

**CITY OF MERCER ISLAND
ORDINANCE NO. 17C-10**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
RELATING TO LAND USE AND DEVELOPMENT, ADOPTING AN
INTERIM ZONING ORDINANCE TO ALLOW LIGHT RAIL TRANSIT
FACILITIES IN A PORTION OF THE PUBLIC INSTITUTION ZONING
CLASSIFICATION AND DECLARING AN EMERGENCY AND
ESTABLISHING AN IMMEDIATE EFFECTIVE DATE**

WHEREAS, the City has adopted a zoning ordinance that classifies the land within the city into various zones and establishes the use of land, regulates construction, and protects critical and sensitive areas within the City; and

WHEREAS, the general purpose of the City's zoning ordinance is to protect and promote health, safety, and the general welfare through the regulation of development within the City of Mercer Island; and

WHEREAS, specific purposes of the City's zoning ordinance are to provide coordinated development, to avoid traffic congestion, to facilitate adequate provisions for transportation, and other public requirements; and

WHEREAS, the City's zoning ordinance bars the use of any land for any purpose or in any manner other than as listed in the ordinance; and

WHEREAS, the City's zoning ordinance provides a certain zoning classification identified as Public Institution; and

WHEREAS, the portion of the Public Institution zone designated the Mercer Island I-90 Right-of-Way (hereinafter Mercer Island I-90 Right-of-Way) does not allow use of the Mercer Island I-90 Right-of-Way for light rail facilities; and

WHEREAS, not amending the City's zoning ordinance to allow for the use of the Mercer Island I-90 Right-of-Way for light rail facilities will prevent development of light rail facilities contrary to the best interests of the City and the region, and to the Growth Management Act, chapter 36.70A RCW, which requires the City to allow siting of essential public facilities; and

WHEREAS, on February 6, 2017, the City Council adopted an immediate moratorium on the acceptance and processing of permits for development within the Mercer Island I-90 Right-of-Way to review and adopt amendments to the zoning ordinance to regulate and potentially mitigate, as appropriate, the use of such right of way in a manner that may differ from the existing use (Ordinance No. 17-05); and

WHEREAS, on March 16, 2017, the City's Development Services Group Director issued a Development Code Interpretation ruling that the light rail project proposed by Sound Transit is not

a permitted use within the Mercer Island I-90 Right-of-Way and is prohibited by the City's development code; and

WHEREAS, the City Council desires to amend the zoning ordinance to allow light rail facilities within a portion of the Mercer Island I-90 Right-of-Way; and

WHEREAS, the City Council may adopt an interim zoning ordinance for a period of up to six months provided the City Council holds a public hearing on the proposed interim zoning ordinance within sixty days after adoption pursuant to RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and adopt findings of fact supporting and justifying the interim zoning ordinance within at least sixty days of its adoption;

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

Section 1. Amendment to Section 19.05.010(B). Section 19.05.010(B) of the Mercer Island City Code is hereby amended as follows (new text underlined):

Mercer Island I-90 Right-of-Way Added to Public Institution Zone. The entire area within the Mercer Island I-90 right-of-way, including, but not limited to, the roadway, street overcrossings, lids, open space, recreation areas, linear greenbelts and the park-and-ride lot area as approved by the city on November 14, 1983, and incorporated in the right-of-way plan approved by WSDOT on May 1, 1987, shall be part of the public institution zone. The uses of the Mercer Island I-90 right-of-way shall be limited to the following. Light rail facilities shall be a permitted use within the I-90 center roadway as the term center roadway is used in the August 2004 Amendment to the I-90 Memorandum Agreement dated December 1976. All other uses within of the Mercer Island I-90 right-of-way shall be conditional uses, and shall be consistent with the uses outlined maintained as set forth in the city-approved I-90 related documents identified in Ordinance No. B-57 § 1(4), adopted on November 23, 1987.

Section 2. Term of Interim Zoning Ordinance. This is an emergency ordinance, approved by a super majority of the entire City Council. The code amendment approved by this ordinance shall become effective immediately, on the date hereof, and shall continue in effect for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s) and entry of appropriate findings of fact pursuant to RCW 35A.63.220 and RCW 36.70A.390; provided further, that this interim zoning ordinance shall automatically expire upon the effective date of final land use regulations adopted by the City Council that amend Section 19.05.010(B) of the Mercer Island City Code.

Section 3. Applicability. Building permit no. 1606-138 shall be reviewed under the land use control ordinances and construction codes in effect on the date the complete

application for this building permit was filed, including without limitation the 2012 International Building Code with statewide and City of Mercer Island amendments, except that the amendments to Sections 19.05.010(B) of the Mercer Island City Code set forth in Section 1 of this Ordinance shall apply to this building permit.

Section 4. Preliminary Findings. The following preliminary findings of fact are hereby adopted:

- A. The current City zoning classification applicable to the Mercer Island I-90 Right-of-Way does not account for or otherwise provide for uses beyond the current use.
- B. Any other use of the Mercer Island I-90 Right-of-Way would be non-compliant with the City's zoning ordinance and would result in enforcement action by the City and added cost and expense to any potential user.
- C. Not allowing other use in certain portions of the Mercer Island I-90 Right-of-Way is preventing development of light rail facilities contrary to the best interests of the City and the region, and to the Growth Management Act, chapter 36.70A RCW, which requires the City to allow siting of essential public facilities.
- D. Collecting and compiling information, public testimony and statements of concerned citizens of the City and of other persons interested in or familiar with the issues of amending the City's zoning ordinance is appropriate.

Section 5. Conclusion. Based on the above Findings of Fact, the City Council concludes that the City has the authority to adopt this interim zoning ordinance on an emergency basis. This interim zoning ordinance is necessary in order 1) to allow light rail facilities within a portion of the Mercer Island I-90 Right-of-Way; 2) to provide the City with an opportunity to adopt further findings of fact, as needed, to justify this interim zoning ordinance; and 3) to allow the City Manager, the Development Services Group staff, and outside consultants, as needed, to produce final development regulations for Planning Commission and City Council consideration as soon as reasonably practicable.

Section 6. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be scheduled for 7:00 p.m. on May 15, 2017, at Mercer Island City Hall, 9611 SE 36th St., during the City Council's regular meeting, or as soon thereafter as the business of the City Council shall permit, in order to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the interim zoning regulations imposed by this Ordinance and to consider adopting further findings of fact if needed.

Section 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a

majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.13.190) and is exempt from SEPA review (WAC 197-11-880 and MICC 19.07.120(D)). Without an immediate effective date, the City will not be able to continue the timely review and processing of construction plans to develop light rail facilities within a portion of the Mercer Island I-90 Right-of-Way. Therefore, the interim zoning regulation established by this Ordinance must be imposed as an emergency measure to protect the public health, safety, and welfare.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property or circumstance.

Section 10. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force and effect immediately upon its adoption, provided it is approved by a majority plus one of the entire membership of the City Council as required by RCW 35A.13.190. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641, 904 P.2d 317 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

ADOPTED by the City Council of the City of Mercer Island, Washington, at its regular meeting on the 17th day of April, 2017, and signed in authentication of its passage.

CITY OF MERCER ISLAND



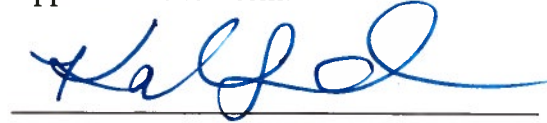
Bruce Bassett, Mayor

ATTEST:



Allison Spietz, City Clerk

Approved as to Form:



Kari Sand, City Attorney

Date of Publication: 4/26/17