

# ORDINANCE 1753

## AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, AMENDING NORTH BEND MUNICIPAL CODE CHAPTER 18.22 RELATING TO ZONING CODE TEMPORARY USES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

**WHEREAS**, the City Council desires to amend its zoning regulations related to temporary uses; and

**WHEREAS**, the City submitted a *Notice of Intent to Adopt* to the Washington State Department of Commerce on May 3, 2021, and no comments were received; and

**WHEREAS**, the City of North Bend Planning Commission held a Public Hearing on the proposed amendments on May 27, 2021, and June 10, 2021; and

**WHEREAS**, a State Environmental Policy Act (“SEPA”) Determination of Non-Significance (“DNS”) was issued on May 21, 2021, with a comment deadline of June 7, 2021, and no comments were received; and

**WHEREAS**, the City Council finds that the proposed temporary use zoning amendments are consistent with the requirements of the Growth Management Act, Chapter 36.70A RCW, and the adoption of these amendments satisfies the procedural requirements of the North Bend Municipal Code (“NBMC”); and

**WHEREAS**, the City Council finds that the procedural, public notice, public participation, and all other requirements set forth in NBMC Chapter 20.08 (Comprehensive Plan and Development Regulation Amendment Procedures) have been satisfied;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. NBMC Chapter 18.22 (Temporary Uses), Amended:** North Bend Municipal Code Chapter 18.22, entitled “Temporary Uses,” is hereby amended to read as set forth in Exhibit A attached hereto.

**Section 2. Severability:** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 3. Effective Date:** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20<sup>TH</sup> DAY OF JULY, 2021.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Rob McFarland, Mayor**

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**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Published: July 30, 2021  
Effective: August 4, 2021

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**Susie Oppedal, City Clerk**

EXHIBIT A

Chapter 18.22

TEMPORARY USES

Sections:

- 18.22.010 Purpose.
- 18.22.015 Review process and fees.
- 18.22.020 Application and authorization.
- 18.22.030 Determinations.
- 18.22.040 General conditions.
- 18.22.050 Additional criteria for interim housing facilities.
- 18.22.060 Allowed temporary uses.
- 18.22.070 Exemptions.
- 18.22.080 Storage containers.

**18.22.010 Purpose.**

The following provisions authorizing and regulating certain temporary uses are intended to permit temporary uses and structures when consistent with the NBMC and when safe and compatible with adjacent uses in the general vicinity.

**18.22.015 Review process and fees.**

A. Temporary use permits (TUP) for anticipated uses of up to 45 days or less in a calendar year shall be reviewed as Type I administrative applications per Chapter 20.01 NBMC.

B. The fee for temporary use reviews shall be as established by city schedule and collected at the time of the temporary use application.

C. Temporary uses for a period of time greater than 45 days shall require a conditional use permit prior to the commencement of the use except as provided pursuant to NBMC Subsection 18.22.015(D). The hearing examiner shall review the request in a public hearing and shall have the authority to condition issuance of the permit to ensure it is compatible with surrounding land uses and the city code or deny the permit if it cannot be made compatible. If a conditional use permit is not granted, such use shall be terminated at the end of 45 days.

D. A TUP for a contractor's office, storage yard, and equipment parking for an active construction project undertaken by a public utility or government agency ("Public TUPs") shall be permitted for up to one year. Public TUPs shall be reviewed as Type I administrative applications per Chapter 20.01 NBMC. Each Public TUP may be renewed for not more than two additional periods not to exceed one year each.

E. A TUP for a public utility or government agency training facility ("Public Training TUPs") shall be permitted for up to one year. Public Training TUPs shall be reviewed as

Type I administrative applications per Chapter 20.01 NBMC. Each Public Training TUP may be renewed for not more than four additional periods not to exceed one year each.

**18.22.020 Application and authorization.**

A. Application to conduct a temporary use shall be made to the community and economic development department and shall include names and contact information for the operator, a written description of the proposed use, scheduled days and times of operation, location map, site plan, and written permission from the property owner, along with such other information as the director may require to evaluate the use and to make the determinations required by these provisions.

B. Application shall be made at least 15 days prior to the requested date for commencement of the temporary use, and the director shall decide whether to approve, approve conditionally, or to deny the temporary use within 10 days after the date of application.

C. Authorization of a temporary use shall be by issuance of an approval letter.

D. TUPs are intended to stimulate economic development and provide additional opportunities for land owners and citizens. If the CED director believes an applicant is using the TUP to circumnavigate site improvements which would otherwise be required, they shall deny or condition the TUP. Temporary uses shall not be made permanent by granting of successive temporary use permits.

E. If the TUP is for use on private property, either the individual operator or the property owner may apply for the TUP so long as the total use does not exceed the maximum days allowed in one calendar year, regardless of applicant identity.

**18.22.030 Determinations.**

The director may authorize temporary uses after consultation and coordination with all other applicable city departments and other agencies when all the following determinations are made based on an application received:

A. The temporary use will not impair the normal, safe, and effective operation of a permanent use on the same site;

B. The temporary use and associated structures will be used in a manner compatible with uses in the general vicinity and on adjacent properties;

C. The temporary use will not significantly impact public health, safety or convenience, or create traffic hazards or congestion, or otherwise interrupt or interfere with the normal conduct or uses and activities in the vicinity; and

D. The temporary use shall be consistent with the permitted uses in the zone as found in NBMC 18.10.030, and all relevant floodplain and critical area regulations in NBMC Title 14.

**18.22.040 General conditions.**

A. A temporary use conducted in a private parking facility shall not occupy or remove from availability more than 20 percent of the spaces required for the permanent use. For a

temporary use located in the downtown commercial area, no more than two public parking spaces may be occupied by the temporary use. Temporary uses are not allowed in public parking stalls within the right-of-way along East North Bend Way between Ballarat Ave. N and Sydney Ave. N.

B. No temporary use located either in off-street public parking or on street public parking shall remain in excess of 24 consecutive hours, or as specifically posted.

C. Each site occupied by a temporary use must provide or have available sufficient parking and vehicular maneuvering area for customers. Such parking need not comply with Chapter 18.16 NBMC, Parking Regulations, but must provide safe and efficient interior circulation and ingress and egress to and from public rights-of-way.

D. The temporary use shall comply with all applicable standards of Public Health – Seattle and King County, the fire marshal, and all other relevant state and local regulations.

E. No temporary use shall occupy or use public parks in any manner unless specifically approved by the director of public works and the community and economic development director.

F. No short-term temporary use shall occupy or operate within the city of North Bend for more than 45 days unless a CUP is granted except as provided in NBMC Subsections 18.22.015(D) and (E). A “day of operation” shall mean any or part of any day in which the business is conducted. The 45 days need not run consecutively and may occur at any time within a year if each day is designated and approved.

G. All temporary uses shall obtain all applicable permits, licenses and other approvals (i.e., business license, building permit, administrative approvals, right-of-way use permits, etc.) prior to occupancy of the site.

H. The applicant shall supply written authorization from the owner of the property on which the temporary use is located.

I. Upon completion each site occupied by a temporary use shall be free of debris, litter, or other evidence of the temporary use.

J. If generators are proposed for use in conjunction with the temporary use, they must be in good condition and generate no more than a maximum of 65 A-weighted decibels (dBA).

K. All materials, structures and products related to the temporary use must be removed from the premises between days of operation, except between consecutive days of operation.

L. Signage.

1. Only one sign is allowed that is not attached to the temporary use and such sign must be located within the permitted area; and

2. All other signage must be attached to the temporary use.

M. The director may require notice to adjacent property owners.

N. The director may establish such additional conditions as may be deemed necessary to ensure land use compatibility and to minimize potential impacts on nearby uses. These include but are not limited to: time and frequency of operation, temporary arrangements for parking and traffic circulation, requirements for screening or enclosure, temporary sanitary facilities, and guarantees for site restoration and cleanup following temporary uses.

O. No mechanical audio or noise-making devices, nor loud shouting or yelling, will be permitted to attract attention for any temporary use.

**18.22.050 Additional criteria for interim housing facilities.**

Interim housing facilities are those facilities that provide indoor temporary housing for homeless persons. Such facilities shall be required to meet the general criteria listed in NBMC 18.22.030, 18.22.040, and the following:

A. Such facilities shall be sponsored by the organization upon whose property they are located. The organization shall be the applicant for any such permit.

B. The housing capacity for such facilities shall be limited in size to 100 people.

C. The sponsoring institution shall ensure that all public health regulations are met, including toilet and shower facilities, food preparation, garbage removal, and public safety.

D. The facility or facilities shall be permitted one day to set up and one day to dismantle the facility or facilities; those two days shall not be part of the 45-day limitation.

E. Public notice and input and a public meeting shall be required prior to a temporary use permit being issued to an interim housing facility. The sponsoring institution shall provide such notice to all property owners within 300 feet of the proposed location at least 30 days prior to the facility moving in. A second public meeting must be scheduled by the sponsoring institution, with a written invitation provided to persons attending the first public meeting, and it shall be held at least 15 days before the facility opens.

F. Other conditions that arise from the public review and from planning, police, fire, and public works review of the temporary use permit shall apply.

**18.22.060 Allowed temporary uses.**

The following types of temporary uses, activities and associated structures may be authorized, subject to specific limitations noted herein and as noted in NBMC 18.22.040, and as may be established by the director:

A. Outdoor art and craft shows and exhibits.

B. Outdoor community festivals, celebrations or grand openings.

C. Seasonal retail sales for items such as Christmas trees and pumpkins, seasonal retail sale of agricultural or horticultural products, and fireworks stands.

D. Mobile services such as veterinary services for purposes of giving shots.

E. Temporary fund raising or other civic activities.

F. Group retail sales such as swap meets, flea markets, parking lot sales, food markets, auctions, etc.

G. Temporary placement of portable building units and mobile structures, including vehicles primarily designed to facilitate direct sales of goods or merchandise from the vehicle, on public or private sites where full compliance with the design standards in the city code is impractical due to the short-term nature of the use.

H. Public TUPs and Public Training TUPs, as described in NBMC Subsections 18.22.015(D) and (E).

H I. The director may authorize additional temporary uses not listed in this subsection, when it is found that the proposed use is consistent with the other uses permitted in the applicable zoning district per Table 18.10.030, and where the use will follow the allowed provisions of this section.

**18.22.070 Exemptions.**

The following activities and structures are exempt from requirements to obtain temporary use approval:

A. A mobile home or travel trailer with adequate water and sewer service used as a dwelling while a residential building on the same lot is being constructed or while a damaged residential building is being repaired.

B. Mobile homes, residences or travel trailers used for occupancy by supervisory and security personnel on the site of an active construction project.

C. Contractor's office, storage yard, and equipment parking and servicing on the site of an active construction project.

D. Portable building units and mobile homes on public school sites or other public facilities when in full compliance with the city code, including but not limited to flood, design, and landscaping requirements.

E. Short-term residential use of a recreational vehicle subject to the following:

1. Vehicle must be properly licensed;
2. Vehicle must be parked on private property in an area developed as a parking area;
3. Vehicle must be self-sufficient in terms of utilities; and
4. Vehicle can be used as a residence for a maximum of 45 days.

F. Model homes or apartments and related real estate sales and display activities located within the subdivision or residential development to which they pertain.

G. Garage sales, moving sales, and similar activities for the sale of personal belongings when operated not more than three days in the same week and not more than twice in the same calendar year.

H. Fund raising car washes.

I. Vehicular or motorized catering such as ice cream trucks and self-contained lunch wagons which typically cater to construction sites or manufacturing facilities.

J. Activities, vendors, food trucks and other booths permitted through a special events permit.

K. Activities, vendors and booths associated with parks, open space and schools located in the POSPF zone when authorized by the managing body of such zone.

L. On-premises activities of existing businesses in compliance with outdoor storage requirements.

M. Sidewalk sales, where adequate public access is provided and a right-of-way use permit has been obtained if applicable.

N. Weekend-only warehouse sales when held not more than once a month in an existing facility.

**18.22.080 Storage containers.**

A. For the purposes of this section, “storage containers” shall mean new or used prefabricated steel enclosures intended for transportation of goods.

B. The use of temporary storage containers shall not exceed 45 days and shall adhere to the general conditions outlined in NBMC 18.22.040 except for Public TUPs and Public Training TUPs as described in NBMC Subsections 18.22.015(D) and (E). The use of temporary storage containers for Public TUPs and Public Training TUPs may be extended in the same manner as a Public TUP. The applicant shall specify the placement dates in the temporary use permit application.

C. Storage containers not removed by the end of the ~~45-day~~ approval period shall be subject to code enforcement per Chapter 1.20 NBMC.

D. Storage containers shall not be stacked, and placement shall be behind or to the side of the business or residence, as approved by the director. The storage containers shall not be visible to the motoring public or from residential neighborhoods immediately adjacent to the property where they are located unless other measures approved by the community and economic development department are employed to mitigate the visual impacts of the containers.

E. Exemptions.

1. Restrictions for storage containers do not apply to construction sites that have an active clear and grade permit or building permit.

2. A storage container that meets the building code, design standards, landscaping, engineering and any other applicable provisions of the NBMC may be permanent.
3. No permit is required when storage containers are being used for moving purposes (i.e., PODS in residential and commercial districts) if the container is on site for less than 45 days.