



King County

Metropolitan King County Council Committee of the Whole

STAFF REPORT

Agenda Item:	10	Name:	Mary Bourguignon
Proposed No.:	2020-0208	Date:	June 16, 2020

SUBJECT

Proposed Motion 2020-0208 would ask the Executive to allow restaurants and retail services in unincorporated King County flexibility to provide outdoor dining or retail services in addition to what is allowed indoors during the phased reopening plan.

SUMMARY

Governor Inslee's Safe Start Plan provides for county by county movement through a four-phase reopening plan. On June 5, 2020, King County received approval to move to a modified Phase 1 (referred to as Phase 1.5) of the Safe Start Plan. Phase 1.5 allows for additional outdoor recreation and some limited fitness activities; additional construction, manufacturing, personal and professional services; social gatherings outdoors of five or fewer people; and additional restaurant and retail services.

For restaurants, Phase 1.5 allows indoor dining at 25 percent and outdoor dining at 50 percent of capacity, with tables and chairs at least six feet apart. Additional or new outdoor dining is permitted if tables and chairs maintain six-foot distance.

For in-store retail, Phase 1.5 allows up to 15 percent occupancy (not including staff), with indoor services limited to 30 minutes. Stores must also take several safety precautions to minimize contact between customers and with store staff.

For both restaurants and retail, many of the requirements for Phase 1.5 are the same as those for Phase 2. See Attachments 1 and 2 for the Phase 2 requirements.

Because the reopening requirements are based on the understanding that outdoor activities are less likely to promote the spread of COVID-19, Proposed Motion 2020-0208 requests that the Executive provide flexibility to unincorporated area restaurants and retail services to provide new or additional outdoor dining or retail opportunities, either on their own property or on adjacent sidewalks, alleys, or right-of-way, in addition to what is allowed indoors, with no additional permits or fees.

This additional flexibility would sunset when King County enters Phase 4 of the Safe Start plan or otherwise allows restaurants and retail services to return to normal operations, whichever comes first.

BACKGROUND

Safe Start Plan. Governor Inslee's Safe Start plan, which was released on June 1, 2020,¹ provides for county by county movement through a four-phase reopening plan. Each phase allows for more commercial and social activity, with movement through the phases based on each county's level of COVID-19 cases, as well as each county's ability to test, track, and treat incidences of COVID-19.

Allowed activities for each phase cover high-risk populations, recreation, social and spiritual gatherings, travel, and business/employers.

Summary of Allowed Activities for Each Phase²

WASHINGTON'S PHASED APPROACH Modifying Physical Distancing Measures as we Reopen the State				
INDIVIDUALS AND BUSINESSES SHOULD FOLLOW ALL REQUIREMENTS LISTED ABOVE DURING ALL PHASES				
	1 Phase 1	2 Phase 2	3 Phase 3	4 Phase 4
High-Risk Populations*	Continue to Stay Home, Stay Healthy	Continue to Stay Home, Stay Healthy	Continue to Stay Home, Stay Healthy	Resume public interactions, with physical distancing
Recreation	Some outdoor recreation (hunting, fishing, golf, boating, hiking)	Outdoor recreation involving 5 or fewer people outside your household (camping, beaches, etc.)	<ul style="list-style-type: none">- Outdoor group rec. sports activities (50 or fewer people)- Recreational facilities at <50% capacity (gyms, public pools, etc.)- Professional sports without audience participation (horseracing, baseball, etc.)	Resume all recreational activity
Gatherings (social, spiritual)	<ul style="list-style-type: none">- None- Drive-in spiritual service with one household per vehicle	Gather with no more than 5 people outside your household per week	Allow gatherings with no more than 50 people	Allow gatherings with >50 people
Travel	Essential travel and limited non-essential travel for Phase I permissible activities	Essential travel and limited non-essential travel for Phase I & II permissible activities	Resume non-essential travel	Continue non-essential travel
Business/Employers	<ul style="list-style-type: none">- Essential businesses open- Existing construction that meets agreed upon criteria- Landscaping- Auto/RV/boat/ORV sales- Retail (curb-side pick-up orders only)- Car washes- Pet walkers	<ul style="list-style-type: none">- Remaining manufacturing- Additional construction phases- In-home/domestic services (nannies, housecleaning, etc.)- Retail (in-store purchases allowed with restrictions)- Real estate- Professional services/office-based businesses (telework remains strongly encouraged)- Hair and nail salons/barbers- Pet grooming- Restaurants/taverns <50% capacity table size no larger than 5 (no bar-area seating)	<ul style="list-style-type: none">- Restaurants/taverns <75% capacity/ table size no larger than 10- Bar areas in restaurant/taverns at <25% capacity- Movie theaters at <50% capacity- Customer-facing government services (telework remains strongly encouraged)- Libraries- Museums- All other business activities not yet listed except for nightclubs and events with greater than 50 people	<ul style="list-style-type: none">- Nightclubs- Concert venues- Large sporting events- Resume unrestricted staffing of worksites, but continue to practice physical distancing and good hygiene

* High-risk populations are currently defined by CDC as: persons 65 years of age and older; people of all ages with underlying medical conditions (particularly not well controlled), including people with chronic lung disease or moderate to severe asthma, people who have serious heart conditions, people who are immunocompromised, people with severe obesity, people with diabetes, people with chronic kidney disease undergoing dialysis, and people with liver disease; people who live in a nursing home or long-term care facility.

Source: Office of Governor Inslee

Phase 1.5. On June 5, 2020, King County received approval from the Washington State Department of Health to move to a modified Phase 1 (also referred to as Phase 1.5) of the Governor's Safe Start Plan.

Phase 1.5 allows for many of the permitted activities in Phase 2, but with more stringent capacity limits, particularly for indoor activities. Phase 1.5 allows for additional outdoor recreation and some limited fitness activities; additional construction, manufacturing,

¹ Proclamation 20-25.4

² <https://www.governor.wa.gov/news-media/chart-washingtons-phased-approach>

personal and professional services; social gatherings outdoors of five or fewer people; and additional restaurant and retail services.

Summary of Allowed Activities in Modified Phase 1 (Phase 1.5)³

Activity Area	Limits and Requirements
Outdoor recreation	All activities may operate subject to Phase 2 guidance, part one, two , and three .
Fitness	All outdoor activities may operate subject to Phase 2 guidance , which limits the occupants to no more than five people outside of a household (excluding the instructor). Indoor fitness studios may operate subject to Phase 2 guidance but is limited to one on one activities only.
Social gatherings	Only allowed outdoors with five or fewer people outside the household.
Additional construction	All activities may operate subject to Phase 2 guidance .
Manufacturing operations	All activities may operate subject to Phase 2 guidance .
Real estate	All activities may operate subject to Phase 2 guidance with the exception that at no time may an office's occupancy be higher than 25% and indoor services are limited to 30 minutes.
In-home / domestic services	As outlined in Phase 2 guidance which has not yet been released by the State.
In-store retail	All non-essential retail activities may operate subject to Phase 2 guidance with the exception that at no time may an establishment's occupancy be higher than 15% and indoor services are limited to 30 minutes.
Personal services	All activities may operate subject to Phase 2 guidance with the exception that at no time may the number of customers be more than 25% the number capable of being served at any one time, or 1 person if it is a single bed/chair studio.
Professional services	All activities may operate subject to Phase 2 guidance with the exception that at no time may an establishment's occupancy be higher than 25% and indoor services are limited to 30 minutes.
Photography	All activities may operate subject to Phase 2 guidance .
Pet grooming	All activities may operate subject to Phase 2 guidance with the exception that at no time may an establishment's occupancy be higher than 25%.
Restaurants	All outdoor dining activities may operate subject to Phase 2 guidance at 50% outdoor capacity with all tables and chairs maintaining 6 feet of distance. Additional or new outdoor seating would be allowed subject to maintaining 6 feet of distance between tables and chairs, as well as receiving a city permit as is typically needed. All indoor dining services may operate subject to Phase 2 guidance with the exception that at no time may the number of customers be more than 25% of the tables provided such tables and chairs are more than 6 feet away from each other.

Source: Office of King County Executive Dow Constantine

Restaurants in Phase 1.5. As the chart summarizes, for restaurants, Phase 1.5 allows:

- Indoor dining at 25 percent of capacity, with tables and chairs more than six feet apart;
- Outdoor dining at 50 percent of capacity, with tables and chairs maintaining six-foot distancing; and

³ <https://kingcounty.gov/depts/health/covid-19/safe-start.aspx>

- Additional or new outdoor dining, with tables and chairs maintaining six-foot distancing.

Except for the capacity limit, the reopening requirements for Phase 1.5 follow those for Phase 2, which can be found as Attachment 1 to this staff report.

Retail in Phase 1.5. For non-essential in-store retail, Phase 1.5 allows up to 15 percent occupancy (not including staff), with indoor services limited to 30 minutes.⁴ Stores must arrange customer flow and mark high-traffic areas to maintain physical distancing, and erect sneeze guards or other barriers between cashiers and customers, or anywhere that employees and customers must come into close contact.

Except for the capacity limit, the reopening requirements for Phase 1.5 follow those for Phase 2, which can be found as Attachment 2 to this staff report.

Proposed Motion 2020-0208. Because the reopening restrictions for Phase 1.5 are based on the understanding that outdoor activities are less likely to promote the spread of COVID-19, Proposed Motion 2020-0208 requests that the Executive provide flexibility to unincorporated area restaurants and retail services to provide new or additional outdoor dining or retail opportunities.

Specifically the Proposed Motion would request that the Executive allow restaurants and retail services in unincorporated areas to use private parking areas, other private property and adjacent sidewalks, alleys or other right-of-way (ensuring steps are taken to ensure adequate pedestrian pathways in the right-of-way) for new or additional outdoor seating or retail use during the county's movement through Phases 1-3 of the Safe Start Plan, with no additional permits or fees required. The Proposed Motion asks the Executive to prepare any legislation or Executive order needed to implement this request.

The Proposed Motion also asks that, as King County moves to Phases 2 and 3 of the Safe Start Plan, the County's applications for those phases allow outdoor dining or retail to be in addition to the indoor limits imposed in those phases.

The additional flexibility requested by the Proposed Motion would sunset when King County enters Phase 4 of the Safe Start plan or otherwise allows restaurants and retail services to return to normal operations, whichever comes first.

ANALYSIS

Proposed Motion 2020-0208 is a request to the Executive to allow greater flexibility for restaurants and retail services in unincorporated King County. Although it would request the Executive to allow these uses without the need for additional permits or fees, it also asks the Executive to prepare any necessary legislation or Executive orders to implement the requested flexibility.

⁴ The Executive's Office notes that real estate, professional services, and in-store retail businesses will be directed to provide signage encouraging indoor visits to less than 30 minutes. At no time may face to face interactions last longer than 30 minutes.

Executive staff have indicated that existing land use and permitting requirements could allow restaurants and retail stores to temporarily use existing privately-owned outdoor spaces, such as parking lots or lawns, for outdoor dining or retail activities, provided that:

- There is no construction of new structures (except for tents under 400 square feet);
- There are no clearing or grading activities; and
- The business continues to provide emergency access lanes and ADA parking areas.

However, Executive staff have noted that current regulations would not allow for outdoor dining or retail activities in the public right-of-way without a permit. Executive staff pointed to four issues that would need to be addressed to use public right-of-way for commercial activities:

- **Safety.** There would need to be provisions made for emergency vehicles and fire access if all or a portion of the right-of-way is closed.
- **Americans with Disabilities Act.** Any closure of the right-of-way must allow for ADA-required access and accessibility with COVID-required social distancing.
- **Maintenance.** There would need to be provisions for the maintenance and protection of roadway structures and drainage features, litter pick-up and disposal, and barricades or signage to close the right-of-way.
- **Liability.** There would be potential liability issues if roads or other right-of-way areas are closed, which would need to be addressed.

Passage of Proposed Motion 2020-0208 would request the Executive to take the steps needed so that restaurants and retail services could expand outdoor operations without the need for permits or fees. It is unknown at this point how this request might be addressed, specifically:

- **Timing.** King County entered Phase 1.5 on June 5. It is not clear what the timeline will be for King County to move into Phases 2 and 3, meaning that it is not clear if King County will still be in Phase 1.5 by the time this Proposed Motion is acted on by Council and the Executive is able to address its request.
- **Cost.** The Proposed Motion requests that the Executive not charge fees to allow expanded outdoor dining or retail activities. If there are costs involved in reviewing requests for temporary expansion into the right-of-way, for erecting or maintaining barricades, or for addressing liability issues due to closures within the right-of-way, these costs would need to be covered. If permit fees do not cover these costs, it is unclear how they would be addressed.

Next steps. Adoption of Proposed Motion 2020-0208 would ask the Executive to take action to allow unincorporated area restaurants and retail services to expand their

outdoor activities. Specific next steps would depend on the Safe Start requirements that are in effect at that time.

INVITED

- John Taylor, Director, Department of Local Services

ATTACHMENTS

1. Proposed Motion 2020-0208
2. Phase 2 Restaurant/Tavern Reopening COVID-19 Requirements
3. Phase 2 Limited In-Store Retail Operations COVID-19 Requirements