



PLANNING COMMISSION REGULAR HYBRID MEETING AGENDA

Wednesday, March 26, 2025 at 6:00 PM

PLANNING COMMISSIONERS

Chair: Dan Thompson
Vice Chair: JB Gibson
Commissioners: Kate Akyuz,
Nazim Nice, and Anthony Perez

LOCATION

Mercer Island Community & Event Center and Zoom
8236 SE 24th Street | Mercer Island, WA 98040
(206) 275-7706 | www.mercerisland.gov

We strive to create an inclusive and accessible experience. Those requiring accommodation for Planning Commission meetings should notify the Deputy City Clerk's Office 3 days prior to the meeting at (206) 275-7793 or by emailing cityclerk@mercerisland.gov.

Individuals wishing to speak live during Public Appearances (public comment period) must register with the Deputy City Clerk at (206) 275-7791 or cityclerk@mercerisland.gov by 4pm on the day of the Planning Commission meeting. Each speaker will be allowed three (3) minutes to speak.

Join the meeting at 6:00 pm (Public Appearances will start sometime after 6:00 PM) by:

- 1) **Telephone:** Call 253.215.8782 and enter Webinar ID 811 9149 3199, Passcode 398647.
- 2) **Zoom:** Click this [Link](#) (Webinar ID 811 9149 3199, Passcode 398647)
- 3) **In person:** Mercer Island Community & Event Center | 8236 SE 24th Street, Mercer Island, WA 98040

CALL TO ORDER & ROLL CALL, 6 PM

PUBLIC APPEARANCES

This is the opportunity for anyone to speak to the Commission about issues of concern. Please limit your comments to three minutes.

REGULAR BUSINESS

1. **Planning Commission Meeting Minutes**
Recommended Action: Approve the February 26, 2025 Regular Meeting minutes.
2. **PCB25-06: Public Hearing on Permanent Regulations for Temporary Uses and Structures Including Outdoor Dining (Second Reading)**
Recommended Action: (Refer to PCB25-06)
3. **PCB25-07: New Dwelling Units in Existing Buildings (HB 1042)**
Recommended Action: Discussion only.

OTHER BUSINESS

4. **Staff Report**

ADJOURNMENT



PLANNING COMMISSION REGULAR MEETING MINUTES

Wednesday, February 26, 2025

CALL TO ORDER

The Planning Commission was called to order by Vice Chair Gibson at 6:03 pm.

Commissioners Kate Akyuz (6:08), JB Gibson, Nazim Nice, and Dan Thompson (remote) were present.

Commissioner Anthony Perez received an excused absence.

Staff Participation:

Jeff Thomas, Director (remote)

Alison Van Gorp, Deputy CPD Director

Adam Zack, Principal Planner

Kim Adams-Pratt, Legal Counsel

Molly McGuire, Senior Planner

Deb Estrada, Deputy City Clerk

Raven Gillis, Recreation Specialist

PUBLIC APPEARANCES. There were no public appearances.

REGULAR BUSINESS

1. Planning Commission Meeting Minutes of January 22, 2025, Regular Meeting:

A motion was made by Thompson; seconded by Nice to:

Approve the minutes.

Approved 3-0

2. PCB25-03: Planning Commission Work Plan

Adam Zack, Principal Planner, provided a brief presentation that addressed the following:

- Background:
 - Planning Commission Duties and Responsibilities
 - Comprehensive Plan
 - Development Regulations
- Adding Projects to the Work Plan
- Legislative Review Process
- Additional Project Steps
- Tentative 2025 PC Work Plan
- New Dwellings in Existing Buildings
- Downhill Façade Height
- Co-Living Housing
- Annual Docket

Zack and legal counsel responded to questions by the Commission.

3. PCB25-05: Permanent Regulations for Temporary Uses and Structures Including Outdoor Dining (First Reading)

Molly McGuire, Senior Planner, provided a brief presentation that addressed the following:

- Background and Purpose
- Regulations

- Commerce on Public Property
- Temporary Uses and Structures
- Permit Processing
- Temporary Uses and Structures Exempt from Permit Requirements
- Criteria for Approval
- Additional Conditions for Select Uses
- Standards for Removal and Assurance Devices

Staff and legal counsel responded to questions by the Commission. Staff also requested that the Planning Commission provide comments on the draft permanent regulations for temporary uses and structures by March 14, 2025, noting that a public hearing and second reading on the draft permanent regulations for temporary uses and structures was scheduled for the March 26, 2025, meeting.

4. PCB 25-05: Planning Commission Bylaws Adoption (Second Reading)

Deb Estrada, Deputy City Clerk, briefly outlined Commission members' proposed amendments to the Planning Commission Bylaws and responded to questions.

A motion was made by Thompson; seconded by Akyuz to:
adopt the bylaws.

A motion was made by Thompson; seconded by Gibson to:
Amend 4.2A to read that the "Planning Commission's regular meetings will be held on the fourth Wednesday of each month at 5:00 P.M."

Failed: 2-2

A motion was made by Gibson; seconded by Akyuz to:

Amend Section 7, to read the "bylaws may be amended by a majority vote (3 votes) of the entire membership of the Planning Commission."

Approved 4-0

Main motion approved 4-0

OTHER BUSINESS

5. Staff Report – None

ADJOURNED - The meeting adjourned at 7:36 pm

Deborah Estrada, Deputy City Clerk



PLANNING COMMISSION CITY OF MERCER ISLAND

PCB 25-06
March 26, 2025
Public Hearing

AGENDA BILL INFORMATION

TITLE:	PCB 25-06: Public Hearing on Permanent Regulations for Temporary Uses and Structures Including Outdoor Dining (Second Reading).	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Recommendation
RECOMMENDED ACTION:	Hold public hearing and make motions to recommend amendments and/or adoption of the proposed permanent regulations related to temporary uses and structures.	

STAFF:	Molly McGuire, Senior Planner
EXHIBITS:	<ol style="list-style-type: none"> Draft Permanent Regulations for Temporary Uses and Structures Temporary Uses and Structures Comment Matrix

EXECUTIVE SUMMARY

The purpose of this agenda bill is to recommend the adoption of permanent regulations for temporary uses and structures in place of interim regulations which were originally adopted on June 4, 2024, under [Ordinance No. 24C-07](#) and are effective for one year.

- Temporary uses and structures are development or activities that take place on a property for a period of 180 days or less. They can include a wide range of development and activities from garage sales to outdoor festivals.
- Prior to 2024, the City did not have a permit process for temporary uses or structures and the development code lacked clarity about how such structures and uses were regulated. As a result, some temporary uses and structures were not allowed.
- At its December 5, 2023 meeting, the City Council docketed a project to develop regulations for temporary uses and structures when it approved [Resolution No. 1655](#).
- On June 4, 2024, the City Council adopted Ordinance No. 24C-07, which established the following:
 - Interim regulations and permitting procedures for temporary structures and uses, and
 - A work plan for developing permanent regulations for temporary structures and uses by the second quarter of 2025.
 - The interim regulations will expire in June 2025 unless the City adopts permanent regulations or renews the interim regulations.
- Staff prepared draft permanent regulations for temporary uses and structures for the Planning Commission to review and provide initial comments on (Exhibit 1).
- The draft regulations would establish:
 - Development standards for temporary uses and structures on real property not owned by the City of Mercer Island (“private property”);
 - Development regulations to continue a pandemic-era allowance for outdoor dining use within public rights of way and private parking spaces; and
 - A permitting process for temporary uses and structures.
- On February 26, 2025, the Planning Commission held a first reading of the draft permanent regulations and provided initial feedback to staff.

- The Planning Commission provided comments and proposed amendments to the draft regulations, which were compiled and categorized by staff and included in Exhibit 2.
 - The Planning Commission should discuss the proposed amendments and draft regulations at its public hearing on March 26, 2025.

BACKGROUND

In 2023, the City Council approved [Resolution No. 1655](#) setting the 2024 Docket, which added Comprehensive Plan and development regulation amendments to the City's Work Plan. City Council directed staff to proceed with developing interim regulations to address two docketed items related to temporary uses and structures and renew the existing interim regulations for outdoor dining. More information on the background of the interim regulations is provided in [PCB25-05](#), from the February 26, 2025 Planning Commission meeting.

The Planning Commission held a regular meeting on February 26, 2025 where it had the first reading of the draft regulations for temporary uses and structures. The Commission provided initial feedback on the draft regulations and asked staff questions related to various topics. Staff requested that the Planning Commissioners provide comments, amendments, and questions and established a deadline for these materials to be submitted, prior to the March 26, 2025 public hearing.

Based on the comments and questions received, included in Exhibit 2, staff identified several key topics that may require additional information and/or clarification. These topics are as follows:

- Zoning
 - Land uses
- Land Use Review Types
 - Type I land use reviews, Type II land use reviews, Type III land use reviews, Type IV land use reviews, Public notification, Public notice, Code official decisions, Hearing examiner decisions
- Nonconforming Structures, Sites, Lots, and Uses
 - Legal nonconforming status of structures, sites and uses and illegal nonconformance of structures, sites and uses
- Variances
 - Criteria for approval
- Existing Regulations for Commerce on Public Property
 - Right-of-way use permits and Summer Celebration

Further information on each of these topics is provided below to support the Commission in making an informed recommendation to City Council on the draft permanent regulations.

ZONING

Mercer Island contains 13 different zoning designations across the Island. Zones are used to guide the development goals of the City by incentivizing certain land uses in specific areas or prohibiting other land uses in areas where they would be undesirable. For example, "professional, scientific, and technical services" are not an allowed use in the single-family residential zoning district by way of exclusion of all unlisted uses. The zoning designation dictates what kinds of development can occur on a specific property (also known as land uses), and the standards by which these developments must comply with.

Land Uses

Land uses can be categorized into three different types: 1) uses that are permitted outright; 2) uses that are permitted through the authorization of a conditional use permit; and 3) uses that are prohibited.

Uses that are permitted outright typically require one or more land use permits and/or a building permit, unless specifically exempted through the code. Permits are used to regulate development to ensure certain uses and structures comply with the standards set out in the development code. For example, development that is allowed within critical areas, such as a wetland, requires a Critical Area Review application to determine that the development would not result in adverse impacts to the wetland by demonstration of compliance with wetland buffers, buffer averaging, or mitigation. All land use permits fall into one of the permit types listed in [MICC 19.15.030](#), Land Use Review Types, and are reviewed according to the procedures established by the code.

Uses that are permitted through the authorization of a conditional use permit are those that are allowed in a zone, but that are subject to additional conditions, usually designed to mitigate anticipated impacts. For example, government services are listed as a conditional use in the single-family zoning designation, and are required to meet standards related to setbacks, parking, and shielding of utilities since the surrounding land uses are likely residential uses. If a government service obtains a conditional use permit to operate in a single-family residential zone and demonstrates that the additional conditions are met to the satisfaction of the hearing examiner, the use is permitted.

Each zone also contains prohibited uses. Uses can be prohibited through either explicitly stating the use, or a blanket statement to prohibit any use that is not listed in the allowed uses. [MICC 19.02.010](#) establishes the allowed uses in single-family zones. This section includes the statement “A use not permitted by this section is prohibited. Please refer to [MICC 19.06.010](#) for other prohibited uses.”

The City does not have an existing process by which a use can be authorized if it does not conform to the development code in Title 19 MICC. Even a development that obtains a variance for a dimensional standard consistent with the criteria in [MICC 19.06.110\(B\)](#) is permitted and is not “nonconforming.”

LAND USE REVIEW TYPES

MICC 19.15.030 categorizes land use permits into four different categories of review. Each review type has different public noticing, review, decision, and appeal processes. There are currently interim regulations in place which re-organize the existing tables and clarify certain processes for specific land use permit applications related to compliance with Senate Bill 5290. The proposed draft regulations for temporary uses and structures do not consider the changes that were made by [Ordinance No. 24C-17](#), as these are interim regulations adopted by City Council and are subject to change as they go through Planning Commission review during the drafting of permanent regulations. MICC 19.15.030 defines each of the land use review types as follows:

1. **Type I Land Use Reviews**

Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

2. **Type II Land Use Reviews**

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.

3. **Type III Land Use Reviews**

Type III reviews require the exercise of discretion about nontechnical issues. These reviews include the development of a staff report, which includes Findings of Fact and Conditions of Permit Approval. Staff reports are not explicitly required by the code, but common practice for the types of permits under this land use review type necessitate a staff report to demonstrate the proposed development meets the standards established in the development code.

4. **Type IV land use reviews**

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. These reviews also include the development of a staff report, which is common practice for applications requiring a public hearing and review by a hearing examiner. The staff report also includes Findings of Fact and Recommended Conditions of Permit Approval that the hearing examiner can adopt as part of their decision.

Public Notification

Type II land use reviews are required to provide public notification. This notification is provided at the time of complete application to allow the community to be notified of the application prior to approval of the permit. The public notification is posted in the Weekly CPD Bulletin, which is published every Monday and includes the permit number, name of the applicant, location, and description of the project, a link to the website where additional information can be found, and the name of the reviewer assigned to the project where the community can ask questions or submit comments.

Public Notice

Type III and IV land use reviews are required to provide public notice of application, which is different from a public notification. Notice is provided in the Weekly CPD Bulletin, mailed to all property owners within 300 feet of the property, posted on the site in a location that is visible to the public right-of-way, and made available to the general public upon request. These notices are more detailed than public notifications. The code requires that the dates of the application, determination of completeness, and the notice of application, name of the applicant, location and description of the request, requested actions and/or required studies, date and time of the open record hearing (if applicable), environmental documents, statement of the public comment period, staff contact information, other permits not included in the application, description of development regulations used in determining consistency with the City's comprehensive plan, and a link the website where additional information can be found to be provided on the notice.

Code Official Decisions

Type I, II, and III land use reviews are subject to a decision by the Code Official. The Code Official is defined as "the director of the community planning and development department for the city of Mercer Island or a duly authorized designee."

Hearing Examiner Decisions

Most Type IV land use reviews are subject to a decision by the hearing examiner following a public hearing. Shoreline Variances and Shoreline Conditional Use Permits must obtain a recommendation from the hearing examiner to the Department of Ecology for their final decision. Design Commission Design Review applications are decided by the Design Commission.

NONCONFORMING STRUCTURES, SITES, LOTS AND USES

Any use that is explicitly allowed in a zoning designation, whether through permitted uses lists or the approval of a conditional use permit, is a conforming use. Nonconforming uses occur when a structures, site, lot, or use does not meet the standards required for those structures, sites, lots, or uses established in the current code. A structure, site, lot, or use can become nonconforming due to code amendments that change standards in the zone where the structure, site, lot, or use exists. Such structures, sites, lots and uses can generally continue and be maintained subject to certain conditions intended to limit any expansion of the nonconformity.

[MICC 19.01.050](#) provides explicit standards and requirements for the continuation and maintenance of structures, sites, lots, and uses that are legally nonconforming.

Legal Nonconforming Status of Structures, Sites, and Uses

Nonconforming structures, sites, and uses must meet certain criteria in order to be considered “legally established” nonconformities. All structures, sites, and uses that lawfully existed prior to September 26, 1960, shall be considered legally nonconforming. Structures, sites, and uses that were constructed or initiated after September 26, 1960, that were in 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 are deemed to be legally nonconforming structures, sites and uses.

A structure, site, lot, or use permitted through a conditional use permit must conform to the applicable code requirements at the time the conditional use permit is approved. 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 to those that the use no longer conforms to. One of the ways an applicant can demonstrate their use is a legal nonconforming use following a code change is through the record of a previous building permit or land use permit, including a conditional use permit. A conditional use that was legally established through a conditional use permit that becomes nonconforming due to later development regulation changes may be maintained in legal nonconforming status as long as no new nonconformities are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost. This is true for all legally nonconforming structures, sites, and uses.

Illegal Nonconformance of Structures, Sites, and Uses

Structures, sites, and uses that were not in conformance with all applicable code provisions in effect at the time of their creation are illegal and shall be brought into compliance with all applicable provisions of the code.

VARIANCES

Variations are available to any applicant or property owner to request to vary from any numeric standard in the code, with the exception of [Chapter 19.07 MICC](#), Environment. Variations may only be granted if the applicant can demonstrate they can meet all of the criteria in the criteria for approval section, which are construed extremely narrowly. Variations are decided by the hearing examiner following a public hearing.

Criteria for Approval

MICC 19.06.110(B)(2) lists the criteria that an applicant must demonstrate the variance request meets. The first criterion is generally the most difficult to meet for the R-8.4, R-9.6, R-12, and R-15 zoning designations, which states:

“The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-12, and R-15 zoning designations, an “unnecessary hardship” is limited to those circumstances where the adopted standards of this title prevent the construction of a single-family dwelling on a legally created, residentially zoned lot.”

In the last 5 years, only one variance request has been granted, which was for a variance in the required 5-foot setback for structures from the edge of an access easement in MICC 19.02.020(H)(1). Nonresidential uses located in the residential zones are generally not eligible for a variance based on this provision.

EXISTING REGULATIONS FOR COMMERCE ON PUBLIC PROPERTY

Regulations for commerce on public property are established in [MICC 19.06.050 – Commerce on public property](#). This section allows business owners to use a portion of the right of way or public sidewalks for

private commerce. Commerce on public property is permitted through Community Planning and Development with a right of way use permit or through Parks and Recreation with a special event permit depending on the location and scale of the proposed use or activity. Commerce on public property permits are generally applicable for the exchange of goods or services by any person(s), corporation, or company when the applicant business has an active business license for a location immediately adjacent to the public property location where the use will take place. Special event permits are applicable to more large-scale events that will take place on public property, such as a wedding ceremony or ticketed event in one of Mercer Island's parks.

During the COVID-19 Pandemic, the City adopted interim regulations for commerce on public property to allow businesses to more easily utilize outdoor spaces. The interim regulations amended MICC 19.05.060 to consider existing eating and drinking establishments that temporarily provide outdoor food and beverage service on adjacent public property to be considered temporary and may be approved without review or approval by the Design Commission.

Right-of-Way Use Permits

The MICC defines right-of-way 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". Right-of-Way Use Permits are currently required for any person(s), corporation, or company who wishes to use the public right-of-way for the exchange of goods or services, regardless of the duration, scale, and location of the proposed activity within the right-of-way. These activities are subject to the criteria for permit approval outlined in MICC 19.06.050(D), where private commerce on public property permits must be reviewed by the code official for compliance with approval criteria related to business license requirements, location conditions, nuisance controls, and design standards.

Right-of-Way Use Permits are currently processed as a Type I land use review, which are reviewed and decided by the City's Public Works Department as the designated code official. This permit process is used to regulate private commerce on public property and to ensure compliance with the approval criteria. Review and approval by the Public Works Department is necessary to ensure smooth operation of streets and utilities and to determine alternate routes for traffic, ensure emergency vehicle access, and regulate duration. The primary concern for the Public Works Department is the safety of pedestrians and motorists. Review for safety would need to occur with a commerce on public property permit. Should certain activities be exempted from needing to obtain a permit, enforcement of compliance with the approval criteria in this section would occur only on a complaint-basis after a code enforcement request is filed, or if the City Engineer determines that the use is causing a hazard.

Summer Celebration

[MICC 19.06.050\(I\)](#) exempts the annual City-sponsored event known as "Summer Celebration" from compliance with the provisions of this section. Summer Celebration is required to obtain a ROW Use Permit, but it is not subject to the review criteria in the commerce on public property section. This event is specifically exempted from this section because it would not meet the criteria for approval which requires the applicant to have an active business license for a location immediately adjacent to the public property location where the request is made; however, Summer Celebration provides a great community benefit.

ISSUE/DISCUSSION

PROPOSED CODE AMENDMENTS

The draft regulations provided in Exhibit 1 were created to establish regulations and a permitting process for temporary uses and structures that would otherwise be prohibited or unregulated. These regulations would

apply to temporary uses and structures on real property not owned by the City of Mercer Island, referred to as “private property”.

Following the briefing on February 26, 2025, the Planning Commissioners provided comments, questions, and proposed amendments to the draft regulations, which are included in Exhibit 2. The proposed amendments were sorted into two different categories: minor and substantive.

- **Minor.** Minor changes are those changes that are non-substantive and would not significantly change the policy direction of the development regulations. Examples of minor changes include wordsmithing, reorganization, or amendments for consistency with other changes that are more substantive. The following Log Numbers have been categorized as minor changes. The Commission may reclassify specific amendments if more detailed discussion is desired to make a recommendation, otherwise, the recommended motion includes the recommendation to adopt all of the following minor changes: Log Nos: 1, 6, 10, 11, 17, 20, 21, 22, and 24.
- **Substantive.** Substantive changes are those changes that would significantly impact the policy direction of the development regulations. These changes require review or discussion by the Planning Commission and often include several proposed alternatives. The Planning Commission should focus on the Log Items categorized as “Substantive” in Exhibit 2, during the meeting.

During the March 26, 2025 meeting, staff will walk through each of the proposed substantive amendments and the proposed motions, which are detailed in the Recommended Action section below.

NEXT STEPS

- March 26, 2025 – Planning Commission public hearing, deliberations, and potential recommendation.
- April 23, 2025 – Planning Commission continued deliberations and recommendation (*if needed*)
- (Meeting date TBD) – City Council briefing on PC recommendation and first reading of an ordinance to adopt permanent regulations for temporary structures and uses.
- (Meeting date TBD) – City Council second reading of an ordinance to adopt permanent regulations for temporary structures and uses.

RECOMMENDED ACTION

Staff recommends the following motions.

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

Note: once the main motion has been made and seconded, the Planning Commission can begin making amendments by motion as it sees fit.

Secondary Motion – Minor Amendments: “Move to approve the minor amendments and amend the draft materials as presented in PCB 25-06.”

Note: this motion would make all of the minor amendments outlined in Exhibit 2. If there are amendments categorized as minor that the Planning Commission would like to discuss further, the motion could be modified to: “move to approve the minor amendments except for proposed amendments [insert log numbers] and amend the draft materials as presented in PCB 25-06.” The excepted amendments can then be addressed with the same process proposed for substantive amendments.

Secondary Motion – Substantive Amendments: “Move to approve substantive amendment [insert log number] alternative [insert preferred alternative letter] as presented.”

Note: Each time a substantive amendment motion is made all the following variables will need to be inserted: (1) amendment log number and (2) the preferred alternative. The phrase “as presented” can be changed to “as amended” if the Planning Commission would like to make further changes to the alternative such as proposing specific language. If changes to an alternative are proposed the tertiary motion below would need to be made to detail the proposed change prior to voting on the secondary motion.

Tertiary Motion – Changes to a substantive amendment alternative: “Move to amend alternative [insert preferred alternative] as follows: [provide the proposed amendment].”

Motion to Table: “Move to table discussion of the main motion and substantive amendments [insert log numbers] until the April 23, 2025 Planning Commission meeting.”

Note: If the Planning Commission is unable to resolve all of the proposed amendments at the March 26 meeting, or if additional information or staff recommendations are required, this matter can be tabled until the April 23, 2025 meeting.

[LOG 1]**MICC 19.06.050 – Commerce and Temporary Structures on Public Property.****[LOG 2a]**

- A. The purpose of this chapter is to allow for the safe, healthful and aesthetic use of public property in zones that allow commercial uses, for the benefit of private commerce. 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.

[LOG 2b]

- 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.

[LOG 3a]

- B. The provisions of this section shall apply only to public sidewalks, streets and rights-of-way ("public property") within the Town Center zone.

[LOG 3b]

- 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.

[LOG 3c]

- B. The provisions of this section shall apply only to public sidewalks, streets and rights-of-way ("public property") within the Town Center, Planned Business, and Commercial Office zones.

[LOG 4]

- C. Any person(s), corporation, or company who wishes to use the public property right-of-way for the exchange of goods or services shall apply for a private commerce on public property permit. Such permit shall be in the form specified by the code official and shall contain such information as deemed necessary by the code official.

[LOG 14b]

- 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 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:

[LOG 5]

1. The applicant business has an active business license or is in the process of applying for a business license for a location immediately adjacent to the public property location where the request has been made.

[LOG 6]

2. The location of the private commerce on public property-business activity does not create a safety hazard for motorists, bicyclists or pedestrians.

[LOG 7a]

- a. The ~~business private commerce on public property~~ location maintains sufficient area for the free passage of pedestrians along sidewalks and access to other adjacent businesses.

[LOG 7b]

- a. The business location maintains sufficient area for the free passage of pedestrians per ADA standards, along sidewalks and access to other adjacent businesses.

[LOG 7c]

- a. The ~~business private commerce on public property~~ location maintains sufficient area for the free passage of pedestrians per ADA standards, along sidewalks and access to other adjacent businesses.

[LOG 6]

- 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.

[LOG 8a]

- b. Hours of operations are sensitive to the surrounding neighborhood and shall be limited from 7:00am to 10:00pm.

[LOG 8b]

- b. Hours of operations are sensitive to the surrounding neighborhood in compliance with WAC 173-60-040.

[LOG 9]

- ~~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.

[LOG 10]

- ~~4. The design for any non temporary improvements is consistent with the design requirements for the Town Center plan.~~

5. The location and design do not unreasonably obstruct the visibility of any adjacent businesses.

[LOG 11]

6. 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.

[LOG 12a]

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:
- 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.

[LOG 13a]

8. The total number of public parking stalls [cannot] be reduced by 50% on a given block for temporary uses or structures, including previously approved permits.

[LOG 13b]

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.

- E. A permit to operate a private business on public property shall be 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.

[LOG 14a]G. Term:

1. 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).
2. 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.

[LOG 15a]

~~I. The provisions of this section shall not apply to the annual city-sponsored event known as "Summer Celebration."~~

[LOG 15b]

I. The provisions of this section shall not apply to the annual city-sponsored events known as "Summer Celebration" and "Mercer Island Farmers Market."

[LOG 15c]

I. 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 Farmers Market."

[LOG 15d]

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".

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.

[LOG 12b]

~~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.~~

[LOG 14b]

~~L.* 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.~~

[LOG 16]

MICC 19.06.130 – Temporary Use and Structure Permits – Outside of the Town Center.

[LOG 17]

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 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.

[LOG 18a]

- C. Application. The application for a temporary use permit 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. Temporary use applications shall be processed as a Type I land use review, pursuant to MICC 19.15.030 Land Use Review Types.

[LOG 18b]

- C. Application. The application for a temporary use permit 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. Temporary use applications shall be processed as a Type III land use review, pursuant to MICC 19.15.030 Land Use Review Types.

[LOG 18c]

- C. Application. The application for a temporary use permit 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~~ as required on the application forms 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. Temporary use applications consistent with existing land use code shall be processed as a Type I land use review, pursuant to MICC 19.15.030 Land Use Review Types. All other applications will be processed as a Type II land use review.

[LOG 18d]

- C. Application. The application for a temporary use permit 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. Temporary use and temporary use renewal applications shall be processed as a Type I land use review, ~~pursuant to MICC 19.15.030 Land Use Review Types.~~ Temporary use deviation applications shall be processed as a Type IV land use review, pursuant to MICC 19.15.030 Land Use Review Types.

D. *Exemptions.*

1. The following activities on private property are exempt from the permit requirements of this chapter, but shall comply with other substantive requirements of this chapter, unless specifically noted otherwise:

[LOG 19a]

- a. 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;~~

[LOG 19b]

- a. 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, with a maximum of one tent per 2,000 SF of lot area, or two tents, whichever is greater;
- b. Rummage and other outdoor sales sited at a school, church, or other nonresidential institutional facility;
- c. 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:

[LOG 20]

- i. 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.

[LOG 21 & 22]

- ii. 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.
- 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.

[LOG 23]

- d. Any temporary use or structure with a term of 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.

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:

[LOG 24]

- 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;

[LOG 25]

- ~~b. 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;~~
- c. Structures proposed for the temporary use comply with applicable provisions of the Building and Fire Codes;

[LOG 26a]

- ~~d. 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;~~

[LOG 26b]

- d. Adequate parking (based on parking requirements for Town Center retail businesses) is available to serve the temporary use, and if applicable, the temporary use does not occupy or use required off-street parking areas for adjacent or nearby uses;

[LOG 27]

- ~~d*. The temporary use shall obtain all necessary permits and/or authorizations required by the City and/or state and federal agencies.~~
- ~~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.~~
- ~~f*. The use or structure shall not interfere with ADA accessible parking spaces or access to adjacent and surrounding businesses.~~

[LOG 28a]

- e. Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses. Temporary uses in the single-family residential zone shall comply with limits on permitted construction in the single-family zone;

[LOG 28b]

- e. Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses. 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];

[LOG 29a]

- f. The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses, no music or sound is amplified;

[LOG 29b]

- f. 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 173-6[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;

[LOG 29c]

- f. The temporary use will not cause nuisance factors such as noise, light, or glare which would adversely impact surrounding land uses. 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;

- g. The temporary use will not include permanent fencing, walls, or other structures that would hinder removal of the structure from the site; and
- h. 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.

[LOG 30]

- i*. 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;

[LOG 31a]

- j*. 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;

[LOG 32]

- k*. 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.

[LOG 33]

- ~~2. 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.~~

[LOG 34]

F. *Additional conditions for certain temporary uses/structures.* The following temporary uses and structures 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.

- ~~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:~~
- ~~a. Temporary use applications shall be processed as a Type IV land use review, pursuant to MICC 19.15.030 Land Use Review Types.~~
- ~~b. Land use review approvals shall expire five years from the date of notice of the 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.~~
- ~~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.~~

[LOG 27]

- ~~1. Mobile Food Vendors. Mobile food vendors shall comply with the following conditions:~~
- ~~a. The mobile food vendor shall obtain and keep the Eastside Fire and Rescue permit or approval and King County Health Department permit or approval on the mobile food vending facility at all times, and copies of these approvals shall be made available to the City upon the City's request.~~
- ~~b. The mobile food vendor must be located on 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.~~
- ~~c. A mobile food vendor shall not be parked in a location that will impede garbage collection.~~
- ~~d. A mobile food vendor must obtain permission from the property owner prior to operating.~~
- ~~e. The mobile food vendor must have fully functional wheels and be able to move immediately by being towed or driven without the removal of blocks or other structural devices.~~

- ~~2. Subject to approval by the code official, existing eating and drinking establishments may temporarily utilize private parking areas for outdoor food and beverage service, provided the private parking area is immediately adjacent to the eating and drinking establishment, and the following conditions are met:~~
- ~~a. 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.~~
 - ~~b. 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.~~
 - ~~c. The use of outdoor food and beverage service shall not interfere with ADA accessible parking spaces or access to adjacent and surrounding businesses.~~
 - ~~d. The temporary use shall obtain all necessary permits and/or authorizations required by the City and/or state and federal agencies.~~

[LOG 35]

F. *Additional conditions for certain temporary uses/structures.* The following temporary uses and structures are permitted in the Town Center 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.

1. Mobile Food Vendors. Mobile food vendors shall comply with the following conditions:
 - a. The mobile food vendor shall obtain and keep the Eastside Fire and Rescue permit or approval and King County Health Department permit or approval on the mobile food vending facility at all times, and copies of these approvals shall be made available to the City upon the City's request.

[LOG 36]

- b. The mobile food vendor must be located on or adjacent to 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.
- c. A mobile food vendor shall not be parked in a location that will impede garbage collection.

[LOG 37]

- d. A mobile food vendor must obtain permission from the property owner prior to parking or operating on private property.

- e. The mobile food vendor must have fully functional wheels and be able to move immediately by being towed or driven without the removal of blocks or other structural devices.
2. Subject to approval by the code official, existing eating and drinking establishments may temporarily utilize private parking areas for outdoor food and beverage service, provided the private parking area is immediately adjacent to the eating and drinking establishment, and the following conditions are met:
- a. 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.

[LOG 38]

- ~~b. 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.~~
- c. The use of outdoor food and beverage service shall not interfere with ADA accessible parking spaces or access to adjacent and surrounding businesses.
- d. The temporary use shall obtain all necessary permits and/or authorizations required by the City and/or state and federal agencies.

[LOG 39]

~~3. [Staff please add a section here for Farmers Market]~~

- G. Time limitation.
- 1. The code official may issue a temporary use or structure permit up to the durations set forth in Table A, Table of Temporary Use and Structure Permit Duration.

Table A. Table of Temporary Use and Structure Permit Duration

Temporary Use or Structure	Maximum Duration	Applicable Development Standards
<p>[LOG 27]</p> <p>Temporary Uses or Structures (not including activities listed in MICC 19.06.130(D), Exemptions and Mobile food vendors)</p>	<p>[LOG 40]</p> <p>180 Days⁺</p> <p>[LOG 41]</p> <p>180 <u>Consecutive</u> Days <u>in a twelve-month period</u></p>	<p>MICC 19.06.130(E)</p>

Activities listed in MICC 19.06.130(D), Exemptions not related to another permit.	<p>[LOG 42]</p> <p><u>Three consecutive days</u>, 30 days of site occupation or operation in any calendar year, unless otherwise stated</p>	MICC 19.06.130(D)
Activities listed in MICC 19.06.130(D), Exemptions related to another permit.	<p>[LOG 43a]</p> <p>180 days of site occupation or operation in any calendar year, unless otherwise stated⁴<u>Expires on the earlier of project completion or related permit expiration</u></p> <p>[LOG 43b]</p> <p>180 <u>consecutive</u> days of site occupation or operation in any calendar year <u>12-month period, unless otherwise stated</u>⁴</p> <p>[LOG 43c]</p> <p>180 days of site occupation or operation in any calendar year, unless otherwise stated⁴<u>The use shall be allowed through the duration of the 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></p>	MICC 19.06.130(D)
<p>[LOG 44]</p> <p>Mobile food vendors<u>Activities located within the Town Center Zone</u></p>	<p>[LOG 45a]</p> <p>30 days or as provided pursuant to the terms of the issued temporary use permit<u>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</u></p> <p>[LOG 45b]</p> <p>30 days <u>in any 12-month period in the Town Center</u> or as provided pursuant to the terms of the issued temporary use permit</p> <p>[LOG 45c]</p> <p>[60 or 90]<u>30</u> days or as provided pursuant to the terms of the issued temporary use permit</p>	MICC 19.06.130(F)(1)

[LOG 40]

⁴The 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(H).

- 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.
- 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 action 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 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
<ul style="list-style-type: none"> • 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 <p>[LOG 46]</p> <ul style="list-style-type: none"> • Temporary use permit 	<ul style="list-style-type: none"> • 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 <p>[LOG 46]</p> <ul style="list-style-type: none"> • <u>Temporary use permit</u> 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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) <p>[LOG 47]</p> <ul style="list-style-type: none"> • <u>Temporary use permit variance</u>

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 -private commerce on public <u>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="497 852 1008 1031"> <thead> <tr> <th data-bbox="497 852 631 901">EDNA OF NOISE SOURCE</th> <th colspan="3" data-bbox="631 852 1008 901">EDNA OF RECEIVING PROPERTY</th> </tr> <tr> <th data-bbox="497 901 631 933"></th> <th data-bbox="631 901 766 933">Class A</th> <th data-bbox="766 901 900 933">Class B</th> <th data-bbox="900 901 1008 933">Class C</th> </tr> </thead> <tbody> <tr> <td data-bbox="497 933 631 966">CLASS A</td> <td data-bbox="631 933 766 966">55 dBA</td> <td data-bbox="766 933 900 966">57 dBA</td> <td data-bbox="900 933 1008 966">60 dBA</td> </tr> <tr> <td data-bbox="497 966 631 998">CLASS B</td> <td data-bbox="631 966 766 998">57</td> <td data-bbox="766 966 900 998">60</td> <td data-bbox="900 966 1008 998">65</td> </tr> <tr> <td data-bbox="497 998 631 1031">CLASS C</td> <td data-bbox="631 998 766 1031">60</td> <td data-bbox="766 998 900 1031">65</td> <td data-bbox="900 998 1008 1031">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																					
CLASS B	57	60	65																					
CLASS C	60	65	70																					

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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	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].	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. 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. Should the Planning Commission wish to incorporate this amendment, staff recommends the Staff Proposed Alternative in Log 14b.	Substantive
14b	Staff Proposed Alternative	Amend 19.06.050 (C): <u>“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.</u> 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>	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.	Substantive
Q5	Dan Thompson	MICC 19.06.050(G) <u>“Permits for ongoing commercial use on public property shall be subject to renewal annually on the date of the original permit approval. Failure [...]”</u> Question related to the use of the word “annually”.	This allows for an applicant operating a commercial use to renew their permit on an annual basis.	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	<p>Question related to (B)(2) which reads: "The property owner or their authorized agent may apply for a temporary use permit on private property."</p> <p>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.</p>	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

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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: " 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. "	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

**PC Temporary Uses and Structures
Comment Matrix**
Updated: 03/26/2024

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: “Additional conditions for certain temporary uses/structures. The following temporary uses and structures <u>in the Town Center</u> 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 ⁺ . <u>Expires on the earlier of project completion or related permit expiration.</u> " [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 . The use shall be allowed through the duration of an active <u>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 ”	If Log 16 is recommended for approval, this amendment would cause conflict. If Log 44 is recommended for approval, staff recommends revising this amendment to eliminate “in the Town Center” as this would create a redundancy.	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.	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. 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.	Q

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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

<p>Q16</p>	<p>Dan Thompson</p>	<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>	<p>Q</p>
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Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
		formalized in an administrative interpretation. DSG ADMINISTRATIVE POLICY DETERMINATION		
<p>Q17</p>	<p>Dan Thompson</p>	<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>	<p>Q</p>

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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?	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 2 nd story addition and site improvements – Approved ZTR23-002 is the reference number for the code amendment currently under consideration for the adoption of permanent regulations for temporary uses and structures.	Q

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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

Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
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

<p>Q24</p>	<p>Dan Thompson</p>	<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>	<p>Q</p>
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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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Log #	Received From	Amendment/Comment/Question	Staff Response	Categorization
			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.	



PLANNING COMMISSION CITY OF MERCER ISLAND

PCB 25-07
March 26, 2025
Regular Business

AGENDA BILL INFORMATION

TITLE:	PCB 25-07: New Dwelling Units in Existing Buildings (HB 1042)	<input checked="" type="checkbox"/> Discussion Only <input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Recommendation
RECOMMENDED ACTION:	Discussion only. No action necessary.	

STAFF:	Adam Zack, Principal Planner
EXHIBITS:	1. Comparison of Proposed Development Code Amendment and RCW 35A.21.440.

EXECUTIVE SUMMARY

The purpose of this PCB is to provide the Planning Commission (PC) with an initial briefing on proposed development code amendments to comply with recent changes in the state law pertaining to allowing new dwelling units to be constructed in existing buildings ([RCW 35A.21.440](#)).

- On April 14, 2023, the Washington State Legislature enacted Engrossed Substitute House Bill (HB) 1042;
- HB 1042 established [RCW 35A.21.440](#), which sets requirements for how code cities can regulate the development of new housing in existing buildings;
- [RCW 35A.21.440](#) requires that all code cities, including Mercer Island, allow the development of new housing in existing buildings subject to conditions;
- The City has established development regulations in Title 19 Mercer Island City Code (MICC);
- The development regulations in Title 19 MICC must be amended to comply with [RCW 35A.21.440](#); and
- The City Council included a project to comply with recent statewide legislation, including HB 1042, on the 2024 Annual Docket.

BACKGROUND

In 2023, the WA State Legislature enacted House Bill 1042 (HB 1042). This bill enacted [RCW 35A.21.440 – New housing in existing buildings—Prohibitions on local regulation](#). This state law requires code cities in Washington to allow new dwelling units to be added to existing buildings subject to specific conditions. Mercer Island must update its code to comply with these changes by June 30, 2025 (RCW 35A.21.440(1)(a)). If the City does not amend the development code to comply with HB 1042 the state law supersedes local regulations (RCW 35A.21.440(1)(b)).

SUMMARY OF AMENDMENTS EXPECTED

This project is expected to result in the amendment of the following sections of the Mercer Island Comprehensive Plan or the development code established in Title 19 Mercer Island City Code (MICC):

Comprehensive Plan

- No amendments expected

Title 19 MICC

- MICC 19.06.XXX – New Dwelling Units in Existing Buildings. [*NEW SECTION*]

PUBLIC PARTICIPATION

The project will utilize the standard public participation required for every development code amendment as established in Title 19 MICC. The standard public participation process includes the following steps:

- Opportunity for the public to comment during public access at first PC meeting
- Public hearing notice and public comment period at least 30 days prior to the PC public hearing
- SEPA Comment Period
- Public hearing at second PC meeting
- Public access at City Council's first reading
- Public access at City Council's second reading

PUBLIC MEETINGS

The project is expected to be completed with four public meetings. The PC will have a first touch in March and in April, hold a public hearing and make its recommendation to the City Council. The City Council is expected to hold a first reading in May and the second reading and adoption in June. As noted above, the City must enact regulations before June 30, 2025 to avoid state regulations superseding local requirements. Please note that the City Council agenda is subject to change and all dates are approximate as of the preparation of this scope.

Planning Commission

- March 26 – First Touch
- April 23 – Public Hearing, Second Touch, and Recommendation

City Council

- May 20 – First Reading
- June 3 – Second Reading and Adoption

RCW 35A.21.440 – NEW HOUSING IN EXISTING BUILDINGS – PROHIBITIONS ON LOCAL REGULATION

The requirements for regulation of new housing in existing buildings in code cities established by HB 1042 are codified in [RCW 35A.21.440 – New housing in existing buildings – Prohibitions on local regulation](#). RCW 35A.21.440 states:

- (1)(a) Code cities must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of subsection (2) of this section for buildings that are zoned for commercial or mixed use no later than six months after its next periodic comprehensive plan update required under RCW 36.70A.130.
- (b) The requirements of subsection (2) of this section apply and take effect in any code city that has not adopted or amended ordinances, regulations, or other official controls as required under this section by the timeline in (a) of this subsection and supersede, preempt, and invalidate any conflicting local development regulations.
- (2) Through ordinances, development regulations, zoning regulations, or other official controls as required under subsection (1) of this section, code cities may not:

- (a) Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards and fire and life safety standards, can be met within the building;
- (b) Impose parking requirements on the addition of dwelling units or living units added within an existing building, however, cities may require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added;
- (c) With the exception of emergency housing and transitional housing uses, impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;
- (d) Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;
- (e) Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building or to preserve character-defining streetscapes, unless the building is a designated landmark or is within a historic district established through a local preservation ordinance;
- (f) Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city, unless the addition of the units would violate applicable building codes or health and safety standards;
- (g) Require unchanged portions of an existing building used for residential purposes to meet the current energy code solely because of the addition of new dwelling units within the building, however, if any portion of an existing building is converted to new dwelling units, each of those new units must meet the requirements of the current energy code;
- (h) Deny a building permit application for the addition of housing units within an existing building due to nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the code city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area; or

- (i) Require a transportation concurrency study under RCW 36.70A.070 or an environmental study under chapter 43.21C RCW based on the addition of residential units within an existing building.
- (3) Nothing in this section requires a code city to approve a building permit application for the addition of housing units constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing in cases in which the building cannot satisfy life safety standards.
- (4) For the purpose of this section, "existing building" means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.

ISSUE/DISCUSSION

Staff has prepared an initial draft of a new section of Chapter 19.06 MICC to comply with RCW 35A.21.440. The proposed draft is provided below with a citation of the RCW in brackets following each provision to help connect the proposed development code section with the requirement from the state law. The bracketed citations are for reference only and will be removed from the draft prior to adoption. A more detailed explanation of the connection between the proposed code section and the RCW is provided in Exhibit 1.

19.06.XXX – NEW DWELLING UNITS IN EXISTING BUILDINGS

- A. *Applicability.* This section applies to any development of new dwelling units in an existing building in a zone where commercial and mixed land uses are allowed. For the purposes of this section, “existing building” means a building that received a certificate of occupancy at least three (3) years prior to the submittal of a permit application to add housing units. [RCW 35A.21.440(1)(a) and (4)]
- B. *Permitted Use.* Development of new dwelling units in an existing building is a residential land use permitted in the TC, PBZ, C-O, B, and MF-2 zones. [RCW 35A.21.440(1)(a)]
- C. *Maximum density.* A maximum residential density established for the underlying zone may be exceeded by up to fifty (50) percent than what is permitted within the underlying zone provided that the development is constructed entirely within the existing building envelope in a building within a zone which permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards, and fire and life safety standards, can be met within the building. [RCW 35A.21.440(2)(a)]
- D. *Parking.* New parking spaces are not required for dwelling units added to an existing building. The code official may condition approval to require the retention of existing parking spaces provided the total number of spaces to be retained is less than or equal to the number of spaces that would be required for multifamily uses in the subject zone. [RCW 35A.21.440(2)(b)]
- E. *Permit Required.* Development of new dwelling units in an existing building is permitted outright in any zone allowing commercial or mixed land uses unless the subject zone requires a land use permit for residential uses, in which case the permit requirement in the subject zone controls. [RCW 35A.21.440(2)(c)]
- F. *Development Standards.* Development of new dwelling units in an existing building is subject to the development standards, including building height, setbacks, lot coverage, and floor area ratio

requirements, applicable to residential development within the subject zone. [RCW 35A.21.440(2)(d) & (e)]

G. *Design Standards.* New dwelling units in existing buildings are exempt from the design standards in Chapters 19.11 and 19.12 MICC, with the following exceptions:

1. The street standards established in MICC 19.11.120. [RCW 35A.21.440(2)(E)]
2. Required ground floor street frontage uses established in MICC 19.11.020. [RCW 35A.21.440(2)(F)]

H. *Transportation Concurrency and Environmental Review.* Development of new residential units in existing buildings is not subject to the transportation concurrency requirements in Chapter 19.20 MICC and environmental review required in Chapter 19.21 MICC. [RCW 35A.21.440(2)(i)]

Review Process

On March 26, staff will brief the Planning Commission on the initial draft code amendment. Following the study session, individual Commissioners can propose amendments to the initial draft for the Planning Commission to consider during deliberations following the public hearing scheduled for April 23. Proposed amendments should be sent to adam.zack@mercerisland.gov by 5:00 pm on April 4, 2025. As a reminder of OPMA rules, please do not copy other Planning Commissioners.

NEXT STEPS

The Planning Commission's Public Hearing on this matter will be held on April 23, 2025.

RECOMMENDED ACTION

Discussion only. No action necessary.

Table 1. Comparison of Proposed New Development Code Section and RCW 35A.21.440.

RCW Section #	RCW 35A.21.440	Draft Code Section	Proposed New Development Code	Staff Commentary
1(a)	Code cities must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of subsection (2) of this section for buildings that are zoned for commercial or mixed use no later than six months after its next periodic comprehensive plan update required under RCW 36.70A.130.	A	<i>Applicability.</i> This section applies to any development of new dwelling units in an existing building in a zone where commercial and mixed land uses are allowed. For the purposes of this section, “existing building” means a building that received a certificate of occupancy at least three (3) years prior to the submittal of a permit application to add housing units.	The definition of “existing building” comes from RCW 35A.21.440(4) below. The definition is added here so it only applies to this use whereas a definition added to Chapter 19.16 MICC would apply in every situation. This definition is particular to this circumstance so applying it throughout the code could have unintended consequences.
		B	<i>Permitted Use.</i> Development of new dwelling units in an existing building is a residential land use permitted in the TC, PBZ, C-O, B, and MF-2 zones. [RCW 35A.21.440(1)(a)]	Commercial uses are allowed in the following zones: C-O, B, PBZ, and MF-2 (Chapter 19.04 MICC) Mixed-uses are allowed in the TC zone. (Chapter 19.11 MICC)
1(b)	The requirements of subsection (2) of this section apply and take effect in any code city that has not adopted or amended ordinances, regulations, or other official controls as required under this section by the timeline in (a) of this subsection and supersede, preempt, and invalidate any conflicting local development regulations.			No development code amendments needed to address RCW 35A.21.440(1)(b)
2	Through ordinances, development regulations, zoning regulations, or other official controls as required under subsection (1) of this section, code cities may not:			The next 8 subsections will address RCW 35A.21.440(2)
2(a)	[Code cities may not] Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards and fire and life safety standards, can be met within the building;	C	<i>Maximum density.</i> A maximum residential density established for the underlying zone may be exceeded by up to fifty (50) percent than what is permitted within the underlying zone provided that the development is constructed entirely within the existing building envelope in a building within a zone which permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards, and fire and life safety standards, can be met within the building.	This provision would only affect zones with an established maximum density <i>and</i> allows multifamily housing. The only zone that would be subject to this section is the MF-2 zone. The maximum density in MF-2 zone has a maximum density of 38 dwelling units per acre. If a development were allowed an additional 50 percent, the maximum density would then be 57 dwelling units per acre. Note, this would only apply if the development is entirely within the existing building envelope. The City’s other zone subject to the proposed section B above that also allows multifamily residential uses is the TC zone. TC does not have an established maximum density.
2(b)	[Code cities may not] Impose parking requirements on the addition of dwelling units or living units added within an existing building, however, cities may require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added;	D	<i>Parking.</i> New parking spaces are not required for dwelling units added to an existing building. The code official may condition approval to require the retention of existing parking spaces provided the total number of spaces to be retained is less than or equal to the number of spaces that would be required for multifamily uses in the subject zone.	
2(c)	With the exception of emergency housing and transitional housing uses, [code cities may not] impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;	E	<i>Permit Required.</i> Development of new dwelling units in an existing building is permitted outright in any zone allowing commercial or mixed land uses unless the subject zone requires a land use permit for residential uses, in which case the permit requirement in the subject zone controls.	Permitting a use outright means that a land use permit is not required. Uses permitted outright are still required to get other necessary permits such as building permits. A development would still be subject to the design standards in that zone.

RCW Section #	RCW 35A.21.440	Draft Code Section	Proposed New Development Code	Staff Commentary
2(d)	[Code cities may not] Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;	F	<i>Development Standards.</i> Development of new dwelling units in an existing building is subject to the development standards, including building height, setbacks, lot coverage, and floor area ratio requirements, applicable to residential development within the subject zone.	Proposed subsection F helps to address both RCW 35A.21.440(2)(d) and (e)
2(e)	[Code cities may not] Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building or to preserve character-defining streetscapes, unless the building is a designated landmark or is within a historic district established through a local preservation ordinance;	G	<i>Design Standards.</i> New dwelling units in existing buildings are exempt from the design standards in Chapters 19.11 and 19.12 MICC, with the following exceptions: <ol style="list-style-type: none"> 1. The street standards established in MICC 19.11.120, and 2. Required ground floor street frontage uses established in MICC 19.11.020. 	Proposed subsections G(1) and G(2) are drafted to address both RCW 35A.21.440(2)(e) and (f).
2(f)	[Code cities may not] Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city, unless the addition of the units would violate applicable building codes or health and safety standards			
2(g)	[Code cities may not] Require unchanged portions of an existing building used for residential purposes to meet the current energy code solely because of the addition of new dwelling units within the building, however, if any portion of an existing building is converted to new dwelling units, each of those new units must meet the requirements of the current energy code;			A section addressing nonconformity to the energy code is not necessary. The City has adopted the WA State Energy Code by reference in Chapter 17.09 MICC. Section C505.1 of the WA State Energy Code states: “[...] Buildings or spaces undergoing a change in space conditioning, change in occupancy or use shall conform to the provisions of this code without requiring the unaltered portion of the existing building to comply with this code. [...]”
2(h)	[Code cities may not] Deny a building permit application for the addition of housing units within an existing building due to nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the code city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area; or			No development code amendments are necessary to address RCW 35A.21.440(2)(h).
2(i)	[Code cities may not] Require a transportation concurrency study under RCW 36.70A.070 or an environmental study under chapter 43.21C RCW based on the addition of residential units within an existing building.	H	<i>Transportation Concurrency and Environmental Review.</i> Development of new dwelling units in existing buildings is not subject to the transportation concurrency requirements in Chapter 19.20 MICC and environmental review required in Chapter 19.21 MICC.	
3	Nothing in this section requires a code city to approve a building permit application for the addition of housing units constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing in cases in which the building cannot satisfy life safety standards.			No development code amendments are necessary to address RCW 35A.21.440(3).
4	For the purpose of this section, "existing building" means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.			This definition incorporated into proposed Section A above