



STAFF REPORT

DATE: October 29, 2020

TO: Mayor Robinson and Members of the City Council

FROM: Liz Stead, Land Use Director, 452-2725
Matthews Jackson, Neighborhood Dev. Planning Manager, 452-2729
Trisna Tanus, Consulting Attorney, 452-2970
Development Services Department

SUBJECT: Public Hearing on Ordinance No. 6530 imposing an interim official control tolling time limitations for certain active Temporary Use Permits and suspending the restriction for application of certain successive Temporary Use Permits; providing for severability; and establishing an effective date. File No. 20-119913-AD.

On October 12, the City Council adopted an interim official control Ordinance to quickly respond to and provide relief for applicants for and holders of Temporary Use Permits. A copy of Ordinance No. 6530 is provided as Attachment A. The City Council will be holding a public hearing on the interim official control on November 16, within 60 days of the enactment of the Ordinance as required by the Growth Management Act (GMA).

I. BACKGROUND

The interim official control is intended to quickly respond to and provide relief for applicants for and holders of Temporary Use Permits who rely on these permits to resume and operate businesses and services. This interim official control tolls the time duration for active Temporary Use Permits and suspends the restriction for application of successive permits, when these permits are related to mitigating the impacts of COVID-19 and Safe Start Washington.

COVID-19 and Safe Start Washington

On February 29, Governor Inslee signed a Proclamation declaring a State of Emergency exists in all counties in the State of Washington due to the worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission, which significantly impacts the life and health of residents of the State of Washington, as well as the state economy. After several months under a Stay Home – Stay Healthy Order, in May 2020, the Governor implemented a county-based four-phased reopening plan called Safe Start Washington.

On June 19, King County was approved to move to Phase 2 of Safe Start Washington, which allowed certain businesses to open and activities to take place, so long as they operated following social distancing and other health and safety requirements. On July 28, the Governor indefinitely paused counties progressing in the reopening phases under the state's Safe Start Washington plan due to the continued rise of cases and spread of coronavirus statewide. The practical implications of this pause was that restaurants, retail stores, educational facilities, religious services, and other businesses and services were required to limit their activities to a percentage of full capacities.

Temporary Use Permits

A Temporary Use Permit, Land Use Code (LUC) Part 20.30M, is a mechanism by which the City may permit a use to locate within the City on an interim basis without requiring full compliance with the development standards of the land use district or by which the City may permit seasonal or transient uses not otherwise permitted. Generally, per LUC 20.30M.145, a Temporary Use Permit is valid for up to 90 calendar days from the effective date of the permit. A property owner or other holder of a Temporary Use Permit may not apply for a successive Temporary Use Permit for 30 days following the expiration of an approved permit for that property per LUC 20.30M.150.

The City has issued Temporary Use Permits for restaurants, retail stores, and entertainment companies to operate in outdoor parking lots and other spaces, in order to increase their overall capacities while remaining in compliance with Safe Start Washington's social distancing and other health and safety requirements. Additionally, the City has received inquiries and expects to receive applications for temporary uses for portable structures from educational institutions, as well as comparable inquiries and applications from healthcare providers for drive-in or drive-through medical services.

With the long duration of Safe Start Washington, compounded by the indefinite pause in the ability for Washington counties to progress in the reopening phases, active Temporary Use Permits as well as any new permits will expire prior to King County completing Safe Start Washington. Also, a permit holder with an expiring Temporary Use Permit will not be able to maintain continuous operations due to the restriction on successive applications.

The interim official control provides relief for applicants for and holders of Temporary Use Permits who rely on these permits to operate their businesses and services. For Temporary Use Permits related to mitigating the impacts of COVID-19 and Safe Start Washington, the Ordinance tolls the time limitation for active permits and suspends the restriction for applications of successive permits until King County completes Safe Start Washington. In essence, permit holders will still have the full duration of their permits remaining and be able to apply for successive permits as needed to adjust to new circumstances at the end of Safe Start Washington.

II. REVIEW PROCESS

Notice and a public hearing are not necessary prior to adoption of an interim official control, to allow for the regulations to be put in place quickly. However, a public hearing must be held within 60 days of its adoption. In addition, the Growth Management Act, RCW 36.70A.390, states that this interim official control may be effective for six (6) months, and if necessary, may be renewed for one or more six (6) months periods if a subsequent public hearing is held and findings of fact are made prior to each successive renewal.

The adoption of the interim official control quickly responds to and provides relief for applicants for and holders of Temporary Use Permits impacted by the COVID-19 pandemic and Safe Start Washington. The public hearing scheduled for November 16 is necessary for the interim official control to remain in place.

III. PUBLIC ENGAGEMENT

Required Public Notice

The notice required for City Council Legislative Actions is governed by the terms of LUC sections 20.35.415 through 20.35.450. Notice of the Public Hearing scheduled for November 16, and availability of this staff report, was published in the Weekly Permit Bulletin on October 29, 2020, and in the Seattle Times on November 2, 2020. Both notices were also provided to members of the EBCC, and others who have subscribed to receive these notices or previously provided written comments on the interim official control.

Department of Commerce Notice

Pursuant to the Washington State Growth Management Act, proposed amendments to the Land Use Code must be sent to the Washington State Department of Commerce. A copy of the required transmittal to the Department of Commerce, including a copy of the proposed amendments, was transmitted on October 26, 2020, and is available for review in the code amendment file.

IV. DECISION CRITERIA

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the Land Use Code. Those criteria, and the relationship of these proposed amendment to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

Finding: The City of Bellevue has adopted several policies that support tolling time limitations for certain active Temporary Use Permits and suspending the restriction for application of certain successive Temporary Use Permits:

Economic Development Goal: To support a strong local economy with opportunities for all to prosper consistent with a high quality of life and a sustainable natural environment.

Policy ED-5. Develop and maintain regulations that allow for continued economic growth while respecting the environment and quality of life of city neighborhoods.

Policy ED-6. Strive to provide an efficient, streamlined, timely, predictable and customer-focused permit processes, conducted in a manner that integrates multiple city departments into a coordinated entity, recognizing the role of development in creating places for economic activity.

Policy ED-21. Support economic development in the city's commercial areas.

Land Use Goal: To develop and maintain a land use pattern that protects natural systems and retains trees and open space; maintains and strengthens the vitality, quality and character of Bellevue's neighborhoods; and focuses development activity in Downtown and other commercial and residential centers.

Policy LU-12. Promote maintenance and establishment of small-scale activity areas within neighborhoods that encourage pedestrian patronage and provide informal opportunities for residents to meet.

Policy LU-17. Maintain areas for shopping centers designed to serve neighborhoods, recognizing their multiple roles: serving residents' needs, acting as community gathering places, and helping to establish neighborhood identity.

Policy LU-29. Help communities to maintain their local, distinctive neighborhood character, while recognizing that some neighborhoods may evolve.

Neighborhoods Goal: To maintain and enhance the high quality of life in Bellevue's distinctive neighborhoods.

Policy N-1. Maintain neighborhoods as safe and welcoming environments for everyone to enjoy.

Policy N-9. Preserve and develop distinctive neighborhood character within Bellevue's diverse neighborhoods.

When Council adopted the interim official control on October 12, Council expressed a strong interest to quickly respond to and provide relief for applicants for and holders of Temporary Use Permits who rely on these permits to resume and operate businesses and services. The interim official control supports many Comprehensive Plan policies by tolling the time limitation for active Temporary Use Permits and suspending the restriction for application of successive permits, thereby supporting these applicants and permit holders during the COVID-19 pandemic and Safe Start Washington. At the same time, this interim official control will help to mitigate decreased tax revenues, underutilized properties and businesses, and short and long-term impacts associated with suspended activities and closed businesses.

B. The amendment enhances the public health, safety or welfare; and

Finding: The amendment will enhance the public health, safety and welfare of people by quickly responding to and providing relief for applicants for and holders of Temporary Use Permits who rely on these permits to resume and operate businesses and services. The amendment will apply to Temporary Use Permits impacted by COVID-19 and Safe Start Washington. The amendment will also help to mitigate decreased tax revenues, underutilized properties and businesses, and short and long-term impacts associated with suspended activities and closed businesses.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Finding: The amendment is not contrary to the interests of citizens and property owners as it will quickly respond to and provide relief for applicants for and holders of Temporary Use Permits who rely on these permits to resume and operate businesses and services. This amendment will toll the time duration for active Temporary Use

Permits and suspend the restriction for application of successive permits, when these permits are related to mitigating the impacts of COVID-19 and Safe Start Washington.

V. STATE ENVIRONMENTAL POLICY ACT

The Environmental Coordinator for the City of Bellevue has determined that this Interim Official Control amending the text of the Land Use Code is Categorically Exempt from the Threshold Determination requirements of the State Environmental Policy Act pursuant to the terms of WAC 197-11-800(19).

VI. RECOMMENDATION

The City Council adopted Ordinance No. 6530 imposing an Interim Official Control tolling time limitations for certain active Temporary Use Permits and suspending the restriction for application of certain successive Temporary Use Permits. Staff has concluded that the interim official control is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC.

ATTACHMENTS

Attachment A – Ordinance No. 6530

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6530

AN ORDINANCE imposing an interim official control tolling time limitations for certain active Temporary Use Permits and suspending the restriction for application of certain successive Temporary Use Permits; providing for severability; and establishing an effective date.

WHEREAS, on February 29, 2020, Governor Inslee signed a Proclamation declaring a State of Emergency exists in all counties in the State of Washington due to the worldwide outbreak of the novel coronavirus (COVID-19) and the effects of its extreme risk of person-to-person transmission, which significantly impacts the life and health of Washington's people, as well as the economy; and

WHEREAS, on March 3, 2020, the Mayor of the City of Bellevue, pursuant to the authority granted by Bellevue City Code (BCC) 9.22.010, proclaimed that a civil emergency exists within the City of Bellevue due to the outbreak of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared a state of worldwide pandemic due to COVID-19; and

WHEREAS, on March 13, 2020, President Trump declared a national emergency due to the COVID-19 virus; and

WHEREAS, in May 2020, Governor Inslee implemented a county-based four-phased reopening plan, Safe Start Washington, that allowed for flexibility and local control to address COVID-19 activity, subject to state Department of Health review and approval of county applications to move to a new phase; and

WHEREAS, on June 19, 2020, King County was approved to move to Phase 2 of Safe Start Washington, which allowed certain businesses to open and activities to take place, with appropriate social distancing and other health and safety requirements; and

WHEREAS, on July 28, 2020, Governor Inslee indefinitely paused counties progressing in the reopening phases under the state's Safe Start Washington plan due to the continued rise of cases and spread of coronavirus statewide; and

WHEREAS, the Bellevue City Council has adopted regulations to permit a use to locate within the City on an interim basis without requiring full compliance with the development standards of the land use district or by which the City may permit seasonal or transient uses not otherwise permitted through a Temporary Use Permit, Land Use Code (LUC) Part 20.30M; and

WHEREAS, the Bellevue City Council adopted regulations establishing limitations for the duration of issued Temporary Use Permits under LUC 20.30M.145; and

WHEREAS, the Bellevue City Council adopted regulations establishing restrictions on applications for successive Temporary Use Permits under LUC 20.30M.150; and

WHEREAS, while King County has been under Safe Start Washington, the City has issued Temporary Use Permits to permit temporary uses for certain businesses and services impacted by the limitations of Safe Start Washington to resume and operate, while following social distancing and other health and safety requirements; and

WHEREAS, under the current Temporary Use Permit provisions in the LUC, these issued Temporary Use Permits will expire after 90 days and cannot be renewed immediately, even during the time period that King County remains under Safe Start Washington; and

WHEREAS, if these Temporary Use Permits expire and successive permits cannot be obtained, permit holders operating these businesses and services may not be able to continue their operations, even though permit holders are still impacted by the limitations of Safe Start Washington and may be in financial and economic jeopardy; and

WHEREAS, allowing these Temporary Use Permits to expire and restricting any successive permits may expose the City to adverse consequences, including decreased tax revenues, underutilized properties and businesses, and the short and long-term impacts associated with suspended and closed businesses and services; and

WHEREAS, the City Council has a compelling interest in protecting the health and safety of all of its residents, and finds it necessary to provide relief to applicants for and holders of Temporary Use Permits who are impacted by the current COVID-19 pandemic and Safe Start Washington; and

WHEREAS, the City Council has a compelling interest in tolling limitations on the duration of active Temporary Use Permits and suspending the provisions in the current LUC related to applications for successive Temporary Use Permits when these permits are related to mitigating the impacts of COVID-19 and Safe Start Washington; and

WHEREAS, the City Council adopts the foregoing as its findings of fact justifying adoption of this Ordinance; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. Tolling of Time Limitation for Certain Active Temporary Use Permits. While Washington State's Safe Start Washington plan is in place for King County, the time limitation for the effective duration set forth in LUC 20.30M.145 shall be tolled for active Temporary Use Permits that are related to mitigating the impacts of COVID-19 and Safe Start Washington. The time limitation shall begin on the first calendar day after King County has completed all phases of Safe Start Washington.

Section 2. Suspension of Restriction for Applications of Certain Successive Temporary Use Permits. While Washington State's Safe Start Washington plan is in place for King County, the restriction set forth in LUC 20.30M.150 shall be suspended for applications of successive Temporary Use Permits related to mitigating the impacts of COVID-19 and Safe Start Washington. The restriction to apply for a successive Temporary Use Permit shall resume 30 days after King County has completed all phases of Safe Start Washington.

Section 3. Duration and Scope of Interim Official Control. Pursuant to RCW 36.70A.390, this Interim Official Control is to be in effect for a period of six months. This Interim Official Control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

Section 4. Public Hearing. Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing on this Interim Official Control within sixty (60) days of its adoption, so as to hear and consider public comment and testimony regarding this Interim Official Control. Following such hearing, the City Council may adopt additional findings of fact, and may extend the Interim Official Control for a period up to an additional six (6) months. The City Council may adopt additional six (6) month extensions after any required public hearing, pursuant to RCW 36.70A.390.

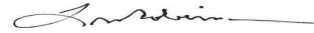
Section 5. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 6. Effective Date. This Ordinance shall take effect and be in force five (5) days after adoption and legal publication.

Section 7. Findings of Fact. The findings contained in this Ordinance are hereby adopted as Findings of Fact to justify adoption of this Interim Official Control.

Passed by the City Council this 12th day of OCTOBER, 2020 and signed in authentication of its passage this 12th day of OCTOBER, 2020.

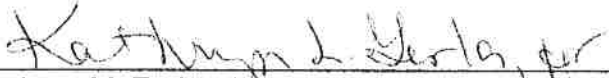
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Lynne Robinson, Mayor


Approved as to form:

Kathryn L. Gerla, City Attorney



Matthew McFarland, Assistant City Attorney

Attest:



Charmaine Arredondo, City Clerk

Published:

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