

Aubrey Davis Park Background Information

Parks and Recreation Commission

February 6, 2025

Executive Summary

Aubrey Davis Park is a unique park facility located on Mercer Island. The park consists of 92-acres of highway lids and landscape buffers surrounding I-90 and is located in right-of-way (ROW) and airspace owned by the Washington State Department of Transportation (WSDOT). Aubrey Davis Park is managed and maintained by the City of Mercer Island through a variety of turnback agreements and airspace leases.

The entirety of WSDOT ROW, including Aubrey Davis Park, is zoned as “Public Institution”. The decision to zone WSDOT ROW as Public Institution in the late 1980’s was the result of a multi-year process that was closely coordinated by the City and WSDOT. The zoning designation of Aubrey Davis Park paved the way for an ongoing partnership between WSDOT and the City of Mercer Island, leading to the execution of several agreements and airspace leases that permit the City to operate and maintain recreational facilities in WSDOT airspace.

Recognizing the complexities of ownership and operation, the City of Mercer Island collaborated with WSDOT to develop the Aubrey Davis Park Master Plan in 2019, which provides a long-term vision for maintaining and improving the park while also ensuring alignment with WSDOT’s operational requirements.

History of Aubrey Davis Park

Aubrey Davis Park (also known as "The Lid Park") was built in 1992 to mitigate impacts from the reconstruction of Interstate 90 (I-90). Today, the park encompasses 92 acres within a 2.8-mile-long recreation and transportation corridor. The park includes the Park on the Lid of I-90, the Mountains to Sound Trail, the Boat Launch, and the Greta Hackett Outdoor Sculpture Gallery.

The I-90 corridor, including Aubrey Davis Park, is zoned as Public Institution ([MICC 19.05.010](#)). The Public Institution Zone is a special purpose zone that permits land use for government services, public schools, public parks, transit facilities, hazardous waste treatment and storage facilities, and wireless communications facilities (MICC 19.05.010(A)). The I-90 corridor was unclassified in the Mercer Island zoning code until 1987, when the City zoned the land as Public Institution through a series of ordinances amending the Comprehensive Plan and zoning code shortly before the construction of the “new” I-90.

Aubrey Davis Park is 92-acres of highway lids and landscape buffers located within airspace of the I-90 ROW owned by WSDOT. The City of Mercer Island and WSDOT executed a series of turnback and landscape maintenance agreements (Agreements) in the late 1980s to permit the construction and use of recreational facilities by the City within WSDOT’s ROW and to transfer maintenance responsibilities of the facilities, including Aubrey Davis Park, to the City. As a result of the Agreements, WSDOT and the City executed airspace leases for I-90 ROW with a 40-year term in the early 1990s to permit specific recreational uses of the I-90 highway lids and operation of the east channel boat launch. As the owner and lessor, WSDOT contractually controls the City’s use of Aubrey Davis Park.

A summary of key events related to the development of Aubrey Davis Park, the adoption of the Public Institution Zone, and the City’s relationship with WSDOT is provided in the timeline below.

- June 1970: Ordinance No. 255 was adopted approving the annexation of the former Town of Mercer Island. The Town of Mercer Island was officially dissolved effective, January 1, 1981.

Aubrey Davis Park Background Information

Parks and Recreation Commission

February 6, 2025

- October 1984: The Planning Commission provides a recommendation to the City Council in AB 1644 to revise the Zoning Code, concluding their six-year code development and public engagement process.
- February 1985: Ordinance No. A-37 was adopted to repeal Ordinance No. 15 (the ordinance that adopted the original City of Mercer Island Zoning Code) and create MICC chapter 19.04 – Zoning Code. The new chapter integrated the City’s former zoning code, the former Town of Mercer Island Zoning Code, and amendments thereto, in addition to establishing the Public Institution Zone. The original permitted uses of the zone included public fire stations, public police stations, public schools, public parks, and municipal buildings and uses.
- January 1987: I-90 Turnback and Landscape Maintenance Agreement Phase I is executed between the City and WSDOT. Street and landscape maintenance and operation responsibilities for certain areas within WSDOT right of way are transferred to the City in exchange for annual reimbursements from WSDOT.
- February 1987: Ordinance No. B-49 was adopted imposing a moratorium on permit applications and zoning classification applications within WSDOT right of way and adjacent lands to allow sufficient time for the City to study, analyze, and enact amendments to the Comprehensive Plan, Zoning Code, and Zoning Map. The moratorium was enacted as a result of the City adding I-90 right of way and adjacent lands to an ongoing study of the Central Business District. The moratorium did not apply to any permits required for the construction of I-90 or related transportation facilities. The moratorium was extended twice by Ordinance Nos. B-53 and B-56.
- July 1987: I-90 Turnback and Landscape Maintenance Agreement Phase II is executed between the City and WSDOT to jointly develop the East Channel Boat Launch within WSDOT right of way, with management and maintenance responsibility to be assumed by the City via an airspace lease.
- November 1987: Ordinance Nos. A-60, A-61, and B-57 were adopted to amend the City’s Comprehensive Plan, Zoning Code, and Zoning Map as part of the I-90 reconstruction process.
 - Ordinance No. A-61 amended the Public Institution Zone by adding the following permitted use: “The entire area within the Mercer Island I-90 right-of-way, including but not limited to, the roadway, street overcrossings, lids, open space, recreation areas, linear greenbelts and the park and ride lot area as approved by the City on November 14, 1983 and incorporated in the right-of-way plan approved by WSDOT on May 1, 1987. All such uses shall be maintained as set forth in City approved I-90 related documents.”
 - Ordinance No. B-57 amended the Comprehensive Plan to establish a new section titled, “Comprehensive Plan for the Property Within the I-90 Right-of-way and Lands in the Proximity Thereof.” The ordinance references several City approved and adopted plans, studies, and agreements related to the construction of I-90, including the following: “The City of Mercer Island approved I-90 documents which set forth freeway location, design geometrics and environmental features shall be considered as the primary planning policy for the orderly and coordinated use and development of land and structures in the I-90 corridor.”

Aubrey Davis Park Background Information

Parks and Recreation Commission

February 6, 2025

- Ordinance No. A-60 amended the Zoning Map to classify the I-90 right of way as Public Institution Zone, among other changes to zoning of the Central Business District. I-90 right of way was unclassified in the Zoning Code prior to Ordinance No. A-60.
- May 1989: I-90 Turnback and Landscape Maintenance Agreement Phase III is executed between the City and WSDOT to jointly develop recreation facilities on the First Hill Lid and transfer landscape maintenance and operation responsibilities to the City.
- December 1989: I-90 Turnback and Landscape Maintenance Agreement Phase IV is executed between the City and WSDOT defining improvements to WSDOT right of way in the Central business District and transferring landscaping and maintenance responsibilities to the City.
- March 1994: The I-90 East Channel Boat Launch Airspace Lease is executed between the City and WSDOT with a term of 40 years. The airspace lease permits the City to operate a public boat ramp and approved concessions at the East Channel Boat Launch facility within WSDOT right of way.
- June 1994: The I-90 First Hill Lid Airspace Lease is executed between the City and WSDOT with a term of 40 years. The airspace lease permits specific uses of the lid by the City for recreational purposes and defines maintenance responsibilities of the City.

Aubrey Davis Park Master Plan

The [Aubrey Davis Park Master Plan](#), adopted in December 2019, provides a long-term vision and strategic framework for maintaining and improving the park. The plan was initiated to address aging infrastructure, enhance accessibility, and ensure the park facilities continue to meet the needs of the community, while also aligning with WSDOT's operational needs and the various documents that govern the management of these facilities. The Master Plan was jointly developed and approved by the City and WSDOT with feedback received from an extensive public engagement process. The Master Plan covers four main categories: park improvements, trail improvements, vegetation management, and arts and culture. The Master Plan will serve as a platform to renegotiate the maintenance agreements and airspace leases with WSDOT.

Washington State Law – Preemptive Authority over State Highway System

Under Washington State law ([RCW 47.01.260\(1\)](#)), “The department of transportation shall exercise all the powers and perform all the duties necessary, convenient, or incidental to the planning, locating, designing, constructing, improving, repairing, operating, and maintaining state highways, including bridges and other structures, culverts, and drainage facilities and channel changes necessary for the protection of state highways...” This statute gives WSDOT “preemptive authority” to exercise all powers over the state highway system. This means cities have no authority to adopt conflicting provisions regarding state highways, including zoning development regulations. The City must comply with the numerous prior agreements with WSDOT and cannot enforce conflicting regulations attempting to control the same uses covered by these agreements that permit the City to maintain Aubrey Davis Park and other recreational facilities within WSDOT right of way.

In 2003, the state statute that authorizes WSDOT to lease surplus air space ([RCW 47.12.120](#)) was amended to provide that surplus property leases will be “subject to the provisions and requirements of zoning ordinances of political subdivisions or governments.” This amendment must be carefully considered as the City and WSDOT

Aubrey Davis Park Background Information

Parks and Recreation Commission

February 6, 2025

prepare to renegotiate the air space leases. Additionally, any modifications to the City's zoning code must account for the risk of creating zoning misalignment, ensuring that new regulations do not conflict with existing land use policies or create inconsistencies in how the area is governed.

10-Year Work Plan – Turnback Agreement and Airspace Lease Renegotiation with WSDOT

The airspace leases that permit the City of Mercer Island to operate and maintain recreational facilities in Aubrey Davis Park, including the east channel boat launch and the Lid, will expire in 2034. Additionally, the turnback and landscape maintenance agreements were executed by the City and WSDOT between 1987-1989 and are due for an update. The City and WSDOT will begin the process of renegotiating these agreements in the coming years.