



MONROE CITY COUNCIL

Agenda Bill No. 20-093

SUBJECT:	<i>Interim Ordinance to allow Temporary use of Private Property/Parking Areas for Outdoor Dining</i>
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
6/23/2020	Community Development	Ben Swanson	Ben Swanson	New Business #5

Discussion: 6/16/2020, 6/23/2020
Attachments: 1. Proposed Ordinance – Outdoor Dining

REQUESTED ACTION: Move to adopt Ordinance No. 009/2020, adopting interim ordinance in response to the COVID-19 pandemic temporarily authorizing existing food and beverage establishments to use private parking areas and sidewalks for outdoor dining; establishing an expiration date consistent with RCW 36.70A.390; and fixing and effective date.

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. *Whether to temporarily waive certain requirements of the Monroe Municipal Code (MMC) to allow the expansion of sidewalk cafes to include those sidewalks fronting neighboring business.*

DESCRIPTION

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. The proposed ordinance would allow eating and drinking establishments to operate in a private parking area for outdoor dining use, provided the private parking area is contiguous to the space leased or owned by the food and beverage establishment. This ordinance also provides for health, life, and safety requirements to ensure that all proposals meet ADA and emergency access requirements.

The proposal also expands on existing Chapter 12.30 MMC – Sidewalk cafes to allow use of a neighboring sidewalk area for outdoor dining and retail, provided written consent is obtained from the neighboring business or property owner.

BACKGROUND

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 a severe economic impact on businesses and the community.



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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 practical effect of reducing the parking needed through phases 2 and 3. Stated differently, any negative impact to on-site parking capacity is largely self-limited as a result of applicable social-distancing requirements and diner capacity constraints that will apply to restaurants during 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.

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, streamlined and brief, while still enabling the City to perform a meaningful evaluation of each application in light of its particular circumstances. As a means of promoting economic development and reducing the financial burden on local businesses that have already been severely impacted by the pandemic, Staff would recommend Council not impose fees for the permit processing and inspection time.

If the City Council ultimately proceeds to adopt the 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, among other items as appropriate, 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.

This interim ordinance is intended to be temporary until public health and economic conditions improve, and the provisions of the ordinance are necessary to avoid an imminent threat to public health or safety. As Snohomish County is in Phase II, this Ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act pursuant to WAC 197-11-880 and Chapter 22.78 MMC.

Under the provisions of state law (RCW 36.70A.390), cities may enact interim ordinances for a period of six months. The City has 60 days from the adoption of the interim ordinance to conduct a public hearing. The expectation is that phase 4 will occur prior to the expiration of the interim ordinance. Council can also in its discretion repeal the ordinance at any time.

In summary, the proposed ordinance is intended to immediately address the public health, safety and economic impacts of the COVID-19 pandemic upon Monroe businesses and consumers in the manner identified above.

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



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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. Modify the proposed ordinance and return to City Council at the next available business meeting
2. Do not approve the proposed ordinance.

**CITY OF MONROE
ORDINANCE NO. 009/2020**

AN INTERIM ORDINANCE OF THE CITY OF MONROE, WASHINGTON, IN RESPONSE TO THE COVID-19 PANDEMIC, TEMPORARILY AUTHORIZING FOOD AND BEVERAGE ESTABLISHMENTS TO USE PRIVATE PARKING AREAS FOR OUTDOOR DINING; ESTABLISHING AN EXPIRATION DATE CONSISTENT WITH RCW 36.70A.390 AND RCW 35A.63.220; DECLARING A PUBLIC EMERGENCY; AND FIXING AN IMMEDIATE EFFECTIVE DATE.

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, taverns and other food and beverage establishments safer to operate by leveraging available private and public space to be used as additional outdoor areas for dining activity while maintaining applicable social distancing requirements; and

WHEREAS, the City Council believes that allowing food and beverage establishments to temporarily expand their on-site dining areas onto privately-owned parking facilities where they may not otherwise be permitted by city code 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, and further declares that a public emergency exists requiring this Ordinance to take effect immediately upon passage.

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

Section 1. Authorization to Use Private Parking Areas for Outdoor Dining. Subject to the provisions of this Ordinance, the City hereby grants temporary permission for food and beverage establishments, existing as of the effective date of this Ordinance, to utilize private off-street parking areas, as defined by MMC 22.12.150, for outdoor dining use, provided the private off-street parking area is immediately adjacent to the food and beverage establishment. The temporary permission conveyed by this section is expressly subject to the following requirements:

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

B. A food and beverage establishment may operate in a private off-street parking area only with a valid permit issued by the City and only while this Ordinance remains in effect.

C. Any food and beverage establishment that utilizes private off-street parking areas for outdoor dining use as authorized by this Ordinance shall comply with all terms, conditions, and requirements of this Ordinance, as well as all terms, conditions and requirements of any permit issued pursuant to Section 3 of this Ordinance.

D. Use of any portion or percentage of private off-street parking areas for outdoor dining use shall require written proof of the property owner's approval. Without limitation of the foregoing, 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 fully with existing applicable permit processes and standards except as provided by this Ordinance.

Section 2. Sections Waived. In order to effectuate the purpose of this Ordinance, minimum parking regulations normally applicable to food and beverage establishments are hereby waived to enable such uses to serve patrons in adjacent private off-street parking areas. Specifically, for the duration of this Ordinance, the following Monroe Municipal Code sections are hereby suspended and waived for the duration of this Ordinance to, and only to, the extent necessary to effectuate this Ordinance and under the terms and conditions set forth in this Ordinance:

A. MMC 22.44.020(A) – No occupancy permit is required for temporary outdoor seating associated with a food and beverage establishment.

B. MMC 22.44.020(G) – A temporary change of use from parking to seating area is authorized for food and beverage establishments during normal business hours.

C. MMC 22.44.030 – The criteria for preexisting uses/buildings shall not apply to temporary outdoor seating associated with a food and beverage establishment.

D. MMC 22.44.050 – Temporary outdoor seating associated with a food and beverage establishment shall not require any additional off-street parking stalls and may use the required off-street parking stalls for temporary outdoor seating authorized under this Ordinance.

E. MMC 22.44.070 – No additional bicycle parking is required of temporary outdoor seating associated with a food and beverage establishment.

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

Section 3. Permit Process.

A. The Community Development Director is hereby authorized and directed to create a permitting process to effectuate and facilitate the interim amendments set forth in this Ordinance. Applications submitted under said permit process will be reviewed by the Community Development Department and Fire Marshal.

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

C. No permit fee will be charged for accepting and processing a permit application for temporary outdoor dining use under this Ordinance.

D. The purpose of this permit presents special circumstances that warrant a different review process than the City's 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 is hereby authorized and directed to establish such requirements, except that the permit should not include any requirements more burdensome than a Type 1 permit under Chapter 22.84 MMC. 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 authorized by this Ordinance, the City's existing temporary membrane permit application and review process shall be incorporated into the temporary outdoor dining area permit authorized by this section. 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 and/or comply with applicable permits or approvals from the City or other governmental entities with jurisdiction, specifically including without limitation the State Liquor and Cannabis Board or the State or county Health Department.

G. Nothing in this Ordinance waives or purports to waive any requirement to comply fully with all other applicable provisions of the MMC except as specifically provided herein.

Section 4. Requirements and Restrictions – Outdoor Dining. The use of private off-street parking areas as temporary outdoor dining areas pursuant to this Ordinance must comply with the following requirements and restrictions:

A. Temporary outdoor dining uses in private off-street parking areas may be utilized only to support additional tables and chairs for food and beverage establishment seating.

- 1) The private off-street parking area used for temporary outdoor seating pursuant to this Ordinance shall not result in a total occupancy greater than the originally approved occupancy limit for food and beverage establishments, unless explicitly authorized by the Building Official and Fire Marshal.
- 2) All outdoor seating shall be spaced at least 6 feet apart measured from back or side of each occupied chair to the back or side of every other occupied chair;

B. Temporary outdoor dining uses in private off-street parking areas must be in conformance with all City buildings and fire requirements for building accessibility and emergency access.

- 1) Fire hydrants and fire apparatus access roadways 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 required 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 building setbacks.
- 3) The outdoor dining area may expand past the food or beverage establishment's façade with the permission of the adjacent landowner.

D. A current City of Monroe 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.

Section 5. Repeal of Section 12.30.010 MMC. Section 12.30.010 of the Monroe Municipal Code is hereby temporarily repealed in its entirety:

~~12.30.010 Applicability-~~

~~((The provisions of this chapter shall apply exclusively to the sidewalk area lying immediately adjacent to a commercial building containing a currently licensed operating retail business engaged in the sales of goods and merchandise, services, or the business of food service establishment located on:~~

~~A. Main Street, between Madison Street and the Burlington Northern Santa Fe railroad tracks;~~

~~B. Lewis Street (SR203), between MacDougall Street and the Burlington Northern Santa Fe railroad tracks;~~

~~C. Hill Street, between Madison Street and Ferry Street; and~~

~~D. Fremont Street, between Blakeley Street and Ann Street. (Ord. 008/2015 § 1))~~

Section 6. Amendment of Section 12.30.010. Section 12.30.010 of the Monroe Municipal Code is hereby amended to provide in its entirety as set forth below:

12.30.010 Applicability

A The provisions of this chapter shall apply exclusively to the sidewalk area lying immediately adjacent to a commercial building containing a currently licensed operating retail business engaged in the sales of goods and merchandise, services, or the business of food service establishment located on:

1. Main Street, between Madison Street and the Burlington Northern Santa Fe railroad tracks;
2. Lewis Street (SR203), between MacDougall Street and the Burlington Northern

Santa Fe railroad tracks;

3. Hill Street, between Madison Street and Ferry Street; and
4. Fremont Street, between Blakeley Street and Ann Street.

B. Food service establishments otherwise meeting the requirements of MMC 12.30.010(A) may also use the sidewalk of a contiguous, commercially zoned property with the written permission of the owner of the contiguous property. This permission shall be submitted to the City along with the associated sidewalk use permit application.

Section 7. Definition. For purposes of this Ordinance, “food and beverage establishment” shall mean any restaurant, fast food restaurant, micro-brewery, bakery, coffee shop or tavern, as respectively defined by Chapter 22.12 MMC, and “food service establishment” as referenced in Chapter 12.30 MMC.

Section 8. Superseding Effect. In the event that the provisions of this Ordinance irreconcilably conflict with any provision of the Monroe Municipal Code, it is the express legislative intent of the City Council that the provisions of this Ordinance shall control to the extent of such conflict.

Section 9. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Clerk is hereby authorized and directed to schedule a public hearing on the interim regulations adopted under this ordinance within 60 days.

Section 10. Findings. The above recitals, together with the content of Agenda Bill AB _____, are hereby adopted as preliminary findings in support of the interim regulations adopted under this ordinance. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council may adopt additional findings following the public hearing referenced in Section 9.

Section 11. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 12. Declaration of Emergency; Effective Date. Based upon the findings above, the City Council declares that a public emergency exists. This ordinance shall therefore take effect immediately upon passage, and shall sunset automatically six (6) months from June 23, 2020, unless terminated earlier or extended by subsequent Council action

ADOPTED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 23rd day of June, 2020.

First Reading: June 23, 2020
Adoption: June 23, 2020
Published: June 28, 2020
Effective: June 23, 2020

CITY OF MONROE, WASHINGTON:

(SEAL)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:

Rebecca R. Hasart, Interim City Clerk

J. Zachary Lell, City Attorney