

**ORDINANCE NO. 2909**

AN ORDINANCE OF THE CITY OF ISSAQUAH, WASHINGTON, ADOPTING AN INTERIM ZONING REGULATION ALLOWING THE TEMPORARY USE OF PARKING LOTS, SIDEWALKS, AND PUBLIC RIGHTS-OF-WAY, TO SUPPORT BUSINESSES DURING THE SAFE START WASHINGTON PHASED REOPENING; SUSPENDING THE OPERATION OF CERTAIN PROVISIONS OF THE ISSAQUAH MUNICIPAL CODE DURING THE EFFECTIVE PERIOD OF THE INTERIM ZONING REGULATION; ESTABLISHING A PERMIT PROCESS FOR SUCH TEMPORARY USES, SETTING THE DATE FOR A PUBLIC HEARING; DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the COVID-19 outbreak has led Governor Inslee, King County Executive Constantine, President Trump, and Mayor Pauly to declare a state of emergency and to prescribe restrictive measures on personal interaction in order to slow the spread of the virus; and

WHEREAS, the restrictions imposed by Governor Inslee’s “Stay Home Stay Healthy” Proclamation 20-25 have had a devastating impact on small businesses and the regional economy; and

WHEREAS, the Stay Home Stay Health order ended on May 31st and moved to Safe Start – Washington’s Phased Reopening which provides for a careful approach to emerging from the pandemic by allowing more businesses and activities to re-open in phases with adequate social distancing measures and health standards in place to minimize the health impacts of COVID-19; and

WHEREAS, Phased Reopening began in King County on June 5, 2020, after the Washington State Department of Health accepted King County’s plan to allow for limited openings of recreational, social and business activities in a modified Phase 1 of the Governor Jay Inslee's Safe Start plan; and

WHEREAS, King County has now applied to move to Phase 2 of the Safe Start plan; and

WHEREAS, under Washington state guidance, restaurants, personal service providers and retail operations are now allowed to begin on-site service with reduced occupancy limits; and

WHEREAS, if small businesses cannot reopen with enough outdoor space to offset the occupancy lost to limits on the use of indoor spaces, some businesses may not be able to reopen or may be forced to close permanently; and

WHEREAS, the Administration has recommended that use of private parking lot, sidewalk and right-of-way spaces be allowed in order to fulfill the primary space needs of businesses to reopen consistent with phased reopening requirements and in a manner that is economically feasible; and

WHEREAS, the City of Issaquah's zoning and permitting requirements for the use of parking lots, sidewalks and rights-of-way has been identified as an obstacle to the timely use of these spaces; and

WHEREAS, a clear and expeditious permitting path has been identified as necessary to support Issaquah's struggling small businesses; and

WHEREAS, RCW 36.70A.390 and RCW 35A.63.220 authorize the City to adopt interim regulations as long as a public hearing on the interim regulations is held within sixty days of adoption and as long as such regulations are effective for no more than six months unless further extended; and

WHEREAS, the Issaquah City Council has considered the recommendations of the Administration and has determined to enact interim regulations for the reasons set forth in this Ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF ISSAQUAH, WASHINGTON, TO ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as the Issaquah City Council's findings justifying the actions taken in this ordinance. The Issaquah City Council reserves the right to adopt additional findings in support of its actions after the public hearing required by Section 5 below is completed.

Section 2. Suspension of Current Zoning and Permitting Requirements. The following sections of the Issaquah Municipal Code (IMC) are hereby superseded and suspended for the period during which the interim regulations set forth in Section 3 are in effect to the extent they are inconsistent with the interim regulations: Chapter 3.64 IMC (but only as to fees related to permits suspended by this ordinance), IMC 12.05.040, IMC 18.09.030(G), IMC 18.09.040, and IMC 18.07.570.

Section 3. Interim Regulations Related to Temporary Use of Parking Lots, Sidewalks, and Public Rights-of-Way. The following interim regulations shall apply to the temporary use of parking lots, sidewalks, and public rights-of-way:

A. The Department of Development Services shall offer an over-the-counter temporary use permit for businesses to use private parking lots, public sidewalks, and other public right-of-way on a temporary basis in order to expand seating or other business capacity during the Safe Start Phased Reopening. The form of the permit application shall be approved by the City Administrator or his or her designee and shall contain the following information:

1. The name, address and telephone number of the applicant;
2. A description of the current use of the space;
3. A description of the intended use of the space;
4. The dates and times of the intended use of the space;
5. A description of the specific area to be used;
6. The name, address, and telephone number of the space to be used (if private);
7. A description of proposed lighting;
8. The number of tables/chairs to be located in the space;
9. Any planned use of tents, canopies or other coverings;
10. If the space is privately owned, evidence of the permission of the owner;
11. If alcoholic beverages are to be served in the space, evidence of permission received from the Liquor and Cannabis Board (LCB), together with a copy of permit or conditions imposed by the LCB;
12. A signed indemnity agreement in a form approved by the City (if the used is proposed to be on a sidewalk or public right-of-way);
13. An insurance certificate evidencing general liability insurance in an amount deemed sufficient by the City Administrator if the proposed use is on public property. The City shall be named as an additional insured.
14. Proposed signage.

B. The Department of Development Services shall issue the temporary use permit with the following criteria as conditions of approval and to note the conditions on the application and the permit:

1. The application must be complete;

2. The proposed use must meet fire code and electrical code, and;
3. The business proposing the use must have a current City of Issaquah business license;
4. The location of the use on the sidewalk and near the store front must be consistent with barrier-free regulations, including ADA access requirements;
5. The temporary use must be allowed in the zoning district pursuant to the Table of Permitted Land Uses in IMC 18.06.130;
6. No permanent fencing, walls, or other structures are proposed which would hinder removal of the use or structure from the site;
7. The use is located where safe ingress and egress from the street can be provided, including a clear sight area adjacent to the street;
8. The use can be operated safely on the in the proposed space;
9. Appropriate provisions have been made for health and sanitation, including access to water, sewer, and garbage pick-up; and
10. No damage will be done to public property by allowing the use.

C. No fee shall be charged for the temporary use permits issued under these regulations.

D. The Department of Development Services may impose reasonable conditions in order to ensure that the criteria for approval are met and will continue to be met by the businesses who are issued temporary permits under these regulations.

E. The City reserves the right to revoke any temporary use permit issued under these regulations if any the applicant violates any of the provisions of subsection 3.B in conducting the approved use on the property. The City also reserves the right to revoke any temporary use

permit for misrepresentation by an applicant, or if the use is operated in an unsafe manner or is operated in violation of City codes or any state, federal, or local regulation.

F. Upon expiration or repeal of the regulations approved by this ordinance all permits issued hereunder shall automatically expire, and all public and private property for which a permit has been issued under these regulations shall be returned to its pre-permit condition and use. The intent of these regulations is to provide relief to small businesses as they reopen under the Safe Start provisions and the Issaquah City Council may repeal these regulations at any time that the Council determines to be appropriate.

Section 4. Interim Nature of Regulations – Limit of Applicability. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the regulations adopted in Sections 2 of this ordinance are interim land use regulations. The regulations shall be in effect for a period of six months from the date this ordinance is effective and shall thereafter expire unless the same are extended as provided by law or unless more permanent regulations are adopted.

Section 5. Public Hearing. The Issaquah City Council shall hold a public hearing on the interim regulations adopted by Sections 2 above on July 20, 2020 at 7:00 p.m. or as soon thereafter as the matter may be heard, in the Issaquah City Council Chambers, provided, that in the event an in-person meeting is prohibited by proclamation of the Governor, the Mayor, or other appropriate legal authority, the hearing may be held virtually using the then-current protocols for conducting remote Issaquah City Council meetings and hearings. Notice of the hearing shall be published in the City's official newspaper or such other newspaper as the City may be using temporarily in the manner provided for Level 6 Land Use Code Amendment hearings by the City Council.

Section 6. Transmittal to Department of Commerce. Pursuant to RCW 36.70A.106, a copy of this ordinance shall be transmitted to the Washington State Department of Commerce as provided by law.

Section 7. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance, the interim regulations, or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance, the interim regulations, or its application to any other person or situation.

Section 8. Declaration of Emergency – Immediate Effective Date. For the reasons set forth in this ordinance and in the emergency proclamations of Governor Inslee, King County Executive Constantine, Mayor Pauly, and President Trump, the Issaquah City Council finds and declares that a public emergency exists due to the outbreak of COVID-19 that makes this ordinance necessary for the immediate protection of the public health, public safety, public property, and public peace. This ordinance, having been declared an emergency and having received the affirmative votes of at least a majority plus one of the whole membership of the City Council, is not subject to referendum and shall become effective immediately upon adoption. The City Clerk shall publish this ordinance or a summary thereof in the ordinary course of business.

Passed by the City Council of the City of Issaquah this 22nd day of June, 2020.

Approved by the Mayor of the City of Issaquah this 22nd day of June, 2020.

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*Mary Lou Pauly*  
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MARY LOU PAULY, MAYOR

ATTEST/AUTHENTICATED

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CHRISTINE L. EGGERS, CITY CLERK

APPROVED AS TO FORM:

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JAMES E. HANEY, CITY ATTORNEY

PUBLISHED: June 26, 2020  
EFFECTIVE DATE: June 22, 2020  
ORDINANCE NO.: 2909