

**CITY OF SEATTLE**  
**ORDINANCE** 127329  
**COUNCIL BILL** 121094

AN ORDINANCE relating to land use and zoning; prohibiting negative use restrictions that limit a property's use as a grocery store or pharmacy; adding a new Section 23.42.140 to the Seattle Municipal Code; amending Sections 23.90.004 and 23.90.018 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The City finds and declares:

A. Grocery stores and pharmacies provide essential goods and services necessary for the public health and safety of the people of Seattle.

B. Grocery stores and pharmacies operate with thin profit margins and face numerous impediments to remaining open, including but not limited to the rising cost of goods and labor, tariffs, theft, and increasing competition with online shopping.

C. Multiple grocery stores in the City have recently closed or announced closures, including a Whole Foods Market on Capitol Hill and a Fred Meyer in the Lake City neighborhood.

D. Multiple pharmacies in the City have closed or have been announced for closure in the past year, including a Rite Aid in Wedgwood and a Bartell Drugs in University Village.

E. The closing of a single grocery store or pharmacy increases the risk that convenient access to essential goods and services may no longer be available or become more difficult for hundreds of people.

1 F. Lack of a grocery store or pharmacy located in close proximity to someone’s work,  
2 school, or home increases their risk of food insecurity and creates a barrier to acquiring needed  
3 medications.

4 G. The City’s Comprehensive Plan includes goals and policies which establish  
5 convenient access to grocery stores and pharmacies as a matter of public policy for the City,  
6 including but not limited to Policy GS 1.14, which directs the City to “support convenient access  
7 to healthful and culturally relevant food for all areas where people live by encouraging grocery  
8 stores, farmers’ markets, and community food gardens.”

9 H. Grocery store owners sometimes impose restrictive covenants or similar negative use  
10 restrictions limiting a property’s future use as a grocery store after they close a store and sell the  
11 property.<sup>1</sup> At least two covenants restricting a property’s future use as a grocery store have been  
12 recorded on properties in Seattle. These covenants limited the square footage of any future  
13 grocery store in that location for as long as 50 years.

14 I. Restrictive covenants prohibiting a property’s future use as a pharmacy are a common  
15 industry practice.<sup>2</sup>

16 J. Restrictions on using a property as a grocery store or pharmacy create unnecessary and  
17 anti-competitive barriers to providing essential goods and services for the people of Seattle.

18 K. A long-standing macroeconomic trend is major grocery store consolidation. Kroger  
19 and Albertsons announced a merger plan in 2022 that could have resulted in store closures  
20 throughout the Seattle area. Although this merger was ultimately blocked in 2024, five major

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<sup>1</sup> Leslie, Christopher R. “Anti-Grocery Covenants.” Reforming America’s Food Retail Markets Conference Compendium. June 2022. Page 106. [[https://law.yale.edu/sites/default/files/area/center/isp/documents/grocery-compendium\\_may2023.pdf](https://law.yale.edu/sites/default/files/area/center/isp/documents/grocery-compendium_may2023.pdf)]

<sup>2</sup> Leslie, Christopher R. “Pharmacy Deserts and Antitrust Law.” Boston University Law Review, Vol. 104:1593. [<https://www.bu.edu/bulawreview/files/2024/12/LESLIE.pdf>]

1 grocery store mergers or acquisitions were completed in the United States that year.<sup>3</sup> This  
2 indicates an industry trend of consolidation and a continuing risk of future closures due to  
3 mergers or acquisitions.

4 L. Fred Meyer is owned by Kroger, which owns two other grocery stores less than two  
5 miles from the Fred Meyer Lake City location. This suggests a potential financial interest for  
6 Kroger to impose a restrictive covenant on the Lake City Way property.

7 M. The Fred Meyer in the Lake City neighborhood is scheduled for closure in October.  
8 Kroger stated it is considering redeveloping or selling the property.<sup>4</sup>

9 N. The practice of imposing these restrictive covenants or similar negative use  
10 restrictions can result in grocery store and pharmacy deserts, where residents would lack  
11 convenient access to fresh, affordable, nutritious, and culturally relevant food and essential  
12 medicine.

13 O. Given the negative public health and safety impacts of grocery store and pharmacy  
14 deserts and the other harmful effects of negative use restrictions as outlined above, the ongoing  
15 pattern of industry consolidation, the recent closures of grocery stores and pharmacies in Seattle,  
16 and the imminent closure of at least one more grocery store in Seattle, the City Council  
17 determines that an exemption from conducting review under the Washington State  
18 Environmental Policy Act (SEPA) of the proposed ban on negative use restrictions is necessary  
19 under Seattle Municipal Code Section 25.05.880. The proposed ban must be implemented  
20 immediately or within a period too short for full compliance with Seattle Municipal Code  
21 Chapter 25.05 to prevent an imminent threat to public health and safety.

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<sup>3</sup> JLL. “Grocery Report 2025.” [https://www.jll.com/en-us/insights/market-perspectives/grocery-tracker]

<sup>4</sup> Roberts, Paul. “Despite talks, Kroger says 4 Seattle-area Fred Meyer stores will close.” *Seattle Times*, September 11, 2025. [https://www.seattletimes.com/business/despite-talks-kroger-says-4-seattle-area-fred-meyer-stores-will-close/]

1 P. Similarly, the City Council determines that the matters set forth in the foregoing  
2 findings create an emergency that justifies the adoption of the ordinance without a pre-adoption  
3 public hearing and making the ordinance immediately effective. Holding a public hearing (with  
4 30 days' notice) and following the normal timelines for the ordinance becoming effective (e.g.,  
5 after 30 days) would delay the proposed changes for over two months. During that period, it is  
6 likely that negative use restrictions could be imposed that would harm public health and safety,  
7 thus making emergency action necessary for the immediate preservation of public health and  
8 safety.

9 Q. Adopting this legislation as an interim ordinance addresses the need for immediate  
10 action as set forth in the preceding paragraphs. In addition, the City Council finds that it is  
11 appropriate for this interim ordinance to have a duration of one year to enable a work plan under  
12 which the Office of Planning and Community Development and Department of Construction and  
13 Inspections can undertake additional investigation and analysis to inform permanent legislation.  
14 The ongoing consolidation of the grocery and pharmacy industries as well as accelerating  
15 changes in national economic conditions warrant additional review of how negative use  
16 restrictions are being deployed by grocery and pharmacy chains both nationally and locally, to  
17 determine how permanent City regulations might appropriately contain different or additional  
18 measures in order to ensure the maximum effectiveness of such regulations in addressing the  
19 City's purposes as described above.

20 Section 2. A new Section 23.42.140 is added to the Seattle Municipal Code as follows:

21 **23.42.140 Negative use restrictions related to grocery stores and pharmacies**

22 A. The purpose of this Section 23.42.140 is to promote public health, safety, and welfare  
23 by prohibiting negative use restrictions that prohibit or restrict the use of real property as a

1 grocery store or pharmacy. Except in particular circumstances, these restrictions interfere with  
2 public health, safety, and welfare, are contrary to clearly established public policy, and are an  
3 anti-competitive barrier to providing essential goods and services to the people of the City.

4 B. For purposes of this Section 23.42.140:

5 “Drug store” means a business establishment (or portion thereof) in multipurpose  
6 retail sales use that includes a pharmacy.

7 “Pharmacy” means a use in which prescription medications are securely stored  
8 and sold.

9 “Retail center” means a multi-tenanted or multi-owner retail development with at  
10 least one shared common area and that is subject to common management or common control  
11 through one or more restrictive covenants or easements.

12 C. Except as set forth in subsection 23.42.140.D, a private agreement that imposes a  
13 negative use restriction upon real property so as to prohibit or restrict the use of such real  
14 property for a grocery store or pharmacy, when such use would otherwise be permitted under this  
15 Title 23, is against public policy, is prohibited, and shall be void and unenforceable. The  
16 prohibition applies regardless of whether the private agreement is incorporated in a contract, a  
17 deed restriction, a restrictive covenant, a lease or memorandum of lease, or any other recorded or  
18 unrecorded instrument. It shall be unlawful for any person to enter an agreement that is  
19 prohibited by this subsection 23.42.140.C or for any person who is the beneficiary of a negative  
20 use restriction imposed by such an agreement to allow such a restriction to remain or to refuse to  
21 release it. For purposes of this subsection 23.42.140.C,

22 1. Restricting the use of real property for a grocery store or pharmacy includes  
23 limiting the size of a grocery store or pharmacy; and

2. The prohibition in this subsection 23.42.140.C applies to negative use restrictions that prohibit or restrict the use of real property for a pharmacy alone and to negative use restrictions that prohibit or restrict the use of real property for a drug store.

D. Subsection 23.42.140.C does not apply to:

1. An agreement imposing a negative use restriction that became effective prior to the effective date of this ordinance;

2. An agreement that imposes a negative use restriction to prohibit or restrict use of real property for a grocery store or pharmacy after an owner or operator of a grocery store or pharmacy discontinues operations of such a store on the property for the purpose of relocating the grocery store or pharmacy, if the parties provide documentation establishing that:

a. When compared to the discontinued store, the relocated grocery store or pharmacy is similar in size or larger and similar in the scope of products sold;

b. The relocated grocery store or pharmacy is located within one-half mile of the discontinued site;

c. At the time of closure the owner or operator has a reasonably achievable written plan to ensure that commencement of operations of the relocated grocery store or pharmacy at the new site occurs within one year following the discontinued store's closure; and

d. The negative use restriction imposed on the prior site does not have a term in excess of three years from the date of closure; and

3. An agreement that imposes a negative use restriction to prohibit or restrict use of real property for a grocery store or pharmacy in order to limit competition or conflicting uses within the confines of a retail center by allowing only a limited number of grocery stores or pharmacies within said retail center; provided, however, that it shall be unlawful for any owner

1 or operator who discontinues grocery store or pharmacy use at a site within a retail center for a  
2 period exceeding one year to seek to enforce a negative use restriction prohibiting or restricting  
3 grocery store or pharmacy uses within the retail center.

4 E. Upon written request of an owner or operator and the requester's presentation of  
5 evidence establishing extenuating circumstances that demonstrate good cause for the extension,  
6 the Director may, by written determination, extend the distance limit in subsection  
7 23.42.140.D.2.b to no more than one mile; the time requirement in subsection 23.42.140.D.2.c;  
8 the term limit in subsection 23.42.140.D.2.d; or the time period in subsection 23.42.140.D.3, as  
9 any of them would apply to the requester. Factors to be considered in evaluating good cause  
10 include:

11 a. Maintaining or increasing food and medicine access in the surrounding  
12 area, including the area around the discontinued site;

13 b. Needs related to financing and construction for the new location; and

14 c. Promoting private investment in the surrounding area.

15 F. Enforcement

16 1. Any private agreement that imposes a negative use restriction upon real  
17 property in violation of subsection 23.42.140.C is null and void and of no lawful force and effect.

18 2. The City is authorized to enforce this Section 23.42.140 using the procedures of  
19 Chapter 23.90.

20 3. Notwithstanding any contrary provision in this Title 23, and regardless of  
21 whether the City uses the procedures of Chapter 23.90, the City may enforce this Section  
22 23.42.140 through a cause of action in a court of competent jurisdiction including declaratory

relief, injunctive relief, or other legal or equitable remedy as appropriate to carry out the purpose and intent of this Section 23.42.140.

Section 3. Section 23.90.004 of the Seattle Municipal Code, last amended by Ordinance 118409, is amended as follows:

**23.90.004 Duty to enforce((=))**

\* \* \*

D. It is the intent of this Land Use Code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this Code; provided that, for purposes of Section 23.42.140, it is the intent of this Land Use Code to place the obligation of compliance upon the foregoing persons and also upon any person that enters an agreement that is prohibited by Section 23.42.140 and upon any person with the authority to release or remove a negative use restriction imposed by such an agreement.

\* \* \*

Section 4. Section 23.90.018 of the Seattle Municipal Code, last amended by Ordinance 127211, is amended as follows:

**23.90.018 Civil enforcement proceedings and penalties**

\* \* \*

**B. Specific violations**

1. Violations of Section 23.71.018 are subject to penalty in the amount specified in subsection 23.71.018.H.

2. Violation of Chapter 23.58D with respect to a failure to timely submit the report required by subsection 23.58D.004.B or to demonstrate compliance with a commitment to



meet the green building standard is subject to a penalty in an amount determined by subsection 23.58D.006.

3. Violation of subsection 23.40.007.B with respect to failure to demonstrate compliance with a waste diversion plan for a structure permitted to be demolished under subsection 23.40.006.D is subject to a penalty in an amount determined as follows:

$$P = SF \times .02 \times RDR,$$

Where:

P is the penalty;

SF is the square footage of the structure for which the demolition permit was issued; and

RDR is the refuse disposal rate, which is the per ton rate established in Chapter 21.40, and in effect on the date the penalty accrues, for the deposit of refuse at City recycling and disposal stations by the largest class of vehicles.

4. Violation of subsections 23.42.140.C, 23.55.030.E.3.a.3, 23.55.030.E.3.b, 23.55.034.D.2.a, and 23.55.036.D.3.b, or, if the Seattle Department of Construction and Inspections has issued an on-premises sign permit for a particular sign and the actual sign is not being used for on-premises purposes or does not meet the definition of an on-premises sign as defined in Chapter 23.84A, are subject to a civil penalty of \$1,500 per day for each violation from the date the violation begins until compliance is achieved.

C. Civil actions to enforce this Title 23 shall be brought exclusively in Seattle Municipal Court except for violations of Section 23.42.140, or of violations of permit terms related to Chapter 23.58C or as otherwise required by law or court rule. The Director shall request in writing that the City Attorney take enforcement action. The City Attorney shall, with the

1 assistance of the Director, take appropriate action to enforce this Title 23. In any civil action filed  
2 pursuant to this Chapter 23.90, the City has the burden of proving by a preponderance of the  
3 evidence that a violation exists or existed. The issuance of the notice of violation or of an order  
4 following a review by the Director is not itself evidence that a violation exists.

5 D. Except in cases of violations of Section 23.42.140, or of violations of Chapter 23.58D  
6 with respect to failure to demonstrate compliance with a commitment to meet the green building  
7 standard or satisfy alternative standards, the violator may show as full or partial mitigation of  
8 liability:

9 1. That the violation giving rise to the action was caused by the willful act, or  
10 neglect, or abuse of another; or

11 2. That correction of the violation was commenced promptly upon receipt of the  
12 notice thereof, but that full compliance within the time specified was prevented by inability to  
13 obtain necessary materials or labor, inability to gain access to the subject structure, or other  
14 condition or circumstance beyond the control of the defendant.

15 \* \* \*

16 Section 5. The interim development regulations set forth in this ordinance shall be in  
17 effect for a period of one year from the effective date of this ordinance and shall automatically  
18 expire after the one-year period unless the same is extended as provided by statute, or unless  
19 terminated sooner by the City Council.

20 Section 6. Pursuant to RCW 36.70A.390, the Council will hold a public hearing within 60  
21 days of adoption of this ordinance to take public testimony and to consider adopting further  
22 findings.

Section 7. 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 Office of Planning and Community Development to transmit proposed legislation to the Council for adoption after resolution of any appeals under SEPA.

OPCD and SDCI undertakes investigation and analysis to inform permanent legislation	Fall of 2025 through Winter of 2026
Mayor Transmits permanent legislation to Council	Anticipated April 2026
Council considers and approves permanent legislation	Anticipated May through August 2026
Permanent Controls Effective	Anticipated September 2026

Section 8. Based on the authority of RCW 36.70A.390 and the findings of Section 1 of this ordinance, the public hearing requirement of Section 23.76.062 of the Seattle Municipal Code is waived for the adoption of this ordinance.

Section 9. The City may renew these interim regulations for one or more six-month periods in accordance with RCW 36.70A.390.

Section 10. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, 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 11. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the protection of the public health, safety, and welfare.

Section 12. By reason of the findings set out in this ordinance, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon a passage by a 3/4 vote of the Council, and its approval by the Mayor, as provided in Article IV, subsection 1.I of the Charter of the City.

Passed by a 3/4 vote of all the members of the City Council the 28th day of October, 2025, and signed by me in open session in authentication of its passage this 28th day of October, 2025.



President \_\_\_\_\_ of the City Council

☒ Approved / ☐ returned unsigned / ☐ vetoed this 29th day of October, 2025.



Bruce A. Harrell, Mayor

Filed by me this 29th day of October, 2025.



Scheereen Dedman, City Clerk

(Seal)