



Legislation Text

File #: CB 120121, Version: 3

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to land use and zoning; adopting interim provisions by amending Sections 23.76.004, 23.76.006, and 23.76.032 of, and adding a new Section 23.42.041 to, the Seattle Municipal Code to facilitate occupancy of street-level spaces downtown during the COVID-19 civil emergency; and adopting a work plan.

WHEREAS, due to the COVID-19 outbreak, street-level businesses downtown have been impacted and many have gone out of business due to the lack of customers, particularly office workers, tourists, and convention attendees; and

WHEREAS, the Seattle Comprehensive Plan has as a Goal (G1) to: Maintain Downtown Seattle as the most important of the region's urban centers-a compactly developed area supporting a diversity of uses meeting the employment, residential, shopping, culture, service, and entertainment needs of the broadest range of the region's population; and

WHEREAS, the Seattle Comprehensive Plan has as a Policy (P11) to: Regulate uses at street-level in certain areas in order to generate pedestrian interest and activity in conformance with policies for the pedestrian environment. Promote street-level uses to reinforce existing retail concentrations, enhance main pedestrian links between areas, and generate new pedestrian activity where appropriate to meet area objectives without diluting existing concentrations of retail activity. Promote active and accessible uses at the street-level of new development where it is important to maintain the continuity of retail activity. Consider measures to promote street-level space of adequate size and sufficient flexibility to accommodate a variety of retail and service activities. Encourage incorporation, as appropriate, of street

-level uses as part of open space public amenity features provided for a floor area bonus to promote activity and increase public use of these spaces. To encourage active and accessible street-level uses throughout Downtown, consider appropriate exemptions of these uses from floor area limits; and

WHEREAS, the Land Use Code amendments proposed in this ordinance would expand opportunities for new businesses to occupy vacant street-level spaces Downtown, consistent with and in furtherance of Comprehensive Plan goals and policies; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council finds and declares that:

A. On February 29, 2020, Governor Inslee proclaimed a State of Emergency for all counties throughout the State of Washington as a result of the confirmed person-to-person spread of COVID-19 in Washington State.

B. The COVID-19 disease, caused by a coronavirus that spreads easily from person to person and which may cause serious injury and death, has spread throughout King County and the City of Seattle.

C. On March 3, 2020, Mayor Durkan issued a Proclamation of Civil Emergency declaring a civil emergency within the City of Seattle based on the confirmed spread of COVID-19 in King County and resulting deaths.

D. In recognition of the danger that hospitals may become overwhelmed with COVID-19 patients unless the spread of the disease is slowed, on March 23, 2020, Governor Inslee imposed a stay-home order throughout Washington State prohibiting all people in the State from leaving their homes or participating in gatherings with only limited exceptions for participating in essential activities or essential business services. While the order initially was for a term of two weeks, the Governor has issued numerous subsequent orders in 2020 and in 2021 limiting business and economic activity to prevent the further spread of the coronavirus and maintain hospital capacity for people with severe cases of COVID-19.

E. Pursuant to the Governor's Orders, all businesses except essential businesses were forced to close or operate virtually for much of the last 18 months.

F. While many citizens have obtained COVID-19 vaccinations in the first two quarters of 2021 and while most COVID-19 occupancy restrictions were lifted on June 30, 2021, the rapid spread of the Delta variant of the coronavirus may require renewed occupancy limitations.

G. Limitations on business and economic activity over the last 18 months have disproportionately impacted businesses at street-level in downtown and in South Lake Union, which are acutely impacted by the lack of office workers in these neighborhoods as well as the lack of tourists and conventions. This impact has and continues to deprive these businesses of the customers previously available to support them, and this extended period of closure and significantly reduced capacity has resulted in numerous street level businesses downtown unable financially to continue to operate at reduced levels and with such a reduced customer base. The Downtown Seattle Association conducted a count in 2021 and found 161 vacant storefronts downtown. The South Lake Union Chamber has identified 23 business closures during the pandemic, for which there has only been a partial recovery.

H. The changes in this ordinance are designed to allow more types of businesses to be located at street-level downtown, thereby increasing the opportunities to fill those spaces and generate income and activity downtown. This is especially important given the length of time that the State shutdown order has been in place because much in-person business activity continues to be limited.

I. Providing regulatory flexibility for street-level businesses will keep more businesses operating and speed the economic recovery once COVID-19 restrictions are lifted.

J. The City Council determines that the foregoing creates a basis for adopting interim regulations under RCW 36.70A.390 which authorizes adoption of the ordinance without a required pre-adoption public hearing and a SEPA threshold determination. Following the standard process would delay the proposed changes for

several months. During that period, for the reasons discussed above, more businesses may fail leading to increased unemployment and continued lack of potential customers, workers, and visitors downtown. Both continued closure of businesses and continued lack of customers, workers and visitors downtown will delay the City's and region's recovery from the COVID-19 emergency.

K. The City has legal authority to establish interim measures pursuant to the authority granted by Article 11, Section 11 of the Washington Constitution, the Growth Management Act, RCW 36.70A.390, and *Matson v. Clark County*, 79 Wn. App. 641 (1995).

Section 2. A new Section 23.42.041 is added to the Seattle Municipal Code as follows:

23.42.041 Additional interim street-level uses

Where street-level uses are required in any SM-SLU zone, except Valley Street between Fairview Avenue North and Westlake Avenue North, or downtown zone, except in the International Special Review District, the interim uses set forth in this Section 23.42.041 are allowed in addition to uses allowed by the zone for an interim period according to the provisions of this Section 23.42.041.

A. Eligibility. In order to qualify for an interim street-level use, an applicant must demonstrate the following:

1. The Department had issued a certificate of occupancy for the structure prior to the effective date of this ordinance.

2. The applicant submits a complete application for interim street-level use within 12 months after the effective date of this ordinance.

3. Structures with existing permit conditions, or development standard limitations related to street-level uses for floor area ratio pursuant to Section 23.49.011 or bonus floor area achieved for general sales and service uses pursuant to Sections 23.49.012 and 23.49.013 may use interim street level use(s) pursuant to this Section 23.42.041 and will not require additional developer contributions.

4. The space may return to the previously established use at the property owner's or applicant's option, consistent with Section 23.42.108.

5. Notwithstanding the expiration of the interim regulations, an approval for interim street-level uses or a permit that is issued or approved for issuance prior to the expiration of the interim regulations can continue as a non-conforming use consistent with Sections 23.42.100 through 23.42.110.

6. Except for uses that are prohibited pursuant to Section 23.66.122 and subsection 23.66.130.E, interim street-level uses permitted pursuant to this Section 23.42.041 in the Pioneer Square Preservation District shall be approved pursuant to Subchapter II of Chapter 23.66 and the following:

- a. Street-level for the purposes of application of this subsection 23.42.041.A.6 means a story or stories located within 8 feet measured horizontally above or below street-level.
- b. No office use may occupy more than 30 feet of the street-level, street-facing facade of a structure, except that no office use may occupy more than 90 feet of street-level, street-façade of a structure in the PSM 85-120 zone south of King Street and west of 1st Avenue South.
- c. The Director of the Department of Neighborhoods may, following a special review of potential impacts, including, but not limited to, the scale and character of the pedestrian environment, administratively approve uses at the street level if the impacts of such uses are not significantly adverse. The Director may also impose conditions to mitigate the impacts of approved uses.
- d. The Director of Neighborhoods shall make the decision about allowing similar uses set forth at subsection 23.42.041.B.1.1.

B. Permitted uses

1. In addition to the street-level uses permitted by the applicable zone, the following uses are permitted:
 - a. Arts facilities, including art installations, that do not conflict with Chapter 23.55;
 - b. Shower facilities for bicycle commuters accessory to office uses;

- c. Food processing and craft work;
- d. Horticultural uses;
- e. Institutions, except hospitals or major institutions;
- f. Lobbies, gyms, meeting rooms, shared working spaces, and other similarly active accessory uses;
- g. Medical services;
- h. Museums;
- i. Public parks;
- j. Public restrooms;
- k. Sales and services, non-household and heavy commercial, except heavy commercial sales;
- l. Light Manufacturing;
- m. Any similar use or activity that is determined by the Director to have the likelihood of attracting and increasing pedestrian activity in the area such as extending the duration of activity beyond 8 A.M. to 5 P.M. Monday to Friday or increasing the variety of goods and services available.

2. The Director shall require the most active portions of uses allowed by subsection 23.42.041.B, such as lobbies, waiting areas, and retail sales, to abut the street-facing facade along street frontages where street-level uses are required by the zone.

Section 3. Table A for Section 23.76.004 of the Seattle Municipal Code, which section was last amended by Ordinance 126042, is amended as follows:

23.76.004 Land use decision framework

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Table
A for
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<p>Director's and Hearing Examiner's Decisions Requiring Master Use Permits TYPE I Director's Decision (Administrative review through land use interpretation as allowed by Section 23.88.020²)</p>	<p>Application of development standards for decisions</p>
<p>*</p>	<p>Uses permitted outright</p>
<p>*</p>	<p>Temporary uses, four weeks or less</p>
<p>*</p>	<p>Renewals of temporary uses, except for temporary uses for construction</p>
<p>*</p>	<p>Intermittent uses</p>

*	Additional interim street-level uses pursuant to Section 23.49.008.H
*	Uses on vacant or underused lots pursuant to Section 23.49.008.H
*	Transitional encampment interim use
*	Certain street uses
*	Lot boundary adjustments
*	Modifications of features bonused under Title 24
*	Determinations of significance (EIS required) except on historic and cultural preservation
*	Temporary uses for relocation of police and fire stations
*	Exemptions from right-of-way improvement requirements
*	Special accommodation
*	Reasonable accommodation
*	Minor amendment to a Major Phased Development Permit
*	Determination of whether an amendment to a proper minor
*	Streamlined design review decisions pursuant to Section 23.49.008.H if no development standard departures are requested, and design review decision if no development standard departures are requested
*	Shoreline special use approvals that are not part of a
*	Adjustments to major institution boundaries pursuant to
*	Determination that a project is consistent with a plan
*	Decision to approve, condition, or deny, based on Section 23.49.008.H be consistent with a planned action ordinance
*	Decision to increase the maximum height for residential use pursuant to subsection 23.49.008.H
*	Decision to increase the maximum allowable FAR in subsection 23.49.011.A.2.n
*	Minor revisions to an issued and unexpired MUP that
*	Building height increase for minor communication use
*	Other Type I decisions that are identified as such in
	* * *

Section 4. Section 23.76.006 the Seattle Municipal Code, last amended by Ordinance 126042, is amended as follows:

23.76.006 Master Use Permits required

A. Type I, II, and III decisions are components of Master Use Permits. Master Use Permits are required

for all projects requiring one or more of these decisions.

B. The following decisions are Type I:

1. Determination that a proposal complies with development standards;
2. Establishment or change of use for uses permitted outright, uses allowed under Section 23.42.038, temporary relocation of police and fire stations for 24 months or less, transitional encampment interim use, temporary uses for four weeks or less not otherwise permitted in the zone, and renewals of temporary uses for up to six months, except temporary uses and facilities for light rail transit facility construction;
3. The following street use approvals:
 - a. Curb cut for access to parking, whether associated with a development proposal or not;
 - b. Concept approval of street improvements associated with a development proposal, such as additional on-street parking, street landscaping, curbs and gutters, street drainage, sidewalks, and paving;
 - c. Structural building overhangs associated with a development proposal;
 - d. Areaways associated with a development proposal;
4. Lot boundary adjustments;
5. Modification of the following features bonused under Title 24:
 - a. Plazas;
 - b. Shopping plazas;
 - c. Arcades;
 - d. Shopping arcades; and
 - e. Voluntary building setbacks;
6. Determinations of Significance (determination that an Environmental Impact Statement is required) for Master Use Permits and for building, demolition, grading, and other construction permits

(supplemental procedures for environmental review are established in Chapter 25.05, Environmental Policies and Procedures), except for Determinations of Significance based solely on historic and cultural preservation;

7. Discretionary exceptions for certain business signs authorized by subsection 23.55.042.D;

8. Waiver or modification of required right-of-way improvements;

9. Special accommodation pursuant to Section 23.44.015;

10. Reasonable accommodation;

11. Minor amendment to Major Phased Development Permit;

12. Streamlined design review decisions pursuant to Section 23.41.018 if no development standard departures are requested pursuant to Section 23.41.012, and design review decisions in an MPC zone if no development standard departures are requested pursuant to Section 23.41.012;

13. Shoreline special use approvals that are not part of a shoreline substantial development permit;

14. Determination that a project is consistent with a planned action ordinance, except as provided in subsection 23.76.006.C;

15. Decision to approve, condition, or deny, based on SEPA policies, a permit for a project determined to be consistent with a planned action ordinance;

16. Determination of requirements according to subsections 23.58B.025.A.3.a, 23.58B.025.A.3.b, 23.58B.025.A.3.c, 23.58C.030.A.2.a, 23.58C.030.A.2.b, and 23.58C.030.A.2.c;

17. Decision to increase the maximum height of a structure in the DOC2 500/300-550 zone according to subsection 23.49.008.F;

18. Decision to increase the maximum FAR of a structure in the DOC2 500/300-550 zone according to subsection 23.49.011.A.2.n;

19. Minor revisions to an issued and unexpired MUP that was subject to design review, pursuant to subsection 23.41.008.G;

20. Building height departures for minor communication facilities in downtown zones, pursuant to Section 23.57.013; ((and))

21. Additional interim street-level uses pursuant to Section 23.42.041; and

22. Other Type I decisions.

* * *

Section 5. Pursuant to RCW 36.70A.390, on August 11, 2021, the Council held a public hearing to take public testimony and consider adopting further findings.

Section 6. Under RCW 36.70A.390, the Council approves the following work plan for the development of permanent regulations to address the issues in this ordinance and directs the Seattle Department of Construction and Inspections, in consultation with the Office of Planning and Community Development, and the Department of Neighborhoods, to transmit proposed legislation to the Council by March 2022. Interim regulations can be authorized up to one year if accompanied by a work plan. The work plan is set forth below:

WORK PLAN:

Prepare State Environmental Policy Act (SEPA) Review on Interim Regulations	July - September 2021
Publish SEPA Threshold Determination	September 2021
Conduct analysis, Draft permanent legislation, Conduct public outreach, and Prepare SEPA review on Permanent Regulations	October - December 2021
Mayor Transmits Permanent Legislation to Council	March 2022
Council Deliberations and Public Hearing on Proposed Permanent Legislation	April - May 2022
Permanent Legislation Effective	June 2022

Section 7. This ordinance shall automatically expire 12 months after its effective date unless the Council takes action to either extend it as provided by statute or terminate it sooner.

Section 8. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the invalidity

of its application to any person or circumstance, does not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 9. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)