

**CITY OF MERCER ISLAND
ORDINANCE NO. 17-05**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
RELATING TO LAND USE AND DEVELOPMENT, ADOPTING AN
IMMEDIATE, EMERGENCY, SIX-MONTH MORATORIUM ON
DEVELOPMENT IN A PORTION OF THE PUBLIC INSTITUTION
ZONING CLASSIFICATION AND DECLARING AN EMERGENCY
NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM 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, a particular purpose of the City's zoning ordinance is to provide coordinated development, to avoid traffic congestion, to facilitate adequate provisions for transportation, and other public requirements;

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 Public Institution zone applies to that portion of Mercer Island, referred to as the "Mercer Island I-90 Right of Way," but does not authorize and otherwise fails to address other potential uses of the I-90 Right of Way that may differ from the existing use by the Washington State Department of Transportation as a public highway and as otherwise limited in the zoning ordinance; and

WHEREAS, even if that portion of the Public Institution zone applicable to the Mercer Island I-90 Right of Way could be interpreted as allowing for uses other than as a public highway, the existing zoning does not adequately address other potential uses in a manner that would ensure that those uses are consistent with the purposes of the City's zoning ordinance; and

WHEREAS, not amending the City's existing zoning ordinance to allow for the use of the right of way in a manner that may differ from the existing use as a public highway, may prevent other beneficial uses of the right of way, may forestall future development within the right of way and/or may result in development of uses that without adequate mitigation are inconsistent with the purposes of the City's zoning ordinance and contrary to the best interests of the City; and

WHEREAS, uses of the right of way that are different from the existing use as a public highway may undermine the purposes of the zoning ordinance if the City does not adopt and enact specific conditions and permitting requirements that would govern those other potential uses; and

WHEREAS, any changes in the Mercer Island I-90 Right of Way, including the installation of any structure, the removal, modification or demolition of any access ramp, or the change of its current use in any fashion, without the City's imposition of specific conditions and permitting requirements, would be inconsistent with the existing zoning ordinance and inimical to the zoning ordinance's purposes of avoiding traffic congestion and facilitating adequate provisions for transportation, including ensuring safe and convenient pedestrian and bicycle access and connections; and

WHEREAS, the City Council desires to adopt an immediate moratorium on any and all development or any other changes or alterations within that portion of the Public Institution zone referred to as the Mercer Island I-90 Right of Way in order to review and ultimately adopt amendments to the existing zoning ordinance that would regulate and potentially mitigate, as appropriate, the use of such right of way in a manner that may differ from the existing use as a public highway; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on development as long as the City Council holds a public hearing on the proposed moratorium 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/or other means to gather information and adopt findings of fact supporting and justifying the moratorium, and to implement a work plan for review of the issues relating to the amendment of its existing zoning ordinance as it relates to that portion of the Public Institution zone consisting of the Mercer Island I-90 Right of Way in order to regulate and mitigate, as appropriate, the use of the right of way in a manner that may differ from the existing use as a public highway;

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

Section 1. Moratorium Established. The Mercer Island City Council hereby imposes an immediate, six-month moratorium on the acceptance, processing, and approval of applications for: (1) any development or construction activity of any type, including the installation or removal of any structure or the removal, demolition or modification of any access ramp, that is inconsistent with, or related to a use other than, the existing public highway use of the Mercer Island I-90 Right of Way in any manner; and (2) any other development within that portion of the Public Institution zone referred to as the Mercer Island I-90 Right of Way. It is in the intent of this moratorium to preserve the existing status quo as to that portion of the Mercer Island I-90 Right of Way during the duration of the moratorium. To the extent any such applications are received by the City during the period of this moratorium, they shall be returned to the applicant.

Section 2. Term of Moratorium. This is an emergency ordinance. Provided it is approved by a super majority of the entire City Council, the moratorium imposed 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 the moratorium shall automatically expire upon the effective date of land use regulations adopted by the City Council that amend the Mercer Island I-90 Right of Way portion of the Public Institution zoning classification.

Section 3. Preliminary Findings. The following preliminary findings of fact are hereby adopted:

- A. The current City zoning classification applicable to that portion of the Public Institution zone, referred to as the Mercer Island I-90 Right of Way, does not account for or otherwise provide for uses beyond the current use of the right of way as a public highway by the Washington State Department of Transportation and otherwise as limited by the existing zoning ordinance.
- B. Any use of the right of way for any other use other than a public highway at present 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 the use of the right of way for another use may prevent other beneficial uses of the right of way and forestall future development within the right of way.
- D. Even if the current City zoning classification applicable to that portion of the Public Institution zone, referred to as the Mercer Island I-90 Right of Way, does allow uses other than as a public highway, the existing zoning does not adequately address other potential uses in a manner that would ensure that those uses are consistent with the purposes of the City's zoning ordinance.
- E. Any changes in the right of way, including the installation of any structure, the removal, demolition or modification of any access ramp, or the change of its current use, would be inconsistent with the existing zoning ordinance and contrary to the zoning ordinance's purposes of avoiding traffic congestion and to facilitate adequate provisions for transportation, including ensuring safe and convenient pedestrian and bicycle access and connections.
- F. Special care and attention must be employed in evaluating, considering, and developing appropriate legislation that satisfactorily addresses the concerns of the City as it pertains to regulating and adequately mitigating, as

appropriate, other uses of the Mercer Island I-90 Right of Way in the Public Institution zone, while also conforming to legal requirements.

- G. 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 4. Conclusion. Based on the above Findings of Fact, the City Council concludes that the City has the authority to establish a moratorium, and that it is necessary to establish a moratorium in order stop the acceptance, processing, and approval of development applications and/or other development or construction activity, including the installation, demolition, modification or removal of any structure, including any access ramp, that would be inconsistent with the existing use of the Mercer Island I-90 Right of Way. The moratorium is necessary in order 1) to provide the City with an opportunity to more fully engage the citizens; and 2) to allow the City Manager, the Development Services Group staff, and outside consultants, as needed, to produce revised or new development regulations for Planning Commission and City Council consideration as soon as reasonably practicable.

Section 5. Public Hearing. A public hearing shall be scheduled for 7:00 p.m. on March 6, 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 moratorium created by this Ordinance and to consider adopting further findings of fact.

Section 6. 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.12.130). Without an immediate moratorium on the City's acceptance, processing, and approval of development applications and/or other development or construction activity, the City will not be able to approve development of the I-90 Right of Way which differs from the existing use by the Washington State Department of Transportation as a public highway. Even if the City could approve that development under its existing zoning code, the code does not presently include regulations or mitigation measures to ensure the development is undertaken in a manner consistent with the interests of the City or the safety and welfare of its citizens. Therefore, the moratorium established by this Ordinance must be imposed as an emergency measure to protect the public health, safety, and welfare.

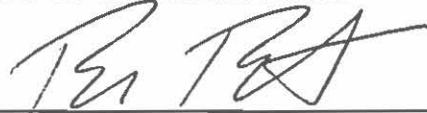
Section 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. 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 9. 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, as long as it is approved by a majority plus one of the entire membership of the City Council as required by RCW 35A.12.130. 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.

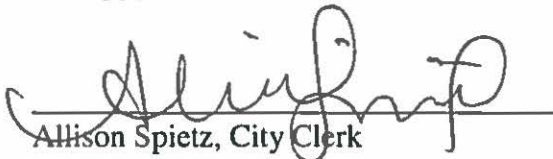
ADOPTED by the City Council of the City of Mercer Island, Washington, at its regular meeting on the 13th day of February, 2017, and signed in authentication of its passage.

CITY OF MERCER ISLAND

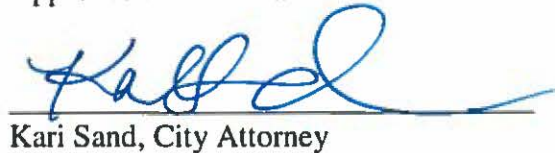


Bruce Bassett, Mayor

ATTEST:


Allison Spietz, City Clerk

Approved as to Form:


Kari Sand, City Attorney

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