City of Seattle
Gregory J. Nickels, Mayor

Department of Planning and Development
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: N/A

Applicant Name: Department of Planning and Development

Location of Proposal: The proposed amendment would apply in rights-of-way located adjacent to established food service establishments, but not within 25 feet of any lot in a single family or lowrise residential zone.

SUMMARY OF PROPOSED ACTION

The proposed action revises sections within Title 15 and Title 23 of the Seattle Municipal Code to consolidate within the Director of the Seattle Department of Transportation (SDOT) the authority to review and approve sidewalk cafés located in the right-of-way. Terms and conditions of sidewalk café permit approval are revised to establish location criteria, prohibit amplified sound, and require that structures associated with sidewalk cafés be certified by a registered design professional. The proposed action also updates SDOT's indemnity provisions to be in compliance with state and federal law.

The following approvals are required:

SEPA – Environmental Determination – Chapter 25.05, Seattle Municipal Code.

SEPA DETERMINATION: [ ] Exempt [X] DNS [ ] EIS

[ ] DNS with conditions

[ ] DNS involving non-exempt grading or demolitions or involving another agency with jurisdiction.

BACKGROUND

As part of Seattle's effort to enliven the streetscape in ways that complement existing public open space, sidewalk cafés are an appealing feature of a neighborhood business district. By providing activity and populating the public realm, they can enhance public safety and improve the quality of urban life.

Review of Seattle's procedures for authorizing sidewalk cafes associated with established adjacent businesses can be simplified with no significant loss of necessary oversight.

Site and Vicinity Description

Sidewalk cafés are currently allowed as an accessory use in all commercial zones, Seattle Mixed, and in lowrise multifamily zones with a Residential-Commercial designation.

Proposal Description

The proposed action amends the existing definition of *sidewalk café* within both Title 15, Street and Sidewalk Use, and Title 23, Land Use Code, to clarify that sidewalk cafés are associated with a *food-service establishment* as that term is used in Title 10, Health and Safety. The SDOT Director will have sole authority to review and approve sidewalk cafés located in the right-of-way. The proposed action will repeal both the Type I Master Use Permit requirement under Chapter 23.76 and the irregular requirement that sidewalk cafés follow Type II notice of application procedures. Existing Street Use Permit requirements will be augmented with the following new terms and conditions:

- The proposed sidewalk café area may not be located within 25 feet of a lot zoned RSL or SF, or a lot zoned L1, L2, L3 or L4 without an RC designation;
- No amplified sound will be permitted within a sidewalk café;
- In the event that the SDOT Director allows a platform or other structure in the right-of-way, the SDOT Director may also require its certification by a registered professional civil engineer or architect.

The proposed action updates SDOT's indemnity provisions to be in compliance with state and federal law. In conjunction with the proposed action, the SDOT Director will also prepare a Director's Rule with design guidelines to help applicants comply with existing Chapter 15.16 requirements regarding, but not limited to, safe pedestrian passage, ADA accessibility, hours and dates of use, lighting, and placement of furniture or equipment within the right-of-way. SDOT will also prepare a Client Assistance Memo based on DPD CAM 225 to help applicants navigate the new approval process.

Public Process

Amendments to the Land Use Code are Type V (Legislative) Land Use Decisions, which require a public hearing before Council. Notice of the Council hearing is provided at least 30 days prior the hearing in the following manner: inclusion in the Land Use Information Bulletin (LUIB),

posting in DPD's Public Resource Center, and publication in the City's official newspaper. Public testimony will be taken at the hearing. In addition, a DPD Director's Report and copies of the proposed legislation will be available for public review and comment at the Public Resource Center and on the Department's Web site during the 30-day review period prior to the Council hearing.

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated April 24, 2008. The information contained in the checklist, supplemental information provided by the applicant, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

Short-Term Impacts

As a non-project action, the proposed text amendments will not have any short-term impacts on the environment. Due to the general prohibition of permanent fixtures or the breaking of sidewalk surfaces, and their limitation to a portion of the existing right-of-way, it is unlikely that a new sidewalk café by itself will be subject to SEPA.

Long-Term Impacts

Seattle has permitted over 200 sidewalk cafés citywide. City policies support their proliferation, and reducing the cost and administrative burden of establishing new sidewalk cafés is likely to help achieve the desired effect. The proposed definition linking sidewalk cafés to food-service establishments under Title 10 rather than eating and drinking establishments under Title 23 means that a broader array of businesses will be eligible. The proposed location criterion reduces a 50 foot setback from adjacent residential lots that would have been required under Title 23 to 25 feet. This reduced setback and the expanded eligibility to establish a sidewalk café increases the likelihood that noise and commercial activity could disturb the quiet enjoyment of adjacent residences, but this increase is not expected to be significant.

Additional City resources in proportion to the greater number of sidewalk cafés are likely to be required for enforcing complaints over noise or encroachment on the right-of-way. Recent changes to noise regulations and to City enforcement procedures within the Department of Executive Administration were made partially in anticipation of increased responsibilities associated with increased urban vitality. The extent to which new sidewalk cafés will increase demand on public services is not expected to be significant.

DECISION - SEPA

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030.(2)(c).

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

Signature: (signature on file) Date: May 12, 2008
Bruce Rips, Senior Planner
Department Planning and Development