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Title: Use of King County Right-of-way for restaurant, personal services or retail use in response to COVID-19

Keywords: special use permit; right-of-way; COVID-19; Safe Start; outdoor business activities

Sponsoring Agency: Department of Local Services



King County

KING COUNTY EXECUTIVE ORDER REGARDING ISSUANCE OF SPECIAL USE PERMITS, TO UTILIZE KING COUNTY RIGHT-OF-WAY FOR RESTAURANT, PERSONAL SERVICES OR RETAIL USE; PURSUANT TO K.C.C. 12.52.030.C.10 AND THE MARCH 1, 2020 PROCLAMATION OF EMERGENCY

WHEREAS, on February 29, 2020, Washington State Governor Jay Inslee issued Proclamation Number 20-05 proclaiming a State of Emergency for all counties in the state of Washington as a result of the coronavirus disease 2019 (“COVID-19”) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State.

WHEREAS, on March 1, 2020, I issued a Proclamation of Emergency in response to the significant health emergency caused COVID-19. The March 1, 2020 Proclamation of Emergency continues to remain in full force and effect. The March 1, 2020 Proclamation of Emergency authorized me to take measures to “... relieve loss, hardship and suffering.” In the Order authorized by the March 1, 2020 Proclamation of Emergency, I reserved the right to issue such further orders as authorized by K.C.C. chapter 12.52 as may be necessary to respond to the emergency proclaimed in Section 2 of the March 1, 2020 Proclamation of Emergency.

WHEREAS, on March 23, 2020, Governor Inslee issued Proclamation 20-25, known as the Stay Home - Stay Healthy order, which responded to the continued worldwide spread of COVID-19, its significant progression in Washington state and the high risk it poses to vulnerable populations, by requiring that all non-essential businesses in Washington state cease operations effective midnight on March 25, 2020, allowing restaurants and food services to operate only delivery or take-away services, limiting retail to those providing essential goods and prohibiting personal services after that date.

WHEREAS, Governor Inslee adjusted and extended the Stay Home - Stay Healthy order through Proclamation 20-25.1, which was issued on April 24, 2020, and Proclamation 20-25.2, which was issued on April 27, 2020.

WHEREAS, the closures and limitations imposed on businesses, including restaurants, personal services and retail services that have resulted from the state of Washington's response to the COVID-19 pandemic have caused significant disruptions and economic losses to local business owners and employees in King County.

WHEREAS, on May 4, 2020, Governor Inslee issued Proclamation 20-25.3, which adjusted and extended the Stay Home, Stay Healthy order and initiated a four-phase approach to reopen businesses and activities in Washington State.

WHEREAS, on June 1, 2020, Governor Inslee issued Proclamation 20-25.4, as amended by Proclamations 20-25.5 and 20-25.6 and any future proclamations, known as the Safe Start - Stay Healthy ("Safe Start") plan, which provided for county-by-county movement through the four phases of reopening based on public health guidelines.

WHEREAS, on June 3, 2020, King County submitted a plan to allow for limited opening of businesses in a modified phase one of the Safe Start plan.

WHEREAS, on June 5, 2020, the Washington state Department of Health accepted King County's modified phase one plan.

WHEREAS, on June 15, 2020, King County submitted a plan to allow for the county to move to phase two of the Safe Start plan.

WHEREAS, on June 19, 2020, the Washington state Department of Health accepted King County's phase two plan.

WHEREAS, the phase two plan allows restaurants and food services to operate indoor seating at fifty percent of normal capacity and outdoor seating at fifty percent of outdoor capacity, with all tables and chairs maintaining six feet of distance, and with additional or new outdoor seating allowed subject to maintaining six feet of distance between tables and chairs and receiving needed permits.

WHEREAS, the Safe Start plan anticipates that restaurants and food services could operate up to seventy-five percent of indoor seating when King County enters phase three and full operations when King County enters phase four.

WHEREAS, the phase two plan allows non-essential retail services to operate at thirty percent of capacity.

WHEREAS, the Safe Start plan anticipates that nonessential retail services could begin moving toward full operations with some limitations when King County enters phase three and full operations when King County enters phase four.

WHEREAS, the phase two plan allows personal services to operate at fifty percent of capacity, with the exception of one to one services in an enclosed room.

WHEREAS, the Safe Start plan anticipates that personal services could begin moving toward full operations with some limitations when King County enters phase three and full operations when King County enters phase four.

WHEREAS, the ability to operate existing or new outdoor seating, personal services or retail activities could have a significant positive impact on the viability of restaurants and retail services as King County moves through the phased reopening process.

WHEREAS, on June 23, 2020, the King County Council adopted Motion 15645 requesting the Executive to allow restaurants, personal services and retail services in unincorporated areas of King County to use private parking areas, other private property and adjacent sidewalks, alleys or other right-of-way for additional or new outdoor seating or retail use during the county's movement through phases two and three of the Safe Start plan and to waive permit fees.

WHEREAS, Motion 15645 also requests the Executive to consider proposals prepared by community or business organizations for neighborhood or business district-wide, or portion thereof, outdoor commercial activities.

WHEREAS, Motion 15645 also requests the Executive to prepare any legislation or executive order necessary to implement these provisions.

WHEREAS, pursuant to the authority set forth in King County Code chapters 2.56 and 12.52 and Chapter 38.52 RCW, the procedures and formalities otherwise required by the County by law or ordinance necessary for the protection of life and property and to ensure the health, safety, and welfare of the community may be waived.

WHEREAS, it is necessary and appropriate to exercise the emergency powers authorized by King County Code chapters 2.56 and 12.52 during the state of local emergency to facilitate and encourage outdoor business areas to make restaurants, personal services, and retail uses safer to operate and to promote needed economic and business recovery in the County.

WHEREAS, the Order set forth below is a further order authorized in Section 3 of the March 1, 2020 Proclamation of Emergency.

NOW, THEREFORE, I Dow Constantine, King County Executive, do hereby order and direct:

SECTION 1: EMERGENCY POWERS

A. On March 1, 2020, I issued a Proclamation of Emergency that found that an emergency exists requiring and authorizing me to exercise the emergency powers vested in me as King County Executive by RCW chapter 38.52, and King County Code chapters 2.56 and 12.52 and authorized me to issue orders may be necessary to respond to the emergency proclaimed in the March 1, 2020 Proclamation of Emergency, as described in this Order; and

B. Effective upon my signing this Order, I authorize the acts described in this Order which are necessary to the management of the emergency described in the March 1, 2020 Proclamation of Emergency.

SECTION 2: ORDER

A. Pursuant to the authority set forth in K.C.C. 12.52.030.C.10 and the March 1, 2020 Proclamation of Emergency, I hereby order the following.

1. Subject to the terms hereof, this Emergency Order grants temporary permission, upon issuance of a special use permit, to utilize King County rights-of-ways for restaurant, personal services or retail use. Special use permits for the use of the right-of-way shall only be issued for rights-of-way, including sidewalks, alleys, and streets, that are directly abutting the parcel where the business is located. Special use permits may be issued to individuals, businesses, community or business organizations for business districts, or portions thereof, or specific geographic areas having unified interests within the County for outdoor restaurant, personal services and retail use.

2. Special use permits for the uses authorized in this Executive Order shall, at a minimum, require the following:

a. An application for a special use permit for the temporary use of right-of-way shall include a sketch or diagram of the portion of the right-of-way whose use will be authorized by the special use permit ("Permitted Area").

b. An applicant for a special use permit for the temporary use of right-of-way shall be required to maintain insurance with appropriate liability coverage consistent with the requirements of the permit and the scale of the proposed use;

c. A special use permit for the temporary use of right-of-way shall include a condition that the permittee agrees to indemnify and hold harmless King County against liability for all claims, demands, suits and judgements which is caused by, arises out of, or is incidental to the uses authorized by the special use permit.

d. A special use permit for the temporary use of right-of-way shall include a condition that any items placed in the right-of-way shall be removed at the end of each day.

e. A special use permit for the temporary use of right-of-way shall include a condition that the permittee agrees that the County is not responsible or liable for any damage to private property placed within the Permitted Area.

f. A special use permit for the temporary use of right-of-way shall include a condition that the permittee shall clean and remove all debris from the Permitted Area on a daily basis.

g. A special use permit for the temporary use of right-of-way shall include a condition that the permittee shall restore the Permitted Area, after completion of the permitted use, to a condition which is equivalent in all respects to the condition of the Permitted Area prior to issuance of the special use permit, including repair at the permittee's sole cost and expense of any damaged to the sidewalk, curbs, roadway, surface, or subsurface.

h. A special use permit for the temporary use of the right-of-way shall ensure that any full road-closure allows for emergency vehicle access, as appropriate.

i. A special use permit for the temporary use of the right-of-way may be revoked pursuant to King County Code Title 23.

j. An application for a special use permit for the temporary use of right-of-way shall set forth measures that ensure the safety of pedestrians, vehicular traffic, employees, and customers utilizing the Permitted Area.

k. An application for a special use permit for the temporary use of right-of-way shall set forth measures that ensure adequate pedestrian pathways within the Permitted Area that meet applicable Americans with Disabilities Act requirements.

l. An application for a special use permit for the temporary use of right-of-way shall set forth measures to ensure access to public utilities, bus stops, and crosswalks.

m. An application for a special use permit for the temporary use of right-of-way shall describe signage that will be used to delineate the Permitted Area.

n. An application for a special use permit for the temporary use of the right-of-way shall set forth measures to protect and not alter the roadway infrastructure, such as storm drains, signage, and pavement markings.

o. An application for a special use permit for the temporary use of right-of-way shall be reviewed, and conditioned as appropriate, by the Permitting Division of the Department of Local Services ("Permitting") to ensure compliance with applicable critical areas; shoreline; and building, fire and other life/safety regulatory requirements.

3. Subject to the terms hereof, this Emergency Order grants temporary permission to utilize privately-owned outdoor areas, including parking areas, for restaurant, personal services

or retail use, including use of temporary tents or shelters, upon review by Permitting of applicable critical areas, shoreline, fire, life/safety and Americans with Disabilities Act requirements. No additional permits for use of these outdoor areas are required except as noted in subsection 10 of this section. Parking places reserved for disabled persons on a business' premise are not available for temporary restaurant, personal services or retail uses. The outdoor uses authorized in this Executive Order shall occur on the same parcel as the business, unless authorized by a Temporary Use Permit under K.C.C. chapter 21A.32 on adjacent properties and with written permission from the property owner, and shall not occur within required landscaped areas, critical areas, or critical area buffers.

4. Any person or entity who utilizes County rights-of-way or privately-owned outdoor areas for restaurant, personal services and retail use as authorized under this Executive Order shall comply with all terms, conditions and requirements of this Executive Order.

5. The outdoor uses authorized in this Executive Order are limited to those existing restaurant, personal services and retail uses already allowed or permitted under K.C.C. 21A.08.050 and 21A.08.070 in applicable zoning districts as of the date set forth below unless authorized by a Temporary Use Permit under K.C.C. chapter 21A.32. Outdoor use of privately-owned property without regularly required permits under this Executive Order shall not vest such outdoor use nor establish such outdoor use as legally nonconforming.

6. Marijuana retail uses are excluded from the authorizations in this Executive Order.

7. The terms, conditions and requirements for utilization of the County rights-of-way and privately-owned outdoor areas for restaurant, personal services and retail use during phase two, as authorized under this Executive Order, include but are not limited to the following unless otherwise directed by the State or King County:

- a. Indoor capacity limited to fifty percent of building occupancy.
- b. All indoor and outdoor seating must be spaced at least six feet apart, except to the extent that appropriate partitioning is in place.
- c. All employees shall wear a face covering when working, except when working alone or when the job involves no in-person interaction.
- d. It is strongly encouraged to test your workforce for COVID-19.
- e. It is required to use disposable paper menus for single use or provide a visible menu board.

- f. Provide easily accessible sanitizer for patrons and employees.
 - g. It is strongly encouraged to implement contactless ordering and payment processes.
 - h. All restaurants are encouraged to use a reservation process to prevent capacity issues. Restaurants using sidewalks or temporary street closures are strongly encouraged to use a reservation process to prevent patrons from congregating while waiting for table service or take-out orders.
 - i. All individuals shall wear a face covering anytime they are not eating and drinking while seated at the table.
 - j. Limit contact with dining guests by reducing the number of visits wait staff make to each table.
 - k. Any waiting areas, such as for take-out orders, must also adhere to the six-foot spacing distance. All businesses with waiting areas are encouraged to mark off the six-foot spacing.
 - l. No employer may operate, allow a customer to enter a business, conduct business or employ employees unless it meets applicable COVID-19 directives.
8. The terms, conditions and requirements for utilization of the County rights-of-way and privately-owned outdoor areas for restaurant, personal services and retail use during phase three, as authorized under this Executive Order, include the requirements set forth above for phase two, modified as follows unless otherwise directed by the State or King County:
- a. Guest occupancy must be seventy-five percent of maximum building occupancy or lower as determined by the fire code. Outdoor seating is permitted but must also be at seventy-five percent capacity.
 - b. All indoor and outdoor seating shall be spaced at least six feet apart measured from back of chair to back of chair.
 - c. Outdoor seating does not count toward the building occupancy limit, including use of any on street or private off-street parking areas for restaurant, personal services and retail use.

9. Pursuant to K.C.C. 14.30.060 and 27.02.040.A.7 and the emergency powers authorized in this Executive Order, fees for special use permits under K.C.C. Title 14 and review by Permitting for the uses authorized in this Executive Order are waived.

10. Nothing in this Emergency Order shall be construed to authorize the waiver of any other King County Code requirements, and all such other Code provisions and laws shall remain in full force and effect. Any use of County rights-of-way or privately-owned outdoor areas for restaurant, personal services and retail uses pursuant to this Order shall comply with all applicable critical areas; shoreline; and building, fire and other life/safety regulatory requirements.

11. Permission to utilize County rights-of-way for restaurant, personal services and retail uses under the terms, conditions and requirements of this Executive Order, is at the sole and absolute discretion of the County. Such permission may be withdrawn by the County at any time, including upon a finding by the County of a violation of this Executive Order, or to comply with proclamations and/or orders issued by the Governor. Notwithstanding any provision in this Order to the contrary, the County reserves the right to restrict or prohibit the use of County rights-of-way for restaurant, personal services and retail use otherwise permitted by this Order if the County determines such use endangers the public health, safety, or welfare, at the County's sole and absolute discretion.

12. This Emergency Order may be enforced by Public Health – Seattle & King County, the fire marshal, the manager of the real estate services section of the Department of Executive Services or the director of the Department of Local Services, or their designees, pursuant to King County Code Title 23. In addition, pursuant to Chapter 38.52 RCW and K.C.C. Title 23, a violation of this Order is a misdemeanor.

13. Outdoor uses allowed by this order must still meet applicable state licensing requirements, including Washington State Liquor and Cannabis Board (WSLCB) requirements as updated for COVID-19. King County shall expedite local review of WSLCB notices regarding applications for adding or expanding outside liquor service during phase two and phase three in unincorporated King County.

SECTION 3: NOTICE

A. A copy of this Order and any orders(s) issued hereunder shall be filed with the Clerk of the Council by no later than 10:00 a.m. on the second business day after issuance. To the extent practicable, a copy of this Order and all emergency orders issued hereunder shall be delivered to all news media within King County and made available to the general public.

SECTION 4: EXPIRATION AND TERMINATION

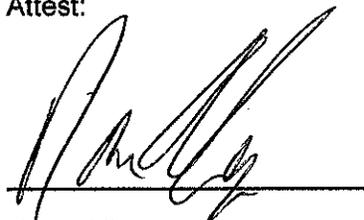
A. This Order shall expire when King County enters phase four of the Safe Start plan or otherwise allows restaurants, personal services and retail services to return to normal operations, whichever comes first, unless terminated sooner by order of the Executive or action by the County Council by motion, or extended by County Council by motion.

Dated and effective this 13 day of July, 2020



Dow Constantine
King County Executive

Attest:



Norm Alberg
Director, Records and Licensing Services Division, Department of Executive Services

