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, 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, 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:

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.

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**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 |
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: ______________