

Temporary Uses and Structures Matrix

Comment Categorization Key

Substantive	Comment proposes significant changes to the Temporary Uses and Structures draft code, Planning Commission (PC) should discuss at its next meeting.
Minor	Non-substantive changes that would not significantly change the policy direction of the Temporary Uses and Structures draft code.
Q	Comment is a question or does not propose specific amendments to the text. Staff responses to these questions are provided.

Table 1. Planning Commission Housing Element Comment Matrix.

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
MICC 19.06.050 - Commerce on Public Property				
1	Dan Thompson	Amend the title to read: “Commerce <u>and Temporary Structures on Public Property.</u> ”	N/A	Minor
2a	Kate Akyuz	Amend (A) to read: “The purpose of this chapter is to allow for the safe, healthful and aesthetic use of public property <u>in zones that allow commercial uses,</u> for the benefit of private commerce. <u>Use of Parks property is covered separately by MICC 9.3 and 4.44 and elements of those sections of code may be applicable to commercial uses that cross over between Parks and commercially zoned properties.</u> ”	While it is not necessary to clarify that use of city parks are covered under a separate code section, and that there may be cross over between these sections, if the Commission wishes to include this information, staff recommends the Staff Proposed Alternative in Log 2b. See Staff Response to 2b for more information.	Substantive
2b	Staff Proposed Alternative	Amend (A) to read: “The purpose of this chapter is to allow for the safe, healthful and aesthetic use of public property for the benefit of private commerce. <u>The provisions of this chapter do not exempt proposed activities from compliance with other titles of the Mercer Island City Code.</u> ”	Commercial uses are allowed in many zones, including the Multi-Family zones. Should the Planning Commission want to allow commerce on public property in zones beyond the Town Center, Logs 3b and 3c would accomplish this more specifically. Additionally, any proposed development or use must comply with the entirety of the Mercer Island City Code, whether explicitly stated in certain chapters or not. If the Planning Commission wants to include this information, staff recommends broadening the clarification to include the entire MICC instead.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
3a	Dan Thompson	Amend (B) to read: "The provisions of this section shall only apply to public sidewalks, streets and rights-of-way (<u>"public property"</u>) within the Town Center zone."	<p>"Public property" and "Right-of-way" are slightly different from each other and are not typically interchangeable.</p> <p>"Public property" is defined as "Any property under direct ownership or control by the city of Mercer Island. This includes, but is not limited to, parks, green belts, open spaces, rights-of-way, and ground around public buildings but excludes Interstate 90 and any property owned by the state of Washington".</p> <p>"Right-of-way" is defined as "Land acquired by reservation, dedication, prescription or condemnation, and intended to be used by a road, sidewalk, utility line or other similar public use".</p> <p>This amendment would broaden the criteria in MICC 19.06.050(D) to apply to all public property within the Town Center zone, and not only public sidewalks, street and rights-of-way. If these criteria were applied to a public park, for example, the criteria that requires the applicant business to have an active business license for a location immediately adjacent to the public property location where the request has been made would prohibit a lot of the commerce activities that may occur within the public parks through a Special Event Permit. Please see PCB25-05 for more information on the kinds of activities permitted through this process.</p> <p>Additionally, uses in parks are regulated through Chapter 9.30, the Mercer Island Park Code. It does not appear that there are any conflicts between Chapter 9.30 and Section 19.06.050 MICC at this time.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
3b	Kate Akyuz	Amend (B) to read: “The provisions of this section shall only apply to public sidewalks, streets and rights-of-way within the Town Center zone, <u>Planned Business Zone, and Commercial Office zone.</u> ” [Several folks in the community have requested that the City consider small coffee shops or other retail amenities in neighborhoods other than TC. Given restaurants are allowed in the PBZ it seems odd to not allow the use there as well. The CO zone has a lot of similarities to these zones and the split among the three in terms of use feels somewhat arbitrary. Could be value in considering CO zone as well.]	N/A	Substantive
3c	Staff Proposed Alternative	Amend (B) to read: “The provisions of this section shall only apply to public sidewalks, streets and rights-of-way (<u>“public property”</u>) within the Town Center, <u>Planned Business, and Commercial Office zones.</u> ”	Should the Planning Commission want to recommend adoption of both Logs 3a and b, this staff proposed alternative would incorporate both amendments.	Substantive
4	Dan Thompson	Amend (C) to read: “[...] wishes to use the public property right-of-way for [...]”	See Staff Response to Log 3a for the implications of broadening these criteria to all public property, not only public right-of-way.	Substantive
Q1	Dan Thompson	MICC 19.06.050(C) “Such permit shall be in the form specified by the code official and shall contain information as deemed necessary by the code official”. What information?	<p>The information that is deemed necessary by the code official to determine that the application meets all applicable criteria can be found in the permit application form for ROW Use Permits.</p> <p>This language is standard through the Title 19 MICC, and while it may seem vague, in practice it allows the code official to require additional studies, for example, a Critical Area Study, or other permit applications, if this is necessary to approve the Temporary Use Permit application. Any additional information required from the applicant would be requested at the time of completeness review, consistent with the standards in MICC 19.15.070.</p>	Q

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
5	Kate Akyuz	Amend (D)(1) to read: “The applicant business has an active business license <u>or is in the process of applying for a business license</u> for a location immediately adjacent to the public property location where the request has been made.” [The new Economic Development Plan attempts to address barriers for small businesses. It is possible that a business plan would be viable contingent on ability to have outdoor summer seating. Adding this allows prospective business to invest in new enterprises with confidence the use would be allowed.]	This amendment would allow any business, whether they have an active business license or not, to obtain a commerce on public property permit. The administering of this allowance could be difficult, since staff are not clear how an applicant can adequately show they are in the process of applying for a business license.	Substantive
6	Dan Thompson	Amend (D)(2) to read: “The location of the <u>private commerce on public property business activity</u> does not create a safety hazard for motorists, bicyclists or pedestrians.” AND Amend (D)(2)(b) to read: “The business - <u>private commerce on public property</u> location [...]”	N/A	Minor
7a	Dan Thompson	Amend (D)(2)(a) to read: “The <u>private commerce on public property business</u> location [...]”	N/A	Substantive
7b	Kate Akyuz	Amend (D)(2)(a) to read: “The business location maintains sufficient area for the free passage of pedestrians <u>per ADA standards</u> , along sidewalks and access to other adjacent businesses.” [This is a topic the Council has been working to address. Given the implementation of ADA standards for street corners starting in TC, it may be important to note this for project feasibility exploration purposes.]	N/A	Substantive
7c	Staff Proposed Alternative	Amend (D)(2)(a) to read: “The <u>private commerce on public property business</u> location maintains sufficient area for the free passage of pedestrians <u>per ADA standards</u> , along sidewalks and access to other adjacent businesses.”	Should the Planning Commission wish to recommend adoption of both Logs 7a and b, this Staff Proposed Alternative would incorporate both amendments.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization																				
8a	Dan Thompson	Amend (D)(3)(b) to read: "Hours of operations are sensitive to the surrounding neighborhood <u>and shall be limited from 7:00am to 10:00pm.</u> "	<p>Limitations on hours of operation to these specific hours could prevent existing or future outdoor dining from operating to the full extent of their business hours.</p> <p>Under the current code, if a business was causing a nuisance and negatively impacting the surrounding neighborhood, this would be investigated through a code enforcement request. The code enforcement officer would determine whether the use is being sensitive to the surrounding neighborhood, and if it is not, the offending activity would be required to cease.</p> <p>If the Planning Commission would like to set a limit on the hours of operation, staff recommends providing reasoning for selecting the specific hours proposed with its recommendation. This will help to ensure the hours have not been arbitrarily selected.</p>	Substantive																				
8b	Kate Akyuz	<p>Amend (D)(3)(b) to read: "Hours of operations are sensitive to the surrounding neighborhood <u>in compliance with WAC 173-60-040.</u>"</p> <table border="1" data-bbox="486 857 1010 1027"> <thead> <tr> <th data-bbox="486 857 620 906">EDNA OF NOISE SOURCE</th> <th colspan="3" data-bbox="620 857 1010 906">EDNA OF RECEIVING PROPERTY</th> </tr> <tr> <th data-bbox="486 906 620 938"></th> <th data-bbox="620 906 755 938">Class A</th> <th data-bbox="755 906 889 938">Class B</th> <th data-bbox="889 906 1010 938">Class C</th> </tr> </thead> <tbody> <tr> <td data-bbox="486 938 620 971">CLASS A</td> <td data-bbox="620 938 755 971">55 dBA</td> <td data-bbox="755 938 889 971">57 dBA</td> <td data-bbox="889 938 1010 971">60 dBA</td> </tr> <tr> <td data-bbox="486 971 620 1003">CLASS B</td> <td data-bbox="620 971 755 1003">57</td> <td data-bbox="755 971 889 1003">60</td> <td data-bbox="889 971 1010 1003">65</td> </tr> <tr> <td data-bbox="486 1003 620 1036">CLASS C</td> <td data-bbox="620 1003 755 1036">60</td> <td data-bbox="755 1003 889 1036">65</td> <td data-bbox="889 1003 1010 1036">70</td> </tr> </tbody> </table> <p>[...] For the purpose of eliminating arbitrary code standards it would be good to specify the decibels of noise allowed to pass from one EDNA property type to another per state code. MI may want more restrictive standards than the state code allows, however, some specific limits would be useful for commercial properties to understand the requirement here and plan accordingly.]</p>	EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY				Class A	Class B	Class C	CLASS A	55 dBA	57 dBA	60 dBA	CLASS B	57	60	65	CLASS C	60	65	70	<p>The maximum environmental noise levels in Chapter 173-60 WAC already apply to all activity across the state. A reference to this WAC section is not necessary, but it can be added here if the Planning Commission prefers, since this reference is included elsewhere in the MICC.</p> <p>Related Logs: 9</p>	Substantive
EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY																							
	Class A	Class B	Class C																					
CLASS A	55 dBA	57 dBA	60 dBA																					
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9	Kate Akyuz	Strike (D)(3)(c) which reads: “No music or sound is amplified.” [Propose striking this only if item 3(b) is amended to apply prescriptive noise limit standards. Low-volume music ambiance in an outdoor restaurant is desirable to many local patrons and most MI restaurants close before 9 PM, i.e. well within the state’s and city’s requirements of time of day for limiting noise. Allowing for music would allow for acoustical performances on summer evenings and elevate the desirability of local restaurant venues.]	N/A Note: This amendment would only be proposed if Log 8b is recommended for adoption.	Substantive
Q2	Dan Thompson	MICC 19.06.050(D)(3)(e) “Physical improvements can be removed or secured when not in operation.” Every night?	The code does not require physical improvements to be removed or secured but only specifies that they <i>can</i> be removed. This is to ensure that physical improvements are temporary and can be removed if the City Engineer or code enforcement officer finds that the activity is not in compliance with the criteria for permit, or if the City needed to access the area related to safety or maintenance needs	Q
10	JB Gibson	Strike (D)(4), which reads “The design for any non-temporary improvements is consistent with the design requirements for the Town Center plan”. [Unnecessary].	Amendment is minor. All development within the Town Center must comply with design requirements, unless stated otherwise pursuant to Chapter 19.11 MICC.	Minor
Q3	Dan Thompson	MICC 19.06.050(D)(4) “The design for any non-temporary improvements is consistent with the design requirements for the Town Center plan.” Is this necessary?	See Staff Response to Log 10.	Q
11	Dan Thompson	Amend (D)(6) to read: “The location of a <u>private commerce on public property permit</u> business engaged in the sale of alcoholic beverages [...]”	N/A	Minor

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
12a	JB Gibson	<p>Amend (D) to add item (7): “The proposed use shall not conflict with scheduled or ongoing city maintenance, public works projects, emergency operations, or other municipal activities. The code official shall coordinate with the Public Works Department and other relevant city divisions to identify and mitigate potential conflicts. If conflict arises, the code official may:</p> <ul style="list-style-type: none"> a. Conditionally approve the permit with modified hours, locations, or operational constraints to avoid interference. b. Require relocation of the temporary use at the applicant’s expense. c. Deny the permit if no feasible mitigation exists.” <p>[This preserves the city’s ability to perform necessary maintenance and projects].</p>	<p>This amendment allows the city to coordinate scheduled maintenance, public works projects, emergency operations, or other activities with the approved commerce on public property activities. While staff understand the reasonings for this proposed amendment, administering portions of the language may be difficult, especially with the inclusion of other proposed amendments, specifically Log 14a. For example, this only allows the code official to identify when these conflicts may arise through the application process, and Log 14a does not require activities less than one week over a three month period to obtain a permit.</p> <p>Staff have prepared an alternative that accomplishes the same goal of preventing conflicts and allowing the city the right to remove a commerce on public property activity should it be necessary to perform certain city activities. See the Staff Prepared Alternative in Log 12b.</p>	Substantive
12b	Staff Proposed Alternative	<p>Amend 19.06.050 to add (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:</p> <ol style="list-style-type: none"> 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 city maintenance, public works projects, emergency operations, or other municipal activities.” 	<p>This language is similar to that found in MICC 19.06.060 for regulations for permanent encroachments in the right-of-way.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
13a	JB Gibson	Amend (D) to add item (8): “The total number of public parking stalls can not be reduced by 50% on a given block for temporary uses or structures, including previously approved permits”. [Ensures temp uses in the ROW do not significantly reduce TC parking capacity].	<p>The use of the term “block” may result in difficulties administering this criterion. “Block” is not a term that is defined in the MICC, however, the MICC does include a definition for “Block frontage” which “refers to all property fronting on one side of a street that is between intersecting streets, or that is between a street and a required through-block connection. An intercepting street or required through-block connection determines only the boundary of the block frontage on the side of the street in which it intercepts”.</p> <p>Additionally, the criterion listed in MICC 19.06.050(D)(1) requires the applicant to have an active business license for a location immediately adjacent to the public property location where the request has been made. This standard effectively limits the use of public property to only those areas immediately adjacent, so a business would not be allowed to occupy multiple parking spaces, stretching beyond the frontage immediately adjacent to their business.</p> <p>If the Planning Commission desires to further restrict the amount of parking that a business use may occupy to maintain parking availability in the Town Center, staff recommends the alternative listed in Log 13b.</p>	Substantive
13b	Staff Proposed Alternative	Amend (D) to add item (8): “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.	The number of public parking stalls a use can occupy may be adjusted.	Substantive
Q4	Dan Thompson	MICC 19.06.050(E) “[...] 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.” Questions related to the use of the words “temporarily” and “temporary”.	Since “temporary” is not defined in the MICC, the city would rely on Webster’s Dictionary definition, which defines “temporary” as “lasting for a limited time”.	Q

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
14a	JB Gibson	<p>Amend (G): <u>“Term:</u> (1) <u>Temporary uses and structures with a term less than one week in any given three month period do not require a permit. Nothing in this section exempts a temporary use or structure from the criteria set in MICC 19.06.050(D).</u> (2) <u>Permits [...]”</u> [This would allow businesses short term uses (i.e. sidewalk sales) without the complexity of permit approvals, insurance, and bonding].</p>	<p>The ROW Use Permit that is required for commerce on public property activities is used to regulate safe use of the public right-of-way. Exempting all activities from obtaining a permit could result in safety concerns due to street or sidewalk closures or obstructions which would not be resolved until after a code enforcement complaint is made and/or the City Engineer observes the issue.</p> <p>Under the current code, all commerce on public property would require a permit. This amendment creates a carve out for temporary uses and structures with a term less than one week in a three-month period.</p> <p>Should the Planning Commission wish to incorporate this amendment, staff recommends the Staff Proposed Alternative in Log 14b.</p>	Substantive
14b	Staff Proposed Alternative	<p>Amend 19.06.050 (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, <u>except as provided below</u>. 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. <u>Temporary uses and structures associated with commerce on public property operating for 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.</u></p>	<p>The staff proposed alternative would relocate this amendment to the “applicability” section in MICC 19.06.050(C). This is more consistent with how other sections of our code are constructed.</p>	Substantive
Q5	Dan Thompson	<p>MICC 19.06.050(G) “Permits for ongoing commercial use on public property shall be subject to renewal annually on the date of the original permit approval. Failure [...]” Question related to the use of the word “annually”.</p>	<p>This allows for an applicant operating a commercial use to renew their permit on an annual basis.</p>	Q

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
15a	JB Gibson	Strike (I): "The provisions of this section shall not apply to the annual city sponsored event known as 'Summer Celebration'". [Unnecessary if Section G is approved].	<p>Summer Celebration is specifically exempted from the criteria for permit due to the criteria which reads "The applicant business has an active business license for a location immediately adjacent to the public property location where the request has been made". This criterion essentially prohibits the typical Summer Celebration event due to the event including vendors who do not have businesses immediately adjacent to the ROW where their booths are located.</p> <p>Adoption of this proposed amendment would result in the prohibition of portions of Summer Celebration as it has historically operated.</p>	Substantive
15b	Kate Akyuz	Amend (I) to read: "The provisions of this section shall not apply to the annual city sponsored events known as 'Summer Celebration' and 'Mercer Island Farmer's Market.'" [Is this still sponsored by the City - I thought benefactors in the community had taken over Summer Celebration. If Summer Celebration is listed here shouldn't the Farmer's Market also be listed? Isn't that also sponsored by the City or financially supported by the City with additional policing? Alternatively this could read - events sponsored in part or full by the City.]	<p>Summer Celebration is a city sponsored event. The City does not sponsor the Mercer Island Farmer's Market.</p> <p>The Mercer Island Farmer's Market has operated on the island for almost two decades and has been historically permitted through a ROW Use Permit with an annual renewal to operate throughout the summer.</p> <p>Certain criteria for commerce on public property would prohibit the Farmer's Market as it has historically operated, similar to the situation described in the Staff Response to Log 15a related to Summer Celebration.</p> <p>Staff recommends clarifying that the Mercer Island Farmer's market is exempt from the provisions of the commerce on public property section to align with how the use has historically been permitted. Please see Staff Proposed Alternative in Log 15d.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
15c	Kate Akyuz	Amend (I) to read: “The provisions of this section shall not apply to the annual city sponsored events sponsored in part or full by the City known as ‘Summer Celebration’ and ‘Mercer Island Farmer’s Market’.”	N/A	Substantive
15d	Staff Proposed Alternative	Amend (I) to read: “The provisions of this section shall not apply to the annual <u>event known as the “Mercer Island Farmer’s Market”, or the annual city sponsored event known as “Summer Celebration”</u> .”	Staff recommends this alternative to address summer celebration and the Farmer’s Market. As proposed an additional land use permit would not be required for Summer Celebration and the Mercer Island Farmer’s Market. These two ongoing events would still require right of way permits to ensure that rights of way are used safely. Both the annual event (Summer Celebration) and the ongoing event (Farmer’s Market) have historically been permitted with a right of way permit without incident.	Substantive
Q6	Kate Akyuz	<p>Question related to (J) which reads: “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.”</p> <p>We need to remove “may require” and state explicitly when it is and is not required to avoid arbitrary decision-making by staff with different degrees of experience with or interpretations of the code. If MICC 19.01.060(C) makes it very clear when bonds will be required, without need of interpretation, then please disregard this comment.</p>	<p>MICC 19.01.060(C)(1)(a): The city may require an applicant to guarantee that activities allowed through the issuance of a permit or through approval of an application will be undertaken and completed to the city's satisfaction. This includes, but is not limited to, guarantees that improvements will be constructed; that they shall remain free from defects of materials, workmanship, and installation for a set period of time; and that landscaping shall survive for a set period of time.</p> <p>(b): “Guarantees may be required for: significant construction in streets; work on public property not performed by the city; nonresidential landscaping; critical areas stabilization and restoration; permanent site restoration on nonresidential projects; and other activities if the city engineer or city attorney determines there is sufficient potential risk of property damage or injury to persons or the environment in the event the applicant fails to complete the permitted work.</p> <p>Staff believe these existing code provisions are adequate for determining when a bond is required.</p>	Q

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
Q7	Kate Akyuz	<p>Question related to (K) which reads: "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 the public property for commercial purposes."</p> <p>We need to provide explicit provisions for when insurance is required. Most municipal ILAs and contracts have explicit boilerplate language regarding bonds and insurance that is based on non-arbitrary standards. It may be possible to provide the information needed for applicants to understand the feasibility of their proposal in advance of application by listing any code that details insurance requirements here as is done with bonds above.</p>	<p>Standards for hold harmless/indemnification agreement and covenant not to sue are found in MICC 19.01.060(B).</p> <p>MICC 19.01.060(B)(1) states: "<i>General.</i> The owner of private property for which a permit application is submitted may be required to provide a hold harmless/indemnification agreement and covenant not to sue approved by the city and recorded with the King County recorder's office prior to the issuance of the permit. Said agreements shall be negotiated and in a form approved by the city attorney, and shall run with the land and be binding on the applicant and his/her successors, heirs and assigns for such period of time as shall be determined appropriate by the city official charged with issuing the permit or approving the application.</p> <p>Standards for performance guarantees and liability protection can be found in MICC 19.01.060(C).</p> <p>MICC 19.01.060(C)(2) states: "<i>Insurance.</i> Prior to issuing a permit or approving an application, the city may require the applicant to provide a certificate of general liability insurance, with limits of liability in an amount acceptable to the city attorney, from an insurance company authorized to do business in Washington, insuring against injury to persons and damage to property, and may require that the city be named as an additional insured."</p> <p>Staff believe these existing code provisions are adequate for determining when indemnification and/or insurance is required.</p>	Q
MICC 19.06.130 – Temporary Use Permits				

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
16	Dan Thompson	Amend the title to read: "Temporary <u>Use and Structure Use Permits - Outside of the Town Center.</u> "	<p>Excluding the Town Center zone from the standards for temporary use and structures on private property could result in a gap in regulations. MICC 19.06.050 regulates only commerce on public property in the Town Center zone, which would not cover the private property located within the Town Center where an applicant may wish to establish a temporary fruit stand, or host a mobile food vendor, for example.</p> <p>Should the Planning Commission wish to establish separate regulations for temporary uses and structures within and outside the Town Center zone, this can be done through the regulations themselves. Staff would not recommend establishing applicability in the title of this section as it causes conflicts that would need to be addressed where standards are specified to only apply to the Town Center zone.</p>	Substantive
17	Dan Thompson	Amend (A): "Purpose and applicability. A temporary use permit authorizes a use or <u>conforming</u> structure on private property on a short term basis."	This amendment does not change the way that temporary uses and structures would be authorized. The review of a temporary use application includes ensuring that the proposal conforms to all applicable standards, as established in this draft code. If the code official finds that the proposal complies with all standards, then a permit can be issued and the structure would be conforming. Illegal nonconformities are dealt with through a separate section in the code, MICC 19.01.050(A)(3) .	Minor
Q8	Kate Akyuz	Question related to (B)(2) which reads: "The property owner or their authorized agent may apply for a temporary use permit on private property." Can a leasee be designated by the property owner as an authorized agent? Ran into a problem with this recently on a public Temp Construction easement due to a trust owning the land a business was operating on. This was problematic due to multiple trustees and not a clear signatory, ie we needed the agent + at least one trustee. If this is moot/too far afield to be an issue here, please disregard this question.	The City has an existing process for establishing an authorized agent – an authorization for permit application would be reviewed at the time of application submittal. If the authorization cannot be established through the Affidavit of Agent Authority or Affidavit of Ownership , the code official will ask for more information to determine that the applicant has the authority to apply for the permit.	Q

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18a	JB Gibson	Amend (C): “[...] Temporary use applications shall be processed as a Type II land use review, pursuant to MICC 19.15.030 Land Use Review Types”. [Public notice should be provided].	<p>Please see PCB25-06 for more information on land use review types.</p> <p>Please see the Alternatives proposed by other Commissioners and staff in Logs 18b, c and d.</p> <p>If Log 34 is recommended for approval, staff recommends the Staff Proposed alternative in Log 18d to include the Type IV land use review for variances.</p>	Substantive
18b	Dan Thompson	<p>Amend (C): “[...] Temporary use applications shall be processed as a Type III land use review, pursuant to MICC 19.15.030 Land Use Review Types.” [Currently a TUP is treated as a Type I application which means there is no public notice to the neighbors, no ability for neighbors to comment or participate, or appeal since the permit will vest before the appeal period expires. Type I permits are only allowed when there is no discretion involved in the decision. However, the criteria in the TUP ordinance are totally discretionary within the code official. The only reason the TUP applications to date have no findings of fact or conclusions or law re: the criteria and weighing of interests between the applicant and neighbors is because the Beach and Shore Club pool covers have been allowed for years under their CUP’s, the other is an ice cream truck in the town center on private property, and the Country Club’s tennis cover would never pass the discretionary criteria.</p> <p>Based on the comments I have heard personally, and the visual from the completed cover on the Country Club’s tennis courts, and the fact the Country Club limbed up the trees that screened the cover, I think there will be neighbor objects to the cover when its TUP comes up again and the neighbors receive notice (although council tacitly approved this TUP for 20 years).</p> <p>After all, how can the code official or DSG make a fair determination based on the discretionary criteria if neighbors and citizens are not allowed to comment and participate in the permit process?]</p>	<p>Please see PCB25-06 for more information on land use review types.</p> <p>Please see the Alternatives proposed by other Commissioners and staff in Logs 18a, c and d.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
18c	Kate Akyuz	Amend (C): <i>“Application.</i> The application for a temporary use permit shall be submitted on forms obtained from the community planning and development department, and consistent with MICC 19.15.060. The application shall contain all information deemed necessary by the code official <u>as required on the application forms</u> to determine if the proposed permit or action will comply with the requirements of this section. The community planning and 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. Temporary use applications <u>consistent with existing land use code</u> shall be processed as a Type I land use review, pursuant to MICC 19.15.030 land use review types. <u>All other applications will be processed as a Type II land use review.</u> ”	The proposed amendments related to the land use review types would be difficult to administer. If a permit is issued for a land use action, it is either consistent with the code, or has been conditioned to be consistent with the code. Staff recommends clarifying this amendment to provide clear thresholds for a Type I versus Type II land use review procedures for temporary use applications. This can be done by either specifically stating the land use code that the application must comply with, i.e. the residential development standards in MICC 19.02.020, or determine specific activities that can be processed as Type I. Staff recommends avoiding the phrase “all other applications” and include specific applications that would be processed as a Type II land use review as they apply to temporary uses. Please see the Alternatives proposed by other Commissioners and staff in Logs 18a, b and d.	Substantive
18d	Staff Proposed Alternative	Amend (C): [...] Temporary use <u>and temporary use renewal</u> applications shall be processed as a Type II land use review, pursuant to MICC 19.15.030 Land Use Review Types. <u>Temporary use deviation applications shall be processed as a Type IV land use review, pursuant to MICC 19.15.030 Land Use Review Types.</u>	This amendment is recommended to maintain internal consistency if Logs 34 and 47 are recommended for adoption. Staff recommends using the term “deviation” instead of variance. See the Staff Response to Log 45a for more information.	Substantive
19a	JB Gibson	Strike “Tents or other temporary structures used in conjunction with any garage, yard, or estate sale shall not exceed 120 square feet in area” from (D)(1)(a). [Unnecessary if section (E)(1)(k) amendment is approved].	The current code would require associated tents or other temporary structures over 120 to obtain a permit. This amendment would broaden the exemption from a permit for garage, yard, or estate sales and would allow for any size structure or tent associated with these activities without review of a permit.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
19b	Nazim Nice	Amend (D)(1)(a) to read: “Garage sales, yard sales, and estate sales conducted by or on behalf of the occupant(s) of a residential dwelling. Tents or other temporary structures used in conjunction with any garage, yard, or estate sale shall not exceed 120 square feet in area, <u>with a maximum of 1 tent per 2,000 SF of lot area, or two tents, whichever is greater;</u> ”	This amendment clarifies the number of tents that are allowed to be associated with the garage, yard, or estate sale. If these thresholds are exceeded, a temporary use permit would be required and evaluated based on the criteria for permit approval. Additional tents may be authorized, and this threshold is only for an exemption from a permit.	Substantive
Q9	Kate Akyuz	Question related to (D)(1)(a) which reads: “Garage sales, yard sales, and estate sales conducted by or on behalf of the occupant(s) of a residential dwelling. Tents or other temporary structures used in conjunction with any garage, yard, or estate sale shall not exceed 120 square feet in area;” “occupant(s)” – Does this apply to/include multi-family as organized by the building or not? If not please clarify. “shall not exceed 120 square feet in area” – Staff please clarify the total maximum number and size of tents.	“Dwelling unit” is defined as “A building or a contiguous portion of a building providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation (see also “Accessory dwelling unit (ADU)”). This standard allows for the occupant(s) of a residential dwelling unit to hold a garage, yard, or estate sale. The total maximum number of tents is not clarified in the current code. It appears that Log 19b addresses this question. The Planning Commission may choose to approve Log 19b, or an alternative.	Q
20	Nazim Nice	Amend (D)(1)(c)(i) to read: “ <u>When located in an R zone, a single Contractor’s office under 400 square feet, storage yard, and equipment parking, and equipment servicing not to exceed 8 hours in duration on or near the site or in the vicinity of an active construction project.</u> ”	If these thresholds are exceeded, the property owner must obtain a temporary use permit that demonstrates compliance with all criteria for approval in MICC 19.06.130(E).	Minor
21	Nazim Nice	Amend (D)(1)(c)(ii) to read: “ <u>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. In all other zones, Contractor’s office, storage yard, and equipment parking and servicing on or near the site or in the vicinity of an active construction project.</u> ”	N/A	Minor
22	Nazim Nice	Amend (D)(1) to add (iii): “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.”	Renumbers (D)(ii) to (iii). No change to original text.	Minor

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
23	JB Gibson	Amend (D)(1) to add (d): “Any temporary use or structure with a term less than one week in any given three month period. The underlying development standards of the zoning designation applicable to the site on which the temporary use or structure is proposed do not apply”. [This would allow short term uses to be exempt from the complexity of permit approvals, zoning regulations, and use regulations (i.e. food truck for a graduation party)].	This amendment would allow any temporary use or structure with a term of less than one week in any given three month period to be exempt from obtaining a permit and the temporary use or structure would not need to comply with the underlying development standards of the zoning designation.	Substantive
Q10	Kate Akyuz	Question related to (E)(1) which reads: “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 for a temporary use permit satisfies all of the following criteria:” “condition and approve” – Please provide the possible conditions and reasons for those conditions in order to avoid arbitrary terms in the code.	Typically, conditions of approval are applied to permit approval to ensure that the proposed development complies with the approval criteria, establishes permit expiration, and sets operation requirements, if applicable, etc. Not all application approvals require conditions of approval, but the code official is authorized to include them if necessary. Conditions of approval are often very specific to a project. Staff would not recommend establishing specific conditions of approval that would apply to all projects within these development standards to maintain flexibility.	Q
24	Dan Thompson	Amend (E)(1)(a) to read: “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;”	N/A	Minor
25	Kate Akyuz	Strike (E)(1)(b) which reads: “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;” [This does not make sense if the use cannot be viewed from the street.]	This standard does not require a temporary use or structure to not be visible from the street but rather ensures that there is clear sight area adjacent to the street to allow for turning vehicles and crossing pedestrians to see the street clearly from the ROW. Staff would not recommend approving this amendment as it helps avoid safety concerns and ensures safe ingress and egress from the street by allowing for clear sight lines.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
26a	JB Gibson; Kate Akyuz	Strike (E)(1)(d) which reads: "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". [Akyuz: A temporary use shouldn't require parking which is permanent in nature. How will adequate be evaluated. This is too arbitrary as written.]	N/A	Substantive
26b	Dan Thompson	Amend (E)(1)(d) to read: "Adequate parking (<u>based on parking requirements for Town Center retail businesses</u>) is available to serve the temporary use, and if applicable, the temporary use does not occupy <u>or use</u> required off-street parking areas for adjacent or nearby uses."	<p>The current code standard for adequate parking is intentionally vague to put the burden of proof on the applicant to demonstrate that they can provide an adequate number of parking spaces to serve their use, whether that is 0 parking spaces for a lemonade stand, or existing street parking for a garage sale that limits the hours of operation to mitigate impacts to the neighborhood. This standard essentially provides flexibility to the applicant and imposing parking requirements for permanent, long-term uses in the Town Center could prohibit many temporary uses due to the burden of meeting these standards.</p> <p>If the Planning Commission does want to establish parking minimums for temporary uses and structures, additional staff analysis would be required. This would likely not be able to be accomplished by the next meeting in April, as this is a significant ask due to the level of evaluation required for different uses.</p> <p>Staff does not recommend utilizing the parking minimums established for the Town Center retail businesses.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
27	JB Gibson	<p>Amend (E)(1) to add a new letter (d*): “The temporary use shall obtain all necessary permits and/or authorizations required by the City and/or state and federal agencies.”</p> <p>(e*): “The temporary use or structure 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.”</p> <p>(f*): “The use or structure shall not interfere with ADA accessible parking spaces or access to adjacent and surrounding businesses.”</p> <p>Strike (F)(1)(a) through (e) and (2)(a) through (d) for standards related to mobile food vendors and outdoor eating and drinking establishments.</p> <p>Strike “and Mobile food vendors” from (G) Table A, Row 2, Column 1. [Not applicable if section F-1 and 2 amendments are approved].</p> <p>*Numbering subject to change based on other proposed amendments.</p>	<p>These amendments are grouped together as they all involve striking all additional requirements for mobile food vendors and outdoor dining. This would allow mobile food vendors and outdoor dining to be authorized if they meet the standards in MICC 19.06.130(E), Criteria for approval and do not impose additional criteria.</p> <p>Several of the criteria that originally applied only to mobile food vendors and outdoor eating and drinking would apply to all temporary uses and structures under this amendment.</p> <p>Related Logs: 36, 37, 38</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
28a	Dan Thompson	Amend (E)(1)(e) to read: "Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses. <u>Temporary uses in the single-family residential zone shall comply with limits on permitted construction in the single-family zone.</u> "	If the intent of this proposed amendment is to limit noise of the temporary use, MICC 8.24.020(R) states "Production at any time of any of the following sounds or noises, which by reason of their intensity, frequency, duration, volume, pitch or any other reason, disturb the peace, quiet, repose or comfort of any person or persons: [see code in MICC]". If a complaint is received related to excessive noise resulting from the temporary use, the code enforcement officer would determine if the use is considered a nuisance based on this code. Since there are already regulations in place for noise, if the intent of this proposed amendment is to limit hours of operation in general, not related to noise, staff recommends establishing specific hour limitations. "Limits on permitted construction in the single-family zone" does not refer to a code section that establishes specific limits. Limits on permit related activities that produce construction related noise are established in MICC 8.24.020(Q), and temporary uses would need to comply with these standards.	Substantive
28b	Staff Proposed Alternative	Amend (E)(1)(e) to read: "Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses. <u>Temporary uses within the R-8.4, R-9.6, R-12, and R-15 zoning designations are limited to hours of operation between [time] and [time];</u> "	This staff proposed alternative would clarify and set a specific standard for hours of operation for temporary uses. Setting a clear and specific standard would simplify the administration of this provision. If the Planning Commission would like to make this amendment, the hours of operation must be defined.	Substantive
Q11	Dan Thompson	MICC 19.06.130(E)(1)(f) "The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses;" Question surrounding the word "nuisance".	Nuisances are regulated through Chapter 8.24 MICC, Nuisance Control Code, which provides definitions of the types of activities that constitute a nuisance.	Q
29a	Dan Thompson	Amend (E)(1)(f) to read: "The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses, <u>no music or sound is amplified;</u> "	Logs 29a and b are related, and can be combined if the Planning Commission desires. See Log 29c for Staff Proposed Alternative.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
29b	Nazim Nice	Amend (E)(1)(f) to read: “The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses. <u>Any mechanical equipment shall not exceed the maximum permissible noise levels set forth in WAC 173-6[0]-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.</u> ”	If Log 29b is recommended for adoption, the WAC reference would need to be revised to “WAC 173-60-040”.	Substantive
29c	Staff Proposed Alternative	Amend (E)(1)(f) to read: “The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses. <u>No music or sound may be amplified. 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.</u> ”	Synthesis of 29a and 29b	Substantive
30	JB Gibson	Amend (E)(1) to add a new criterion: “Minimum parking regulations required in MICC 19.04.040 and MICC 19.11.130 are 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”. [Ensures temp uses do not reduce the neighborhoods parking capacity].	See Staff Response to Log 26b. Staff does not recommend utilizing commercial parking requirements intended to satisfy parking demand for permanent, long-term uses, for all temporary uses and structures.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
31	Nazim Nice	Amend (E)(1) to add a new criterion: "When located in an R zone, unless exempt per [MICC] 19.06.130(D), temporary structures must meet the underlying development standards of the zone, except that on lots greater than 160,000 square feet, temporary structures to enclose outdoor swimming pools or sport courts that existed prior to January 1, 2025 may exceed the height limit by a maximum of ten feet if necessary to span across the pool deck or sport court."	<p>Unless there is a specific reason for establishing the date for previously existing swimming pools or sport courts as January 1, 2025, staff recommends using the effective date of the ordinance to avoid arbitrarily setting a date. This would still have the same effect on existing structures.</p> <p>If the Planning Commission would like to make the change proposed in 31a, staff requests they also provide clarification on two details:</p> <ul style="list-style-type: none"> • Should this apply in all zones or be limited to only the R zones? • If this will only apply in R zones, what would apply in all other zones? 	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
32	JB Gibson	Amend (E)(1) to add a new criterion: “The temporary use or structure will comply with the underlying development standards of the zoning designation and approved conditional uses applicable to the site on which the temporary use or structure is proposed”. [This would prohibit uses not allowed in a particular zone, unless already conditionally approved, and enforce height, setback, and lot coverage requirements to maintain neighborhood character. See proposed section F-2 for uses/structures requiring a variance].	<p>These existing regulations were created to allow for flexibility in the development standards of underlying zones that would prohibit a lot of temporary uses, including lemonade stands on a private property within the front yard setback. However, Log 23 does exempt uses within a certain time limitation to be exempt from complying with the underlying development standards.</p> <p>This amendment would effectively prohibit a temporary structure like the Mercer Island Country Club’s “tennis bubble” which exceeds height limitations in a residential zone.</p> <p>This amendment would also conflict with Log 23, since nothing in that section exempts a temporary use from compliance with MICC 19.06.130(E), Criteria for approval.</p> <p>Additionally, if a use is authorized through the approval of a Conditional Use Permit, no additional permits would be required to permit a use consistent with the CUP.</p> <p>If both Logs 31 and 32 are desired for adoption, staff recommends the Planning Commission direct staff to develop an alternative that would combine both of these amendments.</p>	Substantive
33	JB Gibson; Dan Thompson	Strike (E)(2) which reads: “Except as otherwise provided above, the underlying development standards of the zoning designation applicable to the site on which the temporary use or structure is proposed do not apply”.	This amendment would require all temporary uses to meet all of the requirements of the development standards for the applicable zone. As described in Log 32, this could prohibit some temporary uses.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
34	JB Gibson	<p>Amend (F) to add (1*): “Any proposed use or structure may request a variance from the underlying development standards of the zoning designation applicable to the site on which the temporary use or structure is proposed pursuant to section 19.06.110 and subject to the following conditions:</p> <p>(a) Temporary use applications shall be processed as a Type IV land use review, pursuant to MICC 19.15.030 Land Use Review Types.</p> <p>(b) Land use review approvals shall expire five years from the date of notice of decision. Nothing in this section exempts a temporary use or structure from the time limitations pursuant to MICC 19.06.130(G). Renewal of expired land use approvals shall require a new application.</p> <p>(c) Temporary use or structure permits approved under this section may be renewed as a Type II land use review provided the proposed use or structure has not changed and the Type IV land use approval has not expired”.</p> <p>[Provides public notice and comment on variance requests that will potentially impact the neighborhood character].</p>	<p>Please see PCB25-06 for a discussion on variances and variance approval criteria. Variances in the R-8.4, R-9.6, R-12, and R-15 zones are construed extremely narrowly and the applicant must demonstrate that regulations established in the development code prevent the construction of a single-family dwelling. There are very few circumstances that would meet this criteria, if any.</p> <p>It appears that the intent of this amendment is provide flexibility in the development standards in the underlying zoning designation with a more extensive public process through a public hearing and decision by the hearing examiner. If the Planning Commission wishes to add this flexibility, without going through the variance criteria established in MICC 19.06.110(B), staff recommends that the Planning Commission direct staff to provide an alternative that will be presented during the April meeting.</p> <p>Below are some topics that the Planning Commission should consider and provide feedback to staff:</p> <ul style="list-style-type: none"> • Permit name: Temporary Use Deviation Permit • Standards that are allowed to be deviated from, for example, setbacks, height, lot coverage, gross floor area and by how much • The process for renewals, for example, limited to a certain number of renewals, valid for a certain amount of time, etc. <p>If the Planning Commission desires to recommend this amendment as proposed, staff recommends clarifying whether this would be most appropriate following (F), or if it should be included in another section. If this amendment is recommended for adoption as proposed, staff also recommends including Log 18d for consistency.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
35	Dan Thompson	Amend (F) to read: “ <i>Additional conditions for certain temporary uses/structures. The following temporary uses and structures in the Town Center</i> are permitted when authorized by the issuance of a temporary use permit when the applicable conditions set forth in this section and in MICC 19.06.130(E), Criteria for approval, have been met.”	<p>This amendment limits mobile food vendors and outdoor food and beverage service to only the Town Center. This conflicts with the amendment in Log 16 where all of the standards in MICC 19.06.130 would only apply to zones outside the Town Center.</p> <p>Should the Planning Commission recommend the adoption of this amendment, staff recommends the Planning Commission does not adopt Log 16 to avoid confusion in the applicability of these standards.</p>	Substantive
36	Kate Akyuz	Amend (F)(1)(b) to read: “The mobile food vendor must be located on <u>or adjacent to</u> a paved surface. If the mobile food vendor will be operating within a parking area, the mobile food vending facility may not protrude into the drive aisle, block fire lanes, or result in the site providing less than the required minimum number of parking stalls.”	<p>This amendment would potentially allow for a mobile food vendor to park on grass or other unpaved surface if it is adjacent to a paved surface.</p> <p>If Log 27 is recommended for approval, this criterion would be removed.</p>	Substantive
37	Kate Akyuz	Amend (F)(1)(d) to read: “A mobile food vendor must obtain permission from the property owner prior to <u>parking or operating on private property.</u> ”	<p>This amendment would require a mobile food vendor to obtain permission from a property owner prior to parking on private property, for example, a mobile food vendor parking outside of a grocery store to obtain supplies to operate on a different site.</p> <p>If Log 27 is recommended for approval, this criterion would be broadened to apply to all temporary uses and moved up to (E) for criteria for approval.</p>	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
38	Dan Thompson	Strike (F)(2)(b) which reads: "To the extent necessary to provide outdoor food and beverage service, minimum parking regulations normally applicable to eating and drinking establishments required in MICC 19.04.040 and MICC 19.11.130 are waived to enable such uses to serve patrons in adjoining parking spaces for the duration of the temporary use."	<p>This amendment would prohibit the use of adjoining parking spaces to serve patrons if there is not enough parking provided for the uses as established in MICC 19.04.040 and MICC 19.11.130. In the Town Center, a lot of the businesses that could take advantage of this allowance share parking with other adjoining businesses. The impact of a business utilizing one or two parking spaces immediately adjoining the business is anticipated to be minimal. It is possible that this amendment could prohibit Barrels Wine Bar's use of a parking space adjoining their business.</p> <p>Additionally, if Log 35 is recommended for adoption, the parking standards in MICC 19.04.040 would not apply since these standards would be limited to activities in the Town Center zone. If this amendment is not recommended for adoption, and Log 35 is, staff recommends removing the reference to parking standards in the commercial zones in a revision.</p>	Substantive
39	Kate Akyuz	Amend (F) to add (3). [Staff please add a section here for Farmer's Market.]	Staff require additional direction in developing standards to regulate a farmer's market. Currently, if a farmer's market were to apply for a temporary use permit to operate on private property, they would be required to demonstrate compliance with MICC 19.06.130(E). What additional impacts would the Planning Commission seek to mitigate through additional conditions specific to a farmer's market that are not addressed in the existing criteria for approval?	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
40	JB Gibson; Dan Thompson	Strike footnote 1 in "180 Days ¹ " from (G) Table A, Row 2, Column 2. Strike (G) Table A Footnote 1: "The code official may grant an extension not to exceed 30 days in total, upon the applicant showing compliance with all conditions of permit approval. If a request for an extension is not received in writing at least one week prior to the end of the time limit stated on the temporary use permit, the temporary use permit shall expire and the use or structure shall be timely removed pursuant to MICC 19.06.130(I)". [Gibson: Unnecessary].	If the footnote allowing for an extension is struck, no temporary uses or structures would be allowed to obtain an additional 30 day extension. This would limit the Mercer Island Country Club's "Tennis Bubble" from operating as originally intended.	Substantive
41	Dan Thompson	Amend (G) Table A, Row 2, Column 2 to read: "180 <u>Consecutive Days in a twelve-month period.</u> "	Staff recommends clarification of the intent of this amendment, if recommended for adoption. For example, would a temporary use be able to operate for one 179 consecutive day period, followed by another 179 consecutive day period since they would not be exceeding 180 consecutive days in a 12-month period?	Substantive
42	Dan Thompson	Amend (G) Table A, Row 3, Column 2 to read: " <u>Three consecutive days</u> , 30 days of site occupation or operation in any calendar year, unless otherwise stated"	This amendment would limit all activities listed as exempt from the temporary use permit requirement that are not related to another permit to only be allowed to operate for three consecutive days, and for 30 days of site occupation or operation in a year. This would effectively limit, for example, a yard sale or rummage sale at a church to one weekend per year.	Substantive
43a	JB Gibson	Amend (G) Table A, Row 4, Column 2 to read: " 180 days of site occupation or operation in any calendar year, unless otherwise stated ⁺ . Expires on the earlier of project completion or related permit expiration." [Avoids conflict between a project duration and duration limits set in this provision].	N/A	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
43b	Dan Thompson	Amend (G) Table A, Row 4, Column 2 to read: “180 <u>consecutive</u> days of site occupation or operation in any calendar year <u>12-month period, unless otherwise stated</u> ” [I propose that any TUP be limited to 6 months in any 12-month period (although I oppose any TUP in the single-family zone). The inclement weather is October through March. As the TUP is currently written a TUP can be up to 7 consecutive months, and renewed every three, so 9 months per year. This is a temporary use permit, and really targeted for short (two week) uses or structures, not 9 months/year. Anything longer should go through the CUP process.]	See Staff Response to Log 41.	Substantive
43c	Nazim Nice	Amend (G) Table A, Row 4, Column 2 to read: “ 180 days of site occupation or operation in any calendar year, unless otherwise stated . <u>The use shall be allowed through the duration of an active construction project or active sales/marketing for real estate sales and/or rental information. The use shall be discontinued within 30 days of the project completion, cessation of work, or completion of real estate rental or sales.</u> ”	N/A	Substantive
44	JB Gibson	Amend (G) Table A, Row 5, Column 1 to read: “ Mobile food vendors. Activities located within the Town Center Zone. ” [Aligns with durations allowed for temporary uses on public property. This enables businesses to provide year round uses].	If Log 16 is recommended for approval, this amendment would cause conflict.	Substantive
45a	JB Gibson	Amend (G) Table A, Row 5, Column 2 to read: “ 30 days or as provided pursuant to the terms of the issued temporary use permit. Indefinite, subject to annual renewals. Failure to submit a renewal request within 30 days of the annual renewal date shall result in the expiration of the permit. ” [Aligns with durations allowed for temporary uses on public property. This enables businesses to provide year round uses].	This amendment is dependent on Log 44, as this duration would be applied to activities located within the Town Center instead of mobile food vendors. If Log 34 is recommended for approval, staff recommends clarification on the expiration and renewal of a project that obtains a “Temporary Use Permit Deviation” which expires after 5 years.	Substantive

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
45b	Dan Thompson	Amend (G) Table A, Row 5, Column 2 to read: “30 days in any 12-month period in the Town Center. or as provided pursuant to the terms of the issued temporary use permit ”	<p>If Log 16 is recommended for approval, this amendment would cause conflict.</p> <p>If Log 44 is recommended for approval, staff recommends revising this amendment to eliminate “in the Town Center” as this would create a redundancy.</p>	Substantive
45c	Kate Akyuz	Amend (G) Table A, Row 5, Column 2 to read: “[60 or 90]30 days or as provided pursuant to the terms of the issued temporary use permit”. [This is an inadequate time for many successful and beloved vendors on MI including the old Wood Fired Pizza and the Thai place at the old Baskin Robbins site. Please increase this value to a more reasonable value such as 60 or 90 days.]	If Log 44 is recommended for approval, this duration would apply to activities within the Town Center instead of mobile food vendors. This amendment would not cause a conflict, but the intent of this amendment may not align with the change of the applicable use.	Substantive
MICC 19.15.030 Table A. Land Use Review Types				
46	JB Gibson	Strike “Temporary use permit” from the Type I land use category and add “Temporary use permit” to the Type II land use category. [Aligns with amendment in 19.06.130(C)].	If Log 18b is recommended for approval, this amendment would cause conflict.	Substantive
47	JB Gibson	Amend Table A to add “Temporary use permit variance” to the Type IV land use category. [Aligns with amendment in 19.06.130(F)(1)].	This amendment should only be recommended for adoption if Log 34 is recommended for adoption.	Substantive
Misc.				
Q12	JB Gibson	If these amendments get approved, I recommend an additional round of review and public comment so that we can get public feedback on this updated framework.	If the Planning Commission would like to continue deliberations after March 26, a third discussion of the draft can be scheduled for the next Planning Commission meeting. Given the volume of Planning Commission proposed amendments, continuing deliberations to April is expected.	Q
Q13	Dan Thompson	The TUP really applies to non-conforming structures, not uses. The TUP really has little to do with uses, but mostly to do with non-conforming structures. Every TUP application so far is for an existing use that the zone or a conditional use permit allows. As a result, I have noted in the titles that this ordinance is about non-conforming structures and not uses.	<p>Temporary structures are not inherently “non-conforming”. Please see PCB25-06 for a discussion surrounding nonconforming uses and how these are regulated within the existing MICC.</p> <p>PCB25-06 also includes information related to land uses, which may have associated structures, but not always. Temporary uses are regulated through this section, as uses can have impacts even when they do not have associated structures. Mobile food vendors are a good example of a use that is not associated with a structure.</p>	Q

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Q14	Dan Thompson	<p>The TUP is really three unconnected TUP's for different zones. As Commissioner Nice suspected at the last meeting, this ordinance is really three different temporary use permit ordinances:</p> <ul style="list-style-type: none"> A. The use of public property in the town center for private business use. This is to allow outdoor dining on public property. To date only Barrels has requested this, and the council has allowed this through a series of temporary ordinances since Covid. I don't see that the legal machinery of a TUP is necessary, but since it is public property will defer to the city on this. B. The allowance of temporary structures (not uses) on private property in the town center even though the zone allows the use and the temporary structure meets the zone's regulatory limits. Some examples include the flower shop in the corner of the Walgreen's property, a food truck on the Chevron property, a food truck by the old Baskin Robbins property, and an application for a TUP for an ice cream truck on the Rite Aid property. My question whether a TUP is necessary for private property in the town center when the use is allowed in the zone and the structure meets the regulatory limits. C. The allowance of a non-conforming structure in the single-family zone. This is due to the council's desire to allow the Country Club to cover its outdoor tennis courts during the winter when a regulation cover must be 39' tall and no zone on MI let alone the SFH zone (30') allows a structure to be 39' tall absent housing in the town center. I think this section of the TUP should be eliminated entirely. The residents don't want businesses in the SFH zone, or non-conforming structures, certainly for 6-9 months/year. 	<p>Please note that mobile food vendors are a use and not a structure. Uses that are allowed within certain zoning designations often require the issuance of a land use permit prior to operation or issuance of a building permit, even if the use is allowed outright. Please see PCB25-06 for more information on land use reviews.</p>	Q

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Q15	Dan Thompson	<p>A Conditional Use Permit vs. A Temporary Use Permit. A conditional use permit allows a permanent non-conforming use in a zone. This is usually the single-family zone because the SFH zone has the most restrictive uses (single family homes) and because historically the land in the single-family zone has been cheaper. So clubs, churches, private schools all have CUP's in the residential zone. A CUP has several advantages over the conforming uses in the same zone (single family homes) including:</p> <ul style="list-style-type: none"> A. A non-conforming use that allows the CUP to charge hundreds of thousands of dollars in dues or fees each year. B. Most CUP's are exempt from property taxes so the city's other property taxpayers must make up for that lost property tax. C. Additional impervious surface limits to allow greater parking (usually offset by the fact a CUP has a lower gross floor area to lot area ratio than a house). <p>However, the fundamental rule is a non-conforming use in a CUP does not also receive greater regulatory limits for height, setbacks, or gross floor area to lot area ratio than conforming uses (single family houses) because that is unfair and is basically a rezone. The CUP process is pretty intense, and the city examines all the issues a CUP creates and develops restrictions to deal with these if the CUP is worth it with neighbor input: traffic, parking, noise, light, and just intensity of use.</p> <p>A temporary use permit is something Mercer Island has never had, for any zone. Instead, temporary use or structure is dealt with through the conditional use permit process. The proposed "temporary use permit" ordinance as discussed below has nothing to do with non-conforming uses in a zone and everything to do with allowing structures that exceed regulatory limits for conforming uses in the zone. This has never been allowed on Mercer Island before, and the proposed TUP has no limits whatsoever except the code official's discretion.</p>	<p>If a Conditional Use Permit is obtained for an activity, it is a permitted use and is not non-conforming. Conditional uses are allowed uses within certain zoning designations. Please see PCB25-06 for more information on types of land uses.</p> <p>Temporary use permits have not been previously processed through a conditional use permit process. Conditional uses are only those uses specifically listed in the code as allowed subject to additional conditions that go beyond the development standards in the underlying zone, usually to mitigate anticipated impacts of a more intense use.</p> <p>The city has not previously had a temporary use permit, so any temporary use and structure that does not meet the underlying development standards in the zoning designation would either have been prohibited, or subject to code enforcement. Please see the discussion in PCB25-05 related to existing development standards for temporary uses.</p>	Q

Q16	Dan Thompson	<p>Why not a variance – the 2017 rewrite of the residential development standards.</p> <p>A. The 2017 rewrite of the RDS. Beginning in 2013 the Development Services Group (the precursor to the CPD) implemented some secret code interpretations re: lot coverage and exemptions to GFAR that resulted in the return of the “McMansion” in the single-family zone. Some of us fought for four years to rewrite the RDS, including Mayor Nice and former councilman Dan Grausz. In 2017 the new RDS was adopted, but since there was no moratorium on permits during the rewrite builders filed dozens of building permits that vested under the old RDS. The new RDS removed any discretion from the planning dept. to increase lot coverage or GFAR limits, or height, and reduced GFAR by 5% and eliminated deviations that had been abused (plus required 30-day public notice for any building permit). The citizen anger during the rewrite and afterwards was intense at public meetings. In 2018 the city places a \$28 million general levy on the ballot that lost by 58.5% due to residual anger over out-of-scale development in the single-family zone that was still going on due to the vested permits. This led to nearly all the senior leadership in the city resigning (or being fired later on including Evan Maxim) and a new council.</p> <p>B. Why not a variance for the country club cover? A variance in the single-family zone is VERY difficult to obtain. For a conforming use like a single-family house the property owner must show the regulatory limit the variance is requested for prohibits <i>any</i> development of the property. In 2022 the JCC requested a variance to certain increased regulatory limits to redevelop its property, but the city’s outside counsel determined that a variance for a CUP was not available in the single-family zone under Mercer Island’s development code and comprehensive plan, which was</p>	<p>Commentary only, no question has been asked. Please see the discussion related to variances in PCB25-06.</p>	Q
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		<p>formalized in an administrative interpretation. DSG ADMINISTRATIVE POLICY DETERMINATION</p>		
Q17	Dan Thompson	<p>Is this TUP Ordinance really necessary. To date, there have been four TUP's granted or applied for:</p> <ul style="list-style-type: none"> A. A cover for the tennis courts at the Country Club. There is no change in the use (tennis) which is part of the CUP. The TUP is really about allowing a 40' tall cover in the single-family zone that has a 30' height limit that is not subject to a variance for CUP in the SFH zone. B. A cover for the swimming pool at the Beach Club at the city's insistence. But this cover has been allowed for over a decade as part of the Beach Club's CUP, and does not violate the zone's regulatory limits (height and gross floor area to lot area ratio). A TUP is totally unnecessary for this cover, and the TUP is just another administrative hassle each year for the Beach Club. C. A cover for the swimming pool at the Mercerwood Shore Club. Exactly the same as the Beach Club. The use is already consistent with the Shore Club's CUP and the pool cover is part of the CUP and meets the zone's regulatory limits. A TUP is completely unnecessary each year. D. An ice cream truck in the Rite Aid parking lot. Why is a TUP necessary for this if the private property owner is willing to allow it and this use is consistent with the property and zone? <p>The only part of the TUP that is relevant or necessary is private use of public property in the town center for outdoor dining, and even then Barrels is the only business to ever apply for such a permit.</p>	<p>The proposed regulations for temporary uses are necessary because without them, some temporary uses and structures are either subject to development standards intended for more intense permanent uses or outright prohibited.</p>	Q

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Q18	Dan Thompson	Eliminate a TUP in the single family zone that exceeds the zone’s regulatory limits. Basically, this TUP is simply an end round Administrative Interpretation 22-004 that held a CUP cannot obtain a variance from the regulatory limits in the single-family zone. To allow greater regulatory limits than the SFH zone allows or would be available to a CUP under the CUP process in a temporary use ordinance that can be 9 months/year is disingenuous. Although I don’t think a TUP is necessary or should be allowed in the SFH zone I definitely don’t believe a TUP should be an end round AI 22-004 that prohibits a CUP from even applying for a variance to the regulatory limits in the SFH zone.	Commentary only, no question has been asked.	Q
Q19	Dan Thompson	Eliminate a TUP for retail businesses in the single-family zone that exceed 2 weeks per year. I don’t think the citizens – when asked – will support amending the RDS through a TUP to allow retail businesses in the single-family zone, and a central tenant of the town center is to condense retail businesses in the town center to create retail density and walkability.	Commentary only, no question has been asked.	Q
Q20	Nazim Nice	Can the City provide permit history for the MICC bubble at property 8700 SE 71st, both past and ongoing applications? You’ve already provided TUP[24]-001. What is ZTR23-002 regarding? Are there other land use or building permits?	<p>Permit history for the property at 8700 SE 71st St (Mercer Island Country Club) includes: 1963 Rezone – Denied 1982 Conditional Use Permit for the construction of covered tennis facility – Approved 1983 Lot Line Revision – Recorded 1983 Setback Variance – Approved 1992 Conditional Use Permit for renovations and expansion – Approved 2005 Conditional Use Permit for 2nd story addition and site improvements – Approved</p> <p>ZTR23-002 is the reference number for the code amendment currently under consideration for the adoption of permanent regulations for temporary uses and structures.</p>	Q

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Q21	Nazim Nice	Is there available permit history for the Conditional Use Permits for the MICC, Beach Club, and Mercerwood Shore Club? Do these conditional use permits allow covers over pools/sport courts? Are both the conditional use and temporary use permits necessary for these structures to be permitted?	<p>Permit history for all properties on the island can be found in the City’s GIS portal: Interactive City Web Map City of Mercer Island Geospatial Hub</p> <p>To find previous land use permits:</p> <ol style="list-style-type: none"> 1. Search for a property using the address or parcel number 2. Toggle on the “Land Use” layer found within the “Property” layer 3. Use the “Rectangle Identify” tool to draw an area over the subject property to encapsulate all of the land use permits associated with the property (be sure to not cross property lines, as the report will pull permits for other properties) 4. The results include descriptions of the requested land use permits, as well as the last known status. There is also a link to all of the property documents that are associated with the permit <p>If a Conditional Use Permit is granted that includes, for example, a covered pool, an additional temporary use permit would not be required. The Beach Club and Shore Club currently have Temporary Use Permits related to their seasonal pool covers.</p>	Q

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Q22	Nazim Nice	When referring to a “lot” in the proposed language, with upcoming code changes that include Unit lots, would the word “lot” mean both a Parent Lot or a Unit Lot? Are there recommendations on how to refer to this clearly?	<p>On March 18, 2025, the City Council adopted Interim Ordinance No. 25C-06, which adopted temporary regulations to comply with Senate Bill 5258, which relates to unit lot subdivision. That ordinance temporarily amended the definition of “Lot” as follows (additions show in underline):</p> <p>“Lot: A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law to be used, developed or built upon as a unit.</p> <ol style="list-style-type: none"> 1. Corner lot: A lot located at the junction of and abutting two or more intersecting streets. 2. Upland lot: A lot having no frontage on Lake Washington. 3. Waterfront lot: A lot having frontage on Lake Washington. 4. Parent lot: <u>The initial lot from which unit lots are subdivided pursuant to MICC 19.08.080.</u> 5. Unit lot: <u>A lot created by the subdivision of a parent lot pursuant to MICC 19.08.080.”</u> <p>As defined, using the term “lot” would refer to both parent and unit lots. In most cases outside of a unit lot subdivision, “lot” will effectively be synonymous with “parent lot” because parent lots are required to meet all development standards and only unit lots have unique allowances. If a standard is intended to apply specifically to a parent or unit lot, that term should be used.</p>	Q
Q23	Nazim Nice	In MICC 19.06.130 Table A, are activities listed in MICC 19.06.130D (<i>Exemptions related to another permit</i>) limited to the items listed under 19.06.130(D)(1)(c)? Or are there others?	<p>If any of the uses in MICC 19.06.130(D) were related to another permit, they would fall under this category.</p> <p>It is possible, but not likely, that there would be other activities that are related to a permit in this section other than construction-related activities</p>	Q

Q24	Dan Thompson	<p>Currently there is a conditional use permit process for non-conforming uses in a zone. Here is a Link to the permit application. conditionalusepermit.pdf Could we just use the CUP for temporary uses in the single family zone instead of a new TUP. The only differences I see is a CUP is a Type IV permit, a CUP is for 12 months rather than 6-9 months every 12 months, and a CUP does not allow a structure to exceed the zone’s regulatory limits for conforming uses.</p>	<p>Conditional use permits and nonconforming uses are two separate things. Conditional use is defined in MICC 19.16.010 as: "A use listed among those permitted in any given zone but authorized only after a conditional use permit has been granted." A conditional use permit is a Type IV land use review, which requires a pre-decision public hearing. The decision for conditional use permits is made by the Hearing Examiner after the public hearing (MICC 19.15.030). Requiring a conditional use permit is requiring a process for review.</p> <p>A conditional use must conform to all of the regulations of Title 19 MICC at the time it is proposed and permitted. For this reason, a conditional use is a "conforming use" at the time it is initiated and would not become a nonconforming use until regulations are amended that the use no longer conforms to. For example, the land use "hotel/motel" requires a conditional use permit in the TCMF-3 subarea of Town Center (MICC 19.11.020). An application to develop a hotel in the TCMF-3 subarea of the Town Center would be reviewed as a conditional use permit. All development in the Town Center must also meet the Town Center design standards established in Chapter 19.11 MICC. The conditional use permit for the hotel would be reviewed and conditioned to ensure that it conforms to the Town Center design standards at the time the permit application is reviewed. Note: This is a really simplified description of the process, this type of development would be one of the more complicated uses to permit in the City because there are several other permits and authorizations that would be required in addition to the conditional use permit.</p> <p>Nonconforming uses are those uses that do not conform to the land use standards for the zone in which they take place. Nonconforming uses are regulated by MICC 19.01.050 - Nonconforming structures, sites, lots and uses. Nonconforming uses can be either legally established or illegal nonconforming uses. A legally established nonconforming use is a use "[...] that were in</p>	Q
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			<p>conformance with all applicable code provisions in effect at the time of their creation but are not in compliance with current land use codes as a result of subsequent changes in code requirements [...]" (MICC 19.01.050(A)(2)). An illegal nonconforming uses are those that "[...] were not in conformance with all applicable code provisions in effect at the time of their creation [...]" (MICC 19.01.050(A)(3)).</p> <p>To return to the hotel in the TCMF-3 example, if after the hotel was permitted the City changed the design standards in such a way that the permitted hotel no longer conformed, it would be considered a legally established nonconforming use in addition to being a conditional use authorized by a conditional use permit.</p> <p>The City does not have an existing process by which a use can be authorized if it does not conform to the the Development Code in Title 19 MICC.</p> <p>Yes, the Planning Commission can recommend a requirement that temporary uses be processed as a Type IV land use review, similar to the process for a conditional use permit. As discussed above, a conditional use permit (and any land use permit except for a variance) cannot authorize a use or structure that does not conform to the standards of the development code established in Title 19 MICC.</p> <p>Changing the review process for a given use does not authorize alternative development standards. If the Planning Commission wants to establish a flexible standard that allows temporary uses to exceed the maximum building height in a given zone, that should be established in the code by setting a standard in the proposed regulations in MICC 19.06.130.</p> <p>Requiring a Type IV land use review for temporary uses would add to the necessary review time for temporary uses. Each Type IV land use review requires a pre-decision public hearing prior to</p>	
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			<p>either the Hearing Examiner or the Design Commission issuing a decision. A public hearing can often add at least two months to the land use review. Costs for applicants would also be higher because the permit fees for Type IV land use reviews include the costs associated with the added review and administering the public hearing.</p>	