



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 6801
November 4, 2025
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 6801: Permanent Regulations for Temporary Uses and Structures, Including Outdoor Dining (Ordinance No. 25C-26 First Reading)	☐ Discussion Only ☒ Action Needed: ☒ Motion ☒ Ordinance ☐ Resolution
RECOMMENDED ACTION:	Schedule Ordinance 25C-26 for a second reading.	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, CPD Director Molly McGuire, Senior Planner
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ordinance No. 25C-26 2. Planning Commission Recommendation – Temporary Uses 3. Interim Regulations / Planning Commission Recommendation Matrix
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

EXECUTIVE SUMMARY

The purpose of this agenda bill is to conduct the first reading of Ordinance No. 25C-26 (Exhibit 1) to amend the Mercer Island City Code (MICC) to establish permanent regulations for temporary uses and structures, including outdoor dining, in place of the 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, which was identical to the interim regulations in effect, 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](#)).
- Due to several factors, the first public hearing with the Planning Commission was rescheduled, which required the renewal of the interim regulations under Ordinance No. 24C-07. On May 20, 2025, these interim regulations were renewed for an additional 6 months under Ordinance No. 25C-07 and will now expire on December 16, 2025.
- 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.
- At the July 23, 2025, public meeting, the Planning Commission made motions to recommend the incorporation of 15 additional amendments.
- Due to the significant changes made during the July 23, 2025 meeting, a second public hearing was necessary to ensure the public was aware of the changes and had an opportunity to comment on the entire draft regulations. This public hearing was held on September 10, 2025 where the Planning Commission made a motion to recommend that the City Council adopt the development regulations in Exhibit 2.
- A side-by-side comparison of the development regulations prior to June 2024, the interim regulations adopted under Ordinance No. 24C-07, and the Planning Commission recommended code is provided in Exhibit 3.

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 from the City of Mercer Island and the Mercer Island Country Club related to temporary uses and structures. 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 [AB 6441](#)).

Existing Regulations for Temporary Uses and Structures

Prior to the adoption of [Ordinance No. 24C-07](#) in 2024, the Mercer Island City Code (MICC) did not include regulations 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 altogether.

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. During the COVID-19 Pandemic, the City adopted interim regulations under [Ordinance No. 20C-17](#) 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.

Planning Commission Review

In February of 2025, the Planning Commission began reviewing the staff proposed draft regulations for temporary uses and structures and commerce on public property, which closely aligned with the interim regulations originally adopted in June 2024 under Ordinance No. 24C-07.

The first public hearing with the Planning Commission was held on June 10, 2025. During this time, the Planning Commission provided staff with significant feedback on the draft regulations. Staff returned on July 23, 2025 with a revised draft that addressed the Planning Commission direction and feedback. During this meeting, several more amendments were made by motion, and additional direction was provided to staff which resulted in the need for a second public hearing to ensure the public was aware of the changes and had an opportunity to comment on the new draft.

A second public hearing with the Planning Commission was held on September 10, 2025, at which time the Planning Commission made a final motion to recommend that the City Council adopt the proposed amendments as shown in Exhibit 2.

ISSUE/DISCUSSION

Between February and September 2025, the Planning Commission made several substantial changes to the draft regulations originally presented by staff, which were mostly the same as the interim regulations adopted by the City Council on May 20, 2024. The matrix in Exhibit 3 classifies the Planning Commission changes into “minor” and “substantive.” Minor amendments are those amendments that do not result in substantive policy changes from either the code prior to June 2024 or the interim regulations that are currently in effect. Substantive amendments do result in significant changes from either the code prior to June 2024 or the interim regulations currently in effect. The City Council may direct staff to incorporate all “minor” amendments, reclassify “minor” amendments to “substantive” for further discussion, and/or direct staff to only incorporate certain amendments from the matrix in Exhibit 3. These changes can be further categorized into the following:

MINOR – Commerce on public property (MICC 19.06.050)

Matrix Reference Log No(s): 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13*

***DESIGN REVIEW**

The Planning Commission recommendation removes the references to the Design Commission, which was dissolved on June 17, 2025 under Ordinance No. 25C-17. Design review for development proposals would be considered under MICC 19.15.220.

SUBSTANTIVE – Commerce on public property (MICC 19.06.050)

APPLICABILITY – *Matrix Reference Log No(s): 3, 14*

The Planning Commission recommendation broadens the applicability of the commerce on public property regulations to include public sidewalks, streets, and rights-of-way within the Planned Business zone and Commercial Office zone in addition to the original Town Center zone. The draft also adds the “Mercer Island Farmers Market” and any other events sponsored fully or in part by the City to the provision that exempts “Summer Celebration” from compliance with MICC 19.06.050. The interim regulations in Ordinance No. 24C-07 did not amend these sections.

PERMIT REQUIRED – *Matrix Reference Log No(s): 4*

The Planning Commission recommendation exempts any temporary use and structure associated with commerce on public property that operates for no more than a total of seven calendar days or less in any given 90-day period from the private commerce on public property permit. Currently, all private commerce on public property requires a permit, issued by the Community Planning & Development Department. The interim regulations in Ordinance No. 24C-07 did not amend this section.

PROPERTY RIGHTS AND REMOVAL – *Matrix Reference Log No(s): 15*

The Planning Commission recommendation adds a provision that clarifies that a commerce on public property authorization does not constitute a surrender by the city of any property rights to the right-of-way and includes the ability for the City Engineer to require the removal of improvements under certain circumstances including emergencies and maintenance.

MINOR – Temporary uses and structures on private property (MICC 19.06.130)

Matrix Reference No(s): 16, 17, 18, 26

SUBSTANTIVE – Temporary uses and structures on private property (MICC 19.06.130)

PERMIT REQUIRED – *Matrix Reference Log No(s): 20*

The Planning Commission recommendation exempts two types of temporary uses and structures from requiring a permit: 1) temporary uses and structures that comply with the development standards of the underlying zone, provided the duration does not exceed a single term of seven consecutive days within any given 90-day period; and 2) temporary uses and structures that do not comply with the development standards of the underlying zone, provided the duration does not exceed a maximum duration of 72 hours within any given 60-day period. The draft also adds maximum durations to other listed exempt activities, adds a new exemption for a structure under 250 square feet in area and 10 feet in height used for worship, and clarifies standards for construction-related activities when located in single-family zones.

APPLICATION PROCESS – *Matrix Reference Log No(s): 19, 22, 24, 27*

The Planning Commission recommendation divides temporary use permits into three different application processes: 1) typical temporary use permits which are subject to the Type II land use review process and valid for five years; 2) temporary structure deviations which are subject to the Type III land use review process and valid for five years with the option for renewal; and 3) temporary structure deviation renewals which are subject to the Type II land use review process and eligible for up to 20 years after the original approval provided certain conditions are met.

Each land use review type is subject to different noticing and decision criteria, outlined in [MICC 19.15.030](#) and summarized below:

- Type I land use reviews – No public notification, no public notice of application, no public hearing, and decision by the code official within 65 days of complete application.
- Type II land use reviews – Public notification, but no public notice of application, no public hearing, and decision by the code official within 65 days of complete application.
- Type III land use reviews – Requires a pre-application meeting, no public notification, public notice of application, no public hearing, and decision by the code official within 100 days of complete application, including a notice of decision and, typically, a staff report.
- Type IV land use reviews – Requires a pre-application meeting, no public notification, public notice of application, public hearing, and decision by, most often, the Hearing Examiner, within 170 days of complete application, including a notice of decision and a staff report.

The interim regulations in Ordinance No. 24C-07 required a Type I land use review for all temporary uses and structures, unless specifically exempt from permit requirements. These permits were subject to the City's hourly staff rate of \$176 in 2025.

Should the City Council adopt permanent regulations consistent with the Planning Commission's recommendation, the Fee Schedule will need to be updated to include a new established fee for Temporary Structure Deviations due to the significant increase in staff resources necessary to process a Type III permit review.

CRITERIA FOR APPROVAL – Matrix Reference Log No(s): 21

The Planning Commission recommendation rearranges the subsections from the interim regulations to strike the additional criteria of approval for special temporary uses and structures, which included mobile food vendors and outdoor dining. Instead, these special uses are now subject to all the same standards as any other temporary use and structure in subsection (e), with no additional carve-outs or standards. The parking requirements that were included in the interim regulations for these special temporary uses were added to the criteria for approval for all temporary uses and structures. The Planning Commission also recommended the addition of a standard to prevent mechanical equipment from exceeding the maximum permissible noise levels in the Washington Administrative Code and establishes a setback for mechanical equipment abutting single-family residential zones.

The most substantial change to this section recommended by the Planning Commission is the requirement for all temporary uses and structures, unless otherwise specified, to be subject to the development standards in the underlying zoning designation applicable to the site.

TEMPORARY STRUCTURE DEVIATIONS – Matrix Reference Log No(s): 19, 22, 27

The Planning Commission recommendation includes criteria for a new permit application for temporary structure deviations, which would be for those structures that do not meet certain dimensional development standards in the underlying zoning designation, such as building height, gross floor area, lot coverage, and setbacks. The temporary structure would be required to meet the criteria for approval for all other temporary uses and structures in subsection (e), in addition to the criteria in subsection (F). The additional criteria include requirements for screening and public benefit and allowances for the temporary structure to exceed gross floor area and lot coverage by a certain percentage, and for the temporary structure to reduce yard

setbacks depending on the adjacent uses and proposed structure height. Using a recent example, the Mercer Island Country Club's "tennis bubble" appears that it would comply with these recommended criteria, provided they submit a complete application for a temporary structure deviation.

TIME LIMITATIONS – *Matrix Reference Log No(s): 23*

The Planning Commission recommendation strikes an option from the interim regulations which allows for a temporary use or structure to request a 30-day extension, in addition to the maximum durations outlined in Table A. The Planning Commission recommendation also strikes Table A and instead subjects all temporary uses and structures to a flat duration of 180 days, except as otherwise specified. Using a recent example, the Mercer Island Country Club's "tennis bubble" would only be allowed to operate for 180 days under these recommendations, as opposed to the original Mercer Island Country Club's docket proposal of 243 days. The interim regulations in Ordinance No. 24C-07 allowed for a maximum duration of 180 days with the option for a 30-day extension to align with building code standards for temporary membrane structures.

Ordinance No. 25C-26

If adopted by the City Council, Ordinance No. 25C-26 (Exhibit 1) will amend MICC 19.06.050, Commerce on public property, add a new section to Chapter 19.06 MICC to establish regulations for temporary uses and structures on private property, and amend MICC 19.15.030, Permit review types, to establish permit review processes for temporary use permits, temporary structure deviations, and temporary structure deviation renewals.

NEXT STEPS

Once the City Council completes deliberation, Ordinance No. 25C-26 will be revised as directed and scheduled for a second reading and adoption on November 18, 2025, or as soon as otherwise practicable.

RECOMMENDED ACTION

Move to accept the Planning Commission recommended amendments from Exhibit 3 – Log Numbers [*all minor amendments and/or list log numbers*] in Ordinance No. 25C-26 and schedule Ordinance No. 25C-26 for second reading.