
COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

To: City Council

From: Dan Thompson, Planning Commission Chair

Date: September 10, 2025

Subject: Permanent Regulations for Temporary Uses and Structures Including Outdoor Dining

Attachments: A. Planning Commission Recommended Code Amendments for Commerce on Public Property and Temporary Uses and Structures

In December 2023, the City Council approved Resolution No. 1655 which included adding a project to develop regulations for temporary uses and structures to the 2024 Annual Docket. In June 2024, the City Council adopted interim regulations by Ordinance No. 24C-07, which established regulations and a permitting process for temporary uses and structures, and incorporated existing interim regulations for outdoor dining that had been in place since 2020. These interim regulations have been renewed once for an additional six months and will expire in December 2025.

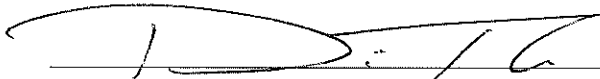
The Planning Commission held a first reading on February 26, 2025 and provided initial feedback on the draft regulations presented by staff. A public hearing was held on June 10, 2025, during which the Planning Commission provided additional direction related to three different categories of temporary uses and structures, which include 1) temporary uses and structures that are exempt from permit requirements; 2) 'normal' temporary uses and structures that require a permit; and 3) temporary uses and structures that do not meet the underlying development standards and require a 'deviation'. Staff prepared a revised draft to incorporate this direction and presented it during the July 23, 2025 public meeting. During this meeting, several motions were made by the Planning Commission to amend the draft further, which resulted in a second public hearing being required before a recommendation could be made. This second public hearing was held on September 10, 2025.

Recommendation

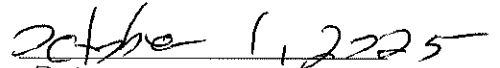
On September 10, 2025, the Planning Commission held a second public hearing and considered its recommendation to the City Council regarding amendments to the development code to establish regulations for temporary uses and structures and

incorporate outdoor dining into the regulations for commerce on public property.
After deliberating, the Planning Commission unanimously voted 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."



Dan Thompson
Planning Commission Chair



Date

MICC 19.06.050 – Commerce and Temporary Structures on Public Property.

- A. The purpose of this chapter is to allow for the safe, healthful and aesthetic use of public property for the benefit of private commerce. The provisions of this chapter do not exempt proposed activities from compliance with other titles of the Mercer Island City Code.
- B. The provisions of this section shall apply only to public sidewalks, streets and rights-of-way within the Town Center zone, Planned Business Zone, and Commercial Office zone.
- C. Any person(s), corporation, or company who wishes to use the public right-of-way for the exchange of goods or service shall apply for a private commerce on public property permit, except as provided below. Such permit shall be in the form specified by the code official and shall contain such information as deemed necessary by the code official.
1. Temporary uses and structures associated with commerce on public property operating for no more than a total of seven calendar days or less in any given 90-calendar day period do not require a permit. Nothing in this section exempts commerce on public property activities from compliance with the criteria in MICC 19.06.050(D), Criteria for permit.
- D. *Criteria for permit.* A private commerce on public property permit shall be reviewed based on the following criteria:
1. The applicant business has an active business license for a location immediately adjacent to the public property location where the request has been made.
 2. The location of the private commerce on public property ~~business~~ activity does not create a safety, noise, or environmental hazard for motorists, bicyclists or pedestrians.
 - a. The ~~business~~ private commerce on public property location maintains sufficient area for the free passage of deliveries, service access, and pedestrians per ADA standards, along sidewalks and access to other adjacent businesses.
 - b. The ~~business~~ private commerce on public property location does not obstruct the views of motorists turning into or out of a street or parking lot.
 3. The business operation does not generate litter, noise or other nuisances that would be objectionable to the public or other businesses in the immediate area.
 - a. Adequate refuse containers shall be provided.
 - b. Hours of operations are sensitive to the surrounding neighborhood.
 - c. ~~No music or sound is amplified.~~
 - d. The area can be maintained in a clean condition.
 - e. Physical improvements can be removed or secured when not in operation.

- ~~4. The design for any improvements is consistent with the design requirements for the Town Center plan.~~
 - ~~45. The location and design do not unreasonably obstruct the visibility of any adjacent businesses or their signage.~~
 - ~~56. The location of a private commerce on public property business engaged in the sale of alcoholic beverages is separated from the public space with a barrier, fence, landscaping or other demarcation.~~
 - ~~6. The total number of public parking stalls occupied by the commerce on public property activity may not exceed two public parking stalls immediately adjacent to the business associated with the activity.~~
- E. A permit to operate a private business on public property shall be subject to design review 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. ~~Permit applications from one or a group of existing eating and drinking establishments at Mercer Island to temporarily operate private business on public property during the effective period set forth in section 6 of Ordinance No. 21C-25 shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.~~ 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.
- F. All permittees must comply with all applicable city, county, state and federal laws, including the International Fire Code.
- G. Permits for ongoing commercial use on public property shall be subject to renewal annually on the date of the original permit approval. Failure to submit a renewal request within 30 days of the annual renewal date shall result in the suspension of the permit.
- H. The revocation of a permit shall be governed by chapter 6.10 MICC.
- I. The provisions of this section shall not apply to the annual event known as the “Mercer Island Farmers Market,” or the annual city sponsored event known as “Summer Celebration” or other events sponsored fully or in part by the City.
- J. The code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to ensure that public property subject to commercial use under this section is restored to its former condition immediately following cessation of the commercial use.
- K. The code official may require evidence of insurance, indemnification or other measures deemed necessary and sufficient to limit the city's liability for the acts or omissions of persons,

corporations, or companies seeking and obtaining permission to use public property for commercial purposes.

L. A commerce on public property authorization does not constitute a surrender by the city of any property rights to the right-of-way. Additionally:

1. The City Engineer may require removal of improvements associated with commerce on public property if it is determined to create a hazard or as required to perform scheduled or ongoing maintenance, public works projects, emergency operations, or other municipal activities.

MICC 19.06.130 – Temporary Use and Structure Permits.

- A. Purpose and applicability. A temporary use permit authorizes a use or conforming structure on private property on a short-term basis. Temporary encampments are not considered temporary uses for purposes of this section and are instead subject to the requirements contained within MICC 19.06.090.
- B. Permit required.
1. No temporary use or structure shall be permitted within the city except in accordance with the provisions of this chapter. A temporary use permit is required for temporary uses and structures except those specifically exempted pursuant to MICC 19.06.130(D).
 2. The property owner or their authorized agent may apply for a temporary use permit on private property.
 3. Any temporary use or structure authorized by this chapter may be subject to other permitting and review requirements of the MICC and/or other public agencies.
- C. Application. Applications for temporary use permits, temporary structure deviation permits, and renewal of temporary structure deviation permits shall be submitted on forms obtained from the Community Planning & Development Department, and consistent with MICC 19.15.060. The application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of this section. The Community Planning & Development Department shall verify that the application is consistent with the requirements of this chapter, and that the application contains proof of a valid business license, if applicable.
1. Temporary use permit applications shall be processed as a Type II land use review, pursuant to MICC 19.15.030 Land Use Review Types, and are subject to MICC 19.06.130(E), Criteria for approval. Temporary use permit approvals shall be valid for five years.
 2. Temporary structure deviation permit applications shall be processed as a Type III land use review, pursuant to MICC 19.15.030 Land Use Review Types, and are subject to MICC 19.06.130(E), Criteria for approval and MICC 19.06.130(F), Temporary structure deviation criteria. Temporary structure deviation permit approvals shall be valid for five years, with the option for renewal.
 3. Applications for renewal of temporary structure deviation permits shall be processed as a Type II land use review, pursuant to MICC 19.15.030 Land Use Review Types, and subject to the following criteria:
 - a. Temporary structure deviation permits shall not be eligible for renewal 20 years after the date of original approval. After 20 years, a new temporary structure deviation permit is required.

- b. Documentation must be provided that all conditions of permit approval have been met.
- c. No changes to the use, structure, or associated deviation have been made.
- d. A complete application must be submitted to the Community Planning & Development Department at least 90 days prior to expiration of a five-year term.
- e. Renewals shall be valid for five years.

D. Exemptions. The following temporary uses and structures are exempt from the permit requirements of this chapter but shall comply with other substantive requirements of this chapter unless specifically noted otherwise:

- 1. Any temporary use or structure that complies with the development standards of the underlying zone applicable to the site on which the temporary use or structure is located may be allowed provided the duration does not exceed a single term of seven consecutive days within any given 90-day period;
- 2. Any temporary use or structure that cannot meet the development standards of the underlying zone applicable to site on which the temporary use or structure is located may be allowed with a maximum duration of 72 hours within any given 60-day period;
- 3. Garage sales, yard sales, and estate sales conducted by or on behalf of the occupant(s) of a residential dwelling, provided the use does not exceed 30 days in a calendar year;
- 4. Rummage and other outdoor sales sited at a school, place of worship, or other nonresidential institutional facility, provided the use does not exceed 30 days in a calendar year;
- 5. 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.
- 6. Exemptions for Construction-Related Activities: The following uses and structures do not require a temporary use permit, provided they are associated with an approved land use application and/or construction permit and the use is discontinued within 30 days of the project completion, cessation of work, or completion of real estate rental or sales activities:
 - a. When located in the R-8.4, R-9.6, R-12, and/or R-15 zones, a single contractor's office under 400 square feet, storage yard, equipment parking and equipment servicing (not to exceed 8 hours in duration) on the site of an active construction project.
 - b. In all other zones, a contractor's office, storage yard, and equipment parking and equipment servicing on or near the site or in the vicinity of an active construction project.

- c. Sales/marketing trailers used for the purpose of real estate sales and/or rental information, located within the subdivision or development to which they pertain.

E. Criteria for approval.

- 1. The code official, in consultation with appropriate City departments, shall review each application for a temporary use permit. The code official may approve, or condition and approve, an application for a temporary use permit if the application satisfies all of the following criteria:
 - a. The temporary use will not be materially detrimental to the public health, safety or welfare, nor injurious to property or improvements in the vicinity of the temporary use;
 - b. Structures proposed for the temporary use comply with applicable provisions of the Building and Fire Codes;
 - c. The temporary use shall obtain all necessary permits and/or authorizations required by the City and/or state and federal agencies;
 - d. The structure or use is located where there is safe ingress and egress from the street, including a clear sight area adjacent to the street;
 - e. Adequate parking is available to serve the temporary use, and if applicable, the temporary use does not occupy required off-street parking areas for adjacent or nearby uses;
 - f. 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 section compels a landlord or property owner to permit a tenant to expand its business to the exterior;
 - g. The use or structure shall not interfere with ADA accessible parking spaces or access to adjacent and surrounding businesses;
 - h. Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses;
 - i. The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses. Any mechanical equipment shall not exceed the maximum permissible noise levels set forth in WAC 173-60-040, which is hereby incorporated as though fully set forth herein. Any such equipment shall not be located within 5 feet of any lot line abutting properties within the R-8.4, R-9.6, R-12, and R-15 zones;
 - j. The temporary use will not include permanent fencing, walls, or other structures that would hinder removal of the structure from the site; and

- k. The temporary use will comply with the applicable portions of MICC Title 19 including, but not limited to, Ch. 19.07, Environment, 19.10, Trees, 19.13, Shoreline Master Program, and 19.21, Environmental Procedures.

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 general public without charge and access is not limited to membership in an organization.
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 percent of the lot area.
 - b. The maximum lot coverage for temporary structures shall be limited to 10 percent 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.
- G. Time limitation. Temporary uses or structures may operate for a total of 180 days per calendar year.
- H. Limitation on activity. A property will not be granted a temporary use permit for a temporary use or structure for a minimum of three months after the expiration of a previous temporary use or structure permit except pursuant to a renewal authorized by this section.
- I. Removal of a temporary use. The code official shall establish, as a condition of each temporary use permit, a date by which the use/structure and all physical evidence of the use/structure must be removed. The site occupied by the temporary use or structure shall be restored to the original or better condition upon the removal of the use or structure. If the permittee has not removed the use/structure as required by the temporary use permit, the city may take any and all enforcement actions permitted by law, including, but not limited to abatement pursuant to MICC Title 6.
- J. Assurance device. The code official may require a financial guarantee pursuant to the requirements in MICC 19.01.060, in a form acceptable to the City's finance department, to assure compliance with the provisions of this title and the temporary use permit as approved.

MICC 19.15.030 – Land Use Review Types.

There are four categories of land use review that occur under the provisions of the development code.

- A. *Type I.* Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
- B. *Type II.* Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.
- C. *Type III.* Type III reviews require the exercise of discretion about nontechnical issues.
- D. *Type IV.* Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.
- E. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.
- F. *Consolidated permit processing.* An application for a development proposal that involves the approval of two or more Type II, III and IV reviews may be processed and decided together,

including any administrative appeals, using the highest numbered land use decision type applicable to the project application. Consolidated land use reviews shall be subject to the longest review time period identified in MICC 19.15.040.

1. The following permits and land use reviews are excluded from consolidated review and approval:
 - a. Building permits associated with the construction of one or more new single-family dwellings on lots resulting from the final plat approval of a short subdivision or long subdivision.
 - b. Building permits associated with shoreline conditional use permits and shoreline variance.
 - c. Project SEPA reviews.
2. When a review is heard by multiple decision bodies, the higher decision body will make the final decision, and the lower decision body will review the project at a public meeting and issue a recommendation that will be reviewed by the higher decision body. The higher decision body will either adopt the recommendation as part of the permit conditions, will remand the recommendation back to the lower body for further consideration, will amend the recommendation, or will deny adoption of the recommendation and will adopt their own permit conditions. The hierarchy of decision bodies is as follows, from highest to lowest:
 - a. City council;
 - b. Hearing examiner;
 - c. Design commission.

G. *Interior alterations exempt from site plan review.*

1. Applications for interior alterations are exempt from site plan review provided they meet the following criteria:
 - a. The proposed development does not result in additional sleeping quarters or bedrooms;
 - b. The proposed development would not result in nonconformity with federal emergency management agency substantial improvement thresholds; or
 - c. The proposed development would not increase the total square footage or valuation of the structure thereby requiring upgraded fire access or fire suppression systems.
2. Applications for interior alterations are subject to review for consistency with any otherwise applicable building, plumbing, mechanical, or electrical codes.

H. *Land use review types and review processing procedures.*

Table A. Land Use Review Type			
Type I	Type II	Type III	Type IV
• Home business • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption ¹ • Critical area review ¹ • Temporary commerce on public property • Site development permits • Transportation concurrency certificate	• Modified wireless communication facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat ^{2,3} • Code official design review • Accessory dwelling unit • Parking modification ⁷ (reviewed by city engineer) • Small wireless facility deployment • Seasonal development limitation waiver • Final short plat • <u>Temporary use permit</u> • <u>Temporary structure deviation renewal</u>	• New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical area review 2 • Public agency exception • Temporary encampment ⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit ⁵ • Shoreline substantial development permit ¹ • Shoreline revision (substantial development) ¹ • <u>Temporary structure deviation</u>	• Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking modifications ⁷ (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP) ⁶ • Shoreline variance ⁶ • Shoreline revision (variance and SCUP)