

**CITY OF MERCER ISLAND  
ORDINANCE NO. 21C-03**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
PROVIDING TEMPORARY MEASURES TO ALLOW MORE OUTDOOR  
SEATING FOR EATING AND DRINKING ESTABLISHMENTS; CALLING A  
PUBLIC HEARING; DECLARING AN EMERGENCY; AND ESTABLISHING AN  
IMMEDIATE 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 significant restrictions on indoor seating on eating and drinking establishments 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 the current state of emergency; and

**WHEREAS**, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City immediately needs interim regulations to ease impacts on local eating and drinking establishments resulting from restrictions on indoor seating; and

**WHEREAS**, the City is authorized under RCW 35A.63.220, 36.70A.390 to pass an interim zoning and official control ordinance for up to six months, provided it holds a public hearing on the same within sixty days after passage; 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. Declaration of Emergency.** As set forth in the “Whereas Clauses” adopted in Section 1 of this Ordinance, the City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority plus one of the whole membership of the City Council, and that under the law the same is not subject to a referendum and is exempt from SEPA review.

**Section 3. 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 while said establishments are under restrictions related to a declared Covid-19 emergency that limit their indoor “sit-down” services to less than 75% capacity shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.

**Section 4. 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 if it is authorized to operate under the Governor's plans related to a declared Covid-19 emergency, and only while restrictions under said plans limit indoor "sit-down" services to less than 75% capacity at eating and drinking establishments.

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 5. Minimum Parking Regulations Waived.** In order to effectuate the purpose of Section 4 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 6 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 April 6, 2021, 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.

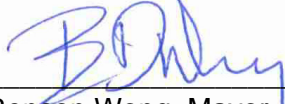
**Section 7. Duration of Interim Zoning and Official Controls.** The interim zoning and official controls approved by this Ordinance shall become effective immediately, on the date hereof, and shall continue in effect for an initial period of six months, unless repealed, extended or modified by the City 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 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. Effective Date.** This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, property, and welfare, shall take effect and be in full force and effect immediately upon passage by a majority plus one of the whole membership of the City Council.

Passed at least by a majority plus one of the City Council of the City of Mercer Island, Washington, at its regular meeting on the 16 day of February 2021 and signed in authentication of its passage.

CITY OF MERCER ISLAND

  
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Benson Wong, Mayor

Approved as to Form:

/s/ Bio Park, 10, 2021  
Bio Park, City Attorney

ATTEST:

  
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Deborah A. Estrada, City Clerk

Date of Publication: February 24, 2021