

**CITY OF MERCER ISLAND
ORDINANCE NO. 21C-02**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
ADOPTING NEW MERCER ISLAND CITY CODE CHAPTER 9.60, RELATING
TO USE OF PUBLIC PROPERTY; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, pursuant to Article XI, Section 11 of the Washington Constitution and RCW 35A.11.020, the City of Mercer Island (City), a non-charter optional code city, is authorized to regulate public property within the City; and

WHEREAS, camping on public property is a public health and safety concern due to interference with other intended uses, such as daily operations of the City, park recreational activities, pedestrian, bicycle, and vehicular traffic, and other public uses; and

WHEREAS, camping without adequate sanitation services, such as sewer, water, and garbage, presents a public health and safety concern due to increased risk of spread of disease and potential for residents and visitors contracting illness; and

WHEREAS, camping in such public property does not allow the public to use those areas for their intended purposes; and

WHEREAS, camping should only occur in designated campgrounds with proper facilities, when possible; and

WHEREAS, the homeless population in the Puget Sound region continues to grow and the City has experienced increasing use of its parks and public property for camping and the storage of personal property; and

WHEREAS, pursuant to *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit Court of Appeals determined that the United States Constitution prohibits the imposition of penalties for sitting, sleeping, or lying outside on public property, on homeless individuals who could not obtain shelter; and

WHEREAS, the City Council hereby finds that the regulatory requirements established by the proposed ordinance are necessary to preserve the public peace, health, safety, and welfare; NOW, THEREFORE,

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

Section 1. Adoption of MICC Chapter 9.60, Uses of Mercer Island Public Property. New MICC Chapter 9.60, Uses of Mercer Island Public Property, is hereby adopted in the form provided below:

Chapter 9.60
USE OF MERCER ISLAND PUBLIC PROPERTY

Sections:

- 9.60.010 Purposes.
- 9.60.020 Defined Terms.
- 9.60.030 Unauthorized Use Of Public Property.
- 9.60.040 Unauthorized Storage Of Personal Property On Public Property.
- 9.60.050 Penalty For Violations.
- 9.60.060 Enforcement Suspended.
- 9.60.070 Rules.

9.60.010 Purposes.

A. It is the purpose of this Chapter to promote the public health, safety, general welfare, and economic health and well-being of the City, its residents, and its visitors by making Mercer Island Public Property readily accessible to the public, and to prevent the uses of Public Property which interfere with the rights of others to use Public Property for which it is intended and to prevent harm to the health, safety, and welfare of the public.

B. It is also the purpose of this Chapter to provide for and promote the health, safety, and welfare of the general public and not to create, either expressly or implicitly, or otherwise establish or designate any particular class or group of persons or individuals who will or should be especially protected or benefited or discriminated against by the terms of this Chapter.

C. For purposes of interpreting this Chapter, if any definition, requirement, or provision in this Chapter conflicts with those in a different provision or Chapter of the Mercer Island City Code, the definition, requirement, or provision in this Chapter shall apply.

9.60.020 Defined Terms.

As used in this Chapter, the following terms shall have the following definitions:

A. "Available Overnight Shelter" means a public or private facility, with available overnight space, open to person(s) or family units experiencing homelessness at no charge.

B. "Camp" means to pitch, erect, or occupy Camp Facilities, or to use Camp Paraphernalia, or both, for the purpose of, or in such a way as will facilitate remaining overnight or parking a Vehicle for the purpose of occupying the Vehicle overnight. The term shall not include overnight use of Public Property by the City or the governmental entity that owns or has a property interest in such Public Property.

C. "Camp Facilities" means, without limitation, tents, huts, and temporary shelters.

D. "Camp Paraphernalia" means, without limitation, blankets, pillows, tarpaulins, cots, beds or bedding, sleeping bags, hammocks, non-City designated cooking facilities, and/or other similar equipment.

E. "City" means the city of Mercer Island, Washington, the area within the territorial limits of the City, and such territory outside of the City over which the City has jurisdiction or control by virtue of any constitutional, statutory, or regulatory provisions.

F. "Park" means, without limitation, any public area created, established, designated, maintained, provided, or set aside by the City for the purposes of public rest, play, recreation, enjoyment, or assembly, and all buildings, facilities, and structures located thereon or therein, as well as all associated areas, including but not limited to parking lots.

G. "Pier" means any pier, wharf, dock, float, gridiron, or other structure where watercraft may anchor or moor.

H. "Public Property" means all property in which the City or any other governmental entity has a property interest, including easements. The term includes, without limitation, all Parks, Piers, Streets, trails, forests, park museums, pools, beaches, open spaces, public squares, public schools and associated athletic facilities, grounds around City or other publicly owned or leased buildings, including but not limited to parking lots, and any other property in which the City or any other governmental entity has a property interest of any type.

I. "Store" means to put aside, accumulate, or leave on Public Property for later use, or for safekeeping.

J. "Street" means, without limitation, any easements, highway, lane, road, street, right-of-way, boulevard, alley, and all Public Property open as a matter of right to public vehicle travel or parking.

K. "Vehicle" means any device capable of being moved or parked upon Public Property and in, upon, or by which any person(s) or property is or may be moved, parked, transported, or drawn, including, without limitation, all forms of automotive vehicles, buses, trucks, cars, vans, campers, trailers, boats or any other vehicle on trailers, recreational vehicles, and mobile homes of any size, whether capable of supplying their own motor power or not. The term vehicle includes all such devices even if immobilized in any way and/or for any period of time.

9.60.030 Unauthorized Use Of Public Property.

Unless otherwise permitted by the Mercer Island City Code, it shall be unlawful for any person to Camp within any Public Property.

9.60.040 Unauthorized Storage Of Personal Property On Public Property.

It shall be unlawful for any person to Store personal property, including, without limitation, Camp Facilities and Camp Paraphernalia, on any Public Property. This section shall not apply to Vehicles, including trailers, recreational vehicles, and campers, which are unoccupied and parked in rights-of-way, unless otherwise prohibited by law.

9.60.050 Penalty For Violations.

Violation of Section 9.60.030 or Section 9.60.040 of this Chapter is a misdemeanor offense and shall be punished upon conviction of such violation by a fine of not more than one thousand dollars, or by imprisonment not to exceed ninety days, or by both such fine and imprisonment.

9.60.060 Enforcement Suspended.

The City shall not enforce the provisions of Section 9.60.030 or Section 9.60.040 of this Chapter as to any Camping and/or Storing of personal property within outdoor portions of Parks or Streets against persons experiencing homelessness unless the City first confirms that there is Available Overnight Shelter that can be utilized by the particular person(s) experiencing homelessness.

9.60.070 Rules.

The Chief of Police is hereby authorized to adopt rules, regulations, administrative policies, and procedures for implementing this Chapter.

Section 2. 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 3. 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 REGULAR MEETING ON FEBRUARY 16, 2021.

CITY OF MERCER ISLAND

Benson Wong, Mayor

ATTEST:

APPROVED AS TO FORM

Deborah A. Estrada, City Clerk

Bio Park, City Attorney

Date of publication: