



PLANNING COMMISSION CITY OF MERCER ISLAND

PCB 25-15
September 10, 2025
Special Business

AGENDA BILL INFORMATION

TITLE:	PCB 25-15: Public Hearing for Permanent Regulations for Temporary Uses and Structures Including Outdoor Dining (Fourth Reading).	☐ Discussion Only ☒ Action Needed: ☒ Motion ☒ Recommendation
RECOMMENDED ACTION:	Hold the public hearing and recommend the City Council adopt the proposed code amendments as shown in Exhibit 1.	

STAFF:	Molly McGuire, Senior Planner
EXHIBITS:	1. Draft Permanent Regulations for Temporary Uses and Structures 2. 07-23-2025 Amendments & Comments Matrix with Staff Responses

EXECUTIVE SUMMARY

The purpose of this agenda bill is to recommend 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 renewed for an additional 6-months on May 20, 2025 under [Ordinance No. 25C-07](#).

- Temporary uses and structures are development or activities that take place on a property for a limited duration. 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 No. 24C-07, which established interim regulations and permitting procedures for temporary structures and uses.
- Staff prepared an initial draft of permanent regulations for temporary uses and structures establishing:
 - 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.
- On February 26, 2025, the Planning Commission held a first reading of the draft permanent regulations and provided initial feedback to staff (see [PCB25-12](#)).
- On June 10, 2025, the Planning Commission held a public hearing to discuss the proposed amendments and draft regulations and directed staff to draft additional amendments.
- Staff updated the draft regulations to incorporate the Planning Commission input provided on June 10, 2025 (Exhibit 1).
- At the July 23, 2025, public meeting, the Planning Commission made motions to recommend the incorporation of 15 additional amendments.

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- Due to the significant changes made during the July 23, 2025, meeting, a second public hearing was necessary to ensure the public is aware of the changes and has an opportunity to comment on the entire draft regulations. This public hearing is scheduled for September 10, 2025.
 - The Planning Commission should review the updated draft regulations and arrive at a recommendation during its meeting on September 10, 2025.

BACKGROUND

In 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. City Council directed staff to proceed with developing interim regulations to address two docketed items related to temporary uses and structures and renew the existing interim regulations for outdoor dining. More information on the background of the interim regulations is provided in [PCB25-05](#), from the February 26, 2025 Planning Commission meeting.

The Planning Commission held a regular meeting on February 26, 2025, where it had the first reading of the draft regulations for temporary uses and structures. The Commission provided initial feedback on the draft regulations and asked staff questions related to various topics. Staff requested that the Planning Commissioners provide comments, amendments, and questions and established a deadline for these materials to be submitted, prior to the previously scheduled March 26, 2025, public hearing. The March 26, 2025, public hearing was canceled and rescheduled for June 10, 2025. During the June 10, 2025 public hearing, the Planning Commission made motions to recommend 16 amendments be incorporated into the draft. Details of these amendments can be found in [PCB25-12](#) and [PCB25-13](#). The Planning Commission also provided feedback on three "Buckets" presented by staff. The feedback included direction from the Planning Commission to staff to return with a draft that would address the desired regulations for what temporary uses require a temporary use permit and what types do not require an additional land use authorization, which temporary uses would be "normal" that require a permit, and which temporary uses would be allowed through the approval of a temporary use "deviation". The draft also included amendments that were recommended by staff to maintain consistency throughout the development code. A summary of the Planning Commission's feedback and resulting amendments can be found in [PCB25-13](#).

Planning Commission Feedback – July 23, 2025

During the July 23, 2025 public meeting, staff presented a draft which incorporated the feedback and direction given by the Planning Commission during the June 10, 2025 public hearing. These amendments were sorted into two categories: Category A and B. Category A was sorted into three subsections that align with the three buckets presented at the June 10, 2025 public hearing. Category B included eight amendments that were recommended by staff for consistency. These categories are detailed in PCB25-13. The Planning Commission made motions to accept all the amendments in Category A and B.

In addition to the amendments in Category A and B, the Planning Commission made motions during the July 23, 2025 meeting to incorporate several amendments to the draft regulations. These amendments are detailed in the Issue/Discussion section below.

Amendments Matrix

Ahead of the July 23, 2025 public meeting, the Planning Commission provided amendments and questions in the form of a matrix (Exhibit 2). The amendments were sorted into four categories and responses were prepared by staff:

- 1) Substantive – Not recommended
 - a. These amendments were not recommended by staff for reasons that include uncertainty in administering the language or something to the same effect being already covered elsewhere in the Mercer Island City Code.
- 2) Substantive – Not consistent with docketed scope

- a. These amendments were not recommended by staff due to the amendment establishing a regulation that the temporary membrane structure by the Mercer Island Country Club would not be able to satisfy. The temporary structures and uses code amendment was initially docketed to establish a regulatory framework for this temporary membrane structure.
- 3) Substantive – Previously resolved
 - a. These amendments were not recommended by staff because they would reverse policy direction given by the Planning Commission at the June 10, 2025 public hearing.
- 4) Minor
 - a. Minor amendments were grouped together, and a motion was made during the July 23, 2025 meeting to recommend the adoption of the following minor amendments in Exhibit 2:
13 (first alternative), 14, 15, 18, 25, 27 (staff alternative), 30, 34, 54, and 55.

These amendments are shown in strikethrough/underline format in red text in Exhibit 1.

ISSUE/DISCUSSION

PROPOSED CODE AMENDMENTS

During the July 23, 2025 public meeting, the following motions were made, in addition to the motions made to recommend the adoption of Category A and B, and the 10 minor amendments from the matrix in Exhibit 2. These amendments are shown in strikethrough/underline format in red text in Exhibit 1:

Temporary Structure Deviation Criteria – Amendment 12

Category A3, presented during the July 23, 2025 public meeting included draft amendments to address criteria of approval for temporary structure deviations. Vice Chair Gibson presented an alternative draft, which was reviewed by staff during the meeting. Following discussion, Vice Chair Gibson made a motion to replace the staff drafted Section F with a new Section F, as follows:

- F. Temporary structure deviation criteria. Temporary structures which cannot meet the development standards of the underlying zone applicable to the site on which the temporary structure is located, and require a temporary use permit, may apply for a temporary structure deviation. The code official may approve, or condition and approve, an application for a temporary structure deviation subject to the criteria in subsections (E)(1)(a) through (j) and the following criteria:
 - 1. The proposed use is allowed in the underlying zone, including allowances provided by a conditional use permit.
 - 2. The temporary structure must be accessory to the established use of the property.
 - 3. Temporary structures shall ensure sufficient temporary or permanent vegetative or equal screening from adjacent residentially zoned properties and public right of way to mitigate visual effects created by the deviation.
 - 4. The proposed structure provides significant public benefit. Significant public benefit may be demonstrated by meeting one of the following conditions:
 - a. The temporary use or structure is owned or operated by the City of Mercer Island.
 - b. The temporary use or structure is owned or operated by an organization or corporation serving at least 250 people; or
 - c. The temporary use or structure is open to the public without charge and access is not limited to membership in an organization.

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5. A temporary structure deviation does not allow a deviation from the applicable provisions in MICC Chapters 19.07 Environment, 19.10 Trees, 19.13 Shoreline Master Program, and 19.21 Environmental Procedures.
 6. Deviations for temporary structures shall be limited to the following. Deviations from requirements not listed below are strictly prohibited.
 - a. The maximum gross floor area for temporary structures shall be 20% of the lot area.
 - b. The maximum lot coverage for temporary structures shall be limited to 10% of the lot area.
 - c. Temporary structures may exceed the maximum building height allowed in the underlying zone, including allowances provided by a conditional use permit, by the lesser of 35 percent or 10 feet.
 - d. Yard setbacks may be reduced to four feet, subject to the following:
 - i. The temporary structure is not adjacent to a property with an established residential use.
 - ii. The height of the structure within the setback area of the underlying zone, including allowances provided by a conditional use permit, does not exceed 20 feet.

Time Limitation – Amendment 13

The draft presented by staff on July 23, 2025 included the option for an applicant to request that the code official grant a 30-day extension to the 180-day time limitation for the operation of the temporary use or structure. A motion was made by Chair Thompson to remove this option from the draft.

Maximum Duration for Temporary Uses and Structures That Cannot Meet Underlying Development Standards – Amendment 9

A motion was made by Vice Chair Gibson to allow temporary uses and structures that cannot meet the development standards of the underlying zone applicable to the site on which the temporary use or structure is located to be allowed with a maximum duration of 72 hours within any given 60-day period. Temporary uses and structures that meet this standard do not need to obtain a permit. The draft presented by staff on July 23, 2025 set a maximum duration of 48 hours.

Exemption for Any Temporary Structure Used for Worship – Amendment 10

A motion was made by Commissioner Nice to include any temporary structure used for worship under 250 square feet in area and 10 feet in height erected for no more than a total of 15 calendar days in any given 365-day period in the list of temporary uses and structures that are exempt from permit requirements.

Amplified Music or Sound – Amendment 4

A motion was made by Commissioner Nice to strike the restriction on amplified music or sound from the criteria for approval for temporary commerce on public property.

PUBLIC HEARING

Due to the extent of the amendments made at the July 23 meeting, a second public hearing has been scheduled for September 10 to ensure the public is aware of the changes and has an opportunity to comment on the entire draft regulations.

Additional amendments should be limited to those made in response to public comment. The Planning Commission is expected to approve a recommendation following the public hearing at the September 10 meeting.

NEXT STEPS

A City Council briefing on the PC recommendation and first reading of an ordinance to adopt permanent regulations for temporary structures and uses is scheduled for November 4, 2025.

RECOMMENDED ACTIONS

Hold the public hearing and recommend the City Council adopt the proposed code amendments as shown in Exhibit 1.

Note: the main motion below was originally made on June 10, 2025, and it was tabled for future discussion during the June 10 and July 23, 2025 meetings. The secondary motions made during previous meetings were voted on and included in Exhibit 1. The only outstanding action to take is to vote on the recommended main motion.

Main Motion: “Move to recommend that the City Council adopt the proposed amendments to MICC 19.06.050 – Commerce on public property as amended; proposed new section MICC 19.06.130 – Temporary use permits as amended; and proposed amendments to MICC 19.15.030 – Land use review types as amended.”