



**LU&ED Committee Members**  
Councilmember Emery  
Councilmember Harris  
Councilmember Jordal  
Council President Schmalz (Alternate)

**Land Use & Economic  
Development  
Committee Agenda**  
**Mukilteo City Hall - 11930 Cyrus  
Way**  
**May 4, 2022**  
**5:30 PM - 7:00 PM**  
**Zoom Virtual Meeting**

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**Join Zoom Meeting**

<https://us02web.zoom.us/j/82064633272>

**By Phone**

Dial by your location

1 253 215 8782 (Tacoma)  
1 669 900 683 (San Jose)

Meeting ID:  
820 6463 3272

**CALL TO ORDER - 5:30 PM**

**Meeting Objectives:**

1. Economic Recovery
2. International Residential Code - Fence Permit Exemption
3. Permitting - Temporary Use Permit Concept
4. Docket Status

**ADJOURNMENT - 7:00 PM**

**Next Meeting Date:** *Wednesday, June 1, 2022, 5:30pm*

- For accessibility information and for accommodation requests, please call the ADA Coordinator at (425) 263-8005 (or TRS (800) 833-6384 or dial 711), or visit

<https://mukilteowa.gov/departments/executive/ada-program/>

## LAND USE & ECONOMIC DEVELOPMENT COMMITTEE AGENDA REPORT

<b>SUBJECT TITLE:</b> International Residential Code (IRC) Amendment - Fence Permit Exemption	<b>FOR AGENDA OF:</b> May 4, 2022
<b>Contact Staff:</b> David Osaki, Community Development Director	<b>EXHIBITS:</b> <ol style="list-style-type: none"><li>1. Draft Ordinance amending Mukilteo Municipal Code (MMC) section 15.04.090, "International Residential Code (IRC) amendments"</li><li>2. City Council August 1, 2016 Agenda Bill - Building and Fire Municipal Code Update</li></ol>
<b>Department Director:</b> David Osaki	

### **Background**

RCW19.27.031 requires all municipalities in the State of Washington to adopt local building codes consistent with the State Building Code.

The Washington State Building Code Council (SBCC) is charged with keeping the State Building Code up to date. The State Building Code establishes the minimum construction requirements for the State of Washington.

The more familiar codes that comprise the State Building Code include, but are not limited to, the following:

- International Building Code (IBC)
- International Fire Code (IFC)
- International Mechanical Code
- International Residential Code (IRC)
- Uniform Plumbing Code

The general process for the local adoption of the various international codes is:

- The above model codes are updated every three years by their publishers.
- The Washington SBCC then reviews the updated versions of each model code, and through a public process amends the model codes as appropriate and adopts them as the State Building Code.
- The new State Building Code is forwarded to the State legislature and typically becomes effective when the legislative session concludes.
- Local governments must then adopt the State Building Code by a specified date.

The most recent codes required to be adopted by local governments are the 2018 State Building Code. Normally, the State Building Codes must be adopted by local jurisdictions by July 1 of the year following the date of the State Codes. This means the 2018 State Building Code must normally be adopted by July 1, 2019. However, due to

COVID and other reasons, the deadline for adopting the 2018 State Building Code was February 1, 2021. The Mukilteo City Council adopted the 2018 codes on January 19, 2021 by Ordinance No. 1448.

### **LOCAL CODE AMENDMENTS**

In adopting the State Building Codes, local governments have some latitude to make local amendments. Common local amendments pertain to administrative provisions (e.g. local government using a hearing examiner to hear appeals of building code decisions rather than creating a citizen building code appeals board as called for in the State Building Code.) State Building Code exemptions from permit requirements are also routinely amended at the local level.

### **PROPOSED ORDINANCE**

**Exhibit 1** is a draft Ordinance amending one of the City's adopted 2018 building codes, specifically the 2018 Edition of the International Residential Code (IRC). The draft Ordinance amends a local amendment made to the IRC contained in MMC Section 15.04.090 entitled "International Residential Code amendments".

The issue has origins going back to the City's August 1, 2016 adoption of the SBCC's 2015 Edition of the IRC by Ordinance No. 1391. Ordinance No. 1391, adopted August 1, 2016, included a local amendment that deleted the following as an exemption from building permit requirements:

"Fences not over 7 feet (2134 mm) high"

The affect of deleting this exemption meant that a fence of any height within the scope of the IRC requires a building permit. The scope of the IRC includes one- and two-family dwellings and townhouses not more than three stories above grade.

The deletion of this exemption was carried into the 2018 IRC code adoption (Ordinance No. 1448 adopted January 16, 2021), as it is routine to carry over exemptions in prior code updates and the fence exemption language was not recognized as an issue.

In researching this local amendment made in 2016, staff has so far found the following:

- Prior to this exemption being deleted in 2016, a building permit exemption for fences existed going back to at least the 2003 codes (and was included in the 2006, 2009, 2012 codes).
- The August 1, 2016 City Council 2015 code update agenda bill makes no reference to deleting that exemption. One might expect that a deletion like this would have been specifically mentioned.
- The August 1, 2016 City Council meeting video of the 2015 code adoption agenda item was very brief and made no mention of deleting that exemption.

- Current staff who were here in 2016 believe the intent of the 2015 Code amendment was to exempt fences six (6) feet in height or less from permit requirements. This would make the IRC building permit exemption for fences consistent with the zoning code, which has a maximum fence height of six feet in residential zones.

A building permit would still be required for fences over six feet in height in cases where the fence is within the scope of the IRC. Fences over six feet in height in residential zones can be allowed administratively through a fence modification process (MMC section 17.20.080(B)).

- The requirement has only very recently been discovered and recent permit applications for fences have not been processed pending the outcome of this code amendment.

The draft Ordinance (**Exhibit 1**) amends MMC section 15.04.090 (“International Residential Code amendments”) to exempt fences six feet in height or less (that are subject to the IRC) from building permit requirements.

The proposed code amendment is as follows:

**“15.04.090 International Residential Code amendments.**

The following sections or subsections of the 2018 International Residential Code are hereby amended as provided below:

A. R105.2 Work exempt from permit.

1. Exemption 1 is amended to read “One-story detached accessory structures, provided that the floor area does not exceed 120 square feet.”

2. Exemptions 2, [is amended to read “Fences not over 6 feet high.”](#)

[3. Exemptions](#) 4, and 10 are deleted in their entirety.

B. R110 Certificate of Occupancy. Section R110 is deleted in its entirety.

C. R112 Board of Appeals. All language in Section R112 is hereby deleted and the following is substituted: “Refer to Chapter [2.80](#) of the Mukilteo Municipal Code.”

**Next Steps**

The draft ordinance would require scheduling for a future City Council meeting for action. No public hearing is required.

**RECOMMENDED ACTION**

Land Use& Economic Development Committee to ask questions, if any,

**EXHIBIT 1**

**CITY OF MUKILTEO  
WASHINGTON  
ORDINANCE NO. XXXX**

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON  
AMENDING SECTION 15.04.090 MMC, RELATED TO  
INTERNATIONAL RESIDENTIAL CODE (IRC) SUBSECTION R105.2  
ENTITLED WORK EXEMPT FROM PERMIT, CLARIFYING THE  
PERMIT EXEMPTION FOR FENCES. PROVIDING FOR  
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, pursuant to Revised Code of Washington (RCW) Chapter 19.27, the City regulates local construction activity and related matters through the standards and procedures set forth in the state building code, as adopted locally in Chapters 15.04, 15.08, and 15.16 of the Mukilteo Municipal Code (MMC); and

WHEREAS, on August 1, 2016 the Mukilteo City Council passed Ordinance No. 1391 which included the adoption of the 2015 Edition of the International Residential Code and Standards (“International Residential Code”) , as published by the International Code Council (ICC), together with State amendments set forth in Chapter 51-50 WAC; and

WHEREAS, Ordinance No. 1391 identified local amendments to the 2015 International Residential Code which included the deletion of an exemption from permit in IRC subsection R105.2 that stated, “Fences not over 7 feet (2134 mm) high”; and

WHEREAS, on January 19, 2021 the Mukilteo City Council passed Ordinance No. 1448 which included the adoption of the 2018 Edition of the International Residential Code, as published by the ICC, together with State amendments set forth in Chapter 51-51 WAC; and

WHEREAS, the amendments to the International Residential Code identified in Ordinance No. 1448 also incorporated the deletion of the exemption from permit in IRC subsection R105.2 that stated, “Fences not over 7 feet (2134 mm) high”; and

WHEREAS, the affect of that exemption deletion requires that any fence of any height associated with one- and two-family dwellings and townhouses not more than three stories above grade in the City of Mukilteo require a building permit; and

WHEREAS, the City Council finds that it would be appropriate to provide an exemption from building permit for fences subject to IRC requirements more consistent with the City of Mukilteo Zoning Code (Title 17) which generally provides for a maximum fence height of six (6) feet; and

WHEREAS, amendments to technical codes are statutorily exempt from the Washington State Environmental Policy Act under RCW 43.21.450;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

**Section 1. Mukilteo Municipal Code (MMC) Section 15.04.090 MMC Amended.** Chapter 15.04 MMC entitled “Building Code” is hereby amended to read as shown in Exhibit A, attached hereto and incorporated herein by reference.

**“15.04.090 International Residential Code amendments.**

The following sections or subsections of the 2018 International Residential Code are hereby amended as provided below:

A. R105.2 Work exempt from permit.

1. Exemption 1 is amended to read “One-story detached accessory structures, provided that the floor area does not exceed 120 square feet.”

2. Exemptions 2- is amended to read “Fences not over 6 feet high.”

3. Exemptions 4, and 10 are deleted in their entirety.

B. R110 Certificate of Occupancy. Section R110 is deleted in its entirety.

C. R112 Board of Appeals. All language in Section R112 is hereby deleted and the following is substituted: “Refer to Chapter 2.80 of the Mukilteo Municipal Code.”

**Section 2. Copy of Codes to be on File.** Pursuant to RCW 35A.12.140, at least one copy of each and every code of technical regulations adopted in Chapter 15.04 MMC shall be filed and maintained by the City Clerk for use and examination of the public.

**Section 3. Severability.** If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 4. Authority to make necessary corrections.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 5. Effective Date.** The ordinance shall take effect and be in full force five (5) days after publication of the attached summary which is hereby approved.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED:

\_\_\_\_\_  
MAYOR JOE MARINE

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, KARA JOHNSON

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

\_\_\_\_\_  
DANIEL P. KENNY

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. XXXX

**SUMMARY OF ORDINANCE NO. XXXX**

of the City of Mukilteo, Washington

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On \_\_\_\_\_, 2022, the City Council of the City of Mukilteo, Washington, approved Ordinance No. XXXX, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON  
AMENDING SECTION 15.04.090 MMC, RELATED TO  
INTERNATIONAL RESIDENTIAL CODE (IRC) SUBSECTION R105.2  
ENTITLED WORK EXEMPT FROM PERMIT, CLARIFYING THE  
PERMIT EXEMPTION FOR FENCES. PROVIDING FOR  
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK, KARA JOHNSON



## EXHIBIT 2

MUKILTEO CITY COUNCIL AGENDA BILL 2016-86	
<b>SUBJECT TITLE:</b> Building & Fire Municipal Code Update Ordinance 1391	<b>Meeting Date:</b> August 1, 2016
<b>Staff Lead:</b> Patricia Love, Community Development Dir.	<b>Exhibits:</b> 1. Ordinance 1391; Adoption of 2015 Building and Fire Code Updates
<b>Department Director:</b> Mayor Jennifer Gregerson	
<b>Estimated Time:</b> 10 Minutes	

**BUDGET INFORMATION:** None

**RECOMMENDATION:**

City Council MOTION to approve Ordinance 1391 amending the Mukilteo Municipal Code Chapters 15.04, Building Code and 15.08, Fire Code, to be consistent with the State Building Code as adopted by the State Building Code Council.

**SUMMARY:**

RCW 19.27.031 requires all municipalities to adopt local building codes consistent with the State Building Code. The State Building Code Council (SBCC) is charged with keeping the State Building Code up to date. The State Building Code, which establishes the minimum construction requirements for the state of Washington, is comprised of the following model codes as amended by the SBCC as they deem appropriate:

- International Building Code
- International Residential Code
- International Mechanical Code
- International Fire Code
- Uniform Plumbing Code

The above model codes are updated every three years by their publishers, the International Code Council, Inc. and the International Association of Plumbing and Mechanical Officials. The last update was in 2012. The SBCC reviews the updated versions of each model code. Following a public process, the SBCC amends the model codes as they deem appropriate and adopts them as the State Building Code. The new State Building Code is forwarded to the State legislature and becomes effective when the legislative session concludes.

Chapter 15.04 Mukilteo Municipal Code (MMC) is the city's building code while Chapter 15.08 is the city's fire code. The proposed changes to the city's codes are substantial changes in section numbers and years to reflect the updated model codes.

**ALTERNATIVES:** None; adoption of the 2015 code updates are mandatory by the State of Washington.

Exhibit 1:

**CITY OF MUKILTEO  
MUKILTEO, WASHINGTON**

**ORDINANCE NO. 1391**

**AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON,  
AMENDING CHAPTER 15.04 MMC, BUILDING CODE AND CHAPTER  
15.08 MMC, FIRE CODE, IN ORDER TO BE CONSISTENT WITH THE  
MOST CURRENT VERSION OF CHAPTER 19.27 RCW, STATE  
BUILDING CODE, PROVIDING FOR SEVERABILITY, AND  
ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, the state legislature has mandated, in RCW 19.27.031, that cities enforce the State Building Code, as adopted and amended by the State Building Code Council; and

WHEREAS, the State Building Code Council, pursuant to RCW 19.27.074, reviewed and adopted as the State Building Code amended versions of the 2015 International Building Code, International Residential Code, International Mechanical Code and International Fire Code as published by the International Code Council, Inc. and the Uniform Plumbing Code and Uniform Plumbing Code Standards as published by the International Association of Plumbing and Mechanical Officials; and

WHEREAS, the Mukilteo City Council desires to update its building and fire codes in order to adopt the versions of the codes adopted by the State Building Code Council, now, therefore;

THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

**Section 1. MMC 15.04.040 - Amended.** MMC 15.04.040, Codes shall be amended to adopt the most recent version of the State of Washington building code and to read as follows:

**MMC 15.04.040 Codes adopted.**

- A. Pursuant to RCW 19.27.031 and 35A.12.140, the following codes of technical regulations, as amended by the State Building Code Council, are adopted by this reference, as if fully set forth, subject to the modifications or amendments set forth in this chapter:
1. The ~~2012~~ **2015** Edition of the International Building Code and Standards, as published by the International Code Council (ICC), together with the state amendments set forth in Chapter 51-50 WAC;
  2. The ~~2012~~ **2015** Edition of the International Residential Code and Standards, as published by the ICC, together with state amendments set forth in Chapter 51-51 WAC;

3. The ~~2012~~ **2015** Edition of the International Mechanical Code and Standards, as published by the ICC, **except that the standards for liquefied petroleum gas installations shall be NFPA 58 (Storage and Handling of Liquefied Petroleum Gases) and ANSI Z223.1/NFPA 54 (National Gas Fuel Code)**, together with the state amendments as set forth in Chapter 51-52 WAC;
  4. The ~~2012~~ **2015** Edition of the Uniform Plumbing Code and Standards, as published by the International Association of Plumbing and Mechanical Officials, together with the state amendments set forth in Chapters 51-56 WAC; **and**
  5. The ~~2012~~ **2015** Edition of the ~~National Electric Code or as amended by the Department of Labor and Industries~~ **International Energy Conservation Code/Washington State Energy Code, as set forth in Chapters 51-11C and 51-11R WAC;** ~~and~~
  - ~~6. The 2012 Edition of the Washington State Energy Code (WSEC), as set forth in Chapter 51-11 WAC; and~~
  - ~~7.~~ **6.** The most recently adopted Washington State Energy-Related Building Standards, Chapter 19.27A RCW.
- B. In the case of a conflict between the codes adopted by subsection (A) of this section, the more stringent (greater protection) code adopted shall govern.

**Section 2.** **MMC 15.04.080 - Amended.** MMC 15.04.080, International Building Code amendments, shall be amended to read as follows:

**15.04.080 International Building Code amendments.**

The following sections or subsections of the ~~2012~~ **2015** International Building Code are hereby amended as provided below:

**~~101.2 Scope. Exception 2 is deleted in its entirety.~~**

**~~101.4.4~~ 101.4.3 Plumbing.** The word “Uniform” is substituted for the word “International” in the first sentence. The last sentence is deleted in its entirety.

**~~101.4.7~~ 101.4.6 Energy.** The words “Washington State Energy Code” are substituted for “International Energy Conservation Code.”

**~~109 Fees.~~** ~~Section 108 is hereby deleted in its entirety. Section 107 of the 1997 Uniform Building Code, as published by the International Conference of Building Officials, is hereby adopted in place of Section 109 of the 2012 International Building Code; provided, that the words “as adopted by resolution” shall be substituted for the words “shown in Table 1-A” or “set forth in Table 1-A” wherever the same appear in Section 107.~~

**113 Board of Appeals.** All language in Section 113 is hereby deleted and the following is substituted: "Refer to Chapter 2.80 of the Mukilteo Municipal Code."

**Section 3.** **MMC 15.04.090 - Amended.** MMC 15.04.090, International Residential Code amendments shall be amended to read as follows:

**R105.2 Work exempt from permit.** In Exemption 1, "200" is changed to "120." Exemptions 2, 4, and 10 ~~is~~ **are** deleted in ~~its~~ **their** entirety.

**R110 Certificate of Occupancy.** Section R110 is deleted in its entirety.

**R112 Board of Appeals.** All language in Section R112 is hereby deleted and the following is substituted: "Refer to Chapter 2.80 of the Mukilteo Municipal Code."

**Section 4.** **MMC 15.04.110 - Amended.** MMC 15.04.110, International Mechanical Code amendments shall be amended to read as follows:

**MMC 15.04.110 International Mechanical Code amendments.**  
The following sections or subsections of the 2012 International Mechanical Code are hereby amended as provided below:

**106.5.2 Fees.** The words "indicated in the following fee schedule" and the fee schedule following thereafter are hereby deleted and the words "as adopted by resolution" are hereby substituted.

**106.5.3 Fee Refunds.** In subsections 2 and 3, the words "SPECIFY PERCENTAGE" are deleted and "80%" is substituted.

**109 Appeals.** All language in Section 109 is hereby deleted and the following is substituted: "Refer to Chapter 2.80 of the Mukilteo Municipal Code."

~~**507.2.3 Domestic cooking appliances used for commercial purposes.**~~ The word "commercial" is ~~deleted~~ in the title and the paragraph and the word "non-residential" is substituted in both areas.

**Section 5.** **MMC 15.04.130 - Amended.** MMC 15.04.130, Uniform Plumbing Code amendments shall be amended to read as follows:

**Uniform Plumbing Code amendments.**

The following sections or subsections of the 2015 Uniform Plumbing Code are hereby amended as provided below:

~~Table 103.4~~ **104.5 Fees.** Table ~~103.4~~ **104.5** is deleted.

~~103.4~~ **104.5 Fees.** The words “~~Table 103.4~~” “**Table 104.5**” are hereby deleted and replaced with “as adopted by resolution.”

~~103.4.1~~ **104.3.2 Plan Review Fees.** The words “at the rate shown in ~~Table 103.4~~ **104.5**” in the fourth paragraph are deleted and replaced with “as adopted by resolution.”

~~103.4.4~~ **104.5.3 Fee Refunds.** The words “a percentage” in ~~103.4.4.2 and 103.4.4.3~~ **104.5.3 number 2** is hereby deleted and replaced with “80%.”

**Section 6.** **MMC 15.08.040 - Amended.** MMC 15.08.040, Adoption of International Fire Code, shall be amended to read as follows:

- A. Certain documents, copies of which are on file in the office of the clerk of the city of Mukilteo, entitled “International Fire Code, 2012 **2015** Edition,” published by the International Code Council, with amendments as adopted by the Washington State Building Code Council and the following Appendices: B (Fire-Flow Requirements for Buildings) **with the exception of subsection B105.3**, C (Fire Hydrant Locations and Distribution), and D (Fire Apparatus Access Roads), and including reference standards of the National Fire Protection Association (NFPA), are adopted as the fire code of the city of Mukilteo for the purpose of prescribing regulations for the safeguarding of life and property from the hazards of fire and explosion. Except as otherwise specifically amended or added herein, or by later ordinance, each and all of the regulations, provisions, penalties, conditions and terms of said code and standards are incorporated and made part of this chapter as if fully set forth herein.
- B. The following fire apparatus access road standards, Section 503, are adopted by reference as originally set forth in the 2012 **2015** International Fire Code: Sections 503.1.1, Buildings and facilities; 503.1.2, Additional access; 503.1.3, High-piled storage; 503.2, Specifications; 503.3, Markings; and 503.4, Obstruction of fire apparatus access roads.

**Section 7.** **Copy of Codes to be on File.** Pursuant to RCW 35A.12.140 and Section 15.04.050 of the Mukilteo Municipal Code, at least one copy of each and every code of technical regulations adopted in Chapter 15.04 and 15.08 shall be filed and maintained by the City Clerk for use and examination of the public.

**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, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 9. Authority to make necessary corrections.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 10. Conflict.** In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

**Section 11. Effective Date.** The ordinance shall take effect and be in full force five (5) days after publication of the attached Summary which is hereby approved.

PASSED by the City Council and APPROVED by the Mayor this 1<sup>st</sup> day of August 2016.

APPROVED:

\_\_\_\_\_  
Mayor Jennifer Gregerson

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Janet Keefe, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

By: \_\_\_\_\_  
Angela G. Summerfield

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL: 8-1-16  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. 1391

## **SUMMARY OF ORDINANCE NO. 1391**

of the City of Mukilteo, Washington

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On August 1, 2016 the City Council of the City of Mukilteo, Washington, approved Ordinance No. 1391, the main points of which may be summarized by its title as follows:

**AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, AMENDING CHAPTER 15.04 MMC, BUILDING CODE AND CHAPTER 15.08 MMC, FIRE CODE, IN ORDER TO BE CONSISTENT WITH THE MOST CURRENT VERSION OF CHAPTER 19.27 RCW, STATE BUILDING CODE, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.**

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of August 1, 2016.

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CITY CLERK, JANET KEEFE

<b>LAND USE &amp; ECONOMIC DEVELOPMENT COMMITTEE AGENDA REPORT</b>	
<b>SUBJECT TITLE:</b> Permitting - Temporary Use Concept	<b>FOR AGENDA OF:</b> May 4, 2022
<b>Contact Staff:</b> David Osaki, Community Development Director	<b>EXHIBITS:</b> 1. Other Cities - Examples of other Temporary Use Permit Code Requirements (i.e. Oak Harbor, Sequim, Mountlake Terrace, Poulsbo)
<b>Department Director:</b> David Osaki Community Development Director	

## **DISCUSSION**

At its April 11, 2022 meeting, the Mukilteo City Council discussed whether it wished to initiate any 2022 Comprehensive Plan docket items. Although the City Council did not initiate any 2022 docket items, a question did arise about whether there might be code amendments to facilitate permit processing in places such as the waterfront. Staff responded that there was a code amendment that might be helpful, and that it would bring the issue to the Land Use & Economic Development (LU&ED) Committee.

## **BACKGROUND**

One zoning code concept that staff has been considering relates to temporary use permit provisions. The intent for this would be to expand zoning flexibility and respond better to the needs of businesses.

A temporary use permit is an administrative approval to permit a temporary, seasonal, or transient land use, building, or structure without requiring full compliance with the development standards for the proposed use and/or applicable zoning district.

Temporary use permits are not intended to provide a means to circumvent the strict application of the permitted uses established in the City's zoning regulations. Nor does it exempt the use or structure from compliance with other life-safety city regulations including, but not limited to, the City's adopted building and fire codes.

Rather, temporary use regulations mainly address those temporary uses located on public or private property outside of public rights of way. Because the use may be temporary, adherence to strict requirements applied to permanent uses like off-street parking, impact fees, street improvements, and landscaping are not always practical.

Each city will identify activities that require a temporary use permit. Examples of where a temporary use might be appropriate include:

- Seasonal flower sales
- Coffee carts
- Seasonal outdoor dining
- Christmas tree lots



- A restaurant or retail business using a portion of its parking lot for an outdoor sales event (i.e. grand opening, business anniversary event)
- Vegetable stands

**Exhibit 1** are temporary use provisions from other jurisdictions. While the specific requirements may vary, a temporary use ordinance would commonly address:

- Definition of a temporary use
- Identify the zoning districts where specific temporary uses may be appropriate.
- Exemptions from temporary use permit requirements (e.g. Christmas tree lots could be excluded)
- The criteria for approval or disapproval of temporary use permit applications.
- Maximum duration of a temporary use permit, which may vary by the type of temporary use.
- General development standards including:
  - Maximum square footage to be devoted to the temporary use
  - Hours of operation
  - Number and square footage of allowable signs
  - Amount of parking that will be required, or conversely, parking requirements that can be waived
  - Use of sound systems, lighting generators, sales of alcohol
  - Financial guarantees (e.g. bonds) to cover any costs of removing a temporary use in cases where it is not done voluntarily

### **RECOMMENDED ACTION**

Land Use & Economic Development Committee to discuss temporary uses, and provide feedback as to whether or not it is an ordinance that might be pursued.

# **EXHIBIT 1**

## **City of Oak Harbor**

### **Chapter 19.35**

#### **TEMPORARY USE PERMITS**

##### **19.35.010 Purpose.**

(1) This chapter is intended to permit certain inherently temporary uses, such as community festivals, fresh vegetable stands and temporary promotions by permanent businesses.

(2) The proposed temporary use must be compatible in terms of location, access, traffic, noise, nuisance, dust control and hours of operation with existing land uses in the immediate vicinity.

##### **19.35.020 Applicability.**

This chapter applies to each application for a temporary use permit, whether located on private property or on the public right-of-way. Mobile food sales and caterers which locate for a short period of time of two hours or less, and car washes and food sales which are operated as nonprofit community fund raisers are exempt.

##### **19.35.030 Criteria for granting a temporary use permit.**

(1) The temporary use will not be materially detrimental to the public health, safety, or welfare, nor injurious to property or improvements in the immediate vicinity of the temporary use.

(2) The temporary use is compatible with the purpose and intent of this title and the specific land use district in which it will be located.

(3) The temporary use is compatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use.

(4) Access is provided such that on-street parking for the temporary use is not required.

(5) The temporary use has adequate off-street parking but does not use off-street parking or loading areas which are necessary for the permanent uses to continue normal operation.

(6) Hours of operation of the temporary use shall be specified.

(7) The temporary use will not cause noise, light or glare which adversely impacts surrounding uses.

(8) The temporary use shall not be on public right-of-way unless the applicant first obtains approval for the use from the city engineer.

(9) The temporary use must conform to setbacks of the zone where it is located.

(10) No temporary use shall utilize any handicap parking stalls.

(11) Seasonal product display requests shall not utilize more than five percent of the total parking for said business. Total parking for those businesses located in shopping centers with common parking lots shall be calculated using current parking standards per Chapter [19.44](#) OHMC.

##### **19.35.035 Seasonal product display.**

Seasonal product displays shall be all products associated with lawn care, landscaping, patio furniture, and children's outside play equipment which are displayed outdoors for the purposes of promoting retail sales of said items. The city may grant a temporary use permit for businesses selling these products to utilize a portion of their parking lot area for display.

**19.35.040 Frequency and duration of the temporary use.**

- (1) The city may grant a temporary use permit to the same property owner for up to 60 consecutive or nonconsecutive days in every 180-day period. The temporary use permit shall specify a date by which the use shall be terminated. The planning director may establish a shorter time frame.
- (2) As part of the temporary use permit, the city shall establish a time within which the use and all physical evidence of the use must be removed by the applicant. If the temporary use and all physical evidence of the use are not removed within the time specified, it will constitute a violation of this title. Further, the city is authorized to abate the temporary use in accordance with OHMC [19.100.010](#).
- (3) A temporary use permit for seasonal displays in parking lots shall only be issued for the period between March 1st and September 30th of each year. The permit shall be renewed each year and fees paid as established in Chapter [3.64](#) OHMC.
- (4) With the exception of Fourth of July fireworks sales, no additional temporary use permits shall be granted for businesses which have approved seasonal temporary use permits.

**19.35.050 Application and procedures for temporary use permits.**

- (1) The applicant shall provide the following information to the planning director:
  - (a) A completed application on the form provided by the city, along with all information requested in that form;
  - (b) An irrevocable, signed and notarized statement granting the city permission to summarily abate the temporary use and all physical evidence of that use if it is not removed by the applicant within the period specified in the permits, and agreeing to reimburse the city for any expenses incurred by the city in abating the temporary use.
- (2) Who May Apply. The property owner may apply for a temporary use permit on private property. Any person may apply for a temporary use permit on public right-of-way.
- (3) The planning director may consult with other city departments as appropriate in the evaluation of an application for a temporary use permit.
- (4) The planning director may establish performance standards as part of the approval of each temporary use permit based on the characteristics of the use and the features of the proposed location.
- (5) The decision may be appealed to the city planning commission.

**City of Sequim**  
**Chapter 18.68**  
**TEMPORARY USES\***

**18.68.010 Purpose.**

Temporary use permits allow the director of the department of community development or designee to permit temporary, seasonal, or transient land uses within the city without requiring full compliance with the development standards of the land use district within which the use or structure is located. This does not exempt the use or structure from compliance with other city regulations including, but not limited to the city building code.

**18.68.020 Applicability.**

Upon approval, temporary use permits may be issued for the following uses or structures:

- A. Temporary sales office and/or model home in an approved subdivision during build-out of the approved development.
- B. Temporary structures in the downtown, commercial, and business and employment zoning districts associated with the primary use on the property.
- C. Temporary housing.
- D. Use of equipment essential to and only in conjunction with the construction or building of a road, bridge, ramp, dock, and/or jetty located in proximity to the temporary site. The applicant must provide a construction contract or other evidence of the time period required to complete the project, and the following equipment is considered essential to and in conjunction with such construction projects:
  - 1. Portable asphaltic concrete-mixing plants;
  - 2. Portable concrete-batching plants;
  - 3. Portable rock-crushing plants;
  - 4. Accessory equipment essential to the use of the plants.
- E. Temporary uses and structures otherwise permitted within the zone that will remain up to one year on an existing lot or parcel where compliance with the zoning districts' development standards is impractical.
- F. Temporary uses and structures not permitted within the zone that have a demonstrated public benefit may be approved for a period no greater than six months. In approving the permit, the director or designee must make written findings that the use is compatible with the surrounding land uses, will have minimal impact on city services and traffic, and that granting the use is consistent with the public health, safety, and welfare.
- G. A temporary use or structure for a purpose not anticipated by this chapter, but not in conflict with it, or a unique situation as determined in writing by the director or designee, for a period of fewer than 90 continuous days in a calendar year.
- H. Food/beverage and retail mobile vending carts. Food trucks are regulated under Chapter [18.65](#) SMC, Mobile Food Service Vendor.

#### **18.68.030 Exemptions.**

The following uses and structures are exempt from the requirement to obtain a temporary use permit:

- A. Temporary offices, storage sheds, equipment, housing, and staging areas in relation to current construction projects with approved land use and building permits for the duration of the construction project. This exemption does not include single-family housing projects.
- B. Seasonal temporary uses, such as Christmas tree lots. Other applicable city permits are still required.
- C. Community-wide special events that have received a special event permit from the city.
- D. Special events located in city-owned parks or public facilities that are not subject to a special event permit.
- E. Garage, yard, and rummage sales are exempt from a temporary use permit but may require a special event permit in accordance with Chapter [8.38](#) SMC.
- F. Temporary fundraising and other civic activities in the downtown, commercial, and business and employment zoning districts that are otherwise exempt from a special event permit.

#### **18.68.040 Review authority.**

Temporary use permit applications are processed under a Type A-I application in accordance with Chapter [20.01](#) SMC. The director of the department of community development or designee has decision-making and review authority over temporary use permits and will issue written approvals of all temporary use permits.

#### **18.68.050 Time limitation.**

- A. Temporary use permits may be approved for up to one year or as otherwise regulated under this chapter. The director or designee may also impose conditions to mitigate negative impacts.
- B. Upon written request no fewer than 30 calendar days before its expiration, a temporary use permit may be granted one additional extension up to one year with demonstrated good cause.
- C. Temporary uses that continue beyond the initial one-year permit and any approved extension will be considered a permanent use, and the city will require a building permit application and any other applicable permit applications to be submitted and processed subject to the provisions of SMC Titles [15](#) and [18](#).
- D. Temporary use permits may be revoked at any time if the conditions of approval are not met after the director or designee provides adequate notice.

#### **18.68.060 Decision criteria.**

The director or designee may approve, or modify and approve, an application for a temporary use permit if:

- A. The temporary use will not be materially detrimental to the public health, safety, or welfare, or injurious to property or improvements in the immediate vicinity of the temporary use.
- B. The temporary use is not incompatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use.
- C. Adequate parking is provided to serve the temporary use, and if applicable, the temporary use does not create a parking shortage for other existing uses on the site.
- D. Hours of operation of the temporary use are specified.

E. The temporary use will not cause noise, light, or glare that adversely impacts surrounding uses.

**18.68.070 Removal of temporary use – Performance bond.**

A. The director or designee will establish, as a condition of approval for each temporary use permit, a time within which the use and all physical evidence of the use must be removed.

B. Before granting a temporary use permit under this chapter, the director or designee may require that the applicant post a cash or surety performance bond with the city to ensure timely removal of the temporary use. The director or designee must provide written reasons for the bond requirement. The bond must meet city standards for posted bonds, and be in the amount set forth in Chapter [3.68](#) SMC, Rates and Fees. If the temporary use or structure is not removed or discontinued at the end of its designated time, the bond will be forfeited, and the temporary use or structure may be deemed a public nuisance and result in civil penalties, infractions, or abatement in accordance with Chapters [1.13](#) and [8.04](#) SMC. (Ord. 2021-012 § 1 (Exh. A))

## City of Mountlake Terrace

### 9.110.170 Temporary uses.

A. Intent and Purpose. The intent and purpose of this section is to provide for uses of land and structures on a temporary basis. A temporary use is not exempt from the construction and fire code requirements adopted in MTMC Title [15](#). Temporary structures or buildings that have mobility gear equipment shall not have said gear removed from the structure and shall not be permanently affixed to the site.

B. Temporary Accessory Uses – No Temporary Use Permit Required. The following uses may be allowed without a temporary use permit accessory to a permitted use in accordance with the regulations of the zone classification in which it is located.

1. Construction Buildings. Temporary structure for the housing of tools and equipment or containing supervisory offices in connection with major construction projects may be established and maintained during the progress of such construction on such projects in accordance with all applicable codes and regulations and shall be removed within 30 days following issuance of the certificate of occupancy.

2. Temporary Real Estate Office. One temporary structure used for a real estate sales office may be located on any new project in accordance with all applicable codes and regulations, provided the activities of such office shall pertain only to the project where the office is located. For any single-household subdivision project, the temporary real estate office shall be removed at the end of a 12-month period measured from the date of the recording of the final plat of the subdivision. For all other projects, the temporary real estate office shall be removed within 30 days after the issuance date of an occupancy permit.

3. Temporary Housing Unit. With approval from the Director, a temporary housing unit for construction may be placed on a lot for occupancy during the period of time necessary to repair damage of a principal residence on the same lot, provided:

- a. The temporary housing unit is removed from the site within six months;
- b. The unit meets minimum setback regulations for a principal structure as required by the applicable zoning district and all applicable codes and regulations; and
- c. A valid building permit is issued by the Building Department for a permanent structure on the lot.

4. Fund Raising Activities for Nonprofit Organizations. Fund raising activities promoted or sponsored by nonprofit organizations, including but not limited to special events such as musical entertainment, vehicle shows, rodeos, carnivals and circuses, shall be allowed on a temporary basis in accordance with Chapter [10.20](#) MTMC and all other applicable City codes and regulations.

C. Temporary Accessory Uses – Permit Required – Peddlers, Solicitors, and Temporary Sales Yards. Any person, firm, organization, or corporation who displays goods for sale, peddles food items, or solicits the sale of goods or wares, including, but not limited to, Christmas trees, flowers, or any food item, and who remains in one location for a period of greater than one hour, shall first obtain a temporary use permit from the Community and Economic Development Director and a City business license if required. These businesses shall be conducted only on private commercial or light industrial zoned properties.

1. A temporary use permit for peddlers, solicitors, and temporary sales yards shall require an application signed by the owner of the property on which the activity will occur. The review shall include location of all structures, objects, or things of any nature whatsoever

appurtenant to the activity for the purpose of assuring compliance with all provisions of this title, and any other pertinent requirement of state and local law or regulation.

2. A time limit for the use shall be determined by the Community and Economic Development Director. The requested time limit shall be stated on the application and may be reduced for any cause related to safety, health, and general welfare of the public. Time extensions may be allowed subject to the approval of the Community and Economic Development Director.

D. Food Vendors – Mobile. To provide for food vendors to operate at a specific location, on a temporary basis, and for a limited period of time.

1. Definition. “Mobile food truck/vendor” means a licensed and operable motor vehicle or trailer, or a push cart, used to serve, vend, or provide food (hot or cold meals, snacks, or nonalcoholic beverage) for human consumption.

2. Private Property. Temporary use permit approval is required when located on private property, is valid for a 12-month period, and is subject to meeting all of the following general standards:

- a. Meets the definition of “mobile food truck/vendor”;
- b. Is located in a commercial or light industrial zoning district. (In residential zones, a special event permit is required in conformance with Chapter [10.20](#) MTMC);
- c. No more than one mobile food truck/vendor can be located on a site at any given time. The allowance of more than one food truck/vendor on a property is only permitted with the approval of a special events permit as provided for in Chapter [10.20](#) MTMC;
- d. No alcoholic beverages. No cannabis related products;
- e. Does not block fire lanes, or drive aisles, or pedestrian access to businesses or the public sidewalk;
- f. Parked a maximum of once a day, up to six hours, on a site/property;
- g. Hours of operation can occur no earlier than 6:00 a.m. and no later than 9:00 p.m., including clean-up time;
- h. Trucks can be parked no more than four days a week;
- i. No overnight parking or storage of the food truck is allowed, including no portion of the vendor’s inventory, sales equipment, or any other objects associated with the vendor;
- j. No excessive smoke associated with food preparation can occur;
- k. No mechanical audio or noise making devices and no hawking is allowed. Hawking is the loud, repeated oral solicitation of business by the vendor or assistant;
- l. Possess a current City business license;
- m. Has obtained necessary permits from the Snohomish Health District;
- n. Meets South County Fire District requirements;
- o. Provides waste collection receptacles, and keeps area clean and free of litter, food and beverage wastes, or other trash. Waste collection receptacles should be placed near the curbside space the food truck occupies and not limit the pedestrian walkway to less than five feet wide. Compost and recycling receptacles are encouraged. Trash must be removed with truck on a daily basis and emptied regularly during the day should they become full during the period the food truck is in operation;



- p. Folding menu boards, if used, should be placed near the curbside space the food truck occupies and walkways shall be kept clear to a width determined by staff and not limit the pedestrian walkway to less than five feet wide.
- q. The city reserves the right to limit the number of food truck/vendor permit sites in any given area of the city.

3. In Right-of-Way. A right-of-way use permit is required when located in city right-of-way as defined in this section, subject to meeting all of the following:

- a. Right-of-way includes any public street, or sidewalk or parking lane, improved or unimproved;
- b. Obtain a right-of-way use permit for each location;
- c. Meets all of the requirements in subsection (D)(2) of this section;
- d. Provides any required insurance and/or indemnification; and
- e. Any other filing requirements requested by the Director and/or conditions of approval.

4. To locate in a city park or other city-owned land (not right-of-way):

- a. Contact the Recreation and Parks Department Director for approval of concessions permit;
- b. Obtain a temporary use permit per MTMC [10.20.180\(C\)](#);
- c. Meets all of the requirements in subsection (D)(2) of this section;
- d. Provides any required insurance and/or indemnification. Vendors selling product on public land are subject to the leasehold excise tax, Chapter [82.92](#) RCW;
- e. Provides any required insurance and/or indemnification; and
- f. Any other filing requirements requested by the Director and/or conditions of approval.

5. Special Events. Any food vendor activity that is defined per Chapter [10.20](#) MTMC may need to obtain a special event permit in lieu of, or in addition to, the requirements set forth in this section.

6. Violations and Enforcement. Violators and violations of this section are subject to any applicable code enforcement actions and penalties per city code, including but not limited to Chapters [8.30](#), [13.10](#), and [19.140](#) MTMC.

## **CITY OF POULSBO**

### **18.280.010 Purpose.**

Temporary use permit is a mechanism by which the city may permit a use to locate within the city on an interim basis without requiring full compliance with the development standards of the land use district or by which the city may permit seasonal or transient uses not otherwise permitted.

### **18.280.020 Applicability.**

Upon approval, temporary permits may be issued for the following uses or structures:

- A. A mobile home, recreation vehicle or other temporary structure for a residential purpose during the construction period of a new residence on the same lot. Appropriate building permit is required.
- B. Use of an existing legally established dwelling unit during the construction period of a new residence on the same lot.
- C. Temporary sales office and/or model home.
- D. Temporary structures in the commercial and business/employment zoning districts associated with the primary use on the property.
- E. Temporary housing for personnel such as watchmen, labor crews, engineering, and management.
- F. Use of equipment essential to and only in conjunction with the construction or building of a road, bridge, ramp, dock, and/or jetty located in proximity to the temporary site; provided, that the applicant shall provide a construction contract or other evidence of the time period required to complete the project; and provided further, that the following equipment shall be considered essential to and in conjunction with such construction projects:
  - a. Portable asphaltic concrete-mixing plants;
  - b. Portable concrete-batching plants;
  - c. Portable rock-crushing plants;
  - d. Accessory equipment essential to the use of the aforementioned plants.
- G. Temporary uses and structures otherwise permitted within the zone which will remain up to one year on an existing lot or parcel where compliance with site plan review and landscaping requirements are impractical.
- H. Temporary uses and structures not permitted within the zone but have a demonstrated public benefit may be approved by the review authority for a period no greater than six months. In approving the permit, the review authority shall find that the use is compatible with the surrounding land uses; the use will have minimal impact on city services and traffic; and granting the use is consistent with the public health, safety and welfare.
- I. A temporary use or structure for a purpose not anticipated by this chapter, but not in conflict with it, or a unique situation as determined by the planning director, for a period of less than ninety days in a calendar year.
- J. Temporary transitory accommodations.
- K. Food/beverage and retail mobile vending carts.

**18.280.030 Exemptions.**

The following activities are exempt from the requirements of temporary permits:

- A. Temporary office, storage sheds, equipment, housing and staging areas in relation to current construction projects with approved land use and building permits, and may be allowed for the duration of the construction project.
- B. Seasonal temporary uses, such as firework stands and Christmas tree lots. Other applicable city permits remain required.
- C. Community-wide special events, festivals, celebrations that have received a special event license.
- D. Special events, concerts or festivals located on city owned parks or public facilities.
- E. Garage sales conducted in private homes; provided, that the sales last no longer than three days, are conducted on the owner's property, and held no more than six times in a calendar year. (Multifamily sales are permitted when held on the property of one of the participants.)
- F. Temporary fundraising and other civic activities in the commercial and business/employment zoning districts.
- G. Portable storage pods located for temporary use in R zones, but shall not be located in public right-of-way; and provided, that if the storage pod remains for more than ninety days, a temporary use permit is required.

**18.280.040 Review authority.**

Temporary use permit applications are processed under a Type I application according to the provisions of Title [19](#).

**18.280.050 Time limitation.**

- A. The review authority may approve temporary permits, with conditions to mitigate negative impacts, valid for one year, or as otherwise regulated in this section.
- B. Upon request in writing no less than thirty days prior to the permit expiration, temporary permits may be granted one additional one-year extension by the planning director with demonstrated good cause.
- C. If, after the one-year initial TUP permit and if a one-year extension was approved, the temporary use owner requests the use to continue, the city will consider it a permanent use; a site plan application shall be submitted and processed subject to the provisions of Chapter [18.270](#).
- D. The temporary use permit may be revoked if the conditions of approval are not met at any time.

**18.280.060 Decision criteria.**

The review authority may approve or modify and approve an application for a temporary use permit if:

- A. The temporary use will not be materially detrimental to the public health, safety, or welfare, nor injurious to property or improvements in the immediate vicinity of the temporary use.
- B. The temporary use is not incompatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use.
- C. Adequate parking is provided to serve the temporary use, and if applicable the temporary use does not create a parking shortage for other existing uses on the site.

- D. Hours of operation of the temporary use are specified.
- E. The temporary use will not cause noise, light, or glare which adversely impacts surrounding uses.

**18.280.070 Removal of temporary use.**

- A. The planning director shall establish, as a condition of approval for each temporary use permit, a time within which the use and all physical evidence of the use must be removed.
- B. Prior to granting a temporary permit under this chapter, the review authority may require that the applicant provide a cash or surety bond of not less than one thousand dollars, nor more than two thousand five hundred dollars, to ensure timely removal of the temporary use. If the temporary use or structure is not removed or discontinued at the end of its designated time, said cash or surety bond shall be forfeited.

<b>LAND USE &amp; ECONOMIC DEVELOPMENT COMMITTEE AGENDA REPORT</b>	
<b>SUBJECT TITLE:</b> Docket Status	<b>FOR AGENDA OF:</b> May 4, 2022
<b>Contact Staff:</b> David Osaki, Community Development Director	<b>EXHIBITS:</b> <ol style="list-style-type: none"> <li>1. Docket Status Summary</li> <li>2. Draft Mobile Food Truck Ordinance</li> <li>3. City of Lynnwood - Mobile Food Vendor Regulations (Licensing)</li> </ol>
<b>Department Director:</b> David Osaki Community Development Director	

### **SUMMARY**

At its April 11, 2022 meeting, the Mukilteo City Council discussed whether the Council wished to initiate 2022 Comprehensive Plan Docket items. The Council action was not to initiate any 2022 docket items.

In taking this action, there was a question about the status of prior docket items. Staff indicated it would bring this information to the Land Use & Economic Development (LU&ED Committee).

### **BACKGROUND**


**Exhibit 1** is a summary of the status of docket items since 2018. Several items have been completed; others are still in progress.



An example of a docket item in progress relates to a mobile food truck code amendment. A draft ordinance and a City of Lynnwood approach to regulating mobile food trucks are included as **Exhibit 2** and **Exhibit 3**. The intent of including these items in the LU&ED Committee packet is not for discussion, but to illustrate an example of the process taking place right now on one of the docket items.

### **RECOMMENDED ACTION**

Land Use & Economic Development Committee to ask questions, if any.

EXHIBIT 1

DOCKET YEAR	NOTES
2018 Docket	
1. Industrial Design Standards Code Amendment for the Planned Industrial (PI) Zone. A docket item re: PI zone street buffering has been combined with this. (Privately Initiated)	Planning Commission discussed this five times in 2019 and then in January 2020. No Planning Commission discussion on the docket item took place after January 2020 until January 2022 due to COVID and staffing vacancy. Planning Commission discussion in January 2022 restarted the effort and included portions of a draft ordinance along with a public outreach strategy.
2. Public Notice Code Amendment (Privately Initiated)	Completed.
2019 Docket	
1. Comprehensive Plan Map Amendment/Rezone for property on 84 <sup>th</sup> St. SW (Privately Initiated)	Completed.
2. Utilities Element Amendment - Related to a Federal Communications Commission Order (City-Initiated)	Completed.
3. City owned Property - 4407 76 <sup>th</sup> Street - Japanese Gulch 76 <sup>th</sup> Street Trailhead (Mukilteo Senior Association Request)  Comprehensive Plan Map Amendment/Rezone w/ Japanese Gulch Master Plan Text Amendment	Withdrawn.  Although approved for the 2019 Final Docket, the Mukilteo Senior Association did not submit required information to process the application. (Although see 2020 Docket, item #1 below.)
2020 Docket	
1. City owned Property - 4407 76 <sup>th</sup> Street - Japanese Gulch 76 <sup>th</sup> Street Trailhead (City Initiated)  Comprehensive Plan Map Amendment/Rezone w/ Japanese Gulch Master Plan Text Amendment	<p>This is the same docket amendment proposed by the Mukilteo Senior Association in 2019; except that it was City initiated.</p> <p>Work to date has included preparing a parking /traffic analysis and wetland review, all to be used in the environmental review for the project.</p> <p>This proposal will require a public outreach process. It revisits a key discussion item in the adopted Master Plan, that is, the appropriate vision for this part (76<sup>th</sup> Trailhead) of Japanese Gulch Park.</p> 
2. City owned Property (former Cannon Property) Comprehensive Plan Map Amendment/Rezone w/ Japanese Gulch Master Plan Text Amendment	<p>Not started. Initiating this would be done in conjunction with #1 above, as both relate to the Japanese Gulch Master Plan.</p> <p>Property is undeveloped, with a trail that extends from Japanese Gulch Park. The trail had informally been used by the public, but was never authorized as such since the property was privately owned. No development is proposed other than to allow the</p>

DOCKET YEAR	NOTES
<p>This one acre parcel abuts Japanese Creek Gulch Park.</p>	<p>property to continue as part of the Japanese Gulch Trail system under City ownership.</p> 
<p><b>3. Development Regulation Amendment - Food Trucks (City initiated)</b></p> <p>Amend the municipal code to allow food trucks within certain zoning districts</p>	<p>A draft ordinance had been prepared. The Planning Commission has discussed the topic and reviewed other local jurisdictions’ approach to regulating mobile food vendors. One approach is to address mobile food vendors through business licensing provisions. The Planning Commission wants to explore that approach.</p> <p>Discussion/coordination with Finance Department needs to occur regarding a business license approach.</p>
<p><b>4. Major Update to the City’s 6-Year Growth Management Act (GMA) Capital Facilities Plan (CFP) (City Initiated)</b></p>	<p>Completed.</p>
<b>2021 Docket</b>	
<p><b>1. City of Mukilteo Comprehensive Plan Text Amendment - Climate Change Text and Policies (City Initiated)</b></p>	<p>Not started.</p> <p>Proposal involves amending the Comprehensive Plan to add climate change related narrative and policies.</p>
<p><b>2. City of Mukilteo - Citywide Comprehensive Plan Text Amendment - Indigenous Peoples Acknowledgement (City Initiated)</b></p>	<p>Not started.</p> <p>Proposal involves amending the Comprehensive Plan to include additional acknowledgment of Indigenous People and respect for their longstanding and sacred relationship with traditional territories.</p>
<p><b>3. City owned Property Hawthorne Hall - 1134 2<sup>nd</sup> Street (City Initiated)</b></p> <p>Comprehensive Plan Map Amendment/Rezone (The rezone portion of the proposal is to change the zoning from “Single Family Residential RD 7.5” to “Public / Semi-Public”</p>	<p>Not initiated; however, Historic Commission has been discussing Hawthorne Hall during 2022.</p> <p>Intent of this docket item is not to pre-judge future use, but to provide potential flexibility, particularly from a timing standpoint, on Hawthorne Hall’s future public use should that be what the City Council wishes to do with the property. Proposal could be withdrawn if current “Single Family Residential RD 7.5” zoning is preferred.</p> 

## EXHIBIT 2

### CITY OF MUKILTEO MUKILTEO, WASHINGTON

#### ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO MOBILE FOOD TRUCKS; AMENDING CHAPTER 17.08 MMC – DEFINITIONS; AMENDING CHAPTER 17.XX.XXX AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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**WHEREAS**, the number of mobile food vendors are rising nationwide as well as locally and provide the service of convenient and diverse food choices; and

**WHEREAS**, mobile food vending has allowed business owners an avenue to pursue small business ownership and practice their craft; and

**WHEREAS**, like many municipalities, Mukilteo has been receiving interest in mobile food vendors and finds that examining its current development regulations is appropriate; and

**WHEREAS**, the Mukilteo has authorized and regulated mobile food vendors for special events only; and

**WHEREAS**, the City of Mukilteo Planning Commission held a duly-noticed public hearing on \_\_\_\_\_, XX, 2022 to consider this ordinance and forwarded a recommendation to the City Council; and

**WHEREAS**, the City has complied with the requirements of the State Environmental Policy Act (SEPA) RCW Ch.43.21C by issuing a \_\_\_\_\_ on \_\_\_\_\_; and

**WHEREAS**, the City has submitted the proposed development regulation revisions to the Washington State Department Commerce as required by RCW 36.70A.106; and

**WHEREAS**, City Council finds that this ordinance is in the best interests of the residents of the City of Mukilteo;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:



**Section 1.** Mukilteo Municipal Code (MMC) section 17.08.020 entitled “Definitions”, is hereby amended to add a new definition of “Mobile Food Unit” as follows,

**17.08.020 Definitions.**

...

**Mobile food unit.**

“Mobile food unit” means a self-contained food service operation, located in a readily movable motorized wheeled or towed vehicle, used to store, prepare, display or serve food intended for individual portion service. This definition shall not include businesses providing or offering to provide scheduled delivery of food products to individual businesses or residences.

...

**Section 2.** MMC 17.16.040(b). Mukilteo Municipal Code section 17.16.040(B), entitled “Reference Notes for Permitted Use Matrix”, shall be amended to add a new reference Note 67 read as follows:

67. Mobile food units shall be subject to the following standards.

- A. Mobile food units shall only be allowed as an accessory use.
- B. Mobile food units shall not be allowed in the public right-of-way.
- C. The mobile food unit vendor shall have written approval from the property owner.
- D. There shall be no more than one mobile food unit on a property at any one time.
- E. One A-board sign not exceeding nine square feet in area shall be permitted. The A-board sign shall be placed within 20 feet of the mobile food unit. No other freestanding signage shall be permitted.
- F. Outdoor seating areas associated with mobile food units are permitted; provided, that seating capacity does not exceed eight persons.
- G. Hours of operation shall be limited to 7:00 a.m. to 9:00 p.m.
- H. Mobile food units shall not occupy required off-street parking spaces necessary to meet the requirements of the uses on the property, shall not park on landscaped areas, and shall not obstruct required loading, circulation, pedestrian paths, drive aisles or fire access. The siting of the mobile food unit shall also not allow for pedestrians to stand in the public right-of-way.
- I. Mobile food units shall observe the setback, lot coverage, landscaping, maximum hard surface and other applicable development standards and requirements applicable to the zoning district.
- J. Mobile food units shall be sited on the property so that it is located at least 150 feet from a “Residential” zoning district as identified in Table 17.16.040:

- K. The mobile food unit operator shall comply with all applicable Snohomish Health District. Nothing in these regulations is intended to supersede requirements of the Snohomish Health District or any other agency with oversight over the operation of mobile food units.
- L. Restroom facilities shall meet minimum requirements of the Snohomish Health District. Portable toilets shall not be allowed.
- M. Mobile food units shall maintain a minimum 20-foot setback from all other building structures.
- N. Amplified music or loudspeakers shall only be permitted between 10:00 a.m. and 6:00 p.m. The operation shall comply with the provisions of the City of Mukilteo noise regulations.
- O. A mobile food unit permit shall be obtained from the city.
- P. Mobile food trucks associated with special events permit shall not be subject to Notes 67 A through M above but shall instead be subject to requirements of the special events permit.

**Section 3. Findings, Conclusions, and Analysis.** In support of the amendments approved in this ordinance, the Mukilteo City Council adopts the Findings of Fact & Conclusions attached hereto as Exhibit “A” and incorporated herein by reference and the analysis contained in the Staff Report on the amendments

**Section 4. Enforcement.** Violations of this Ordinance are punishable under Title 18 MMC and as otherwise provided by law, and are subject to injunctive and other forms of civil relief which the City may seek.

**Section 5. Conflict.** In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

**Section 6. Severability.** If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 7. Authority to make necessary corrections.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 8. Effective Date.** The ordinance shall take effect and be in full force five (5) days after publication of the attached Summary which is hereby approved.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED:

\_\_\_\_\_  
MAYOR JOE MARINE

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, KARA JOHNSON

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

\_\_\_\_\_  
DANIEL P. KENNY

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. XXXX

SUMMARY OF ORDINANCE NO. XXXX  
of the City of Mukilteo, Washington

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On \_\_\_\_\_, 2022, the City Council of the City of Mukilteo, Washington, approved Ordinance No. XXXX, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON,  
RELATING TO MOBILE FOOD TRUCKS; AMENDING CHAPTER 17.08  
MMC – DEFINITIONS; AMENDING CHAPTER 17.XX.XXX AND  
PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of \_\_\_\_\_, 2022.

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City Clerk, Kara Johnson

# EXHIBIT 3

## CITY OF LYNNWOOD

### Chapter 5.18 MOBILE FOOD VENDORS

#### Sections:

- 5.18.010 Purpose.**
- 5.18.020 Definitions.**
- 5.18.030 Mobile food vendor business – License required – Exemptions.**
- 5.18.040 Display of license.**
- 5.18.050 Restrictions applicable to all mobile food vendors.**
- 5.18.060 Director’s rules.**
- 5.18.070 Mobile food vendor license – Application.**
- 5.18.080 License fee.**
- 5.18.090 General regulations.**

#### **5.18.010 Purpose.**

The purpose of this chapter is to allow for mobile food vendors (food trucks) to conduct business within the corporate limits of Lynnwood and to reasonably accommodate new businesses, enhance street vitality, and support entrepreneurship. (Ord. 3343 § 1 (Exh. A), 2019; Ord. 3253 § 2 (Exh. B), 2017; Ord. 3175 § 4, 2016)

#### **5.18.020 Definitions.**

- A. “Cart” means a mobile, nonmotorized vehicle or conveyance which is intended to be pushed, pulled or otherwise used by a mobile food vendor for the transport of food of any name, nature or description.
- B. “Mobile food preparation van” means a commercially manufactured motorized vehicle in which ready-to-eat food is cooked, wrapped, packaged, processed or portioned for service, sale or distribution.
- C. “Mobile food vendor” means a seller of food from a mobile food preparation van, truck, cart or other vehicle or conveyance, whether upon the public streets, alleys or public property or on private property.
- D. “Vending unit” means a mobile food preparation van, truck, cart, or other vehicle or conveyance, or any facility that is not on a permanent foundation that complies with the International Building Code, and which is used for the sale or delivery of food. (Ord. 3343 § 1 (Exh. A), 2019; Ord. 3253 § 2 (Exh. B), 2017; Ord. 3175 § 4, 2016)

#### **5.18.030 Mobile food vendor business – License required – Exemptions.**

No person, firm or corporation shall engage in a mobile food vendor business without having first obtained a business license from the business license clerk; provided, however, that no license shall be required of the following:

- A. Persons, firms or corporations who conduct a casual or isolated sale and who are not engaged in the business of selling the type of food involved.
- B. Associations, corporations or organizations not organized for profit, and any community fund or foundation organized and operated exclusively for religious, scientific, public or charitable purposes, no part of the earnings of which ensures to the benefit of any private shareholder, owner, member or individual, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.
- C. Persons, firms or corporations who conduct the sale of seasonal fresh fruits and vegetables that are unprepared and similar agricultural products, as exempted by RCW [36.71.090](#).
- D. Any “peddler,” as the term is defined in Chapter [5.20](#) LMC, that is licensed under that same chapter.
- E. Any mobile food vendor operating at a special event approved by the city under Chapter [5.30](#) LMC or an event sponsored by or held in conjunction with the city.
- F. The license required under this chapter is separate from the license required under Chapter [5.06](#) LMC.

#### **5.18.040 Display of license.**

All mobile food vendor licenses shall be prominently displayed upon all carts, vehicles or locations from which a mobile food vendor sells products.

#### **5.18.050 Restrictions applicable to all mobile food vendors.**

- A. Mobile food vending on public streets and public rights-of-way within the corporate limits of the city shall not be permitted unless approved as an authorized participant in a city-approved special event, including a festival, sports tournament or similar activity as authorized under Chapter [5.30](#) LMC.
- B. Mobile food vending to serve local businesses’ employees at the local businesses’ location shall be permitted when authorized by the business or businesses, such as within the City Center, for the period of time that it takes to set up, serve, and close up the food service.
- C. A mobile food vendor shall not obstruct or cause to be obstructed the passage of any pedestrian or vehicle on any public sidewalk, street, fire lane, or any other public right-of-way, including obstructions caused by customer queues or customers consuming any food sold by the mobile food vendor at or near the place where the items are being offered for sale. No items may be offered or sold, and no customers served, in any traveled portion of a public roadway.
- D. A mobile food vendor shall not sell or deliver any food from the mobile food vendor’s vending unit, if the vending unit is within 100 feet of the entrance of any business establishment which is open for business and offers similar food for sale, without the consent of said business.
- E. If a mobile food vendor will be utilizing an external propane tank (not mounted on the mobile food preparation van), external power connections and/or tent structures, the mobile food vendor will be subject to additional review by the Lynnwood fire department.

F. Notwithstanding any provision of this chapter to the contrary, the director is authorized to adopt rules relating to the time, place, and manner in which a nonprofit organization may vend food in which the organization's political, religious, sociological, or ideological message is inextricably intertwined if the sale exercises the permittee's rights guaranteed by the United States or the Washington Constitution. Such rules may address the issuance and duration of permits, the size and other equipment used, their siting and location, the type of items offered for sale, advertising and posting of prices, the display of licenses, the exclusion of ineligible merchandise, the documentation to accompany applications for registration.

#### **5.18.060 Director's rules.**

The director may promulgate rules to implement this chapter. The rules may address the subjects identified in this chapter and other subjects the director believes may aid in the implementation of this chapter.

#### **5.18.070 Mobile food vendor license – Application.**

A. The submittal requirements for business license review shall include the following:

1. A site plan, a simple sketch of the site layout, depicting the following:
  - a. Ingress and egress; and
  - b. Location of the vending unit on the property on which food will be offered for sale.
2. A photograph of the vending unit, proposed signs, and any equipment.
3. Written approval by the Snohomish health district that the food preparation and service comply with health regulations.
4. Evidence of a current state of Washington vehicle registration.
5. A written plan documenting appropriate disposal of wastewater generated by the vending unit. Grease shall be properly disposed of per adopted Washington State health regulations.
6. Documentation that the vending unit has been approved by the State of Washington Department of Labor and Industries.
7. Evidence of necessary approvals from the Lynnwood building and fire departments in the event that external combustible fuels, external power connections and/or tent structures are proposed when operating under a special event permit per Chapter [5.30](#) LMC.

B. The mobile food vendor shall comply with the standards of the State of Washington Department of Labor and Industries for electrical service to the mobile food preparation van. In no event shall the mobile food vendor locate electric lines overhead or on the ground surface in any location in which the public has access.

C. The mobile food vendor must obtain and provide proof of written permission from the property owner for each location at which the mobile food vendor proposes to offer food for sale. This includes written permission for the mobile food vendor's location on the site, and for the mobile food vendor's staff to use the property owner's restrooms. No portable restrooms are allowed on the site; provided, that a portable restroom may be approved for interim use if there are no permanent restrooms available from an on-site business, as long as it is located at least 120 feet from an arterial street and screened. (Ord. 3343 § 1 (Exh. A), 2019; Ord. 3253 § 2 (Exh. B), 2017; Ord. 3175 § 4, 2016)

#### **5.18.080 License fee.**

Business license fees for mobile food vendors shall be in the amount stated in Chapter [3.104](#) LMC. The city business license will serve as evidence that the applicant has applied for and obtained a Washington State Department of Revenue business registration number. (Ord. 3343 § 1 (Exh. A), 2019; Ord. 3253 § 2 (Exh. B), 2017; Ord. 3243 § 2, 2017; Ord. 3175 § 4, 2016)

#### **5.18.090 General regulations.**

A. The mobile food vendor shall leave the site clean and vacant each day, including picking up trash and litter generated by the mobile food vendor's customers.

B. The use of any portion of the vending unit as living or sleeping quarters is prohibited.

C. All attachments to the vending unit, including but not limited to signs, lights, overhangs, and awnings, shall be maintained in such a manner as to not create a hazard to pedestrians, customers or vehicles.

Flashing lights and similar displays are prohibited.

D. All exterior trash receptacles not intended for customer use shall be screened from public view and securely covered.

E. Wastewater.

1. The mobile food vendor shall install an appropriate grease trap in the vending unit, and shall maintain the grease trap.

2. Grease shall be properly disposed of per adopted Washington State health regulations.

Wastewater generated by the vending unit shall be disposed of in a proper manner and documented.

F. One portable pop-up 10-foot-by-12-foot tent or umbrella may be used for cover for patrons, or up to three tables with beach type umbrellas. Cooking shall not take place under any tent. Umbrellas and canopies must be removed at the end of each day.

G. The hours of operation for mobile vending are limited to between 7:00 a.m. and 10:00 p.m.

H. Mobile food vendors shall not use amplification or noise-making devices and shall comply with Chapter [10.12](#) LMC.

I. The owner of the real property on which a mobile food vendor is located shall be responsible for overall site maintenance. The property owner shall be responsible for the mobile food vendor's compliance with the provisions of this chapter with respect to the mobile food vendor's operation on the owner's property.

J. Mobile food vendors may not serve alcoholic beverages.

K. All mobile food vendors shall comply with all laws, rules and regulations regarding food handling, and all mobile food preparation vans and motor vehicles used by mobile food vendors shall comply with all applicable laws, rules and regulations respecting such vehicles as established by the Snohomish County health department, the Washington State Motor Vehicle Code, and any applicable sections of the city code regarding the operation of the business.