

**CITY OF MERCER ISLAND
ORDINANCE NO. 24C-07**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING TITLE 19 OF THE MERCER ISLAND CITY CODE TO ADOPT
INTERIM REGULATIONS RELATED TO (1) OUTDOOR SEATING FOR EATING
AND DRINKING ESTABLISHMENTS, AND (2) TEMPORARY USES AND
STRUCTURES; PROVIDING FOR SEVERABILITY; ADOPTING A WORK
PLAN; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the City of Mercer Island adopted Ordinance No. 20C-17 on August 4, 2020, enacting interim zoning and official controls to allow existing eating and drinking establishments to expand outdoor seating into available public and private space in order to provide safer dining conditions for patrons during the COVID-19 pandemic; and

WHEREAS, the City Council renewed the interim regulations for outdoor dining on February 16 under Ordinance Number 21C-03, July 6 under Ordinance Number 21C-16, and December 7, 2021 under Ordinance Number 21C-25, and June 20, 2024 under Ordinance Number 23C-09; and

WHEREAS, the City Council wishes to continue promoting local economic recovery and to make eating and drinking establishments safer to operate by leveraging available private and public space to be used as additional outdoor areas for eating and drinking; and

WHEREAS, the Washington State Liquor and Cannabis Board adopted permanent rules for outdoor alcohol service as amendments to WAC 314-03-200 on January 31, 2024, effective March 2, 2024; and

WHEREAS, the Mercer Island Country Club submitted an application for a Docket Request in fall of 2023 to consider allowing air-supported temporary structures as a temporary use; and

WHEREAS, the City of Mercer Island submitted an application for a Docket Request in fall of 2023 to consider establishing temporary use and structure provisions; and

WHEREAS, the City Council approved Resolution 1655 on December 5, 2023 docketing both the Mercer Island Country Club and the City of Mercer Island requests; and

WHEREAS, the City Council directed City Staff to draft interim regulations for temporary uses and structures and renew the interim regulations for outdoor dining at its April 2, 2024 regular business meeting; and

WHEREAS, City Staff drafted the necessary amendments to the MICC to achieve the City Council direction including a proposed new MICC 19.06.130, permitting temporary uses or structures on real property not owned by the City of Mercer Island referred to as "private property"; and

WHEREAS, the proposed amendments would benefit the public welfare by ensuring that temporary uses and structures on private property are regulated to allow socially beneficial temporary uses while placing conditions on other, more intense temporary uses; and

WHEREAS, the City is authorized under RCW 35A.63.220 and 36.70A.390 to pass an interim zoning and official control ordinance for up to one year, provided a work plan is developed for related studies providing for such a longer period; and

WHEREAS, the City Council held a public hearing on June 4, 2024 which satisfies the requirements of RCW 35A.63.220 and RCW 36.70A.390.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Whereas Clauses Adopted. The “Whereas Clauses” set forth in the recital of this Ordinance are hereby adopted as the preliminary findings and conclusions of the City Council for passing this ordinance.

Section 2. Amendment of MICC 19.06.050. MICC 19.06.050 is amended and adopted as shown in Exhibit A.

Section 3. Authorization to Use Private Parking Areas for Outdoor Dining. Subject to the provisions of this ordinance, the City grants temporary permission for existing eating and drinking establishments at Mercer Island to temporarily utilize private parking areas for outdoor food and beverage service, provided the private parking area is immediately adjacent to the eating and drinking establishment, and the following conditions are met:

- A. An eating and drinking establishment may provide food and beverage service in a private parking area only while this ordinance remains in effect.
- B. Use of any portion or percentage of private off-street parking areas for outdoor food and beverage service shall require the landlord’s / property owner’s approval. Nothing in this ordinance compels a landlord / property owner to permit a tenant to expand its business to the exterior.
- C. This ordinance authorizes only temporary use of private areas otherwise restricted for parking purposes. Nothing in this ordinance authorizes permanent improvements or interior expansions.

Section 4. Minimum Parking Regulations Waived. In order to effectuate the purpose of Section 3 above, but only to the extent necessary to so effectuate and under the terms and conditions set forth in this ordinance, minimum parking regulations normally applicable to eating and drinking establishments are waived to enable such uses to serve patrons in adjoining parking spaces for the duration of this ordinance.

Section 5. Amendment of MICC and Establishment of New Code Section 19.06.130. A new section MICC 19.06.130 is adopted as shown in Exhibit B.

Section 6. Amendment of MICC 19.15.030. MICC 19.15.030 is amended and adopted as shown in Exhibit C.

Section 7. Work Plan adopted. The Work Plan attached as Exhibit D is adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390 and indicates the City's plans for considering permanent regulations during the pendency of the interim regulations.

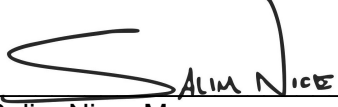
Section 8. Duration of Interim Zoning and Official Controls. The interim zoning and official controls approved by this ordinance shall continue in effect for an initial period of one year from the effective date, unless repealed, extended or modified by the City Council pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 9. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property, or circumstance.

Section 10. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five days after the date of publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AT ITS MEETING ON JUNE 4, 2024.

CITY OF MERCER ISLAND



Salim Nice, Mayor

Approved as to Form:

s/Bio Park

Bio Park, City Attorney

ATTEST:



Andrea Larson, City Clerk

Date of Publication: June 12, 2024

EXHIBIT A

19.06.050 Commerce on public property.

- A. The purpose of this chapter is to allow for the safe, healthful and aesthetic use of public property for the benefit of private commerce.
- B. The provisions of this section shall apply only to public sidewalks, streets and rights-of-way within the Town Center zone.
- C. Any person(s), corporation, or company who wishes to use the public right-of-way for the exchange of goods or services shall apply for a private commerce on public property permit. Such permit shall be in the form specified by the code official and shall contain such information as deemed necessary by the code official.
- D. *Criteria for permit.* A private commerce on public property permit shall be reviewed based on the following criteria:
 - 1. The applicant business has an active business license for a location immediately adjacent to the public property location where the request has been made.
 - 2. The location of the business activity does not create a safety hazard for motorists, bicyclists or pedestrians.
 - a. The business location maintains sufficient area for the free passage of pedestrians along sidewalks and access to other adjacent businesses.
 - b. The business location does not obstruct the views of motorists turning into or out of a street or parking lot.
 - 3. The business operation does not generate litter, noise or other nuisances that would be objectionable to the public or other businesses in the immediate area.
 - a. Adequate refuse containers shall be provided.
 - b. Hours of operations are sensitive to the surrounding neighborhood.
 - c. No music or sound is amplified.
 - d. The area can be maintained in a clean condition.
 - e. Physical improvements can be removed or secured when not in operation.
 - 4. The design for any non-temporary improvements is consistent with the design requirements for the Town Center plan.
 - 5. The location and design do not unreasonably obstruct the visibility of any adjacent businesses.
 - 6. The location of a business engaged in the sale of alcoholic beverages is separated from the public space with a barrier, fence, landscaping or other demarcation.
- E. A permit to operate a private business on public property shall be reviewed and approved by the design commission; provided, that occasional, temporary business operations involving temporary structures and/or temporary right-of-way obstructions may be approved by the code official. ~~Permit applications from one or a group of existing eating and drinking establishments at Mercer Island to temporarily operate private business on public property during the effective period set forth in section 6 of Ordinance No. 21C-25 shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.~~ Permit applications from existing eating and drinking establishments at Mercer Island to temporarily provide outdoor food and beverage service on public property adjacent to the eating and drinking establishment shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.

- F. All permittees must comply with all applicable city, county, state and federal laws, including the International Fire Code.
- G. Permits for ongoing commercial use on public property shall be subject to renewal annually on the date of the original permit approval. Failure to submit a renewal request within 30 days of the annual renewal date shall result in the suspension of the permit.
- H. The revocation of a permit shall be governed by chapter 6.10 MICC.
- I. The provisions of this section shall not apply to the annual city-sponsored event known as "Summer Celebration."
- J. The code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to ensure that public property subject to commercial use under this section is restored to its former condition immediately following cessation of the commercial use.
- K. The code official may require evidence of insurance, indemnification or other measures deemed necessary and sufficient to limit the city's liability for the acts or omissions of persons, corporations, or companies seeking and obtaining permission to use public property for commercial purposes.

EXHIBIT B

MICC 19.06.130 TEMPORARY USE PERMITS

A. Purpose and applicability.

A temporary use permit authorizes a use or structure on private property on a short-term basis. Temporary encampments are not considered temporary uses for purposes of this section and are instead subject to the requirements contained within MICC 19.06.090.

B. Permit required.

1. No temporary use or structure shall be permitted within the city except in accordance with the provisions of this chapter. A temporary use permit is required for temporary uses except those specifically exempted pursuant to MICC 19.06.130(D).
2. The property owner or their authorized agent may apply for a temporary use permit on private property.
3. Any temporary use or structure authorized by this chapter may be subject to other permitting and review requirements of the MICC and/or other public agencies.

C. Application.

The application for a temporary use permit shall be submitted on forms obtained from the Community Planning & Development Department, and consistent with MICC 19.15.060. The application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of this section. The Community Planning & Development Department shall verify that the application is consistent with the requirements of this chapter, and that the application contains proof of a valid business license, if applicable. Temporary use applications shall be processed as a Type I land use review, pursuant to MICC 19.15.030 Land Use Review Types.

D. Exemptions.

1. The following activities on private property are exempt from the permit requirements of this chapter, but shall comply with other substantive requirements of this chapter, unless specifically noted otherwise:
 - a. Garage sales, yard sales, and estate sales conducted by or on behalf of the occupant(s) of a residential dwelling. Tents or other temporary structures used in conjunction with any garage, yard, or estate sale shall not exceed 120 square feet in area;
 - b. Rummage and other outdoor sales sited at a school, church, or other nonresidential institutional facility;
 - c. Fireworks stands operating under a permit issued by the fire marshal's office;
 - d. Exemptions for Construction-Related Activities: The following uses and structures do not require a temporary use permit, provided they are associated with an approved land use application and/or construction permit:
 - i. Contractor's office, storage yard, and equipment parking and servicing on or near the site or in the vicinity of an active construction project.
 - ii. Sales/marketing trailers used for the purpose of real estate sales and/or rental information, located within the subdivision or development to which they pertain.

E. Criteria for approval.

1. The code official, in consultation with appropriate City departments, shall review each application for a temporary use permit. The code official may approve, or condition and approve, an application for a temporary use permit if the application satisfies all of the following criteria:
 - a. The temporary use will not be materially detrimental to the public health, safety or welfare, nor injurious to property or improvements in the vicinity of the temporary use;
 - b. The structure or use is located where there is safe ingress and egress from the street, including a clear sight area adjacent to the street;
 - c. Structures proposed for the temporary use comply with applicable provisions of the Building and Fire Codes;
 - d. Adequate parking is available to serve the temporary use, and if applicable, the temporary use does not occupy required off-street parking areas for adjacent or nearby uses;
 - e. Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses;
 - f. The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses;
 - g. The temporary use will not include permanent fencing, walls, or other structures that would hinder removal of the structure from the site; and
 - h. The temporary use will comply with the applicable portions of MICC Title 19 including, but not limited to, Ch. 19.07, Environment, 19.10, Trees, 19.13, Shoreline Master Program, and 19.21, Environmental Procedures.
2. Except as otherwise provided above, the underlying development standards of the zoning designation applicable to the site on which the temporary use or structure is proposed do not apply.

F. Additional conditions for certain temporary uses/structures.

The following temporary uses and structures are permitted when authorized by the issuance of a temporary use permit when the applicable conditions set forth in this section and in MICC 19.06.130(E), Criteria for approval, have been met.

1. Mobile Food Vendors. Mobile food vendors shall comply with the following conditions:
 - a. The mobile food vendor shall obtain and keep the Eastside Fire and Rescue permit or approval and King County Health Department permit or approval on the mobile food vending facility at all times, and copies of these approvals shall be made available to the City upon the City's request.
 - b. The mobile food vendor must be located on a paved surface. If the mobile food vendor will be operating within a parking area, the mobile food vending facility may not protrude into the drive aisle, block fire lanes, or result in the site providing less than the required minimum number of parking stalls.
 - c. A mobile food vendor shall not be parked in a location that will impede garbage collection.
 - d. A mobile food vendor must obtain permission from the property owner prior to operating.
 - e. The mobile food vendor must have fully functional wheels and be able to move immediately by being towed or driven without the removal of blocks or other structural devices.

G. Time limitation.

1. The code official may issue a temporary use or structure permit up to the durations set forth in Table A, Table of Temporary Use and Structure Permit Duration.

Table A, Table of Temporary Use and Structure Permit Duration

<u>Temporary Use or Structure</u>	<u>Maximum Duration</u>	<u>Applicable Development Standards</u>
<u>Temporary Uses or Structures (not including activities listed in MICC 19.06.130(D), Exemptions and Mobile food vendors)</u>	<u>180 Days¹</u>	<u>MICC 19.06.130(E)</u>
<u>Activities listed in MICC 19.06.130(D), Exemptions not related to another permit.</u>	<u>30 days of site occupation or operation in any calendar year, unless otherwise stated</u>	<u>MICC 19.06.130(D)</u>
<u>Activities listed in MICC 19.06.130(D), Exemptions related to another permit.</u>	<u>180 days of site occupation or operation in any calendar year, unless otherwise stated¹</u>	<u>MICC 19.06.130(D)</u>
<u>Mobile food vendors</u>	<u>30 days or as provided pursuant to the terms of the issued temporary use permit</u>	<u>MICC 19.06.130(F)(1)</u>

¹The code official may grant an extension not to exceed 30 days in total, upon the applicant showing compliance with all conditions of permit approval. If a request for an extension is not received in writing at least one week prior to the end of the time limit stated on the temporary use permit, the temporary use permit shall expire and the use or structure shall be timely removed pursuant to MICC 19.06.130(I).

H. Limitation on activity.

1. A property will not be granted a temporary use permit for a temporary use or structure for a minimum of three months after the expiration of a previous temporary use or structure permit.

I. Removal of a temporary use.

1. The code official shall establish, as a condition of each temporary use permit, a date by which the use/structure and all physical evidence of the use/structure must be removed. The site occupied by the temporary use or structure shall be restored to the original or better condition upon the removal of the use or structure. If the permittee has not removed the use/structure as required by the temporary use permit, the city may take any and all enforcement action permitted by law, including, but not limited to abatement pursuant to MICC Title 6.

J. Assurance device.

1. The code official may require a financial guarantee pursuant to the requirements in MICC 19.01.060, in a form acceptable to the finance department, to assure compliance with the provisions of this title and the temporary use permit as approved.

Exhibit C
MICC 19.15.030

Table A. Land Use Review Type			
Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> • Home business • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption ¹ • Critical area review ¹ • Temporary commerce on public property • Site development permits • Transportation concurrency certificate • Temporary Use Permit 	<ul style="list-style-type: none"> • Modified wireless communication facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat ^{2,3} • Code official design review • Accessory dwelling unit • Parking modification ⁷ (reviewed by city engineer) • Small wireless facility deployment • Seasonal development limitation waiver • Final short plat 	<ul style="list-style-type: none"> • New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical area review ² • Public agency exception • Temporary encampment ⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit ⁵ • Shoreline substantial development permit ¹ • Shoreline revision (substantial development) ¹ 	<ul style="list-style-type: none"> • Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking modifications ⁷ (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP) ⁶ • Shoreline variance ⁶ • Shoreline revision (variance and SCUP)

EXHIBIT D

1. Technical analysis and staff recommendation a. Review peer city approaches b. Prepare staff recommendations and begin drafting a code amendment based on the above information c. Prepare a SEPA checklist and determination for the proposed code amendment, provide notification to state agencies and tribes	Q3 2024-Q1 2025
2. Planning Commission legislative review and recommendation on a draft code amendment including three points of review by the commission – study session, public hearing, and recommendation	Q2 2025
3. City Council review and approval of code amendment a. First and second reading of the ordinance	Q2 2025