



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5940
September 21, 2021
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 5940: Development Code Amendment ZTR19-003 Signage (Ord. No. 21C-21 First Reading)	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Review Ordinance No. 21C-21 and set for second reading	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Director Alison Van Gorp, Deputy Director Daniel Kenny, Legal Counsel Daniel Hubbell, Planning Commission Chair
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Staff memos dated May 13, June 9 and July 28, 2021 2. Planning Commission Recommendation, dated August 13, 2021 3. Ordinance No. 21C-21 (Proposed)
CITY COUNCIL PRIORITY:	n/a

SUMMARY

The Planning Commission recommends approving the proposed code amendment to MICC 19.06.020, 19.11.140, 19.12.080 and 19.16.010 updating the code sections related to temporary signs, signs in Town Center, signs outside Town Center, and definitions, respectively. This code amendment addresses the Supreme Court ruling in *Reed v. Town of Gilbert* and subsequent, related case law. It also addresses staff recommended revisions based on issues that have arisen in permit review.

BACKGROUND

Exhibit 1 includes a memo (see page 2) from the City's contract legal counsel, Daniel Kenny, that provides a brief overview of the 2015 U.S. Supreme Court ruling in *Reed v. Town of Gilbert*. In short, the court found that the Town of Gilbert, Arizona's sign regulations were impermissible because they regulated signs based on the content of the sign (e.g. sign code categories such as "Ideological Signs", "Political Signs" and "Temporary Directional Signs" were defined based on the message that the sign conveys and each carried different regulatory provisions).

Upon review of the Mercer Island City Code (MICC), staff found that, similar to many jurisdictions across the country, the Mercer Island sign code contains some provisions that are content-based and should be revised to conform to the *Reed v. Town of Gilbert* ruling. Additionally, staff also found a few areas of the sign code where amendments were needed to clarify existing provisions or to resolve issues that had arisen during processing of applications.

CODE AMENDMENT

This code amendment was approved by City Council for legislative review as part of the 2021 docket. The proposed amendment includes the following revisions to the MICC:

- **MICC 19.06.020 - Temporary Signs**
 - Shift to define temporary signs based on type and materials rather than duration of placement.
 - Removes provisions related to political signs as they are content based (political signs will be covered by the general temporary sign provisions).
 - Prohibits signs in parks, except as permitted in the parks code (MICC 9.30.040)
 - Additional provisions added related to placement of signs – clarifying signs cannot obstruct sidewalks, sight lines, bicycle facilities, bus stops, etc. It also prohibits signs in medians, roundabouts and traffic circles.
 - Added the Commercial Office (C-O) zone the list of zones that allow temporary commercial signs (including TC, B and PBZ).
- **MICC 19.11.140 – [Town Center] Signs**
 - Adds allowance for signs along alleyways and through-block connections
 - Added allowance for a secondary wall sign on the primary frontage of a business to identify a secondary or affiliated use. This is intended to provide for signs for things like ATMs and coffee stands inside grocery stores.
 - Clarifies that the 25% limit on window signs applies to each tenant/business window area that faces the street or through-block connection. Allows for lighting of window signs during business hours.
 - Revision of the lighted sign provisions focused on objective standards around the design of the sign and lighting to limit glare and reflection of light.
- **MICC 19.12.080 - Signs [Outside Town Center]**
 - Clarifies how sign size should be measured for all sign types.
 - Adds an allowance for lighted signs as in the town center provisions
 - Adds an allowance for signs at neighborhood entrances and driveway entrances for identification and navigation purposes.
 - Adds an allowance for the replacement of existing non-conforming signs.
- **MICC 19.16.010 - Definitions**
 - Added a definition of “Public Art” and revised the definition of “Sign” to clarify that public art, including murals, is not regulated as signs.

PROCESS

City staff followed the procedures in MICC [19.15.230](#) and [19.15.260](#) related to the review of code amendment proposals that have been placed on the final docket by the City Council. On May 12, 2021, public notice was provided for the public hearing scheduled on June 16, 2021. Public notice was provided in the Mercer Island Reporter and the weekly permit bulletin. A SEPA determination of non-significance was issued by staff on August 2, 2021. Staff memos (three in total) were prepared in advance of each Planning Commission meeting summarizing the proposal and providing a staff recommendation as provided in Exhibit 1.

On May 19, 2021, the Planning Commission received a presentation on relevant case law and provided feedback for the proposed code amendment during a public meeting. On June 16, the Planning Commission held a public hearing on the revised amendment. The Public hearing was continued to the July 28 meeting. Following the hearing on June 16, the Planning Commission requested further revisions to the proposed

amendment. The Planning Commission held their final review of the proposed amendment on July 28, 2021. During this meeting, the Planning Commission completed and closed the public hearing, then deliberated on the draft code amendment, agreeing to several additional revisions. Finally, by a unanimous vote, the Planning Commission recommended the City Council approve the proposed amendment as revised. The Planning Commission's July 28 recommendation is attached as Exhibit 2. The recommended code amendment is included in Exhibit 3 as Ordinance No. 21C-21.

Included with the Planning Commission's recommendation is a suggestion that the City Council give further consideration to MICC 19.11.140(B)(11) (renumbered as subsection 13 in Exhibit 3, page 25) and whether the Design Commission should have discretion to waive any of the Town Center sign provisions if the commission finds that the design is "creative, artistic and an integral part of the architecture". The Planning Commission had split opinions on this matter and more detail on the Planning Commission's discussion of this issue is provided in their recommendation (Exhibit 2). Staff recommend retaining this section of code as-is. A handful of town center businesses, including the former New Season's Market and Caruccio's have utilized this provision in the approval of their sign designs. Staff believe the process has worked well and the flexibility allowed through the Design Commission review process benefited local businesses.

NEXT STEPS

The City Council will review the proposed code amendment at the September 21 meeting and schedule the second reading and adoption for October 5.

RECOMMENDED ACTION

Set Ordinance No. 21C-21 for second reading and adoption at the Council Meeting on October 5, 2021, or soon thereafter.