

**CITY OF MERCER ISLAND
ORDINANCE NO. 23C-09**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
ADOPTING INTERIM ZONING MEASURES TO ALLOW MORE OUTDOOR
SEATING FOR EATING AND DRINKING ESTABLISHMENTS; SCHEDULING A
PUBLIC HEARING; ADOPTING A WORK PLAN; AND ESTABLISHING AN
EFFECTIVE DATE.**

WHEREAS, the City of Mercer Island adopted Ordinance No. 20C-17 on August 4, 2020, enacting interim zoning and official controls to allow existing eating and drinking establishments to expand outdoor seating into available public and private space in order to provide safer dining conditions for patrons during the COVID-19 pandemic; and

WHEREAS, the City Council renewed the interim regulations on February 16, July 6, December 7, 2021, and January 7, 2023; and

WHEREAS, the City Council wishes to continue promoting local economic recovery 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; 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 was previously restricted; and

WHEREAS, the Washington State Liquor and Cannabis Board enacted temporary rules for outdoor alcohol service in WAC 314-03-205, which provide temporary exceptions to WAC 314-03-200; and

WHEREAS, the City's interim regulations for outdoor dining can only apply to outdoor alcohol service if the State Liquor and Cannabis Board temporary rules are in effect; and

WHEREAS, the State Liquor and Cannabis Board temporary rules were recently extended by the State Legislature and now expire July 1, 2025; 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 one year, provided a work plan is developed and 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 adopted as the findings of fact of the City Council for passing this Ordinance.

Section 2. 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 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 existing eating and drinking establishments at Mercer Island to temporarily provide outdoor food and beverage service on public property adjacent to the eating and drinking establishment shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.

Section 3. 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 food and beverage service, provided the private parking area is immediately adjacent to the eating and drinking establishment, and the following conditions are met:

A. An eating and drinking establishment may provide food and beverage service in a private parking area only while this Ordinance remains in effect.

B. Use of any portion or percentage of private off-street parking areas for outdoor food and beverage service 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.

C. 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 4. Minimum Parking Regulations Waived. In order to effectuate the purpose of Section 3 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 5 Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall occur on July 18, 2023, or within 60 days of this Ordinance passage, 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 6. Work Plan adopted. The Work Plan attached as Attachment A is adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390 and indicates the City's plans for considering permanent regulations during the pendency of the interim regulations.

Section 7. Duration of Interim Zoning and Official Controls. The interim zoning and official controls approved by this Ordinance shall continue in effect for an initial period of one year from the effective date, unless repealed, extended or modified by the City Council 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. 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 THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AT ITS MEETING ON JUNE 20, 2023.

CITY OF MERCER ISLAND

Salim Nice, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio Park, City Attorney

Andrea Larson, City Clerk

Date of Publication: XX

Attachment A

Temporary Uses and Outdoor Dining Work Plan

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| Q3 2023-Q3 2024 | Await the conclusion of the Town Center Parking Study, completion of the Economic Development Element of the Comprehensive Plan, and action from the State Liquor and Cannabis Board on permanent provisions for outdoor alcohol service.

Coordinate with City staff in the Recreation Division, the Chamber of Commerce, and local eating and drinking establishments to understand the needs for outdoor dining and special events in terms of temporary use of the public ROW and private parking areas. |
| Q3-Q4 2024 | Propose a code amendment for the annual docket related to temporary uses and outdoor dining. |
| Q1-Q2 2025 | Legislative review of the proposed code amendment. |