

**CITY OF MERCER ISLAND  
ORDINANCE NO. 21-08**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
RENEWING FOR SIX MONTHS INTERIM DESIGN AND CONCEALMENT  
STANDARDS FOR DEPLOYMENT OF SMALL CELL FACILITIES ADOPTED IN  
ORDINANCE 19C-02; PROVIDING FOR SEVERABILITY AND ESTABLISHING  
AN EFFECTIVE DATE.**

**WHEREAS**, the City Council unanimously passed Emergency Ordinance 19C-02 (“Ord. 19C-02”) on January 15, 2019, and held a public hearing on March 5, 2019, in response to the Federal Communications Commission’s Declaratory Ruling and Third Report and Order (“New Rules”) relating to small cell facilities, which became effective January 15, 2019; and

**WHEREAS**, the New Rules significantly preempt the City’s ability to regulate the installation of small cell facilities on City-owned public rights-of-way; and

**WHEREAS**, aesthetic requirements imposed by the City under the New Rules on installation of small cell facilities should be published in advance and they must be reasonable; and

**WHEREAS**, Ord. 19C-02 adopted interim design and concealment standards for deployment of small cell facilities; and

**WHEREAS**, the design and concealment standards for small cell facilities in Ord. 19C-02 are effective for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s) and entry of appropriate findings of fact; and

**WHEREAS**, the City Council extended the effective period of Ord. 19C-02 several times following additional public hearings; and

**WHEREAS**, the City Council considered and approved a recommended scope of work on January 21, 2020 and directed the Planning Commission to proceed in developing permanent design and concealment standards for deployment of small cell facilities; and

**WHEREAS**, the City Council finds that the onset of the COVID-19 pandemic has contributed significantly to the delay in the Planning Commission’s review of permanent design and concealment standards for deployment of small cell facilities; and

**WHEREAS**, the City has not yet adopted permanent design and concealment standards for deployment of small cell facilities; and

**WHEREAS**, the interim design and concealment standards adopted under Ord. 19C-02 will expire on or about July 11, 2021, unless further extended following a public hearing; and

**WHEREAS**, the conditions that existed when Ord. 19C-02 was adopted requiring the need for the City to have interim design and concealment standards for deployment of small cell facilities continue to exist today; and

**WHEREAS**, the City Council finds that deployment of small cell facilities with unregulated design and concealment standards may result in uncoordinated installations, visual blight, interference with public facilities and equipment, and traffic dangers that pose harm to public health, safety, property, and welfare; and

**WHEREAS**, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City needs to extend the interim design and concealment standards for deployment of small cell facilities until permanent standards can be adopted following the process and procedures for adopting development regulations; and

**WHEREAS**, the City is authorized under RCW 35A.63.220, 36.70A.390 to renew an interim zoning and official control ordinance for one or more six-month periods, provided it holds a public hearing on the same prior to each renewal; and

**WHEREAS**, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing prior to passing this Ordinance; 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 adopted as the findings and conclusions of the City Council for passing this Ordinance. Furthermore, the “Whereas Clauses” set forth in the recital of Ord. 19C-02 are also adopted by reference as supplemental findings and conclusions of the City Council for passing this Ordinance.
- Section 2. Interim Standards Renewed.** On July 10, 2021 prior to the expiration of the current effective period, the effective period of Ord. 19C-02 and the Interim Design and Concealment Standards for Deployment of Small Cell Facilities, as set forth in Exhibit A of Ord. 19C-02 and adopted thereunder, shall be renewed under RCW 35A.63.220 and RCW 36.70A.390 for another six-months until January 10, 2022, unless repealed, extended or modified by the City Council.
- Section 3. 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 4. 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 the 4<sup>th</sup> of May 2021 and signed in authentication of its passage.

CITY OF MERCER ISLAND

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Benson Wong, Mayor

APPROVED AS TO FORM:

ATTEST:

/s/ Bio Park, 04/28/2021

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Bio Park, City Attorney

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Deborah A. Estrada, City Clerk

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