



PLANNING COMMISSION CITY OF MERCER ISLAND

PCB 25-05
February 26, 2025
Regular Business

AGENDA BILL INFORMATION

TITLE:	PCB 25-05: Review Permanent Regulations for Temporary Uses and Structures Including Outdoor Dining (First Reading).	<input checked="" type="checkbox"/> Discussion Only <input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Recommendation
RECOMMENDED ACTION:	Receive report and provide comments on the draft regulations for temporary structures and uses.	

STAFF:	Molly McGuire, Senior Planner
EXHIBITS:	1. Draft Permanent Regulations for Temporary Uses and Structures

EXECUTIVE SUMMARY

The purpose of this agenda bill is to discuss the adoption of permanent regulations for temporary uses and structures in place of interim regulations which were originally adopted on June 4, 2024, under [Ordinance No. 24C-07](#) and are effective for one year.

- Temporary uses and structures are development or activities that take place on a property for a period of 180 days or less. They can include a wide range of development and activities from garage sales to outdoor festivals.
- Prior to 2024, the City did not have a permit process for temporary uses or structures and the development code lacked clarity about how such structures and uses were regulated. As a result, some temporary uses and structures were not allowed.
- At its December 5, 2023 meeting, the City Council docketed a project to develop regulations for temporary uses and structures when it approved [Resolution No. 1655](#).
- On June 4, 2024, the City Council adopted Ordinance 24C-07, which established the following:
 - Interim regulations and permitting procedures for temporary structures and uses, and
 - A work plan for developing permanent regulations for temporary structures and uses by the second quarter of 2025.
 - The interim regulations will expire in June 2025 unless the City adopts permanent regulations or renews the interim regulations.
- Staff prepared draft permanent regulations for temporary uses and structures for the Planning Commission to review and provide initial comments on (Exhibit 1).
- The draft regulations would establish:
 - Development standards for temporary uses and structures on real property not owned by the City of Mercer Island (“private property”);
 - Development regulations to continue a pandemic-era allowance for outdoor dining use within public rights of way and private parking spaces; and
 - A permitting process for temporary uses and structures.
- Staff requests that the Planning Commission provide comments on the draft permanent regulations for temporary uses and structures by March 14, 2025.
- A public hearing and second reading on the draft permanent regulations for temporary uses and structures is scheduled for March 26, 2025.

BACKGROUND

Temporary uses and structures are active or constructed on a short-term basis. Typically, temporary uses and structures are those developments that will be in place for no more than 180-days and which will not permanently alter a site. The [2021 Washington State Building Code](#) defines temporary structures as those that are erected for a period of less than 180 days. Temporary uses normally include a wide variety of uses, for example: garage sales, outdoor dining areas associated with a restaurant or bar, food trucks, tents for large events, seasonal enclosures for pools, or sport courts, etc.

On December 5, 2023, the City Council approved [Resolution No. 1655](#) setting the 2024 Docket, which added Comprehensive Plan and development regulation amendments to the City's Work Plan. Separate proposals submitted by both the City of Mercer Island and the Mercer Island Country Club to docket code amendments to establish temporary use and structure regulations were approved by City Council. After discussing the prioritization of the Mercer Island Country Club docketed item at its March 1, 2024, Planning Session, City Council directed staff to proceed with developing interim regulations to address both docketed items and renew the existing interim regulations for outdoor dining at its regular business meeting on April 2, 2024 (see [AB6441](#)).

Existing Regulations for Temporary Uses and Structures

Prior to the adoption of [Ordinance No. 24C-07](#), the Mercer Island City Code (MICC) did not include regulations and permitting processes for temporary uses and structures. Without established regulations, some temporary uses and structures were either subject to development standards intended for more intense permanent uses or prohibited. Many temporary uses and structures that would benefit Mercer Island residents are subject to existing land use regulations, including setbacks, lot coverage, building height, and design requirements. For example, prior to Ordinance No. 24C-07, a yard sale in the R-8.4 zone would be considered a "home business" subject to [MICC 19.02.010\(A\)\(5\)](#). The regulations for a home business establishes operation and parking requirements that would likely make a yard sale infeasible because they are designed to address a permanent home business such as a daycare. If a yard sale cannot meet the requirements of a home business established in MICC 19.02.010(A)(5), it would be out of compliance with the development code and could be subject to code enforcement.

Existing Regulations for Commerce on Public Property

Regulations for commerce on public property are established in [MICC 19.06.050 – Commerce on public property](#). This section allows business owners to use a portion of the right of way or public sidewalks for private commerce. Commerce on public property is permitted through Community Planning and Development with a right of way use permit or through Parks and Recreation with a special event permit depending on the location and scale of the proposed use or activity. Commerce on public property permits are generally applicable for the exchange of goods or services by any person(s), corporation, or company when the applicant business has an active business license for a location immediately adjacent to the public property location where the use will take place. Special event permits are applicable to more large-scale events that will take place on public property, such as a wedding ceremony or ticketed event in one of Mercer Island's parks.

During the COVID-19 Pandemic, the City adopted interim regulations for commerce on public property to allow businesses to utilize more outdoor spaces. The interim regulations amended MICC 19.05.060 to consider existing eating and drinking establishments that temporarily provide outdoor food and beverage service on adjacent public property to be considered temporary and may be approved without review or approval by the Design Commission. These amendments also clarified that non-temporary improvements must be consistent with the design requirements in the Town Center Plan.

ISSUE/DISCUSSION

Proposed Code Amendments

The draft regulations provided in Exhibit 1 were created to establish regulations and a permitting process for temporary uses and structures that would otherwise be prohibited or unregulated. These regulations would apply to temporary uses and structures on real property not owned by the City of Mercer Island, referred to as “private property”.

The proposed amendments establish regulations which would:

- Amend [MICC 19.06.050](#) to:
 - Provide clarification on the applicability of design requirements and review and approval by the Design Commission for commerce on public property;
 - Exclude temporary improvements from compliance with design requirements; and
 - Clarify that permit applications for existing eating and drinking establishments to temporarily provide outdoor food and beverage service on adjacent public property are considered temporary and may be approved by the code official without review or approval by the Design Commission.
- Establish a new code section MICC 19.06.130 – Temporary Use Permits, which would regulate temporary uses and structures on private property.
- Amend [MICC 19.15.030](#) Table A – Permit Review Types to establish “Temporary Use Permit” as a Type I land use review.

MICC 19.06.050 – Commerce on Public Property

The proposed amendments to [MICC 19.06.050](#) exclude temporary improvements from compliance with design requirements, and clarifies that permit applications for existing eating and drinking establishments that temporarily provide outdoor food and beverage service on adjacent public property are considered temporary and may be approved by the code official without review or approval by the Design Commission. The permitting process established in this section for private commerce on public property remains unchanged. Proposals for commerce on public property would require a right-of-way use permit or special event permit, as described above.

New Section: MICC 19.06.130 – Temporary Use Permits

The proposed new section for temporary use permits establishes the following:

- The purpose and applicability of the proposed regulations
- When a temporary use permit is required and who may apply for the temporary use permit
- The application process for temporary use permits
- Activities that are explicitly exempt from the requirement of a permit
- Criteria for approval of a temporary use permit
- Additional conditions for certain temporary uses and/or structures
- Time limitations
- Limitation on activity
- Standards for removal of the temporary use and/or structure
- Assurance device

These regulations were drafted after considering several neighboring cities’ existing temporary use standards, including the Cities of Kirkland, Renton, and Sammamish. These examples all contain similarities in the structure of the regulations, time limitations, exempt activities, and additional conditions.

Purpose and applicability. This section establishes the purpose of a temporary use permit, which is to authorize a use or structure on private property on a short-term basis. For purposes of this section,

temporary encampments are not considered temporary uses and are subject to the requirements contained in [MICC 19.06.090](#), Temporary encampment permit.

Permit required. This section establishes that a temporary use permit is required in accordance with the provisions of this chapter, except for those uses that are specifically exempt from the permit requirement. This section also establishes who may apply for the temporary use permit and clarifies that the temporary use or structure may be subject to additional permitting and review requirements within the MICC or public agencies.

Application. This section outlines the application process. Temporary use permits would be processed as a Type I land use review. Type I land use reviews are further discussed in the section below.

Exemptions. This section exempts specific activities from the permit requirements of this chapter but does not exclude these activities from compliance with other substantive requirements. Activities like garage, yard, and estate sales, rummage or outdoor sales at schools, churches, or other nonresidential institutional facilities, and construction-related activities would be exempt from obtaining a temporary use permit, but would still be subject to other requirements, such as safety and welfare, nuisance, hours of operation, and duration. While temporary use permits would be processed as a Type I land use review, which are relatively simple to process, the permit requirement could create an unnecessary barrier to the property owner for certain activities that are low impact in nature and provide community benefit.

Criteria for approval. This section establishes the criteria a temporary use permit application must satisfy for the code official to approve, or approve with conditions. The criteria were designed to ensure that temporary uses and structures are regulated so as not to adversely impact the community, but also to not inadvertently restrict uses that may benefit the community. Activities that are exempt from the permit requirement are not exempt from compliance with the criteria in this section. Should an activity be noncompliant with certain criteria, a code enforcement request could be made, and compliance would be investigated through this process.

Additional conditions for certain temporary uses/structures. This section was created to regulate certain uses that may have more impact on the community. Only certain uses would be subject to these conditions, in addition to the criteria for approval. Two uses are identified to require additional conditions: mobile food vendors and existing eating and drinking establishments that may temporarily utilize adjacent private parking areas for outdoor food and beverage services. These regulations were originally adopted as interim regulations in response to the COVID-19 Pandemic and reflect the now permanent rules for outdoor dining by the Washing State Liquor and Cannabis Board under [WAC 314-03-200](#).

Time limitation. This section establishes the maximum durations for which the code official may issue a temporary use or structure permit. The time limitations were drafted based on Section 108 in the International Construction Code and International Residential Code, which considers a structure to be temporary if it is constructed for less than 180 days. The temporary use regulations allow the code official to grant extensions if the applicant shows compliance with all conditions of the permit approval. If the structure is in place for over 180 days, it may be subject to certain additional construction standards. These time limitations are based on the type of temporary use or structure, ranging from a minimum of 30 days to a maximum of 180 days.

Limitation on activity. This section limits a property from being granted a temporary use permit within three months of the expiration of a previous temporary use permit.

Removal of a temporary use. This section requires the code official to establish a date by which the use or structure must be removed, and the action allowed to be taken by the city if the site has not been restored to the standards outlined.

Assurance device. This section allows the code official to require a financial guarantee pursuant to the requirements in [MICC 19.01.060](#) to assure compliance with the provisions of this title and the temporary use permit as approved.

MICC 19.15.030 Table A – Land Use Review Types

Under the proposed amendments to [MICC 19.15.030](#), Temporary Use Permits are proposed to be classified as a Type I land use review, as these land use reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. Type I land use reviews are not subject to the noticing requirements that more substantial land use reviews, like major building permits or shoreline permits, are subject to.

As of the date of this PC bill, four temporary use permits have been approved under the regulations adopted in [Ordinance No. 24C-07](#). Three of these permits were temporary structures to cover outdoor sports facilities for use in inclement weather at different properties across the island, and one permit was for pre-packaged ice cream sales. These permits were processed as Type I land use reviews and received approvals within 2 weeks of the date of application. Applications for temporary use permits are required to receive a decision from the City in a maximum of 65 days, in accordance with application procedures in the Washington Administrative Code.

Feedback Requested

The Planning Commission are asked to consider the draft language and the implications that regulating temporary uses and structures on private property may have on the Mercer Island community.

The key points that the Planning Commission should consider are:

- The activities that are exempt from the permit requirement.
- The criteria for approval of a temporary use permit.
- The proposed additional conditions for more intense temporary uses.
- The time limitations that the various types of temporary uses are subject to.

Staff requests feedback on the proposed amendments from the Planning Commission no later than close of business on March 14. Questions, comments, and proposed amendments should be sent to Molly McGuire, molly.mcguire@mercerisland.gov. The Planning Commission can consider making amendments in response to comments during the deliberations following the public hearing on March 26, 2025.

NEXT STEPS

- March 14, 2025 – Planning Commission comments on the draft code amendment due to staff by 5:00pm.
- March 26, 2025 – Planning Commission public hearing, deliberations, and recommendation.
- April (meeting date TBD) – City Council briefing on PC recommendation and first reading of an ordinance to adopt permanent regulations for temporary structures and uses.
- May (meeting date TBD) – City Council second reading of an ordinance to adopt permanent regulations for temporary structures and uses.

RECOMMENDED ACTION

Receive report and provide comments on the draft regulations for temporary structures and uses.