

**CITY OF MERCER ISLAND
ORDINANCE NO. 21C-25**

**AN INTERIM ORDINANCE OF THE CITY OF MERCER ISLAND,
WASHINGTON, PROVIDING TEMPORARY MEASURES TO ALLOW MORE
OUTDOOR SEATING FOR EATING AND DRINKING ESTABLISHMENTS;
SETTING A PUBLIC HEARING; ADOPTING A WORK PLAN; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, a state of emergency has been declared by the federal, state, county, and municipal governments, including the City of Mercer Island, in response to the COVID-19 pandemic; and

WHEREAS, since February 29, 2020, Governor Jay Inslee has issued several proclamations, including Emergency Proclamation 20-25 ("Stay Home, Stay Healthy order"), placing numerous restrictions on individuals and businesses in response to the state-wide threat of the spread of the COVID-19 virus; and

WHEREAS, Governor Inslee has issued multiple subsequent amendments to Emergency Proclamation 20-25 and developed a phased reopening approach, as currently directed in Emergency Proclamation 20-25.12 ("Healthy Washington – Roadmap to Recovery"), a phased reopening plan in effective since January 11, 2021, for resuming recreational, social, and business activities; and

WHEREAS, outdoor restaurant seating has been determined to be safer and less likely to lead to the spread of COVID-19 than indoor restaurant seating, which has been significantly restricted; and

WHEREAS, the City Council wishes to promote local economic recovery by encouraging business activity in Mercer Island consistent with the Healthy Washington – Roadmap to Recovery requirements 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 while maintaining social distancing requirements; and

WHEREAS, it is necessary and appropriate during the state of local emergency to utilize an interim ordinance, which is intended to be only temporary until public health and economic conditions improve, to facilitate and encourage outdoor seating areas to make eating and drinking establishments safer to operate and to promote needed economic and business recovery in the City; and

WHEREAS, the City Council finds that public reluctance to dine indoors because of COVID-19 continues to impact eating and drinking establishments, which may cause said establishments in Mercer Island to close and to go out-of-business; and

WHEREAS, the lack of local eating and drinking establishments would result in harm to public health, safety, property, and welfare in Mercer Island during and following the current state of emergency; and

WHEREAS, the City Council believes making the interim regulations permanent will continue to support economic recovery and vitality in the Town Center and other business districts; 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 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 related to repurposing public parking for non-parking uses and such work plan is attached to this Ordinance as Exhibit A; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and adopt additional findings of fact, if necessary, supporting and justifying the interim zoning and official control ordinance within at least sixty days of its passage;

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. Code Amended. Subsections (D)(4) and (E) of MICC 19.06.050 are amended as follows for the duration of this Ordinance:

D. 4. The design for any non-temporary improvements is consistent with the design requirements for the Town Center plan.

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 ~~or referred to the design commission at the code official's discretion.~~ 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 a declared Covid-19 emergency by the City of Mercer Island shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.

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 dining use, provided the private parking area is immediately adjacent to the eating and drinking establishment, and the following conditions are met:

A. ~~Such outdoor dining use shall be permitted only during a declared Covid-19 emergency declared by the City of Mercer Island.~~

B. An eating and drinking establishment may only operate in a private parking area only while this Ordinance remains in effect.

C. Use of any portion or percentage of private off-street parking areas for outdoor dining use 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.

D. 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. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall occur within 60 days of this Ordinance passage on January 18, 2022, in order to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the interim zoning and official controls approved by this Ordinance, and to consider adopting further findings of fact, if necessary.

Section 6. Effective Period of Interim Zoning and Official Controls. The interim zoning and official controls approved by this Ordinance shall become effective on January 7, 2022, but no sooner than the effective date of this Ordinance, and shall continue in effect for a period of one year, unless repealed, extended or modified by the City Council after subsequent public hearing(s), entry of appropriate findings of fact, and/or development of a work plan for related studies pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 7: Adoption of Work Plan. The work plan attached to this Ordinance as Exhibit A is hereby adopted.

Section 8. 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 9. 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 DECEMBER 7, 2021.

CITY OF MERCER ISLAND

Benson Wong, Mayor

Approved as to Form:

ATTEST:

Bio Park, City Attorney

Andrea Larson, City Clerk

Date of Publication: _____

Exhibit A

Commerce on Public Property Permanent Regulations Work Plan

<ol style="list-style-type: none">1. Evaluate relevance in Town Center Parking Study process<ol style="list-style-type: none">a. Review code amendment needs with parking study consultant and determine whether study-related analysis is recommended before moving forward with specific code work2. If deemed able to move forward with code work, complete technical analysis and staff recommendation<ol style="list-style-type: none">a. Review peer city approachesb. Analyze existing code criteria and requirements for commerce on public property and parkingc. Prepare staff recommendations and begin drafting a code amendment based on the above informationd. Prepare a SEPA checklist and determination on the proposed code amendment; notify state agencies and tribes	Q4 2021-Q2 2022
<ol style="list-style-type: none">3. Planning Commission review and recommendation on a draft code amendment<ol style="list-style-type: none">a. Public outreach, including public hearingb. Approximately 3 points of review by the commission – study session, public hearing, and recommendation	Q3 2022
<ol style="list-style-type: none">4. City Council review and approval of code amendment<ol style="list-style-type: none">a. First and second reading of the ordinance	Q4 2022