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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



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## COMMERCE ON PUBLIC PROPERTY PERMIT-

### Temporary Use of Right-of-Way for Outdoor Seating Associated with Eating & Drinking Establishments

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#### PURPOSE

Allow temporary use of public sidewalks, streets, and right-of-way, in the Town Center zone for outdoor seating by eating and drinking establishments.

#### CRITERIA FOR PERMIT

A temporary Commerce on Public Property permit shall be reviewed based on the following criteria:

1. The applicant business has an active business license for a location immediately adjacent to the public property location where the request has been made.
2. The location of the business activity does not create a safety hazard for motorists, bicyclists, or pedestrians
  - a. The business location must maintain sufficient area for the free passage of pedestrians along sidewalk and access to other adjacent businesses. The following are minimum requirements:
    - i. A minimum of 44 inches of clear and unobstructed accessible route for travel must be maintained.
    - ii. A minimum 7-foot 6-inches of clear height above the sidewalk must be maintained.
    - iii. Sidewalk usage cannot interfere with egress routes from the building to the public way, including sidewalks and road.
3. The business operation does not generate litter, noise or other nuisances that would be objectionable to the public or other businesses in the immediate area.
  - a. Adequate refuse containers shall be provided.
  - b. Hours of operations are sensitive to the surrounding neighborhood.
  - c. No music or sound is amplified.
  - d. The area can be maintained in a clean condition.
  - e. Physical improvements can be removed or secured when not in operation.
4. The location and design do not unreasonably obstruct the visibility of any adjacent business.
5. The location of a business engaged in the sale of alcoholic beverages is separated from the public space with a barrier, fence, landscaping, or other demarcation.
6. All permittees must comply with all applicable city, county, state, and federal laws, including the International Fire Code (per MICC 19.06.050.F)

#### FIRE CODE REQUIREMENTS

Fire Code requirements below must also be met:

1. Maintain clearance (3 feet) around all Fire Hydrants, Fire Department Connections, and other Fire Protection Systems.

2. Maintain access to interior areas of the building. Leave sidewalks open for access.
3. Maintain Emergency Vehicle Access around the building. Do not block fire access lanes.
4. Tents/ canopies, if used, over 400 square feet are subject to an operation permit and approval of the Fire Marshal as outlined in Chapter 31 of the International Fire Code.

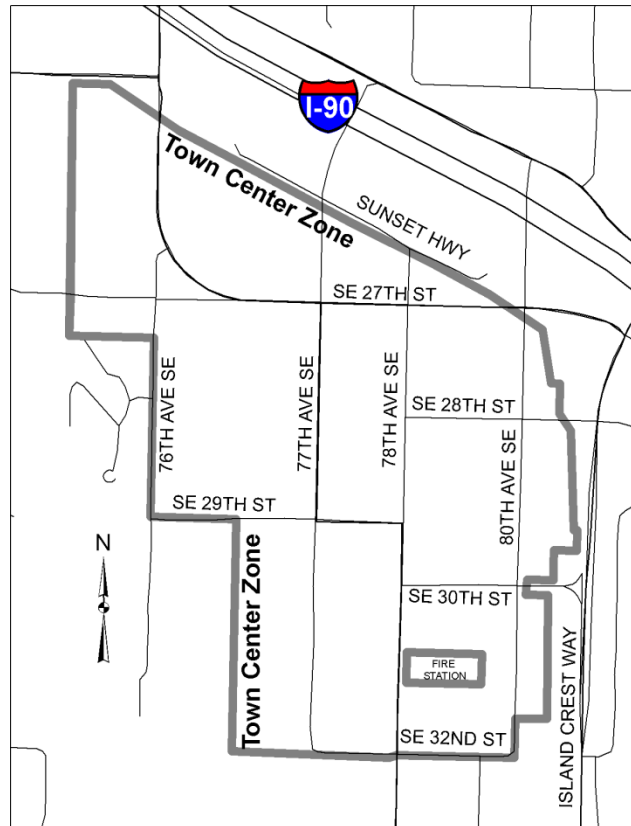
## **INSURANCE REQUIREMENTS**

The insurance requirements below must also be met:

1. Insurance Term- The Permittee shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operation or activities performed by or on the Permittee's behalf with the issuance of this Permit.
2. No Limitation- The Permittee's maintenance of insurance as required by the Permit shall not be construed to limit the liability of the Permittee to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.
3. Minimum Scope of Insurance- The Permittee shall obtain insurance of the types and coverage described below:
  - a. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. The City shall be named as an additional insured under the Permittee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.
4. Minimum Amounts of Insurance- The Permittee shall maintain the following insurance limits:
  - a. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.
5. Other Insurance Provision- The Permittee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Public Entity. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Permittee's insurance and shall not contribute with it.
6. Acceptability of Insurers- Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
7. Verification of Coverage- The Permittee shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Permittee before issuance of the Permit.
8. Notice of Cancellation- The Permittee shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
9. Failure to Maintain Insurance- Failure on the part of the Permittee to maintain the insurance as required shall constitute a material breach of the Permit, upon which the City may, after giving five business days' notice to the Permittee to correct the breach, immediately terminate the Permit or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.
10. City Full Availability of Permittee Limits- If the Permittee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Permittee, irrespective of whether such limits maintained by the Permittee are greater than those required by this Permit or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Permittee.

## PERMIT PROCESS

A permit for temporary use of right-of-way for outdoor seating associated with eating and drinking establishments shall be reviewed and approved by the Code Official (per MICC 19.06.050.E). Permits shall be valid through January 6, 2022.



## HOW TO APPLY

During COVID-19, please submit your signed permit application package via email to [epermittech@mercerisland.gov](mailto:epermittech@mercerisland.gov) and Cc to [Patrick.Yamashita@mercerisland.gov](mailto:Patrick.Yamashita@mercerisland.gov). Add the following to the subject line – **“Temporary use of Right of Way for Outdoor Seating”**. The individual who signs the application form and the permit must be the same individual who is listed on the Mercer Island Business license.

**CITY OF MERCER ISLAND**  
**COMMUNITY PLANNING & DEVELOPMENT**  
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 Submit to: [epermit.tech@mercerisland.gov](mailto:epermit.tech@mercerisland.gov)



CITY USE ONLY		
PROJECT #	RECEIPT #	FEE
DATE RECEIVED	RECEIVED BY	

**APPLICATION FOR TEMPORARY COMMERCE ON PUBLIC PROPERTY**

SITE ADDRESS		
PERMIT APPLICANT NAME:	PERMIT APPLICANT EMAIL:	PERMIT APPLICANT PHONE #
If applying for multiple businesses at the same address, please complete the contact information for each business that is applying		
BUSINESS #1 OWNER NAME:	BUSINESS #1 OWNER EMAIL:	BUSINESS #1 OWNER PHONE #
BUSINESS #2 OWNER NAME:	BUSINESS #2 OWNER EMAIL:	BUSINESS #2 OWNER PHONE #
BUSINESS #3 OWNER NAME:	BUSINESS #3 OWNER EMAIL:	BUSINESS #3 OWNER PHONE #
If permit applicant is more than three businesses, provide information on separate page.		
BUSINESS #1 NAME:	BUSINESS #2 NAME:	BUSINESS #3 NAME:
BUSINESS #1 MERCER ISLAND BUSINESS LICENSE #:	EXPIRATION DATE:	HOURS OF OPERATION:
BUSINESS #2 MERCER ISLAND BUSINESS LICENSE #:	EXPIRATION DATE:	HOURS OF OPERATION:
BUSINESS #3 MERCER ISLAND BUSINESS LICENSE #:	EXPIRATION DATE:	HOURS OF OPERATION:

**REQUIRED INFORMATION**

- Site plan (11"x17"), using a scale that is legible and easily reviewed, showing the following information:
  - 100 feet in all directions of the proposal, or to the closest Right-of-Way intersection (whichever is less);
  - Right-of-Way width;
  - Full width of the sidewalk and edge of the road;
  - Identify any obstructions on the sidewalk, including existing signs, sign posts, fire hydrants, utility poles, landscaping, trees, trash cans, post office boxes, and any other obstruction in the sidewalk;
  - Location of refuse container to be used. If a refuse container is not owned by the applicant the application must include a signed authorization by the owner for use of the refuse container by the business while there is a valid permit for private commerce on public property by the applicant.;
  - Clearly label the location of any proposed structures, including fences, trash cans, and landscaping.
- Insurance Certificate naming the City as an additional insured (will be required before the permit is issued, does not have to be submitted at time of application. Refer to insurance requirements section for more information).

Description of request (purpose, duration, location, impacts to Right-of-Way, proposed mitigation if any, etc.) and explanation of how review criteria is being met. Attach additional pages if necessary.

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**NOTICE TO PERMITEE**

**AS A CONDITION OF THIS PERMIT, THE PERMITEE AGREES AS FOLLOWS:**

The Permittee shall defend, indemnify and hold the City of Mercer Island (City), its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Permittee or on the Permittee’s behalf out of issuance of this Permit, except for injuries and damages caused by the sole negligence of the City.

However, should a court of competent jurisdiction determine that RCW 4.24.115 applies to this Permit, then the Permittee agrees to defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes the Permittee’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Permittee and the City. The provisions of this section shall survive the expiration or termination of this Permit.

Additionally, the City shall be listed as an additional insured on the business’s insurance and provide a copy of the certificate of insurance. The specific coverage requirements is still being determined at the moment and will be determined prior to issuance of the permit.

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Signature of Business #1 Owner (must be same individual listed on business license)

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Date

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Signature of Business #2 Owner (must be same individual listed on business license)

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Date

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Signature of Business #3 Owner (must be same individual listed on business license)

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Date