

**CITY OF MERCER ISLAND  
ORDINANCE NO. 21C-23**

**AN INTERIM ORDINANCE OF THE CITY OF MERCER ISLAND,  
WASHINGTON, AMENDING MICC 19.16.010, DEFINITIONS, RELATING TO  
EMERGENCY SHELTERS AND HOUSING, TRANSITIONAL HOUSING, AND  
PERMANENT SUPPORTIVE HOUSING; ADOPTING A WORK PLAN;  
PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND  
ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the adoption of land use and zoning regulations is a valid exercise of the City's police power and is specifically authorized by RCW 35A.63.100; and

**WHEREAS**, within the express terms of the Growth Management Act, the Washington State Legislature has specifically conferred upon the governing bodies of Washington cities the right to establish and adopt interim development regulations; and

**WHEREAS**, homelessness is a national, state, regional, and local crisis and homelessness has devastating effects on human lives and severe health, safety, social, economic, and environmental impacts on cities, neighborhoods, families, schools, businesses, healthcare facilities, and social service agencies; and

**WHEREAS**, the Washington State legislature recently passed E2SHB 1220, which, among other things, requires cities to allow indoor emergency shelters and housing, transitional housing, and permanent supportive housing in certain zones; and

**WHEREAS**, E2SHB 1220 provides, in part, that a city shall not prohibit transitional housing or permanent supportive housing in any zones in which residential dwelling units or hotels are allowed, and that a city shall not prohibit indoor emergency shelters and indoor emergency housing in any zones in which hotels are allowed, except if the city has adopted an ordinance authorizing indoor emergency shelters and indoor emergency housing in a majority of zones within a one-mile proximity to transit; and

**WHEREAS**, cities are allowed to adopt reasonable occupancy, spacing, and intensity of use requirements on permanent supportive housing, transitional housing, indoor emergency housing, and indoor emergency shelters to protect public health and safety so long as those reasonable restrictions do not prohibit the number of units assigned to the city by the Washington State Department of Commerce ("Commerce"); and

**WHEREAS**, Commerce has not yet assigned the City of Mercer Island a number of units for permanent supportive housing, transitional housing, indoor emergency housing, and indoor emergency shelters; and

**WHEREAS**, E2SHB 1220 includes a September 30, 2021, deadline for cities to comply, and the City Council has determined that to comply with the deadline and thoroughly analyze permanent regulations, interim development regulations adopted under the provisions of RCW 36.70A.390 are necessary to allow adequate time for the City to adopt permanent development regulations in compliance with E2SHB 1220; and

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

**WHEREAS**, City Staff have developed a work plan for related studies for compliance with E2SHB 1220 and such work plan is attached to this Ordinance as Exhibit A; and

**WHEREAS**, the City is authorized under RCW 35A.63.200 and 36.70A.390 to pass an interim zoning and official control ordinance, provided it holds a public hearing on the same within sixty days after passage if it has not previously held a public hearing on the proposed ordinance; and

**WHEREAS**, the City Council held a public hearing on September 21, 2021 regarding this interim zoning and official control ordinance; and

**WHEREAS**, both the homelessness crisis and the deadlines in E2SHB 1220 for cities to adopt compliant development regulations cause an emergency which necessitates that this ordinance become effective immediately in order to preserve the public health, safety, and welfare and also requires action prior to the preparation of a State Environmental Protection Act threshold determination pursuant to WAC 197-11-880 and MICC 19.21.160;

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

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

**Section 2:   Section 19.16.010 MICC, Definitions, Amended.** MICC Section 19.16.010, Definitions, is hereby amended as follows. All other definitions not herein amended shall remain as currently written.

Social Service Transitional Housing: Noninstitutional group housing facilities for unrelated persons, other than special needs group housing or rooming houses, that are privately or publicly operated, including those facilities required to be licensed by the state or federal governments as well as those that may not be required to be licensed, that provide temporary and transitional housing to meet community social service needs including, but not limited to, work-release facilities and other housing facilities serving as an alternative to incarceration, halfway houses, emergency shelters, homeless shelters, domestic violence shelters and other such crisis intervention facilities. ~~Social service transitional housing excludes institutional facilities that typically cannot be accommodated in a single-family residential structure.~~ Further, the term shall include “emergency housing,” and “transitional housing” as defined within RCW 84.36.043(2)(c) or as hereafter amended. The term shall further include “emergency shelter” as defined within RCW 36.70A.030 or as hereafter amended.

Special Needs Group Housing: Noninstitutional group housing that primarily supports unrelated persons with handicaps or persons protected by familial status within the meaning of the FHAA, but not including individuals whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of

others. Special needs group housing includes, but is not limited to, foster family homes, adult family homes and residential care facilities as provided in Chapter 70.128 RCW, but excludes facilities ~~that typically cannot be accommodated in a single-family residential structure~~ such as hospitals, nursing homes, assisted living facilities and detention centers. Further, the term shall include "permanent supportive housing" as defined in RCW 36.70A.030 or as hereafter amended.

- Section 3: Duration of Interim Zoning and Official Controls.** The interim zoning and official controls approved by this Ordinance shall be effective immediately upon passage of this ordinance and continue in effect for a period of one year, unless repealed, extended, or modified by the City Council.
- Section 4. Adoption of Work Plan.** The work plan attached to this Ordinance as Exhibit A is hereby adopted.
- Section 5. Severability.** If any section, sentence, clause or phrase of this Ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this Ordinance or the amended code section.
- Section 6: Effective Date.** The City Council hereby finds and declares the deadlines in E2SHB 1220 for cities to adopt compliant development regulations cause an emergency which necessitates that this ordinance become effective immediately in order to preserve the public health, safety, and welfare. This ordinance shall become effective immediately upon passage by at least a majority plus one member of the City Council. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS REGULAR MEETING ON SEPTEMBER 21, 2021.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Benson Wong, Mayor

Approved as to Form:

ATTEST:

\_\_\_\_\_  
Bio F. Park, City Attorney

\_\_\_\_\_  
Deborah A. Estrada, City Clerk

Date of Publication: \_\_\_\_\_

## Exhibit A

### State Mandated Code Amendments Work Plan

<ol style="list-style-type: none"><li>1. Technical analysis and staff recommendation<ol style="list-style-type: none"><li>a. Review peer city approaches</li><li>b. Analyze existing code criteria and spacing requirements for siting transitional and supportive housing facilities to understand existing capacity for potential housing sites</li><li>c. Await Department of Commerce data on Mercer Island's "share" of the population in need of transitional/supportive housing and the amount of such housing the City should plan to accommodate</li><li>d. Prepare staff recommendations and begin drafting a code amendment based on the above information</li><li>e. Prepare a SEPA checklist and determination on the proposed code amendment, provide notification to state agencies and tribes</li></ol></li></ol>	Q4 2021-Q1 2022
<ol style="list-style-type: none"><li>2. Planning Commission review and recommendation on a draft code amendment<ol style="list-style-type: none"><li>a. Public outreach, including public hearing</li><li>b. Approximately 3 points of review by the commission – study session, public hearing, and recommendation</li></ol></li></ol>	Q2 2022
<ol style="list-style-type: none"><li>3. City Council review and approval of code amendment<ol style="list-style-type: none"><li>a. First and second reading of the ordinance</li></ol></li></ol>	Q2-Q3 2022