)**

AN INTERIM ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, IN RESPONSE TO THE COVID-19 PANDEMIC TEMPORARILY AUTHORIZING EXISTING FOOD AND BEVERAGE ESTABLISHMENTS TO USE PRIVATE PARKING AREAS FOR OUTDOOR DINING; ESTABLISHING AN EXPIRATION DATE CONSISTENT WITH RCW 36.70A.390; AND FIXING AN EFFECTIVE DATE.

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WHEREAS, a state of emergency has been declared by the federal, state, county, and municipal governments in response to the COVID-19 pandemic; and

WHEREAS, since February 29, 2020, Governor Jay Inslee has issued several proclamations, including Emergency Proclamation 20-25 (“Stay Home, Stay Healthy order”), placing numerous restrictions on individuals and businesses in response to the state-wide threat of the spread of COVID-19 virus; and

WHEREAS, Governor Inslee has developed a phased reopening approach, known as the “Safe Start Washington” phased reopening plan, for resuming recreational, social, and business activities; and

WHEREAS, outdoor activities, including outdoor restaurant seating, have been determined to be safer and less likely to lead to the spread of COVID-19 than indoor restaurant seating; and

WHEREAS, during a modified Phase 1 of the “Safe Start” reopening plan, restaurants are authorized to resume outdoor on-premise food and beverage service at 50 percent of existing outdoor capacity, so long as those businesses adopt social distancing measures consistent with the phase-specific re-opening plan requirements but indoor dining is prohibited; and

WHEREAS, during Phase 2 of the “Safe Start” reopening plan, restaurants and taverns are authorized to resume both indoor and outdoor on-premise consumption of food and beverages consistent with the phase-specific reopening plan requirements; and

WHEREAS, in the industry-specific requirements, Section 5 of the Phase 2 Restaurant/Tavern Reopening COVID-19 Requirements requires that the restaurants and taverns operate at no more than 50% of seating capacity, limiting the size of parties to five or less, and seating groups of guests at least 6 feet apart; and

WHEREAS, the City Council wishes to encourage business activity consistent with the Safe Start requirements and to make restaurants and taverns safer to operate by leveraging available private and public space to be used as additional outdoor areas for dining activity while maintaining social distancing requirements; and

WHEREAS, the City Council believes that allowing food and beverage establishments to expand their business footprint onto privately-owned parking facilities where they may not be permitted by city code otherwise will support the Governor's Safe Start plan, encourage compliance with social distancing requirements, and promote business operation and economic recovery while maintaining the focus on core public safety principles; and

WHEREAS, it is necessary and appropriate during the state of local emergency to utilize an interim ordinance, which is intended to be only temporary until public health and economic conditions improve, to facilitate and encourage outdoor seating areas to make food and beverage establishments safer to operate and to promote needed economic and business recovery in the City; and

WHEREAS, the City Council finds that it is in the public interest to adopt this interim Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. AUTHORIZATION TO USE PRIVATE PARKING AREAS FOR OUTDOOR DINING. Subject to the provisions of this Ordinance, the City grants temporary permission for existing eating and drinking establishments to utilize private parking areas for outdoor dining use, provided the private parking area is immediately adjacent to the food and beverage establishment.

A. Such outdoor dining use shall be permitted only if it is authorized to operate under the state's Safe Start Washington phased reopening plan.

B. An eating and drinking establishment may only operate in a private parking area only with a valid permit issued by the City and only while this Ordinance remains in effect.

C. Any person who utilizes private areas for outdoor dining use as authorized by this Ordinance shall comply with all terms, conditions, and requirements of this Ordinance.

D. Use of any portion or percentage of private off-street parking areas for outdoor dining use shall require the property owner's approval. Nothing in this Ordinance compels a landlord to permit a tenant to expand its business to the exterior.

E. This Ordinance authorizes only temporary use of private areas otherwise restricted for parking purposes. Nothing in this Ordinance authorizes permanent improvements or interior expansions. Such development must comply with existing permit processes.

Section 2. SECTIONS WAIVED. In order to effectuate the purpose of this Ordinance, minimum parking regulations normally applicable to eating and drinking establishments are waived to enable such uses to serve patrons in adjoining parking spaces. Specifically, for the duration of this Ordinance, the following Bothell Municipal Code sections are hereby suspended and waived for the duration of this Ordinance only to the extent necessary to effectuate this Ordinance and under the terms and conditions set forth in this Ordinance:

A. BMC 12.16.020(A) – No occupancy permit is required for temporary outdoor seating.

B. BMC 12.16.020(D) – A temporary change of use from parking to seating area is authorized for existing food and beverage businesses.

C. BMC 12.16.030 – No minimum parking spaces or additional bicycle parking are required for temporary outdoor seating activity authorized by this Ordinance.

D. BMC 12.16.120(C)(1) – Waived for temporary walkways within or associated with temporary outdoor seating activity authorized by this Ordinance.

E. The minimum parking requirements applicable in the downtown subarea as reflected in BMC 12.64.402 and by cross-references within each district section are waived for purposes of authorizing temporary outdoor seating activity consistent with this Ordinance.

F. Any other minimum or maximum parking requirement of the City not specifically identified here that conflicts with this Ordinance, as determined by the Community Development Director, is hereby waived.

Nothing in this Ordinance shall be construed to authorize the waiver of any other City code requirements and all such other provisions and law shall remain in full force and effect. In particular, any use of private parking areas for outdoor dining use pursuant to this Ordinance must comply with all applicable fire, life safety, and ADA requirements.

### Section 3. PERMIT PROCESS.

A. The Community Development Director is directed to create a permitting process for this temporary outdoor dining use. Applications will be reviewed by the Community Development Department and the Fire Department.

B. The permitting process shall be efficient and with a limited review based upon a subject-to-field-inspection (STFI) permit.

C. No permit application fee will be charged.

D. The purpose of this permit presents special circumstances that warrant a different review process than the existing administrative permit requirements, particularly because the authorized activity is temporary in nature and because there is an immediate need to create this opportunity to expand outdoor dining areas. Therefore, to the extent additional administrative provisions are necessary, the Community Development Director has discretion to establish those requirements, except that this permit should not include any requirements more burdensome than a Type 1 permit under Chapter 11.07 BMC. The Community Development Director may but is not required to include public notice requirements.

E. If an applicant desires to include a temporary membrane (e.g., a canopy or tent) for the temporary outdoor dining area, the City's existing temporary membrane permit application and review process shall be subsumed into this temporary outdoor dining area permit. While this Ordinance remains in effect, the current IFC operational permit fee established in the fee resolution for a temporary membrane is waived for temporary outdoor dining areas.

F. Nothing in this Ordinance waives or purports to waive any requirement to obtain permits or approvals from other entities, such as the state's Liquor and Cannabis Board or the state or county Health Department, which are the responsibility of the food and beverage establishment.

Section 4. REQUIREMENTS AND RESTRICTIONS. Temporary outdoor dining areas utilizing private parking areas must comply with the following requirements and restrictions:

A. Outdoor seating in private parking areas may be utilized only to support additional tables and chairs for food or beverage establishment seating.

- 1) New outdoor operations cannot result in a total occupancy greater than the originally approved occupancy limit for the food or beverage establishment, unless explicitly authorized by the Building Official and the Fire Marshal.
- 2) All outdoor seating shall be spaced at least 6 feet apart measured from back of occupied chair to back of occupied chair;

B. The converted use must be in conformance with all City building and fire requirements for building accessibility and emergency access.

- 1) Fire hydrants and fire lanes must not be blocked, and required fire access must be maintained.
- 2) Outdoor seating shall not block or otherwise restrict access to designated disabled parking spaces.
- 3) Outdoor seating shall not block any established exits from any building.
- 4) ADA and other access standards and guidance apply.

C. Other limitations on placement of outdoor dining areas.

- 1) Outdoor seating cannot be located within required landscaping, stormwater facilities, critical areas, or private streets.
- 2) Temporary placement of outdoor seating areas and/or equipment such as wash stations and hand sanitizing stations or stations for staff set-up and service do not need to meet required setbacks.
- 3) The outdoor dining area may expand past the food or beverage establishment's façade with the neighboring business's permission.

D. A current City of Bothell business license is a prerequisite to being issued a permit as provided for in this Ordinance.

E. Any other requirements or restrictions deemed necessary by the Community Development Department and/or the Fire Marshal. In particular, in order to allow the greatest flexibility in implementing the additional outdoor dining areas authorized by this Ordinance, the Community Development Director and the Fire Marshal have discretion to modify or change these regulations and restrictions to address any changes or modifications to the Safe Start phased reopening requirements and restrictions.

Section 5. SEVERABILITY. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 6. EFFECTIVE DATE. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Section 7. EXPIRATION. The City Council adopts this interim regulation under the authority of RCW 36.70A.390. Therefore, the interim controls adopted herein shall be in

effect for a period of six (6) months from the effective date of this Ordinance and shall automatically expire after a period of six months, unless extended as provided by statute or otherwise superseded by action of Council, whichever occurs first. Because this is an interim ordinance only, it shall not be codified.

Section 8. CORRECTIONS. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

APPROVED:

\_\_\_\_\_  
LIAM OLSEN  
MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
LAURA HATHAWAY  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
PAUL BYRNE  
CITY ATTORNEY

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO.: \_\_\_\_\_ (2020)

**SUMMARY OF ORDINANCE NO. \_\_\_\_\_ (2020)**

City of Bothell, Washington

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On the \_\_\_\_\_ day of \_\_\_\_\_, 2020, the City Council of the City of Bothell passed Ordinance No. \_\_\_\_\_ (2020). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN INTERIM ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, IN RESPONSE TO THE COVID-19 PANDEMIC TEMPORARILY AUTHORIZING EXISTING FOOD AND BEVERAGE ESTABLISHMENTS TO USE PRIVATE PARKING AREAS FOR OUTDOOR DINING; ESTABLISHING AN EXPIRATION DATE CONSISTENT WITH RCW 36.70A.390; AND FIXING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

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LAURA HATHAWAY  
CITY CLERK

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO.: \_\_\_\_\_ (2020)