

# Homeless Encampment Ordinance Peer City Documents

City of Mercer Island



**Community Meeting Regarding Tent City**

**October 22, 2009**

**Notes taken from attendees (scribes: Joyce Trantina and Joy Johnston)**

**(notes are listed in the order in which they were spoken. Dotted line delineates the change in speaker)**

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Jerry Bradshaw

Increased traffic and disruption to neighborhood

Concerns regarding # 6, #19, #20 of Ordinance. Violations should be resolved within 48 hours or camp closed.

Utilize professional security patrols versus untrained (TC patrols)

Concerns regarding reduced property values to neighboring homes.

No follow-thru with neighbors by Church.

What did Tent City cost all City Depts.?

All neighborhoods should take turns, versus the same host.

Some may believe it is the City's duty to bring back Tent City.

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Steve Bryan – 2426 70<sup>th</sup> Ave SE

Appreciate the meeting with First Hill neighborhood, process has been constructive.

Smoking area – should be addressed in the Ordinance, need to limit the amount of impact on the neighborhood..

Need to address delivery services (early morning servicing of sanicans, and other services) were disruptive to neighbors.

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Mercer Island Presbyterian Church – 100+ people signed up to provide meals for TC while they were here (ages 3 to 70). All of their feedback about the experience of having TC on Mercer Island has been positive.

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Where in the process, does the Church/Synagogue actually extend the invitation?

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Chuck Hodge

Regarding the map – does the regulation limit a church, based on public transportation?

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Steve Case – 4250 Shoreclub Drive

Does the 12 month time period in the Ordinance count from the beginning (when TC arrives) or the end (after TC leaves)?

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Jessica Prince

Family spent time at the camp and made connections with the people living there – positive experience to be with them. Would Tent City be able to come back? Is the Ordinance structured in such a way so as to make it difficult for TC to ever return to MI?

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Dale Sewell – 9535 Mercerwood Drive

No interest in having TC coming back more than once a year or returning to the same neighborhoods. Some congregations had concerns regarding the one mile distance (i.e. if one church hosts, will the other 11 churches be restricted from hosting for 12 months? ). Isn't this unconstitutional? Would any other sites be eliminated because of the ordinance?

Good process – the City should meet with the Clergy Association to discuss the Ordinance and talk about constitutional issues/concerns.

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Rev. Leslie Ann Knight – 6616 SE 24<sup>th</sup> St.

Need a parking regulation in the Ordinance. Most development/building projects require “more than enough” parking, i.e. the churches have plenty of parking capacity.

Timeline looks too long – TC is often “emergency housing” – a mandatory time of 3 months preparation seems too long – how does that compare to other cities?.

Will this Ordinance afford the church's some protection from litigation?

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Legend of map - 600' to school site, what are the implications for TC? What if the issues can't be resolved?

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Is the one year restriction more restrictive? Versus the language in the Temporary use Agreement – (Tent City can't come anywhere on the Island for one year).

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Tara Johnson

Ordinance Issues:

#6 – would prefer 18 months (like Bellevue)

# 20 – 14 days too generous, would like 48 hours to resolve

#17 – need to be more specific regarding “reasonable verification”

Requirement of host church to hold monthly meetings with neighbors.

Security patrols should be prohibited like Redmond and Kirkland, especially in the middle of the night.

Parking – add language to address overflow issues (blocking neighbors driveways, etc.)

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Karen Morris, Bellevue

Fence – more than appearance, but is supposed to provide one point of entrance/exit for TC residents.

Hold Harmless provision, but no requirement for liability insurance.

Should be meetings with schools – concern about cooperation with school requests.

City staff should not refer to “proponents” and “opponents” - too demeaning.

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Ira Appleman

Ordinance refers to temporary encampments (not specifically Tent City). What about Boy Scout Jamborees?

Should this be a Conditional use Agreement instead of an Ordinance?

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Don't write an Ordinance for one specific use/organization.



EXHIBIT A

**CITY OF MERCER ISLAND  
ORDINANCE NO. XXC-XX**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010, AND  
ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE  
DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR PERMITTING  
TEMPORARY ENCAMPMENTS WITHIN THE CITY, PROVIDING FOR  
SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the Seattle Housing and Resource Effort (“SHARE”) and the Women’s Housing Equality and Enhancement League (“WHEEL”), non-profit organizations experienced in operating and managing temporary encampments for homeless individuals, have collaborated to provide temporary housing on the Eastside of King County, under the designation “Tent City 4”; and

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions’ ability to practice their religion by hosting temporary encampments, and limiting municipalities’ ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

WHEREAS, beginning in May 2004, Tent City 4 has set up temporary encampments in several Eastside Cities including Bellevue, Bothell, Issaquah, Kirkland, Redmond, as well as in unincorporated communities in east King County, including Finn Hill and Cottage Lake, and has accepted invitations to return to some of these jurisdictions after positive Tent City 4 experiences; and

WHEREAS, the City of Mercer Island, it’s elected and appointed officials, are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, and the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held a open record public hearing on January 18, 2010, held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** **Amendments to Chapter 19.16 MICC, Definitions.** MICC 19.16.010 "Definitions" is hereby amended by adding the following:

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Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, other than for recreational purposes.

Temporary Encampment Sponsor: A local group or organization that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

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**Section 2.** **Chapter 19.06 MICC General Regulations.** MICC 19.06.090 "Temporary Encampment Permit" is hereby added as follows:

**19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. Each site occupied by a temporary encampment must provide or have available sufficient parking and vehicular maneuvering area for patrons.

2. The temporary encampment and the parking of any vehicles associated with the applications shall not displace the host site's parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the Code Official.

3. The temporary encampment shall be located within one-half mile of a public transit stop.

4. No temporary encampment shall occupy or use public parks in any manner unless specifically approved by the Parks Department.

5. No temporary encampment shall occupy or operate with the City of Mercer Island for more than 90 days.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a site that is within one mile of any site that contained a temporary encampment within the last 12 months.

7. All temporary encampments shall obtain, prior to occupancy of the site, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least 60 days before the planned opening or any occupancy of the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons, if all other conditions are met. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the City on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the Code Official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments.

b. A sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the Code Official. The Code Official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement.

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment. In exigent circumstances, if a child under the age of 18 attempts to stay overnight at the temporary encampment, the encampment managers shall immediately contact the temporary encampment managing organization and Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.

15. The temporary encampment shall permit regular inspections by the City and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire

Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization. The property owner, temporary encampment sponsor, and temporary encampment managing organization shall sign a hold harmless agreement for the temporary encampment.

17. The temporary encampment managing organization shall maintain a resident log for all who are residing at the encampment. Such log shall be kept onsite at the encampment. Prospective encampment residents shall be asked to provide a reasonable form of identification when signing the log.

18. The temporary encampment host, encampment sponsor, and encampment managing organization shall ensure enforcement of a Code of Conduct at the temporary encampment site. The Code of Conduct shall be in substantially the following form or address the following issues:

- a. Possession or use of illegal drugs is not permitted.
- b. No alcohol is permitted.
- c. No weapons are permitted.
- d. All knives over three and one-half inches must be turned in to the encampment manager for safekeeping.
- e. No violence is permitted.
- f. No open flames are permitted.
- g. No trespassing into private property in the surrounding neighborhood is permitted.
- h. No littering on the Temporary Encampment site or in the surrounding neighborhood is permitted.

Nothing within this section shall prohibit the encampment host, encampment sponsor or encampment manager from imposing and enforcing additional Code of Conduct conditions not otherwise inconsistent with this section.

19. The applicant shall obtain warrant and sex offender checks from the King County Sheriff's office or other relevant authority for all current camp residents within seven days of moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the applicant shall immediately contact the City of Mercer Island Police Department. To verify compliance with this requirement, the City of Mercer Island Police Department may do random warrant and sex offender checks on temporary encampment residents.

20. Upon determination that there has been a violation of any decision criteria or condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within 14 days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the 14-day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

21. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the Code Official:

1. General application form;
2. A site plan, drawn to scale showing all of the following:
  - a. all existing structures;
  - b. existing parking stalls;
  - c. parking stalls proposed to be unavailable for parking vehicles during the Temporary

Encampment:

- d. all proposed temporary structures;
- e. proposed electrical and plumbing connections;
- f. proposed and existing ingress and egress; and
- g. any permanent alterations to the site or structures;
3. Proposed fencing detail or typical section;
4. Written authorization from the owner of the property on which the temporary encampment is located;
  5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the property owner, temporary encampment sponsor, and temporary encampment managing organization;
  6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;
  7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;
  8. A copy of the Code of Conduct;
  9. Any other information deemed necessary by the Code Official for the processing of a temporary encampment permit; and
10. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official may require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment. When required, the informal public meetings shall be held as early in the review process as possible once a complete application has been submitted. Notice of the public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting, and combined with the notice of application whenever possible. Prior to the public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding the proposed security measures. At the public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment management responsibility plan, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda, and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.
2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the site for the proposed temporary encampment. Prior to notice of decision of a temporary encampment permit by the code official, the temporary encampment sponsor, or temporary encampment managing organization shall

meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the proposed temporary encampment site, and shall meet and confer with the operators of any property licensed child care service within 600 feet of the boundaries of the proposed temporary encampment site. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the criteria for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, based on the applicable decision criteria.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations.** MICC 19.06.010(A) "Prohibited Uses" is hereby amended as follows:

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development.** MICC 19.09.010 "Preapplication and intake screening meetings" is hereby amended as follows:

**19.09.010 Preapplication and intake screening meetings.**

- A. Preapplication meetings between the applicant, members of the applicant's project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

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**Section 5. Amendments to Chapter 19.09 MICC, Administration.** MICC 19.15.010(E) “General Procedures” is hereby amended as follows:

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E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

<b>ACTION</b>	<b>DECISION AUTHORITY</b>	<b>CRITERIA</b>	<b>APPEAL AUTHORITY</b>
<b>Ministerial Actions</b>			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial	Code official	MICC 19.07.110	Shoreline hearings

Development Permit			board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court
<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board

\*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).

\*\*The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.

**Section 6:**     **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:**     **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 8:**     **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: \_\_\_\_\_





October 12, 2009

Development Services Group  
**WEEKLY PERMIT INFORMATION BULLETIN**

A publication of the City of Mercer Island issued weekly providing official notice of land use applications filed and decisions made on development permits

You may review the files on projects at the offices of Development Services, 9611 SE 36th St, Mercer Island. Comments on proposals are accepted for a period of not less than fourteen (14) days from the date of publication of this bulletin. Comments must be in writing and contain your name and address and reference the project number and location. All written comments must be filed with the Development Services Group or if there is a public hearing, testimony may be given at the public hearing before a decision is made in order to establish standing to appeal the decision.

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**NOTICE OF PUBLIC COMMUNITY MEETING**

**NOTICE IS HEREBY GIVEN** that the City of Mercer Island will host a community meeting to provide a forum for additional public input, to discuss the lessons learned from the Tent City experience, and to provide an overview of the draft Temporary Encampment ordinance.

Description: For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. To read background information about Tent City's stay on Mercer Island, please visit [www.mercergov.org/tentcity](http://www.mercergov.org/tentcity). At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to prepare a draft ordinance for Council's consideration. The City Council asked to have an ordinance ready to pass no later than January 31, 2010. The Council directed staff to hold a community meeting with the First Hill neighborhood to receive their input and perspective regarding their experiences related to the 2008 hosting of Tent City, as well as another community meeting to respond to the draft ordinance. City staff held a community meeting on August 25 at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. Another community meeting will take place on October 22, 2009.

An overview of the Tent City 4 experience and a discussion of Temporary Encampment regulations will be presented to the Mercer Island Planning Commission on October 7. To view the documents related to the Temporary Encampment discussion and a draft ordinance, please see the [Planning Commission Agenda](#).

Location: City-Wide

Public Community Meeting: The City is seeking citizen input at a community meeting to be held on October 22, 2009 from 7:00 PM to 9:00 PM at the Mercer Island Community Center at Mercer View, located at 8236 SE 24th Street, Mercer Island, WA.

Staff Contact: George Steirer, Principal Planner at 206-275-7719 or [george.steirer@mercergov.org](mailto:george.steirer@mercergov.org)

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## NOTICE OF PUBLIC HEARING

Project #: SUB08-006

Description: A request for preliminary long plat approval to subdivide one existing parcel into five lots, and associated improvements.

Location: 6410 East Mercer Way; King County tax parcel # 302405-9079

Date of Hearing: Monday, November 2, 2009 at 7:00 PM in City Council Chambers at 9611 SE 36th Street Mercer Island, WA 98040

Applicant: East Cove Long Plat represented by Andy McAndrews of CHS Engineers, LLC, for Islander Properties, LLC

Approvals Required: Final Plat Approval, building permits

SEPA Review: Other permits include a State Environmental Policy Act (SEPA) application (SEP08-021). On May 11, 2009, the City Issued a Determination of Non-Significance for the subdivision of the property into five lots. The optional DNS process, as specified in WAC 197-11-355, was used.

Comment Period: Only those parties who submitted written comments during the Public Comment Period, which ran from April 20, 2009 through May 4, 2009 and those parties who testified at the Open Record Public Hearing in front of the Planning Commission on July 15, 2009, will receive a notice of the decision and have the right to appeal.

Staff Contact: Shana Crick, Planner at 206-275-7731 or [shana.crick@mercergov.org](mailto:shana.crick@mercergov.org)

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## NOTICE OF APPLICATION

Project #: ZTR09-003, SEP09-020

Description: Notice is hereby given that an application for a zoning text amendment and State Environmental Policy Act (SEPA) Threshold Determination has been submitted for a proposed amendment to Title 19 of the Mercer Island City Code (MICC) establishing regulations governing temporary encampments with the City.

Location: All lands within the City of Mercer Island

Applicant: City of Mercer Island

Date of Application: October 1, 2009

Date Determined to be Complete: October 5, 2009

Approvals Required: Zoning Text Revisions are a legislative process per MICC 19.15.020(G). The City of Mercer Island will be holding a Community Meeting on Thursday, October 22, 2009 from 7:00 PM – 9:00 PM at the Community Center at Mercer View (8236 SE 24th Street). The purpose of this public meeting is for the community to provide feedback on the experiences with Tent City 4, provide input for consideration for Mercer Island “temporary encampment” regulations, and discuss the timeline for future public hearings. The Planning Commission has also scheduled an open record public hearing regarding a code text amendment for November 18, 2009 at 7:30 PM to formulate a recommendation for the City Council’s review and final decision.

SEPA Review: A State Environmental Policy Act (SEPA) Checklist has been completed for this proposed non-project action as defined by WAC 197-11-704 (2)(b)(ii). An initial evaluation of the proposed non-project action for probable significant adverse environmental impacts has been conducted. The City expects to issue a SEPA Determination of Non-Significance (DNS) for this project. The optional DNS process, as specified in WAC 197-11-355, is being used.

Comment Period Ends: Wednesday, October 28, 2009 at 5:00 p.m.

Staff Contact: George Steirer, Principal Planner at 206-275-7719 or [george.steirer@mercergov.org](mailto:george.steirer@mercergov.org)

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**NOTICE OF DECISION**

Project : SHL09-021  
Description: A Shoreline Exemption Permit to install a lake water pump for irrigation, under State of Washington Department of Ecology Water Right Claim No. CG1-158498CL@74.  
SEPA Review: The project is exempt from SEPA per WAC 197-11-800(4)  
Location: 4137 Boulevard Place, Mercer Island, WA 98040; King County Parcel #3623500450  
Applicant: Scott Holsapple for David and Becky Sandwith  
Decision: Approved, subject to nine (9) conditions  
Appeal Period Ends: October 26, 2009 at 5:00 PM  
Staff Contact: Travis Saunders, Planner at 206-275-7717 or [travis.saunders@mercergov.org](mailto:travis.saunders@mercergov.org)

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In order to appeal a project decision, you must have filed a written comment or testified at the public hearing before the decision was made. Please contact the City Clerk's office at 206-275-7793 for information on how to file an appeal.

Correspondence should be directed to the contact person at the following address:

Development Services Group  
City of Mercer Island  
9611 SE 36th Street  
Mercer Island, WA 98040

206-275-7729

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**IF YOU WOULD LIKE TO RECEIVE FUTURE COPIES OF THIS BULLETIN, PLEASE FILL OUT THIS FORM AND RETURN IT TO MAILING ADDRESS ABOVE.**

**ATTENTION: PLEASE ADD ME TO THE BULLETIN MAILING LIST**

NAME:

E-MAIL ADDRESS:

PHONE:



**Community Meeting Regarding Tent City**

**October 22, 2009**

**Notes taken from attendees (scribes: Joyce Trantina and Joy Johnston)**

**(notes are listed in the order in which they were spoken. Dotted line delineates the change in speaker)**

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Jerry Bradshaw

Increased traffic and disruption to neighborhood

Concerns regarding # 6, #19, #20 of Ordinance. Violations should be resolved within 48 hours or camp closed.

Utilize professional security patrols versus untrained (TC patrols)

Concerns regarding reduced property values to neighboring homes.

No follow-thru with neighbors by Church.

What did Tent City cost all City Depts.?

All neighborhoods should take turns, versus the same host.

Some may believe it is the City's duty to bring back Tent City.

-----  
Steve Bryan – 2426 70<sup>th</sup> Ave SE

Appreciate the meeting with First Hill neighborhood, process has been constructive.

Smoking area – should be addressed in the Ordinance, need to limit the amount of impact on the neighborhood..

Need to address delivery services (early morning servicing of sanicans, and other services) were disruptive to neighbors.

---

Mercer Island Presbyterian Church – 100+ people signed up to provide meals for TC while they were here (ages 3 to 70). All of their feedback about the experience of having TC on Mercer Island has been positive.

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Where in the process, does the Church/Synagogue actually extend the invitation?

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Chuck Hodge

Regarding the map – does the regulation limit a church, based on public transportation?

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Steve Case – 4250 Shoreclub Drive

Does the 12 month time period in the Ordinance count from the beginning (when TC arrives) or the end (after TC leaves)?

---

Jessica Prince

Family spent time at the camp and made connections with the people living there – positive experience to be with them. Would Tent City be able to come back? Is the Ordinance structured in such a way so as to make it difficult for TC to ever return to MI?

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Dale Sewell – 9535 Mercerwood Drive

No interest in having TC coming back more than once a year or returning to the same neighborhoods. Some congregations had concerns regarding the one mile distance (i.e. if one church hosts, will the other 11 churches be restricted from hosting for 12 months? ). Isn't this unconstitutional? Would any other sites be eliminated because of the ordinance?

Good process – the City should meet with the Clergy Association to discuss the Ordinance and talk about constitutional issues/concerns.

---

Rev. Leslie Ann Knight – 6616 SE 24<sup>th</sup> St.

Need a parking regulation in the Ordinance. Most development/building projects require “more than enough” parking, i.e. the churches have plenty of parking capacity.

Timeline looks too long – TC is often “emergency housing” – a mandatory time of 3 months preparation seems too long – how does that compare to other cities?.

Will this Ordinance afford the church's some protection from litigation?

---

Legend of map - 600' to school site, what are the implications for TC? What if the issues can't be resolved?

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Is the one year restriction more restrictive? Versus the language in the Temporary use Agreement – (Tent City can't come anywhere on the Island for one year).

---

Tara Johnson

Ordinance Issues:

#6 – would prefer 18 months (like Bellevue)

# 20 – 14 days too generous, would like 48 hours to resolve

#17 – need to be more specific regarding “reasonable verification”

Requirement of host church to hold monthly meetings with neighbors.

Security patrols should be prohibited like Redmond and Kirkland, especially in the middle of the night.

Parking – add language to address overflow issues (blocking neighbors driveways, etc.)

---

Karen Morris, Bellevue

Fence – more than appearance, but is supposed to provide one point of entrance/exit for TC residents.

Hold Harmless provision, but no requirement for liability insurance.

Should be meetings with schools – concern about cooperation with school requests.

City staff should not refer to “proponents” and “opponents” - too demeaning.

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Ira Appleman

Ordinance refers to temporary encampments (not specifically Tent City). What about Boy Scout Jamborees?

Should this be a Conditional use Agreement instead of an Ordinance?

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Don't write an Ordinance for one specific use/organization.





# Community

## Meeting

Regarding Tent City

October 22, 2009 ~ 7 pm to 9 pm

Community Center at Mercer View

### AGENDA

- 7:00 Welcome and Purpose of Meeting
- 7:05 Introduction of Staff
- 7:10 What We Want to Accomplish
- 7:15 Brief Background Report
- 7:30 Rules of Engagement and Logistics
- 7:40 Public Comments
- 8:55 Wrap Up and Next Steps

*Thanks for coming!*

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*City Website: [www.mercergov.org](http://www.mercergov.org)*



# CITY COUNCIL MEETING AGENDA

Tuesday  
January 19, 2010  
7:00 pm

## REGULAR MEETING

**CALL TO ORDER & ROLL CALL**-----7:00 pm

**SPECIAL BUSINESS**-----7:01 pm

Veterans and Human Services Levy Presentation

**APPEARANCES**-----7:15 pm

*This is the time set aside for members of the public to speak to the City Council about any issues of concern. If you wish to speak, please consider the following points:*

1. *Speak audibly into the podium microphone,*
2. *state your name and address for the record, and*
3. *limit your comments to three minutes.*

**MINUTES**-----7:30 pm

REVISED Special Meeting Minutes of December 7, 2009  
Regular Meeting Minutes of January 4, 2010

**CONSENT CALENDAR**-----7:32 pm

- (2) Payables: \$1,255,573.15 (01/07/10) & 497,483.92 (01/13/10)  
Payroll: \$4,142.06 (12/31/09) & \$693,152.25 (01/15/10)

### REGULAR BUSINESS

(3) AB 4500 Interlocal Agreement with City of Bellevue for Marine Patrol Services --7:35 pm

(4) AB 4492 Public Hearing: Temporary Encampments Ordinance (1st Reading) -----8:05 pm

**OTHER BUSINESS**-----9:30 pm

Councilmember Absences  
Planning Schedule  
Board Appointment to YFS Advisory Board  
Councilmember Reports

**ADJOURNMENT**-----9:40 pm

*Agenda times are approximate*

### COUNCILMEMBERS

Bruce Bassett  
Mike Cero  
Mike Grady  
Dan Grausz  
El Jahncke  
Steve Litzow  
Jim Pearman

### CITY MANAGER

Rich Conrad

All meetings are held in the  
City Hall Council Chambers  
unless otherwise noticed

### COUNCIL CHAMBERS

9611 SE 36th Street  
Mercer Island, WA

### PHONE

206.275.7600

### EMAIL

[council@mercergov.org](mailto:council@mercergov.org)

### WEB

[www.mercergov.org](http://www.mercergov.org)



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND, WA**

**AB 4492  
January 19, 2010  
Regular Business**

<b>TEMPORARY ENCAMPMENT ORDINANCE (1ST READING)</b>	<b>Proposed Council Action:</b> Hold an Open Record Public Hearing/Public Meeting and conduct 1st reading of Ordinance No. 10C-01.
-----------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------

<b>DEPARTMENT OF</b>	City Manager (James Mason)
<b>COUNCIL LIAISON</b>	El Jahncke
<b>EXHIBITS</b>	<ol style="list-style-type: none"> <li>1. Proposed Ordinance No. 10C-01 as recommended by the Planning Commission</li> <li>2. Written comments submitted during SEPA comment period</li> <li>3. Summary of community meeting comments</li> <li>4. Memo from City Attorney to Planning Commission re: Overview of 2008 Tent City Experience</li> <li>5. Memo from City Attorney to Planning Commission re: Overview for Discussion of Temporary Encampments Regulations</li> <li>6. Comparison matrix of other jurisdictions</li> <li>7. Proximity map</li> </ol>
<b>APPROVED BY CITY MANAGER</b>	

<b>AMOUNT OF EXPENDITURE</b>	\$	n/a
<b>AMOUNT BUDGETED</b>	\$	n/a
<b>APPROPRIATION REQUIRED</b>	\$	n/a

**SUMMARY**

**HISTORY**

The Mercer Island United Methodist Church ("Church") invited Tent City 4 to establish a temporary encampment on the Church's property for three months beginning August 5, 2008. The encampment stayed on the Island for approximately 90 days. Tent City 4 is a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. The Church's pastor, congregational leaders, and SHARE/WHEEL signed a Temporary Use Agreement with the City, which Agreement was approved at the City Council meeting on June 16, 2008. The Temporary Use Agreement addressed the health, safety and welfare concerns arising from the temporary encampment's stay at the Church.

Mindful of the extensive litigation surrounding temporary encampments and religious institutions' ministry to the homeless, the City determined that it was unlikely to prevail in court on forbidding such an encampment if the Church invited Tent City 4. The City also determined that it was likely to obtain more favorable conditions to the City if it entered into a voluntary agreement with SHARE/WHEEL and the Church. The parties agreed that the City (Fire, Police and DSG) and King County Health Department could regularly

inspect the encampment. The Church and SHARE/WHEEL agreed to a hold harmless and indemnification provision. Many other elements of the Temporary Use Agreement were incorporated into the proposed ordinance, attached as Exhibit 1.

At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to meet with citizens to discuss the Tent City 4 experience, and to prepare a draft Temporary Encampment ordinance for Council's consideration. Staff returned to the Council with a proposed sequence of events designed to ultimately provide the Council with an ordinance ready for adoption by February 1, 2010. After Council's approval of the timeline, City staff met with First Hill neighbors and the community at large. As part of the SEPA process, comments were obtained at those meetings. Both oral and written comments from citizens were ultimately provided to the Planning Commission for consideration. The public comments are attached as Exhibits 2 and 3. Staff also conducted extensive research into the legal parameters regarding the regulation of temporary encampments, including review of recent case law regarding Tent City 4.

Recently, the Washington State Supreme Court decided in a unanimous decision that numerous cases before it have already determined that the state constitution "absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution..." *City of Woodinville v. Northshore United Church of Christ, WA Supreme Court slip opinion, July 16, 2009*. Relying on the Washington State Constitution, the Court held that cities may not impose a temporary moratorium on churches hosting homeless encampments. The court concluded that the religious organizations have more protection under Washington's constitution and, therefore, did not address whether there was also a violation of federal statutes or the federal constitution. Cities may regulate concerns for safety, noise, and crime but may not outright deny consideration of permitting a church to host a homeless encampment. A more extensive legal analysis is provided in Exhibit 4. This analysis was provided to the Planning Commission along with the various City departments' experiences with Tent City 4 during its stay on the Island.

## **PROCESS**

City staff held a public meeting on August 25, 2009 at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. Much of the information derived from that meeting was useful in designing a draft Temporary Encampment Ordinance. On October 22, 2009, staff held a community-wide open house at the Community Center at Mercer View to provide a forum for additional public input and to provide an overview of the draft Temporary Encampment Ordinance. The major areas of discussion regarded the legal structure of the ordinance, communication issues such as public noticing of immediate neighbors and the community as well as opportunities for public involvement, regulatory issues surrounding the location of future temporary encampments and any benefits or concerns of proposed sites, public safety issues and compliance with regulations and codes. Guided by the comments from the public, the ordinance was refined and presented to the Planning Commission.

The Planning Commission was given a briefing on October 7, 2009. The briefing included discussion of the key provisions of the ordinance, as well as why potential regulatory conditions were not specifically included as mandatory permitting elements. See Exhibit 5. Some of those potential regulatory conditions were deemed more appropriate for site-specific issues that could be addressed in the temporary encampment permit on a case by case basis by the code official. Others are addressed through other code requirements. Some are likely to be considered unconstitutional.

In addition to the public discussion regarding the ordinance, the Planning Commission was provided information drawn from the City's experience with the Tent City 4 visit. See Exhibit 4. DSG, Police and Fire discussed the Departments' experiences with the encampment. A discussion of the communication experience regarding Tent City 4 was also addressed. The Planning Commission asked that the staff return with a staff recommended ordinance once the community wide meeting was held and the oral and written comments were reviewed. Ultimately, a public hearing was held before the Planning Commission on

November 18, 2009. The Planning Commission decided on the recommended ordinance being presented to City Council.

## **RECOMMENDED ORDINANCE HIGHLIGHTS**

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The current proposed ordinance allows some flexibility for the Code Official to adopt additional requirements in the permit itself based on the location and site conditions of the temporary encampment. A matrix is attached as Exhibit 6 comparing the proposed ordinance to other cities' ordinances (as opposed to temporary permits, with the exception if Issaquah).

Many of the provisions in the Temporary Use Agreement for Tent City 4 were used in the drafting of the staff recommended ordinance ultimately presented to the Planning Commission. The key points of the Planning Commission recommended ordinance are:

- a. A pre-application meeting and an informal public meeting are required for any temporary encampment. An application must be submitted at least 90 days prior to opening a temporary encampment.
- b. Notice of the application would be required to be mailed to all residents within 600 feet of the proposed site. Typically, a 300 foot notice is required. A public notice sign would also be posted on site.
- c. The location and visual screening must provide "privacy and a visual buffer" for temporary encampment residents and neighbors. The ordinance provides guidance regarding the materials and height of the fence that was not as clearly defined in the Temporary Use Agreement for Tent City 4.
- d. No more than 100 people could stay at the encampment.
- e. No children under the age of 18 will reside in the encampment.
- f. A stringent code of conduct would be enforced. The temporary encampment sponsor and managing organization would be required to comply with all applicable City and State codes.
- g. All camp residents must provide government issued identification. Warrant and sex offender status of all prospective residents must be checked within the seven days prior to moving to Mercer Island. Any positive results must be reported to the Police Department.
- h. No sex offenders would be allowed to stay at the encampment.
- i. Random warrant and sex offender checks by the Police Department could be conducted to ensure compliance.
- j. The temporary encampment sponsor must provide a hold harmless and indemnification provision.
- k. The temporary encampment must allow regular inspections by the City (Fire, Police and DSG) and the King County Health Department.
- l. No temporary encampment would be permitted to return within one-half mile of a previous temporary encampment until 18 months after that previous encampment leaves the City. The Temporary Use Agreement prohibited more than one Temporary Encampment on Mercer Island each calendar year.
- m. Any violation of city code as a condition of a permit must be cured within seven days of mailing a notice of violation. The Temporary Use agreement required a cure within 14 days of notice.

Exhibit 7 details the proximity of Mercer Island places of worship to bus stops, schools and child care services. Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the proposed ordinance. This is intended to allow flexibility given the variety of sites which may be presented for locating temporary encampments in the future.

At this point, the City Council is to hold an Open Record Public Hearing to review the Planning Commission's recommended ordinance and to consider any additional comments or information. The Council will conduct the first reading of Ordinance No. 10C-01 and provide staff with additional direction, if desired. The second reading of the ordinance is scheduled for February 1, 2010.

## RECOMMENDATION

*Deputy City Manager*

MOVE TO: Hold an Open Record Public Hearing/Public Meeting, conduct the first reading of Ordinance No. 10C-01 regarding temporary encampments as recommended by the Planning Commission, and set the ordinance for a second reading on February 1, 2010.

**CITY OF MERCER ISLAND  
ORDINANCE NO. 10C-01**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010,  
AND ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE  
DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR  
PERMITTING TEMPORARY ENCAMPMENTS WITHIN THE CITY**

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions' ability to practice their religion by hosting temporary encampments, and limiting municipalities' ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

WHEREAS, the City of Mercer Island, it's elected and appointed officials, are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, 2009, and the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held an open record public hearing on January 18, 2010,

held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Amendments to Chapter 19.16 MICC, Definitions.** MICC 19.16.010 “Definitions” is hereby amended by adding the following:

T

...

Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a Temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A “sponsor” may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment “managing organization” may be the same entity as the temporary encampment sponsor.

...

**Section 2. Chapter 19.06 MICC General Regulations.** MICC 19.06.090 “Temporary Encampment Permit” is hereby added as follows:

**19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. Each lot occupied by a temporary encampment must provide or have available parking and vehicular maneuvering area.

2. The temporary encampment and the parking of any vehicles associated with a temporary encampment application shall not displace the host site’s parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the Code Official.

3. The temporary encampment shall be located within one-half mile of a public transit stop.

4. No temporary encampment shall occupy or use public parks in any manner unless specifically approved by the Parks Department.

5. No temporary encampment shall operate within the City of Mercer Island for more than 90 consecutive days.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a lot or lots within one-half mile of any lot(s) that contained a temporary encampment within the last 18 months. For the purposes of this subsection, the 18 months shall be calculated from the last day of the prior temporary encampment within the one-half mile radius. No more than one temporary encampment may be located in the City at any time.

7. All temporary encampments shall obtain, prior to occupancy of the lots, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least 90 days before the planned opening or any occupancy of the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons, if all other conditions are met. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the code official on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the Code Official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property, unless otherwise approved by the Code Official. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments.

b. A six-foot high sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the Code Official. The fence(s) shall not be constructed of tarp, visqueen, or plastic sheeting. The Code Official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement.

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment. If a child under the age of 18 attempts to stay overnight at the temporary encampment, the encampment managers shall immediately contact the temporary encampment managing organization and Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials. Servicing of portable toilets and trash dumpsters is prohibited between the hours of 10:00 pm and 7:00 am on Mondays through Fridays, excluding legal holidays, and between the hours of 10:00 pm and 9:00 am on Saturdays, Sundays, and legal holidays, except in the case of bona fide emergency or under permit from the Code Official in case of demonstrated necessity.

15. The temporary encampment shall permit regular inspections by the City and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services, such as food, water, and waste disposal, provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization.

Temporary encampment sponsor, shall sign a hold harmless agreement for the temporary encampment.

17. The temporary encampment managing organization shall maintain a resident log for all who are residing at the encampment. Such log shall be kept onsite at the encampment. Prospective encampment residents shall provide a government issued form of identification when signing the log.

18. The temporary encampment host, encampment sponsor, and encampment managing organization shall ensure enforcement of a Code of Conduct at the temporary encampment site. The Code of Conduct shall be in substantially the following form or address the following issues:

- a. Possession or use of illegal drugs is not permitted.
- b. No alcohol is permitted.
- c. No weapons are permitted.
- d. All knives over three and one-half inches must be turned in to the encampment

manager for safekeeping.

- e. No violence is permitted.
- f. No open flames are permitted.
- g. No trespassing into private property in the surrounding neighborhood is permitted.
- h. No littering on the Temporary Encampment site or in the surrounding neighborhood

is permitted.

Nothing within this section shall prohibit the encampment sponsor or encampment managing organization from imposing and enforcing additional Code of Conduct conditions not otherwise inconsistent with this section.

19. The applicant shall obtain warrant and sex offender checks from the King County Sheriff's office or other relevant authority for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the applicant shall immediately contact the City of Mercer Island Police Department. To verify compliance with this requirement, the City of Mercer Island Police Department may do random warrant and sex offender checks on temporary encampment residents.

20. Upon determination that there has been a violation of any decision criteria or condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within 7 days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the 7 day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

21. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the Code Official:

1. General application form;
2. A site plan, which extends 50 feet beyond the proposed site's property boundaries, drawn to scale showing all of the following:
  - a. all existing structures;
  - b. existing parking stalls;
  - c. parking stalls proposed to be unavailable for parking vehicles during the Temporary Encampment;
  - d. all proposed temporary structures;
  - e. proposed electrical and plumbing connections;
  - f. location of trash receptacles, including trash dumpsters;
  - g. location of toilets and other sanitary facilities;
  - h. location and details of any proposed connection to wastewater, potable water, stormwater, electrical supply, or other public or private utility systems;
  - i. proposed and existing ingress and egress; and
  - j. any permanent alterations on the lot, to the site, or structures;
3. Proposed fencing detail or typical section;
4. Written authorization from a temporary encampment organization on which the temporary encampment is located;
5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the , temporary encampment sponsor;
6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;
7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;
8. A copy of the Code of Conduct;
9. Any other information deemed necessary by the Code Official for the processing of a temporary encampment permit; and
10. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official shall require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment. When required, the informal public meetings shall be held as early in the review process as possible once a complete application has been submitted. Notice of the public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting, and combined with the notice of application whenever possible. Prior to the public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding the proposed security measures. At the public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment management security measures, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda, and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.

2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the lot(s) containing the proposed temporary encampment. Prior to any application for a temporary encampment permit, the temporary encampment sponsor, or temporary encampment managing organization shall meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment, and shall meet and confer with the operators of any properly licensed child care service within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the criteria for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, based on the applicable decision criteria.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations. MICC 19.06.010(A) "Prohibited Uses" is hereby amended as follows:**

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development. MICC 19.09.010 “Preapplication and intake screening meetings” is hereby amended as follows:**

**19.09.010 Preapplication and intake screening meetings.**

A. Preapplication meetings between the applicant, members of the applicant’s project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

...

**Section 5. Amendments to Chapter 19.09 MICC, Administration. MICC 19.15.010(E) “General Procedures” is hereby amended as follows:**

...

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Ministerial Actions			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety	Police chief	MICC 19.06.080(A)	Hearing examiner

Determination			
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court

<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board

\*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).

\*\*The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.

**Section 6:** **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:** **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 8:** **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: \_\_\_\_\_

## George Steirer

---

**From:** Sue Bennett [suebennett18@comcast.net]  
**Sent:** Wednesday, October 21, 2009 7:38 PM  
**To:** George Steirer  
**Subject:** tent city

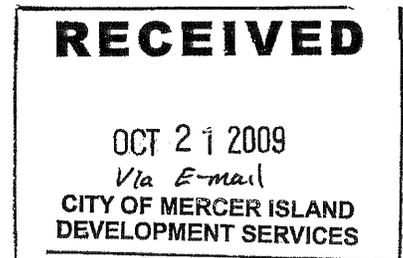
I read about the open house to discuss the tent city experience. I can't attend and I worry that those most motivated to attend will be motivated by dissatisfaction. Often those that are happy about an issue don't feel moved to do anything. I just want to say that I thought the tent city event was handled very well.

My family joined with another family to offer dinner one night. The people living in tent city were polite and appreciative. My kids had a rare experience of having a meal with people very different from them, and of feeling like they were tangibly helping someone else. I was impressed with how tent city organized itself and managed its security, showers, meals, etc. The whole operation was organized, safe, accessible, and well-run.

Thank you to those that made it happen, who were not afraid to reach out to others, who see the benefit in stretching our community and sharing our resources. No one was forced to participate, yet the opportunity to be a part of this broader community was open to all. It was the best of Mercer Island.

Sincerely,

Sue Bennett  
6510 81st Ave SE  
Mercer Island, WA 98040  
206-275-2669



10/21/2009

To Whom It May Concern:

**RECEIVED**

OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

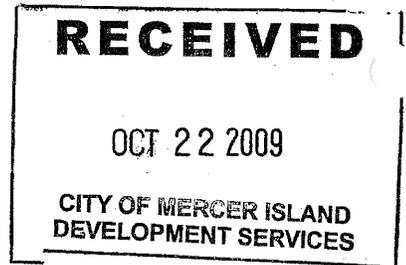
Unfortunately, I won't be able to attend the TC meeting tomorrow night. However, I would like to pass on some comments to the Planning Commission as one more First Hill Neighborhood voice.

I'm concerned that the Ordinance, as drafted, has no restriction on Tent City returning to the same location year after year. This is completely unfair to the impacted neighborhood. If Tent City is allowed to come to the Island, which I strongly oppose, then the least the Commission can do is to spread the wealth around- let other neighborhoods experience the joy. Maybe then, more people would wake up to what a sham Share/Wheel is.

In general, I feel that any ordinance drafted by Mercer Island should encompass the strictest requirements of other cities that have ordinances in place regarding Tent City. Those cities have put in strict requirements for a reason. I think Mercer Island should take heed and learn from the experience of other cities. First and foremost, the Planning Commission and City Council should work for the safety and welfare of the citizens of Mercer Island.

Elizabeth Insinger

10/22/2009



City Council members,

The draft ordinance appears to address some of the concerns of the citizens of Mercer Island and the First Hill neighbors. In addition to what is already proposed, I would like to limit the time of a temporary use to 60 days; and see an elapsed time between visits to the same location of 18 months. The City of Bellevue requires 18 months between visits in their Agreement.

Moreover, I would like to see the time frame for violation resolution moved to 48 hours. The city of Bothell allows 48 hours for conflict resolution.

It is **imperative** that current sex offender and warrant checks are required upon moving to a temporary site onto Mercer Island; and not using checks from other locations that were completed two years prior. If even a percentage of a "temporary use" population have outstanding warrants when they move onto Mercer Island, it is not okay. Warrant and Sex Offender checks would have saved time and resources for both the city and the citizens.

Furthermore, I would like to see the security patrols removed completely as these patrols did little to enforce security and caused lots of disruption to the neighbors. Would the boy scouts be walking up and down the streets at 2am? Our own police force did more for security than these patrols. Both the Cities of Kirkland and Redmond prohibit these patrols.

Please work for those who elected you to represent the citizens of Mercer Island by enacting the above changes.

Regards,

Jayne Judd

Dear Mayor Pearman and City Council Members,

Just a quick note concerning the new city ordinance on temporary encampments (i.e. Tent City), and what we would like included in the ordinance.

We all work very hard to live here on beautiful Mercer Island, and we feel if Tent City returns, the experience of hosting Tent City should be shared among all of its supporters. If MI is to host Tent City again, we feel all of the MI Clergy Assoc. sponsoring churches should actively participate in rotating Tent City onto their properties for 3 months, before Tent City is ever allowed to return to the United Methodist Church. This will allow Tent City supporters here on MI to fully appreciate the positives and negatives that Tent City brought into our neighborhood for 3 months in 2008.

If the other MI Clergy Assoc. sponsoring churches choose not to participate in this rotation, we feel the United Methodist Church will willingly host them for 3 months of every year in our neighborhood. Subsequently, property owners within a certain radius of Tent City who choose to sell their homes may be legally required to disclose this perceived benefit or defect to potential home buyers, property values may fall even more than they have recently, and this condition may result in additional real estate foreclosures and short sales.

To encourage Tent City supporters to participate, please include a provision in the new ordinance to rotate the site of Tent City among all MI Clergy Association sponsoring churches before Tent City is ever allowed to return to the United Methodist Church again.

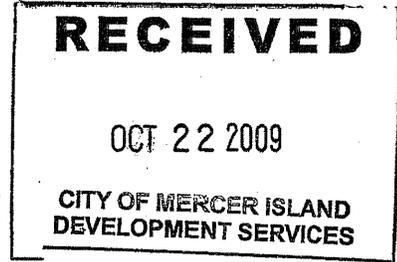
Thank you for your time and the good that you do for all of Mercer Island.

Sincerely,

John & Susan Redifer

cc: Katie Knight, MI City Attorney  
Ali Spietz, MI City Clerk

10/22/2009



PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Nancy & Bob Williard

Mailing Address: 2611 93rd Ave SE MI

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: \_\_\_\_\_

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

We so enjoyed our connections  
w. the former Tent City and  
are proud of our community  
to be hosting these —  
keep it up —

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CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Marnie Holen

Mailing Address: 4818 E Mercer Way MI 98040

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: mholen@comcast.net

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

My concern is that an ordinance on fencing may make the fencing material so expensive, that the hosting costs go ~~the~~ above normal costs and cause religious organizations reason to not<sup>be</sup> able to host.

**RECEIVED**  
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CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Elta Loy

Mailing Address: 7660<sup>SE</sup> 29<sup>th</sup> St #202

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: \_\_\_\_\_

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

Our church, The Congregational Church on M. I., fully support Tent City and had the privilege of providing 5 meals for the residents. Our members participated to teach their children and grandchildren by example to respect others among many reasons, and in interviewing the participants after their experiences every single individual mutually agreed that they felt they had received far more than they gave.

**RECEIVED**

OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

**Community Meeting Regarding Tent City**

**October 22, 2009**

**Notes taken from attendees (scribes: Joyce Trantina and Joy Johnston)**

**(Notes are listed in the order in which they were spoken. Lines delineate the change in speaker. The notes are only a summary.)**

---

Jerry Bradshaw

Increased traffic and disruption to neighborhood.

Concerns regarding #6, #19, #20 of Ordinance. Violations should be resolved within 48 hours or camp closed.

Utilize professional security patrols versus untrained (TC patrols).

Concerns regarding reduced property values to neighboring homes.

No follow-thru with neighbors by Church.

What did Tent City cost all City Depts.?

All neighborhoods should take turns, versus the same host.

Some may believe it is the City's duty to bring back Tent City.

---

Steve Bryan – 2426 70<sup>th</sup> Ave SE

Appreciate the meeting with First Hill neighborhood, process has been constructive.

Smoking area – should be addressed in the Ordinance, need to limit the amount of impact on the neighborhood..

Need to address delivery services (early morning servicing of sani-cans, and other services) were disruptive to neighbors.

---

Mercer Island Presbyterian Church – 100+ people signed up to provide meals for TC while they were here (ages 3 to 70). All of their feedback about the experience of having TC on Mercer Island has been positive.

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Where in the process does the Church/Synagogue actually extend the invitation?

---

Chuck Hodge

Regarding the map – does the regulation limit a church, based on public transportation?

---

Steve Case – 4250 Shoreclub Drive

Does the 12 month time period in the Ordinance count from the beginning (when TC arrives) or the end (after TC leaves)?

---

Jessica Prince

Family spent time at the camp and made connections with the people living there – positive experience to be with them. Would Tent City be able to come back? Is the Ordinance structured in such a way so as to make it difficult for TC to ever return to MI?

---

Dale Sewell – 9535 Mercerwood Drive

No interest in having TC coming back more than once a year or returning to the same neighborhoods. Some congregations had concerns regarding the one mile distance (i.e. if one church hosts, will the other 11 churches be restricted from hosting for 12 months? ). Isn't this unconstitutional? Would any other sites be eliminated because of the ordinance?

Good process – the City should meet with the Clergy Association to discuss the Ordinance and talk about constitutional issues/concerns.

---

Rev. Leslie Ann Knight – 6616 SE 24<sup>th</sup> St.

Need a parking regulation in the Ordinance. Most development/building projects require “more than enough” parking, i.e. the churches have plenty of parking capacity.

Timeline looks too long – TC is often “emergency housing” – a mandatory time of 3 months preparation seems too long – how does that compare to other cities?.

Will this Ordinance afford the church's some protection from litigation?

---

Legend of map - 600' to school site, what are the implications for TC? What if the issues can't be resolved?

---

Is the one year restriction more restrictive? Versus the language in the Temporary use Agreement – (Tent City can't come anywhere on the Island for one year).

---

Tara Johnson

Ordinance Issues:

#6 – would prefer 18 months (like Bellevue)

#20 – 14 days too generous, would like 48 hours to resolve

#17 – need to be more specific regarding “reasonable verification”

Requirement of host church to hold monthly meetings with neighbors.

Security patrols should be prohibited like Redmond and Kirkland, especially in the middle of the night.

Parking – add language to address overflow issues (blocking neighbors driveways, etc.)

---

Karen Morris, Bellevue

Fence – more than appearance, but is meant to provide one point of entrance/exit for TC residents.

Hold Harmless provision, but no requirement for liability insurance.

Should be meetings with schools – concern about cooperation with school requests.

City staff should not refer to “proponents” and “opponents” - too demeaning.

---

Ira Appleman

Ordinance refers to temporary encampments (not specifically Tent City). What about Boy Scout Jamborees?

Should this be a Conditional use Agreement instead of an Ordinance?

---

Don't write an Ordinance for one specific use/organization.



# Memorandum

## City Attorney's Office

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Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

RE: Overview of 2008 Tent City Experience

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### I. 2008 TENT CITY EXPERIENCE

#### A. LEGAL

##### 1. Factual Background

The Mercer Island United Methodist Church ("Church") invited the nonprofit organization SHARE/WHEEL, organizer and manager of Tent City 4, to establish a Tent City encampment on the Church's property for three months beginning August 5, 2008. The Church's pastor, congregational leaders, and SHARE/WHEEL signed a Temporary Use Agreement ("Agreement") with the City after a small amendment was made during the City Council meeting on June 16, 2008.

Based on the extensive litigation with Eastside communities in the past, the City determined that it was unlikely to prevail on forbidding such an encampment if the Church invited Tent City 4. The City also determined that it was likely to obtain more favorable conditions to the City if it entered into a voluntary agreement with SHARE/WHEEL and the Church.

The Temporary Use Agreement contained the following terms:

- There will not be more than one encampment on Mercer Island in a calendar year at the Church and the duration of any stay will not exceed three months.
- The location and visual screening of the camp will afford privacy for Tent City residents and neighbors.
- No more than 100 people will stay at the camp.
- The church will manage parking at weekly services to minimize spillover onto neighborhood streets.
- No children under the age of 18 will reside in the Tent City encampment.
- A stringent code of conduct will be enforced and SHARE/WHEEL and the Church will comply with all lawful City and State codes.

- The identity of all camp residents will be verified, and warrant and sex offender status of prospective residents will be checked. Any positive results reported to the MI Police Department.
- No sex offenders will be allowed to stay at the encampment.
- The Church and Tent City managers will allow regular inspections by the City (Fire, Police and DSG) and the King County Health Department.
- The Church and SHARE/WHEEL agreed to a hold harmless and indemnification provision.

Pursuant to the Agreement, the Church held a public informational neighborhood meeting approximately one month prior to establishment of the encampment, with notice of the meeting published in the MI Reporter and delivered to nearby residents/owners two weeks prior to the meeting.

Prior to Tent City 4's arrival, the City, Church and SHARE/WHEEL were sued by a group calling themselves Citizens for Fair Process. Ultimately, the trial court dismissed the group's claims. The dismissal of the case has been appealed. Tent City 4 moved to Mercer Island in August, 2008 for about 90 days.

## 2. Constitutional Issues

As is discussed more fully below, courts across the nation have recognized the activities of feeding the hungry and sheltering the homeless as core religious activities. For example, the court reviewing Tent City's arrival at St. Brendan's in Bothell found as a matter of law that "St. Brendan's use of its property for the purpose of sheltering the homeless constitutes the exercise of religion and is protected by the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington State Constitution."

### A. The Washington State Constitution Bars Government Restrictions on the Exercise of Religious Duties on Church Property Unless a Compelling Governmental Interest Demands Intervention.

Article 1, Section 11 of the Washington State Constitution ensures "[a]bsolute freedom of conscience in all matters of religious sentiment, belief, and worship" to "every individual" and guarantees that "no one shall be molested or disturbed in person or property on account of religion." This guarantee of free exercise – significantly stronger than the corresponding provision in the federal Constitution – "is 'of vital importance.'" *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 226, 840 P.2d 174, 186-87 (Wash. 1992). If the "coercive effect of [an] enactment" operates against a party "in the practice of his religion", it unduly burdens the free exercise of religion. A facially neutral, even-handedly enforced statute that does not directly burden free exercise may, nonetheless, violate Article 1, section 11, if it indirectly burdens the exercise of religion. State action is constitutional under the free exercise clause of article 1 if the action results in no infringement of a citizen's right or if a compelling state interest justifies any burden on the free exercise of religion. *Id.* at 226, 840 P.2d at 187 (citations omitted; alterations and omissions in the original); *see also Munns v. Martin*, 130 Wn.2d 192, 200, 930 P.2d 318, 321 (Wash. 1997); *City of Sumner v. First Baptist Church*, 97 Wn.2d 1, 5, 639 P.2d 1358, 1361 (Wash. 1982).

“A ‘compelling interest’ is one that has a ‘clear justification . . . in the necessities of national or community life’, that prevents a ‘clear and present, grave and immediate’ danger to public health, peace and welfare.” *First Covenant*, 120 Wn.2d at 226-27, 840 P.2d at 187 (citations omitted; emphasis added). The interest must be “paramount.” *Sherber v. Verner*, 374 U.S. 398, 406 (1963). The test also focuses on the means used to accomplish the asserted interest: “The State also must demonstrate that the means chosen to achieve its compelling interest are necessary and the least restrictive available.” *First Covenant*, 120 Wn.2d at 227, 840 P.2d at 187. The least restrictive means element is virtually impossible to satisfy when reasonable alternatives exist that would advance the government’s interests without sacrificing the religious exercise at issue. In effect, this means that the courts will examine the regulations on a case-by-case basis, and the City will have to show that its regulations were the minimum necessary to achieve its interests in the health, safety and welfare of its citizens. The regulations cannot be such that the use ends up being prohibited if there is a way to achieve the use while protecting the health, safety and welfare of citizens.

The Washington State Supreme Court, in a 9-0 decision, most recently declared that numerous cases before it have already decided that the state constitution “absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution...” *First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 229-30, 840 P.2d 174 (1992). The court concluded that the religious organizations have more protection under Washington’s constitution and did not go further to determine whether there was violation of RLUIPA. Under this decision, Cities may regulate concerns for safety, noise, and crime but may not outright deny consideration of permitting. *City of Woodinville v. Northshore Church of United Christ*, WA Supreme Court slip opinion, July 16, 2009.

Although the *Woodinville* court determined that it only needed to base its decision on the Washington State Constitution, a review of the U.S. Constitution assists in understanding the concerns regarding regulating ministry to the homeless.

B. The Free Exercise Clause Of The First Amendment To The United States Constitution Bars Government From Interfering With A Church’s Ministry To The Homeless Unless A Compelling Governmental Interest Demands Intervention.

Like the Washington Constitution, the United States Constitution proscribes governmental action that infringes on the ability of churches to exercise the mandates of their faith. The First Amendment both guarantees the right of free exercise of religion and provides that government may not establish or otherwise control religion. *See* U.S. Const. Amend I.

The same compelling governmental interest test applied by the Washington courts also applies under the First Amendment where, as in most land use matters, individualized exemptions to otherwise generally applicable rules are allowed in the discretion of government officials. In the case of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, (1993), the United States Supreme Court held:

As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government

“may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.”

508 U.S. at 537. Thus, the Free Exercise clause of the First Amendment prohibits enforcement of zoning regulations that place a substantial burden on the exercise of religion unless the land use authority demonstrates that the regulations are necessary to further a compelling governmental interest (*i.e.*, prevention of a clear, present, grave and immediate danger to public health, peace and welfare) and that the least restrictive means necessary to further that governmental interest are employed.

C. RLUIPA Bars Government Restrictions On The Exercise Of Religious Duties On Church Property Unless A Compelling Governmental Interest Demands Intervention.

After finding substantial evidence of widespread discrimination against religious uses of land, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). RLUIPA bars enforcement of any local land use law or regulation that fails the “compelling state interest” test:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling government interest.

42 U.S.C. 2000cc § 2(a)(1).

RLUIPA specifically permits aggrieved churches to challenge enforcement actions that burden the free exercise of religion. *See id.*, § 4(a). As under the constitutional standard, once a church produces evidence demonstrating a burden on the exercise of religion, it is the government’s burden to justify its actions under the compelling governmental interest test. *See id.*, § 2(a)(1)(A)-(B); § 4(b); § 8(2). RLUIPA is to “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” *Id.*, § 5(g) (emphasis added). Anyone who successfully asserts a RLUIPA claim is entitled to an award of attorney's fees. *See id.*, § 4(d); 42 U.S.C. § 1988(b).

The Act broadly defines the term “land use regulation” to mean any “zoning . . . law, or the application of such a law, that limits or restricts a claimant’s use . . . of land.” *Id.*, § 8(5). RLUIPA defines “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” *Id.*, §7(A). While the Act does not define “substantial burden,” courts have repeatedly interpreted the term in similar contexts. Among other things, “a substantial burden on the free exercise of religion . . . is one that forces

adherents of a religion to refrain from religiously motivated conduct . . .”. *Mack v. O’Leary*, 80 F.3d 1175, 1179 (7th Cir. 1996), *certiorari granted, judgment vacated on other grounds*, 522 U.S. 801 (1997); *see also Brown-El v. Harris*, 26 F.3d 68, 70 (8th Cir. 1994) (government action that forces religious adherents “to refrain from religiously motivated conduct” substantially burdens religious exercise); *Werner v. McCotter*, 49 F.2d 1476, 1480 (10th Cir. 1995) (action that “significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a [person’s] individual beliefs” substantially burdens religious exercise).

Section 5(e) of RLUIPA makes it clear that Congress intended land use authorities to be flexible in accommodating churches' free exercise of religion. That section states:

A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

*Id.* §5(e). Thus, the Act specifically provides that a land use regulator may comply with RLUIPA and accommodate a church’s exercising the mandates of its religion by recognizing higher standards of regulation in connection with homeless ministries. Here, the City used its inherent ability to contract in order to accommodate the flexibility dictated in RLUIPA. Just as development agreements are entered into by the City and private entities in order to address such issues, the City entered into the Temporary Use Agreement with the Church and with SHARE/WHEEL to accommodate the Church’s exercise of the mandates of its religion while regulating concerns about the health, safety and welfare of its citizens and the Tent City 4 residents.

State and Federal law supersede the City’s municipal code. If the City’s code is in conflict with these superior laws, then those laws govern and the City cannot prohibit the activity. Even if the City code is silent with regard to Temporary Homeless Encampments, federal law and state law mandate that the City not impose burdens to hinder this activity.

Given the Church’s stated intent to host Tent City 4 on its property, the City’s authority to prohibit this impending encampment was at best uncertain. The King County Superior Court’s June 10, 2004 decision reflected this tenuous legal landscape by refusing to grant the City of Bothell’s request for a preliminary injunction, even where Tent City 4 had established its homeless encampment unlawfully and without the requested local permits. The City of Mercer Island was entitled to rely upon the experiences of other municipalities (e.g., Bothell) in determining an appropriate response to the encampment’s arrival at the Church. *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986). The ultimate wisdom of the City Council’s responsive policy is not properly subject to review. *See, e.g., Davis v. exrel. Dept of Licensing*, 137 Wn.2d 957, 976, n.12, 977 P.2d 534 (1999).

## **B. DSG Experience with Tent City**

### **1. Title 19 MICC – Unified Land Development Code**

Title 19 of the Mercer Island City Code (MICC) regulates the manner in which land is used and developed throughout the island. This includes the types of land uses allowed in various locations and the allowed or required physical attributes of those uses. The R-9.6 zoning district is intended primarily for single family residential use. Certain non-residential uses considered to be supportive of a residential environment (e.g., schools and places of worship) or needing a residential environment to operate effectively (e.g., special needs group housing) are also allowed either outright or through a “conditional use” review process.

Title 19 does not specifically address the appropriate location or required attributes of temporary homeless encampments such as Tent City 4. Section 19.06.010 of the city code specifies uses that are prohibited, but the list of prohibited uses does not include temporary homeless encampments or any similar use.

Experience: As discussed elsewhere in this report, the legal right of religious organizations to host such temporary homeless encampments has been recognized by the courts. Based upon this right and the provisions of the Title 19 described above, it was determined that nothing within the City’s land use regulations would prevent or specify the conditions under which MIUMC or another place of worship could host Tent City 4.

In light of the lack of specific guidance within Title 19 regarding the conditions under which a temporary homeless encampment might operate, City staff worked with MIUMC, Share/Wheel and Tent City 4 to include in the Temporary Use Agreement requirements typically applied to other allowed uses. These include: property line setbacks and screening or visual buffering; exterior lighting; density or intensity of use (maximum number of residents); and parking. Provisions included in the Agreement were based, to the extent deemed appropriate, on requirements for similar uses and situations under the Title 19.

*Setbacks and Screening.* The Temporary Use Agreement established requirements that Tent City 4 must be located at least 20 feet from any abutting residential property, and that a sight-obscuring fence and/or vegetation shall be provided within this area. These requirements were based partly on the perimeter screening requirements for “Multifamily Development” uses located adjacent to “Single-Family Residential ” uses as specified by MICC 19.12.040.B.7. These requirements were met by Tent City 4 with the exception of a minor encroachment on the 20 feet setback that was immediately remedied after the encampment was notified of the problem.

*Exterior Lighting.* The Temporary Use Agreement established requirements that exterior lighting associated with Tent City 4 must be directed downward, away from adjoining properties and contained within the temporary homeless encampment. This provision was based partly on MICC 19.12.070, which requires that exterior lighting for regulated developments must be shielded or located to confine light spread and the associated negative impacts within the site boundaries. The City received no recorded complaints regarding light spillover impacts on surrounding properties.

*Density/Intensity of Use.* In the Agreement, Tent City 4 was limited to a maximum of 100 persons, but still must meet all setbacks as well as health and safety issues. The Agreement stated that in exigent circumstances, this number could be exceeded if a person or persons seek shelter overnight.

*Parking.* The Agreement required a minimum of 26 off-street parking stalls on Saturdays, Sundays and after 6:00 p.m. on weekdays. A minimum of 8 off-street parking stalls were required at all other times.

*Portable Toilets.* MICC 19.06.010 prohibits the use of portable toilets except for emergency or construction use. In the case of Tent City 4 at MIUMC, portable toilets were allowed as a reasonable and necessary accommodation. The Temporary Use Agreement required portable toilets that were serviced on a regular basis. There was concern by neighbors regarding odors from the toilets, and servicing prior to 7:00 a.m.

#### Chapter 15.14 MICC – Unlawful Cross-Connections

Description: Chapter 15.14 regulates connections to the use of City utilities.

#### Experience:

*Water system backflow prevention.* Potable water was supplied to Tent City 4 by a hose connection to an existing hose bib on the exterior of the church building. Under the provisions of MICC 15.14.030 *Backflow Prevention Devices Required*, it was determined that appropriate backflow prevention was advisable to prevent any potential for water system contamination. An approved backflow prevention device was installed by Tent City 4. This device was inspected and approved by the city's certified cross-connection control inspector and its continued use was verified by other inspectors on several occasions throughout the Tent City stay.

*Sanitary sewer connection.* Grey water from a portable shower facility and hand washing stations was collected in a sump and pumped to a sanitary sewer connection in MIUMC property. This system and the connection were inspected and approved by the city utilities inspector. On one occasion power to the sump pump was inadvertently disconnected and a small quantity of grey water overflowed the sump but did not leave the site. The issue was immediately resolved upon notification of Tent City 4.

*(ix) Compliance with Codes.* *SHARE/WHEEL and the Church shall comply with lawful Washington State and City codes concerning but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.*

### **C. Police Experience with TC4**

Prior to Tent City's arrival on Mercer Island in 2008, the City's Police Department had no direct experience with Tent City. Upon learning that Tent City may come to Mercer Island, the department reached out to other Police Departments in the area and requested a summary of their experience with the encampment in their communities. The Police Chief also interviewed several of the Police Chiefs, and did on-site visits of the encampment in Bellevue. Subsequently, the department drafted its Police Department Response Plan, wherein roles and responsibilities were outlined for the Police Chief, the Police Liaison, the Patrol Section, the Criminal Investigations Section, and the Records Section.

The Police Department took the presence of Tent City very seriously, and dedicated resources to this encampment and the surrounding neighborhoods. In addition to general patrols of the area, officers also physically walked through the encampment 287 times during the three-month stay. The residents of Tent City welcomed the officers, and appreciated the time they spent with them. The residents in the surrounding neighborhoods also appreciated the extra presence of the patrol officers.

A detective was assigned as the Police Department's Tent City Liaison, which proved very helpful in many ways. He was able to build relationships with the residents of the encampment as well as the residents of the surrounding neighborhoods. He provided a consistent point of contact, and he was able to develop a solid understanding of the concerns that surrounded the encampment.

The Police Officers made a total of nine arrests of Tent City residents. Five arrests were for outstanding warrants, two were for traffic offenses, one was for violation of a No Contact Order, and one was for a Domestic Violence assault. In addition to these five arrests, the officers also took 15 other reports ranging from graffiti and littering to reports of water balloons being tossed into Tent City. None of these reports were for felony crimes.

The extra efforts relating to Tent City added to the Department's daily workload, but it did not prove to be over-burdensome. Officers shifted their focus for portions of their shifts to the First Hill neighborhood rather than other areas of the city. However, this focus did not prevent officers from addressing calls for service in other areas of the city. Overall, the Police Department was able to effectively manage their core mission of protecting all the residents of this community.

### **D. Fire Department Experience with Tent City**

Mercer Island Fire Department ("MIFD") did not have any experience with a group such as Tent City 4 prior to their arrival in August 2008. In order to prepare for Tent City's arrival, MIFD contacted several neighboring departments who had dealt with the challenges associated with having the camp in their operations area. MIFD discovered that every department reported Tent City 4 had very little impact on call volume and services including, both fire and EMS.

After Tent City 4's arrival, the Fire Marshal worked closely with the Tent City 4 staff and several city staff to ensure that the encampment complied with all appropriate fire codes. Tent

City 4 residents and staff were found to be very helpful and compliant with all MIFD and Fire Marshall requirements. Duty crews were asked to perform walk-through inspections and area familiarization on a daily basis to increase safety for the residents and our staff.

The following is a brief summary of the fire department's experience with Tent City 4:

- Walk Throughs
  - Duty Crews - 32
  - Fire Marshal - 4
  - Deputy Chief - 2
  - Fire Chief - 1
- EMS Calls
  - Approximately - 4
- Fire Calls
  - None
- Service Calls
  - None

Overall, Tent City 4 had a minimal impact on the calls for service to the Fire Department.

#### **E. Communication Experience with Tent City**

The possibility of hosting Tent City on Mercer Island was first introduced to the public in the Mercer Island Reporter on June 13, 2007 in an article submitted by the Mercer Island Clergy Association. The news was subsequently repeated in the Seattle Times and other major regional media. At that time, the City established a dedicated Tent City webpage at [www.mercergov.org/tentcity](http://www.mercergov.org/tentcity).

In mid-May of 2008, Mercer Island United Methodist Church (MIUMC) announced its intention to host Tent City 4. As details unfolded, the City worked closely with MIUMC to establish a process of public notification. On May 30, 2009, MIUMC submitted a press release to the Mercer Island Reporter. An article titled "Tent City Coming in August to Island" appeared on the front page of the June 4, 2008 edition. In addition, Rev. Dale Sewall published an article in the same edition of the Mercer Island Reporter on behalf of the Mercer Island Clergy Association. The news was also repeated in major media, including KING 5 and KOMO. On June 11, 2008 notice of the City Council Meeting at which the Temporary Use Agreement for Tent City would be discussed was published in the Mercer Island Reporter.

The Temporary Use Agreement required that SHARE/WHEEL and the church conduct a neighborhood meeting a minimum of 20 calendar days prior to the opening date of the temporary homeless encampment, and that notice of the meeting be provided to residents within 600 feet of the church. SHARE/WHEEL and MIUMC hosted a public meeting on July 9, 2008. Notice of the meeting was hand-delivered to all residents within 600 feet of the church.

Throughout the time leading up to and throughout Tent City 4's stay on Mercer Island, the City updated information on the City's website and published information in the City's weekly e-newsletter, MI Weekly, which is distributed to about 500 subscribers throughout the Island. The City's Communications Coordinator became the primary contact for media inquiries,

and the story continued to garner attention of regional media including KUOW and major network stations. Citizen comments were received through email, phone calls and during the appearances portion of City Council meetings. From June through December 2008, approximately 110 comments were heard from 83 individuals at Mercer Island City Council Meetings.

City staff has responded and continues to respond to public records requests for documents regarding Tent City.

## **II. CONCLUSION**

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large at the October 22, 2009 community meeting.



# Memorandum

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## City Attorney's Office

Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

**RE: Overview for Discussion of Temporary Encampment Regulations**

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### I. OVERVIEW

The briefing on October 7 is intended to provide the Planning Commission with an overview of the draft temporary encampment ordinance, and to provide feedback on the experience of Tent City 4 when it came to the City last year. The formal public hearing on the ordinance itself will be held November 18, 2009. The meeting tonight is informational only. The draft ordinance is provided to present a context for discussion for future regulation of temporary encampments, based upon the experience from last year. At this early point, it does not represent a “staff recommended ordinance.” It merely represents a starting point for the Commission’s and community’s discussion.

#### A. Background

For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to prepare a draft ordinance for Council’s consideration. The City Council asked to have an ordinance ready to pass by January 31, 2010. The Council directed staff to hold a public meeting with the First Hill neighborhood to receive their input and perspective regarding their experiences related to the 2008 hosting of Tent City, as well as a community wide public meeting to respond to the draft ordinance.

City staff held a public meeting on August 25th at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. On October 22, the City will hold a community-wide open house at the Community Center at Mercer View (“CCMV”) to provide a forum for additional public input, to discuss the lessons learned from the Tent City experience, and to provide an overview of the draft Temporary Encampment ordinance. The major areas of discussion will include:

- Legal Structure
  - Legal/constitutional requirements
  - Legal precedent
- Communications
  - Public noticing of neighbors, community
  - Opportunities for public involvement
- Location of future Tent City
  - Regulatory issues
  - Benefits/concerns of site
- Public Safety
  - Fire safety
  - Enforcement
  - Emergency medical services
  - Public health
- Compliance
  - City code requirements
  - City Ordinance
  - Tent City Code of Conduct

## **B. EXHIBITS**

1. Exhibit A is the draft Temporary Encampment Ordinance.
2. Exhibit B is the process timeline.
3. Exhibit C is a map of the City identifying the location of the religious institutions which may potentially host a temporary encampment and their relation to transit stops, schools and daycares.
4. Attached as Exhibit D is a comparison chart of the proposed ordinance and other Eastside City Ordinances. Note that the comparisons are being drawn to the actual ordinances themselves, not to subsequent permits issued pursuant to those ordinances. (The Issaquah example is a mix of the ordinance and the conditions placed on the permit under the broad “any mitigation necessary” provision as Temporary Encampments are shoehorned into Temporary Use Permits.)

## **II. DRAFT ORDINANCE**

The Washington Supreme Court has unanimously determined that religious organizations are allowed to minister to the homeless, so there is no ability by municipalities to completely prohibit temporary encampments at churches. Municipalities are permitted, however, to regulate such temporary use based on health, safety and welfare issues. In the land use realm, a number of strategies exist which allow local governments to address regulation of temporary uses, such as through temporary use agreements, permits, or ordinances. The temporary use agreement is useful in negotiating specific issues which have not been encountered previously. Some uses

may be generally authorized by ordinance, but any regulations are provided specifically in the temporary use permit itself. Some ordinances permit the use and contain the regulations within the body of the ordinance itself, and may not require a permit. Other ordinances do a blend of both.

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The draft ordinance provided by Mercer Island staff puts the majority of regulations within the ordinance, while allowing flexibility for the Code Official to adopt additional requirements in the permit itself based on the location of the temporary encampment. A matrix is attached to demonstrate the draft ordinance compared to other cities' ordinances (as opposed to temporary permits). Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the draft ordinance.

The key provisions of the draft Temporary Encampment Ordinance are as follows:

- Maximum stay of 90 days at one location, in any 12 month period
- No permit is granted for a temporary encampment proposed to commence on site within one mile of any site that contained a temporary encampment within the last 12 months
- Although Design Review would not apply for temporary encampments, screening and setback provisions are required.
- Temporary Encampments cannot reduce a site below the minimum allowed parking requirement for the other uses on the site.
- Public notice is required for all property owners within 600 feet, rather than the standard 300 feet.
- The Code Official has the discretion to require an informal neighborhood meeting during the comment period.
- Criminal background Warrant and sex offender checks are required of Temporary Encampment residents.
- Maximum amount of 100 persons.
- Compliance with Seattle-King County Health requirements and all state and city codes regarding drinking water connections, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.
- Hold harmless agreement required.
- Compliance with code of conduct.

Some other elements for discussion were not included in the current draft ordinance for a variety of reasons. Some are more appropriate for site-specific issues and can be addressed in the temporary encampment permit. Others are addressed through other code requirements. Some are likely to be considered unconstitutional. Those proposals are as follows, with some italicized commentary as appropriate:

- Permit fee: (*highest cost in other cities is approximately \$1600*)

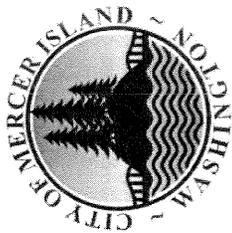
- Identification of Adverse Effects. “ The applicant shall identify potential adverse effects of the proposed temporary encampment on neighboring properties and the community and shall develop measures to mitigate such effects. The applicant shall submit a temporary encampment impact mitigation plan with the permit application. The plan shall contain a narrative and drawing(s) that describe, to the satisfaction of the community development director, the measures the applicant will use to mitigate the effects of the temporary encampment. At a minimum, the plan shall specifically describe the measures that will be implemented to satisfy the approval criteria provided in the MICC except for criteria specifically waived by the Code Official. The plan shall include a code of conduct and the names and phone numbers of all persons comprising the applicant. The form and mitigation plan shall be as specified by the community development director, but the elements of the plan shall be bound together. The approved temporary encampment impact mitigation plan shall be signed by the Code Official and the applicant and implementation and enforcement shall be a condition of the permit approval.”: *(such adverse effects addressed via the ordinance and site-specific permit)*
- Smoking requirements. Any established area for smoking shall conform to the following stipulations:
  - A. Noncombustible, approved ashtrays shall be provided;
  - B. A “designated smoking area” sign shall be posted
  - C. The area shall be located as far from the tent area as possible, the location will be subject to inspection by Fire Marshal Office.  
*(smoking requirements addressed via site-specific permit)*
- Tent requirements: “Tents over 200 sf shall be flame treated.” *(already addressed via requirement for compliance with codes/site-specific permit)*
- Conduct and Security Requirements: “Any temporary encampment shall comply with the City regulations regarding lawful behavior set forth in Mercer Island Code. Any temporary encampment shall provide all required legal access to public areas of the site by the City of Mercer Island Police Department and any other relevant law enforcement agency at all times.”: *(already required)* “ Additionally, where deemed necessary by the Development Director or the Police Chief, the applicant shall provide for the following:
  1. Verifiable Identification Required: The applicant shall take all reasonable and legal steps to obtain verifiable identification, such as a valid driver’s license, government issued identification card, military identification card, or passport, from all prospective and current camp residents.
  2. Other individuals who are turned away from the camp shall be handled as follows:
  3. A) Applicant shall walk the individual to the bus stop and wait with them until the bus arrives;
  - B) A camp vehicle shall be used to drive the individual to the closest available bus service or
  - C) A taxi or volunteer driver shall be called and the homeless encampment security workers shall be available to wait with the person. Taxi vouchers shall be available from sponsor when buses are not operating:

*(may be addressed in site-specific permit)*

- Sidewalk monitor requirement. “Host shall provide sidewalk monitors during normal hours when elementary, junior high or high school students are going to and from the bus stops.” *(may be addressed in site-specific permit)*
- Prohibition of neighborhood security foot patrols. “Residents and guest of encampment shall not perform neighborhood security foot patrol into the adjoining residential neighborhood.”: *(Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas)*
- Prohibition of Neighborhood Trash Patrols: “Neighborhood and trash patrol by residents and guests of encampment in adjoining residential neighborhood is prohibited.”: *(Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas—note that Bellevue’s ordinance actually requires such patrols)*
- Quiet hours requirement. “Quiet hours at encampment shall be between 9:00 PM and 8:00 AM.” *(may be addressed in site-specific permit)*
- Visiting Hours. “Visiting hours for Guests are between 8:00 AM and 9:00 PM. Guests must check-in and provide valid form of identification at camp security location and must leave by 9:00PM. Guests are prohibited from staying overnight in the camp.” *(potentially unconstitutional elements—some aspects addressed elsewhere)*
- Failure to apply for Permit. “If a temporary use for which a permit would be required is established without a permit first having been obtained, the Planning Director shall require all activities associated with the encampment shall cease immediately and the site shall immediately be vacated and restored to its pre-existing condition unless and until such time as a temporary use permit has been obtained.” *(may be addressed elsewhere in the City Code)*

### III. CONCLUSION

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large, at the October 22, 2009 community-wide meeting.



# Mercer Island Temporary Encampment Ordinance Comparison Matrix

Mercer Island code sections cited are within the Planning Commission recommended ordinance

	Mercer Island	Bellevue	Bothell	Issaquah*	Kirkland	Redmond	SeaTac
Minimum Time Application must be Submitted Prior to Arrival	90 days 19.06.090(A)(9)	Not specified	None specified	None specified	None specified	30 days, RCDG 20D.190-10.030.3.a	Notify city 30 days prior to arrival and 14 days prior to application. SMC 15.20.045.A.1
Time Limit for Returning	Must not be located within half mile of any site that contained a temporary encampment within the last 18 months. 19.06.090(A)(6)	May be located at the same site no more than once every 18 months. 20.30U.125(A)(5)	Shall not be allowed in one location for more than 90 days, either consecutively or cumulatively, during any 12-month period. BMC 12.06.160.B.3.c	No criteria found in ordinance or Special Event/Use Permit SPE07-00032.	The City may not grant a temporary use permit at the same site more frequently than once in every 365-day period. KZC 127.30.	Limited to a maximum of 110 days within any 365-day time period at one location. RCDG 20D.190-10-030.3.c	"The duration of the homeless encampment shall not exceed 90 days or exceed 180 days in any 2 year period." & "No more than one homeless encampment may be located in the City at any time." SMC 15.20.045.D.1 & 2.
Length of Stay	Cannot exceed 90 days. 19.06.090(A)(5)	Cannot exceed 60 days. LUC 20.30U.125(A)(4). (Consent decree allows for 90 days)	90 days + weekend if 90 <sup>th</sup> day is on a Friday. BMC 12.06.160.B.3.c	90 days. Special Event/Use Permit SPE07-00032.	Cannot exceed 92 days. KZC 127.30.	110 days "at one location", RCDG 20D.190-10-030.3.b	Cannot exceed 90 days. SMC 15.20.045.D.1
Encampment Setback from Abutting Properties.	20 feet or more, 19.06.090(A)(10)(a)	20 feet or more, LUC 20.30U.125.	20 feet or more, unless approved by adjacent property. BMC 12.06.160.B.3.b.2	No setback requirement in Permit. (IMC 5.14.050.A.10 allows for other conditions deemed necessary)	20 feet or more. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	None.
Sight Obscuring Fence or Screening Required?	Yes. 19.06.090(A)(10)(b)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.3	Yes, Use Permit # SPE07-00032.	Yes, KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	Yes. SMC 15.20.045.B.9 and 15.20.045.B.10
Lighting Regulation.	Lighting must be directed inward toward encampment. 19.06.090(A)(10)(c)	Glare and reflections must be contained within Camp. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.e.2	None in Permit.	Lighting must be directed downward and containing within camp. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	None.

# Mercer Island Temporary Encampment Ordinance Comparison Matrix

	<b>Mercer Island</b>	<b>Bellevue</b>	<b>Bothell</b>	<b>Issaquah*</b>	<b>Kirkland</b>	<b>Redmond</b>	<b>SeaTac</b>
Maximum Number of Residents at Encampment.	100 persons. 19.06.090(A)(9)	100 persons. LUC 20.30U.125.	Based on land area. No max #. BMC 12.06.160.B.3.b.1	100 persons. Use Permit # SPE07-00032.	100 persons. KZC 127.25.	100 persons. RCDG 20D.190-10-030.3.b	100 persons. SMC 15.20.045.B.6
Parking Requirements at Site?	Yes. 19.06.090(A)(1)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.4	Yes. Use Permit Condition 5.	Yes. KZC 127.25.	Yes. RCDG 20D.190-10-030.3.d	Yes. SMC 15.20.045.B.7
Proximity to transit Required?	Yes. Within 1/2 mile of a public transit stop. 19.06.090(A)(3)	Yes. Within 1/2 mile of a transit stop. LUC 20.30U.125.	Yes. Within 1/2 mile of transit stop. BMC 12.06.160.B.3.b.5	No requirement in Permit # SPE07-00032.	Yes, Within 1/2 mile of a transit stop. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.iii	Yes. Within 1/4 mile or provide carpool/shuttles. SMC 15.20.045.B.8
Children Prohibited from Staying in Encampment?	Yes. Cannot stay overnight, except under exigent circumstances. 19.06.090(A)(12)	Yes. LUC 20.30U.125.	Not Prohibited.	No. Not under Permit # SPE07-00032.	Yes. KZC 127.25	Planning Director's decision. RCDG 20D.190-10-030.3.f.i	Not Prohibited.
Code of Conduct for Persons in Encampment?	Yes. 19.06.090(A)(18)	Yes. LUC 20.30U.125	Yes. BMC 12.06.160.B.3.e.4	Not mentioned in Permit # SPE07-00032.	Yes. KZC 127.25	Yes. RCDG 20D.190-10-030.3.f.i	Yes. SMC 15.20.045.C.3
Specific Health, Safety and Fire Protections Apply?	Yes. 19.06.090(A)(7), 19.06.090(A)(8), 19.06.090(A)(13), 19.06.090(A)(14)	Yes.	Yes. BMC 12.06.160.B.3.d	Yes.	Yes.	Yes. RCDG 20D.190-10-030.2.d and 20D.190-10-030.3.f	Yes. SMC 15.20.045.B.2 and 15.20.045.B.3
Identification, and Warrant and Sex Offender Checks Required For Persons at Encampment?	Yes. 19.06.090(A)(17) and 19.06.090(A)(19)	Yes. 20.30U.121	Yes, when deemed necessary. BMC 12.06.160.B.3.e.3	Not mentioned in Permit # SPE07-00032. (may be in separate agreement with Police Depart.).	Yes. KZC 127.25.	Only identification required. RCDG 20D.190-10-030.3.e	Yes. SMC 15.20.045.C.5 and 15.20.045.C.6
Inspections Required?	"shall permit inspections". 19.06.090(A)(15)	Not addressed in 20.30U.	"may be conducted". BMC 12.06.160.B.3.d	Yes. Temp Use Permit.	Yes. KZC 127.25.	Not addressed.	"shall permit inspections". SMC 15.20.045.E.3
Is Notice Provided to Neighbors Prior to Decision?	Yes. 19.06.090(C)(1) and 19.06.090(C)(2)	Yes. LUC 20.35.510 & 525.	Yes. BMC 12.06.160.B.3.a.2 and BMC title 11	Not required for special use permit per IMC 5.14	Yes. KZC 127.42.	Yes. RCDG 20D.190-10-030.4	Yes. Notify property owners prior to application. SMC 15.20.045.A.2

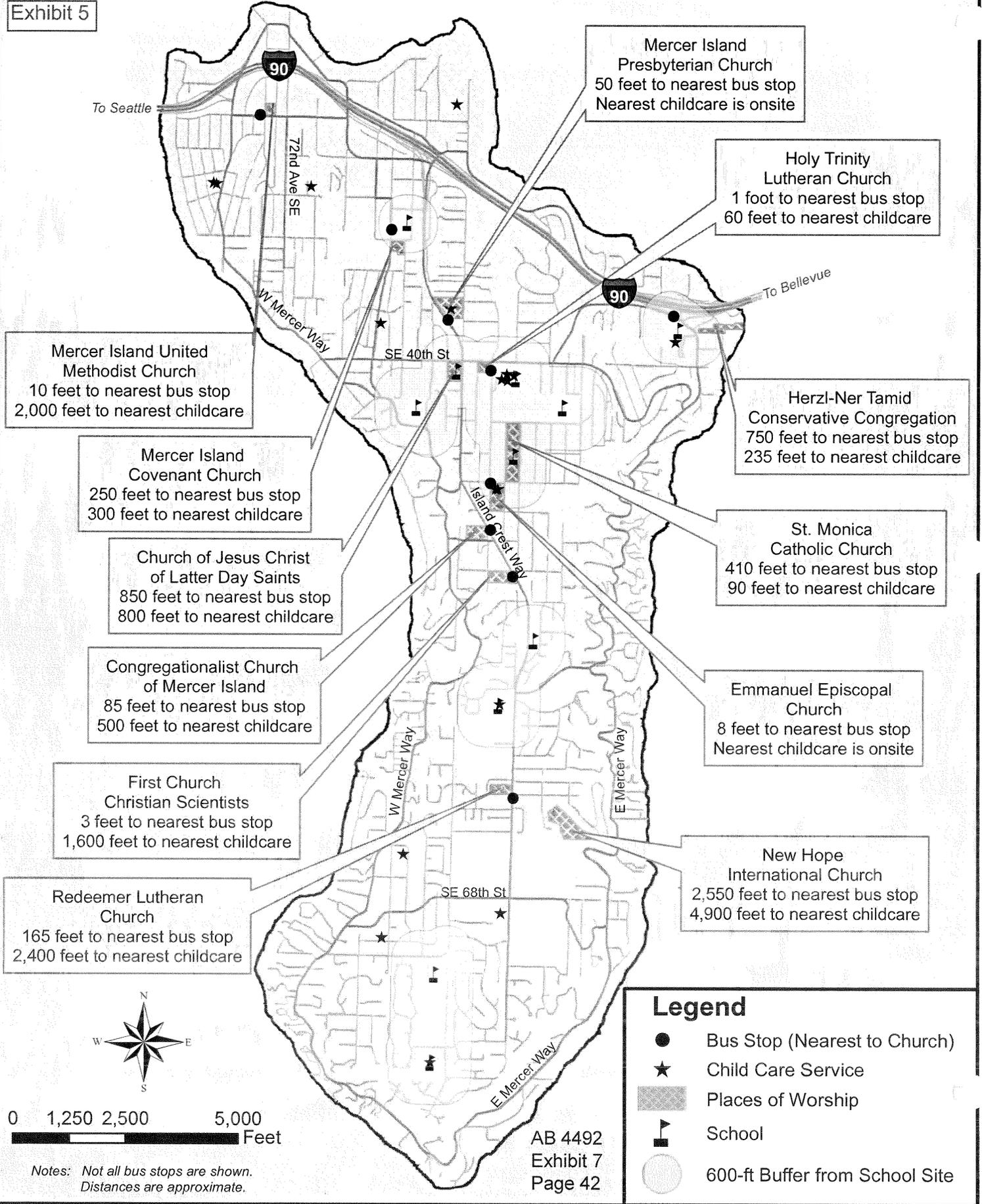
# Mercer Island Temporary Encampment Comparison Matrix

	<b>Mercer Island</b>	<b>Bellevue</b>	<b>Bothell</b>	<b>Issaquah*</b>	<b>Kirkland</b>	<b>Redmond</b>	<b>SeaTac</b>
Must Notify, and Meet and Confer with Nearby Schools and Daycares?	Yes. Any within 600 feet of the encampment. 19.06.090(C)(2)	Yes. Any within 600 feet of site. LUC 20.30U.122.	Yes. BMC 12.06.160.B.3.a.4	No. Not in Temporary Use Permit.	No. (does require compatibility with surrounding uses).	Not Prohibited.	Not Prohibited
Can There be Immediate Enforcement of Violations?	Yes. Mercer Island Codes 8.04.120, 8.30.030, 17.14, 17.15, and 19.15.030	Yes. LUC 20.30U.125 and BCC 1.18	Yes. BMC 12.06.160.B.3.a.7	Yes. IMC 5.14.090	Yes. Chapter 1.14, 9.34, 14.04	Yes.	Yes.
Are There Any Penalties for Violating Codes or Agreement?	Yes. Civil fines and penalties for City and State Code violations. Mercer Island Codes 8.04.120, 8.30.030, 17.14.113, 17.14.115, 17.15.030, 19.15.030, & RCW 70.95.240(2)(b-c)	Yes.	Yes. BMC 12.06.160.B.3.a.7 and 11.20.010	Yes. Civil fines or by imprisonment. IMC 5.14.060 and 5.14.090	Yes. Chapter 1.14, 9.34, 14.04	Yes. Expulsion or Termination of Temporary Use Permit. SMC 15.20.045.C.3 or 15.20.045.F.1	
Is there a provision for hold harmless / indemnification for City taxpayers?	Yes, City is held harmless and indemnified.	No.	Yes. BMC 12.06.160.B.3.f.1	Yes. Special use Permit Sec. 14.	No.	No.	No.
Process For People Evicted From Tent City?	Yes. Process for eviction or unlawful detainer. RCW 59.12. See RWC 59.16-59.20. See also Mercer Island City Code 9.14, Trespass, to which usual police procedures apply.	Yes.	Yes. BMC 12.06.160.B.3.e.3.D & C	Yes.	Yes. In Temp Use Permit ZOzn08-00001.	No.	No.
Application Fee	None at this time. Must be submitted if required. A \$250 refundable deposit for a public notice sign would be required. A fee of \$69 was charged for a temporary power permit for Tent City	\$440 total. \$110 land use fee, \$225 fee for land use sign, \$62 for fire inspection, \$43 for Right-of-Way use	Hourly rate based on time to process land use permit. Land use planner hourly rate is \$140.80	\$188.80 total. \$20 for special use permit, and \$168.80 for plumbing permit	\$212 for a Temporary Use Permit	\$1,601.77 for a Temporary Use Permit	\$60 for a Temporary Use Permit

\*Issaquah regulates Temporary Encampments with a "Temporary Use Permit" (which also includes many other temporary land uses) and is not specific to Temporary Encampments. Language is provided in the Issaquah Municipal Code that allows the city to place restrictions on the permit that are not necessarily spelled out in the code, subject to a legal nexus.

# PROXIMITY OF MERCER ISLAND PLACES OF WORSHIP TO BUS STOPS, SCHOOLS, AND CHILD CARE SERVICES

Exhibit 5



**Mercer Island Presbyterian Church**  
 50 feet to nearest bus stop  
 Nearest childcare is onsite

**Holy Trinity Lutheran Church**  
 1 foot to nearest bus stop  
 60 feet to nearest childcare

**Herzl-Ner Tamid Conservative Congregation**  
 750 feet to nearest bus stop  
 235 feet to nearest childcare

**St. Monica Catholic Church**  
 410 feet to nearest bus stop  
 90 feet to nearest childcare

**Emmanuel Episcopal Church**  
 8 feet to nearest bus stop  
 Nearest childcare is onsite

**New Hope International Church**  
 2,550 feet to nearest bus stop  
 4,900 feet to nearest childcare

**Mercer Island United Methodist Church**  
 10 feet to nearest bus stop  
 2,000 feet to nearest childcare

**Mercer Island Covenant Church**  
 250 feet to nearest bus stop  
 300 feet to nearest childcare

**Church of Jesus Christ of Latter Day Saints**  
 850 feet to nearest bus stop  
 800 feet to nearest childcare

**Congregationalist Church of Mercer Island**  
 85 feet to nearest bus stop  
 500 feet to nearest childcare

**First Church Christian Scientists**  
 3 feet to nearest bus stop  
 1,600 feet to nearest childcare

**Redeemer Lutheran Church**  
 165 feet to nearest bus stop  
 2,400 feet to nearest childcare

**City Council - Minutes**  
**Tuesday, January 19, 2010**

**CALL TO ORDER:**

Mayor Jim Pearman called the meeting to order at 7:05 pm in the Council Chambers of City Hall, 9611 SE 36th Street, Mercer Island, Washington.

**ROLL CALL:**

Councilmembers Bruce Bassett, Mike Cero, Mike Grady Dan Grausz, Steve Litzow, Deputy Mayor El Jahncke and Mayor Jim Pearman were present

**SPECIAL BUSINESS:**

Veterans and Human Services Levy Presentation

Sadikifu Akina-James, King County Veterans & Human Services Levy Manager and James Estey, King County Veterans Program Manager presented information to the Council regarding the Veterans and Human Service Levy that was approved by King County voters in November 2005. The Levy provides over \$13 million each year through 2011 to help people in need around the county. It serves four different groups of people:

- Veterans, military personnel and their families
- Individuals and families who have experienced long-term homelessness
- Individuals who have recently been released from prison or jail
- Families and young children who are at risk

Half of the Levy revenue is dedicated to veterans, military personnel, and their families (Veterans Levy Fund) and the other half is for the other individuals and families in need (Human Services Levy). To best serve these groups, funds from the Levy have been allocated to five different strategy areas:

1. Enhancing services and access to veterans, military personnel, and their families
2. Ending homelessness through outreach, prevention, permanent supportive housing and employment
3. Increasing access to behavioral health services
4. Strengthening families at risk
5. Increasing the effectiveness of Levy resource management and evaluation

**APPEARANCES:**

Lucia Pirzio-Biroli (4212 West Mercer Way), Steve Bryan (2426 70th Ave SE), Fred Glick (7644 SE 41<sup>st</sup> St), Bert Loosmore (4639 Forest Ave SE), and Peter Donaldson (3635 88th Ave SE) spoke about a letter they (and other citizens) sent to the City Council regarding comprehensive long-range multi-modal transportation visioning and master planning process that utilizes sustainability strategies and builds on the many resources Mercer Islander's already embrace as a community. They encouraged the Council to look ahead 50-100 years and envision how to meet Mercer Island's transportation needs in light of current energy, environmental and economic issues. They offered that IslandVision, with support from the City in publicizing and provision of venue, would sponsor, over the next six months, several evening public forums aimed at educating the community about all the issues surrounding multi-modal transportation planning.

Gail Stagman, 7401 92<sup>nd</sup> Place SE, spoke about parking restrictions in the area around the park-and-ride. She believes that the parking strips in front of the homes around the park-and-ride are public property and should be available for residents to park there when the park-and-ride is full.

Ron Moattar, 4645 88<sup>th</sup> Ave SE, is encouraged that the Council and the City is working toward improving transportation on Mercer Island. He believes there are a lot of possibilities for improvements.

Selena Carsiodis, 7420 SE 27th St, expressed concern about recent graffiti in the parks and the cost to remove it.

**MINUTES:**

- (1) It was moved by Councilmember Grady; seconded by Councilmember Bassett to:  
**Adopt the REVISED Special Meeting Minutes of December 7, 2009 and the Regular Meeting Minutes of January 4, 2010 as written.**  
Motion passed 7-0.

**CONSENT CALENDAR:**

- (2) Payables: \$1,255,573.15 (01/07/10) & 497,483.92 (01/13/10)  
Payroll: \$4,142.06 (12/31/09) & \$693,152.25 (01/15/10)

It was moved by Councilmember Litzow; seconded by Councilmember Grady to:  
**Approve the Consent Calendar and the recommendations contained therein.**  
Motion passed 7-0.

**REGULAR BUSINESS:**

- (3) AB 4500 Interlocal Agreement with City of Bellevue for Marine Patrol Services

Police Chief Ed Holmes presented an interlocal agreement with the City of Bellevue for an exchange of services. As part of the agreement, Bellevue will receive services from Mercer Island's Marine Patrol and Dive Team on Lake Washington and Mercer Island will received services from Bellevue's SWAT team, specialized forensics, K-9, major investigations and the use of Bellevue's firing range.

It was moved by Councilmember Grady; seconded by Councilmember Cero to:  
**Authorize the City Manager to sign the Interlocal Agreement between the City of Mercer Island and the City of Bellevue relating to Marine Patrol and other services.**

It was moved by Councilmember Grausz; seconded by Councilmember Litzow to:  
**Amend Section 1.4 as follows:**

**1.4 At the specific request of Bellevue, and at times when its workload priorities permit, provide patrol services and/or respond to emergencies at times other than those of the daily boating season shift and outside the boating season.**

**And amend Section 2.2 as follows:**

**2.2 At times where its workload priorities permit and in consideration for the marine patrol services provided by Mercer Island, Bellevue shall make available, at no charge, to Mercer Island upon request and with adequate notice specialized Bellevue police services consisting of K-9, forensics, firing range, major investigations, SWAT, and such other services as Bellevue may in the future permit.**

Motion passed 7-0.

Main motion as amended passed 7-0.

(4) AB 4492 Open Record Hearing/Public Meeting: Temporary Encampments Ordinance (1<sup>st</sup> Reading)

Deputy City Manager James Mason provided a history of the City's experience with Tent City 4 in the summer of 2008 as well as the public process the City Council directed staff to conduct to enact legislation for the permitting of temporary encampments on Mercer Island. He detailed the timeline of events for the public process and the methods staff used to integrate the comments received regarding regulations for temporary encampment permits.

Planning Commission Chair Adam Cooper stated that he was impressed with the quality and quantity of the public involvement. He also praised staff for their work in disseminating the public input. He spoke about the Planning Commission's process of presenting a recommendation to the Council for temporary encampment regulations. He noted that the Planning Commission changed staff's recommendation regarding "verifiable identification" to "government-issues identification" as they felt it was not strong enough. The Planning Commission also recommended that the element that prevents another temporary encampment from returning to the same place of worship within 12 months and 1 mile of a previous encampment to 18 months and ½ mile. Chair Cooper stated that they did not want to see the one community have encampments more frequently than others.

The Mayor opened the Open Record Hearing/Public Meeting at 8:25 pm.

Steve Oaks, 2423 71<sup>st</sup> Ave SE, thanked the staff and Council for the work done to get the ordinance to Council for consideration. He spoke about his three main areas of focus: 1) process, 2) safety and distribution of impact. He detailed elements he would like changed or clarified in the ordinance regarding: when will the camp show up after the community meeting, require current and prospective members to have government issued ID, how will Police Chief verify there was a valid ID shown.

Susie Redifer, 2440 62nd Ave SE, believes that residents do have a voice about TC4 as evidenced by the ordinance process. She does not agree with some of TC4's philosophies and practices and believes the Council must take action to protect citizens and residents. She is glad to have Police Dept conduct random background checks. She believes it is imperative that TC4 be rotated fairly among all religious organizations on Island and they should not be forced upon just the north-end Neighborhood.

Kristin Jamerson, 2706 60th Ave SE, representative of Mercer Island Clergy Association, stated that the cost to sponsor Tent City 4 is high and the host church bears that burden. The MI Clergy Association has combined funds to support Tent City, but they encouraged the Council to consider a low fee for temporary encampments on Mercer Island.

Steve Bryan, 2426 70th Ave SE, believes that the process has gone well and public has been educated. He spoke about the element regarding fencing. He is worried about prohibit "tarps" as they can be a good material for fencing. He also believes there may be a slippery slope in requiring background checks. He also stated that real estate disclosure requirements to not require disclosure about temporary encampments.

Jayne Judd, 2511 71st Ave SE, is a realtor and has checked on issue of disclosing temporary encampments on Form 17. She believes it does not have to be disclosed unless the encampment continues to come back to the same location. She also spoke about homes in the neighborhood where TC4 was in 2008 that were not selling.

Nancy Gilchrest, 114 157th Ave, Bellevue, is directly adjacent to TC4 when they are at Temple B'Nai Torah. She spoke about photos she provided of showing the fence of the TC4 encampment in Woodinville. She is concerned that the ordinance does address the fence being a security feature only for visual screening. She also suggested having only one point of ingress and egress from the encampment for security.

Tara Johnson, 2438 62nd Ave SE, thanked the City Staff for time and efforts that went into drafting the ordinance and for the public process to get to this point. She believes that the same level of public safety concern given to the Island Crest Way and Merrimount intersection should be given to this ordinance. She detailed elements that citizen Steve Oaks would like changed or clarified in the ordinance regarding: what proof will there be that the background and sex offender checks have been completed, why can't the Police Department request ID's and run the checks, what will happen if there is a outstanding warrant or is a sex offender, should be 24 months instead of 18 months. She also spoke about another temporary encampment that was closed by the church Seattle because a level 3 sex offender was living in the encampment. She asked the Council to require the Police to do background and warrant checks on all temporary encampment residents.

Leslie Ann, 6616 SE 24th Street, spoke as a representative of the Mercer Island Clergy Association and the pastor of the Mercer Island United Methodist Church. She thanked the Council and staff for the care that has been taken during the public process. She stated that the City government should to hold a light hand on the reigns and be responsible for health, safety and welfare of the citizens, but not comfort and preferences. She expressed concern that the ordinance is more stringent than it needs to be. Congregations will work with the neighborhoods as the temporary encampment is in the hands of the congregation that is sponsoring. The City's duty to does not out way an individual congregation's right to act as sanctuary for those who are in need. She also encouraged a timely process for the permitting process.

Bruce Thomas, Camp Advisor and resident of Tent City 4, is concerned with the proposed ordinance. He believes that the City cannot limit a church's right to practice its religion because they are close to a church that already practiced that religion.

Deborah, TC4 resident, addressed element of ordinance that temporary encampments are allowed only if the guidelines listed are listed. She believes that the City is not allowed require a church to get a permit to practice their religion.

Robert, TC4 resident, asked the Council to consider revising the 90 day requirement to allow the encampment to move on a Saturday.

Patrick Schultz, TC4 resident, expressed concern with the requirement that the encampment must leave the occupied space free of debris. He asked if normal wear and tear is allowed.

Shy, TC4 resident, stated that the element requiring a complete application 90 days in advance of arriving is way too long.

Lorrie Clark, TC4 resident, expressed concern with the element of having a maximum of 100 people in the camp. He stated that the point of non-profit is to help those in need and turning people away is against the goal.

Eric Viafore, 2250 70th Avenue SE, lived adjacent to TC4 on north end. He asked that a regulation for establishing a smoking area for the encampment be included as he had passive smoke in his house during TC4's stay. He also thanked the City for the work they have done.

Jack, TC4 resident, asked that the element prohibiting children in an encampment. They would like to be able to house a child if they come with a parent at night and find other housing in the morning.

Vaughn Seneca, TC4 resident, #would like to see the element requiring perspective members to have valid government issued ID changed as not everyone has government issued ID.

James Hill, TC4 resident, spoke about Tent City already conducting warrant and sex offender checks of all members of the camp as they are concerned about their safety. He does not believe the City needs to regulate and require these checks to be done.

Jonathan Dye, TC4 resident, believes that there could be other organizations within City of Mercer Island that could host TC4 not just places of worship.

Karen Morris, 15788 NE 4<sup>th</sup> Street, Bellevue, spoke about elements of the proposed ordinance she feels need to be strengthened. She stated that she has had tent city residents and former residents approach her to tell things that go on in TC4 that are hidden from public view. She spoke about the information she received from current and former residents such as that the log is not accurate and the Code of Conduct is not strictly enforced.

The Mayor closed the Open Record Hearing/Public Meeting at 9:03 pm.

The Council asked questions of staff regarding the proposed elements of the ordinance. Following deliberation, Council directed staff to prepare language for review at the upcoming 2010 City Council Planning Session (January 22-23, 2010) regarding the following:

- Add homeless statistics language to the "Whereas" section
- Clarify "Place of Worship"
- Remove unnecessary language regarding the Parks Department
- Add flexibility regarding the maximum stay being 90 days
- Reduce the minimum time for submitting a complete application prior to opening a Temporary Encampment due to moving up the Informal Meeting
- Provide additional examples of fence materials that are acceptable and not acceptable
- Require the Managing Organization to sign the hold harmless agreement
- Further discuss requiring "government issued" identification
- Prohibit sex offenders as a portion of the Code of Conduct
- Provide less restrictive language regarding warrant checks
- Add a requirement and criteria for siting smoking areas
- Detail what is done with the information from the informal public meeting
- Require informal public meeting before permit application is submitted
- Detail items to be discussed at the informal public meeting

#### **OTHER BUSINESS:**

##### **Councilmember Absences:**

Councilmember Bassett will be absent from the February 16<sup>th</sup> meeting.

##### **Planning Schedule:**

There were no changes.

##### **Board Appointments:**

It was moved by Councilmember Litzow; seconded by Councilmember Grady to:

**Appoint Cristina Scalzo to a youth position (expiring May 31, 2011) on the Mercer Island Youth and Family Services Advisory Board.**

Motion passed 7-0.

**Councilmember Reports:**

Councilmember Grausz spoke about the Design Commission approving the application from BRE Properties for the old Safeway site to extend the project by an additional year.

**ADJOURNMENT:** 11:36 pm



# **Mercer Island City Council 2010 Planning Session**

## **Resource Material**

**Groveland Room  
Community Center at Mercer View  
8236 SE 24<sup>th</sup> Street  
Mercer Island, WA 98040**

Friday, January 22, 2010: 5:00 pm – 6:30 pm  
7:45 pm – 9:00 pm  
Saturday, January 23, 2010: 8:30 am – 5:00 pm  
Sunday, January 24, 2010: 8:30 am – 12:00 pm



# Mercer Island City Council Planning Session Agenda

January 22-24, 2010

Location: Luther Burbank Room, Community Center at Mercer View

## Friday, January 22, 2010:

- 5:00 pm      Welcome
- Mayor's opening remarks
  - Agenda review
  - 2009 objectives and accomplishments
- 6:30            Private social and dinner
- 7:45            Council operations
- Rules on Council members making public presentations
  - Council protocol – questions for staff versus council deliberations
  - Roles of Council Liaisons vis-à-vis Boards and Commissions
- 8:30            Citizen of the Year
- 9:00            Adjourn

# Mercer Island City Council Planning Session Agenda

January 22-24, 2010

Location: Luther Burbank Room, Community Center at Mercer View

## Saturday, January 23, 2010:

- 8:30 am      Budget Discussion
- 2009 Review & 2010 Forecast
  - 2011-2012 Budget Process Overview
  - "Re-Balancing" 2010 Budget
    - Employee Wage Concessions
    - Use of Contingency Reserves
    - CIP Admin Overhead
  - Major Operating Issue – MIYFS Counseling Program
  - Major Capital Issue –
    - Island Crest Way Implementation – 2010?
    - Fire Station Financing – 2010, 2011, 2012?
- 10:45      Break
- 11:00      Sustainability Committee Update
- Accomplishments
  - Green Ribbon Commission Status
  - Allocation of funds in next biennium
  - Future Opportunities
- 12:15 p.m.      Lunch
- 1:00      Town Center
- Status report – active and future development projects
  - Traffic/parking/transportation
  - Economic status
  - Steve's "Parting Pearls"
  - New directions?
  - Council discussion
- 2:30      Break
- 2:45      Recycle Center Property – What Next?
- Status of site
  - Public Participation Proposal – Bainbridge Grad Inst.
    - Building public involvement skills & capacities at the City
    - Obtain public input on future of recycle center site
  - Discussion
- 4:00      Transportation Vision for Mercer Island
- Public involvement
  - Funding challenge
- 4:30      Parks & Recreation Cost Recovery
- Competition with private sector
- 5:00      Adjourn

# Mercer Island City Council Planning Session Agenda

January 22-24, 2010

Location: Luther Burbank Room, Community Center at Mercer View

## Sunday, January 24, 2008:

- 8:30 am Underage Drug & Alcohol Use
- Continuing discussion
  - Council actions
  -
- 9:00 Temporary Encampments Ordinance
- Continuing discussion (if needed)
- 9:15 Break
- 9:30 Council annual work plan finalized
- 10:30 Miscellaneous Council topics
- *(Pick and choose from below)*
- 12:00 Adjourn

## Topics currently not scheduled:

- *Consultant bias – Bike/Ped Plan; Shorelines (Jahncke)*
- *Taping executive sessions (Cero)*
- *Residential & arterial street life cycle standards (Cero)*
- *Performance audits – State Auditor's Office (Cero)*
- *Regional Aviation Picture (Cero)*
  - *Renton Field vs Mercer Island*
  - *Noise monitoring; Noise impacts*
  - *Role of other airports*

**11**

**TEMPORARY  
ENCAMPMENTS  
ORDINANCE**



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND, WA**

**AB 4492  
January 19, 2010  
Regular Business**

**TEMPORARY ENCAMPMENT ORDINANCE (1ST  
READING)**

**Proposed Council Action:**

Hold an Open Record Public Hearing/Public Meeting and conduct 1st reading of Ordinance No. 10C-01.

**DEPARTMENT OF**

City Manager (James Mason)

**COUNCIL LIAISON**

El Jahncke

**EXHIBITS**

1. Proposed Ordinance No. 10C-01 as recommended by the Planning Commission
2. Written comments submitted during SEPA comment period
3. Summary of community meeting comments
4. Memo from City Attorney to Planning Commission re: Overview of 2008 Tent City Experience
5. Memo from City Attorney to Planning Commission re: Overview for Discussion of Temporary Encampments Regulations
6. Comparison matrix of other jurisdictions
7. Proximity map

**APPROVED BY CITY MANAGER**

<b>AMOUNT OF EXPENDITURE</b>	\$	n/a
<b>AMOUNT BUDGETED</b>	\$	n/a
<b>APPROPRIATION REQUIRED</b>	\$	n/a

**SUMMARY**

**HISTORY**

The Mercer Island United Methodist Church ("Church") invited Tent City 4 to establish a temporary encampment on the Church's property for three months beginning August 5, 2008. The encampment stayed on the Island for approximately 90 days. Tent City 4 is a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. The Church's pastor, congregational leaders, and SHARE/WHEEL signed a Temporary Use Agreement with the City, which Agreement was approved at the City Council meeting on June 16, 2008. The Temporary Use Agreement addressed the health, safety and welfare concerns arising from the temporary encampment's stay at the Church.

Mindful of the extensive litigation surrounding temporary encampments and religious institutions' ministry to the homeless, the City determined that it was unlikely to prevail in court on forbidding such an encampment if the Church invited Tent City 4. The City also determined that it was likely to obtain more favorable conditions to the City if it entered into a voluntary agreement with SHARE/WHEEL and the Church. The parties agreed that the City (Fire, Police and DSG) and King County Health Department could regularly

inspect the encampment. The Church and SHARE/WHEEL agreed to a hold harmless and indemnification provision. Many other elements of the Temporary Use Agreement were incorporated into the proposed ordinance, attached as Exhibit 1.

At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to meet with citizens to discuss the Tent City 4 experience, and to prepare a draft Temporary Encampment ordinance for Council's consideration. Staff returned to the Council with a proposed sequence of events designed to ultimately provide the Council with an ordinance ready for adoption by February 1, 2010. After Council's approval of the timeline, City staff met with First Hill neighbors and the community at large. As part of the SEPA process, comments were obtained at those meetings. Both oral and written comments from citizens were ultimately provided to the Planning Commission for consideration. The public comments are attached as Exhibits 2 and 3. Staff also conducted extensive research into the legal parameters regarding the regulation of temporary encampments, including review of recent case law regarding Tent City 4.

Recently, the Washington State Supreme Court decided in a unanimous decision that numerous cases before it have already determined that the state constitution "absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution..." *City of Woodinville v. Northshore United Church of Christ, WA Supreme Court slip opinion, July 16, 2009*. Relying on the Washington State Constitution, the Court held that cities may not impose a temporary moratorium on churches hosting homeless encampments. The court concluded that the religious organizations have more protection under Washington's constitution and, therefore, did not address whether there was also a violation of federal statutes or the federal constitution. Cities may regulate concerns for safety, noise, and crime but may not outright deny consideration of permitting a church to host a homeless encampment. A more extensive legal analysis is provided in Exhibit 4. This analysis was provided to the Planning Commission along with the various City departments' experiences with Tent City 4 during its stay on the Island.

## **PROCESS**

City staff held a public meeting on August 25, 2009 at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. Much of the information derived from that meeting was useful in designing a draft Temporary Encampment Ordinance. On October 22, 2009, staff held a community-wide open house at the Community Center at Mercer View to provide a forum for additional public input and to provide an overview of the draft Temporary Encampment Ordinance. The major areas of discussion regarded the legal structure of the ordinance, communication issues such as public noticing of immediate neighbors and the community as well as opportunities for public involvement, regulatory issues surrounding the location of future temporary encampments and any benefits or concerns of proposed sites, public safety issues and compliance with regulations and codes. Guided by the comments from the public, the ordinance was refined and presented to the Planning Commission.

The Planning Commission was given a briefing on October 7, 2009. The briefing included discussion of the key provisions of the ordinance, as well as why potential regulatory conditions were not specifically included as mandatory permitting elements. See Exhibit 5. Some of those potential regulatory conditions were deemed more appropriate for site-specific issues that could be addressed in the temporary encampment permit on a case by case basis by the code official. Others are addressed through other code requirements. Some are likely to be considered unconstitutional.

In addition to the public discussion regarding the ordinance, the Planning Commission was provided information drawn from the City's experience with the Tent City 4 visit. See Exhibit 4. DSG, Police and Fire discussed the Departments' experiences with the encampment. A discussion of the communication experience regarding Tent City 4 was also addressed. The Planning Commission asked that the staff return with a staff recommended ordinance once the community wide meeting was held and the oral and written comments were reviewed. Ultimately, a public hearing was held before the Planning Commission on

November 18, 2009. The Planning Commission decided on the recommended ordinance being presented to City Council.

## **RECOMMENDED ORDINANCE HIGHLIGHTS**

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The current proposed ordinance allows some flexibility for the Code Official to adopt additional requirements in the permit itself based on the location and site conditions of the temporary encampment. A matrix is attached as Exhibit 6 comparing the proposed ordinance to other cities' ordinances (as opposed to temporary permits, with the exception if Issaquah).

Many of the provisions in the Temporary Use Agreement for Tent City 4 were used in the drafting of the staff recommended ordinance ultimately presented to the Planning Commission. The key points of the Planning Commission recommended ordinance are:

- a. A pre-application meeting and an informal public meeting are required for any temporary encampment. An application must be submitted at least 90 days prior to opening a temporary encampment.
- b. Notice of the application would be required to be mailed to all residents within 600 feet of the proposed site. Typically, a 300 foot notice is required. A public notice sign would also be posted on site.
- c. The location and visual screening must provide "privacy and a visual buffer" for temporary encampment residents and neighbors. The ordinance provides guidance regarding the materials and height of the fence that was not as clearly defined in the Temporary Use Agreement for Tent City 4.
- d. No more than 100 people could stay at the encampment.
- e. No children under the age of 18 will reside in the encampment.
- f. A stringent code of conduct would be enforced. The temporary encampment sponsor and managing organization would be required to comply with all applicable City and State codes.
- g. All camp residents must provide government issued identification. Warrant and sex offender status of all prospective residents must be checked within the seven days prior to moving to Mercer Island. Any positive results must be reported to the Police Department.
- h. No sex offenders would be allowed to stay at the encampment.
- i. Random warrant and sex offender checks by the Police Department could be conducted to ensure compliance.
- j. The temporary encampment sponsor must provide a hold harmless and indemnification provision.
- k. The temporary encampment must allow regular inspections by the City (Fire, Police and DSG) and the King County Health Department.
- l. No temporary encampment would be permitted to return within one-half mile of a previous temporary encampment until 18 months after that previous encampment leaves the City. The Temporary Use Agreement prohibited more than one Temporary Encampment on Mercer Island each calendar year.
- m. Any violation of city code as a condition of a permit must be cured within seven days of mailing a notice of violation. The Temporary Use agreement required a cure within 14 days of notice.

Exhibit 7 details the proximity of Mercer Island places of worship to bus stops, schools and child care services. Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the proposed ordinance. This is intended to allow flexibility given the variety of sites which may be presented for locating temporary encampments in the future.

At this point, the City Council is to hold an Open Record Public Hearing to review the Planning Commission's recommended ordinance and to consider any additional comments or information. The Council will conduct the first reading of Ordinance No. 10C-01 and provide staff with additional direction, if desired. The second reading of the ordinance is scheduled for February 1, 2010.

## RECOMMENDATION

*Deputy City Manager*

MOVE TO: Hold an Open Record Public Hearing/Public Meeting, conduct the first reading of Ordinance No. 10C-01 regarding temporary encampments as recommended by the Planning Commission, and set the ordinance for a second reading on February 1, 2010.

**CITY OF MERCER ISLAND  
ORDINANCE NO. 10C-01**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010,  
AND ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE  
DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR  
PERMITTING TEMPORARY ENCAMPMENTS WITHIN THE CITY**

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions' ability to practice their religion by hosting temporary encampments, and limiting municipalities' ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

WHEREAS, the City of Mercer Island, it's elected and appointed officials, are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, 2009, and the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held an open record public hearing on January 18, 2010,

held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Amendments to Chapter 19.16 MICC, Definitions.** MICC 19.16.010 “Definitions” is hereby amended by adding the following:

**T**

...

Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a Temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A “sponsor” may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment “managing organization” may be the same entity as the temporary encampment sponsor.

...

**Section 2. Chapter 19.06 MICC General Regulations.** MICC 19.06.090 “Temporary Encampment Permit” is hereby added as follows:

### **19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. Each lot occupied by a temporary encampment must provide or have available parking and vehicular maneuvering area.
2. The temporary encampment and the parking of any vehicles associated with a temporary encampment application shall not displace the host site’s parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the Code Official.
3. The temporary encampment shall be located within one-half mile of a public transit stop.
4. No temporary encampment shall occupy or use public parks in any manner unless specifically approved by the Parks Department.
5. No temporary encampment shall operate within the City of Mercer Island for more than 90 consecutive days.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a lot or lots within one-half mile of any lot(s) that contained a temporary encampment within the last 18 months. For the purposes of this subsection, the 18 months shall be calculated from the last day of the prior temporary encampment within the one-half mile radius. No more than one temporary encampment may be located in the City at any time.

7. All temporary encampments shall obtain, prior to occupancy of the lots, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least 90 days before the planned opening or any occupancy of the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons, if all other conditions are met. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the code official on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the Code Official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property, unless otherwise approved by the Code Official. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments.

b. A six-foot high sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the Code Official. The fence(s) shall not be constructed of tarp, visqueen, or plastic sheeting. The Code Official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement.

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment. If a child under the age of 18 attempts to stay overnight at the temporary encampment, the encampment managers shall immediately contact the temporary encampment managing organization and Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials. Servicing of portable toilets and trash dumpsters is prohibited between the hours of 10:00 pm and 7:00 am on Mondays through Fridays, excluding legal holidays, and between the hours of 10:00 pm and 9:00 am on Saturdays, Sundays, and legal holidays, except in the case of bona fide emergency or under permit from the Code Official in case of demonstrated necessity.

15. The temporary encampment shall permit regular inspections by the City and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services, such as food, water, and waste disposal, provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization.

Temporary encampment sponsor, shall sign a hold harmless agreement for the temporary encampment.

17. The temporary encampment managing organization shall maintain a resident log for all who are residing at the encampment. Such log shall be kept onsite at the encampment. Prospective encampment residents shall provide a government issued form of identification when signing the log.

18. The temporary encampment host, encampment sponsor, and encampment managing organization shall ensure enforcement of a Code of Conduct at the temporary encampment site. The Code of Conduct shall be in substantially the following form or address the following issues:

a. Possession or use of illegal drugs is not permitted.

b. No alcohol is permitted.

c. No weapons are permitted.

d. All knives over three and one-half inches must be turned in to the encampment manager for safekeeping.

e. No violence is permitted.

f. No open flames are permitted.

g. No trespassing into private property in the surrounding neighborhood is permitted.

h. No littering on the Temporary Encampment site or in the surrounding neighborhood is permitted.

Nothing within this section shall prohibit the encampment sponsor or encampment managing organization from imposing and enforcing additional Code of Conduct conditions not otherwise inconsistent with this section.

19. The applicant shall obtain warrant and sex offender checks from the King County Sheriff's office or other relevant authority for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the applicant shall immediately contact the City of Mercer Island Police Department. To verify compliance with this requirement, the City of Mercer Island Police Department may do random warrant and sex offender checks on temporary encampment residents.

20. Upon determination that there has been a violation of any decision criteria or condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within 7 days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the 7 day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

21. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the Code Official:

1. General application form;
2. A site plan, which extends 50 feet beyond the proposed site's property boundaries, drawn to scale showing all of the following:
  - a. all existing structures;
  - b. existing parking stalls;
  - c. parking stalls proposed to be unavailable for parking vehicles during the Temporary Encampment;
  - d. all proposed temporary structures;
  - e. proposed electrical and plumbing connections;
  - f. location of trash receptacles, including trash dumpsters;
  - g. location of toilets and other sanitary facilities;
  - h. location and details of any proposed connection to wastewater, potable water, stormwater, electrical supply, or other public or private utility systems;
  - i. proposed and existing ingress and egress; and
  - j. any permanent alterations on the lot, to the site, or structures;
3. Proposed fencing detail or typical section;
4. Written authorization from a temporary encampment organization on which the temporary encampment is located;
5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the temporary encampment sponsor;
6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;
7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;
8. A copy of the Code of Conduct;
9. Any other information deemed necessary by the Code Official for the processing of a temporary encampment permit; and
10. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official shall require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment. When required, the informal public meetings shall be held as early in the review process as possible once a complete application has been submitted. Notice of the public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting, and combined with the notice of application whenever possible. Prior to the public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding the proposed security measures. At the public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment management security measures, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda, and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.

2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the lot(s) containing the proposed temporary encampment. Prior to any application for a temporary encampment permit, the temporary encampment sponsor, or temporary encampment managing organization shall meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment, and shall meet and confer with the operators of any properly licensed child care service within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the criteria for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, based on the applicable decision criteria.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations.** MICC 19.06.010(A) "Prohibited Uses" is hereby amended as follows:

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development. MICC**

19.09.010 “Preapplication and intake screening meetings” is hereby amended as follows:

**19.09.010 Preapplication and intake screening meetings.**

A. Preapplication meetings between the applicant, members of the applicant’s project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

...

**Section 5. Amendments to Chapter 19.09 MICC, Administration. MICC 19.15.010(E)**

“General Procedures” is hereby amended as follows:

...

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Ministerial Actions			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety	Police chief	MICC 19.06.080(A)	Hearing examiner

Determination			
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court

<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board

\*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).

\*\*The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.

**Section 6:**     **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:**     **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 8:**     **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: \_\_\_\_\_

## George Steirer

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**From:** Sue Bennett [suebennett18@comcast.net]  
**Sent:** Wednesday, October 21, 2009 7:38 PM  
**To:** George Steirer  
**Subject:** tent city

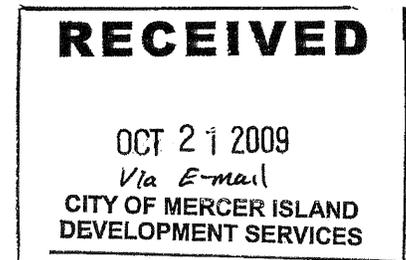
I read about the open house to discuss the tent city experience. I can't attend and I worry that those most motivated to attend will be motivated by dissatisfaction. Often those that are happy about an issue don't feel moved to do anything. I just want to say that I thought the tent city event was handled very well.

My family joined with another family to offer dinner one night. The people living in tent city were polite and appreciative. My kids had a rare experience of having a meal with people very different from them, and of feeling like they were tangibly helping someone else. I was impressed with how tent city organized itself and managed its security, showers, meals, etc. The whole operation was organized, safe, accessible, and well-run.

Thank you to those that made it happen, who were not afraid to reach out to others, who see the benefit in stretching our community and sharing our resources. No one was forced to participate, yet the opportunity to be a part of this broader community was open to all. It was the best of Mercer Island.

Sincerely,

Sue Bennett  
6510 81st Ave SE  
Mercer Island, WA 98040  
206-275-2669



10/21/2009

**RECEIVED**

OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

To Whom It May Concern:

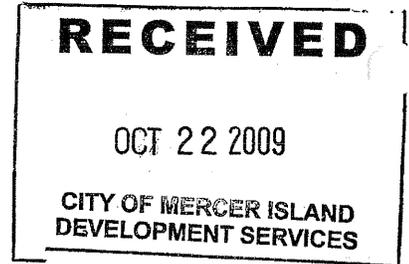
Unfortunately, I won't be able to attend the TC meeting tomorrow night. However, I would like to pass on some comments to the Planning Commission as one more First Hill Neighborhood voice.

I'm concerned that the Ordinance, as drafted, has no restriction on Tent City returning to the same location year after year. This is completely unfair to the impacted neighborhood. If Tent City is allowed to come to the Island, which I strongly oppose, then the least the Commission can do is to spread the wealth around- let other neighborhoods experience the joy. Maybe then, more people would wake up to what a sham Share/Wheel is.

In general, I feel that any ordinance drafted by Mercer Island should encompass the strictest requirements of other cities that have ordinances in place regarding Tent City. Those cities have put in strict requirements for a reason. I think Mercer Island should take heed and learn from the experience of other cities. First and foremost, the Planning Commission and City Council should work for the safety and welfare of the citizens of Mercer Island.

Elizabeth Insinger

10/22/2009



City Council members,

The draft ordinance appears to address some of the concerns of the citizens of Mercer Island and the First Hill neighbors. In addition to what is already proposed, I would like to limit the time of a temporary use to 60 days; and see an elapsed time between visits to the same location of 18 months. The City of Bellevue requires 18 months between visits in their Agreement.

Moreover, I would like to see the time frame for violation resolution moved to 48 hours. The city of Bothell allows 48 hours for conflict resolution.

It is **imperative** that current sex offender and warrant checks are required upon moving to a temporary site onto Mercer Island; and not using checks from other locations that were completed two years prior. If even a percentage of a "temporary use" population have outstanding warrants when they move onto Mercer Island, it is not okay. Warrant and Sex Offender checks would have saved time and resources for both the city and the citizens.

Furthermore, I would like to see the security patrols removed completely as these patrols did little to enforce security and caused lots of disruption to the neighbors. Would the boy scouts be walking up and down the streets at 2am? Our own police force did more for security than these patrols. Both the Cities of Kirkland and Redmond prohibit these patrols.

Please work for those who elected you to represent the citizens of Mercer Island by enacting the above changes.

Regards,

Jayne Judd

Dear Mayor Pearman and City Council Members,

Just a quick note concerning the new city ordinance on temporary encampments (i.e. Tent City), and what we would like included in the ordinance.

We all work very hard to live here on beautiful Mercer Island, and we feel if Tent City returns, the experience of hosting Tent City should be shared among all of its supporters. If MI is to host Tent City again, we feel all of the MI Clergy Assoc. sponsoring churches should actively participate in rotating Tent City onto their properties for 3 months, before Tent City is ever allowed to return to the United Methodist Church. This will allow Tent City supporters here on MI to fully appreciate the positives and negatives that Tent City brought into our neighborhood for 3 months in 2008.

If the other MI Clergy Assoc. sponsoring churches choose not to participate in this rotation, we feel the United Methodist Church will willingly host them for 3 months of every year in our neighborhood. Subsequently, property owners within a certain radius of Tent City who choose to sell their homes may be legally required to disclose this perceived benefit or defect to potential home buyers, property values may fall even more than they have recently, and this condition may result in additional real estate foreclosures and short sales.

To encourage Tent City supporters to participate, please include a provision in the new ordinance to rotate the site of Tent City among all MI Clergy Association sponsoring churches before Tent City is ever allowed to return to the United Methodist Church again.

Thank you for your time and the good that you do for all of Mercer Island.

Sincerely,

John & Susan Redifer

cc: Katie Knight, MI City Attorney  
Ali Spietz, MI City Clerk

10/22/2009

**RECEIVED**

OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Nancy & Bob Hilliard

Mailing Address: 3611 93rd AVE SE MI

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: \_\_\_\_\_

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

We so enjoyed our connections  
w. the former Tent City and  
are proud of our community  
to be hosting these —  
keep it up —

<b>RECEIVED</b>
OCT 22 2009
CITY OF MERCER ISLAND DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Marnie Holen

Mailing Address: 4818 E Mercer Way MI 98040

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: mholen@comcast.net

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

My concern is that an ordinance on fencing may make the fencing material so expensive, that the hosting costs go ~~the~~ above normal costs and cause religious organizations reason to not <sup>be</sup> able to host.

**RECEIVED**  
OCT 22 2009  
CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Elta Loy

Mailing Address: 7660<sup>SE</sup> 29<sup>th</sup> St #202

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: \_\_\_\_\_

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

Our church, The Congregational Church on M. I. fully support Tent City and had the privilege of providing 5 meals for the residents. Our members participated to teach their children and grandchildren by example to respect others among many reasons and in interviewing the participants after their experiences every single individual mutually agreed that they felt they had received far more than they gave.

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OCT 22 2009  
CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

**Community Meeting Regarding Tent City**

**October 22, 2009**

**Notes taken from attendees (scribes: Joyce Trantina and Joy Johnston)**

**(Notes are listed in the order in which they were spoken. Lines delineate the change in speaker. The notes are only a summary.)**

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Jerry Bradshaw

Increased traffic and disruption to neighborhood.

Concerns regarding #6, #19, #20 of Ordinance. Violations should be resolved within 48 hours or camp closed.

Utilize professional security patrols versus untrained (TC patrols).

Concerns regarding reduced property values to neighboring homes.

No follow-thru with neighbors by Church.

What did Tent City cost all City Depts.?

All neighborhoods should take turns, versus the same host.

Some may believe it is the City's duty to bring back Tent City.

---

Steve Bryan – 2426 70<sup>th</sup> Ave SE

Appreciate the meeting with First Hill neighborhood, process has been constructive.

Smoking area – should be addressed in the Ordinance, need to limit the amount of impact on the neighborhood..

Need to address delivery services (early morning servicing of sani-cans, and other services) were disruptive to neighbors.

---

Mercer Island Presbyterian Church – 100+ people signed up to provide meals for TC while they were here (ages 3 to 70). All of their feedback about the experience of having TC on Mercer Island has been positive.

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Where in the process does the Church/Synagogue actually extend the invitation?

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Chuck Hodge

Regarding the map – does the regulation limit a church, based on public transportation?

---

Steve Case – 4250 Shoreclub Drive

Does the 12 month time period in the Ordinance count from the beginning (when TC arrives) or the end (after TC leaves)?

---

Jessica Prince

Family spent time at the camp and made connections with the people living there – positive experience to be with them. Would Tent City be able to come back? Is the Ordinance structured in such a way so as to make it difficult for TC to ever return to MI?

---

Dale Sewell – 9535 Mercerwood Drive

No interest in having TC coming back more than once a year or returning to the same neighborhoods. Some congregations had concerns regarding the one mile distance (i.e. if one church hosts, will the other 11 churches be restricted from hosting for 12 months? ). Isn't this unconstitutional? Would any other sites be eliminated because of the ordinance?

Good process – the City should meet with the Clergy Association to discuss the Ordinance and talk about constitutional issues/concerns.

---

Rev. Leslie Ann Knight – 6616 SE 24<sup>th</sup> St.

Need a parking regulation in the Ordinance. Most development/building projects require “more than enough” parking, i.e. the churches have plenty of parking capacity.

Timeline looks too long – TC is often “emergency housing” – a mandatory time of 3 months preparation seems too long – how does that compare to other cities?.

Will this Ordinance afford the church's some protection from litigation?

---

Legend of map - 600' to school site, what are the implications for TC? What if the issues can't be resolved?

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Is the one year restriction more restrictive? Versus the language in the Temporary use Agreement – (Tent City can't come anywhere on the Island for one year).

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Tara Johnson

Ordinance Issues:

#6 – would prefer 18 months (like Bellevue)

#20 – 14 days too generous, would like 48 hours to resolve

#17 – need to be more specific regarding “reasonable verification”

Requirement of host church to hold monthly meetings with neighbors.

Security patrols should be prohibited like Redmond and Kirkland, especially in the middle of the night.

Parking – add language to address overflow issues (blocking neighbors driveways, etc.)

---

Karen Morris, Bellevue

Fence – more than appearance, but is meant to provide one point of entrance/exit for TC residents.

Hold Harmless provision, but no requirement for liability insurance.

Should be meetings with schools – concern about cooperation with school requests.

City staff should not refer to “proponents” and “opponents” - too demeaning.

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Ira Appleman

Ordinance refers to temporary encampments (not specifically Tent City). What about Boy Scout Jamborees?

Should this be a Conditional use Agreement instead of an Ordinance?

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Don't write an Ordinance for one specific use/organization.



# Memorandum

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## City Attorney's Office

Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

**RE: Overview of 2008 Tent City Experience**

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### I. 2008 TENT CITY EXPERIENCE

#### A. LEGAL

##### 1. Factual Background

The Mercer Island United Methodist Church ("Church") invited the nonprofit organization SHARE/WHEEL, organizer and manager of Tent City 4, to establish a Tent City encampment on the Church's property for three months beginning August 5, 2008. The Church's pastor, congregational leaders, and SHARE/WHEEL signed a Temporary Use Agreement ("Agreement") with the City after a small amendment was made during the City Council meeting on June 16, 2008.

Based on the extensive litigation with Eastside communities in the past, the City determined that it was unlikely to prevail on forbidding such an encampment if the Church invited Tent City 4. The City also determined that it was likely to obtain more favorable conditions to the City if it entered into a voluntary agreement with SHARE/WHEEL and the Church.

The Temporary Use Agreement contained the following terms:

- There will not be more than one encampment on Mercer Island in a calendar year at the Church and the duration of any stay will not exceed three months.
- The location and visual screening of the camp will afford privacy for Tent City residents and neighbors.
- No more than 100 people will stay at the camp.
- The church will manage parking at weekly services to minimize spillover onto neighborhood streets.
- No children under the age of 18 will reside in the Tent City encampment.
- A stringent code of conduct will be enforced and SHARE/WHEEL and the Church will comply with all lawful City and State codes.

- The identity of all camp residents will be verified, and warrant and sex offender status of prospective residents will be checked. Any positive results reported to the MI Police Department.
- No sex offenders will be allowed to stay at the encampment.
- The Church and Tent City managers will allow regular inspections by the City (Fire, Police and DSG) and the King County Health Department.
- The Church and SHARE/WHEEL agreed to a hold harmless and indemnification provision.

Pursuant to the Agreement, the Church held a public informational neighborhood meeting approximately one month prior to establishment of the encampment, with notice of the meeting published in the MI Reporter and delivered to nearby residents/owners two weeks prior to the meeting.

Prior to Tent City 4's arrival, the City, Church and SHARE/WHEEL were sued by a group calling themselves Citizens for Fair Process. Ultimately, the trial court dismissed the group's claims. The dismissal of the case has been appealed. Tent City 4 moved to Mercer Island in August, 2008 for about 90 days.

## 2. Constitutional Issues

As is discussed more fully below, courts across the nation have recognized the activities of feeding the hungry and sheltering the homeless as core religious activities. For example, the court reviewing Tent City's arrival at St. Brendan's in Bothell found as a matter of law that "St. Brendan's use of its property for the purpose of sheltering the homeless constitutes the exercise of religion and is protected by the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington State Constitution."

### A. The Washington State Constitution Bars Government Restrictions on the Exercise of Religious Duties on Church Property Unless a Compelling Governmental Interest Demands Intervention.

Article 1, Section 11 of the Washington State Constitution ensures "[a]bsolute freedom of conscience in all matters of religious sentiment, belief, and worship" to "every individual" and guarantees that "no one shall be molested or disturbed in person or property on account of religion." This guarantee of free exercise – significantly stronger than the corresponding provision in the federal Constitution – "is 'of vital importance.'" *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 226, 840 P.2d 174, 186-87 (Wash. 1992). If the "coercive effect of [an] enactment" operates against a party "in the practice of his religion", it unduly burdens the free exercise of religion. A facially neutral, even-handedly enforced statute that does not directly burden free exercise may, nonetheless, violate Article 1, section 11, if it indirectly burdens the exercise of religion. State action is constitutional under the free exercise clause of article 1 if the action results in no infringement of a citizen's right or if a compelling state interest justifies any burden on the free exercise of religion. *Id.* at 226, 840 P.2d at 187 (citations omitted; alterations and omissions in the original); *see also Munns v. Martin*, 130 Wn.2d 192, 200, 930 P.2d 318, 321 (Wash. 1997); *City of Sumner v. First Baptist Church*, 97 Wn.2d 1, 5, 639 P.2d 1358, 1361 (Wash. 1982).

“A ‘compelling interest’ is one that has a ‘clear justification . . . in the necessities of national or community life’, that prevents a ‘clear and present, grave and immediate’ danger to public health, peace and welfare.” *First Covenant*, 120 Wn.2d at 226-27, 840 P.2d at 187 (citations omitted; emphasis added). The interest must be “paramount.” *Sherber v. Verner*, 374 U.S. 398, 406 (1963). The test also focuses on the means used to accomplish the asserted interest: “The State also must demonstrate that the means chosen to achieve its compelling interest are necessary and the least restrictive available.” *First Covenant*, 120 Wn.2d at 227, 840 P.2d at 187. The least restrictive means element is virtually impossible to satisfy when reasonable alternatives exist that would advance the government’s interests without sacrificing the religious exercise at issue. In effect, this means that the courts will examine the regulations on a case-by-case basis, and the City will have to show that its regulations were the minimum necessary to achieve its interests in the health, safety and welfare of its citizens. The regulations cannot be such that the use ends up being prohibited if there is a way to achieve the use while protecting the health, safety and welfare of citizens.

The Washington State Supreme Court, in a 9-0 decision, most recently declared that numerous cases before it have already decided that the state constitution “absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution...” *First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 229-30, 840 P.2d 174 (1992). The court concluded that the religious organizations have more protection under Washington’s constitution and did not go further to determine whether there was violation of RLUIPA. Under this decision, Cities may regulate concerns for safety, noise, and crime but may not outright deny consideration of permitting. *City of Woodinville v. Northshore Church of United Christ*, WA Supreme Court slip opinion, July 16, 2009.

Although the *Woodinville* court determined that it only needed to base its decision on the Washington State Constitution, a review of the U.S. Constitution assists in understanding the concerns regarding regulating ministry to the homeless.

B. The Free Exercise Clause Of The First Amendment To The United States Constitution Bars Government From Interfering With A Church’s Ministry To The Homeless Unless A Compelling Governmental Interest Demands Intervention.

Like the Washington Constitution, the United States Constitution proscribes governmental action that infringes on the ability of churches to exercise the mandates of their faith. The First Amendment both guarantees the right of free exercise of religion and provides that government may not establish or otherwise control religion. *See* U.S. Const. Amend I.

The same compelling governmental interest test applied by the Washington courts also applies under the First Amendment where, as in most land use matters, individualized exemptions to otherwise generally applicable rules are allowed in the discretion of government officials. In the case of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, (1993), the United States Supreme Court held:

As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government

“may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.”

508 U.S. at 537. Thus, the Free Exercise clause of the First Amendment prohibits enforcement of zoning regulations that place a substantial burden on the exercise of religion unless the land use authority demonstrates that the regulations are necessary to further a compelling governmental interest (*i.e.*, prevention of a clear, present, grave and immediate danger to public health, peace and welfare) and that the least restrictive means necessary to further that governmental interest are employed.

C. RLUIPA Bars Government Restrictions On The Exercise Of Religious Duties On Church Property Unless A Compelling Governmental Interest Demands Intervention.

After finding substantial evidence of widespread discrimination against religious uses of land, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). RLUIPA bars enforcement of any local land use law or regulation that fails the “compelling state interest” test:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling government interest.

42 U.S.C. 2000cc § 2(a)(1).

RLUIPA specifically permits aggrieved churches to challenge enforcement actions that burden the free exercise of religion. *See id.*, § 4(a). As under the constitutional standard, once a church produces evidence demonstrating a burden on the exercise of religion, it is the government’s burden to justify its actions under the compelling governmental interest test. *See id.*, § 2(a)(1)(A)-(B); § 4(b); § 8(2). RLUIPA is to “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” *Id.*, § 5(g) (emphasis added). Anyone who successfully asserts a RLUIPA claim is entitled to an award of attorney’s fees. *See id.*, § 4(d); 42 U.S.C. § 1988(b).

The Act broadly defines the term “land use regulation” to mean any “zoning . . . law, or the application of such a law, that limits or restricts a claimant’s use . . . of land.” *Id.*, § 8(5). RLUIPA defines “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” *Id.*, §7(A). While the Act does not define “substantial burden,” courts have repeatedly interpreted the term in similar contexts. Among other things, “a substantial burden on the free exercise of religion . . . is one that forces

adherents of a religion to refrain from religiously motivated conduct . . .”. *Mack v. O’Leary*, 80 F.3d 1175, 1179 (7th Cir. 1996), *certiorari granted, judgment vacated on other grounds*, 522 U.S. 801 (1997); *see also Brown-El v. Harris*, 26 F.3d 68, 70 (8th Cir. 1994) (government action that forces religious adherents “to refrain from religiously motivated conduct” substantially burdens religious exercise); *Werner v. McCotter*, 49 F.2d 1476, 1480 (10th Cir. 1995) (action that “significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a [person’s] individual beliefs” substantially burdens religious exercise).

Section 5(e) of RLUIPA makes it clear that Congress intended land use authorities to be flexible in accommodating churches’ free exercise of religion. That section states:

A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

*Id.* §5(e). Thus, the Act specifically provides that a land use regulator may comply with RLUIPA and accommodate a church’s exercising the mandates of its religion by recognizing higher standards of regulation in connection with homeless ministries. Here, the City used its inherent ability to contract in order to accommodate the flexibility dictated in RLUIPA. Just as development agreements are entered into by the City and private entities in order to address such issues, the City entered into the Temporary Use Agreement with the Church and with SHARE/WHEEL to accommodate the Church’s exercise of the mandates of its religion while regulating concerns about the health, safety and welfare of its citizens and the Tent City 4 residents.

State and Federal law supersede the City’s municipal code. If the City’s code is in conflict with these superior laws, then those laws govern and the City cannot prohibit the activity. Even if the City code is silent with regard to Temporary Homeless Encampments, federal law and state law mandate that the City not impose burdens to hinder this activity.

Given the Church’s stated intent to host Tent City 4 on its property, the City’s authority to prohibit this impending encampment was at best uncertain. The King County Superior Court’s June 10, 2004 decision reflected this tenuous legal landscape by refusing to grant the City of Bothell’s request for a preliminary injunction, even where Tent City 4 had established its homeless encampment unlawfully and without the requested local permits. The City of Mercer Island was entitled to rely upon the experiences of other municipalities (e.g., Bothell) in determining an appropriate response to the encampment’s arrival at the Church. *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986). The ultimate wisdom of the City Council’s responsive policy is not properly subject to review. *See, e.g., Davis v. exrel. Dept of Licensing*, 137 Wn.2d 957, 976, n.12, 977 P.2d 534 (1999).

## **B. DSG Experience with Tent City**

### **1. Title 19 MICC – Unified Land Development Code**

Title 19 of the Mercer Island City Code (MICC) regulates the manner in which land is used and developed throughout the island. This includes the types of land uses allowed in various locations and the allowed or required physical attributes of those uses. The R-9.6 zoning district is intended primarily for single family residential use. Certain non-residential uses considered to be supportive of a residential environment (e.g., schools and places of worship) or needing a residential environment to operate effectively (e.g., special needs group housing) are also allowed either outright or through a “conditional use” review process.

Title 19 does not specifically address the appropriate location or required attributes of temporary homeless encampments such as Tent City 4. Section 19.06.010 of the city code specifies uses that are prohibited, but the list of prohibited uses does not include temporary homeless encampments or any similar use.

Experience: As discussed elsewhere in this report, the legal right of religious organizations to host such temporary homeless encampments has been recognized by the courts. Based upon this right and the provisions of the Title 19 described above, it was determined that nothing within the City’s land use regulations would prevent or specify the conditions under which MIUMC or another place of worship could host Tent City 4.

In light of the lack of specific guidance within Title 19 regarding the conditions under which a temporary homeless encampment might operate, City staff worked with MIUMC, Share/Wheel and Tent City 4 to include in the Temporary Use Agreement requirements typically applied to other allowed uses. These include: property line setbacks and screening or visual buffering; exterior lighting; density or intensity of use (maximum number of residents); and parking. Provisions included in the Agreement were based, to the extent deemed appropriate, on requirements for similar uses and situations under the Title 19.

*Setbacks and Screening.* The Temporary Use Agreement established requirements that Tent City 4 must be located at least 20 feet from any abutting residential property, and that a sight-obscuring fence and/or vegetation shall be provided within this area. These requirements were based partly on the perimeter screening requirements for “Multifamily Development” uses located adjacent to “Single-Family Residential ” uses as specified by MICC 19.12.040.B.7. These requirements were met by Tent City 4 with the exception of a minor encroachment on the 20 feet setback that was immediately remedied after the encampment was notified of the problem.

*Exterior Lighting.* The Temporary Use Agreement established requirements that exterior lighting associated with Tent City 4 must be directed downward, away from adjoining properties and contained within the temporary homeless encampment. This provision was based partly on MICC 19.12.070, which requires that exterior lighting for regulated developments must be shielded or located to confine light spread and the associated negative impacts within the site boundaries. The City received no recorded complaints regarding light spillover impacts on surrounding properties.

*Density/Intensity of Use.* In the Agreement, Tent City 4 was limited to a maximum of 100 persons, but still must meet all setbacks as well as health and safety issues. The Agreement stated that in exigent circumstances, this number could be exceeded if a person or persons seek shelter overnight.

*Parking.* The Agreement required a minimum of 26 off-street parking stalls on Saturdays, Sundays and after 6:00 p.m. on weekdays. A minimum of 8 off-street parking stalls were required at all other times.

*Portable Toilets.* MICC 19.06.010 prohibits the use of portable toilets except for emergency or construction use. In the case of Tent City 4 at MIUMC, portable toilets were allowed as a reasonable and necessary accommodation. The Temporary Use Agreement required portable toilets that were serviced on a regular basis. There was concern by neighbors regarding odors from the toilets, and servicing prior to 7:00 a.m.

#### Chapter 15.14 MICC – Unlawful Cross-Connections

Description: Chapter 15.14 regulates connections to the use of City utilities.

Experience:

*Water system backflow prevention.* Potable water was supplied to Tent City 4 by a hose connection to an existing hose bib on the exterior of the church building. Under the provisions of MICC 15.14.030 *Backflow Prevention Devices Required*, it was determined that appropriate backflow prevention was advisable to prevent any potential for water system contamination. An approved backflow prevention device was installed by Tent City 4. This device was inspected and approved by the city's certified cross-connection control inspector and its continued use was verified by other inspectors on several occasions throughout the Tent City stay.

*Sanitary sewer connection.* Grey water from a portable shower facility and hand washing stations was collected in a sump and pumped to a sanitary sewer connection in MIUMC property. This system and the connection were inspected and approved by the city utilities inspector. On one occasion power to the sump pump was inadvertently disconnected and a small quantity of grey water overflowed the sump but did not leave the site. The issue was immediately resolved upon notification of Tent City 4.

*(ix) Compliance with Codes.* *SHARE/WHEEL and the Church shall comply with lawful Washington State and City codes concerning but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.*

### **C. Police Experience with TC4**

Prior to Tent City's arrival on Mercer Island in 2008, the City's Police Department had no direct experience with Tent City. Upon learning that Tent City may come to Mercer Island, the department reached out to other Police Departments in the area and requested a summary of their experience with the encampment in their communities. The Police Chief also interviewed several of the Police Chiefs, and did on-site visits of the encampment in Bellevue. Subsequently, the department drafted its Police Department Response Plan, wherein roles and responsibilities were outlined for the Police Chief, the Police Liaison, the Patrol Section, the Criminal Investigations Section, and the Records Section.

The Police Department took the presence of Tent City very seriously, and dedicated resources to this encampment and the surrounding neighborhoods. In addition to general patrols of the area, officers also physically walked through the encampment 287 times during the three-month stay. The residents of Tent City welcomed the officers, and appreciated the time they spent with them. The residents in the surrounding neighborhoods also appreciated the extra presence of the patrol officers.

A detective was assigned as the Police Department's Tent City Liaison, which proved very helpful in many ways. He was able to build relationships with the residents of the encampment as well as the residents of the surrounding neighborhoods. He provided a consistent point of contact, and he was able to develop a solid understanding of the concerns that surrounded the encampment.

The Police Officers made a total of nine arrests of Tent City residents. Five arrests were for outstanding warrants, two were for traffic offenses, one was for violation of a No Contact Order, and one was for a Domestic Violence assault. In addition to these five arrests, the officers also took 15 other reports ranging from graffiti and littering to reports of water balloons being tossed into Tent City. None of these reports were for felony crimes.

The extra efforts relating to Tent City added to the Department's daily workload, but it did not prove to be over- burdensome. Officers shifted their focus for portions of their shifts to the First Hill neighborhood rather than other areas of the city. However, this focus did not prevent officers from addressing calls for service in other areas of the city. Overall, the Police Department was able to effectively manage their core mission of protecting all the residents of this community.

### **D. Fire Department Experience with Tent City**

Mercer Island Fire Department ("MIFD") did not have any experience with a group such as Tent City 4 prior to their arrival in August 2008. In order to prepare for Tent City's arrival, MIFD contacted several neighboring departments who had dealt with the challenges associated with having the camp in their operations area. MIFD discovered that every department reported Tent City 4 had very little impact on call volume and services including, both fire and EMS.

After Tent City 4's arrival, the Fire Marshal worked closely with the Tent City 4 staff and several city staff to ensure that the encampment complied with all appropriate fire codes. Tent

City 4 residents and staff were found to be very helpful and compliant with all MIFD and Fire Marshall requirements. Duty crews were asked to perform walk-through inspections and area familiarization on a daily basis to increase safety for the residents and our staff.

The following is a brief summary of the fire department's experience with Tent City 4:

- Walk Throughs
  - Duty Crews - 32
  - Fire Marshal - 4
  - Deputy Chief - 2
  - Fire Chief - 1
- EMS Calls
  - Approximately - 4
- Fire Calls
  - None
- Service Calls
  - None

Overall, Tent City 4 had a minimal impact on the calls for service to the Fire Department.

#### **E. Communication Experience with Tent City**

The possibility of hosting Tent City on Mercer Island was first introduced to the public in the Mercer Island Reporter on June 13, 2007 in an article submitted by the Mercer Island Clergy Association. The news was subsequently repeated in the Seattle Times and other major regional media. At that time, the City established a dedicated Tent City webpage at [www.mercergov.org/tentcity](http://www.mercergov.org/tentcity).

In mid-May of 2008, Mercer Island United Methodist Church (MIUMC) announced its intention to host Tent City 4. As details unfolded, the City worked closely with MIUMC to establish a process of public notification. On May 30, 2009, MIUMC submitted a press release to the Mercer Island Reporter. An article titled "Tent City Coming in August to Island" appeared on the front page of the June 4, 2008 edition. In addition, Rev. Dale Sewall published an article in the same edition of the Mercer Island Reporter on behalf of the Mercer Island Clergy Association. The news was also repeated in major media, including KING 5 and KOMO. On June 11, 2008 notice of the City Council Meeting at which the Temporary Use Agreement for Tent City would be discussed was published in the Mercer Island Reporter.

The Temporary Use Agreement required that SHARE/WHEEL and the church conduct a neighborhood meeting a minimum of 20 calendar days prior to the opening date of the temporary homeless encampment, and that notice of the meeting be provided to residents within 600 feet of the church. SHARE/WHEEL and MIUMC hosted a public meeting on July 9, 2008. Notice of the meeting was hand-delivered to all residents within 600 feet of the church.

Throughout the time leading up to and throughout Tent City 4's stay on Mercer Island, the City updated information on the City's website and published information in the City's weekly e-newsletter, MI Weekly, which is distributed to about 500 subscribers throughout the Island. The City's Communications Coordinator became the primary contact for media inquiries,

and the story continued to garner attention of regional media including KUOW and major network stations. Citizen comments were received through email, phone calls and during the appearances portion of City Council meetings. From June through December 2008, approximately 110 comments were heard from 83 individuals at Mercer Island City Council Meetings.

City staff has responded and continues to respond to public records requests for documents regarding Tent City.

## **II. CONCLUSION**

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large at the October 22, 2009 community meeting.



# *Memorandum*

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## *City Attorney's Office*

Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

**RE: Overview for Discussion of Temporary Encampment Regulations**

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### **I. OVERVIEW**

The briefing on October 7 is intended to provide the Planning Commission with an overview of the draft temporary encampment ordinance, and to provide feedback on the experience of Tent City 4 when it came to the City last year. The formal public hearing on the ordinance itself will be held November 18, 2009. The meeting tonight is informational only. The draft ordinance is provided to present a context for discussion for future regulation of temporary encampments, based upon the experience from last year. At this early point, it does not represent a "staff recommended ordinance." It merely represents a starting point for the Commission's and community's discussion.

#### **A. Background**

For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to prepare a draft ordinance for Council's consideration. The City Council asked to have an ordinance ready to pass by January 31, 2010. The Council directed staff to hold a public meeting with the First Hill neighborhood to receive their input and perspective regarding their experiences related to the 2008 hosting of Tent City, as well as a community wide public meeting to respond to the draft ordinance.

City staff held a public meeting on August 25th at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. On October 22, the City will hold a community-wide open house at the Community Center at Mercer View ("CCMV") to provide a forum for additional public input, to discuss the lessons learned from the Tent City experience, and to provide an overview of the draft Temporary Encampment ordinance. The major areas of discussion will include:

- Legal Structure
  - Legal/constitutional requirements
  - Legal precedent
- Communications
  - Public noticing of neighbors, community
  - Opportunities for public involvement
- Location of future Tent City
  - Regulatory issues
  - Benefits/concerns of site
- Public Safety
  - Fire safety
  - Enforcement
  - Emergency medical services
  - Public health
- Compliance
  - City code requirements
  - City Ordinance
  - Tent City Code of Conduct

## B. EXHIBITS

1. Exhibit A is the draft Temporary Encampment Ordinance.
2. Exhibit B is the process timeline.
3. Exhibit C is a map of the City identifying the location of the religious institutions which may potentially host a temporary encampment and their relation to transit stops, schools and daycares.
4. Attached as Exhibit D is a comparison chart of the proposed ordinance and other Eastside City Ordinances. Note that the comparisons are being drawn to the actual ordinances themselves, not to subsequent permits issued pursuant to those ordinances. (The Issaquah example is a mix of the ordinance and the conditions placed on the permit under the broad “any mitigation necessary” provision as Temporary Encampments are shoehorned into Temporary Use Permits.)

## II. DRAFT ORDINANCE

The Washington Supreme Court has unanimously determined that religious organizations are allowed to minister to the homeless, so there is no ability by municipalities to completely prohibit temporary encampments at churches. Municipalities are permitted, however, to regulate such temporary use based on health, safety and welfare issues. In the land use realm, a number of strategies exist which allow local governments to address regulation of temporary uses, such as through temporary use agreements, permits, or ordinances. The temporary use agreement is useful in negotiating specific issues which have not been encountered previously. Some uses

may be generally authorized by ordinance, but any regulations are provided specifically in the temporary use permit itself. Some ordinances permit the use and contain the regulations within the body of the ordinance itself, and may not require a permit. Other ordinances do a blend of both.

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The draft ordinance provided by Mercer Island staff puts the majority of regulations within the ordinance, while allowing flexibility for the Code Official to adopt additional requirements in the permit itself based on the location of the temporary encampment. A matrix is attached to demonstrate the draft ordinance compared to other cities' ordinances (as opposed to temporary permits). Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the draft ordinance.

The key provisions of the draft Temporary Encampment Ordinance are as follows:

- Maximum stay of 90 days at one location, in any 12 month period
- No permit is granted for a temporary encampment proposed to commence on site within one mile of any site that contained a temporary encampment within the last 12 months
- Although Design Review would not apply for temporary encampments, screening and setback provisions are required.
- Temporary Encampments cannot reduce a site below the minimum allowed parking requirement for the other uses on the site.
- Public notice is required for all property owners within 600 feet, rather than the standard 300 feet.
- The Code Official has the discretion to require an informal neighborhood meeting during the comment period.
- Criminal background Warrant and sex offender checks are required of Temporary Encampment residents.
- Maximum amount of 100 persons.
- Compliance with Seattle-King County Health requirements and all state and city codes regarding drinking water connections, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.
- Hold harmless agreement required.
- Compliance with code of conduct.

Some other elements for discussion were not included in the current draft ordinance for a variety of reasons. Some are more appropriate for site-specific issues and can be addressed in the temporary encampment permit. Others are addressed through other code requirements. Some are likely to be considered unconstitutional. Those proposals are as follows, with some italicized commentary as appropriate:

- Permit fee: *(highest cost in other cities is approximately \$1600)*

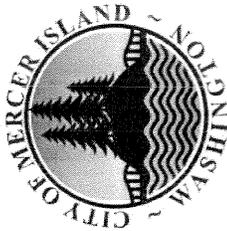
- Identification of Adverse Effects. “ The applicant shall identify potential adverse effects of the proposed temporary encampment on neighboring properties and the community and shall develop measures to mitigate such effects. The applicant shall submit a temporary encampment impact mitigation plan with the permit application. The plan shall contain a narrative and drawing(s) that describe, to the satisfaction of the community development director, the measures the applicant will use to mitigate the effects of the temporary encampment. At a minimum, the plan shall specifically describe the measures that will be implemented to satisfy the approval criteria provided in the MICC except for criteria specifically waived by the Code Official. The plan shall include a code of conduct and the names and phone numbers of all persons comprising the applicant. The form and mitigation plan shall be as specified by the community development director, but the elements of the plan shall be bound together. The approved temporary encampment impact mitigation plan shall be signed by the Code Official and the applicant and implementation and enforcement shall be a condition of the permit approval.”: *(such adverse effects addressed via the ordinance and site-specific permit)*
- Smoking requirements. Any established area for smoking shall conform to the following stipulations:
  - A. Noncombustible, approved ashtrays shall be provided;
  - B. A “designated smoking area” sign shall be posted
  - C. The area shall be located as far from the tent area as possible, the location will be subject to inspection by Fire Marshal Office.  
*(smoking requirements addressed via site-specific permit)*
- Tent requirements: “Tents over 200 sf shall be flame treated.” *(already addressed via requirement for compliance with codes/site-specific permit)*
- Conduct and Security Requirements: “Any temporary encampment shall comply with the City regulations regarding lawful behavior set forth in Mercer Island Code. Any temporary encampment shall provide all required legal access to public areas of the site by the City of Mercer Island Police Department and any other relevant law enforcement agency at all times.”: *(already required)* “ Additionally, where deemed necessary by the Development Director or the Police Chief, the applicant shall provide for the following:
  1. Verifiable Identification Required: The applicant shall take all reasonable and legal steps to obtain verifiable identification, such as a valid driver’s license, government issued identification card, military identification card, or passport, from all prospective and current camp residents.
  2. Other individuals who are turned away from the camp shall be handled as follows:
  3. A) Applicant shall walk the individual to the bus stop and wait with them until the bus arrives;
  - B) A camp vehicle shall be used to drive the individual to the closest available bus service or
  - C) A taxi or volunteer driver shall be called and the homeless encampment security workers shall be available to wait with the person. Taxi vouchers shall be available from sponsor when buses are not operating;

*(may be addressed in site-specific permit)*

- Sidewalk monitor requirement. “Host shall provide sidewalk monitors during normal hours when elementary, junior high or high school students are going to and from the bus stops.” *(may be addressed in site-specific permit)*
- Prohibition of neighborhood security foot patrols. “Residents and guest of encampment shall not perform neighborhood security foot patrol into the adjoining residential neighborhood.”: *(Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas)*
- Prohibition of Neighborhood Trash Patrols: “Neighborhood and trash patrol by residents and guests of encampment in adjoining residential neighborhood is prohibited.”: *(Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas—note that Bellevue’s ordinance actually requires such patrols)*
- Quiet hours requirement. “Quiet hours at encampment shall be between 9:00 PM and 8:00 AM.” *(may be addressed in site-specific permit)*
- Visiting Hours. “Visiting hours for Guests are between 8:00 AM and 9:00 PM. Guests must check-in and provide valid form of identification at camp security location and must leave by 9:00PM. Guests are prohibited from staying overnight in the camp.” *(potentially unconstitutional elements—some aspects addressed elsewhere)*
- Failure to apply for Permit. “If a temporary use for which a permit would be required is established without a permit first having been obtained, the Planning Director shall require all activities associated with the encampment shall cease immediately and the site shall immediately be vacated and restored to its pre-existing condition unless and until such time as a temporary use permit has been obtained.” *(may be addressed elsewhere in the City Code)*

### III. CONCLUSION

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large, at the October 22, 2009 community-wide meeting.



# Mercer Island Temporary Encampment Ordinance Comparison Matrix

Mercer Island code sections cited are within the Planning Commission recommended ordinance

	Mercer Island	Bellevue	Bothell	Issaquah*	Kirkland	Redmond	SeaTac
Minimum Time Application must be Submitted Prior to Arrival	90 days 19.06.090(A)(9)	Not specified	None specified	None specified	None specified	30 days. RCDG 20D.190-10.030.3.a	Notify city 30 days prior to arrival and 14 days prior to application. SMC 15.20.045.A.1
Time Limit for Returning	Must not be located within half mile of any site that contained a temporary encampment within the last 18 months. 19.06.090(A)(6)	May be located at the same site no more than once every 18 months. 20.30U.125(A)(5)	Shall not be allowed in one location for more than 90 days, either consecutively or cumulatively, during any 12-month period. BMC 12.06.160.B.3.c	No criteria found in ordinance or Special Event/Use Permit SPE07-00032.	The City may not grant a temporary use permit at the same site more frequently than once in every 365-day period. KZC 127.30.	Limited to a maximum of 110 days within any 365-day time period at one location. RCDG 20D.190-10.030.3.c	"The duration of the homeless encampment shall not exceed 90 days or exceed 180 days in any 2 year period." & "No more than one homeless encampment may be located in the City at any time." SMC 15.20.045.D.1 & 2.
Length of Stay.	Cannot exceed 90 days. 19.06.090(A)(5)	Cannot exceed 60 days. LUC 20.30U.125(A)(4). (Consent decree allows for 90 days)	90 days + weekend if 90 <sup>th</sup> day is on a Friday. BMC 12.06.160.B.3.c.	90 days. Special Event/Use Permit SPE07-00032.	Cannot exceed 92 days. KZC 127.30.	110 days "at one location". RCDG 20D.190-10.030.3.b	Cannot exceed 90 days. SMC 15.20.045.D.1
Encampment Setback from Abutting Properties.	20 feet or more, 19.06.090(A)(10)(a)	20 feet or more, LUC 20.30U.125.	20 feet or more, unless approved by adjacent property. BMC 12.06.160.B.3.b.2	No setback requirement in Permit. (IMC 5.14.050.A.10 allows for other conditions deemed necessary)	20 feet or more. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10.030.3.ii	None.
Sight Obscuring Fence or Screening Required?	Yes. 19.06.090(A)(10)(b)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.3	Yes. Use Permit # SPE07-00032.	Yes, KZC 127.25.	Planning Director's decision. RCDG 20D.190-10.030.3.ii	Yes. SMC 15.20.045.B.9 and 15.20.045.B.10
Lighting Regulation.	Lighting must be directed inward toward encampment. 19.06.090(A)(10)(c)	Glare and reflections must be contained within Camp. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.e.2	None in Permit.	Lighting must be directed downward and containing within camp. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10.030.3.iii	None.

# Mercer Island Temporary Encampment Ordinance Comparison Matrix

	<b>Mercer Island</b>	<b>Bellevue</b>	<b>Bothell</b>	<b>Issaquah*</b>	<b>Kirkland</b>	<b>Redmond</b>	<b>SeaTac</b>
Maximum Number of Residents at Encampment.	100 persons. 19.06.090(A)(9)	100 persons. LUC 20.30U.125.	Based on land area. No max #. BMC 12.06.160.B.3.b.1	100 persons. Use Permit # SPE07-00032.	100 persons. KZC 127.25.	100 persons. RCDG 20D.190-10-030.3.b	100 persons. SMC 15.20.045.B.6
Parking Requirements at Site?	Yes. 19.06.090(A)(1)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.4	Yes. Use Permit Condition 5.	Yes. KZC 127.25.	Yes. RCDG 20D.190-10-030.3.d	Yes. SMC 15.20.045.B.7
Proximity to transit Required?	Yes. Within 1/2 mile of a public transit stop. 19.06.090(A)(3)	Yes. Within 1/2 mile of a transit stop. LUC 20.30U.125.	Yes. Within 1/2 mile of transit stop. BMC 12.06.160.B.3.b.5	No requirement in Permit # SPE07-00032.	Yes. Within 1/2 mile of a transit stop. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.iii	Yes. Within 1/4 mile or provide carpool/shuttles. SMC 15.20.045.B.8
Children Prohibited from Staying in Encampment?	Yes. Cannot stay overnight, except under exigent circumstances. 19.06.090(A)(12)	Yes. LUC 20.30U.125.	Not Prohibited.	No. Not under Permit # SPE07-00032.	Yes. KZC 127.25	Planning Director's decision. RCDG 20D.190-10-030.3.f.i	Not Prohibited.
Code of Conduct for Persons in Encampment?	Yes. 19.06.090(A)(18)	Yes. LUC 20.30U.125	Yes. BMC 12.06.160.B.3.e.4	Not mentioned in Permit # SPE07-00032.	Yes. KZC 127.25	Yes. RCDG 20D.190-10-030.3.f.i	Yes. SMC 15.20.045.C.3
Specific Health, Safety and Fire Protections Apply?	Yes. 19.06.090(A)(7), 19.06.090(A)(8), 19.06.090(A)(13), 19.06.090(A)(14)	Yes.	Yes. BMC 12.06.160.B.3.d	Yes.	Yes.	Yes. RCDG 20D.190-10-030.2.d and 20D.190-10-030.3.f	Yes. SMC 15.20.045.B.2 and 15.20.045.B.3
Identification, and Warrant and Sex Offender Checks Required For Persons at Encampment?	Yes. 19.06.090(A)(17) and 19.06.090(A)(19)	Yes. 20.30U.121	Yes, when deemed necessary. BMC 12.06.160.B.3.e.3	Not mentioned in Permit # SPE07-00032. (may be in separate agreement with Police Depart.).	Yes. KZC 127.25.	Only identification required. RCDG 20D.190-10-030.3.e	Yes. SMC 15.20.045.C.5 and 15.20.045.C.6
Inspections Required?	"shall permit inspections". 19.06.090(A)(15)	Not addressed in 20.30U.	"may be conducted". BMC 12.06.160.B.3.d	Yes. Temp Use Permit.	Yes. KZC 127.25.	Not addressed.	"shall permit inspections". SMC 15.20.045.E.3
Is Notice Provided to Neighbors Prior to Decision?	Yes. 19.06.090(C)(1) and 19.06.090(C)(2)	Yes. LUC 20.35.510 & 525.	Yes. BMC 12.06.160.B.3.a.2 and BMC title 11	Not required for special use permit per IMC 5.14	Yes. KZC 127.42.	Yes. RCDG 20D.190-10-030.4	Yes. Notify property owners prior to application. SMC 15.20.045.A.2

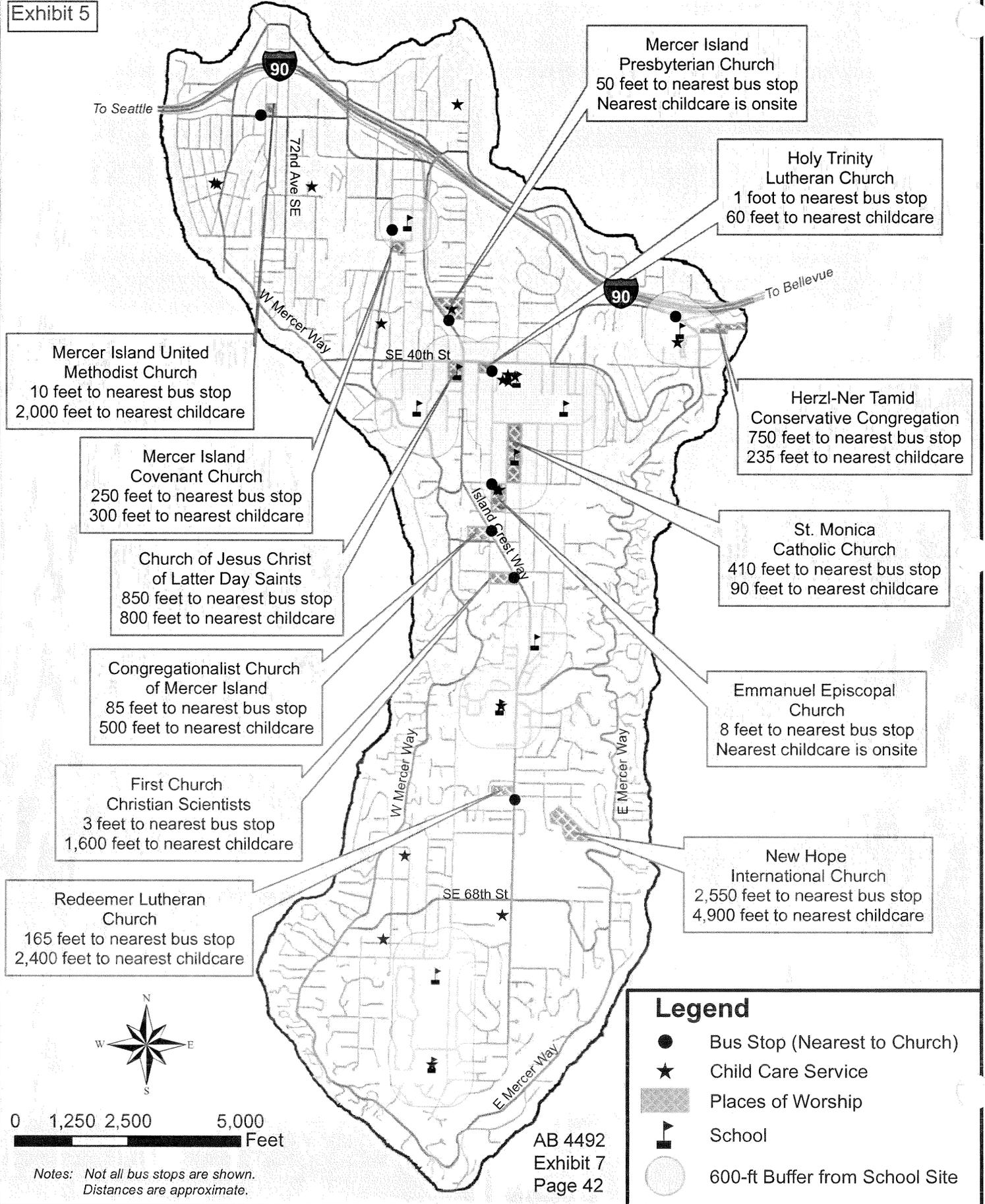
# Mercer Island Temporary Encampment Comparison Matrix

	<b>Mercer Island</b>	<b>Bellevue</b>	<b>Bothell</b>	<b>Issaquah*</b>	<b>Kirkland</b>	<b>Redmond</b>	<b>SeaTac</b>
Must Notify, and Meet and Confer with Nearby Schools and Daycares?	Yes. Any within 600 feet of the encampment. 19.06.090(C)(2)	Yes. Any within 600 feet of site. LUC 20.30U.122.	Yes. BMC 12.06.160.B.3.a.4	No. Not in Temporary Use Permit.	No. (does require compatibility with surrounding uses).	Not Prohibited.	Not Prohibited
Can There be Immediate Enforcement of Violations?	Yes. Mercer Island Codes 8.04.120, 8.30.030, 17.14, 17.15, and 19.15.030	Yes. LUC 20.30U.125 and BCC 1.18	Yes. BMC 12.06.160.B.3.a.7	Yes. IMC 5.14.090	Yes.	Yes. Chapter 1.14, 9.34, 14.04	Yes.
Are There Any Penalties for Violating Codes or Agreement?	Yes. Civil fines and penalties for City and State Code violations. Mercer Island Codes 8.04.120, 8.30.030, 17.14.113, 17.14.115, 17.15.030, 19.15.030, & RCW 70.95.240(2)(b-c)	Yes.	Yes. BMC 12.06.160.B.3.a.7 and 11.20.010	Yes. Civil fines or by imprisonment. IMC 5.14.060 and 5.14.090	Yes.	Yes. Chapter 1.14, 9.34, 14.04	Yes. Expulsion or Termination of Temporary Use Permit. SMC 15.20.045.C.3 or 15.20.045.F.1
Is there a provision for hold harmless / indemnification for City taxpayers?	Yes, City is held harmless and indemnified.	No.	Yes. BMC 12.06.160.B.3.f.1	Yes. Special use Permit Sec. 14.	No.	No.	No.
Process For People Evicted From Tent City?	Yes. Process for eviction or unlawful detainer. RCW 59.12. See RWC 59.16-59.20. See also Mercer Island City Code 9.14, Trespass, to which usual police procedures apply.	Yes.	Yes. BMC 12.06.160.B.3.e.3.D & C	Yes.	Yes. In Temp Use Permit ZOzn08-00001.	No.	No.
Application Fee	None at this time. Must be submitted if required. A \$250 refundable deposit for a public notice sign would be required. A fee of \$69 was charged for a temporary power permit for Tent City	\$440 total. \$110 land use fee, \$225 fee for land use sign, \$62 for fire inspection, \$43 for Right-of-Way use	Hourly rate based on time to process land use permit. Land use planner hourly rate is \$140.80	\$188.80 total. \$20 for special use permit, and \$168.80 for plumbing permit	\$212 for a Temporary Use Permit	\$1,601.77 for a Temporary Use Permit	\$60 for a Temporary Use Permit

\*Issaquah regulates Temporary Encampments with a "Temporary Use Permit" (which also includes many other temporary land uses) and is not specific to Temporary Encampments. Language is provided in the Issaquah Municipal Code that allows the city to place restrictions on the permit that are not necessarily spelled out in the code, subject to a legal nexus.

# PROXIMITY OF MERCER ISLAND PLACES OF WORSHIP TO BUS STOPS, SCHOOLS, AND CHILD CARE SERVICES

Exhibit 5



Mercer Island Presbyterian Church  
50 feet to nearest bus stop  
Nearest childcare is onsite

Holy Trinity Lutheran Church  
1 foot to nearest bus stop  
60 feet to nearest childcare

Mercer Island United Methodist Church  
10 feet to nearest bus stop  
2,000 feet to nearest childcare

Herzl-Ner Tamid Conservative Congregation  
750 feet to nearest bus stop  
235 feet to nearest childcare

Mercer Island Covenant Church  
250 feet to nearest bus stop  
300 feet to nearest childcare

St. Monica Catholic Church  
410 feet to nearest bus stop  
90 feet to nearest childcare

Church of Jesus Christ of Latter Day Saints  
850 feet to nearest bus stop  
800 feet to nearest childcare

Emmanuel Episcopal Church  
8 feet to nearest bus stop  
Nearest childcare is onsite

Congregationalist Church of Mercer Island  
85 feet to nearest bus stop  
500 feet to nearest childcare

First Church Christian Scientists  
3 feet to nearest bus stop  
1,600 feet to nearest childcare

New Hope International Church  
2,550 feet to nearest bus stop  
4,900 feet to nearest childcare

Redeemer Lutheran Church  
165 feet to nearest bus stop  
2,400 feet to nearest childcare

0 1,250 2,500 5,000 Feet

**City Council - Minutes**  
**Saturday, January 23, 2010**

**CALL TO ORDER:**

Mayor Jim Pearman called the meeting to order as follows in the Luther Burbank Room at the Community Center at Mercer View (8236 SE 24<sup>th</sup> Street, Mercer Island, Washington):

- January 22, 2010, 5:00 pm - 6:30 pm, 7:45 pm - 9:00 pm
- January 23, 2010, 8:30 am - 5:00 pm
- January 24, 2010, 8:30 am - 12:00 pm

**ROLL CALL:**

Councilmembers Bruce Bassett, Mike Cero, Mike Grady, Dan Grausz, Steve Litzow, Deputy Mayor El Jahncke and Mayor Jim Pearman were present.

The attached memo, dated February 8, 2010, to the Mercer Island City Council from Ginny Ratliff with Agreement Dynamics, Inc is hereby incorporated by reference as the minutes of the 2010 Mercer Island City Council Annual Planning Session.

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**TO:** Members of the Mercer Island City Council

**FROM:** Ginny Ratliff

**RE:** 2010 City Council Planning Session

**DATE:** February 8, 2010

Thank you for the opportunity to provide note-taking services for your January 23-24, 2010 City Council Planning Session. As always, it's a pleasure working with the City of Mercer Island.

## **Friday, January 23, 2009**

**MAYOR'S OPENING REMARKS**

Mayor Pearman welcomed the Council and staff to the 2010 Planning Session. He gave a quick review of the weekend's agenda noting that he thought there would be adequate time to discuss all of the Council's topics.

City Manager Rich Conrad then provided a brief review of the Council's 2009 Work Plan and the status of work plan items. He reported that all work plan items had been accomplished except those that were on January/February, 2010 calendars per Council or Planning Commission direction (Tent City Ordinance, Bike & Pedestrian Plan). He noted that the total agenda item "units" accomplished in 2009 turned out to be identical to those planned for at

the 2009 Planning Session – 98 agenda items. In response to Council Litzow's question, he also noted that this level of workload for the staff was realistic.

### **COUNCIL OPERATIONS**

Mayor Pearman opened the discussion by pointing out that every year the Council checks in about its own behavior and processes. City Manager Conrad highlighted an issue concerning Board and Commission council liaison roles that had come to light. The issue concerned council liaison engagement and influence on the work of the boards and commissions, particularly the Planning and Design Commissions. Consistent with Council-adopted protocols, Councilmembers agreed to maintain independence from any quasi-judicial work of the commissions as well as refraining from influencing any substantive policy recommendations arising from the commissions.

### **CITIZEN OF THE YEAR**

The Council ended the evening's session with a discussion of the Citizen of the Year Award.

## **Saturday, January 23, 2010**

### **BUDGET DISCUSSION**

Mayor Jim Pearman convened the meeting at 8:30 a.m. by welcoming Councilmembers, City staff, and community members to the 2010 Council Planning Session.

City Manager Conrad opened the discussion by explaining that the Council needed to discuss options to rebalance the 2010 budget and consider funding alternatives for some previous Council decisions affecting the General Fund.

Finance Director Chip Corder stated that the General Fund revenue shortfall for 2009 had increased to \$1.35 million (\$100,000 over his November 2009 projections) due to decreases in property, utility and sales taxes and fewer development fees. He also noted that the Capital Improvement Program (CIP) budget is also lower due to the decrease in real estate excise taxes (REET) resulting from fewer home sales and lower sales prices.

The Council and staff discussed Island housing prices, the likelihood and timing of an economic recovery, and that tapping the "rainy day fund" would not affect the City's bond rating,

Finance Director Corder and City Manager Conrad recommended rebalancing the 2010 General Fund budget in ways that wouldn't require staff layoffs or service reductions through a combination of expenditure savings and using the City's "Rainy Day Fund". The savings he cited were on staff COLAs, non-staff departmental expenditure cuts, positions temporarily remaining unfilled, and a reduction in DSG contract staff. City Manager Conrad related discussions he has had with the unions (and non-union employees) to accept zero cost-of-living (COLA) raises for employees in 2010, resulting in savings of approximately \$156,000. After some discussion, the Mayor queried the Council if they supported the union COLA concessions and all Councilmembers concurred.

Next, the group discussed how to fund the zero percent property tax increase in 2010 when one percent had been budgeted. Staff suggested tapping the contingency fund to cover the

\$104,000 shortage, but Councilmember Grausz endorsed taking less from the contingency fund and increasing revenues instead. Only one other Councilmember agreed with this approach.

Finance Director Corder then recommended that the Council revert to the staff's previous method of calculating CIP administrative overhead which would preserve the budgeted transfer from the CIP to the General Fund of \$173,289. Deputy Mayor Jahncke suggested that change only for 2010 and the Council agreed.

Next the Council considered staff recommendations to use the Youth and Family Services (YFS) fund balance for counselor funding (\$57,000) in 2010 and resolve the 2011-2012 funding issue during the budget process. Youth and Family Services Director Cindy Goodwin responded to Council questions about increased demand for services. YFS Director Goodwin explained that the need for emergency services has risen dramatically in the past year and has been met through additional grants and sales from the Thrift Shop. Councilmember Cero asked if additional service from the counselors beyond their 10 month contract was feasible. Councilmember Grausz advised looking at all areas of YFS funding, including the cost of counseling, during the budget process. Mayor Pearman suggested the Council adopt staff recommendations to fund YFS counselors for 2010 and address issues raised during their budget cycle discussion. All Councilmembers agreed except for one.

To close out the Budget Discussion, City Manager Conrad summarized the Council's decisions on the budget:

- Support management's recommendations on COLA freezes for 2010;
- Support the use of \$479,000 in the "Rainy Day Fund" to cover 1% property tax budgeted in 2010 (\$104,000) and to fund half of the remaining \$750,000 total revenue shortfall;
- Support using one-time dollars to extend Youth and Family Services counselors through the end of 2010;
- Not supportive of a new revenue source for replacement of property tax reduction;
- Support staff's recommendation to revert to previous CIP overhead for 2010 but to revisit the issue in the 2011-12 budget process.

### **ISLAND CREST WAY**

City Manager Conrad stated that in order to meet the Council's request to complete Island Crest Way Alternative 3 in 2010, he would need to use \$150,000 slated for future projects. He explained two possible advantages: REET funds may recover in the future and the cost of construction is lower now than in the past. The Council concurred with this recommendation.

City Manager Conrad also requested that the Council's final discussion on project scope, schedule, and budget be moved to the March meeting to accommodate Councilmember Bassett (who will be absent in February). The Council agreed.

### **SOUTH FIRE STATION FINANCING**

In recognition of the economic climate, REET funding shortages and the need for a new fire station, Council and staff brainstormed what options they could pursue in 2010. After discussion of design phases, bond or other funding sources, public safety, and possible postponement, the Council agreed to start the "building program" phase in 2010. This phase establishes the purpose and mission of the future facility vis-à-vis the operations that are

intended for the building. It is a pre-cursor to determining project scale and cost. City Manager Conrad will propose to the Council how to pay for the estimated \$20,000 in architectural services.

In response to an inquiry from Council, Fire Chief Chris Tubbs said he expected to hear whether Mercer Island would be awarded a Homeland Security Grant in September 2010.

## **2011-2012 BUDGET PROCESS DISCUSSION**

Council and staff discussed the biennial citizen survey. Councilmember Cero recommended skipping the 2010 survey because of the budget shortfall. Two Councilmembers supported this idea. City Manager Conrad suggested the possibility of fewer calls to save costs. Councilmember Litzow advocated continued support of the survey and requested staff check with the pollsters on how to reduce costs. Councilmember Grady endorsed transitioning to paperless or electronic surveys to save money. Four Councilmembers supported continuing the survey as well as looking at ways to transition to electronic surveys.

Next, Council and staff discussed the budget calendar, ways to improve budget discussions and methods to achieve Council's goals for those discussions. Finance Director Corder recommended that prior to launching into budget detail he would provide a budget overview prior to the October 4 meeting. He suggested splitting the operating budget review into 3 meetings (the first two to review department budgets and a follow-up meeting for issues raised, revenue projections, etc.). Councilmember Litzow advised starting budget meetings earlier, like 6:00,p.m., to avoid late-night deliberations. The Council discussed the possibility of seeing revenue projections prior to developing the budget, but decided to continue reviewing staff's budget first.

Mayor Pearman reiterated the Council's goal of shorter staff presentations and reminded the Council of the importance of preparing for these discussions. He also preferred giving staff the leeway to provide more detailed presentations when deemed necessary.

City Manager Conrad followed up by saying that a discussion on Council budget presentations will be a top priority at the upcoming management retreat.

Councilmember Litzow pointed out that the July 5 meeting scheduled conflicts with Independence Day holiday.

## **SUSTAINABILITY**

Deputy City Manager James Mason explained that the Council's investments in staff and consultant time had leveraged \$35,000 into three sustainability grants totaling nearly \$420,000. He noted that the City is maintaining the ICLEI database and monitoring savings from the City's sustainability initiatives. He said that the fuel savings in the City's new electric and hybrid vehicles will offset the price differential of these vehicles.

The Council raised questions about the new electric bikes for police officers. Police Chief Ed Holmes said that in the past, non-motorized bicycles limited how far the officers could travel from their vehicles. He went on to explain that electric bikes, which travel at speeds of 35 miles per hour, will allow officers to travel greater distances on bicycle trails and then speed back to their cruisers if they are called by dispatch. In response to a query, he said that the City will maintain three officers on duty at all times.

Councilmember Bassett described the growth and citizen advocacy of the Green Ribbon Commission. He said there are more than 25 citizens involved and the transportation and home energy efficiency committees have developed social marketing campaigns. He announced that the transportation committee is sponsoring three "YouPowered" events focused on getting around the Island without using a car.

Deputy Mayor Jahncke noted that the City is a stakeholder of the Commission. He asked what the difference was between a stakeholder and a member. Councilmember Bassett explained that "stakeholders" refer to groups (e.g., Rotary, Island Vision, Boys and Girls Club), while members are individuals who participate in the Commission. He also communicated that the City is just one of many players active in the Commission's effort.

Councilmember Grady described future opportunities to leverage more funding for sustainability projects:

- Mercer Island will be getting 4-5 hybrids and one additional electric car. Nissan will be testing a fleet of nearly 5000 electric vehicles (EV) in the Seattle area. If appropriate, City Manager Conrad will be trying to secure electric charging stations on the Island to support users and to help catalyze the EV business.
- HUD and DOE have developed a sustainable initiative to help regions combine planning for land-use, housing, and energy to achieve sustainability. Transit-oriented development, like on Mercer Island, could be highly regarded for this grant cycle.
- A national conference on sustainability will be held February 4 in Seattle. Two groups will tour the Puget Sound region and will be visiting Mercer Island's Town Center.
- Department of Labor funding is flowing to Bellevue and Seattle Community Colleges to train technicians in conducting energy conservation audits.

Next the Council and staff discussed the City's fleet of vehicles. City Manager Conrad explained the City's approach to evaluating vehicle replacement with electric/hybrid, right-sizing, and avoidance of vehicle "creep."

Councilmember Cero indicated he has hardly seen the City's electric car and recommended that the staff prioritize its use, thereby increasing awareness of and support for EV in the community.

Councilmember Grady shared that a Rotary group is working with the City on siting electric car charging stations. He shared that there is an Island auto manufacturer who has developed a broad line of electric cars--from passenger sedans to sport utility vehicles.

In response to an inquiry from Councilmember Grausz, Councilmember Grady shared areas where sustainability grants could be used by the City, including: Comprehensive Plan updates to include long-range, multi-modal planning; alternative transportation like bike and pedestrian plans; Puget Sound Energy and Green Ribbon Commission's home energy reports; and a smart grid and reliable energy distribution network on Mercer Island.

Councilmember Grausz recommended that the Council be more involved and give direction and prioritization on the City's requests for sustainability grants. City Manager Conrad suggested a brief strategic plan for the Council to review. He also noted this could be a tool to impress upon the community the importance of the City's efforts toward sustainability.

The group brainstormed ways to inform the community about these efforts and discussed school curriculum, Mercer Island Quarterly, Mercer Island Reporter advertising, school district email, utility billing, and email.

Councilmember Bassett stated that the Home Group wants to challenge the Council to measure, publish and evaluate each member's carbon footprint.

## **TOWN CENTER**

Following a lunch break, the Council and staff focused on the Town Center. Steve Lancaster (former Development Services Director) was introduced as the new City Administrator of Tukwila.

Deputy City Manager James Mason shared that there has been considerable interest expressed in the Town Center because of its unique location relative to transit, the thousands of people passing by each day as well as the well established community base of citizens on Mercer Island. City Manager Conrad summarized some of the discussions he had with interested developers that could impact the Walgreen's Site, and other possible projects in Town Center.

Steve Lancaster told the Council and staff that they should be proud of Town Center and said that many other communities are impressed with what has been accomplished there. He applauded the City, the Design Commission, and the Council's leadership, vision, and their commitment to the plan. He cited the many amenities of Mercer Island and the important role that public investment has played in enhancing those amenities.

He noted the desire for more specialty retail and restaurants to fill Town Center. He stated that most local residents work off island and provide an evening customer base for Town Center. However, retailers need more daytime activity (i.e., office employees) to sustain themselves. He discussed business recruitment to attract office employers and possible code incentives to draw these businesses to Town Center.

Mr. Lancaster also described parking as an ongoing issue for Town Center. He believed that finding new parking options for Mercer Island transit riders and limiting the length of stay for on-street parking would help alleviate the problem. He recommended increasing the on-street retail parking supply, code changes to incent more public parking, and promoting alternatives to the automobile. He also said continuing to pursue public/private partnerships and, wherever possible, shared parking opportunities

Councilmember Grausz cited a Town Center retail business he recently visited. He said that while it is tailored to Mercer Island tastes, it wasn't being supported by the community. He asked if there was a role for the City to attract more business to the retail center. City Manager Conrad said that the City has not had an economic development function but that other cities promote such a business model. He asked Deputy Mayor Jahncke for his opinion on this issue.

Deputy Mayor Jahncke, a commercial real estate investor, said that like everywhere else in the country, the retail occupancy and rental rates are down. He said that while many commercial property developers are "underwater", they are also reticent to cut rents because it devalues their property. He indicated that everyone is waiting it out with the belief that it will begin to turn around in 2011.

The Council, Steve Lancaster and staff discussed suburban and urban design models vis-à-vis Town Center. They also strategized ways to achieve Mercer Island-only parking for resident commuters and discussed what financial tools could be available for that purpose.

Councilmember Litzow suggested a study session on ways to improve parking in Town Center.

Councilmember Grausz requested a forum for property owners, retail businesses and the City to discuss issues and opportunities for Town Center. City Manager Conrad recommended asking the Chamber of Commerce to do that in exchange for their rent. The Council concurred unanimously.

Councilmember Bassett offered the idea of finding a source of dedicated parking on the south-end of the island with a jitney to connect to Town Center and the park and ride. He said that it could be incorporated into their sustainability efforts. All but one Councilmember concurred with that recommendation.

## **RECYCLING CENTER**

After a brief break, the planning session reconvened to discuss the soon-to-be closed recycling center. City Manager Conrad said that the City owns the property and that it is adjacent to two parks and a dedicated green space. He said the reason that this has come to the Council for discussion is because the Mercer Island School District has given notice that they will no longer be running the recycling center that's been on the property since the 1970s.

He then introduced students from the Bainbridge Graduate Institute (BGI): Susan Borg, Laura Steffen, Nathaniel Lodwig, and Tylor Jeffrey. He explained that this bright and dedicated group of business graduate students will help shape a public process for the community to decide upon the future of this site. The students are engaged to work on this project through a grant written by and awarded to the City of Mercer Island.

Laura Steffen described BGI's mission to prepare students to build enterprises that are financially successful, socially responsible and environmentally sustainable. She noted that this collaboration was a good fit because Mercer Island strives to be a sustainable city. She commented that the stakeholder process would also be a sustainable model: it could be a framework for other public involvement processes and that City staff, who will work in collaboration with BGI, will gain experience and be able to replicate similar efforts in the future.

Susan Borg presented a slide show on the proposed process. She showed the varying levels of stakeholder engagement and the importance of setting discussion boundaries at the outset of the process. She also recommended clear communication about these boundaries to keep stakeholders engaged and their expectations met.

She provided a timeline of what they could accomplish prior to July. She indicated they could identify stakeholders, design and conduct the process, summarize the community's preferred solutions for the site and debrief the Council and staff on the outcomes and the process. She concluded by saying that they will be using the best practices for stakeholder processes drawn from throughout the world.

Councilmember Litzow expressed support for this effort noting that it will create a repeatable process for the City to get public input and help the City determine what the community wants for the recycling center site. After discussion, the Council was unanimous in its support to work with the BGI Team.

Next City Manager Conrad facilitated a Council brainstorming session on boundaries for the process discussion. After eliminating a few options, the Council provided the following guidance for the recycling site:

**What it could be**

- Recycling center
- Dedicated parking with plug-ins
- Community bike shop
- More park and open space
- Combo admin offices for city/school
- Environmental education center
- Miscellaneous parks/recreation utility building
- Farmers market
- Affordable housing
- Music/art center
- Thrift shop site
- Residential site that demonstrates green building and sustainability techniques

**What it can't be**

- Toxic waste site
- School bus parking
- Residential – garden variety
- Commercial building use (private/office retail)
- Land swap

Laura advised that the Council and staff look more broadly at the values desired for the site or what the community's needs are. For example, she noted that the City has identified that whatever happens at the site it needs to be budget neutral and be consistent with the City's sustainability goals. She also suggested setting clear boundaries for the community by deleting the "What it could be" column, and leaving in place "What it can't be."

In closing, Nathaniel Lodwig of the BGI team expressed enthusiasm and appreciation to be working with the City on such an important and timely project.

## **TRANSPORTATION VISION**

Councilmember Bassett began this discussion by noting that the Transportation Element in the Comprehensive Plan is based on 15-year-old assumptions. He recommended using the BGI process to allow the community to envision its transportation plan 20 years in the future. He explained that Council decisions that affect transportation can then be informed by the community's vision.

City Manager Conrad advised that the State may postpone Comprehensive Plan updates until 2014 but that the \$80,000 the Council had budgeted for this purpose could be used to bridge other budget shortfalls. The Council recommended that the Sustainability Committee develop and present a plan and a proposal for the jitney service discussed previously in the day.

## **PARKS AND RECREATION COST RECOVERY:**

Deputy Mayor Jahncke expressed interest in increasing parks and recreation cost recovery to more than 46% from programs that can afford to pay higher rents for Community Center use (e.g., Jazzercise). He said this would help the City's overall budget. He also reiterated concern about City-sponsored programs that compete with the private sector, citing a flyer he received from a financial planner who provides his services at the Community Center. He opined that the City was subsidizing some businesses through their sponsorship and/or lower rents and setting up unfair competition for other Island businesses and property owners like Pilates and Yoga programs elsewhere on the Island. Councilmember Litzow stated that the City's rental rates should be competitive, rather than subsidizing.

After examining the flyer City Manager Conrad said it appears to be a case of marketing under the City's umbrella. The financial planner provides the training pro-bono to seniors. The Council agreed that the sponsorship for this program should change.

Interim Parks and Recreation Director Manny Ocampo stated that the City averages a rate of 41% cost recovery and that pre-school, youth, seniors and teens have the lowest cost-recovery of all. Overall, he said, adult classes are actually revenue generators for the City.

After additional discussion, a majority of the Council agreed to maintain the overall cost-recovery goal for Parks and Recreation at 46%.

At 5:30 p.m. the Council planning session adjourned.

# **Sunday, January 24, 2010**

Mayor Pearman called the planning session to order at 8:45 a.m.

## **UNDERAGE DRUG AND ALCOHOL USE**

Youth and Family Services Director Cindy Goodwin told the Council that her purpose today was to listen to the Council's concerns and answer any questions they may have. She

informed them that she'll be bringing a calendar of events and list of achievements to the first February Council meeting.

Councilmember Grausz stressed the importance of the community and Council's focus on this issue. He also stressed the need to have a specific plan on how to message the issue and share it with adult and youth groups in schools, churches, synagogues, the Jewish Community Center and other organizations on the Island. He recommended a campaign whereby at the end of 2010 children and adults have heard the "message" and understand the importance of avoiding drug and alcohol use. He concluded his remarks by stating that City involvement is key to the success of this campaign.

YFS Director Goodwin advised that Communities That Care (CTC) is the umbrella organization working on this issue and that most Island clergy are involved. She noted that their message needs to be repeated--sometimes three or four times--before an organization will internalize it. She listed other organizations where they are sharing concerns about underage drug and alcohol use, including country clubs.

City Manager Conrad commented that Nancy Lee's social marketing campaigns have been very successful at changing people's fundamental thought processes and behaviors, citing her "Click-it or Ticket" seatbelt campaign. He recommended having Nancy give feedback on messages for underage drug and alcohol use.

In response to Councilmember Grady's inquiry about getting coaches involved in the campaign, YFS Director Goodwin explained that their involvement is critical because many parents drink prior to and during youth athletic events. Councilmembers Grausz said the City has the legal jurisdiction to prohibit drinking on athletic fields. YFS Director Goodwin responded that notices have been posted to that affect.

Councilmember Cero expressed appreciation to YFS Director Goodwin for including drug use in the messaging campaign since DARE and the Bellevue Drug Program have been eliminated.

Mayor Pearman asked what YFS Director Goodwin's performance measures were and she replied that every other year YFS measures via a Healthy Youth Survey.

Councilmember Grausz prescribed funding these important programs through a surcharge on admission to community events.

Mayor Pearman recommended, and the Council agreed, to get an update from YFS Director Goodwin at their mid-year planning session.

#### **TEMPORARY ENCAMPMENTS ORDINANCE**

City Manager Conrad informed the Council that they will be voting at their next Council meeting on the Planning Commission's recommended temporary encampments ordinance which had been presented to the City Council for First Reading on January 19<sup>th</sup>.

City Attorney Katie Knight provided a handout of draft language based on guidance she had received from the Council at the Council's previous First Reading as well as a review of other jurisdictions' ordinances. She led the group through discussion and decisions on each area of proposed changes with an eye towards revisions to the draft ordinance that would be considered at the next Council meeting under Second Reading.

Councilmember Cero recommended, but the Council didn't agree, to consider the first page of "Whereas" language together. The Council had considerable discussion about legal challenges to similar ordinances, discrimination and the language on mental illness and sex offenders. They decided to keep the first two "Whereas" statements that provide the statistics on homelessness in King County and acknowledges that tent cities are an emergency response as well as a safer alternative to life on the streets.

Principal Planner George Steirer described the purpose of temporary use permits and tying encampments to places of worship (Section 1 Definition and Section 2A). Councilmember Cero expressed concern about neighborhood safety, property values, and First Hill being stereotyped as a homeless encampment neighborhood. He also stated that giving flexibility to extend beyond a 90-day stay sends the wrong message to Mercer Islanders. According to City Attorney Knight, the Tent City residents prefer to move on the weekend and the Council agreed that the code official may allow up to five additional days to accommodate moving on a weekend.

Next, Principal Planner Steirer explained that new language proposed for Section 2: 19.06.090(A)(11)(b) would provide more guidance on the types of acceptable fencing or screening. After discussion of aesthetic standards and cost, the Council removed the proposed language and left discretion to the code official on what are acceptable materials for privacy and visual buffering. He noted the community's dislike of tarps as a screening method.

The Council agreed unanimously to require the managing organization of the temporary encampment to sign a hold harmless agreement.

Regarding Section 2: 19.06.090(A)(17)(a), the Council debated and approved replacing a "government issued" ID with a "verifiable" ID for the purpose of knowing who the encampment residents are. In addition, the Council unanimously approved language prohibiting sex offenders from residing in the temporary encampments.

Regarding proposed language changes for Section 2: 19.06.090(A)(19), the Council and Police Chief Holmes discussed random searches and options for warrant and sex offender checks. Councilmember Grausz recommended, and the Council concurred, that the language should require the hosting organization to run sex offender and warrant checks prior to an encampment moving to Mercer Island. Councilmember Grady opposed this and expressed concern about discrimination and the assumption of guilt that this places on the homeless.

The Council agreed to require designated smoking areas at the temporary encampments and approved new language requiring informal public meetings prior to submitting a temporary use permit for an encampment.

Councilmember Grady and Deputy Mayor Jahncke recommended removing the required Code of Conduct from Section 2: 19.06.090(C)(1) but that failed to receive Council support.

Councilmember Cero requested that staff retrieve current information from the Sheriff's office on the number of county sex offenders and the number of them that are homeless. Chief Holmes agreed to supply the information.

City Manager Conrad indicated when the draft of the ordinance comes before the Council for a vote, staff will recommend an interim fee for temporary encampments until the fee schedule is finalized later this year.

## **WORKPLAN FINALIZATION**

As a result of discussions during the planning session, City Manager Conrad added new tasks to the work plan for 2010. Generally, he said, it appears to be a full schedule, especially given budget deliberations that will come later in the year. The year's work areas include: budget deliberations, I-90 issues, Sewer Lake Line Project implementation, Communities That Care, City code amendments, South-end Fire Station Program Plan, Shoreline Master Plan, sustainability efforts and grant review by the Council, buildings codes for home electric vehicle plug-ins, long-range transportation plan and jitney bus, collaboration with the Chamber of Commerce on Town Center partnerships, recycling center community process, and review of performance measures.

## **MISCELLANEOUS COUNCIL TOPICS**

Next, the Council turned to additional topics for discussion.

Deputy Mayor Jahncke raised a point concerning consultant bias. He said he observed a consultant promoting a particular solution during the examination of Island Crest Way.

In an effort to improve governmental transparency, Councilmember Cero requested adding a Council discussion about the pros and cons of taping Executive Sessions. The Council did not concur.

Councilmember Cero raised the question of setting residential and arterial street life cycle standards. City Manager Conrad suggested the Council take that up when they consider the Transportation Improvement Program (TIP). He also informed the Council that a report will be presented on this topic from research done last year.

Councilmember Cero explained that the State Auditor's Office (SAO) offers a performance auditing service. He recommended the City conduct such a review to learn ways to do things better in the City and to save money. City Manager Conrad noted that continual improvement is built into the City's culture and that the SAO may offer audits to find efficiencies. The Council didn't support Councilmember Cero's idea.

Councilmember Cero recommended an agenda item to keep the Council updated on the proposed regional airport near South Lake Washington. Mayor Pearman reminded the Council that Bryan Cairns (former Mayor and Councilmember) represents the City on the joint city airport committee. He went on to say that he'll check in with Bryan Cairns and have him brief the Council prior to any developments.

Councilmember Cero suggested broadcasting the Planning and Design Commission meetings on Mercer Island TV. A majority of Councilmembers concurred, and City Manager Conrad said he will bring a proposal and cost breakdown for the Council to consider.

Councilmember Bassett endorsed--and the Council concurred--to have an agenda bill to review the policies of the Open Space Conservancy Trust and include new properties like Pioneer Park and Engstrom's. City staff will bring information to the Council to consider.

Councilmember Bassett raised the idea of an Arts Council liaison being on the Design Commission. The group talked about the nexus of public-private art installations and City Manager Conrad recommended that the two Council liaisons meet with the two board chairs and bring issues back to the Council, if there are any.

Deputy Mayor Jahncke raised his interest in discussing 1% for art on utilities projects, citing the Lake Line project as an example. The Council agreed to discuss it.

Mayor Pearman reminded Council and staff that 2010 is the 50th anniversary of the City of Mercer Island and that the City should gear up for celebrations.

Councilmember Cero raised concern that the City is not fully funding LEOFF 1 long term care liability. He requested that the staff provide information on the unfunded liabilities and its implications going forward during budget deliberations.

**ADJOURNMENT:**

The Mayor adjourned the meeting at 12:00 p.m.

**City Council - Minutes**  
**Saturday, January 23, 2010**

**CALL TO ORDER:**

Mayor Jim Pearman called the meeting to order as follows in the Luther Burbank Room at the Community Center at Mercer View (8236 SE 24<sup>th</sup> Street, Mercer Island, Washington):

- January 22, 2010, 5:00 pm - 6:30 pm, 7:45 pm - 9:00 pm
- January 23, 2010, 8:30 am - 5:00 pm
- January 24, 2010, 8:30 am - 12:00 pm

**ROLL CALL:**

Councilmembers Bruce Bassett, Mike Cero, Mike Grady, Dan Grausz, Steve Litzow, Deputy Mayor El Jahncke and Mayor Jim Pearman were present.

The attached memo, dated February 8, 2010, to the Mercer Island City Council from Ginny Ratliff with Agreement Dynamics, Inc is hereby incorporated by reference as the minutes of the 2010 Mercer Island City Council Annual Planning Session.

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**TO:** Members of the Mercer Island City Council

**FROM:** Ginny Ratliff

**RE:** 2010 City Council Planning Session

**DATE:** February 8, 2010

Thank you for the opportunity to provide note-taking services for your January 23-24, 2010 City Council Planning Session. As always, it's a pleasure working with the City of Mercer Island.

## **Friday, January 23, 2009**

**MAYOR'S OPENING REMARKS**

Mayor Pearman welcomed the Council and staff to the 2010 Planning Session. He gave a quick review of the weekend's agenda noting that he thought there would be adequate time to discuss all of the Council's topics.

City Manager Rich Conrad then provided a brief review of the Council's 2009 Work Plan and the status of work plan items. He reported that all work plan items had been accomplished except those that were on January/February, 2010 calendars per Council or Planning Commission direction (Tent City Ordinance, Bike & Pedestrian Plan). He noted that the total agenda item "units" accomplished in 2009 turned out to be identical to those planned for at

the 2009 Planning Session – 98 agenda items. In response to Council Litzow's question, he also noted that this level of workload for the staff was realistic.

### **COUNCIL OPERATIONS**

Mayor Pearman opened the discussion by pointing out that every year the Council checks in about its own behavior and processes. City Manager Conrad highlighted an issue concerning Board and Commission council liaison roles that had come to light. The issue concerned council liaison engagement and influence on the work of the boards and commissions, particularly the Planning and Design Commissions. Consistent with Council-adopted protocols, Councilmembers agreed to maintain independence from any quasi-judicial work of the commissions as well as refraining from influencing any substantive policy recommendations arising from the commissions.

### **CITIZEN OF THE YEAR**

The Council ended the evening's session with a discussion of the Citizen of the Year Award.

## **Saturday, January 23, 2010**

### **BUDGET DISCUSSION**

Mayor Jim Pearman convened the meeting at 8:30 a.m. by welcoming Councilmembers, City staff, and community members to the 2010 Council Planning Session.

City Manager Conrad opened the discussion by explaining that the Council needed to discuss options to rebalance the 2010 budget and consider funding alternatives for some previous Council decisions affecting the General Fund.

Finance Director Chip Corder stated that the General Fund revenue shortfall for 2009 had increased to \$1.35 million (\$100,000 over his November 2009 projections) due to decreases in property, utility and sales taxes and fewer development fees. He also noted that the Capital Improvement Program (CIP) budget is also lower due to the decrease in real estate excise taxes (REET) resulting from fewer home sales and lower sales prices.

The Council and staff discussed Island housing prices, the likelihood and timing of an economic recovery, and that tapping the "rainy day fund" would not affect the City's bond rating,

Finance Director Corder and City Manager Conrad recommended rebalancing the 2010 General Fund budget in ways that wouldn't require staff layoffs or service reductions through a combination of expenditure savings and using the City's "Rainy Day Fund". The savings he cited were on staff COLAs, non-staff departmental expenditure cuts, positions temporarily remaining unfilled, and a reduction in DSG contract staff. City Manager Conrad related discussions he has had with the unions (and non-union employees) to accept zero cost-of-living (COLA) raises for employees in 2010, resulting in savings of approximately \$156,000. After some discussion, the Mayor queried the Council if they supported the union COLA concessions and all Councilmembers concurred.

Next, the group discussed how to fund the zero percent property tax increase in 2010 when one percent had been budgeted. Staff suggested tapping the contingency fund to cover the

\$104,000 shortage, but Councilmember Grausz endorsed taking less from the contingency fund and increasing revenues instead. Only one other Councilmember agreed with this approach.

Finance Director Corder then recommended that the Council revert to the staff's previous method of calculating CIP administrative overhead which would preserve the budgeted transfer from the CIP to the General Fund of \$173,289. Deputy Mayor Jahncke suggested that change only for 2010 and the Council agreed.

Next the Council considered staff recommendations to use the Youth and Family Services (YFS) fund balance for counselor funding (\$57,000) in 2010 and resolve the 2011-2012 funding issue during the budget process. Youth and Family Services Director Cindy Goodwin responded to Council questions about increased demand for services. YFS Director Goodwin explained that the need for emergency services has risen dramatically in the past year and has been met through additional grants and sales from the Thrift Shop. Councilmember Cero asked if additional service from the counselors beyond their 10 month contract was feasible. Councilmember Grausz advised looking at all areas of YFS funding, including the cost of counseling, during the budget process. Mayor Pearman suggested the Council adopt staff recommendations to fund YFS counselors for 2010 and address issues raised during their budget cycle discussion. All Councilmembers agreed except for one.

To close out the Budget Discussion, City Manager Conrad summarized the Council's decisions on the budget:

- Support management's recommendations on COLA freezes for 2010;
- Support the use of \$479,000 in the "Rainy Day Fund" to cover 1% property tax budgeted in 2010 (\$104,000) and to fund half of the remaining \$750,000 total revenue shortfall;
- Support using one-time dollars to extend Youth and Family Services counselors through the end of 2010;
- Not supportive of a new revenue source for replacement of property tax reduction;
- Support staff's recommendation to revert to previous CIP overhead for 2010 but to revisit the issue in the 2011-12 budget process.

### **ISLAND CREST WAY**

City Manager Conrad stated that in order to meet the Council's request to complete Island Crest Way Alternative 3 in 2010, he would need to use \$150,000 slated for future projects. He explained two possible advantages: REET funds may recover in the future and the cost of construction is lower now than in the past. The Council concurred with this recommendation.

City Manager Conrad also requested that the Council's final discussion on project scope, schedule, and budget be moved to the March meeting to accommodate Councilmember Bassett (who will be absent in February). The Council agreed.

### **SOUTH FIRE STATION FINANCING**

In recognition of the economic climate, REET funding shortages and the need for a new fire station, Council and staff brainstormed what options they could pursue in 2010. After discussion of design phases, bond or other funding sources, public safety, and possible postponement, the Council agreed to start the "building program" phase in 2010. This phase establishes the purpose and mission of the future facility vis-à-vis the operations that are

intended for the building. It is a pre-cursor to determining project scale and cost. City Manager Conrad will propose to the Council how to pay for the estimated \$20,000 in architectural services.

In response to an inquiry from Council, Fire Chief Chris Tubbs said he expected to hear whether Mercer Island would be awarded a Homeland Security Grant in September 2010.

## **2011-2012 BUDGET PROCESS DISCUSSION**

Council and staff discussed the biennial citizen survey. Councilmember Cero recommended skipping the 2010 survey because of the budget shortfall. Two Councilmembers supported this idea. City Manager Conrad suggested the possibility of fewer calls to save costs. Councilmember Litzow advocated continued support of the survey and requested staff check with the pollsters on how to reduce costs. Councilmember Grady endorsed transitioning to paperless or electronic surveys to save money. Four Councilmembers supported continuing the survey as well as looking at ways to transition to electronic surveys.

Next, Council and staff discussed the budget calendar, ways to improve budget discussions and methods to achieve Council's goals for those discussions. Finance Director Corder recommended that prior to launching into budget detail he would provide a budget overview prior to the October 4 meeting. He suggested splitting the operating budget review into 3 meetings (the first two to review department budgets and a follow-up meeting for issues raised, revenue projections, etc.). Councilmember Litzow advised starting budget meetings earlier, like 6:00 p.m., to avoid late-night deliberations. The Council discussed the possibility of seeing revenue projections prior to developing the budget, but decided to continue reviewing staff's budget first.

Mayor Pearman reiterated the Council's goal of shorter staff presentations and reminded the Council of the importance of preparing for these discussions. He also preferred giving staff the leeway to provide more detailed presentations when deemed necessary.

City Manager Conrad followed up by saying that a discussion on Council budget presentations will be a top priority at the upcoming management retreat.

Councilmember Litzow pointed out that the July 5 meeting scheduled conflicts with Independence Day holiday.

## **SUSTAINABILITY**

Deputy City Manager James Mason explained that the Council's investments in staff and consultant time had leveraged \$35,000 into three sustainability grants totaling nearly \$420,000. He noted that the City is maintaining the ICLEI database and monitoring savings from the City's sustainability initiatives. He said that the fuel savings in the City's new electric and hybrid vehicles will offset the price differential of these vehicles.

The Council raised questions about the new electric bikes for police officers. Police Chief Ed Holmes said that in the past, non-motorized bicycles limited how far the officers could travel from their vehicles. He went on to explain that electric bikes, which travel at speeds of 35 miles per hour, will allow officers to travel greater distances on bicycle trails and then speed back to their cruisers if they are called by dispatch. In response to a query, he said that the City will maintain three officers on duty at all times.

Councilmember Bassett described the growth and citizen advocacy of the Green Ribbon Commission. He said there are more than 25 citizens involved and the transportation and home energy efficiency committees have developed social marketing campaigns. He announced that the transportation committee is sponsoring three "YouPowered" events focused on getting around the Island without using a car.

Deputy Mayor Jahncke noted that the City is a stakeholder of the Commission. He asked what the difference was between a stakeholder and a member. Councilmember Bassett explained that "stakeholders" refer to groups (e.g., Rotary, Island Vision, Boys and Girls Club), while members are individuals who participate in the Commission. He also communicated that the City is just one of many players active in the Commission's effort.

Councilmember Grady described future opportunities to leverage more funding for sustainability projects:

- Mercer Island will be getting 4-5 hybrids and one additional electric car. Nissan will be testing a fleet of nearly 5000 electric vehicles (EV) in the Seattle area. If appropriate, City Manager Conrad will be trying to secure electric charging stations on the Island to support users and to help catalyze the EV business.
- HUD and DOE have developed a sustainable initiative to help regions combine planning for land-use, housing, and energy to achieve sustainability. Transit-oriented development, like on Mercer Island, could be highly regarded for this grant cycle.
- A national conference on sustainability will be held February 4 in Seattle. Two groups will tour the Puget Sound region and will be visiting Mercer Island's Town Center.
- Department of Labor funding is flowing to Bellevue and Seattle Community Colleges to train technicians in conducting energy conservation audits.

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He noted the desire for more specialty retail and restaurants to fill Town Center. He stated that most local residents work off island and provide an evening customer base for Town Center. However, retailers need more daytime activity (i.e., office employees) to sustain themselves. He discussed business recruitment to attract office employers and possible code incentives to draw these businesses to Town Center.

Mr. Lancaster also described parking as an ongoing issue for Town Center. He believed that finding new parking options for Mercer Island transit riders and limiting the length of stay for on-street parking would help alleviate the problem. He recommended increasing the on-street retail parking supply, code changes to incent more public parking, and promoting alternatives to the automobile. He also said continuing to pursue public/private partnerships and, wherever possible, shared parking opportunities

Councilmember Grausz cited a Town Center retail business he recently visited. He said that while it is tailored to Mercer Island tastes, it wasn't being supported by the community. He asked if there was a role for the City to attract more business to the retail center. City Manager Conrad said that the City has not had an economic development function but that other cities promote such a business model. He asked Deputy Mayor Jahncke for his opinion on this issue.

Deputy Mayor Jahncke, a commercial real estate investor, said that like everywhere else in the country, the retail occupancy and rental rates are down. He said that while many commercial property developers are "underwater", they are also reticent to cut rents because it devalues their property. He indicated that everyone is waiting it out with the belief that it will begin to turn around in 2011.

The Council, Steve Lancaster and staff discussed suburban and urban design models vis-à-vis Town Center. They also strategized ways to achieve Mercer Island-only parking for resident commuters and discussed what financial tools could be available for that purpose.

Councilmember Litzow suggested a study session on ways to improve parking in Town Center.

Councilmember Grausz requested a forum for property owners, retail businesses and the City to discuss issues and opportunities for Town Center. City Manager Conrad recommended asking the Chamber of Commerce to do that in exchange for their rent. The Council concurred unanimously.

Councilmember Bassett offered the idea of finding a source of dedicated parking on the south-end of the island with a jitney to connect to Town Center and the park and ride. He said that it could be incorporated into their sustainability efforts. All but one Councilmember concurred with that recommendation.

## **RECYCLING CENTER**

After a brief break, the planning session reconvened to discuss the soon-to-be closed recycling center. City Manager Conrad said that the City owns the property and that it is adjacent to two parks and a dedicated green space. He said the reason that this has come to the Council for discussion is because the Mercer Island School District has given notice that they will no longer be running the recycling center that's been on the property since the 1970s.

He then introduced students from the Bainbridge Graduate Institute (BGI): Susan Borg, Laura Steffen, Nathaniel Lodwig, and Tylor Jeffrey. He explained that this bright and dedicated group of business graduate students will help shape a public process for the community to decide upon the future of this site. The students are engaged to work on this project through a grant written by and awarded to the City of Mercer Island.

Laura Steffen described BGI's mission to prepare students to build enterprises that are financially successful, socially responsible and environmentally sustainable. She noted that this collaboration was a good fit because Mercer Island strives to be a sustainable city. She commented that the stakeholder process would also be a sustainable model: it could be a framework for other public involvement processes and that City staff, who will work in collaboration with BGI, will gain experience and be able to replicate similar efforts in the future.

Susan Borg presented a slide show on the proposed process. She showed the varying levels of stakeholder engagement and the importance of setting discussion boundaries at the outset of the process. She also recommended clear communication about these boundaries to keep stakeholders engaged and their expectations met.

She provided a timeline of what they could accomplish prior to July. She indicated they could identify stakeholders, design and conduct the process, summarize the community's preferred solutions for the site and debrief the Council and staff on the outcomes and the process. She concluded by saying that they will be using the best practices for stakeholder processes drawn from throughout the world.

Councilmember Litzow expressed support for this effort noting that it will create a repeatable process for the City to get public input and help the City determine what the community wants for the recycling center site. After discussion, the Council was unanimous in its support to work with the BGI Team.

Next City Manager Conrad facilitated a Council brainstorming session on boundaries for the process discussion. After eliminating a few options, the Council provided the following guidance for the recycling site:

**What it could be**

- Recycling center
- Dedicated parking with plug-ins
- Community bike shop
- More park and open space
- Combo admin offices for city/school
- Environmental education center
- Miscellaneous parks/recreation utility building
- Farmers market
- Affordable housing
- Music/art center
- Thrift shop site
- Residential site that demonstrates green building and sustainability techniques

**What it can't be**

- Toxic waste site
- School bus parking
- Residential – garden variety
- Commercial building use (private/office retail)
- Land swap

Laura advised that the Council and staff look more broadly at the values desired for the site or what the community's needs are. For example, she noted that the City has identified that whatever happens at the site it needs to be budget neutral and be consistent with the City's sustainability goals. She also suggested setting clear boundaries for the community by deleting the "What it could be" column, and leaving in place "What it can't be."

In closing, Nathaniel Lodwig of the BGI team expressed enthusiasm and appreciation to be working with the City on such an important and timely project.

## **TRANSPORTATION VISION**

Councilmember Bassett began this discussion by noting that the Transportation Element in the Comprehensive Plan is based on 15-year-old assumptions. He recommended using the BGI process to allow the community to envision its transportation plan 20 years in the future. He explained that Council decisions that affect transportation can then be informed by the community's vision.

City Manager Conrad advised that the State may postpone Comprehensive Plan updates until 2014 but that the \$80,000 the Council had budgeted for this purpose could be used to bridge other budget shortfalls. The Council recommended that the Sustainability Committee develop and present a plan and a proposal for the jitney service discussed previously in the day.

## **PARKS AND RECREATION COST RECOVERY:**

Deputy Mayor Jahncke expressed interest in increasing parks and recreation cost recovery to more than 46% from programs that can afford to pay higher rents for Community Center use (e.g., Jazzercise). He said this would help the City's overall budget. He also reiterated concern about City-sponsored programs that compete with the private sector, citing a flyer he received from a financial planner who provides his services at the Community Center. He opined that the City was subsidizing some businesses through their sponsorship and/or lower rents and setting up unfair competition for other Island businesses and property owners like Pilates and Yoga programs elsewhere on the Island. Councilmember Litzow stated that the City's rental rates should be competitive, rather than subsidizing.

After examining the flyer City Manager Conrad said it appears to be a case of marketing under the City's umbrella. The financial planner provides the training pro-bono to seniors. The Council agreed that the sponsorship for this program should change.

Interim Parks and Recreation Director Manny Ocampo stated that the City averages a rate of 41% cost recovery and that pre-school, youth, seniors and teens have the lowest cost-recovery of all. Overall, he said, adult classes are actually revenue generators for the City.

After additional discussion, a majority of the Council agreed to maintain the overall cost-recovery goal for Parks and Recreation at 46%.

At 5:30 p.m. the Council planning session adjourned.

# **Sunday, January 24, 2010**

Mayor Pearman called the planning session to order at 8:45 a.m.

## **UNDERAGE DRUG AND ALCOHOL USE**

Youth and Family Services Director Cindy Goodwin told the Council that her purpose today was to listen to the Council's concerns and answer any questions they may have. She

informed them that she'll be bringing a calendar of events and list of achievements to the first February Council meeting.

Councilmember Grausz stressed the importance of the community and Council's focus on this issue. He also stressed the need to have a specific plan on how to message the issue and share it with adult and youth groups in schools, churches, synagogues, the Jewish Community Center and other organizations on the Island. He recommended a campaign whereby at the end of 2010 children and adults have heard the "message" and understand the importance of avoiding drug and alcohol use. He concluded his remarks by stating that City involvement is key to the success of this campaign.

YFS Director Goodwin advised that Communities That Care (CTC) is the umbrella organization working on this issue and that most Island clergy are involved. She noted that their message needs to be repeated--sometimes three or four times--before an organization will internalize it. She listed other organizations where they are sharing concerns about underage drug and alcohol use, including country clubs.

City Manager Conrad commented that Nancy Lee's social marketing campaigns have been very successful at changing people's fundamental thought processes and behaviors, citing her "Click-it or Ticket" seatbelt campaign. He recommended having Nancy give feedback on messages for underage drug and alcohol use.

In response to Councilmember Grady's inquiry about getting coaches involved in the campaign, YFS Director Goodwin explained that their involvement is critical because many parents drink prior to and during youth athletic events. Councilmembers Grausz said the City has the legal jurisdiction to prohibit drinking on athletic fields. YFS Director Goodwin responded that notices have been posted to that affect.

Councilmember Cero expressed appreciation to YFS Director Goodwin for including drug use in the messaging campaign since DARE and the Bellevue Drug Program have been eliminated.

Mayor Pearman asked what YFS Director Goodwin's performance measures were and she replied that every other year YFS measures via a Healthy Youth Survey.

Councilmember Grausz prescribed funding these important programs through a surcharge on admission to community events.

Mayor Pearman recommended, and the Council agreed, to get an update from YFS Director Goodwin at their mid-year planning session.

#### **TEMPORARY ENCAMPMENTS ORDINANCE**

City Manager Conrad informed the Council that they will be voting at their next Council meeting on the Planning Commission's recommended temporary encampments ordinance which had been presented to the City Council for First Reading on January 19<sup>th</sup>.

City Attorney Katie Knight provided a handout of draft language based on guidance she had received from the Council at the Council's previous First Reading as well as a review of other jurisdictions' ordinances. She led the group through discussion and decisions on each area of proposed changes with an eye towards revisions to the draft ordinance that would be considered at the next Council meeting under Second Reading.

Councilmember Cero recommended, but the Council didn't agree, to consider the first page of "Whereas" language together. The Council had considerable discussion about legal challenges to similar ordinances, discrimination and the language on mental illness and sex offenders. They decided to keep the first two "Whereas" statements that provide the statistics on homelessness in King County and acknowledges that tent cities are an emergency response as well as a safer alternative to life on the streets.

Principal Planner George Steirer described the purpose of temporary use permits and tying encampments to places of worship (Section 1 Definition and Section 2A). Councilmember Cero expressed concern about neighborhood safety, property values, and First Hill being stereotyped as a homeless encampment neighborhood. He also stated that giving flexibility to extend beyond a 90-day stay sends the wrong message to Mercer Islanders. According to City Attorney Knight, the Tent City residents prefer to move on the weekend and the Council agreed that the code official may allow up to five additional days to accommodate moving on a weekend.

Next, Principal Planner Steirer explained that new language proposed for Section 2: 19.06.090(A)(11)(b) would provide more guidance on the types of acceptable fencing or screening. After discussion of aesthetic standards and cost, the Council removed the proposed language and left discretion to the code official on what are acceptable materials for privacy and visual buffering. He noted the community's dislike of tarps as a screening method.

The Council agreed unanimously to require the managing organization of the temporary encampment to sign a hold harmless agreement.

Regarding Section 2: 19.06.090(A)(17)(a), the Council debated and approved replacing a "government issued" ID with a "verifiable" ID for the purpose of knowing who the encampment residents are. In addition, the Council unanimously approved language prohibiting sex offenders from residing in the temporary encampments.

Regarding proposed language changes for Section 2: 19.06.090(A)(19), the Council and Police Chief Holmes discussed random searches and options for warrant and sex offender checks. Councilmember Grausz recommended, and the Council concurred, that the language should require the hosting organization to run sex offender and warrant checks prior to an encampment moving to Mercer Island. Councilmember Grady opposed this and expressed concern about discrimination and the assumption of guilt that this places on the homeless.

The Council agreed to require designated smoking areas at the temporary encampments and approved new language requiring informal public meetings prior to submitting a temporary use permit for an encampment.

Councilmember Grady and Deputy Mayor Jahncke recommended removing the required Code of Conduct from Section 2: 19.06.090(C)(1) but that failed to receive Council support.

Councilmember Cero requested that staff retrieve current information from the Sheriff's office on the number of county sex offenders and the number of them that are homeless. Chief Holmes agreed to supply the information.

City Manager Conrad indicated when the draft of the ordinance comes before the Council for a vote, staff will recommend an interim fee for temporary encampments until the fee schedule is finalized later this year.

## **WORKPLAN FINALIZATION**

As a result of discussions during the planning session, City Manager Conrad added new tasks to the work plan for 2010. Generally, he said, it appears to be a full schedule, especially given budget deliberations that will come later in the year. The year's work areas include: budget deliberations, I-90 issues, Sewer Lake Line Project implementation, Communities That Care, City code amendments, South-end Fire Station Program Plan, Shoreline Master Plan, sustainability efforts and grant review by the Council, buildings codes for home electric vehicle plug-ins, long-range transportation plan and jitney bus, collaboration with the Chamber of Commerce on Town Center partnerships, recycling center community process, and review of performance measures.

## **MISCELLANEOUS COUNCIL TOPICS**

Next, the Council turned to additional topics for discussion.

Deputy Mayor Jahncke raised a point concerning consultant bias. He said he observed a consultant promoting a particular solution during the examination of Island Crest Way.

In an effort to improve governmental transparency, Councilmember Cero requested adding a Council discussion about the pros and cons of taping Executive Sessions. The Council did not concur.

Councilmember Cero raised the question of setting residential and arterial street life cycle standards. City Manager Conrad suggested the Council take that up when they consider the Transportation Improvement Program (TIP). He also informed the Council that a report will be presented on this topic from research done last year.

Councilmember Cero explained that the State Auditor's Office (SAO) offers a performance auditing service. He recommended the City conduct such a review to learn ways to do things better in the City and to save money. City Manager Conrad noted that continual improvement is built into the City's culture and that the SAO may offer audits to find efficiencies. The Council didn't support Councilmember Cero's idea.

Councilmember Cero recommended an agenda item to keep the Council updated on the proposed regional airport near South Lake Washington. Mayor Pearman reminded the Council that Bryan Cairns (former Mayor and Councilmember) represents the City on the joint city airport committee. He went on to say that he'll check in with Bryan Cairns and have him brief the Council prior to any developments.

Councilmember Cero suggested broadcasting the Planning and Design Commission meetings on Mercer Island TV. A majority of Councilmembers concurred, and City Manager Conrad said he will bring a proposal and cost breakdown for the Council to consider.

Councilmember Bassett endorsed--and the Council concurred--to have an agenda bill to review the policies of the Open Space Conservancy Trust and include new properties like Pioneer Park and Engstrom's. City staff will bring information to the Council to consider.

Councilmember Bassett raised the idea of an Arts Council liaison being on the Design Commission. The group talked about the nexus of public-private art installations and City Manager Conrad recommended that the two Council liaisons meet with the two board chairs and bring issues back to the Council, if there are any.

Deputy Mayor Jahncke raised his interest in discussing 1% for art on utilities projects, citing the Lake Line project as an example. The Council agreed to discuss it.

Mayor Pearman reminded Council and staff that 2010 is the 50th anniversary of the City of Mercer Island and that the City should gear up for celebrations.

Councilmember Cero raised concern that the City is not fully funding LEOFF 1 long term care liability. He requested that the staff provide information on the unfunded liabilities and its implications going forward during budget deliberations.

**ADJOURNMENT:**

The Mayor adjourned the meeting at 12:00 p.m.

**City Council - Minutes**  
**Saturday, January 23, 2010**

**CALL TO ORDER:**

Mayor Jim Pearman called the meeting to order as follows in the Luther Burbank Room at the Community Center at Mercer View (8236 SE 24<sup>th</sup> Street, Mercer Island, Washington):

- January 22, 2010, 5:00 pm - 6:30 pm, 7:45 pm - 9:00 pm
- January 23, 2010, 8:30 am - 5:00 pm
- January 24, 2010, 8:30 am - 12:00 pm

**ROLL CALL:**

Councilmembers Bruce Bassett, Mike Cero, Mike Grady, Dan Grausz, Steve Litzow, Deputy Mayor El Jahncke and Mayor Jim Pearman were present.

The attached memo, dated February 8, 2010, to the Mercer Island City Council from Ginny Ratliff with Agreement Dynamics, Inc is hereby incorporated by reference as the minutes of the 2010 Mercer Island City Council Annual Planning Session.

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**TO:** Members of the Mercer Island City Council

**FROM:** Ginny Ratliff

**RE:** 2010 City Council Planning Session

**DATE:** February 8, 2010

Thank you for the opportunity to provide note-taking services for your January 23-24, 2010 City Council Planning Session. As always, it's a pleasure working with the City of Mercer Island.

## **Friday, January 23, 2009**

**MAYOR'S OPENING REMARKS**

Mayor Pearman welcomed the Council and staff to the 2010 Planning Session. He gave a quick review of the weekend's agenda noting that he thought there would be adequate time to discuss all of the Council's topics.

City Manager Rich Conrad then provided a brief review of the Council's 2009 Work Plan and the status of work plan items. He reported that all work plan items had been accomplished except those that were on January/February, 2010 calendars per Council or Planning Commission direction (Tent City Ordinance, Bike & Pedestrian Plan). He noted that the total agenda item "units" accomplished in 2009 turned out to be identical to those planned for at

the 2009 Planning Session – 98 agenda items. In response to Council Litzow's question, he also noted that this level of workload for the staff was realistic.

### **COUNCIL OPERATIONS**

Mayor Pearman opened the discussion by pointing out that every year the Council checks in about its own behavior and processes. City Manager Conrad highlighted an issue concerning Board and Commission council liaison roles that had come to light. The issue concerned council liaison engagement and influence on the work of the boards and commissions, particularly the Planning and Design Commissions. Consistent with Council-adopted protocols, Councilmembers agreed to maintain independence from any quasi-judicial work of the commissions as well as refraining from influencing any substantive policy recommendations arising from the commissions.

### **CITIZEN OF THE YEAR**

The Council ended the evening's session with a discussion of the Citizen of the Year Award.

## **Saturday, January 23, 2010**

### **BUDGET DISCUSSION**

Mayor Jim Pearman convened the meeting at 8:30 a.m. by welcoming Councilmembers, City staff, and community members to the 2010 Council Planning Session.

City Manager Conrad opened the discussion by explaining that the Council needed to discuss options to rebalance the 2010 budget and consider funding alternatives for some previous Council decisions affecting the General Fund.

Finance Director Chip Corder stated that the General Fund revenue shortfall for 2009 had increased to \$1.35 million (\$100,000 over his November 2009 projections) due to decreases in property, utility and sales taxes and fewer development fees. He also noted that the Capital Improvement Program (CIP) budget is also lower due to the decrease in real estate excise taxes (REET) resulting from fewer home sales and lower sales prices.

The Council and staff discussed Island housing prices, the likelihood and timing of an economic recovery, and that tapping the "rainy day fund" would not affect the City's bond rating,

Finance Director Corder and City Manager Conrad recommended rebalancing the 2010 General Fund budget in ways that wouldn't require staff layoffs or service reductions through a combination of expenditure savings and using the City's "Rainy Day Fund". The savings he cited were on staff COLAs, non-staff departmental expenditure cuts, positions temporarily remaining unfilled, and a reduction in DSG contract staff. City Manager Conrad related discussions he has had with the unions (and non-union employees) to accept zero cost-of-living (COLA) raises for employees in 2010, resulting in savings of approximately \$156,000. After some discussion, the Mayor queried the Council if they supported the union COLA concessions and all Councilmembers concurred.

Next, the group discussed how to fund the zero percent property tax increase in 2010 when one percent had been budgeted. Staff suggested tapping the contingency fund to cover the

\$104,000 shortage, but Councilmember Grausz endorsed taking less from the contingency fund and increasing revenues instead. Only one other Councilmember agreed with this approach.

Finance Director Corder then recommended that the Council revert to the staff's previous method of calculating CIP administrative overhead which would preserve the budgeted transfer from the CIP to the General Fund of \$173,289. Deputy Mayor Jahncke suggested that change only for 2010 and the Council agreed.

Next the Council considered staff recommendations to use the Youth and Family Services (YFS) fund balance for counselor funding (\$57,000) in 2010 and resolve the 2011-2012 funding issue during the budget process. Youth and Family Services Director Cindy Goodwin responded to Council questions about increased demand for services. YFS Director Goodwin explained that the need for emergency services has risen dramatically in the past year and has been met through additional grants and sales from the Thrift Shop. Councilmember Cero asked if additional service from the counselors beyond their 10 month contract was feasible. Councilmember Grausz advised looking at all areas of YFS funding, including the cost of counseling, during the budget process. Mayor Pearman suggested the Council adopt staff recommendations to fund YFS counselors for 2010 and address issues raised during their budget cycle discussion. All Councilmembers agreed except for one.

To close out the Budget Discussion, City Manager Conrad summarized the Council's decisions on the budget:

- Support management's recommendations on COLA freezes for 2010;
- Support the use of \$479,000 in the "Rainy Day Fund" to cover 1% property tax budgeted in 2010 (\$104,000) and to fund half of the remaining \$750,000 total revenue shortfall;
- Support using one-time dollars to extend Youth and Family Services counselors through the end of 2010;
- Not supportive of a new revenue source for replacement of property tax reduction;
- Support staff's recommendation to revert to previous CIP overhead for 2010 but to revisit the issue in the 2011-12 budget process.

### **ISLAND CREST WAY**

City Manager Conrad stated that in order to meet the Council's request to complete Island Crest Way Alternative 3 in 2010, he would need to use \$150,000 slated for future projects. He explained two possible advantages: REET funds may recover in the future and the cost of construction is lower now than in the past. The Council concurred with this recommendation.

City Manager Conrad also requested that the Council's final discussion on project scope, schedule, and budget be moved to the March meeting to accommodate Councilmember Bassett (who will be absent in February). The Council agreed.

### **SOUTH FIRE STATION FINANCING**

In recognition of the economic climate, REET funding shortages and the need for a new fire station, Council and staff brainstormed what options they could pursue in 2010. After discussion of design phases, bond or other funding sources, public safety, and possible postponement, the Council agreed to start the "building program" phase in 2010. This phase establishes the purpose and mission of the future facility vis-à-vis the operations that are

intended for the building. It is a pre-cursor to determining project scale and cost. City Manager Conrad will propose to the Council how to pay for the estimated \$20,000 in architectural services.

In response to an inquiry from Council, Fire Chief Chris Tubbs said he expected to hear whether Mercer Island would be awarded a Homeland Security Grant in September 2010.

## **2011-2012 BUDGET PROCESS DISCUSSION**

Council and staff discussed the biennial citizen survey. Councilmember Cero recommended skipping the 2010 survey because of the budget shortfall. Two Councilmembers supported this idea. City Manager Conrad suggested the possibility of fewer calls to save costs. Councilmember Litzow advocated continued support of the survey and requested staff check with the pollsters on how to reduce costs. Councilmember Grady endorsed transitioning to paperless or electronic surveys to save money. Four Councilmembers supported continuing the survey as well as looking at ways to transition to electronic surveys.

Next, Council and staff discussed the budget calendar, ways to improve budget discussions and methods to achieve Council's goals for those discussions. Finance Director Corder recommended that prior to launching into budget detail he would provide a budget overview prior to the October 4 meeting. He suggested splitting the operating budget review into 3 meetings (the first two to review department budgets and a follow-up meeting for issues raised, revenue projections, etc.). Councilmember Litzow advised starting budget meetings earlier, like 6:00 p.m., to avoid late-night deliberations. The Council discussed the possibility of seeing revenue projections prior to developing the budget, but decided to continue reviewing staff's budget first.

Mayor Pearman reiterated the Council's goal of shorter staff presentations and reminded the Council of the importance of preparing for these discussions. He also preferred giving staff the leeway to provide more detailed presentations when deemed necessary.

City Manager Conrad followed up by saying that a discussion on Council budget presentations will be a top priority at the upcoming management retreat.

Councilmember Litzow pointed out that the July 5 meeting scheduled conflicts with Independence Day holiday.

## **SUSTAINABILITY**

Deputy City Manager James Mason explained that the Council's investments in staff and consultant time had leveraged \$35,000 into three sustainability grants totaling nearly \$420,000. He noted that the City is maintaining the ICLEI database and monitoring savings from the City's sustainability initiatives. He said that the fuel savings in the City's new electric and hybrid vehicles will offset the price differential of these vehicles.

The Council raised questions about the new electric bikes for police officers. Police Chief Ed Holmes said that in the past, non-motorized bicycles limited how far the officers could travel from their vehicles. He went on to explain that electric bikes, which travel at speeds of 35 miles per hour, will allow officers to travel greater distances on bicycle trails and then speed back to their cruisers if they are called by dispatch. In response to a query, he said that the City will maintain three officers on duty at all times.

Councilmember Bassett described the growth and citizen advocacy of the Green Ribbon Commission. He said there are more than 25 citizens involved and the transportation and home energy efficiency committees have developed social marketing campaigns. He announced that the transportation committee is sponsoring three "YouPowered" events focused on getting around the Island without using a car.

Deputy Mayor Jahncke noted that the City is a stakeholder of the Commission. He asked what the difference was between a stakeholder and a member. Councilmember Bassett explained that "stakeholders" refer to groups (e.g., Rotary, Island Vision, Boys and Girls Club), while members are individuals who participate in the Commission. He also communicated that the City is just one of many players active in the Commission's effort.

Councilmember Grady described future opportunities to leverage more funding for sustainability projects:

- Mercer Island will be getting 4-5 hybrids and one additional electric car. Nissan will be testing a fleet of nearly 5000 electric vehicles (EV) in the Seattle area. If appropriate, City Manager Conrad will be trying to secure electric charging stations on the Island to support users and to help catalyze the EV business.
- HUD and DOE have developed a sustainable initiative to help regions combine planning for land-use, housing, and energy to achieve sustainability. Transit-oriented development, like on Mercer Island, could be highly regarded for this grant cycle.
- A national conference on sustainability will be held February 4 in Seattle. Two groups will tour the Puget Sound region and will be visiting Mercer Island's Town Center.
- Department of Labor funding is flowing to Bellevue and Seattle Community Colleges to train technicians in conducting energy conservation audits.

Next the Council and staff discussed the City's fleet of vehicles. City Manager Conrad explained the City's approach to evaluating vehicle replacement with electric/hybrid, right-sizing, and avoidance of vehicle "creep."

Councilmember Cero indicated he has hardly seen the City's electric car and recommended that the staff prioritize its use, thereby increasing awareness of and support for EV in the community.

Councilmember Grady shared that a Rotary group is working with the City on siting electric car charging stations. He shared that there is an Island auto manufacturer who has developed a broad line of electric cars--from passenger sedans to sport utility vehicles.

In response to an inquiry from Councilmember Grausz, Councilmember Grady shared areas where sustainability grants could be used by the City, including: Comprehensive Plan updates to include long-range, multi-modal planning; alternative transportation like bike and pedestrian plans; Puget Sound Energy and Green Ribbon Commission's home energy reports; and a smart grid and reliable energy distribution network on Mercer Island.

Councilmember Grausz recommended that the Council be more involved and give direction and prioritization on the City's requests for sustainability grants. City Manager Conrad suggested a brief strategic plan for the Council to review. He also noted this could be a tool to impress upon the community the importance of the City's efforts toward sustainability.

The group brainstormed ways to inform the community about these efforts and discussed school curriculum, Mercer Island Quarterly, Mercer Island Reporter advertising, school district email, utility billing, and email.

Councilmember Bassett stated that the Home Group wants to challenge the Council to measure, publish and evaluate each member's carbon footprint.

## **TOWN CENTER**

Following a lunch break, the Council and staff focused on the Town Center. Steve Lancaster (former Development Services Director) was introduced as the new City Administrator of Tukwila.

Deputy City Manager James Mason shared that there has been considerable interest expressed in the Town Center because of its unique location relative to transit, the thousands of people passing by each day as well as the well established community base of citizens on Mercer Island. City Manager Conrad summarized some of the discussions he had with interested developers that could impact the Walgreen's Site, and other possible projects in Town Center.

Steve Lancaster told the Council and staff that they should be proud of Town Center and said that many other communities are impressed with what has been accomplished there. He applauded the City, the Design Commission, and the Council's leadership, vision, and their commitment to the plan. He cited the many amenities of Mercer Island and the important role that public investment has played in enhancing those amenities.

He noted the desire for more specialty retail and restaurants to fill Town Center. He stated that most local residents work off island and provide an evening customer base for Town Center. However, retailers need more daytime activity (i.e., office employees) to sustain themselves. He discussed business recruitment to attract office employers and possible code incentives to draw these businesses to Town Center.

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Laura Steffen described BGI's mission to prepare students to build enterprises that are financially successful, socially responsible and environmentally sustainable. She noted that this collaboration was a good fit because Mercer Island strives to be a sustainable city. She commented that the stakeholder process would also be a sustainable model: it could be a framework for other public involvement processes and that City staff, who will work in collaboration with BGI, will gain experience and be able to replicate similar efforts in the future.

Susan Borg presented a slide show on the proposed process. She showed the varying levels of stakeholder engagement and the importance of setting discussion boundaries at the outset of the process. She also recommended clear communication about these boundaries to keep stakeholders engaged and their expectations met.

She provided a timeline of what they could accomplish prior to July. She indicated they could identify stakeholders, design and conduct the process, summarize the community's preferred solutions for the site and debrief the Council and staff on the outcomes and the process. She concluded by saying that they will be using the best practices for stakeholder processes drawn from throughout the world.

Councilmember Litzow expressed support for this effort noting that it will create a repeatable process for the City to get public input and help the City determine what the community wants for the recycling center site. After discussion, the Council was unanimous in its support to work with the BGI Team.

Next City Manager Conrad facilitated a Council brainstorming session on boundaries for the process discussion. After eliminating a few options, the Council provided the following guidance for the recycling site:

**What it could be**

- Recycling center
- Dedicated parking with plug-ins
- Community bike shop
- More park and open space
- Combo admin offices for city/school
- Environmental education center
- Miscellaneous parks/recreation utility building
- Farmers market
- Affordable housing
- Music/art center
- Thrift shop site
- Residential site that demonstrates green building and sustainability techniques

**What it can't be**

- Toxic waste site
- School bus parking
- Residential – garden variety
- Commercial building use (private/office retail)
- Land swap

Laura advised that the Council and staff look more broadly at the values desired for the site or what the community's needs are. For example, she noted that the City has identified that whatever happens at the site it needs to be budget neutral and be consistent with the City's sustainability goals. She also suggested setting clear boundaries for the community by deleting the "What it could be" column, and leaving in place "What it can't be."

In closing, Nathaniel Lodwig of the BGI team expressed enthusiasm and appreciation to be working with the City on such an important and timely project.

## **TRANSPORTATION VISION**

Councilmember Bassett began this discussion by noting that the Transportation Element in the Comprehensive Plan is based on 15-year-old assumptions. He recommended using the BGI process to allow the community to envision its transportation plan 20 years in the future. He explained that Council decisions that affect transportation can then be informed by the community's vision.

City Manager Conrad advised that the State may postpone Comprehensive Plan updates until 2014 but that the \$80,000 the Council had budgeted for this purpose could be used to bridge other budget shortfalls. The Council recommended that the Sustainability Committee develop and present a plan and a proposal for the jitney service discussed previously in the day.

## **PARKS AND RECREATION COST RECOVERY:**

Deputy Mayor Jahncke expressed interest in increasing parks and recreation cost recovery to more than 46% from programs that can afford to pay higher rents for Community Center use (e.g., Jazzercise). He said this would help the City's overall budget. He also reiterated concern about City-sponsored programs that compete with the private sector, citing a flyer he received from a financial planner who provides his services at the Community Center. He opined that the City was subsidizing some businesses through their sponsorship and/or lower rents and setting up unfair competition for other Island businesses and property owners like Pilates and Yoga programs elsewhere on the Island. Councilmember Litzow stated that the City's rental rates should be competitive, rather than subsidizing.

After examining the flyer City Manager Conrad said it appears to be a case of marketing under the City's umbrella. The financial planner provides the training pro-bono to seniors. The Council agreed that the sponsorship for this program should change.

Interim Parks and Recreation Director Manny Ocampo stated that the City averages a rate of 41% cost recovery and that pre-school, youth, seniors and teens have the lowest cost-recovery of all. Overall, he said, adult classes are actually revenue generators for the City.

After additional discussion, a majority of the Council agreed to maintain the overall cost-recovery goal for Parks and Recreation at 46%.

At 5:30 p.m. the Council planning session adjourned.

# **Sunday, January 24, 2010**

Mayor Pearman called the planning session to order at 8:45 a.m.

## **UNDERAGE DRUG AND ALCOHOL USE**

Youth and Family Services Director Cindy Goodwin told the Council that her purpose today was to listen to the Council's concerns and answer any questions they may have. She

informed them that she'll be bringing a calendar of events and list of achievements to the first February Council meeting.

Councilmember Grausz stressed the importance of the community and Council's focus on this issue. He also stressed the need to have a specific plan on how to message the issue and share it with adult and youth groups in schools, churches, synagogues, the Jewish Community Center and other organizations on the Island. He recommended a campaign whereby at the end of 2010 children and adults have heard the "message" and understand the importance of avoiding drug and alcohol use. He concluded his remarks by stating that City involvement is key to the success of this campaign.

YFS Director Goodwin advised that Communities That Care (CTC) is the umbrella organization working on this issue and that most Island clergy are involved. She noted that their message needs to be repeated--sometimes three or four times--before an organization will internalize it. She listed other organizations where they are sharing concerns about underage drug and alcohol use, including country clubs.

City Manager Conrad commented that Nancy Lee's social marketing campaigns have been very successful at changing people's fundamental thought processes and behaviors, citing her "Click-it or Ticket" seatbelt campaign. He recommended having Nancy give feedback on messages for underage drug and alcohol use.

In response to Councilmember Grady's inquiry about getting coaches involved in the campaign, YFS Director Goodwin explained that their involvement is critical because many parents drink prior to and during youth athletic events. Councilmembers Grausz said the City has the legal jurisdiction to prohibit drinking on athletic fields. YFS Director Goodwin responded that notices have been posted to that affect.

Councilmember Cero expressed appreciation to YFS Director Goodwin for including drug use in the messaging campaign since DARE and the Bellevue Drug Program have been eliminated.

Mayor Pearman asked what YFS Director Goodwin's performance measures were and she replied that every other year YFS measures via a Healthy Youth Survey.

Councilmember Grausz prescribed funding these important programs through a surcharge on admission to community events.

Mayor Pearman recommended, and the Council agreed, to get an update from YFS Director Goodwin at their mid-year planning session.

## **TEMPORARY ENCAMPMENTS ORDINANCE**

City Manager Conrad informed the Council that they will be voting at their next Council meeting on the Planning Commission's recommended temporary encampments ordinance which had been presented to the City Council for First Reading on January 19<sup>th</sup>.

City Attorney Katie Knight provided a handout of draft language based on guidance she had received from the Council at the Council's previous First Reading as well as a review of other jurisdictions' ordinances. She led the group through discussion and decisions on each area of proposed changes with an eye towards revisions to the draft ordinance that would be considered at the next Council meeting under Second Reading.

Councilmember Cero recommended, but the Council didn't agree, to consider the first page of "Whereas" language together. The Council had considerable discussion about legal challenges to similar ordinances, discrimination and the language on mental illness and sex offenders. They decided to keep the first two "Whereas" statements that provide the statistics on homelessness in King County and acknowledges that tent cities are an emergency response as well as a safer alternative to life on the streets.

Principal Planner George Steirer described the purpose of temporary use permits and tying encampments to places of worship (Section 1 Definition and Section 2A). Councilmember Cero expressed concern about neighborhood safety, property values, and First Hill being stereotyped as a homeless encampment neighborhood. He also stated that giving flexibility to extend beyond a 90-day stay sends the wrong message to Mercer Islanders. According to City Attorney Knight, the Tent City residents prefer to move on the weekend and the Council agreed that the code official may allow up to five additional days to accommodate moving on a weekend.

Next, Principal Planner Steirer explained that new language proposed for Section 2: 19.06.090(A)(11)(b) would provide more guidance on the types of acceptable fencing or screening. After discussion of aesthetic standards and cost, the Council removed the proposed language and left discretion to the code official on what are acceptable materials for privacy and visual buffering. He noted the community's dislike of tarps as a screening method.

The Council agreed unanimously to require the managing organization of the temporary encampment to sign a hold harmless agreement.

Regarding Section 2: 19.06.090(A)(17)(a), the Council debated and approved replacing a "government issued" ID with a "verifiable" ID for the purpose of knowing who the encampment residents are. In addition, the Council unanimously approved language prohibiting sex offenders from residing in the temporary encampments.

Regarding proposed language changes for Section 2: 19.06.090(A)(19), the Council and Police Chief Holmes discussed random searches and options for warrant and sex offender checks. Councilmember Grausz recommended, and the Council concurred, that the language should require the hosting organization to run sex offender and warrant checks prior to an encampment moving to Mercer Island. Councilmember Grady opposed this and expressed concern about discrimination and the assumption of guilt that this places on the homeless.

The Council agreed to require designated smoking areas at the temporary encampments and approved new language requiring informal public meetings prior to submitting a temporary use permit for an encampment.

Councilmember Grady and Deputy Mayor Jahncke recommended removing the required Code of Conduct from Section 2: 19.06.090(C)(1) but that failed to receive Council support.

Councilmember Cero requested that staff retrieve current information from the Sheriff's office on the number of county sex offenders and the number of them that are homeless. Chief Holmes agreed to supply the information.

City Manager Conrad indicated when the draft of the ordinance comes before the Council for a vote, staff will recommend an interim fee for temporary encampments until the fee schedule is finalized later this year.

## **WORKPLAN FINALIZATION**

As a result of discussions during the planning session, City Manager Conrad added new tasks to the work plan for 2010. Generally, he said, it appears to be a full schedule, especially given budget deliberations that will come later in the year. The year's work areas include: budget deliberations, I-90 issues, Sewer Lake Line Project implementation, Communities That Care, City code amendments, South-end Fire Station Program Plan, Shoreline Master Plan, sustainability efforts and grant review by the Council, buildings codes for home electric vehicle plug-ins, long-range transportation plan and jitney bus, collaboration with the Chamber of Commerce on Town Center partnerships, recycling center community process, and review of performance measures.

## **MISCELLANEOUS COUNCIL TOPICS**

Next, the Council turned to additional topics for discussion.

Deputy Mayor Jahncke raised a point concerning consultant bias. He said he observed a consultant promoting a particular solution during the examination of Island Crest Way.

In an effort to improve governmental transparency, Councilmember Cero requested adding a Council discussion about the pros and cons of taping Executive Sessions. The Council did not concur.

Councilmember Cero raised the question of setting residential and arterial street life cycle standards. City Manager Conrad suggested the Council take that up when they consider the Transportation Improvement Program (TIP). He also informed the Council that a report will be presented on this topic from research done last year.

Councilmember Cero explained that the State Auditor's Office (SAO) offers a performance auditing service. He recommended the City conduct such a review to learn ways to do things better in the City and to save money. City Manager Conrad noted that continual improvement is built into the City's culture and that the SAO may offer audits to find efficiencies. The Council didn't support Councilmember Cero's idea.

Councilmember Cero recommended an agenda item to keep the Council updated on the proposed regional airport near South Lake Washington. Mayor Pearman reminded the Council that Bryan Cairns (former Mayor and Councilmember) represents the City on the joint city airport committee. He went on to say that he'll check in with Bryan Cairns and have him brief the Council prior to any developments.

Councilmember Cero suggested broadcasting the Planning and Design Commission meetings on Mercer Island TV. A majority of Councilmembers concurred, and City Manager Conrad said he will bring a proposal and cost breakdown for the Council to consider.

Councilmember Bassett endorsed--and the Council concurred--to have an agenda bill to review the policies of the Open Space Conservancy Trust and include new properties like Pioneer Park and Engstrom's. City staff will bring information to the Council to consider.

Councilmember Bassett raised the idea of an Arts Council liaison being on the Design Commission. The group talked about the nexus of public-private art installations and City Manager Conrad recommended that the two Council liaisons meet with the two board chairs and bring issues back to the Council, if there are any.

Deputy Mayor Jahncke raised his interest in discussing 1% for art on utilities projects, citing the Lake Line project as an example. The Council agreed to discuss it.

Mayor Pearman reminded Council and staff that 2010 is the 50th anniversary of the City of Mercer Island and that the City should gear up for celebrations.

Councilmember Cero raised concern that the City is not fully funding LEOFF 1 long term care liability. He requested that the staff provide information on the unfunded liabilities and its implications going forward during budget deliberations.

**ADJOURNMENT:**

The Mayor adjourned the meeting at 12:00 p.m.







**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND, WA**

**AB 4508  
February 1, 2010  
Regular Business**

<b>TEMPORARY ENCAMPMENT ORDINANCE (2<sup>ND</sup> READING)</b>	<b>Proposed Council Action:</b> Conduct 2 <sup>nd</sup> reading and adopt Ordinance No. 10C-01 and pass Resolution No. 1424.
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<b>DEPARTMENT OF</b>	City Manager (James Mason)
<b>COUNCIL LIAISON</b>	El Jahncke
<b>EXHIBITS</b>	1. Proposed Ordinance No. 10C-01 with Council recommendations 2. Ordinance Revisions Matrix 3. Proposed Resolution No.1424
<b>APPROVED BY CITY MANAGER</b>	

<b>AMOUNT OF EXPENDITURE</b>	\$	n/a
<b>AMOUNT BUDGETED</b>	\$	n/a
<b>APPROPRIATION REQUIRED</b>	\$	n/a

**SUMMARY**

On January 19, 2010, Council conducted the first reading of Ordinance No. 10C-01, regarding permitting of temporary encampments. At that time, the Council directed staff to clarify several elements of the ordinance and provide updated revisions at the City Council Planning Session on January 23<sup>rd</sup>. The City Council discussed the modifications at the Planning Session and directed staff to revise the draft ordinance for the second reading. A revised ordinance is attached as Exhibit 1. Staff has also prepared a matrix which outlines the specific revisions to the ordinance in Exhibit 2.

At the Planning Session the City Council also directed staff to provide a recommended fee for processing a temporary encampment application. After reviewing fees from other cities for temporary encampments (which ranged from \$60 to \$1,600), staff recommends a processing fee of \$204 for a temporary encampment and an additional refundable deposit of \$250 (for the public notification sign to be posted on the site). Upon review of the City's permitting fee structure, staff has determined that the fee amount recommended for a temporary encampment is consistent with other land use permits.

In order to set these fees for a temporary encampment application the Development and Construction Permit Fee Schedule must be revised. The City Council must pass Resolution No. 1424 (Exhibit 3) to add the fees to the schedule.

## RECOMMENDATION

*Deputy City Manager*

- MOVE TO:
1. Conduct second reading and adopt Ordinance No. 10C-01, amending the Mercer Island City Code Section 19.06 to provide requirements and procedures for permitting temporary encampments.
  2. Adopt Resolution No. 1424, adding fees to the Development and Building Fee Schedule to process a permit for a temporary encampment.

**CITY OF MERCER ISLAND  
ORDINANCE NO. 10C-01**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010,  
AND ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE  
DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR  
PERMITTING TEMPORARY ENCAMPMENTS WITHIN THE CITY**

WHEREAS the Committee to End Homelessness in King County estimates 8,000 people are homeless in King County each night; and

WHEREAS the Committee to End Homelessness in King County's plan neither promotes nor disapproves of tent cities. Rather it acknowledges that tent cities are an emergency response to a greater problem of homelessness in King County and a safer alternative to life on the streets; and

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions' ability to practice their religion by hosting temporary encampments, and limited municipalities' ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

WHEREAS, the City of Mercer Island and its elected and appointed officials are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, 2009, and

the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held an open record public hearing on January 18, 2010, held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Amendments to Chapter 19.16 MICC, Definitions. MICC 19.16.010**

"Definitions" is hereby amended by adding the following:

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Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes, and located at a place of worship.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a Temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

...

**Section 2. Chapter 19.06 MICC General Regulations. MICC 19.06.090 "Temporary Encampment Permit" is hereby added as follows:**

**19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. A temporary encampment shall be located at a place of worship. If the place of worship is not actively practicing on the site proposed for a temporary encampment, then the place of worship must comply with all other permit requirements for the underlying zone required for siting a new place of worship and temporary encampment.

2. Each lot occupied by a temporary encampment must provide or have available parking and vehicular maneuvering area.

3. The temporary encampment and the parking of any vehicles associated with a temporary encampment application shall not displace the host site's parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the code official.

4. The temporary encampment shall be located within one-half mile of a public transit stop.

5. No temporary encampment shall operate within the City of Mercer Island for more than 90 consecutive days, except that the code official may allow up to five additional days to accommodate moving on a weekend.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a lot or lots within one-half mile of any lot(s) that contained a temporary encampment within the last 18 months. For the purposes of this subsection, the 18 months shall be calculated from the last day of the prior temporary encampment within the one-half mile radius. No more than one temporary encampment may be located in the City at any time.

7. All temporary encampments shall obtain, prior to occupancy of the lots, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least 75 days before any occupancy by the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons, if all other conditions are met. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the code official on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the code official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property, unless otherwise approved by the code official. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments.

b. A six-foot high sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the code official. The code official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement.

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment. If a child under the age of 18 attempts to stay overnight at the temporary encampment, the temporary encampment managing organization shall immediately contact the Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials. Servicing of portable toilets and trash dumpsters is prohibited between the hours of 10:00 pm and 7:00 am on Mondays through Fridays, excluding legal holidays, and between the hours of 10:00 pm and 9:00 am on Saturdays, Sundays, and legal holidays, except in the case of bona fide emergency or under permit from the code official in case of demonstrated necessity.

15. The temporary encampment shall permit regular inspections by the City, including the Police Department, and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services, such as food, water, and waste disposal, provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization.

17. The managing organization and temporary encampment sponsor shall sign a hold harmless agreement for the temporary encampment.

18. The temporary encampment managing organization shall maintain a resident log for all who are residing at the temporary encampment. Such log shall be kept onsite at the temporary encampment. Prospective encampment residents shall provide a verifiable form of identification when signing the log.

19. The temporary encampment host, encampment sponsor, and encampment managing organization shall ensure enforcement of a code of conduct at the temporary encampment site. The code of conduct shall be in substantially the following form or address the following issues:

- a. Possession or use of illegal drugs is not permitted.
- b. No alcohol is permitted.
- c. No weapons are permitted.
- d. All knives over three and one-half inches must be turned in to the encampment manager for safekeeping.
- e. No violence is permitted.
- f. No open flames are permitted.
- g. No trespassing into private property in the surrounding neighborhood is permitted.
- h. No littering on the Temporary Encampment site or in the surrounding neighborhood is permitted.
- i. No convicted sex offender shall reside in the temporary encampment

Nothing within this section shall prohibit the encampment sponsor or encampment managing organization from imposing and enforcing additional code of conduct conditions not otherwise inconsistent with this section.

20. The temporary encampment managing organization is responsible for maintaining an up to date log of persons residing at the temporary encampment and to obtain warrant and sex offender checks with King County. The temporary encampment managing organization shall obtain warrant and sex offender checks from the King County Sheriff's office for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the temporary encampment managing organization or sponsor shall immediately contact the City of Mercer Island Police Department. The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur.

21. Upon determination that there has been a violation of any decision criteria or condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within seven days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the seven day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

22. A designated smoking area shall be provided on site in the location which would result in the least impact on neighboring properties based on distance.

23. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the code official:

1. General application form;
2. A site plan, which extends 50 feet beyond the proposed site's property boundaries, drawn to scale showing all of the following:
  - a. all existing structures;
  - b. existing parking stalls;
  - c. parking stalls proposed to be unavailable for parking vehicles during the Temporary Encampment;
  - d. all proposed temporary structures;
  - e. proposed electrical and plumbing connections;
  - f. location of trash receptacles, including trash dumpsters;
  - g. location of toilets and other sanitary facilities;
  - h. location and details of any proposed connection to wastewater, potable water, stormwater, electrical supply, or other public or private utility systems;
  - i. proposed and existing ingress and egress;
  - j. any permanent alterations on the lot, to the site, or structures; and

- k. designated smoking area;
- 3. Proposed fencing detail or typical section;
- 4. Written authorization from a temporary encampment organization on which the temporary encampment is located;
- 5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the , temporary encampment sponsor;
- 6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;
- 7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;
- 8. A copy of the code of conduct;
- 9. The applicant shall provide:
  - i. the date, time, and location of the required informal public meeting;
  - ii. the name of persons representing the temporary encampment managing organization and sponsor at the informal public meeting;
  - iii. a summary of comments provided; and
  - iv. copies of any documents submitted at the informal public meeting.
- 10. Any other information deemed necessary by the code official for the processing of a temporary encampment permit; and
- 11. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official shall require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment prior to submittal of an application. Notice of the informal public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting. Prior to the informal public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding any proposed security measures. At the informal public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment location, timing, site plan, code of conduct, encampment concerns, management security measures, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.

2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the lot(s) containing the proposed temporary encampment. Prior to any application for a temporary encampment permit, the temporary encampment sponsor, or temporary encampment managing organization shall meet and confer with the administration of any public or private elementary,

middle, junior high or high school within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment, and shall meet and confer with the operators of any properly licensed child care service within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the conditions for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, based on the applicable decision criteria.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations.** MICC 19.06.010(A) "Prohibited Uses" is hereby amended as follows:

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development.** MICC 19.09.010 "Preapplication and intake screening meetings" is hereby amended as follows:

**19.09.010 Preapplication and intake screening meetings.**

A. Preapplication meetings between the applicant, members of the applicant's project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

...

**Section 5. Amendments to Chapter 19.09 MICC, Administration.** MICC 19.15.010(E) “General Procedures” is hereby amended as follows:

...

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
<b>Ministerial Actions</b>			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission

Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court
<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board

Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).			
**The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.			

**Section 6:** **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:** **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 8:** **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 1st day of February, 2010 and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: \_\_\_\_\_

**CHANGES TO THE DRAFT TEMPORARY ENCAMPMENT ORDINANCE  
PRESENTED ON JAN. 19, 2010, AS REQUESTED BY COUNCIL**

<b>AB 4508</b>	<b>REQUEST</b>	<b>POSSIBLE LANGUAGE</b>
Whereas	Add language to the "Whereas" section, regarding homeless statistics. Ref: <a href="http://www.cehkc.org/DOC_plan/10-YearPlanFinal.pdf">http://www.cehkc.org/DOC_plan/10-YearPlanFinal.pdf</a> pg. i Ref: <a href="http://www.cehkc.org/DOC_plan/10YPlanFAQs.pdf">http://www.cehkc.org/DOC_plan/10YPlanFAQs.pdf</a>	<u>Whereas the Committee to End Homelessness in King County estimates 8,000 people are homeless in King County each night; and</u>  <u>Whereas the Committee to End Homelessness in King County's plan neither promotes nor disapproves of tent cities. Rather it acknowledges that tent cities are an emergency response to a greater problem of homelessness in King County and a safer alternative to life on the streets; and</u>
Section 1 Definition	Clarify language on Place of Worship. (19.16.010)	<u>Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes, and located at a place of worship.</u>
Section 2 A.1	Clarify language on Place of Worship. (19.06.090.A.1)	<u>1. A temporary encampment must be located at a place of worship. If the place of worship is not actively practicing on the site proposed for a temporary encampment, then the place of worship must comply with all other permit requirements for the underlying zone required for siting a new place of worship and temporary encampment.</u>
Section 2 A.old #4	Remove unnecessary language regarding the Parks Department. (19.06.090.A.4)	<del><u>No temporary encampment shall occupy or use public parks in any manner unless specifically approved by the Parks Department.</u></del>
Section 2 A.5	Add some flexibility regarding the maximum stay being 90 days. (19.06.090.A.5)	<u>No temporary encampment shall operate within the City of Mercer Island for more than 90 consecutive days, except that the code official may allow up to five additional days to accommodate moving on a weekend.</u>
Section 2 A.9	Reduce the minimum time for submitting a complete application prior to opening a Temporary Encampment due to moving up the Informal Meeting (19.06.090.A.9)	<u>The applicant shall submit a complete application for a temporary encampment permit at least 90-75 days before the planned opening of any occupancy of by the temporary encampment.</u>

Section 2 A.11.b	Remove limit on fence materials. (19.06.090.A.11.b)	A six-foot high sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the Code Official. <del>The fence(s) shall not be constructed of tarp, visqueen, or plastic sheeting.</del> The code official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement. <u>The managing organization and temporary encampment sponsor shall sign a hold harmless agreement for the temporary encampment.</u> The temporary encampment managing organization shall maintain a resident log for all who are residing at the <u>temporary encampment</u> . Such log shall be kept onsite at the <u>temporary encampment</u> . Prospective encampment residents shall provide a <del>government-issued</del> <u>verifiable form of identification when signing the log.</u> i. <u>No convicted sex offender shall reside in the temporary encampment.</u>
Section 2 A.17	Require the Managing Organization to sign the hold harmless agreement. (19.06.090.A.17)	
Section 2 A.18	a. Remove "government issued" identification (19.06.090.A.19)	
Section 2 A.19	Prohibit sex offenders as a portion of the Code of Conduct. (19.06.090.A.19)	
Section 2 A.20	Provide less restrictive language regarding warrant checks. (19.06.090.A.20)	<u>The temporary encampment managing organization is responsible for maintaining an up to date log of persons residing at the temporary encampment and to obtain warrant and sex offender checks with King County.</u> <del>The applicant temporary encampment managing organization shall obtain warrant and sex offender checks from the King County Sheriff's office or other relevant authority for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the applicant temporary encampment managing organization or sponsor shall immediately contact the City of Mercer Island Police Department. To verify compliance with this requirement, the City of Mercer Island Police Department may do random warrant and sex offender checks on temporary encampment residents.</del> <u>The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur.</u>

Section 2 A.22	Add a requirement and criteria for siting smoking areas. (19.06.090.A[New #22] and application requirements in 19.09.090.B.2.k)	22. <u>A designated smoking area shall be provided on site in the location which would result in the least impact on neighboring properties based on distance.</u>
Section 2 B.(9)	Detail what is done with the information from the informal public meeting. (19.06.090.B[New #9])	<u>The applicant shall provide the:</u> i. <u>the date, time, and location of the required informal public meeting;</u> ii. <u>the name of persons representing the temporary encampment managing organization and sponsor at the informal public meeting;</u> iii. <u>a summary of comments provided; and</u> iv. <u>copies of any documents submitted at the informal public meeting.</u>
Section 2 C.1	a. Require informal public meeting before permit application is submitted. (19.06.090.C.1)  b. Detail items to be discussed at the informal public meeting (19.06.090.C.1)	The code official shall require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment prior to submittal of an application. <del>When required, the informal public meetings shall be held as early in the review process as possible once a complete application has been submitted.</del> Notice of the <u>informal public meeting</u> shall be provided in the same manner as required for notice of the application, and at least 10 days prior to the informal public meeting, and <del>combined with the notice of application whenever possible.</del> Prior to the <u>informal public meeting</u> , the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding <del>the any</del> proposed security measures. At the <u>informal public meeting</u> , a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment <u>location, timing, site plan, code of conduct, encampment concerns, management security measures</u> , and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.
Various	Various locations in the ordinance	There are other minor syntax changes made throughout the ordinance, such as using consistent terms, for clarification.
Fees	Provide a recommended fee amount for processing a Temporary Encampment	\$204

**CITY OF MERCER ISLAND  
RESOLUTION NO. 1424**

**A RESOLUTION OF THE CITY OF MERCER ISLAND, WASHINGTON  
ADDING A FEE TO PROCESS A PERMIT FOR A TEMPORARY  
ENCAMPMENT.**

WHEREAS, fees are charged for services provided by the Development Services Group (DSG) for the development of land and construction of structures which includes the review of permit applications, issuance of permits, field inspections, and related actions; and

WHEREAS, the City Council's Management and Budget Policies indicate that development and construction permit fees should be based on the costs of providing services; and

WHEREAS, the Mercer Island City Council has passed Ordinance No. 10C-01 which regulates temporary encampments to protect the safety, health and welfare of citizens; and

WHEREAS, Ordinance No. 10C-01 requires that a permit be submitted for the placement of a temporary encampment; and

WHEREAS, in November 2009, Resolution No. 1424 was passed by the City Council to update the Development and Building Permit Fee Schedule based on the cost of providing review and permitting of development and construction permits, annual changing economic factors, and the Consumer Price Index – West, U.S. Cities; and

WHEREAS, future development fee increases will be tied to the First Half CPI-W (Seattle Metro) Index, assuming it is positive, and will be effective January 1st of each year to provide consistency with utility and other City fee structures.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AS FOLLOWS:

**Section 1: Development and Construction Permit Fee Schedule.**

Consistent with the authority set forth in Mercer Island City Code 19.15.020(B)(2), the fee to submit an application for a temporary encampment land use decision shall be \$204.00 and shall be added to the Development and Construction Permit Fee Schedule.

**Section 2: Future Fee Adjustments.**

The fees set forth in this resolution shall be adjusted January 1 of each year, based on the First Half CPI-W (Seattle Metro) Index, in order to align the fees with industry standards for fee increases.

**Section 3: Effective Date.**

The fee established by this resolution shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AT ITS REGULAR MEETING ON THE 1ST DAY OF FEBRUARY, 2010.

CITY OF MERCER ISLAND

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Jim Pearman, Mayor

ATTEST:

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Allison Spietz, City Clerk



# CITY COUNCIL PLANNING SCHEDULE

All meetings are held in the City Hall Council Chambers unless otherwise noted.  
 Special Meetings and Study Sessions begin at 6:00 pm. Regular Meetings begin at 7:00 pm.

<b>FEBRUARY 1</b>		
<b>Item Type</b>	<b>Topic/Presenter</b>	<b>Time</b>
<i>Consent Calendar</i>	Interlocal Agreement with King County for Waste Reduction and Recycling Grant Program – G. Boettcher	--
<i>Regular Business</i>	Lakeridge Elementary Healthy Ways to School Project Acceptance (no presentation) – C. Morris	10
<i>Regular Business</i>	Sub- Basin 6 Stormwater Improvement Preliminary Design and Permitting (no presentation) – F. Gu	10
<i>Regular Business</i>	Emergency Well Facility - Operations Overview – G. Boettcher	30
<i>Regular Business</i>	Temporary Encampment – Ordinance (2 <sup>nd</sup> Reading) – K. Knight	45
<i>Regular Business</i>	Arts Council 2009 Annual Report and 2010 Work Plan – A. Britton	30

<b>FEBRUARY 16 (TUESDAY)</b>		
<b>Item Type</b>	<b>Topic/Presenter</b>	<b>Time</b>
<i>Consent Calendar</i>	2009 72nd Ave SE (SE 24th to SE 32nd St) Asphalt Overlay and Pedestrian Improvements Project Close-Out – J. Weiser	--
<i>Regular Business</i>	1% for Public Art Banner Proposal – A. Britton	30
<i>Regular Business</i>	Island Crest Way Corridor – A. Tonella-Howe	30
<i>Regular Business</i>	Planning Commission 2010 Work Program – G. Steirer	30
<i>Regular Business</i>	Pedestrian and Bicycle Facilities Plan Briefing – M. Ocampo	60

<b>MARCH 1</b>		
<b>Item Type</b>	<b>Topic/Presenter</b>	<b>Time</b>
<i>Consent Calendar</i>	Northwest Center Pool Annual Report – D. Mortenson	--
<i>Regular Business</i>	78 <sup>th</sup> Ave Sculpture Garden Plaza	30
<i>Regular Business</i>	ARCH Fall Trust Fund Recommendations – J. Trantina	15
<i>Regular Business</i>	2010 ARCH Work Program – J. Trantina	15
<i>Regular Business</i>	ARCH Interlocal Agreement – J. Trantina	15
<i>Regular Business</i>	Pedestrian and Bicycle Facilities Plan Discussion – M. Ocampo	60

**MARCH 15**

Item Type	Topic/Presenter	Time
<i>Study Session</i>	Biennial Citizen Survey Results—J. Mason	60
<i>Consent Calendar</i>	Mercer Island Preschool Association Grant for Deanes Childrens' Park Adventure Playground – P. West	--
<i>Regular Business</i>	Pedestrian and Bicycle Facilities Plan Adoption – M. Ocampo	60
<i>Regular Business</i>	2009 Year-End Financial Status Report & 2009-2010 Budget Adjustments – C. Corder	30
<i>Regular Business</i>	2011-2016 Capital Improvement Program Kick-Off – J. Mason & C. Corder	60
<i>Regular Business</i>	Open Space Conservancy Trust Annual Report – P. West and D. Cohen	20

**APRIL 5**

Item Type	Topic/Presenter	Time

**APRIL 19**

Item Type	Topic/Presenter	Time
<i>Regular Business</i>	Adoption of 2009 Construction Codes (1 <sup>st</sup> Reading) – D. Cole	45

**MAY 3**

Item Type	Topic/Presenter	Time
<i>Regular Business</i>	Adoption of 2009 Construction Codes (2 <sup>nd</sup> Reading) – D. Cole	30

**OTHER ITEMS TO BE SCHEDULED:**

- Senior Commission Work Plan – C. Goodwin
- School Bus Storage – R. Conrad & G. Boettcher
- East Cove Long Plat – G. Steirer

**COUNCILMEMBER ABSENCES:**

Councilmember Bassett: February 16, 2010



**City Council - Minutes**  
**Monday, February 01, 2010**

**CALL TO ORDER:**

Mayor Jim Pearman called the meeting to order at 7:06 pm in the Council Chambers of City Hall, 9611 SE 36th Street, Mercer Island, Washington.

**ROLL CALL:**

Councilmembers Bruce Bassett, Mike Cero, Mike Grady, Dan Grausz, Steve Litzow, Deputy Mayor El Jahncke and Mayor Jim Pearman were present.

Mayor Pearman read thank you letters from Island Park Elementary 2<sup>nd</sup> grade students from their tour in January.

Mayor Pearman thanked EarthCorps volunteers' for their work in removing invasive species in Pioneer Park over the past weekend.

City Manager Rich Conrad introduced the new Parks and Recreation Director, Bruce Fletcher. Director Fletcher previously worked for the Cities of Tukwila and Olympia and is the current President of the Washington Recreation and Parks Association.

**APPEARANCES:**

Bob Brahm, 7420 North Mercer Way, thanked the Council and the Parks and Recreation staff for their support of the Mercer Island Arts Council efforts for the first presentation of the blue star service flag, which is an official banner that family members of service members in harm's way can display. He especially thanked Judy Leithe for her work in making the presentation at Summer Celebration! in 2009. On behalf of Mercer Island Post 5760, he thanked the City for the support of Mercer Island veterans.

Sam Hobson, 8828 SE 77th Place, thanked the Council for the Lakeridge healthy ways to school project as his family uses the new services at least 4 times a week.

Lynn Thomas, 7360 Island Crest Way, thanked the council for the improvements around Lakeridge elementary. She hopes the Council will continue to support such projects for increased safety for walking and biking around the Island.

**MINUTES:**

- (1) It was moved by Councilmember Grady; seconded by Councilmember Bassett to:  
**Adopt the Regular Meeting Minutes of January 19, 2010 as written.**  
Motion PASSED 7-0.

**CONSENT CALENDAR:**

- (2) Payables: \$846,811.21 (1/21/2010) & \$118,006.69 (01/27/2010)

**Recommendation:** Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

Payroll: \$606,835.48 (01/29/2010)

**Recommendation:** Certify that the materials or services specified have been received, and that all fund warrants are approved for payment.

(3) AB 4506 Interlocal Agreement with King County for Waste Reduction and Recycling Grant Program

**Recommendation:** Authorize the City Manager to sign the interlocal agreement with King County for the 2010-2011 Waste Reduction and Recycling Grant Program.

It was moved by Councilmember Grady; seconded by Councilmember Bassett to:  
**Approve the Consent Calendar and the recommendations contained therein.**  
Motion PASSED 7-0.

#### REGULAR BUSINESS:

(4) AB 4504 Lakeridge Elementary Healthy Ways to School Project Acceptance (no presentation)

It was moved by Councilmember Bassett; seconded by Councilmember Grady to:  
**Accept the completed Lakeridge Elementary Healthy Ways to School project improvements and authorize staff to close out the contract.**  
Motion PASSED 7-0.

(5) AB 4498 Sub-Basin 6 Stormwater Improvement Preliminary Design & Permitting (no presentation)

It was moved by Deputy Mayor Jahncke; seconded by Councilmember Grady to:  
**Authorize staff to accelerate preliminary design and permitting work on Sub-Basin 6 to 2010, and redirect \$75,000 from saving on Sub-Basin 26 Phase II Project in 2009 to the Sub-Basin 6 Project in 2010.**

It was moved by Councilmember Bassett; seconded by Councilmember Cero to:  
**Amend the main motion to add:  
Expand project scope to include knotweed eradication along the watercourse from SE 40<sup>th</sup> Street to I-90.**  
Motion to amend PASSED 7-0.

Main motion as amended PASSED 7-0.

(7) AB 4503 Arts Council 2009 Annual Report and 2010 Work Plan

Arts & Special Events Coordinator and Staff Liaison to the Arts Council Amber Britton introduced the Chair of the Arts Council Jane Ditzler who spoke about the Arts Council accomplishments in 2009 and the goals for 2010. She thanked Bruce Bassett for his support as the City Council liaison for the past two years.

It was moved by Councilmember Bassett; seconded by Councilmember Grady to:  
**Receive the Mercer Island Arts Council 2009 Annual Report and approve the 2010 Work Plan.**

It was moved by Councilmember Grausz; seconded by Councilmember Bassett to:  
**Amend the main motion to include:**  
**Direct staff to add to the work plan an item that would have the Arts Council engage with the Youth Theatre Northwest on the possibility of a continued financial relationship in 2010.**  
Motion to amend PASSED 7-0.

Main motion as amended PASSED 7-0.

(8) AB 4508 Temporary Encampments Ordinance (2nd Reading)

Deputy City Manager James Mason presented a revised ordinance regarding temporary encampment permitting regulations for a second reading and possible adoption. He detailed the revisions to the ordinance stemming from Council deliberation at the January 19, 2010 Council Meeting and the 2010 Planning Session on January 24, 2010.

City Attorney Katie Knight spoke about various issues that have been expressed by SHARE/WHEEL and the Mercer Island Clergy Association and what revisions were made to the ordinance.

**APPEARANCES (CONTINUED):**

Alana Osborne, 4137 94<sup>th</sup> Ave SE, has visited Tent City multiple times. She read from a paper she wrote about her experiences with and support of Tent City and the people who live there.

Reverend Dale Sol, 9535 Mercerwood Drive, Pastor of Mercer Island Presbyterian, presented a petition of 500 signatures from church members and high school students urging the Council to create a reasonable ordinance that reflects the welcome and support for the homeless residents of Tent City and facilitates their stay on Mercer Island without undue burden to either Tent City or their hosts. He spoke about a letter that was sent to the City Council from the Mercer Island Clergy Association about the proposed ordinance.

Reverend Mark Travis, Pastor of Congregational Church on Mercer Island and President of the Mercer Island Clergy Association, appreciates the Council's intent to facilitate the conversation about temporary encampments, but he stated that the Clergy are not comfortable with the ordinance. They disagree with certain portions dealing with the prohibition of children, safety precautions, time restrictions and informal meetings.

Bruce Thomas, Camp Advisor and Tent City 4 resident, has issue with the City requiring the temporary encampment managing organization to obtain warrant and sex offender checks from the King County Sheriff's office. He believes this is a right he can give up, not one that the City can take. He also read a memo from SHARE/WHEEL's attorney Ted Hunter stating that requiring warrant and sex offender checks of Tent City residents is unlawful.

Andy Nevels, TC4 resident, believes that the proposed ordinance is unconstitutional

Shy, TC4 resident, believes that requiring warrant checks is a violation of the equal protection clause of the Constitution as well as the Religious Land Use and Institutionalized Persons Act.

Patrick Schultz, TC4 resident, stated that Tent City conducts their own warrant checks and forcing Tent City to conduct them is unconstitutional.

Vaughn, TC4 resident, believes that requiring warrant checks violates the equal rights protection under the law and all Mercer Island residents and guests would also have to be checked.

Jonathan Dye, TC4 resident, believes that the City cannot force all Tent City residents to do warrant checks

Donald Brown, TC4 resident, believes that it is unconstitutional to force Tent City 4 to do warrant checks.

Jack, TC4 resident, believes that requiring warrant checks is a violation of equal protection clause of the Constitution.

Deborah, TC4 resident, asked the Council to amend the restriction that no children under age of 18 are allowed to stay in a temporary encampment, to add the exception for certain circumstances. She believes that Tent City 4 can offer a family a safe alternative for a night and then help them in the morning to find a different solution.

Hunt Priest, Rector of Emmanuel Episcopal Church, asked that Council add more flexibility in the ½ mile, 18 month moratorium for returning temporary encampments.

<No name given>, TC4 resident, spoke about his education and vocational accomplishments and the need to live in Tent City at this time. He asked the Council to welcome Tent City 4 and allow the same rights as the resident so Mercer Island.

Tara Johnson, 2438 62<sup>nd</sup> Ave SE, stated that warrant checks were required in the temporary use agreement and is part of other jurisdictions' ordinances and the courts have ruled that this requirement does not infringe on anyone's constitutional rights. She asked the Council to focus on safety provisions for the surrounding neighborhoods.

Karen Griffin, 3426 72<sup>nd</sup> Ave SE, feels that the Council and those who have attended the meetings have worked really hard to protect the interests of Mercer Island residents and Tent City residents. She feels the proposed ordinance creates a good balance.

Diane Osborne, 4137 94<sup>th</sup> Ave SE, was raised to give back and not to separate herself from other communities. She feels that some children on Mercer Island are not raised to give back. She would like to see community service as a requirement to teach younger people about the importance of learning about those who are different.

Susie Redifer, PO Box 283, thanked staff and Council for the hard work on the ordinance. She stated that real estate agents who deal with homes located close to the Mercer Island United Methodist Church have stated the value has gone down because of Tent City 4. She respects the City's ordinance process, but believes the government-issued ID requirement should be reinstated.

Dorothy Swarts, 8501 SE 61st Street, believes that Tent City's upholds their own rules and the City does not need to implement more. She noted that when Tent City 4 was here there were no issues and that some people just have a fear of people they don't know.

Clara Flaherty, 4244 Shore Club Drive, spoke about the negative stereotype associated with living on Mercer Island. She has worked with Tent City on multiple occasions and she was always received very warmly.

Ethan, 6907 96th Ave SE, worked to collect petition signatures from the Mercer Island High School. He expressed the students he knows do not feel unsafe because of Tent City.

It was moved by Councilmember Bassett; seconded by Councilmember Grausz to:  
**Conduct second reading and adopt Ordinance No. 10C-01, amending the Mercer Island City Code Section 19.06 to provide requirements and procedures for permitting temporary encampments.**

It was moved by Councilmember Grady; seconded by Deputy Mayor Jahncke to:

**Amend the main motion to include:**

**Delete section 19.06.090(A)(18) in its entirety:**

~~18. The temporary encampment managing organization shall maintain a resident log for all who are residing at the temporary encampment. Such log shall be kept onsite at the temporary encampment. Prospective encampment residents shall provide a verifiable form of identification when signing the log.~~

Motion to amend FAILED 2-5 (Councilmember Grady and Deputy Mayor Jahncke assented).

It was moved by Councilmember Grady; seconded by Deputy Mayor Jahncke to:

**Amend the main motion to include:**

**Delete section 19.06.090(A)(19) in its entirety:**

~~19. The temporary encampment sponsor and encampment managing organization shall ensure enforcement of a code of conduct at the temporary encampment site. The code of conduct shall be in substantially the following form or address the following issues:~~

~~a. Possession or use of illegal drugs is not permitted;~~

~~b. No alcohol is permitted;~~

~~c. No weapons are permitted;~~

~~d. All knives over three and one-half inches must be turned in to the encampment managing organization for safekeeping;~~

~~e. No violence is permitted;~~

~~f. No open flames are permitted;~~

~~g. No trespassing into private property in the surrounding neighborhood is permitted;~~

~~h. No littering on the Temporary Encampment site or in the surrounding neighborhood is permitted; and~~

~~i. No convicted sex offender shall reside in the temporary encampment.~~

~~Nothing within this section shall prohibit the encampment sponsor or encampment managing organization from imposing and enforcing additional code of conduct conditions not otherwise inconsistent with this section.~~

Motion to amend FAILED 2-5 (Councilmember Grady and Deputy Mayor Jahncke assented).

It was moved by Councilmember Grady; seconded by Deputy Mayor Jahncke to:

**Amend the main motion to include:**

**Delete section 19.06.090(A)(20) in its entirety:**

~~20. The applicant temporary encampment managing organization is responsible for maintaining an up to date log of persons residing at the temporary encampment and to obtain warrant and sex offender checks with King County. The temporary encampment managing organization shall obtain warrant and sex offender checks from the King County Sheriff's office for all current camp residents within the seven~~

~~days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the temporary encampment managing organization or sponsor shall immediately contact the City of Mercer Island Police Department. The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur, that the log of persons residing at the temporary encampment is kept and that verifiable forms of identification are being provided.~~  
Motion to amend FAILED 1-6 (Councilmember Grady assented).

It was moved by Deputy Mayor Jahncke; seconded by Councilmember Grady to:  
**Amend the main motion to include:**

**Amend section 19.06.090(A)(12) as follows:**

**12. No children under the age of 18 are allowed to stay overnight in a temporary encampment unless accompanied by a parent or legal guardian. If any other child under the age of 18 attempts to stay overnight at the temporary encampment, the temporary encampment managing organization shall immediately contact the Washington State Department of Social and Health Services Child Protective Services, or its successor.**

It was moved by Councilmember Grady; seconded by Deputy Mayor Jahncke to:  
**Amend the amendment above to include:**

**Amend section 19.06.090(A)(12) as follows:**

**12. No children under the age of 18 are allowed to stay overnight in a temporary encampment unless accompanied by a parent or legal guardian. If any other child under the age of 18 attempts to stay overnight at the temporary encampment, the temporary encampment managing organization shall immediately contact the Washington State Department of Social and Health Services Child Protective Services, or its successor and help to find long term overnight accommodations.**

Motion to amend the amendment FAILED 1-6 (Councilmember Grady assented).

Motion to amend PASSED 6-1 (Councilmember Litzow dissented).

It was moved by Councilmember Grady; seconded by Councilmember Bassett to:

**Amend the main motion to include:**

**Delete section 19.06.090(B)(8) in its entirety:**

**~~8.—A copy of the code of conduct;~~**

Motion to amend FAILED 2-5 (Councilmember Grady and Deputy Mayor Jahncke assented).

It was moved by Councilmember Cero; seconded by Councilmember Litzow to:

**Amend the main motion to include:**

**Amend section 19.06.090(A)(20) as follows:**

~~20. The applicant temporary encampment managing organization is responsible for maintaining an up to date log of persons residing at the temporary encampment and to obtain warrant and sex offender checks with King County. The temporary encampment managing organization The Mercer Island Police Department shall obtain warrant and sex offender checks from the King County Sheriff's office for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the temporary encampment managing organization or sponsor shall immediately contact the City of Mercer Island Police Department. The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur, that the log of persons residing at the temporary encampment is kept and that verifiable forms of identification are being provided.~~

Motion to amend FAILED 1-6 (Councilmember Cero assented).

It was moved by Councilmember Bassett; seconded by Deputy Mayor Jahncke to:

**Amend the main motion to include:**

**Amend section 19.06.090(A)(20) as follows:**

**20. The applicant temporary encampment managing organization is responsible for maintaining an up to date log of persons residing at the temporary encampment and to obtain warrant and sex offender checks with King County. The temporary encampment managing organization shall obtain warrant and sex offender checks from the King County Sheriff's office for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the temporary encampment managing organization or sponsor shall immediately contact the City of Mercer Island Police Department. The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur, that the log of persons residing at the temporary encampment is kept and that verifiable forms of identification are being provided.**

Motion to amend FAILED 3-4 (Councilmember Bassett, Grady and Deputy Mayor Jahncke assented).

It was moved by Councilmember Grausz; seconded by Deputy Mayor Jahncke to:

**Amend the main motion to include:**

**Amend section 19.06.090(A)(20) as follows:**

**20. ~~The applicant temporary encampment managing organization is responsible for maintaining an up to date log of persons residing at the temporary encampment and to obtain warrant and sex offender checks with King County.~~ The temporary encampment managing organization shall obtain warrant and sex offender checks from the King County Sheriff's office for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the temporary encampment managing organization or sponsor shall immediately contact the City of Mercer Island Police Department. The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur, that the log of persons residing at the temporary encampment is kept and that verifiable forms of identification are being provided.**

Motion to amend PASSED 7-0.

It was moved by Deputy Mayor Jahncke; seconded by Councilmember Grausz to:

**Amend the main motion to include:**

**Amend section 19.06.090(A)(21) as follows:**

**21. Upon determination that there has been a violation of any ~~decision criteria or~~ condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within seven days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the seven day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.**

Motion to amend PASSED 6-1 (Councilmember Cero dissented).

It was moved by Councilmember Grausz; seconded by Deputy Mayor Jahncke to:

**Amend the main motion to include:**

**Amend section 19.06.090(C)(2) as follows:**

**2. Additional Mailed Notice.** The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the lot(s) containing the proposed temporary encampment. Prior to any application for a temporary encampment permit, the temporary encampment sponsor, or temporary encampment managing organization shall meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment, and shall meet and confer with the operators of any properly licensed child care service within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the conditions for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, without violating the legal rights of the temporary encampments sponsor.

Motion to amend PASSED 5-2 (Councilmembers Cero and Litzow dissented).

Main motion as amended PASSED 5-2 (Councilmembers Cero and Grady dissented).

It was moved by Councilmember Bassett; seconded by Councilmember Litzow to:  
**Adopt Resolution No. 1424, adding fees to the Development and Building Fee Schedule to process a permit for a temporary encampment.**

It was moved by Councilmember Grady; seconded by Councilmember Cero to:  
**Amend Section 1 of Resolution No. 1424 as follows:  
Consistent with the authority set forth in Mercer Island City Code 19.15.020(B)(2), the fee to submit an application for a temporary encampment land use decision shall be \$0.00204.00 and shall be added to the Development and Construction Permit Fee Schedule.**

Motion to amend PASSED 7-0.

Main motion as amended PASSED 7-0.

(6) AB 4505 Emergency Well Facility - Operations Overview

Maintenance Director Glenn Boettcher, Utilities Engineer Rona Lin and consultant Greg Hill, President of Roth Hill Engineering presented information and photos about the construction of the Emergency Well Facility at Rotary Park. They detailed the background of the project, the construction process and presented information about the well operations strategy that determines who will operate the well, who will conduct training for volunteers and how water will be distributed from the well.

#### **OTHER BUSINESS:**

##### **Councilmember Absences:**

Councilmember Bassett will be absent from the February 16<sup>th</sup> meeting.

**Planning Schedule:**

Island Crest Way Corridor will be on March 1<sup>st</sup> instead of February 16<sup>th</sup>.

**Board Appointments:**

There were no appointments.

**Councilmember Reports:**

There were no reports.

**ADJOURNMENT:** 11:18 pm



**CITY OF MERCER ISLAND  
ORDINANCE NO. 10C-01**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010,  
AND ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE  
DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR  
PERMITTING TEMPORARY ENCAMPMENTS WITHIN THE CITY**

WHEREAS the Committee to End Homelessness in King County estimates 8,000 people are homeless in King County each night; and

WHEREAS the Committee to End Homelessness in King County's plan neither promotes nor disapproves of tent cities. Rather it acknowledges that tent cities are an emergency response to a greater problem of homelessness in King County and a safer alternative to life on the streets; and

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions' ability to practice their religion by hosting temporary encampments, and limited municipalities' ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

WHEREAS, the City of Mercer Island and its elected and appointed officials are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, 2009, and

the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held an open record public hearing on January 18, 2010, held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Amendments to Chapter 19.16 MICC, Definitions. MICC 19.16.010**  
"Definitions" is hereby amended by adding the following:

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...

Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes, and located at a place of worship.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a Temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

...

**Section 2. Chapter 19.06 MICC General Regulations. MICC 19.06.090 "Temporary Encampment Permit" is hereby added as follows:**

**19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. A temporary encampment shall be located at a place of worship. If the place of worship is not actively practicing on the site proposed for a temporary encampment, then the place of worship must comply with all other permit requirements for the underlying zone required for siting a new place of worship and temporary encampment.

2. Each lot occupied by a temporary encampment must provide or have available parking and vehicular maneuvering area.

3. The temporary encampment and the parking of any vehicles associated with a temporary encampment application shall not displace the host site's parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the code official.

4. The temporary encampment shall be located within one-half mile of a public transit stop.

5. No temporary encampment shall operate within the City of Mercer Island for more than 90 consecutive days, except that the code official may allow up to five additional days to accommodate moving on a weekend.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a lot or lots within one-half mile of any lot(s) that contained a temporary encampment within the last 18 months. For the purposes of this subsection, the 18 months shall be calculated from the last day of the prior temporary encampment within the one-half mile radius. No more than one temporary encampment may be located in the City at any time.

7. All temporary encampments shall obtain, prior to occupancy of the lots, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least 75 days before or any occupancy by the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the code official on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the code official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property, unless otherwise approved by the code official. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments;

b. A six-foot high sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the code official. The code official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement; and

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment unless accompanied by a parent or legal guardian. If any other child under the age of 18 attempts to stay overnight at the temporary encampment, the temporary encampment

managing organization shall immediately contact the Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials. Servicing of portable toilets and trash dumpsters is prohibited between the hours of 10:00 pm and 7:00 am on Mondays through Fridays, excluding legal holidays, and between the hours of 10:00 pm and 9:00 am on Saturdays, Sundays, and legal holidays, except in the case of bona fide emergency or under permit from the code official in case of demonstrated necessity.

15. The temporary encampment shall permit regular inspections by the City, including the Police Department, and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services, such as food, water, and waste disposal, provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization.

17. The managing organization and temporary encampment sponsor shall sign a hold harmless agreement for the temporary encampment.

18. The temporary encampment managing organization shall maintain a resident log for all who are residing at the temporary encampment. Such log shall be kept onsite at the temporary encampment. Prospective encampment residents shall provide a verifiable form of identification when signing the log.

19. The temporary encampment sponsor and encampment managing organization shall ensure enforcement of a code of conduct at the temporary encampment site. The code of conduct shall be in substantially the following form or address the following issues:

- a. Possession or use of illegal drugs is not permitted;
- b. No alcohol is permitted;
- c. No weapons are permitted;
- d. All knives over three and one-half inches must be turned in to the encampment

managing organization for safekeeping;

- e. No violence is permitted;
- f. No open flames are permitted;
- g. No trespassing into private property in the surrounding neighborhood is permitted;
- h. No littering on the Temporary Encampment site or in the surrounding neighborhood

is permitted; and

- i. No convicted sex offender shall reside in the temporary encampment.

Nothing within this section shall prohibit the encampment sponsor or encampment managing organization from imposing and enforcing additional code of conduct conditions not otherwise inconsistent with this section.

20. The temporary encampment managing organization shall obtain warrant and sex offender checks from the King County Sheriff's office for all current camp residents within the seven days prior to moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the temporary encampment managing organization or sponsor shall immediately contact

the City of Mercer Island Police Department. The temporary encampment sponsor shall be responsible for verifying that the warrant and sex offender checks occur, that the log of persons residing at the temporary encampment is kept and that verifiable forms of identification are being provided.

21. Upon determination that there has been a violation of any condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within seven days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the seven day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

22. A designated smoking area shall be provided on site in the location which would result in the least impact on neighboring properties based on distance.

23. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the code official:

1. General application form;

2. A site plan, which extends 50 feet beyond the proposed site's property boundaries, drawn to scale showing all of the following:

a. all existing structures;

b. existing parking stalls;

c. parking stalls proposed to be unavailable for parking vehicles during the Temporary

Encampment;

d. all proposed temporary structures;

e. proposed electrical and plumbing connections;

f. location of trash receptacles, including trash dumpsters;

g. location of toilets and other sanitary facilities;

h. location and details of any proposed connection to wastewater, potable water, stormwater, electrical supply, or other public or private utility systems;

i. proposed and existing ingress and egress;

j. any permanent alterations on the lot, to the site, or structures; and

k. designated smoking area;

3. Proposed fencing detail or typical section;

4. Written authorization from a temporary encampment sponsor on which the temporary encampment is located;

5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the temporary encampment sponsor;

6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;

7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;

8. A copy of the code of conduct;

9. The applicant shall provide;

- i. The date, time, and location of the required informal public meeting;
- ii. The name of persons representing the temporary encampment managing organization and sponsor at the informal public meeting;
- iii. A summary of comments provided; and
- iv. Copies of any documents submitted at the informal public meeting;

10. Any other information deemed necessary by the code official for the processing of a temporary encampment permit; and

11. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official shall require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment prior to submittal of an application. Notice of the informal public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting. Prior to the informal public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding any proposed security measures. At the informal public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment location, timing, site plan, code of conduct, encampment concerns, management security measures, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.

2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the lot(s) containing the proposed temporary encampment. Prior to any application for a temporary encampment permit, the temporary encampment sponsor, or temporary encampment managing organization shall meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment, and shall meet and confer with the operators of any properly licensed child care service within 600 feet of the boundaries of the lot(s) proposed to contain the temporary encampment. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the conditions for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, without violating the legal rights of the temporary encampments sponsor.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations. MICC 19.06.010(A) "Prohibited Uses" is hereby amended as follows:**

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development. MICC 19.09.010 "Preapplication and intake screening meetings" is hereby amended as follows:**

**19.09.010 Preapplication and intake screening meetings.**

A. Preapplication meetings between the applicant, members of the applicant's project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

...

**Section 5. Amendments to Chapter 19.09 MICC, Administration. MICC 19.15.010(E) "General Procedures" is hereby amended as follows:**

...

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
<b>Ministerial Actions</b>			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner

Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court
<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>

Discretionary Actions			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
Legislative Actions			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).			
**The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.			

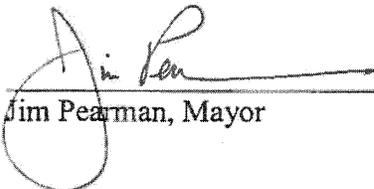
**Section 6:** Severability. If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:** Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

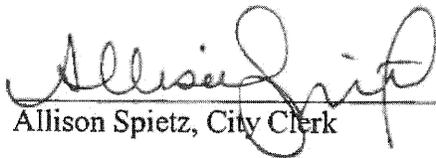
**Section 8:** Effective Date. This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 1st day of February, 2010 and signed in authentication of its passage.

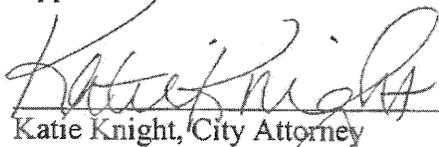
CITY OF MERCER ISLAND

  
\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

  
\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: 2/10/2010

**Planning Commission - Minutes**  
**Wednesday, October 07, 2009**

**CALL TO ORDER:**

Chair Cooper called the meeting to order at 7:35 PM in the Council Chambers, at 9611 SE 36th Street, Mercer Island, Washington.

**ROLL CALL:**

Chair Adam Cooper, Vice Chair Eric Laschever, Commissioners Kristen White and Jon Friedman were present. Commissioners Steve Marshall, Bryan Cairns and Council Liaison El Jahncke were excused. City staff was represented by Don Cole, Building Official; Ed Holmes, Police Chief; Katie Knight, City Attorney; James Mason, Deputy City Manager; Shane Moloney, Assistant City Attorney; Manny Ocampo, Interim Parks and Recreation Director; Travis Saunders, Planner; George Steirer, Principal Planner; Joyce Trantina, Development Services Analyst; and Chris Tubbs, Fire Chief.

**APPEARANCES:**

Tara Johnson of 2438 62<sup>nd</sup> Avenue SE provided comment regarding temporary encampments.

Sue Stewart of 3205 84<sup>th</sup> Avenue SE provided comment regarding the Shoreline Master Program update.

Steve Oaks of 2423 71<sup>st</sup> Avenue SE provided comment regarding temporary encampments.

Rita Moore of 4509 Ferncroft Road provided comment regarding the Shoreline Master Program update.

**MINUTES:**

Commissioner Friedman motioned to amend the minutes, having staff revisit the audio tape from September 16, 2009 to confirm the Commissioner's request of staff, detailed under item 1 of the minutes. Commissioner White seconded the motion. The Planning Commission approved the motion unanimously. Commissioner Friedman motioned to approve the minutes as amended. Commissioner White seconded the motion. The Planning Commission unanimously approved the minutes from the September 16, 2009 meeting, as amended.

**REGULAR BUSINESS:**

**Agenda Item #1: Overview for Discussion of Tent city experience and Temporary Encampment regulations**

Staff, represented by Katie Knight, George Steirer, Shane Moloney, Ed Holmes, Chris Tubbs, Joyce Trantina, and Don Cole provided information to the Commission.

The Commission asked questions of staff and provided them with the following work items to address for the November 18, 2009 meeting:

- Review peer jurisdiction provisions regarding return timeframes for temporary encampments
- Review of church sidewalk monitor requirements
- Review of definitions

- Provide Woodinville case law
- Provide any case law regarding appeals to temporary encampment ordinances
- Provide information if SHARE/WHEEL has challenged any adopted temporary encampment ordinances
- Invite a representative from SHARE/WHEEL to the November 18, 2009 meeting

**Agenda Item #2: Shoreline Master Program update workshop – Review of Shoreline Environment Designations**

Due to the lateness of the evening, this agenda item was not heard.

**COUNCIL LIAISON REPORT:**

None

**STAFF COMMENTS:**

A change in the Planning Commission schedule was provided to the Commissioners.

**PLANNED ABSENCES FOR FUTURE MEETINGS:**

None

**ANNOUNCEMENTS AND COMMUNICATIONS:**

None

**NEXT REGULAR MEETING:**

The next regular meeting is scheduled for October 21, 2009.

**ADJOURNMENT:**

The Planning Commission meeting was adjourned at 10:14 PM.





# Memorandum

## City Attorney's Office

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Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

**RE: Overview for Discussion of Temporary Encampment Regulations**

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### I. OVERVIEW

The briefing on October 7 is intended to provide the Planning Commission with an overview of the draft temporary encampment ordinance, and to provide feedback on the experience of Tent City 4 when it came to the City last year. The formal public hearing on the ordinance itself will be held November 18, 2009. The meeting tonight is informational only. The draft ordinance is provided to present a context for discussion for future regulation of temporary encampments, based upon the experience from last year. At this early point, it does not represent a "staff recommended ordinance." It merely represents a starting point for the Commission's and community's discussion.

#### A. Background

For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to prepare a draft ordinance for Council's consideration. The City Council asked to have an ordinance ready to pass by January 31, 2010. The Council directed staff to hold a public meeting with the First Hill neighborhood to receive their input and perspective regarding their experiences related to the 2008 hosting of Tent City, as well as a community wide public meeting to respond to the draft ordinance.

City staff held a public meeting on August 25<sup>th</sup> at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. On October 22, the City will hold a community-wide open house at the Community Center at Mercer View ("CCMV") to provide a forum for additional public input, to discuss the lessons learned from the Tent City experience, and to provide an overview of the draft Temporary Encampment ordinance. The major areas of discussion will include:

- Legal Structure

- Legal/constitutional requirements
- Legal precedent
- Communications
  - Public noticing of neighbors, community
  - Opportunities for public involvement
- Location of future Tent City
  - Regulatory issues
  - Benefits/concerns of site
- Public Safety
  - Fire safety
  - Enforcement
  - Emergency medical services
  - Public health
- Compliance
  - City code requirements
  - City Ordinance
  - Tent City Code of Conduct

## **B. EXHIBITS**

1. Exhibit A is the draft Temporary Encampment Ordinance.
2. Exhibit B is the process timeline.
3. Exhibit C is a map of the City identifying the location of the religious institutions which may potentially host a temporary encampment and their relation to transit stops, schools and daycares.
4. Attached as Exhibit D is a comparison chart of the proposed ordinance and other Eastside City Ordinances. Note that the comparisons are being drawn to the actual ordinances themselves, not to subsequent permits issued pursuant to those ordinances. (The Issaquah example is a mix of the ordinance and the conditions placed on the permit under the broad “any mitigation necessary” provision as Temporary Encampments are shoehorned into Temporary Use Permits.)

## **II. DRAFT ORDINANCE**

The Washington Supreme Court has unanimously determined that religious organizations are allowed to minister to the homeless, so there is no ability by municipalities to completely prohibit temporary encampments at churches. Municipalities are permitted, however, to regulate such temporary use based on health, safety and welfare issues. In the land use realm, a number of strategies exist which allow local governments to address regulation of temporary uses, such as through temporary use agreements, permits, or ordinances. The temporary use agreement is useful in negotiating specific issues which have not been encountered previously. Some uses may be generally authorized by ordinance, but any regulations are provided specifically in the temporary use permit itself. Some ordinances permit the use and contain the regulations within

the body of the ordinance itself, and may not require a permit. Other ordinances do a blend of both.

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The draft ordinance provided by Mercer Island staff puts the majority of regulations within the ordinance, while allowing flexibility for the Code Official to adopt additional requirements in the permit itself based on the location of the temporary encampment. A matrix is attached to demonstrate the draft ordinance compared to other cities' ordinances (as opposed to temporary permits). Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the draft ordinance.

The key provisions of the draft Temporary Encampment Ordinance are as follows:

- Maximum stay of 90 days at one location, in any 12 month period
- No permit is granted for a temporary encampment proposed to commence on site within one mile of any site that contained a temporary encampment within the last 12 months
- Although Design Review would not apply for temporary encampments, screening and setback provisions are required.
- Temporary Encampments cannot reduce a site below the minimum allowed parking requirement for the other uses on the site.
- Public notice is required for all property owners within 600 feet, rather than the standard 300 feet.
- The Code Official has the discretion to require an informal neighborhood meeting during the comment period.
- Criminal background checks are required of Temporary Encampment residents.
- Maximum amount of 100 persons.
- Compliance with Seattle-King County Health requirements and all state and city codes regarding drinking water connections, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.
- Hold harmless agreement required.
- Compliance with code of conduct.

Some other elements for discussion were not included in the current draft ordinance for a variety of reasons. Some are more appropriate for site-specific issues and can be addressed in the temporary encampment permit. Others are addressed through other code requirements. Some are likely to be considered unconstitutional. Those proposals are as follows, with some italicized commentary as appropriate:

- Permit fee: (*highest cost in other cities is approximately \$1600*)
- Identification of Adverse Effects. “ The applicant shall identify potential adverse effects of the proposed temporary encampment on neighboring properties and the community and shall develop measures to mitigate such effects. The applicant shall submit a temporary encampment impact mitigation plan with the permit

application. The plan shall contain a narrative and drawing(s) that describe, to the satisfaction of the community development director, the measures the applicant will use to mitigate the effects of the temporary encampment. At a minimum, the plan shall specifically describe the measures that will be implemented to satisfy the approval criteria provided in the MICC except for criteria specifically waived by the Code Official. The plan shall include a code of conduct and the names and phone numbers of all persons comprising the applicant. The form and mitigation plan shall be as specified by the community development director, but the elements of the plan shall be bound together. The approved temporary encampment impact mitigation plan shall be signed by the Code Official and the applicant and implementation and enforcement shall be a condition of the permit approval.”: *(such adverse effects addressed via the ordinance and site-specific permit)*

- Smoking requirements. Any established area for smoking shall conform to the following stipulations:
  - A. Noncombustible, approved ashtrays shall be provided;
  - B. A “designated smoking area” sign shall be posted
  - C. The area shall be located as far from the tent area as possible, the location will be subject to inspection by Fire Marshal Office.  
*(smoking requirements addressed via site-specific permit)*
- Tent requirements: “Tents over 200 sf shall be flame treated.” *(already addressed via requirement for compliance with codes/site-specific permit)*
- Conduct and Security Requirements: “Any temporary encampment shall comply with the City regulations regarding lawful behavior set forth in Mercer Island Code. Any temporary encampment shall provide all required legal access to public areas of the site by the City of Mercer Island Police Department and any other relevant law enforcement agency at all times.”: *(already required)* “ Additionally, where deemed necessary by the Development Director or the Police Chief, the applicant shall provide for the following:
  - 1. Verifiable Identification Required: The applicant shall take all reasonable and legal steps to obtain verifiable identification, such as a valid driver’s license, government issued identification card, military identification card, or passport, from all prospective and current camp residents.
  - 2. Other individuals who are turned away from the camp shall be handled as follows:
  - 3. A) Applicant shall walk the individual to the bus stop and wait with them until the bus arrives;
    - B) A camp vehicle shall be used to drive the individual to the closest available bus service or
    - C) A taxi or volunteer driver shall be called and the homeless encampment security workers shall be available to wait with the person. Taxi vouchers shall be available from sponsor when buses are not operating:  
*(may be addressed in site-specific permit)*
- Sidewalk monitor requirement. “Host shall provide sidewalk monitors during normal hours when elementary, junior high or high school students are going to and from the bus stops.” *(may be addressed in site-specific permit)*

- Prohibition of neighborhood security foot patrols. “Residents and guest of encampment shall not perform neighborhood security foot patrol into the adjoining residential neighborhood.”: (*Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas*)
- Prohibition of Neighborhood Trash Patrols: “Neighborhood and trash patrol by residents and guests of encampment in adjoining residential neighborhood is prohibited.”: (*Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas—note that Bellevue’s ordinance actually requires such patrols*)
- Quiet hours requirement. “Quiet hours at encampment shall be between 9:00 PM and 8:00 AM.” (*may be addressed in site-specific permit*)
- Visiting Hours. “Visiting hours for Guests are between 8:00 AM and 9:00 PM. Guests must check-in and provide valid form of identification at camp security location and must leave by 9:00PM. Guests are prohibited from staying overnight in the camp.” (*potentially unconstitutional elements—some aspects addressed elsewhere*)
- Failure to apply for Permit. “If a temporary use for which a permit would be required is established without a permit first having been obtained, the Planning Director shall require all activities associated with the encampment shall cease immediately and the site shall immediately be vacated and restored to its pre-existing condition unless and until such time as a temporary use permit has been obtained.” (*may be addressed elsewhere in the City Code*)

### III. CONCLUSION

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large, at the October 22, 2009 community-wide meeting.



# Memorandum

## City Attorney's Office

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Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

RE: Overview of 2008 Tent City Experience

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### I. 2008 TENT CITY EXPERIENCE

#### A. LEGAL

##### 1. Factual Background

The Mercer Island United Methodist Church (“Church”) invited the nonprofit organization SHARE/WHEEL, organizer and manager of Tent City 4, to establish a Tent City encampment on the Church’s property for three months beginning August 5, 2008. The Church’s pastor, congregational leaders, and SHARE/WHEEL signed a Temporary Use Agreement (“Agreement”) with the City after a small amendment was made during the City Council meeting on June 16, 2008.

Based on the extensive litigation with Eastside communities in the past, the City determined that it was unlikely to prevail on forbidding such an encampment if the Church invited Tent City 4. The City also determined that it was likely to obtain more favorable conditions to the City if it entered into a voluntary agreement with SHARE/WHEEL and the Church.

The Temporary Use Agreement contained the following terms:

- There will not be more than one encampment on Mercer Island in a calendar year at the Church and the duration of any stay will not exceed three months.
- The location and visual screening of the camp will afford privacy for Tent City residents and neighbors.
- No more than 100 people will stay at the camp.
- The church will manage parking at weekly services to minimize spillover onto neighborhood streets.
- No children under the age of 18 will reside in the Tent City encampment.
- A stringent code of conduct will be enforced and SHARE/WHEEL and the Church will comply with all lawful City and State codes.

- The identity of all camp residents will be verified, and warrant and sex offender status of prospective residents will be checked. Any positive results reported to the MI Police Department.
- No sex offenders will be allowed to stay at the encampment.
- The Church and Tent City managers will allow regular inspections by the City (Fire, Police and DSG) and the King County Health Department.
- The Church and SHARE/WHEEL agreed to a hold harmless and indemnification provision.

Pursuant to the Agreement, the Church held a public informational neighborhood meeting approximately one month prior to establishment of the encampment, with notice of the meeting published in the MI Reporter and delivered to nearby residents/owners two weeks prior to the meeting.

Prior to Tent City 4's arrival, the City, Church and SHARE/WHEEL were sued by a group calling themselves Citizens for Fair Process. Ultimately, the trial court dismissed the group's claims. The dismissal of the case has been appealed. Tent City 4 moved to Mercer Island in August, 2008 for about 90 days.

## 2. Constitutional Issues

As is discussed more fully below, courts across the nation have recognized the activities of feeding the hungry and sheltering the homeless as core religious activities. For example, the court reviewing Tent City's arrival at St. Brendan's in Bothell found as a matter of law that "St. Brendan's use of its property for the purpose of sheltering the homeless constitutes the exercise of religion and is protected by the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington State Constitution."

### A. The Washington State Constitution Bars Government Restrictions on the Exercise of Religious Duties on Church Property Unless a Compelling Governmental Interest Demands Intervention.

Article 1, Section 11 of the Washington State Constitution ensures "[a]bsolute freedom of conscience in all matters of religious sentiment, belief, and worship" to "every individual" and guarantees that "no one shall be molested or disturbed in person or property on account of religion." This guarantee of free exercise – significantly stronger than the corresponding provision in the federal Constitution – "is 'of vital importance.'" *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 226, 840 P.2d 174, 186-87 (Wash. 1992). If the "coercive effect of [an] enactment" operates against a party "in the practice of his religion", it unduly burdens the free exercise of religion. A facially neutral, even-handedly enforced statute that does not directly burden free exercise may, nonetheless, violate Article 1, section 11, if it indirectly burdens the exercise of religion. State action is constitutional under the free exercise clause of article 1 if the action results in no infringement of a citizen's right or if a compelling state interest justifies any burden on the free exercise of religion. *Id.* at 226, 840 P.2d at 187 (citations omitted; alterations and omissions in the original); *see also Munns v. Martin*, 130 Wn.2d 192, 200, 930 P.2d 318, 321 (Wash. 1997); *City of Sumner v. First Baptist Church*, 97 Wn.2d 1, 5, 639 P.2d 1358, 1361 (Wash. 1982).

“A ‘compelling interest’ is one that has a ‘clear justification . . . in the necessities of national or community life’, that prevents a ‘clear and present, grave and immediate’ danger to public health, peace and welfare.” *First Covenant*, 120 Wn.2d at 226-27, 840 P.2d at 187 (citations omitted; emphasis added). The interest must be "paramount." *Sherber v. Verner*, 374 U.S. 398, 406 (1963). The test also focuses on the means used to accomplish the asserted interest: “The State also must demonstrate that the means chosen to achieve its compelling interest are necessary and the least restrictive available.” *First Covenant*, 120 Wn.2d at 227, 840 P.2d at 187. The least restrictive means element is virtually impossible to satisfy when reasonable alternatives exist that would advance the government’s interests without sacrificing the religious exercise at issue. In effect, this means that the courts will examine the regulations on a case-by-case basis, and the City will have to show that its regulations were the minimum necessary to achieve its interests in the health, safety and welfare of its citizens. The regulations cannot be such that the use ends up being prohibited if there is a way to achieve the use while protecting the health, safety and welfare of citizens.

The Washington State Supreme Court, in a 9-0 decision, most recently declared that numerous cases before it have already decided that the state constitution “absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution...” *First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 229-30, 840 P.2d 174 (1992). The court concluded that the religious organizations have more protection under Washington’s constitution and did not go further to determine whether there was violation of RLUIPA. Under this decision, Cities may regulate concerns for safety, noise, and crime but may not outright deny consideration of permitting. *City of Woodinville v. Northshore Church of United Christ*, WA Supreme Court slip opinion, July 16, 2009.

Although the *Woodinville* court determined that it only needed to base its decision on the Washington State Constitution, a review of the U.S. Constitution assists in understanding the concerns regarding regulating ministry to the homeless.

B. The Free Exercise Clause Of The First Amendment To The United States Constitution Bars Government From Interfering With A Church’s Ministry To The Homeless Unless A Compelling Governmental Interest Demands Intervention.

Like the Washington Constitution, the United States Constitution proscribes governmental action that infringes on the ability of churches to exercise the mandates of their faith. The First Amendment both guarantees the right of free exercise of religion and provides that government may not establish or otherwise control religion. *See* U.S. Const. Amend I.

The same compelling governmental interest test applied by the Washington courts also applies under the First Amendment where, as in most land use matters, individualized exemptions to otherwise generally applicable rules are allowed in the discretion of government officials. In the case of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, (1993), the United States Supreme Court held:

As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government

“may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.”

508 U.S. at 537. Thus, the Free Exercise clause of the First Amendment prohibits enforcement of zoning regulations that place a substantial burden on the exercise of religion unless the land use authority demonstrates that the regulations are necessary to further a compelling governmental interest (*i.e.*, prevention of a clear, present, grave and immediate danger to public health, peace and welfare) and that the least restrictive means necessary to further that governmental interest are employed.

C. RLUIPA Bars Government Restrictions On The Exercise Of Religious Duties On Church Property Unless A Compelling Governmental Interest Demands Intervention.

After finding substantial evidence of widespread discrimination against religious uses of land, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). RLUIPA bars enforcement of any local land use law or regulation that fails the “compelling state interest” test:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling government interest.

42 U.S.C. 2000cc § 2(a)(1).

RLUIPA specifically permits aggrieved churches to challenge enforcement actions that burden the free exercise of religion. *See id.*, § 4(a). As under the constitutional standard, once a church produces evidence demonstrating a burden on the exercise of religion, it is the government’s burden to justify its actions under the compelling governmental interest test. *See id.*, § 2(a)(1)(A)-(B); § 4(b); § 8(2). RLUIPA is to “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” *Id.*, § 5(g) (emphasis added). Anyone who successfully asserts a RLUIPA claim is entitled to an award of attorney’s fees. *See id.*, § 4(d); 42 U.S.C. § 1988(b).

The Act broadly defines the term “land use regulation” to mean any “zoning . . . law, or the application of such a law, that limits or restricts a claimant’s use . . . of land.” *Id.*, § 8(5). RLUIPA defines “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” *Id.*, §7(A). While the Act does not define “substantial burden,” courts have repeatedly interpreted the term in similar contexts. Among other things, “a substantial burden on the free exercise of religion . . . is one that forces

adherents of a religion to refrain from religiously motivated conduct . . .”. *Mack v. O’Leary*, 80 F.3d 1175, 1179 (7<sup>th</sup> Cir. 1996), *certiorari granted, judgment vacated on other grounds*, 522 U.S. 801 (1997); *see also Brown-El v. Harris*, 26 F.3d 68, 70 (8<sup>th</sup> Cir. 1994) (government action that forces religious adherents “to refrain from religiously motivated conduct” substantially burdens religious exercise); *Werner v. McCotter*, 49 F.2d 1476, 1480 (10<sup>th</sup> Cir. 1995) (action that “significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a [person’s] individual beliefs” substantially burdens religious exercise).

Section 5(e) of RLUIPA makes it clear that Congress intended land use authorities to be flexible in accommodating churches' free exercise of religion. That section states:

A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

*Id.* §5(e). Thus, the Act specifically provides that a land use regulator may comply with RLUIPA and accommodate a church’s exercising the mandates of its religion by recognizing higher standards of regulation in connection with homeless ministries. Here, the City used its inherent ability to contract in order to accommodate the flexibility dictated in RLUIPA. Just as development agreements are entered into by the City and private entities in order to address such issues, the City entered into the Temporary Use Agreement with the Church and with SHARE/WHEEL to accommodate the Church’s exercise of the mandates of its religion while regulating concerns about the health, safety and welfare of its citizens and the Tent City 4 residents.

State and Federal law supersede the City’s municipal code. If the City’s code is in conflict with these superior laws, then those laws govern and the City cannot prohibit the activity. Even if the City code is silent with regard to Temporary Homeless Encampments, federal law and state law mandate that the City not impose burdens to hinder this activity.

Given the Church’s stated intent to host Tent City 4 on its property, the City’s authority to prohibit this impending encampment was at best uncertain. The King County Superior Court’s June 10, 2004 decision reflected this tenuous legal landscape by refusing to grant the City of Bothell’s request for a preliminary injunction, even where Tent City 4 had established its homeless encampment unlawfully and without the requested local permits. The City of Mercer Island was entitled to rely upon the experiences of other municipalities (e.g., Bothell) in determining an appropriate response to the encampment’s arrival at the Church. *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986). The ultimate wisdom of the City Council’s responsive policy is not properly subject to review. *See, e.g., Davis v. exrel. Dept of Licensing*, 137 Wn.2d 957, 976, n.12, 977 P.2d 534 (1999).

## **B. DSG Experience with Tent City**

### **1. Title 19 MICC – Unified Land Development Code**

Title 19 of the Mercer Island City Code (MICC) regulates the manner in which land is used and developed throughout the island. This includes the types of land uses allowed in various locations and the allowed or required physical attributes of those uses. The R-9.6 zoning district is intended primarily for single family residential use. Certain non-residential uses considered to be supportive of a residential environment (e.g., schools and places of worship) or needing a residential environment to operate effectively (e.g., special needs group housing) are also allowed either outright or through a “conditional use” review process.

Title 19 does not specifically address the appropriate location or required attributes of temporary homeless encampments such as Tent City 4. Section 19.06.010 of the city code specifies uses that are prohibited, but the list of prohibited uses does not include temporary homeless encampments or any similar use.

Experience: As discussed elsewhere in this report, the legal right of religious organizations to host such temporary homeless encampments has been recognized by the courts. Based upon this right and the provisions of the Title 19 described above, it was determined that nothing within the City’s land use regulations would prevent or specify the conditions under which MIUMC or another place of worship could host Tent City 4.

In light of the lack of specific guidance within Title 19 regarding the conditions under which a temporary homeless encampment might operate, City staff worked with MIUMC, Share/Wheel and Tent City 4 to include in the Temporary Use Agreement requirements typically applied to other allowed uses. These include: property line setbacks and screening or visual buffering; exterior lighting; density or intensity of use (maximum number of residents); and parking. Provisions included in the Agreement were based, to the extent deemed appropriate, on requirements for similar uses and situations under the Title 19.

*Setbacks and Screening.* The Temporary Use Agreement established requirements that Tent City 4 must be located at least 20 feet from any abutting residential property, and that a sight-obscuring fence and/or vegetation shall be provided within this area. These requirements were based partly on the perimeter screening requirements for “Multifamily Development” uses located adjacent to “Single-Family Residential” uses as specified by MICC 19.12.040.B.7. These requirements were met by Tent City 4 with the exception of a minor encroachment on the 20 foot setback that was immediately remedied after the encampment was notified of the problem.

*Exterior Lighting.* The Temporary Use Agreement established requirements that exterior lighting associated with Tent City 4 must be directed downward, away from adjoining properties and contained within the temporary homeless encampment. This provision was based partly on MICC 19.12.070, which requires that exterior lighting for regulated developments must be shielded or located to confine light spread and the associated negative impacts within the site boundaries. The City received no recorded complaints regarding light spillover impacts on surrounding properties.

*Density/Intensity of Use.* In the Agreement, Tent City 4 was limited to a maximum of 100 persons, but still must meet all setbacks as well as health and safety issues. The Agreement stated that in exigent circumstances, this number could be exceeded if a person or persons seek shelter overnight.

*Parking.* The Agreement required a minimum of 26 off-street parking stalls on Saturdays, Sundays and after 6:00 p.m. on weekdays. A minimum of 8 off-street parking stalls were required at all other times.

*Portable Toilets.* MICC 19.06.010 prohibits the use of portable toilets except for emergency or construction use. In the case of Tent City 4 at MIUMC, portable toilets were allowed as a reasonable and necessary accommodation. The Temporary Use Agreement required portable toilets that were serviced on a regular basis. There was concern by neighbors regarding odors from the toilets, and servicing prior to 7:00 a.m.

#### Chapter 15.14 MICC – Unlawful Cross-Connections

Description: Chapter 15.14 regulates connections to the use of City utilities.

#### Experience:

*Water system backflow prevention.* Potable water was supplied to Tent City 4 by a hose connection to an existing hose bib on the exterior of the church building. Under the provisions of MICC 15.14.030 *Backflow Prevention Devices Required*, it was determined that appropriate backflow prevention was advisable to prevent any potential for water system contamination. An approved backflow prevention device was installed by Tent City 4. This device was inspected and approved by the city's certified cross-connection control inspector and its continued use was verified by other inspectors on several occasions throughout the Tent City stay.

*Sanitary sewer connection.* Grey water from a portable shower facility and hand washing stations was collected in a sump and pumped to a sanitary sewer connection in MIUMC property. This system and the connection were inspected and approved by the city utilities inspector. On one occasion power to the sump pump was inadvertently disconnected and a small quantity of grey water overflowed the sump but did not leave the site. The issue was immediately resolved upon notification of Tent City 4.

*(ix) Compliance with Codes. SHARE/WHEEL and the Church shall comply with lawful Washington State and City codes concerning but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.*

### **C. Police Experience with TC4**

Prior to Tent City's arrival on Mercer Island in 2008, the City's Police Department had no direct experience with Tent City. Upon learning that Tent City may come to Mercer Island, the department reached out to other Police Departments in the area and requested a summary of their experience with the encampment in their communities. The Police Chief also interviewed several of the Police Chiefs, and did on-site visits of the encampment in Bellevue. Subsequently, the department drafted its Police Department Response Plan, wherein roles and responsibilities were outlined for the Police Chief, the Police Liaison, the Patrol Section, the Criminal Investigations Section, and the Records Section.

The Police Department took the presence of Tent City very seriously, and dedicated resources to this encampment and the surrounding neighborhoods. In addition to general patrols of the area, officers also physically walked through the encampment 287 times during the three-month stay. The residents of Tent City welcomed the officers, and appreciated the time they spent with them. The residents in the surrounding neighborhoods also appreciated the extra presence of the patrol officers.

A detective was assigned as the Police Department's Tent City Liaison, which proved very helpful in many ways. He was able to build relationships with the residents of the encampment as well as the residents of the surrounding neighborhoods. He provided a consistent point of contact, and he was able to develop a solid understanding of the concerns that surrounded the encampment.

The Police Officers made a total of nine arrests of Tent City residents. Five arrests were for outstanding warrants, two were for traffic offenses, one was for violation of a No Contact Order, and one was for a Domestic Violence assault. In addition to these five arrests, the officers also took 15 other reports ranging from graffiti and littering to reports of water balloons being tossed into Tent City. None of these reports were for felony crimes.

The extra efforts relating to Tent City added to the Department's daily workload, but it did not prove to be over-burdensome. Officers shifted their focus for portions of their shifts to the First Hill neighborhood rather than other areas of the city. However, this focus did not prevent officers from addressing calls for service in other areas of the city. Overall, the Police Department was able to effectively manage their core mission of protecting all the residents of this community.

### **D. Fire Department Experience with Tent City**

Mercer Island Fire Department ("MIFD") did not have any experience with a group such as Tent City 4 prior to their arrival in August 2008. In order to prepare for Tent City's arrival, MIFD contacted several neighboring departments who had dealt with the challenges associated with having the camp in their operations area. MIFD discovered that every department reported Tent City 4 had very little impact on call volume and services including, both fire and EMS.

After Tent City 4's arrival, the Fire Marshal worked closely with the Tent City 4 staff and several city staff to ensure that the encampment complied with all appropriate fire codes. Tent

City 4 residents and staff were found to be very helpful and compliant with all MIFD and Fire Marshall requirements. Duty crews were asked to perform walk-through inspections and area familiarization on a daily basis to increase safety for the residents and our staff.

The following is a brief summary of the fire department's experience with Tent City 4:

- Walk Throughs
  - Duty Crews - 32
  - Fire Marshal - 4
  - Deputy Chief - 2
  - Fire Chief - 1
- EMS Calls
  - Approximately - 4
- Fire Calls
  - None
- Service Calls
  - None

Overall, Tent City 4 had a minimal impact on the calls for service to the Fire Department.

#### **E. Communication Experience with Tent City**

The possibility of hosting Tent City on Mercer Island was first introduced to the public in the Mercer Island Reporter on June 13, 2007 in an article submitted by the Mercer Island Clergy Association. The news was subsequently repeated in the Seattle Times and other major regional media. At that time, the City established a dedicated Tent City webpage at [www.mercergov.org/tentcity](http://www.mercergov.org/tentcity).

In mid-May of 2008, Mercer Island United Methodist Church (MIUMC) announced its intention to host Tent City 4. As details unfolded, the City worked closely with MIUMC to establish a process of public notification. On May 30, 2009, MIUMC submitted a press release to the Mercer Island Reporter. An article titled "Tent City Coming in August to Island" appeared on the front page of the June 4, 2008 edition. In addition, Rev. Dale Sewall published an article in the same edition of the Mercer Island Reporter on behalf of the Mercer Island Clergy Association. The news was also repeated in major media, including KING 5 and KOMO. On June 11, 2008 notice of the City Council Meeting at which the Temporary Use Agreement for Tent City would be discussed was published in the Mercer Island Reporter.

The Temporary Use Agreement required that SHARE/WHEEL and the church conduct a neighborhood meeting a minimum of 20 calendar days prior to the opening date of the temporary homeless encampment, and that notice of the meeting be provided to residents within 600 feet of the church. SHARE/WHEEL and MIUMC hosted a public meeting on July 9, 2008. Notice of the meeting was hand-delivered to all residents within 600 feet of the church.

Throughout the time leading up to and throughout Tent City 4's stay on Mercer Island, the City updated information on the City's website and published information in the City's weekly e-newsletter, MI Weekly, which is distributed to about 500 subscribers throughout the Island. The City's Communications Coordinator became the primary contact for media inquiries,

and the story continued to garner attention of regional media including KUOW and major network stations. Citizen comments were received through email, phone calls and during the appearances portion of City Council meetings. From June through December 2008, approximately 110 comments were heard from 83 individuals at Mercer Island City Council Meetings.

City staff has responded and continues to respond to public records requests for documents regarding Tent City.

## **II. CONCLUSION**

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large at the October 22, 2009 community meeting.

**CITY OF MERCER ISLAND  
ORDINANCE NO. XXC-XX**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010, AND  
ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE  
DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR PERMITTING  
TEMPORARY ENCAMPMENTS WITHIN THE CITY, PROVIDING FOR  
SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the Seattle Housing and Resource Effort (“SHARE”) and the Women’s Housing Equality and Enhancement League (“WHEEL”), non-profit organizations experienced in operating and managing temporary encampments for homeless individuals, have collaborated to provide temporary housing on the Eastside of King County, under the designation “Tent City 4”; and

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions’ ability to practice their religion by hosting temporary encampments, and limiting municipalities’ ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

WHEREAS, beginning in May 2004, Tent City 4 has set up temporary encampments in several Eastside Cities including Bellevue, Bothell, Issaquah, Kirkland, Redmond, as well as in unincorporated communities in east King County, including Finn Hill and Cottage Lake, and has accepted invitations to return to some of these jurisdictions after positive Tent City 4 experiences; and

WHEREAS, the City of Mercer Island, it’s elected and appointed officials, are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, and the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held a open record public hearing on January 18, 2010, held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Amendments to Chapter 19.16 MICC, Definitions.** MICC 19.16.010 "Definitions" is hereby amended by adding the following:

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Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, other than for recreational purposes.

Temporary Encampment Sponsor: A local group or organization that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

...

**Section 2. Chapter 19.06 MICC General Regulations.** MICC 19.06.090 "Temporary Encampment Permit" is hereby added as follows:

**19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. Each site occupied by a temporary encampment must provide or have available sufficient parking and vehicular maneuvering area for patrons.

2. The temporary encampment and the parking of any vehicles associated with the applications shall not displace the host site's parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the Code Official.

3. The temporary encampment shall be located within one-half mile of a public transit stop.

4. No temporary encampment shall occupy or use public parks in any manner unless specifically approved by the Parks Department.

5. No temporary encampment shall occupy or operate with the City of Mercer Island for more than 90 days.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a site that is within one mile of any site that contained a temporary encampment within the last 12 months.

7. All temporary encampments shall obtain, prior to occupancy of the site, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least 60 days before the planned opening or any occupancy of the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons, if all other conditions are met. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the City on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the Code Official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments.

b. A sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the Code Official. The Code Official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement.

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment. In exigent circumstances, if a child under the age of 18 attempts to stay overnight at the temporary encampment, the encampment managers shall immediately contact the temporary encampment managing organization and Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.

15. The temporary encampment shall permit regular inspections by the City and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire

Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization. The property owner, temporary encampment sponsor, and temporary encampment managing organization shall sign a hold harmless agreement for the temporary encampment.

17. The temporary encampment managing organization shall maintain a resident log for all who are residing at the encampment. Such log shall be kept onsite at the encampment. Prospective encampment residents shall be asked to provide a reasonable form of identification when signing the log.

18. The temporary encampment host, encampment sponsor, and encampment managing organization shall ensure enforcement of a Code of Conduct at the temporary encampment site. The Code of Conduct shall be in substantially the following form or address the following issues:

- a. Possession or use of illegal drugs is not permitted.
- b. No alcohol is permitted.
- c. No weapons are permitted.
- d. All knives over three and one-half inches must be turned in to the encampment manager for safekeeping.
- e. No violence is permitted.
- f. No open flames are permitted.
- g. No trespassing into private property in the surrounding neighborhood is permitted.
- h. No littering on the Temporary Encampment site or in the surrounding neighborhood is permitted.

Nothing within this section shall prohibit the encampment host, encampment sponsor or encampment manager from imposing and enforcing additional Code of Conduct conditions not otherwise inconsistent with this section.

19. The applicant shall obtain warrant and sex offender checks from the King County Sheriff's office or other relevant authority for all current camp residents within seven days of moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the applicant shall immediately contact the City of Mercer Island Police Department. To verify compliance with this requirement, the City of Mercer Island Police Department may do random warrant and sex offender checks on temporary encampment residents.

20. Upon determination that there has been a violation of any decision criteria or condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within 14 days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the 14-day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

21. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the Code Official:

1. General application form;
2. A site plan, drawn to scale showing all of the following:
  - a. all existing structures;
  - b. existing parking stalls;
  - c. parking stalls proposed to be unavailable for parking vehicles during the Temporary Encampment;
  - d. all proposed temporary structures;
  - e. proposed electrical and plumbing connections;
  - f. proposed and existing ingress and egress; and
  - g. any permanent alterations to the site or structures;
3. Proposed fencing detail or typical section;
4. Written authorization from the owner of the property on which the temporary encampment is located;
5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the property owner, temporary encampment sponsor, and temporary encampment managing organization;
6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;
7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;
8. A copy of the Code of Conduct;
9. Any other information deemed necessary by the Code Official for the processing of a temporary encampment permit; and
10. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official may require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment. When required, the informal public meetings shall be held as early in the review process as possible once a complete application has been submitted. Notice of the public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting, and combined with the notice of application whenever possible. Prior to the public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding the proposed security measures. At the public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment management responsibility plan, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda, and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.

2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the site for the proposed temporary encampment. Prior to notice of decision of a temporary encampment permit by the code official, the temporary encampment sponsor, or temporary encampment managing organization shall

meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the proposed temporary encampment site, and shall meet and confer with the operators of any property licensed child care service within 600 feet of the boundaries of the proposed temporary encampment site. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the criteria for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, based on the applicable decision criteria.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations.** MICC 19.06.010(A) "Prohibited Uses" is hereby amended as follows:

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development.** MICC 19.09.010 "Preapplication and intake screening meetings" is hereby amended as follows:

**19.09.010 Preapplication and intake screening meetings.**

A. Preapplication meetings between the applicant, members of the applicant's project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

...

**Section 5. Amendments to Chapter 19.09 MICC, Administration.** MICC 19.15.010(E) “General Procedures” is hereby amended as follows:

...

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

<b>ACTION</b>	<b>DECISION AUTHORITY</b>	<b>CRITERIA</b>	<b>APPEAL AUTHORITY</b>
<b>Ministerial Actions</b>			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial	Code official	MICC 19.07.110	Shoreline hearings

Development Permit			board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court
<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board

\*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).

\*\*The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.

**Section 6:**     **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:**     **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 8:**     **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: \_\_\_\_\_



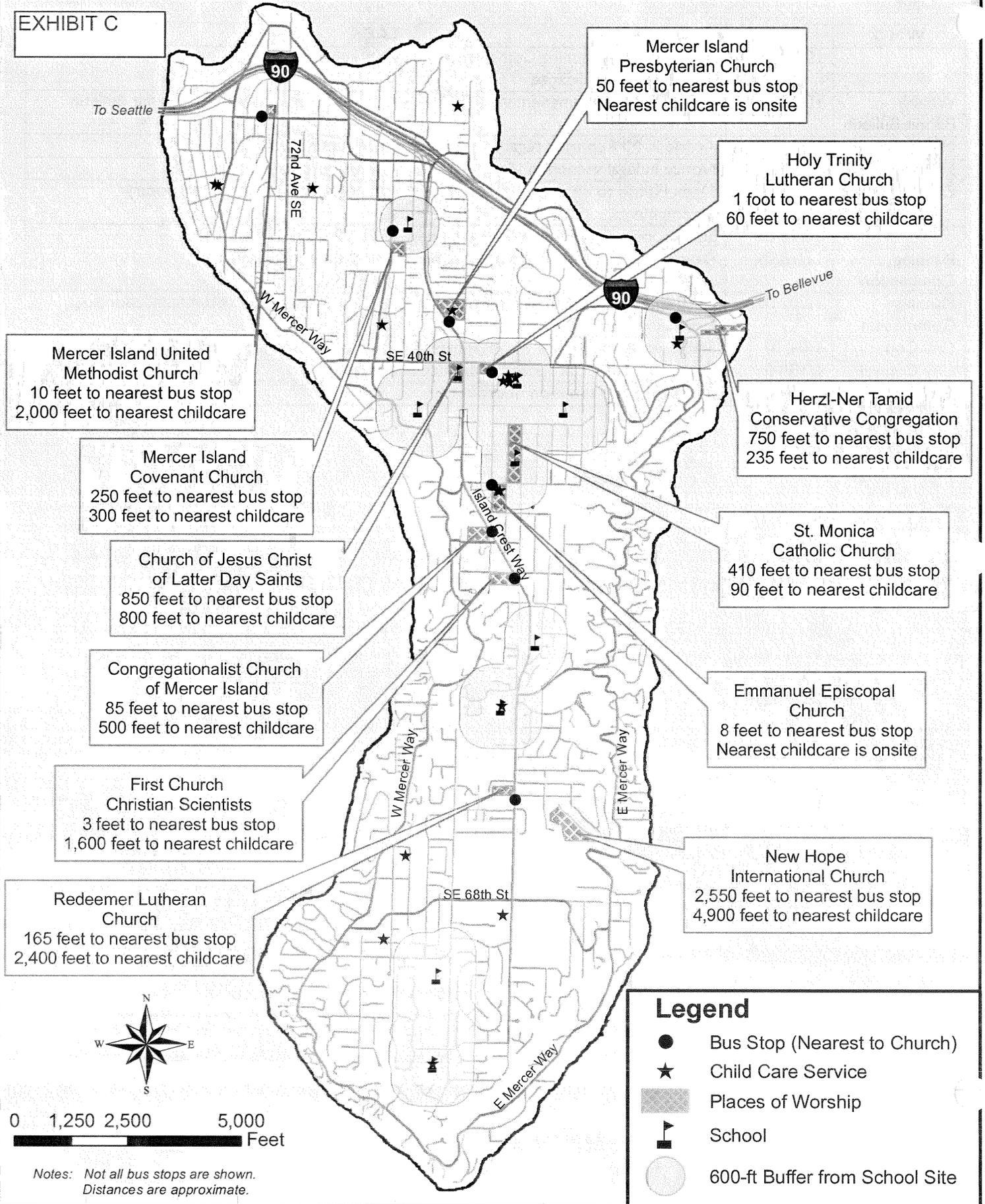
EXHIBIT B

## Anticipated Temporary Encampment Process Schedule

WHO	DATE	TASK
	10/07/09	Briefing to the Planning Commission regarding Tent City experience and Temporary Encampments ordinance
Weekly Permit Bulletin	10/12/09	Notice code text amendment and S.E.P.A. application in DSG Weekly Permit Bulletin
MI Reporter	10/14/09	Article in MI Reporter regarding Temporary Encampments
MI Reporter	10/14/09	Notice in legal section of Mercer Island Reporter regarding applications
City Staff	10/22/09	Open House to discuss Tent City experience, regulation of future Temporary Encampments, and solicit SEPA comments
	10/28/09	SEPA comment period ends Wednesday, 10/28/09 at 5:00 PM.
Planning Commission	11/18/09	Planning Commission to hold public hearing and discuss ordinance
Planning Commission	12/02/09	Anticipated date for Planning Commission to discuss and make recommendation to Council
City Council	1/04/10	Staff briefing to Council with Planning Commission recommendation - Q & A only
City Council	1/18/10	Public Hearing for proposed ordinance & 1 <sup>st</sup> reading
City Council	2/01/10	2 <sup>nd</sup> reading and adoption of ordinance

# PROXIMITY OF MERCER ISLAND PLACES OF WORSHIP, BUS STOPS, SCHOOLS, AND LICENSED CHILD CARE SERVICES

EXHIBIT C





# Mercer Island Temporary Encampment Comparison Matrix

Mercer Island code sections cited are within the draft ordinance provided for discussion purposes to the Planning Commission for the October 7, 2009 meeting

	Mercer Island	Bellevue	Bothell	Issaquah*	Kirkland	Redmond	SeaTac
Length of Stay.	Cannot exceed 90 days. 19.06.090(A)(4)	Cannot exceed 60 days. LUC 20.30U.125.	90 days + weekend if 90 <sup>th</sup> day is on a Friday. BMC 12.06.160.B.3.c.	90 days. Special Event/Use Permit SPE07-00032.	Cannot exceed 92 days. KZC 127.30.	110 days "at one location". RCDG 20D.190-10-030.3.b	Cannot exceed 90 days. SMC 15.20.045.D.1
Encampment Setback from Abutting Properties.	20 feet or more, 19.06.090(A)(10)(a)	20 feet or more, LUC 20.30U.125.	20 feet or more, unless approved by adjacent property. BMC 12.06.160.B.3.b.2	No setback requirement in Permit. (IMC 5.14.050.A.10 allows for other conditions deemed necessary)	20 feet or more. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	None.
Sight Obscuring Fence or Screening Required?	Yes. 19.06.090(A)(10)(b)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.3	Yes. Use Permit # SPE07-00032.	Yes. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	Yes. SMC 15.20.045.B.9 and 15.20.045.B.10
Lighting Regulation.	Lighting must be directed inward toward encampment. 19.06.090(A)(10)(c)	Glare and reflections must be contained within Camp. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.e.2	None in Permit.	Lighting must be directed downward and containing within camp. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	None.
Maximum Number of Residents at Encampment.	100 persons. 19.06.090(A)(9)	100 persons. LUC 20.30U.125.	Based on land area. No max #. BMC 12.06.160.B.3.b.1	100 persons. Use Permit # SPE07-00032.	100 persons. KZC 127.25.	100 persons. RCDG 20D.190-10-030.3.b	100 persons. SMC 15.20.045.B.6
Parking Requirements at Site?	Yes. 19.06.090(A)(1)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.4	Yes. Use Permit Condition 5.	Yes. KZC 127.25.	Yes. RCDG 20D.190-10-030.3.d	Yes. SMC 15.20.045.B.7
Proximity to transit Required?	Yes. Within 1/2 mile of a public transit stop. 19.06.090(A)(3)	Yes. Within 1/2 mile of a transit stop. LUC 20.30U.125.	Yes. Within 1/2 mile of transit stop. BMC 12.06.160.B.3.b.5	No requirement in Permit # SPE07-00032.	Yes. Within 1/2 mile of a transit stop. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.iii	Yes. Within 1/4 mile or provide carpool/shuttles. SMC 15.20.045.B.8

# Mercer Island Temporary Encampment Comparison Matrix

	Mercer Island	Bellevue	Bothell	Issaquah*	Kirkland	Redmond	SeaTac
Children Prohibited from Staying in Encampment?	Yes. Cannot stay overnight, except under exigent circumstances. 19.06.090(A)(12)	Yes. LUC 20.30U.125.	Not Prohibited.	No. Not under Permit # SPE07-00032.	Yes. KZC 127.25	Planning Director's decision. RCDG 20D.190-10-030.3.fi.ii	Not Prohibited.
Code of Conduct for Persons in Encampment?	Yes. 19.06.090(A)(18)	Yes. LUC 20.30U.125	Yes. BMC 12.06.160.B.3.e.4	Not mentioned in Permit # SPE07-00032.	Yes. KZC 127.25	Yes. RCDG 20D.190-10-030.3.fi	Yes. SMC 15.20.045.C.3
Specific Health, Safety and Fire Protections Apply?	Yes. 19.06.090(A)(7), 19.06.090(A)(8), 19.06.090(A)(13), 19.06.090(A)(14)	Yes.	Yes. BMC 12.06.160.B.3.d	Yes.	Yes.	Yes. RCDG 20D.190-10-030.2.d and 20D.190-10-030.3.f	Yes. SMC 15.20.045.B.2 and 15.20.045.B.3
Identification, and Warrant and Sex Offender Checks Required For Persons at Encampment?	Yes. 19.06.090(A)(17) and 19.06.090(A)(19)	Yes. 20.30U.121	Yes, when deemed necessary. BMC 12.06.160.B.3.e.3	Not mentioned in Permit # SPE07-00032. (may be in separate agreement with Police Dept.).	Yes. KZC 127.25.	Only identification required. RCDG 20D.190-10-030.3.e	Yes. SMC 15.20.045.C.5 and 15.20.045.C.6
Inspections Required?	"shall permit inspections". 19.06.090(A)(15)	Not addressed in 20.30U.	"may be conducted". BMC 12.06.160.B.3.d	Yes. Temp Use Permit.	Yes. KZC 127.25.	Not addressed.	"shall permit inspections". SMC 15.20.045.E.3
Is Notice Provided to Neighbors Prior to Decision?	Yes. 19.06.090(C)(1) and 19.06.090(C)(2)	Yes. LUC 20.35.510 & 525.	Yes. BMC 12.06.160.B.3.a.2 and BMC title 11	Not required for special use permit per IMC 5.14	Yes. KZC 127.42.	Yes. RCDG 20D.190-10-030.4	Yes. Notify property owners prior to application. SMC 15.20.045.A.2
Must Notify, and Meet and Confer with Nearby Schools and Daycares?	Yes. Any within 600 feet of the encampment. 19.06.090(C)(2)	Yes. Any within 600 feet of site. LUC 20.30U.122.	Yes. BMC 12.06.160.B.3.a.4	No. Not in Temporary Use Permit.	No. (does require compatibility with surrounding uses).	Not Prohibited.	Not Prohibited
Can There be Immediate Enforcement of Violations?	Yes. Mercer Island Codes 8.04.120, 8.30.030, 17.14, 17.15, and 19.15.030	Yes. LUC 20.30U.125 and BCC 1.18	Yes. BMC 12.06.160.B.3.a.7	Yes. IMC 5.14.090	Yes.	Yes. Chapter 1.14, 9.34, 14.04	Yes.
Are There Any Penalties for Violating Codes or Agreement?	Yes. Civil fines and penalties for City and State Code violations. Mercer Island Codes 8.04.120, 8.30.030, 17.14.113, 17.14.115, 17.15.030, 19.15.030, & RCW 70.95.240(2)(b-c)	Yes.	Yes. BMC 12.06.160.B.3.a.7 and 11.20.010	Yes. Civil fines or by imprisonment. IMC 5.14.060 and 5.14.090	Yes.	Yes. Chapter 1.14, 9.34, 14.04	Yes. Expulsion or Termination of Temporary Use Permit. SMC 15.20.045.C.3 or 15.20.045.F.1

# Mercer Island Temporary Encampment Comparison Matrix

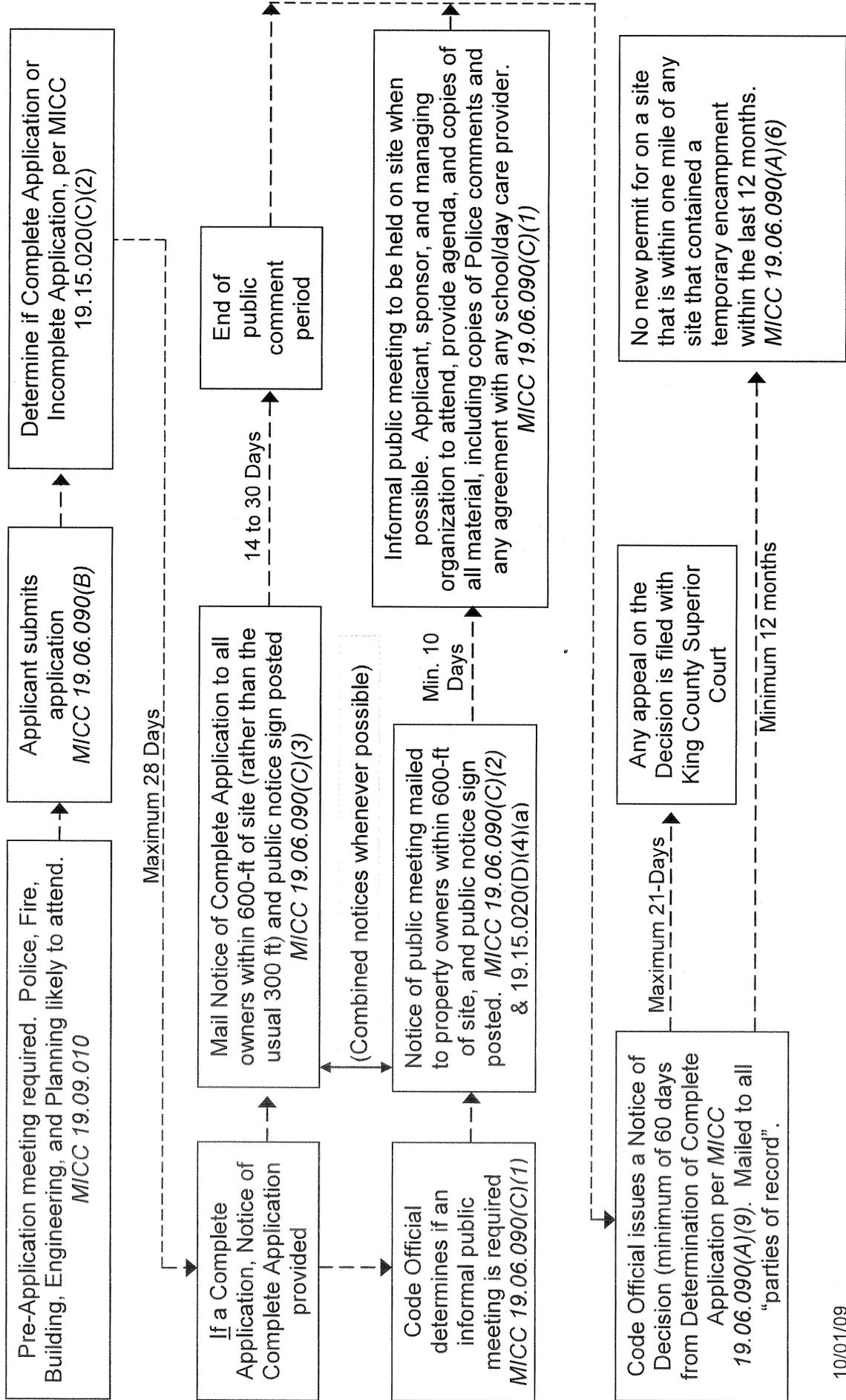
	Mercer Island	Bellevue	Bothell	Issaquah*	Kirkland	Redmond	SeaTac
Is there a provision for hold harmless / indemnification for City taxpayers?	Yes, City is held harmless and indemnified.	No.	Yes. BMC 12.06.160.B.3.f.1	Yes. Special use Permit Sec. 14.	No.	No.	No.
Process For People Evicted From Tent City?	Yes. Process for eviction or unlawful detainer. RCW 59.12. See RWC 59.16-59.20. See also Mercer Island City Code 9.14, Trespass, to which usual police procedures apply.	Yes.	Yes. BMC 12.06.160.B.3.e.3.D & C	Yes.	Yes. In Temp Use Permit ZOzn08-00001.	No.	No.
Application Fee	None at this time. Must be submitted if required. A \$250 deposit for a public notice sign would be required. A fee of \$69 was charged for a temporary power permit for Tent City	\$440 total. \$110 land use fee, \$225 for land use sign, \$62 for fire inspection, \$43 for Right-of-Way use	Hourly rate based on time to process land use permit. Land use planner hourly rate is \$140.80	\$188.80 total. \$20 for special use permit, and \$168.80 for plumbing permit	\$212 for a Temporary Use Permit	\$1,601.77 for a Temporary Use Permit	\$60 for a Temporary Use Permit

\*Issaquah regulates Temporary Encampments with a "Temporary Use Permit" (which also includes many other types temporary land uses) and is not specific to Temporary Encampments. Language is provided in the Issaquah Municipal Code that allows the city to place restrictions on the permit that are not necessarily spelled out in the code, subject to a legal nexus.



# DRAFT PROCESS SUMMARY FOR TEMPORARY ENCAMPMENTS

The following is a summary of the process. Please refer to the draft ordinance, which shall always govern. *Italics are new sections of the code proposed by the draft ordinance provided to the Planning Commission for the October 7, 2009 meeting.*



**Wednesday, November 18, 2009**

## **PLANNING COMMISSION REGULAR MEETING AGENDA**

### **PLANNING COMMISSIONERS**

Bryan Cairns

Adam Cooper

Jon Friedman

Eric Laschever

Steve Marshall

Craig Olson

Kristen White

### **COUNCIL LIAISON**

El Jahncke

**CALL TO ORDER &  
ROLL CALL** 7:30 PM

### **APPEARANCES**

This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:

Speak audibly into the podium microphone

State your name and address for the record

Limit your comments to three minutes

*(Note: The Commission may limit the number of speakers and modify the time allotted. Total time for appearances: 15 minutes)*

**APPROVAL OF  
MINUTES** Minutes from November 4, 2009

**REGULAR BUSINESS** 7:45 PM

### **Agenda Item #1**

Open Record Public Hearing for an ordinance of the City of Mercer Island, Washington, amending MICC 19.06.010(a), 19.09.010, 19.15.010(e) and 19.16.010, and adding new section MICC 19.06.090 in order to provide definitions, requirements, and procedures for permitting temporary encampments within the City, providing for severability and establishing an effective date.

**OTHER BUSINESS** Council Liaison Report  
Staff Comments  
Planned Absences for Future Meetings  
Announcements & Communications  
Next Regular Meeting: December 2, 2009

**ADJOURN**

**AGENDA TIMES ARE APPROXIMATE**



CITY COUNCIL CHAMBERS

PHONE: 206-275-7605

MERCER ISLAND CITY HALL

WEB: [www.mercergov.org](http://www.mercergov.org)

9611 SE 36TH STREET

MERCER ISLAND, WA 98040



# Memorandum

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To: Planning Commission and Deputy Mayor Jahncke  
From: Katie Knight, City Attorney  
Re: Public Hearing on Draft Temporary Encampment Ordinance  
Date: November 12, 2009

Following staff's presentation on October 7, 2009 regarding the City's experience with a Temporary Encampment and a summary of draft legislation, staff held a city wide community meeting on moving forward with a draft ordinance. The initial draft ordinance provided to the Planning Commission was not recommended by staff, but provided to help shape a context for discussion purposes. The Planning Commission then asked staff to return with a "staff recommended" ordinance. After review of the comments from the neighborhood meeting and community meeting, as well as language in other neighboring jurisdictions, staff has provided the "staff recommended" draft ordinance attached as Exhibit A. All changes from the previous draft ordinance provided to the Planning Commission for the October 7, 2009 meeting are in **bold and highlighted**. The Planning Commission is now scheduled to hold an Open Record Public Hearing on Exhibit A at the November 19<sup>th</sup> Meeting.

## Next Steps

Following Planning Commission's Open Record Public Hearing and deliberations at the November 18<sup>th</sup> meeting, the Planning Commission can choose to:

1. Move to: Recommend adoption to City Council of the proposed code changes of Title 19 of the Municipal Code, as presented as Exhibit A in the staff report to the Planning Commission; or
2. Move to: Recommend adoption to City Council of the proposed code changes to Title 19 of the Municipal Code, as presented as Exhibit A in the staff report to the Planning Commission with certain specified changes; or
3. Move to: Recommend denial to City Council of the proposed code changes of Title 19 of the Municipal Code, as presented as Exhibit A in the staff report to the Planning Commission.

## Exhibits

- A. Draft Ordinance
- B. Written Comments Submitted during SEPA Comment Period
- C. Summary of Community Meeting Comments
- D. Comparison Matrix of other jurisdictions
- E. Ordinance Draft Schedule
- F. Proximity Map
- G. Memorandum #1 from Katie Knight dated October 1, 2009
- H. Memorandum #2 from Katie Knight dated October 1, 2009

EXHIBIT A

CITY OF MERCER ISLAND  
ORDINANCE NO. XXC-XX

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, AMENDING MICC 19.06.010(A), 19.09.010, 19.15.010(E) AND 19.16.010, AND ADDING NEW SECTION MICC 19.06.090 IN ORDER TO PROVIDE DEFINITIONS, REQUIREMENTS, AND PROCEDURES FOR PERMITTING TEMPORARY ENCAMPMENTS WITHIN THE CITY, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

~~WHEREAS, the Seattle Housing and Resource Effort (“SHARE”) and the Women’s Housing Equality and Enhancement League (“WHEEL”), non-profit organizations experienced in operating and managing temporary encampments for homeless individuals, have collaborated to provide temporary housing on the Eastside of King County, under the designation “Tent City 4”; and~~

WHEREAS, both the First Amendment to the United States Constitution and Article 1 Section 11 of the Washington State Constitution protect the free exercise of religion; further, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits governments from imposing a land use regulation that unreasonably limits religious assemblies, institutions or structures. Court decisions hold that a church sponsoring a Temporary Homeless Encampment on its own property constitutes protected religious expression; and

WHEREAS, the Washington Supreme Court has determined that municipalities may not infringe upon religious institutions’ ability to practice their religion by hosting temporary encampments, and limiting municipalities’ ability to legislate regarding such temporary encampments to health, safety and welfare issues; and

~~WHEREAS, beginning in May 2004, Tent City 4 has set up temporary encampments in several Eastside Cities including Bellevue, Bothell, Issaquah, Kirkland, Redmond, as well as in unincorporated communities in east King County, including Finn Hill and Cottage Lake, and has accepted invitations to return to some of these jurisdictions after positive Tent City 4 experiences; and~~

WHEREAS, the City of Mercer Island, it’s elected and appointed officials, are committed to protecting the health, safety and well-being of its citizens, as mandated by the State Constitution; and

WHEREAS, in keeping with the duties and responsibilities of municipal government, temporary encampments and the hosting facility are also protected by all public safety, health and welfare regulations routinely provided to Mercer Island citizens and visitors; and

WHEREAS, Tent City 4 came to the City of Mercer Island in 2008 and the City developed its own experience with regard to the temporary encampment; and

WHEREAS, City staff prepared draft changes to the City code to address safety, health and welfare issues related to temporary encampments, and on October 22, 2009, a community meeting was held to introduce the proposed code changes to the public; and

WHEREAS, the Mercer Island Planning Commission was briefed on the temporary encampment issues and began its review of the proposed code changes on October 7, 2009, and the Planning Commission held a public hearing on the proposed changes on November 18, 2009; and

WHEREAS, on December 2, 2009, the Mercer Island Planning Commission made its final recommendations on proposed temporary encampment regulations; and

WHEREAS, the Mercer Island City Council considered the Planning Commission's recommendations on January 4, 2010, held an open record public hearing on January 18, 2010, held a second reading on February 1, 2010, and has determined to adopt the code changes set forth in this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** Amendments to Chapter 19.16 MICC, Definitions. MICC 19.16.010 "Definitions" is hereby amended by adding the following:

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Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, ~~other than for excluding~~ recreational purposes ~~or when the encampment is located in a permanent structure.~~

Temporary Encampment Sponsor: A ~~local group or organization~~ place of worship which owns the property or has an ownership interest in the property, for which a Temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

...

**Section 2.** Chapter 19.06 MICC General Regulations. MICC 19.06.090 "Temporary Encampment Permit" is hereby added as follows:

**19.06.090 Temporary Encampment Permit**

A. General Conditions. Temporary encampments are allowed only pursuant to a permit issued in accordance with the following conditions:

1. Each ~~site lot~~ occupied by a temporary encampment must provide or have available ~~sufficient~~ parking and vehicular maneuvering area ~~for patrons.~~

2. The temporary encampment and the parking of any vehicles associated with ~~the a temporary encampment~~ applications shall not displace the host site's parking lot in such a way that the host site no longer meets the minimum or required parking of the principle use as required by code or previous approvals unless an alternative parking plan has been approved by the Code Official.

3. The temporary encampment shall be located within one-half mile of a public transit stop.

4. No temporary encampment shall occupy or use public parks in any manner unless specifically approved by the Parks Department.

5. No temporary encampment shall ~~occupy or~~ operate within the City of Mercer Island for more than 90 ~~consecutive~~ days.

6. The City shall not grant a permit for a temporary encampment that is proposed to commence on a ~~site that is lot or lots~~ within one mile of any ~~site-lot(s)~~ that contained a temporary encampment within the last 12 months. **For the purposes of this subsection, the 12 months shall be calculated from the last day of the prior temporary encampment within the one mile radius.**

7. All temporary encampments shall obtain, prior to occupancy of the ~~site-lots~~, all applicable City of Mercer Island permits, licenses and other approvals (i.e. business license, building permit, administrative approvals, etc.).

8. Each site occupied by a temporary encampment shall be left free of debris, litter, or other evidence of the temporary encampment upon completion of removal of the use.

9. The applicant shall submit a complete application for a temporary encampment permit at least ~~60~~ **90** days before the planned opening or any occupancy of the temporary encampment.

10. The encampment shall be limited to a maximum of 100 persons, if all other conditions are met. After the encampment reaches its 100 person capacity, any individual(s) who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which the individual(s) will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the ~~City~~ **code official** on a weekly basis.

11. Because of their temporary nature, temporary structures within temporary encampments shall not be required to meet the Design Review criteria of MICC 19.11 or 19.12. Any permanent structures, as determined by the Code Official, shall meet all applicable Design Review criteria, and receive any necessary Design Review permits. All temporary structures for temporary encampments shall comply with the following design criteria:

a. Temporary encampment structures shall be located a minimum of 20 feet from any property line that abuts a residential property. All other setbacks and yards applicable to permanent structures shall apply to temporary structures related to temporary encampments.

b. A **six-foot high** sight obscuring fence, vegetative screen or other visual buffering shall be provided between the temporary encampment and any abutting residential property and the right-of-way. The fence shall provide a privacy and a visual buffering among neighboring properties in a manner and material approved by the Code Official. **The fence(s) shall not be constructed of tarp, visqueen, or plastic sheeting.** The Code Official shall consider existing vegetation, fencing, topographic variations and other site conditions in determining compliance with this requirement.

c. Exterior lighting must be directed downward, away from adjoining properties, and contained within the temporary encampment.

12. No children under the age of 18 are allowed to stay overnight in a temporary encampment. ~~In exigent circumstances, i~~ If a child under the age of 18 attempts to stay overnight at the temporary encampment, the encampment managers shall immediately contact the temporary encampment managing organization and Washington State Department of Social and Health Services Child Protective Services, or its successor.

13. The temporary encampment shall comply with all applicable standards of the Seattle-King County Health Department, or its successor.

14. The temporary encampment shall comply with all Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials. **Servicing of portable toilets and trash dumpsters is prohibited between the hours of 10:00 pm and 7:00 am on Mondays through Fridays, excluding legal holidays, and between the hours of 10:00 pm and 9:00 am on Saturdays, Sundays, and legal holidays, except in the case of bona fide emergency or under permit from the Code Official in case of demonstrated necessity.**

15. The temporary encampment shall permit regular inspections by the City and King County Health Department to check compliance with the standards for temporary encampments. The Mercer Island Fire Department shall do an initial fire inspection and safety meeting at the inception of the temporary encampment.

16. All temporary encampments shall have services, **such as food, water, and waste disposal**, provided by a temporary encampment sponsor and supervised by a temporary encampment managing organization. The property owner, temporary encampment sponsor, and temporary encampment managing organization shall sign a hold harmless agreement for the temporary encampment.

17. The temporary encampment managing organization shall maintain a resident log for all who are residing at the encampment. Such log shall be kept onsite at the encampment. Prospective encampment residents shall ~~be asked to~~ provide a **reasonable-verifiable** form of identification when signing the log.

18. The temporary encampment host, encampment sponsor, and encampment managing organization shall ensure enforcement of a Code of Conduct at the temporary encampment site. The Code of Conduct shall be in substantially the following form or address the following issues:

- a. Possession or use of illegal drugs is not permitted.
- b. No alcohol is permitted.
- c. No weapons are permitted.
- d. All knives over three and one-half inches must be turned in to the encampment manager for safekeeping.
- e. No violence is permitted.
- f. No open flames are permitted.
- g. No trespassing into private property in the surrounding neighborhood is permitted.
- h. No littering on the Temporary Encampment site or in the surrounding neighborhood is permitted.

Nothing within this section shall prohibit the ~~encampment host~~, encampment sponsor or encampment **managing organization** from imposing and enforcing additional Code of Conduct conditions not otherwise inconsistent with this section.

19. The applicant shall obtain warrant and sex offender checks from the King County Sheriff's office or other relevant authority for all current camp residents within **the seven days of prior to** moving to Mercer Island, as well as from all new residents checking into the temporary encampment. If said check reveals the subject is a sex offender or has an active warrant, the applicant shall immediately contact the City of Mercer Island Police Department. To verify compliance with this requirement, the City of Mercer Island Police Department may do random warrant and sex offender checks on temporary encampment residents; **and shall remove anyone with an outstanding warrant.**

20. Upon determination that there has been a violation of any decision criteria or condition of approval, the code official may give written notice to the permit holder describing the alleged violation. Within ~~14-7~~ days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the ~~14-7~~ day period, the code official shall sustain or revoke the permit. When a Temporary Encampment Permit is revoked, the code official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a Temporary Encampment Permit will be processed pursuant to RCW 36.70C. The availability of this procedure shall be in addition to the procedures set out in MICC 19.15.030.

21. The code official may require any other condition as necessary to mitigate impacts from temporary encampments.

B. Permit Application. The applicant for a temporary encampment shall submit all of the following, unless waived by the Code Official:

1. General application form;
2. A site plan, **which extends 50 feet beyond the proposed site's property boundaries,** drawn to scale showing all of the following:
  - a. all existing structures;
  - b. existing parking stalls;
  - c. parking stalls proposed to be unavailable for parking vehicles during the Temporary Encampment;
  - d. all proposed temporary structures;
  - e. proposed electrical and plumbing connections;
  - f. location of trash receptacles, including trash dumpsters;**
  - g. location of toilets and other sanitary facilities;**
  - h. location and details of any proposed connection to wastewater, potable water, stormwater, electrical supply, or other public or private utility systems;**
  - i. proposed and existing ingress and egress; and
  - gj. any permanent alterations on the lot,** to the site, or structures;
3. Proposed fencing detail or typical section;
4. Written authorization from the owner of the property on which the temporary encampment is located;
  5. A hold harmless agreement, on a form approved by the City Attorney, with a signature of the property owner, temporary encampment sponsor, and temporary encampment managing organization;
  6. A copy of any agreements with other parties regarding use of parking, either on-site or off-site;
  7. A copy of any agreement between the temporary encampment sponsor, temporary encampment managing organization, and any schools and/or child care services;
  8. A copy of the Code of Conduct;

9. Any other information deemed necessary by the Code Official for the processing of a temporary encampment permit; and

10. All applicable application filing fees in an amount established by city ordinance or resolution.

C. Application Process. A Temporary Encampment Permit is an Administrative Action. In addition to the requirements for the processing of Administrative Actions specified in MICC 19.15, the following additional procedures shall apply:

1. Informal Public Meeting Required. The code official may require an applicant to conduct an informal public meeting to inform citizens about a proposed temporary encampment. When required, the informal public meetings shall be held as early in the review process as possible once a complete application has been submitted. Notice of the public meeting shall be provided in the same manner as required for notice of the application, at least 10 days prior to the informal public meeting, and combined with the notice of application whenever possible. Prior to the public meeting, the temporary encampment sponsor and managing organization shall meet and confer with the Mercer Island Police Department regarding the proposed security measures. At the public meeting, a representative of the temporary encampment sponsor and managing organization shall present in writing and describe the proposed temporary encampment management ~~responsibility plan~~ security measures, and any input or comment received on the plan, including any comment or input from the Mercer Island Police Department, or comment or input from schools and/or child care services under subsection 2 of this section. Copies of the agenda, and other materials shall be provided by the applicant at the meeting. The meeting shall be conducted on the subject property whenever feasible.

2. Additional Mailed Notice. The requirements for mailing the notice of application set forth in MICC 19.15 shall be expanded to include owners of real property within 600 feet of the ~~site for lot(s) containing~~ the proposed temporary encampment. Prior to ~~notice of decision any application for of~~ a temporary encampment permit by the code official, the temporary encampment sponsor, or temporary encampment managing organization shall meet and confer with the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the ~~lot(s) proposed to contain the proposed~~ temporary encampment ~~site~~, and shall meet and confer with the operators of any properly licensed child care service within 600 feet of the boundaries of the ~~lot(s) proposed to contain the proposed~~ temporary encampment ~~site~~. The temporary encampment sponsor and the school administration and/or child care service operator shall make a good faith effort to agree upon any additional conditions that may be appropriate or necessary to address school and/or child care concerns regarding the location of a temporary encampment within 600 feet of such a facility. Any such conditions agreed upon between the parties shall be submitted to the code official for consideration, for inclusion within the temporary encampment permit. In the event the parties fail to agree on any conditions, either party may provide the code official with a written summary of the parties' discussions, which the code official may consider in evaluating whether the criteria for the temporary encampment permit are met, or the need for additional conditions upon the temporary encampment permit, based on the applicable decision criteria.

D. Emergencies. The code official may waive these requirements when a catastrophic event necessitates the immediate establishment of a temporary encampment.

**Section 3. Amendments to Chapter 19.06 MICC, General Regulations.** MICC 19.06.010(A)  
 “Prohibited Uses” is hereby amended as follows:

**19.06.010 Prohibited uses.**

The following uses are prohibited in all zones except as specifically allowed below.

- A. Portable toilets except for temporary encampments, emergency or construction use.
- B. Electric fences or any device designed to give an electric shock to any person coming in contact therewith.
- C. Houseboats and watercraft used for habitation or commercial purposes.
- D. Excavation and removal from the lot, as distinguished from grading on the lot, of black soil, peat, sand, gravel or other natural deposits.
- E. The use of any vehicle or trailer as a dwelling.
- F. Any signs, except as permitted by this code, or other city or state regulation.
- G. The lease of any dwelling or dwelling unit for a period of less than 30 days; provided, rooms in a bed and breakfast, hotel, or motel may be leased for periods of less than 30 days.

**Section 4. Amendments to Chapter 19.09 MICC, Property Development.** MICC 19.09.010  
 “Preapplication and intake screening meetings” is hereby amended as follows:

**19.09.010 Preapplication and intake screening meetings.**

A. Preapplication meetings between the applicant, members of the applicant’s project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.

...

**Section 5. Amendments to Chapter 19.09 MICC, Administration.** MICC 19.15.010(E) “General Procedures” is hereby amended as follows:

...

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Ministerial Actions			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner

Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.010	Hearing examiner*
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation (Except Shoreline Deviations)	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(2) and (D)(3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court
<u>Temporary Encampment</u>	<u>Code Official</u>	<u>MICC 19.06.090</u>	<u>Superior court</u>
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(2), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission*	MICC 19.15.020(G)	Superior court

Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission**	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission**	MICC 19.09.070	Superior court
Shoreline Deviation	Planning commission	MICC 19.07.080	City council
Shoreline Variance	Planning commission	MICC 19.07.110(C)(2)(d)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission**	MICC 19.15.020(G)	Growth management hearings board
*Final rulings granting or denying an exemption under MICC 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60).			
**The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.			

**Section 6:** **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 7:** **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 8:** **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

\_\_\_\_\_  
Katie Knight, City Attorney

Date of Publication: \_\_\_\_\_

**George Steirer**

---

**From:** Sue Bennett [suebennett18@comcast.net]  
**Sent:** Wednesday, October 21, 2009 7:38 PM  
**To:** George Steirer  
**Subject:** tent city

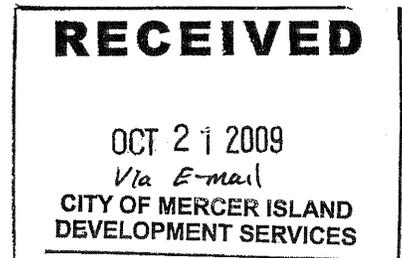
I read about the open house to discuss the tent city experience. I can't attend and I worry that those most motivated to attend will be motivated by dissatisfaction. Often those that are happy about an issue don't feel moved to do anything. I just want to say that I thought the tent city event was handled very well.

My family joined with another family to offer dinner one night. The people living in tent city were polite and appreciative. My kids had a rare experience of having a meal with people very different from them, and of feeling like they were tangibly helping someone else. I was impressed with how tent city organized itself and managed its security, showers, meals, etc. The whole operation was organized, safe, accessible, and well-run.

Thank you to those that made it happen, who were not afraid to reach out to others, who see the benefit in stretching our community and sharing our resources. No one was forced to participate, yet the opportunity to be a part of this broader community was open to all. It was the best of Mercer Island.

Sincerely,

Sue Bennett  
6510 81st Ave SE  
Mercer Island, WA 98040  
206-275-2669



**RECEIVED**

OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

10/21/2009

To Whom It May Concern:

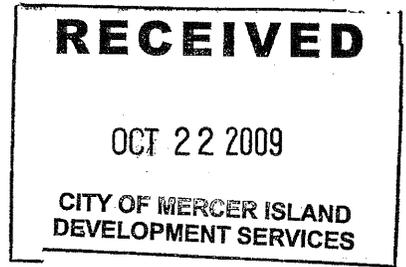
Unfortunately, I won't be able to attend the TC meeting tomorrow night. However, I would like to pass on some comments to the Planning Commission as one more First Hill Neighborhood voice.

I'm concerned that the Ordinance, as drafted, has no restriction on Tent City returning to the same location year after year. This is completely unfair to the impacted neighborhood. If Tent City is allowed to come to the Island, which I strongly oppose, then the least the Commission can do is to spread the wealth around- let other neighborhoods experience the joy. Maybe then, more people would wake up to what a sham Share/Wheel is.

In general, I feel that any ordinance drafted by Mercer Island should encompass the strictest requirements of other cities that have ordinances in place regarding Tent City. Those cities have put in strict requirements for a reason. I think Mercer Island should take heed and learn from the experience of other cities. First and foremost, the Planning Commission and City Council should work for the safety and welfare of the citizens of Mercer Island.

Elizabeth Insinger

10/22/2009



City Council members,

The draft ordinance appears to address some of the concerns of the citizens of Mercer Island and the First Hill neighbors. In addition to what is already proposed, I would like to limit the time of a temporary use to 60 days; and see an elapsed time between visits to the same location of 18 months. The City of Bellevue requires 18 months between visits in their Agreement.

Moreover, I would like to see the time frame for violation resolution moved to 48 hours. The city of Bothell allows 48 hours for conflict resolution.

It is **imperative** that current sex offender and warrant checks are required upon moving to a temporary site onto Mercer Island; and not using checks from other locations that were completed two years prior. If even a percentage of a "temporary use" population have outstanding warrants when they move onto Mercer Island, it is not okay. Warrant and Sex Offender checks would have saved time and resources for both the city and the citizens.

Furthermore, I would like to see the security patrols removed completely as these patrols did little to enforce security and caused lots of disruption to the neighbors. Would the boy scouts be walking up and down the streets at 2am? Our own police force did more for security than these patrols. Both the Cities of Kirkland and Redmond prohibit these patrols.

Please work for those who elected you to represent the citizens of Mercer Island by enacting the above changes.

Regards,

Jayne Judd

Dear Mayor Pearman and City Council Members,

Just a quick note concerning the new city ordinance on temporary encampments (i.e. Tent City), and what we would like included in the ordinance.

We all work very hard to live here on beautiful Mercer Island, and we feel if Tent City returns, the experience of hosting Tent City should be shared among all of its supporters. If MI is to host Tent City again, we feel all of the MI Clergy Assoc. sponsoring churches should actively participate in rotating Tent City onto their properties for 3 months, before Tent City is ever allowed to return to the United Methodist Church. This will allow Tent City supporters here on MI to fully appreciate the positives and negatives that Tent City brought into our neighborhood for 3 months in 2008.

If the other MI Clergy Assoc. sponsoring churches choose not to participate in this rotation, we feel the United Methodist Church will willingly host them for 3 months of every year in our neighborhood. Subsequently, property owners within a certain radius of Tent City who choose to sell their homes may be legally required to disclose this perceived benefit or defect to potential home buyers, property values may fall even more than they have recently, and this condition may result in additional real estate foreclosures and short sales.

To encourage Tent City supporters to participate, please include a provision in the new ordinance to rotate the site of Tent City among all MI Clergy Association sponsoring churches before Tent City is ever allowed to return to the United Methodist Church again.

Thank you for your time and the good that you do for all of Mercer Island.

Sincerely,

John & Susan Redifer

cc: Katie Knight, MI City Attorney  
Ali Spietz, MI City Clerk

10/22/2009

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OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Nancy & Bob Williard

Mailing Address: 2611 93rd Ave SE MI

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: \_\_\_\_\_

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

We so enjoyed our connections  
w. the former Tent City and  
are proud of our community  
to be hosting these —  
keep it up —

Please use the back side if more space is needed

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OCT 22 2009  
CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Marnie Holen

Mailing Address: 4818 E Mercer Way MI 98040

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: mholen@comcast.net

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

My concern is that an ordinance on fencing may make the fencing material so expensive, that the hosting costs go ~~the~~ above normal costs and cause religious organizations reason to not <sup>be</sup> able to host.

Please use the back side if more space is needed

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OCT 22 2009  
CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

PLEASE WRITE CLEARLY. We want to ensure that we have your name and address correct for the record, and understand comments clearly. Thank you for taking the time to provide feedback.

Name: Ella Loy

Mailing Address: 7660<sup>SE</sup> 29<sup>th</sup> St #202

Would you like the City to e-mail you updates on the process?

No, thanks

Yes, please. My e-mail address is: \_\_\_\_\_

I am providing the following written comment on the environmental impacts of the potential ordinance related to temporary encampments on Mercer Island (project file Nos SEP09-020 and ZTR09-003). The comments are provided pursuant to the comment period under the Washington State Environmental Policy Act (SEPA), which ends at 5:00 PM on October 28, 2009:

Our church, The Congregational Church on M.I., fully support Tent City and had the privilege of providing 5 meals for the residents. Our members participated to teach their children and grandchildren by example to respect others among many reasons, and in interviewing the participants after their experiences every single individual mutually agreed that they felt they had received far more than they gave.

**RECEIVED**

OCT 22 2009

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

## EXHIBIT C

### Community Meeting Regarding Tent City

October 22, 2009

Notes taken from attendees (scribes: Joyce Trantina and Joy Johnston)

(Notes are listed in the order in which they were spoken. Lines delineates the change in speaker. The notes are only a summary.)

---

#### Jerry Bradshaw

Increased traffic and disruption to neighborhood

Concerns regarding # 6, #19, #20 of Ordinance. Violations should be resolved within 48 hours or camp closed.

Utilize professional security patrols versus untrained (TC patrols)

Concerns regarding reduced property values to neighboring homes.

No follow-thru with neighbors by Church.

What did Tent City cost all City Depts.?

All neighborhoods should take turns, versus the same host.

Some may believe it is the City's duty to bring back Tent City.

---

#### Steve Bryan – 2426 70<sup>th</sup> Ave SE

Appreciate the meeting with First Hill neighborhood, process has been constructive.

Smoking area – should be addressed in the Ordinance, need to limit the amount of impact on the neighborhood..

Need to address delivery services (early morning servicing of sani-cans, and other services) were disruptive to neighbors.

---

Mercer Island Presbyterian Church – 100+ people signed up to provide meals for TC while they were here (ages 3 to 70). All of their feedback about the experience of having TC on Mercer Island has been positive.

---

Where in the process does the Church/Synagogue actually extend the invitation?

---

Chuck Hodge

Regarding the map – does the regulation limit a church, based on public transportation?

---

Steve Case – 4250 Shoreclub Drive

Does the 12 month time period in the Ordinance count from the beginning (when TC arrives) or the end (after TC leaves)?

---

Jessica Prince

Family spent time at the camp and made connections with the people living there – positive experience to be with them. Would Tent City be able to come back? Is the Ordinance structured in such a way so as to make it difficult for TC to ever return to MI?

---

Dale Sewell – 9535 Mercerwood Drive

No interest in having TC coming back more than once a year or returning to the same neighborhoods. Some congregations had concerns regarding the one mile distance (i.e. if one church hosts, will the other 11 churches be restricted from hosting for 12 months? ). Isn't this unconstitutional? Would any other sites be eliminated because of the ordinance?

Good process – the City should meet with the Clergy Association to discuss the Ordinance and talk about constitutional issues/concerns.

---

Rev. Leslie Ann Knight – 6616 SE 24<sup>th</sup> St.

Need a parking regulation in the Ordinance. Most development/building projects require “more than enough” parking, i.e. the churches have plenty of parking capacity.

Timeline looks too long – TC is often “emergency housing” – a mandatory time of 3 months preparation seems too long – how does that compare to other cities?.

Will this Ordinance afford the church's some protection from litigation?

---

Legend of map - 600' to school site, what are the implications for TC? What if the issues can't be resolved?

---

Is the one year restriction more restrictive? Versus the language in the Temporary use Agreement – (Tent City can't come anywhere on the Island for one year).

---

Tara Johnson

Ordinance Issues:

#6 – would prefer 18 months (like Bellevue)

#20 – 14 days too generous, would like 48 hours to resolve

#17 – need to be more specific regarding “reasonable verification”

Requirement of host church to hold monthly meetings with neighbors.

Security patrols should be prohibited like Redmond and Kirkland, especially in the middle of the night.

Parking – add language to address overflow issues (blocking neighbors driveways, etc.)

---

Karen Morris, Bellevue

Fence – more than appearance, but is meant to provide one point of entrance/exit for TC residents.

Hold Harmless provision, but no requirement for liability insurance.

Should be meetings with schools – concern about cooperation with school requests.

City staff should not refer to “proponents” and “opponents” - too demeaning.

---

Ira Appleman

Ordinance refers to temporary encampments (not specifically Tent City). What about Boy Scout Jamborees?

Should this be a Conditional use Agreement instead of an Ordinance?

---

Don't write an Ordinance for one specific use/organization.

EXHIBIT D

# Mercer Island Temporary Encampment Comparison Matrix

Mercer Island code sections sited are within the draft ordinance provided for discussion purposes to the Planning Commission for the November 18, 2009 meeting. Items underlined have been added since the last version used for discussion on October 7, 2009.



	Mercer Island	Bellevue	Bothell	Issaquah*	Kirkland	Redmond	SeaTac
Minimum Time Application must be Submitted Prior to Arrival	90 days 19.06.090(A)(9)	Not specified	None specified	None specified	None specified	30 days. RCDG 20D.190-10.030.3.a	Notify city 30 days prior to arrival and 14 days prior to application. SMC 15.20.045.A.1
Time Limit for Returning	Must not be located within one mile of any site that contained a temporary encampment within the last 12 months. 19.06.090(A)(6)	May be located at the same site no more than once every 18 months. 20.30U.125(A)(5)	Shall not be allowed in one location for more than 90 days, either consecutively or cumulatively, during any 12-month period. BMC 12.06.160.B.3.c	No criteria found in ordinance or Special Event/Use Permit SPE07-00032.	The City may not grant a temporary use permit at the same site more frequently than once in every 365-day period. KZC 127.30.	Limited to a maximum of 110 days within any 365-day time period at one location. RCDG 20D.190-10-030.3.c	"The duration of the homeless encampment shall not exceed 90 days or exceed 180 days in any 2 year period." & "No more than one homeless encampment may be located in the City at any time." SMC 15.20.045.D.1 & 2.
Length of Stay	Cannot exceed 90 days. 19.06.090(A)(5)	Cannot exceed 60 days. LUC 20.30U.125(A)(4). (Consent decree allows for 90 days)	90 days + weekend if 90 <sup>th</sup> day is on a Friday. BMC 12.06.160.B.3.c.	90 days. Special Event/Use Permit SPE07-00032.	Cannot exceed 92 days. KZC 127.30.	110 days "at one location". RCDG 20D.190-10-030.3.b	Cannot exceed 90 days. SMC 15.20.045.D.1
Encampment Setback from Abutting Properties	20 feet or more, 19.06.090(A)(10)(a)	20 feet or more, LUC 20.30U.125.	20 feet or more, unless approved by adjacent property. BMC 12.06.160.B.3.b.2	No setback requirement in Permit. (IMC 5.14.050.A.10 allows for other conditions deemed necessary)	20 feet or more. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	None.
Sight Obscuring Fence or Screening Required?	Yes. 19.06.090(A)(10)(b)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.3	Yes. Use Permit # SPE07-00032.	Yes. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	Yes. SMC 15.20.045.B.9 and 15.20.045.B.10
Lighting Regulation	Lighting must be directed inward toward encampment. 19.06.090(A)(10)(c)	Glare and reflections must be contained within Camp. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.e.2	None in Permit.	Lighting must be directed downward and containing within camp. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.ii	None.

## Mercer Island Temporary Encampment Comparison Matrix

	<b>Mercer Island</b>	<b>Bellevue</b>	<b>Bothell</b>	<b>Issaquah*</b>	<b>Kirkland</b>	<b>Redmond</b>	<b>SeaTac</b>
Maximum Number of Residents at Encampment	100 persons. 19.06.090(A)(9)	100 persons. LUC 20.30U.125.	Based on land area. No max #. BMC 12.06.160.B.3.b.1	100 persons. Use Permit # SPE07-00032.	100 persons. KZC 127.25.	100 persons. RCDG 20D.190-10-030.3.b	100 persons. SMC 15.20.045.B.6
Parking Requirements at Site?	Yes. 19.06.090(A)(1)	Yes. LUC 20.30U.125.	Yes. BMC 12.06.160.B.3.b.4	Yes. Use Permit Condition 5.	Yes. KZC 127.25.	Yes. RCDG 20D.190-10-030.3.d	Yes. SMC 15.20.045.B.7
Proximity to transit Required?	Yes. Within 1/2 mile of a public transit stop. 19.06.090(A)(3)	Yes. Within 1/2 mile of a transit stop. LUC 20.30U.125.	Yes. Within 1/2 mile of transit stop. BMC 12.06.160.B.3.b.5	No requirement in Permit # SPE07-00032.	Yes. Within 1/2 mile of a transit stop. KZC 127.25.	Planning Director's decision. RCDG 20D.190-10-030.3.f.iii	Yes. Within 1/4 mile or provide carpool/shuttles. SMC 15.20.045.B.8
Children Prohibited from Staying in Encampment?	Yes. Cannot stay overnight, except under exigent circumstances. 19.06.090(A)(12)	Yes. LUC 20.30U.125.	Not Prohibited.	No. Not under Permit # SPE07-00032.	Yes. KZC 127.25	Planning Director's decision. RCDG 20D.190-10-030.3.f.i	Not Prohibited.
Code of Conduct for Persons in Encampment?	Yes. 19.06.090(A)(18)	Yes. LUC 20.30U.125	Yes. BMC 12.06.160.B.3.e.4	Not mentioned in Permit # SPE07-00032.	Yes. KZC 127.25	Yes. RCDG 20D.190-10-030.3.f.i	Yes. SMC 15.20.045.C.3
Specific Health, Safety and Fire Protections Apply?	Yes. 19.06.090(A)(7), 19.06.090(A)(8), 19.06.090(A)(13), 19.06.090(A)(14)	Yes.	Yes. BMC 12.06.160.B.3.d	Yes.	Yes.	Yes. RCDG 20D.190-10-030.2.d and 20D.190-10-030.3.f	Yes. SMC 15.20.045.B.2 and 15.20.045.B.3
Identification, and Warrant and Sex Offender Checks Required For Persons at Encampment?	Yes. 19.06.090(A)(17) and 19.06.090(A)(19)	Yes. 20.30U.121	Yes, when deemed necessary. BMC 12.06.160.B.3.e.3	Not mentioned in Permit # SPE07-00032. (may be in separate agreement with Police Dept.).	Yes. KZC 127.25.	Only identification required. RCDG 20D.190-10-030.3.e	Yes. SMC 15.20.045.C.5 and 15.20.045.C.6
Inspections Required?	"shall permit inspections". 19.06.090(A)(15)	Not addressed in 20.30U.	"may be conducted". BMC 12.06.160.B.3.d	Yes. Temp Use Permit.	Yes. KZC 127.25.	Not addressed.	"shall permit inspections". SMC 15.20.045.E.3
Is Notice Provided to Neighbors Prior to Decision?	Yes. 19.06.090(C)(1) and 19.06.090(C)(2)	Yes. LUC 20.35.510 & 525.	Yes. BMC 12.06.160.B.3.a.2 and BMC title 11	Not required for special use permit per IMC 5.14	Yes. KZC 127.42.	Yes. RCDG 20D.190-10-030.4	Yes. Notify property owners prior to application. SMC 15.20.045.A.2

EXHIBIT D

**Mercer Island Temporary Encampment Comparison Matrix**

	<b>Mercer Island</b>	<b>Bellevue</b>	<b>Bothell</b>	<b>Issaquah*</b>	<b>Kirkland</b>	<b>Redmond</b>	<b>SeaTac</b>
Must Notify, and Meet and Confer with Nearby Schools and Daycares?	Yes. Any within 600 feet of the encampment. 19.06.090(C)(2)	Yes. Any within 600 feet of site. LUC 20.30U.122.	Yes. BMC 12.06.160.B.3.a.4	No. Not in Temporary Use Permit.	No. (does require compatibility with surrounding uses).	Not Prohibited.	Not Prohibited
Can There be Immediate Enforcement of Violations?	Yes. Mercer Island Codes 8.04.120, 8.30.030, 17.14, 17.15, and 19.15.030	Yes. LUC 20.30U.125 and BCC 1.18	Yes. BMC 12.06.160.B.3.a.7	Yes. IMC 5.14.090	Yes.	Yes. Chapter 1.14, 9.34, 14.04	Yes.
Are There Any Penalties for Violating Codes or Agreement?	Yes. Civil fines and penalties for City and State Code violations. Mercer Island Codes 8.04.120, 8.30.030, 17.14.113, 17.14.115, 17.15.030, 19.15.030, & RCW 70.95.240(2)(b-c)	Yes.	Yes. BMC 12.06.160.B.3.a.7 and 11.20.010	Yes. Civil fines or by imprisonment. IMC 5.14.060 and 5.14.090	Yes.	Yes. Chapter 1.14, 9.34, 14.04	Yes. Expulsion or Termination of Temporary Use Permit. SMC 15.20.045.C.3 or 15.20.045.F.1
Is there a provision for hold harmless / indemnification for City taxpayers?	Yes, City is held harmless and indemnified.	No.	Yes. BMC 12.06.160.B.3.f.1	Yes. Special use Permit Sec. 14.	No.	No.	No.
Process For People Evicted From Tent City?	Yes. Process for eviction or unlawful detainer. RCW 59.12. See RWC 59.16-59.20. See also Mercer Island City Code 9.14, Trespass, to which usual police procedures apply.	Yes.	Yes. BMC 12.06.160.B.3.e.3.D & C	Yes.	Yes. In Temp Use Permit ZOzn08-00001.	No.	No.
Application Fee	None at this time. Must be submitted if required. A \$250 refundable deposit for a public notice sign would be required. A fee of \$69 was charged for a temporary power permit for Tent City	\$440 total. \$110 land use fee, \$225 fee for land use sign, \$62 for fire inspection, \$43 for Right-of-Way use	Hourly rate based on time to process land use permit. Land use planner hourly rate is \$140.80	\$188.80 total. \$20 for special use permit, and \$168.80 for plumbing permit	\$212 for a Temporary Use Permit	\$1,601.77 for a Temporary Use Permit	\$60 for a Temporary Use Permit

\*Issaquah regulates Temporary Encampments with a "Temporary Use Permit" (which also includes many other temporary land uses) and is not specific to Temporary Encampments. Language is provided in the Issaquah Municipal Code that allows the city to place restrictions on the permit that are not necessarily spelled out in the code, subject to a legal nexus.



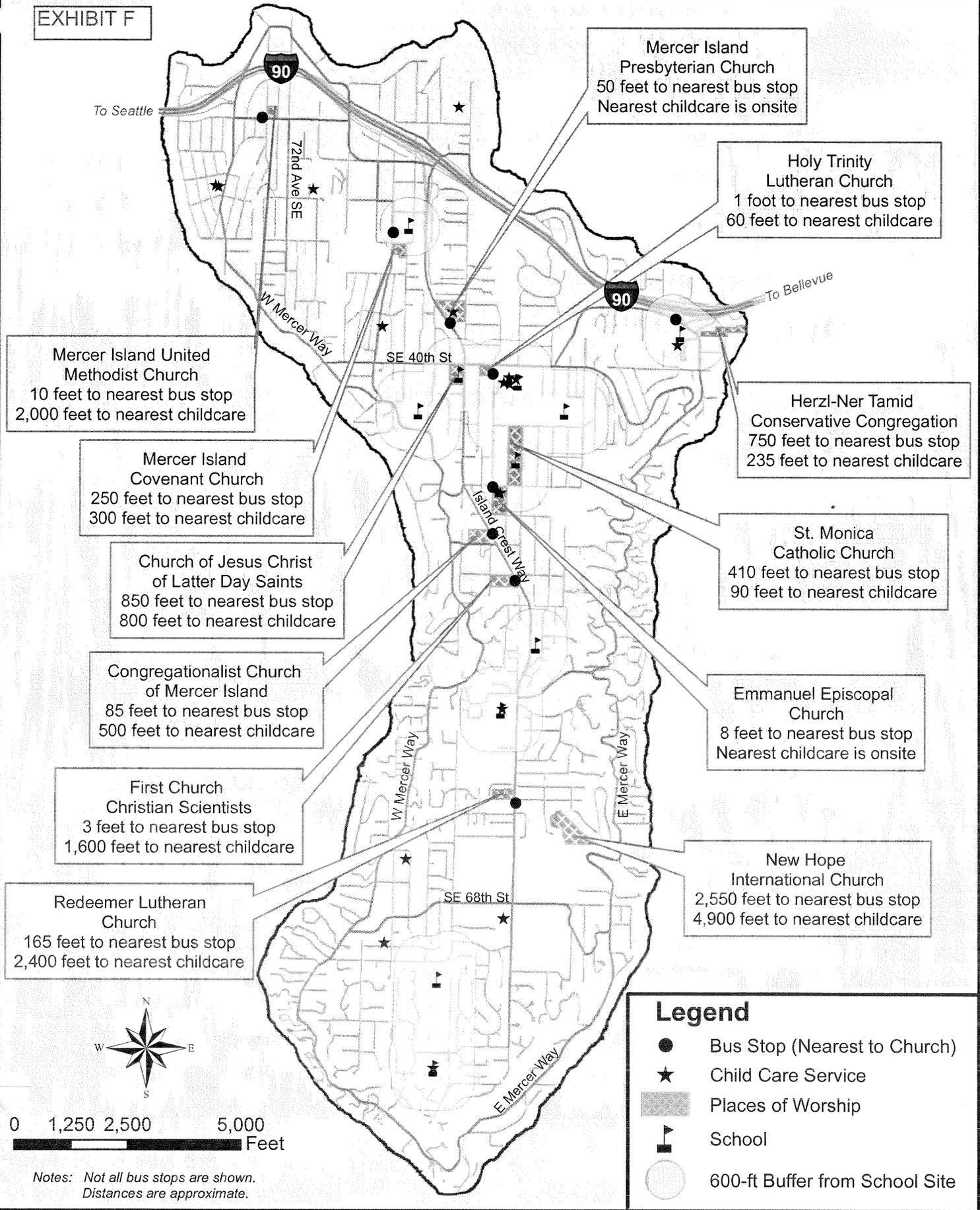
EXHIBIT E

**Anticipated Temporary Encampment Process Schedule**

WHO	DATE	TASK
	<del>10/07/09</del>	<del>Briefing to the Planning Commission regarding Tent City experience and Temporary Encampments ordinance</del>
<del>Weekly Permit Bulletin</del>	<del>10/12/09</del>	<del>Notice code text amendment and S.E.P.A. application in DSG Weekly Permit Bulletin</del>
<del>MI Reporter</del>	<del>10/14/09</del>	<del>Article in MI Reporter regarding Temporary Encampments</del>
<del>MI Reporter</del>	<del>10/14/09</del>	<del>Notice in legal section of Mercer Island Reporter regarding applications</del>
<del>City Staff</del>	<del>10/22/09</del>	<del>Open House to discuss Tent City experience, regulation of future Temporary Encampments, and solicit SEPA comments</del>
	<del>10/28/09</del>	<del>SEPA comment period ends Wednesday, 10/28/09 at 5:00 PM.</del>
Planning Commission	11/18/09	Planning Commission to hold public hearing and discuss ordinance
Planning Commission	12/02/09	Anticipated date for Planning Commission to discuss and make recommendation to Council
City Council	1/04/10	Staff briefing to Council with Planning Commission recommendation - Q & A only
City Council	1/18/10	Public Hearing for proposed ordinance & 1 <sup>st</sup> reading
City Council	2/01/10	2 <sup>nd</sup> reading and adoption of ordinance

# PROXIMITY OF MERCER ISLAND PLACES OF WORSHIP TO BUS STOPS, SCHOOLS, AND CHILD CARE SERVICES

EXHIBIT F





# *Memorandum*

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## *City Attorney's Office*

Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

**RE: Overview of 2008 Tent City Experience**

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### **I. 2008 TENT CITY EXPERIENCE**

#### **A. LEGAL**

##### **1. Factual Background**

The Mercer Island United Methodist Church (“Church”) invited the nonprofit organization SHARE/WHEEL, organizer and manager of Tent City 4, to establish a Tent City encampment on the Church’s property for three months beginning August 5, 2008. The Church’s pastor, congregational leaders, and SHARE/WHEEL signed a Temporary Use Agreement (“Agreement”) with the City after a small amendment was made during the City Council meeting on June 16, 2008.

Based on the extensive litigation with Eastside communities in the past, the City determined that it was unlikely to prevail on forbidding such an encampment if the Church invited Tent City 4. The City also determined that it was likely to obtain more favorable conditions to the City if it entered into a voluntary agreement with SHARE/WHEEL and the Church.

The Temporary Use Agreement contained the following terms:

- There will not be more than one encampment on Mercer Island in a calendar year at the Church and the duration of any stay will not exceed three months.
- The location and visual screening of the camp will afford privacy for Tent City residents and neighbors.
- No more than 100 people will stay at the camp.
- The church will manage parking at weekly services to minimize spillover onto neighborhood streets.
- No children under the age of 18 will reside in the Tent City encampment.
- A stringent code of conduct will be enforced and SHARE/WHEEL and the Church will comply with all lawful City and State codes.

- The identity of all camp residents will be verified, and warrant and sex offender status of prospective residents will be checked. Any positive results reported to the MI Police Department.
- No sex offenders will be allowed to stay at the encampment.
- The Church and Tent City managers will allow regular inspections by the City (Fire, Police and DSG) and the King County Health Department.
- The Church and SHARE/WHEEL agreed to a hold harmless and indemnification provision.

Pursuant to the Agreement, the Church held a public informational neighborhood meeting approximately one month prior to establishment of the encampment, with notice of the meeting published in the MI Reporter and delivered to nearby residents/owners two weeks prior to the meeting.

Prior to Tent City 4's arrival, the City, Church and SHARE/WHEEL were sued by a group calling themselves Citizens for Fair Process. Ultimately, the trial court dismissed the group's claims. The dismissal of the case has been appealed. Tent City 4 moved to Mercer Island in August, 2008 for about 90 days.

## 2. Constitutional Issues

As is discussed more fully below, courts across the nation have recognized the activities of feeding the hungry and sheltering the homeless as core religious activities. For example, the court reviewing Tent City's arrival at St. Brendan's in Bothell found as a matter of law that "St. Brendan's use of its property for the purpose of sheltering the homeless constitutes the exercise of religion and is protected by the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington State Constitution."

### A. The Washington State Constitution Bars Government Restrictions on the Exercise of Religious Duties on Church Property Unless a Compelling Governmental Interest Demands Intervention.

Article 1, Section 11 of the Washington State Constitution ensures "[a]bsolute freedom of conscience in all matters of religious sentiment, belief, and worship" to "every individual" and guarantees that "no one shall be molested or disturbed in person or property on account of religion." This guarantee of free exercise – significantly stronger than the corresponding provision in the federal Constitution – "is 'of vital importance.'" *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 226, 840 P.2d 174, 186-87 (Wash. 1992). If the "coercive effect of [an] enactment" operates against a party "in the practice of his religion", it unduly burdens the free exercise of religion. A facially neutral, even-handedly enforced statute that does not directly burden free exercise may, nonetheless, violate Article 1, section 11, if it indirectly burdens the exercise of religion. State action is constitutional under the free exercise clause of article 1 if the action results in no infringement of a citizen's right or if a compelling state interest justifies any burden on the free exercise of religion. *Id.* at 226, 840 P.2d at 187 (citations omitted; alterations and omissions in the original); *see also Munns v. Martin*, 130 Wn.2d 192, 200, 930 P.2d 318, 321 (Wash. 1997); *City of Sumner v. First Baptist Church*, 97 Wn.2d 1, 5, 639 P.2d 1358, 1361 (Wash. 1982).

“A ‘compelling interest’ is one that has a ‘clear justification . . . in the necessities of national or community life’, that prevents a ‘clear and present, grave and immediate’ danger to public health, peace and welfare.” *First Covenant*, 120 Wn.2d at 226-27, 840 P.2d at 187 (citations omitted; emphasis added). The interest must be “paramount.” *Sherber v. Verner*, 374 U.S. 398, 406 (1963). The test also focuses on the means used to accomplish the asserted interest: “The State also must demonstrate that the means chosen to achieve its compelling interest are necessary and the least restrictive available.” *First Covenant*, 120 Wn.2d at 227, 840 P.2d at 187. The least restrictive means element is virtually impossible to satisfy when reasonable alternatives exist that would advance the government’s interests without sacrificing the religious exercise at issue. In effect, this means that the courts will examine the regulations on a case-by-case basis, and the City will have to show that its regulations were the minimum necessary to achieve its interests in the health, safety and welfare of its citizens. The regulations cannot be such that the use ends up being prohibited if there is a way to achieve the use while protecting the health, safety and welfare of citizens.

The Washington State Supreme Court, in a 9-0 decision, most recently declared that numerous cases before it have already decided that the state constitution “absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution...” *First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 229-30, 840 P.2d 174 (1992). The court concluded that the religious organizations have more protection under Washington’s constitution and did not go further to determine whether there was violation of RLUIPA. Under this decision, Cities may regulate concerns for safety, noise, and crime but may not outright deny consideration of permitting. *City of Woodinville v. Northshore Church of United Christ*, WA Supreme Court slip opinion, July 16, 2009.

Although the *Woodinville* court determined that it only needed to base its decision on the Washington State Constitution, a review of the U.S. Constitution assists in understanding the concerns regarding regulating ministry to the homeless.

B. The Free Exercise Clause Of The First Amendment To The United States Constitution Bars Government From Interfering With A Church’s Ministry To The Homeless Unless A Compelling Governmental Interest Demands Intervention.

Like the Washington Constitution, the United States Constitution proscribes governmental action that infringes on the ability of churches to exercise the mandates of their faith. The First Amendment both guarantees the right of free exercise of religion and provides that government may not establish or otherwise control religion. *See* U.S. Const. Amend I.

The same compelling governmental interest test applied by the Washington courts also applies under the First Amendment where, as in most land use matters, individualized exemptions to otherwise generally applicable rules are allowed in the discretion of government officials. In the case of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, (1993), the United States Supreme Court held:

As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government

“may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.”

508 U.S. at 537. Thus, the Free Exercise clause of the First Amendment prohibits enforcement of zoning regulations that place a substantial burden on the exercise of religion unless the land use authority demonstrates that the regulations are necessary to further a compelling governmental interest (*i.e.*, prevention of a clear, present, grave and immediate danger to public health, peace and welfare) and that the least restrictive means necessary to further that governmental interest are employed.

C. RLUIPA Bars Government Restrictions On The Exercise Of Religious Duties On Church Property Unless A Compelling Governmental Interest Demands Intervention.

After finding substantial evidence of widespread discrimination against religious uses of land, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). RLUIPA bars enforcement of any local land use law or regulation that fails the “compelling state interest” test:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling government interest.

42 U.S.C. 2000cc § 2(a)(1).

RLUIPA specifically permits aggrieved churches to challenge enforcement actions that burden the free exercise of religion. *See id.*, § 4(a). As under the constitutional standard, once a church produces evidence demonstrating a burden on the exercise of religion, it is the government’s burden to justify its actions under the compelling governmental interest test. *See id.*, § 2(a)(1)(A)-(B); § 4(b); § 8(2). RLUIPA is to “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” *Id.*, § 5(g) (emphasis added). Anyone who successfully asserts a RLUIPA claim is entitled to an award of attorney’s fees. *See id.*, § 4(d); 42 U.S.C. § 1988(b).

The Act broadly defines the term “land use regulation” to mean any “zoning . . . law, or the application of such a law, that limits or restricts a claimant’s use . . . of land.” *Id.*, § 8(5). RLUIPA defines “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” *Id.*, §7(A). While the Act does not define “substantial burden,” courts have repeatedly interpreted the term in similar contexts. Among other things, “a substantial burden on the free exercise of religion . . . is one that forces adherents of a religion to refrain from religiously motivated conduct . . .”. *Mack v. O’Leary*, 80

F.3d 1175, 1179 (7<sup>th</sup> Cir. 1996), *certiorari granted, judgment vacated on other grounds*, 522 U.S. 801 (1997); *see also Brown-El v. Harris*, 26 F.3d 68, 70 (8<sup>th</sup> Cir. 1994) (government action that forces religious adherents “to refrain from religiously motivated conduct” substantially burdens religious exercise); *Werner v. McCotter*, 49 F.2d 1476, 1480 (10<sup>th</sup> Cir. 1995) (action that “significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a [person’s] individual beliefs” substantially burdens religious exercise).

Section 5(e) of RLUIPA makes it clear that Congress intended land use authorities to be flexible in accommodating churches' free exercise of religion. That section states:

A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

*Id.* §5(e). Thus, the Act specifically provides that a land use regulator may comply with RLUIPA and accommodate a church’s exercising the mandates of its religion by recognizing higher standards of regulation in connection with homeless ministries. Here, the City used its inherent ability to contract in order to accommodate the flexibility dictated in RLUIPA. Just as development agreements are entered into by the City and private entities in order to address such issues, the City entered into the Temporary Use Agreement with the Church and with SHARE/WHEEL to accommodate the Church’s exercise of the mandates of its religion while regulating concerns about the health, safety and welfare of its citizens and the Tent City 4 residents.

State and Federal law supersede the City’s municipal code. If the City’s code is in conflict with these superior laws, then those laws govern and the City cannot prohibit the activity. Even if the City code is silent with regard to Temporary Homeless Encampments, federal law and state law mandate that the City not impose burdens to hinder this activity.

Given the Church’s stated intent to host Tent City 4 on its property, the City’s authority to prohibit this impending encampment was at best uncertain. The King County Superior Court’s June 10, 2004 decision reflected this tenuous legal landscape by refusing to grant the City of Bothell’s request for a preliminary injunction, even where Tent City 4 had established its homeless encampment unlawfully and without the requested local permits. The City of Mercer Island was entitled to rely upon the experiences of other municipalities (e.g., Bothell) in determining an appropriate response to the encampment’s arrival at the Church. *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986). The ultimate wisdom of the City Council’s responsive policy is not properly subject to review. *See, e.g., Davis v. exrel. Dept of Licensing*, 137 Wn.2d 957, 976, n.12, 977 P.2d 534 (1999).

## **B. DSG Experience with Tent City**

## 1. Title 19 MICC – Unified Land Development Code

Title 19 of the Mercer Island City Code (MICC) regulates the manner in which land is used and developed throughout the island. This includes the types of land uses allowed in various locations and the allowed or required physical attributes of those uses. The R-9.6 zoning district is intended primarily for single family residential use. Certain non-residential uses considered to be supportive of a residential environment (e.g., schools and places of worship) or needing a residential environment to operate effectively (e.g., special needs group housing) are also allowed either outright or through a “conditional use” review process.

Title 19 does not specifically address the appropriate location or required attributes of temporary homeless encampments such as Tent City 4. Section 19.06.010 of the city code specifies uses that are prohibited, but the list of prohibited uses does not include temporary homeless encampments or any similar use.

Experience: As discussed elsewhere in this report, the legal right of religious organizations to host such temporary homeless encampments has been recognized by the courts. Based upon this right and the provisions of the Title 19 described above, it was determined that nothing within the City’s land use regulations would prevent or specify the conditions under which MIUMC or another place of worship could host Tent City 4.

In light of the lack of specific guidance within Title 19 regarding the conditions under which a temporary homeless encampment might operate, City staff worked with MIUMC, Share/Wheel and Tent City 4 to include in the Temporary Use Agreement requirements typically applied to other allowed uses. These include: property line setbacks and screening or visual buffering; exterior lighting; density or intensity of use (maximum number of residents); and parking. Provisions included in the Agreement were based, to the extent deemed appropriate, on requirements for similar uses and situations under the Title 19.

*Setbacks and Screening.* The Temporary Use Agreement established requirements that Tent City 4 must be located at least 20 feet from any abutting residential property, and that a sight-obscuring fence and/or vegetation shall be provided within this area. These requirements were based partly on the perimeter screening requirements for “Multifamily Development” uses located adjacent to “Single-Family Residential ” uses as specified by MICC 19.12.040.B.7. These requirements were met by Tent City 4 with the exception of a minor encroachment on the 20 feet setback that was immediately remedied after the encampment was notified of the problem.

*Exterior Lighting.* The Temporary Use Agreement established requirements that exterior lighting associated with Tent City 4 must be directed downward, away from adjoining properties and contained within the temporary homeless encampment. This provision was based partly on MICC 19.12.070, which requires that exterior lighting for regulated developments must be shielded or located to confine light spread and the associated negative impacts within the site boundaries. The City received no recorded complaints regarding light spillover impacts on surrounding properties.

*Density/Intensity of Use.* In the Agreement, Tent City 4 was limited to a maximum of 100 persons, but still must meet all setbacks as well as health and safety issues. The Agreement

stated that in exigent circumstances, this number could be exceeded if a person or persons seek shelter overnight.

*Parking.* The Agreement required a minimum of 26 off-street parking stalls on Saturdays, Sundays and after 6:00 p.m. on weekdays. A minimum of 8 off-street parking stalls were required at all other times.

*Portable Toilets.* MICC 19.06.010 prohibits the use of portable toilets except for emergency or construction use. In the case of Tent City 4 at MIUMC, portable toilets were allowed as a reasonable and necessary accommodation. The Temporary Use Agreement required portable toilets that were serviced on a regular basis. There was concern by neighbors regarding odors from the toilets, and servicing prior to 7:00 a.m.

#### Chapter 15.14 MICC – Unlawful Cross-Connections

Description: Chapter 15.14 regulates connections to the use of City utilities.

Experience:

*Water system backflow prevention.* Potable water was supplied to Tent City 4 by a hose connection to an existing hose bib on the exterior of the church building. Under the provisions of MICC 15.14.030 *Backflow Prevention Devices Required*, it was determined that appropriate backflow prevention was advisable to prevent any potential for water system contamination. An approved backflow prevention device was installed by Tent City 4. This device was inspected and approved by the city's certified cross-connection control inspector and its continued use was verified by other inspectors on several occasions throughout the Tent City stay.

*Sanitary sewer connection.* Grey water from a portable shower facility and hand washing stations was collected in a sump and pumped to a sanitary sewer connection in MIUMC property. This system and the connection were inspected and approved by the city utilities inspector. On one occasion power to the sump pump was inadvertently disconnected and a small quantity of grey water overflowed the sump but did not leave the site. The issue was immediately resolved upon notification of Tent City 4.

*(ix) Compliance with Codes. SHARE/WHEEL and the Church shall comply with lawful Washington State and City codes concerning but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.*

#### **C. Police Experience with TC4**

Prior to Tent City's arrival on Mercer Island in 2008, the City's Police Department had no direct experience with Tent City. Upon learning that Tent City may come to Mercer Island, the department reached out to other Police Departments in the area and requested a summary of their experience with the encampment in their communities. The Police Chief also interviewed several of the Police Chiefs, and did on-site visits of the encampment in Bellevue. Subsequently, the department drafted its Police Department Response Plan, wherein roles and responsibilities were outlined for the Police Chief, the Police Liaison, the Patrol Section, the Criminal Investigations Section, and the Records Section.

The Police Department took the presence of Tent City very seriously, and dedicated resources to this encampment and the surrounding neighborhoods. In addition to general patrols of the area, officers also physically walked through the encampment 287 times during the three-month stay. The residents of Tent City welcomed the officers, and appreciated the time they spent with them. The residents in the surrounding neighborhoods also appreciated the extra presence of the patrol officers.

A detective was assigned as the Police Department's Tent City Liaison, which proved very helpful in many ways. He was able to build relationships with the residents of the encampment as well as the residents of the surrounding neighborhoods. He provided a consistent point of contact, and he was able to develop a solid understanding of the concerns that surrounded the encampment.

The Police Officers made a total of nine arrests of Tent City residents. Five arrests were for outstanding warrants, two were for traffic offenses, one was for violation of a No Contact Order, and one was for a Domestic Violence assault. In addition to these five arrests, the officers also took 15 other reports ranging from graffiti and littering to reports of water balloons being tossed into Tent City. None of these reports were for felony crimes.

The extra efforts relating to Tent City added to the Department's daily workload, but it did not prove to be over- burdensome. Officers shifted their focus for portions of their shifts to the First Hill neighborhood rather than other areas of the city. However, this focus did not prevent officers from addressing calls for service in other areas of the city. Overall, the Police Department was able to effectively manage their core mission of protecting all the residents of this community.

#### **D. Fire Department Experience with Tent City**

Mercer Island Fire Department ("MIFD") did not have any experience with a group such as Tent City 4 prior to their arrival in August 2008. In order to prepare for Tent City's arrival, MIFD contacted several neighboring departments who had dealt with the challenges associated with having the camp in their operations area. MIFD discovered that every department reported Tent City 4 had very little impact on call volume and services including, both fire and EMS.

After Tent City 4's arrival, the Fire Marshal worked closely with the Tent City 4 staff and several city staff to ensure that the encampment complied with all appropriate fire codes. Tent City 4 residents and staff were found to be very helpful and compliant with all MIFD and Fire Marshall requirements. Duty crews were asked to perform walk-through inspections and area familiarization on a daily basis to increase safety for the residents and our staff.

The following is a brief summary of the fire department's experience with Tent City 4:

- Walk Throughs
  - Duty Crews - 32
  - Fire Marshal - 4
  - Deputy Chief - 2
  - Fire Chief - 1
- EMS Calls
  - Approximately - 4
- Fire Calls
  - None
- Service Calls
  - None

Overall, Tent City 4 had a minimal impact on the calls for service to the Fire Department.

#### **E. Communication Experience with Tent City**

The possibility of hosting Tent City on Mercer Island was first introduced to the public in the Mercer Island Reporter on June 13, 2007 in an article submitted by the Mercer Island Clergy Association. The news was subsequently repeated in the Seattle Times and other major regional media. At that time, the City established a dedicated Tent City webpage at [www.mercergov.org/tentcity](http://www.mercergov.org/tentcity).

In mid-May of 2008, Mercer Island United Methodist Church (MIUMC) announced its intention to host Tent City 4. As details unfolded, the City worked closely with MIUMC to establish a process of public notification. On May 30, 2009, MIUMC submitted a press release to the Mercer Island Reporter. An article titled "Tent City Coming in August to Island" appeared on the front page of the June 4, 2008 edition. In addition, Rev. Dale Sewall published an article in the same edition of the Mercer Island Reporter on behalf of the Mercer Island Clergy Association. The news was also repeated in major media, including KING 5 and KOMO. On June 11, 2008 notice of the City Council Meeting at which the Temporary Use Agreement for Tent City would be discussed was published in the Mercer Island Reporter.

The Temporary Use Agreement required that SHARE/WHEEL and the church conduct a neighborhood meeting a minimum of 20 calendar days prior to the opening date of the temporary homeless encampment, and that notice of the meeting be provided to residents within 600 feet of the church. SHARE/WHEEL and MIUMC hosted a public meeting on July 9, 2008. Notice of the meeting was hand-delivered to all residents within 600 feet of the church.

Throughout the time leading up to and throughout Tent City 4's stay on Mercer Island, the City updated information on the City's website and published information in the City's weekly e-newsletter, MI Weekly, which is distributed to about 500 subscribers throughout the Island. The City's Communications Coordinator became the primary contact for media inquiries, and the story continued to garner attention of regional media including KUOW and major network stations. Citizen comments were received through email, phone calls and during the appearances portion of City Council meetings. From June through December 2008, approximately 110 comments were heard from 83 individuals at Mercer Island City Council Meetings.

City staff has responded and continues to respond to public records requests for documents regarding Tent City.

## **II. CONCLUSION**

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large at the October 22, 2009 community meeting.



# *Memorandum*

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## *City Attorney's Office*

Date: October 1, 2009

To: City Planning Commission

From: Katie Knight, City Attorney

**RE: Overview for Discussion of Temporary Encampment Regulations**

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### I. OVERVIEW

The briefing on October 7 is intended to provide the Planning Commission with an overview of the draft temporary encampment ordinance, and to provide feedback on the experience of Tent City 4 when it came to the City last year. The formal public hearing on the ordinance itself will be held November 18, 2009. The meeting tonight is informational only. The draft ordinance is provided to present a context for discussion for future regulation of temporary encampments, based upon the experience from last year. At this early point, it does not represent a "staff recommended ordinance." It merely represents a starting point for the Commission's and community's discussion.

#### A. Background

For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by SHARE/WHEEL, a non-profit homeless advocacy organization. At the June 20, 2009 Council Mini-Planning Session, the City Council directed staff to prepare a draft ordinance for Council's consideration. The City Council asked to have an ordinance ready to pass by January 31, 2010. The Council directed staff to hold a public meeting with the First Hill neighborhood to receive their input and perspective regarding their experiences related to the 2008 hosting of Tent City, as well as a community wide public meeting to respond to the draft ordinance.

City staff held a public meeting on August 25<sup>th</sup> at the Mercer Island United Methodist Church to receive input from the greater First Hill Neighborhood. On October 22, the City will hold a community-wide open house at the Community Center at Mercer View ("CCMV") to provide a forum for additional public input, to discuss the lessons learned from the Tent City experience, and to provide an overview of the draft Temporary Encampment ordinance. The major areas of discussion will include:

- Legal Structure

- Legal/constitutional requirements
- Legal precedent
- Communications
  - Public noticing of neighbors, community
  - Opportunities for public involvement
- Location of future Tent City
  - Regulatory issues
  - Benefits/concerns of site
- Public Safety
  - Fire safety
  - Enforcement
  - Emergency medical services
  - Public health
- Compliance
  - City code requirements
  - City Ordinance
  - Tent City Code of Conduct

## B. EXHIBITS

1. Exhibit A is the draft Temporary Encampment Ordinance.
2. Exhibit B is the process timeline.
3. Exhibit C is a map of the City identifying the location of the religious institutions which may potentially host a temporary encampment and their relation to transit stops, schools and daycares.
4. Attached as Exhibit D is a comparison chart of the proposed ordinance and other Eastside City Ordinances. Note that the comparisons are being drawn to the actual ordinances themselves, not to subsequent permits issued pursuant to those ordinances. (The Issaquah example is a mix of the ordinance and the conditions placed on the permit under the broad “any mitigation necessary” provision as Temporary Encampments are shoehorned into Temporary Use Permits.)

## II. DRAFT ORDINANCE

The Washington Supreme Court has unanimously determined that religious organizations are allowed to minister to the homeless, so there is no ability by municipalities to completely prohibit temporary encampments at churches. Municipalities are permitted, however, to regulate such temporary use based on health, safety and welfare issues. In the land use realm, a number of strategies exist which allow local governments to address regulation of temporary uses, such as through temporary use agreements, permits, or ordinances. The temporary use agreement is useful in negotiating specific issues which have not been encountered previously. Some uses may be generally authorized by ordinance, but any regulations are provided specifically in the temporary use permit itself. Some ordinances permit the use and contain the regulations within

the body of the ordinance itself, and may not require a permit. Other ordinances do a blend of both.

In reviewing temporary encampment regulations of other eastside municipalities, some choose to address the health, safety and welfare issues within the ordinance itself. Others address such regulations via temporary use permits. The draft ordinance provided by Mercer Island staff puts the majority of regulations within the ordinance, while allowing flexibility for the Code Official to adopt additional requirements in the permit itself based on the location of the temporary encampment. A matrix is attached to demonstrate the draft ordinance compared to other cities' ordinances (as opposed to temporary permits). Again, the Code official may require additional site specific conditions in the permit which are not currently identified in the draft ordinance.

The key provisions of the draft Temporary Encampment Ordinance are as follows:

- Maximum stay of 90 days at one location, in any 12 month period
- No permit is granted for a temporary encampment proposed to commence on site within one mile of any site that contained a temporary encampment within the last 12 months
- Although Design Review would not apply for temporary encampments, screening and setback provisions are required.
- Temporary Encampments cannot reduce a site below the minimum allowed parking requirement for the other uses on the site.
- Public notice is required for all property owners within 600 feet, rather than the standard 300 feet.
- The Code Official has the discretion to require an informal neighborhood meeting during the comment period.
- ~~Criminal background~~ Warrant and sex offender checks are required of Temporary Encampment residents.
- Maximum amount of 100 persons.
- Compliance with Seattle-King County Health requirements and all state and city codes regarding drinking water connections, solid waste disposal, electrical systems, cooking and food handling and fire resistant materials.
- Hold harmless agreement required.
- Compliance with code of conduct.

Some other elements for discussion were not included in the current draft ordinance for a variety of reasons. Some are more appropriate for site-specific issues and can be addressed in the temporary encampment permit. Others are addressed through other code requirements. Some are likely to be considered unconstitutional. Those proposals are as follows, with some italicized commentary as appropriate:

- Permit fee: *(highest cost in other cities is approximately \$1600)*
- Identification of Adverse Effects. “ The applicant shall identify potential adverse effects of the proposed temporary encampment on neighboring properties and the community and shall develop measures to mitigate such effects. The applicant

shall submit a temporary encampment impact mitigation plan with the permit application. The plan shall contain a narrative and drawing(s) that describe, to the satisfaction of the community development director, the measures the applicant will use to mitigate the effects of the temporary encampment. At a minimum, the plan shall specifically describe the measures that will be implemented to satisfy the approval criteria provided in the MICC except for criteria specifically waived by the Code Official. The plan shall include a code of conduct and the names and phone numbers of all persons comprising the applicant. The form and mitigation plan shall be as specified by the community development director, but the elements of the plan shall be bound together. The approved temporary encampment impact mitigation plan shall be signed by the Code Official and the applicant and implementation and enforcement shall be a condition of the permit approval.”: *(such adverse effects addressed via the ordinance and site-specific permit)*

- Smoking requirements. Any established area for smoking shall conform to the following stipulations:
  - A. Noncombustible, approved ashtrays shall be provided;
  - B. A “designated smoking area” sign shall be posted
  - C. The area shall be located as far from the tent area as possible, the location will be subject to inspection by Fire Marshal Office.  
*(smoking requirements addressed via site-specific permit)*
- Tent requirements: “Tents over 200 sf shall be flame treated.” *(already addressed via requirement for compliance with codes/site-specific permit)*
- Conduct and Security Requirements: “Any temporary encampment shall comply with the City regulations regarding lawful behavior set forth in Mercer Island Code. Any temporary encampment shall provide all required legal access to public areas of the site by the City of Mercer Island Police Department and any other relevant law enforcement agency at all times.”: *(already required)* “Additionally, where deemed necessary by the Development Director or the Police Chief, the applicant shall provide for the following:
  - 1. Verifiable Identification Required: The applicant shall take all reasonable and legal steps to obtain verifiable identification, such as a valid driver’s license, government issued identification card, military identification card, or passport, from all prospective and current camp residents.
  - 2. Other individuals who are turned away from the camp shall be handled as follows:
  - 3. A) Applicant shall walk the individual to the bus stop and wait with them until the bus arrives;  
B) A camp vehicle shall be used to drive the individual to the closest available bus service or  
C) A taxi or volunteer driver shall be called and the homeless encampment security workers shall be available to wait with the person. Taxi vouchers shall be available from sponsor when buses are not operating:  
*(may be addressed in site-specific permit)*
- Sidewalk monitor requirement. “Host shall provide sidewalk monitors during normal hours when elementary, junior high or high school students are going to and from the bus stops.” *(may be addressed in site-specific permit)*

- Prohibition of neighborhood security foot patrols. “Residents and guest of encampment shall not perform neighborhood security foot patrol into the adjoining residential neighborhood.”: (*Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas*)
- Prohibition of Neighborhood Trash Patrols: “Neighborhood and trash patrol by residents and guests of encampment in adjoining residential neighborhood is prohibited.”: (*Unconstitutional to prohibit freedom to move about on public right-of-ways and public areas—note that Bellevue’s ordinance actually requires such patrols*)
- Quiet hours requirement. “Quiet hours at encampment shall be between 9:00 PM and 8:00 AM.” (*may be addressed in site-specific permit*)
- Visiting Hours. “Visiting hours for Guests are between 8:00 AM and 9:00 PM. Guests must check-in and provide valid form of identification at camp security location and must leave by 9:00PM. Guests are prohibited from staying overnight in the camp.” (*potentially unconstitutional elements—some aspects addressed elsewhere*)
- Failure to apply for Permit. “If a temporary use for which a permit would be required is established without a permit first having been obtained, the Planning Director shall require all activities associated with the encampment shall cease immediately and the site shall immediately be vacated and restored to its pre-existing condition unless and until such time as a temporary use permit has been obtained.” (*may be addressed elsewhere in the City Code*) .

### III. CONCLUSION

Staff will continue to bring more information to the Planning Commission at the November 18, 2009 hearing, after more input is received from the community at large, at the October 22, 2009 community-wide meeting.

**Planning Commission - Minutes**  
**Wednesday, November 18, 2009**

**CALL TO ORDER:**

Chair Cooper called the meeting to order at 7:32 PM in the Council Chambers, at 9611 SE 36th Street, Mercer Island, Washington.

**ROLL CALL:**

Chair Adam Cooper, Vice-Chair Eric Laschever, Commissioners Bryan Cairns, Jon Friedman, Steve Marshall, Craig Olson, and Kristen White were present. City staff was represented by Katie Knight, City Attorney; Sung Lee, Planner; and George Steirer, Principal Planner.

**MINUTES:**

Commissioner Laschever motioned to approve the minutes from November 4, 2009. Commissioner White seconded the motion. The Commission unanimously approved the minutes.

**REGULAR BUSINESS:**

**Agenda Item #1: Open Record Public Hearing for an ordinance of the City of Mercer Island, Washington, amending MICC 19.06.010(A), 19.09.010, 19.15.010(E) and 19.16.010, and adding new section MICC 19.06.090 in order to provide definitions, requirements, and procedures for permitting temporary encampments within the City.**

Katie Knight, City Attorney, provided a summary of the process and background on the staff recommended Temporary Encampment ordinance.

George Steirer, Principal Planner, provided a summary of the changes in the staff recommended ordinance.

Chair Cooper opened the public hearing at 7:53 PM

Reverend Mark Travis of the Congregational Church and President of the Mercer Island Clergy Association provided testimony.

Karen Morris (did not indicate her address), provided testimony.

Ira Appelman of 6213 83<sup>rd</sup> Place Southeast provided testimony.

The Commission asked questions of staff and deliberated.

Commissioner Laschever moved that the Planning Commission recommend adoption to City Council the proposed code changes of Title 19 of the Municipal Code, as presented as Exhibit A in the staff report to the Planning Commission with specific changes as previously directed. Commissioner White seconded the motion. The Planning Commission discussed the motion

Commissioner Laschever moved to amend the original motion to allow the Planning Commission Chair to review and approve the recommended draft ordinance, as amended, on behalf of the Planning Commission. Commissioner White seconded the motion. The motion to amend the original motion passed with 7 yeas and no nays. The original motion, as amended, passed with 7 yeas and no nays.

**COUNCIL LIAISON REPORT:**

No report was provided

**STAFF COMMENTS:**

Staff provided a brief summary of the City Council's actions on recent recommendations by the Planning Commission.

**PLANNED ABSENCES FOR FUTURE MEETINGS:**

Commissioner Steve Marshall will be absent for the December 2, 2009 meeting.

**ANNOUNCEMENTS AND COMMUNICATIONS:**

None

**NEXT REGULAR MEETING:**

The next regular meeting is scheduled for December 2, 2009.

**ADJOURNMENT:**

The Planning Commission meeting was adjourned at 10:19 PM.



# MEMORANDUM

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## City Attorney's Office

**Date:** June 15, 2009  
**To:** Mercer Island City Council  
**From:** Katie Knight, City Attorney  
**Re:** Community Review of the Tent City Experience

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### **Background**

For three months beginning in August of 2008, the Mercer Island United Methodist Church hosted Tent City 4, a temporary homeless encampment managed by a non-profit organization called SHARE/WHEEL. During that time, the Mercer Island City Council indicated that a review of the experience would occur following Tent City's stay. This memo:

- defines the purpose of a review of the Tent City experience
- outlines a suggested public process for the review.

### **Purpose of Review**

The purpose of the review is to develop a comprehensive record of Mercer Island's experience with hosting Tent City within the community. The record would include the things that went well and the lessons that were learned so that there will be useful information for decision-making should Tent City be invited back to Mercer Island in the future. In order to create a comprehensive record, it will be important to hear from all key stakeholders, including the Mercer Island United Methodist Church, the residents who live near the church, the Mercer Island Clergy Association, City staff including Police, Fire and others, the County Health Department, Tent City residents, SHARE/WHEEL, and the broader Mercer Island community.

### **Suggested Process**

The following public process will serve to collect the input of the various stakeholders and will result in a final report:

1. City staff will develop a draft report of the Tent City experience
2. Draft report available for public review on City website and as hard copies at City Hall and the Mercer Island library
3. Public meeting where staff briefly summarize draft report and invite the community and other stakeholders to provide comments
4. Staff will incorporate comments into a final report on the Tent City experience and present to City Council

## Areas of Focus

The following specific issues are suggested as areas of focus for the Tent City report. Each area of focus would include a description, a summary of the experience, and a review of what worked well and lessons learned.

- Legal Structure
  - Legal/constitutional requirements
  - Temporary Use Agreement
- Communications
  - Public noticing of neighbors, community
  - Opportunities for public involvement
- Location of Tent City 4
  - Regulatory issues
  - Benefits/concerns of site
- Public Safety
  - Fire safety
  - Enforcement
  - Emergency medical services
  - Public health
- Compliance
  - City code requirements
  - Temporary Use Agreement requirements
  - Tent City Code of Conduct

## Timeline

Depending on Council preference, the public meeting could take place as follows:

1. Late July/early August, 2009  
*Considerations: Sooner conclusion of review process, quick turnaround could hinder thorough public noticing and invitation of key stakeholders, residents often leave the Island during the summer*
2. October 2009  
*Considerations: Further delay in conducting public review, advance planning and time of year would allow for thorough public noticing and maximize key stakeholder participation*

## Facilitation

The public meeting would be scheduled for two hours at the Community Center at Mercer View and be facilitated by Manny Ocampo who currently serves as the City's Interim Parks and Recreation Director and comes with many years of public process facilitation experience. Should Council prefer a third party facilitator, an outside consultant could be hired to facilitate the meeting.

## **Recommendation**

I recommend that a team of City staff proceed with developing a draft report of Mercer Island's Tent City experience as well as plan and publicize a public meeting. The facilitator and staff team would also need to draft clear parameters for a public discussion so that the process is fair to all involved and so that there is ample opportunity for the community to comment. Not only will this process provide a valuable record for future decision-making, but it also has the potential of building new capacity for future discussions with the Mercer Island community.

Thank you for your consideration.

