
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

To: Planning Commission

From: Alison Van Gorp, Deputy CPD Director

Date: October 21, 2021

RE: 2022 Comprehensive Plan and Development Code Amendment Preliminary Docket

SUMMARY

The City has an annual opportunity for the public to propose amendments to the Comprehensive Plan and development regulations. The proposed amendments are compiled, along with the City's proposed amendments, on a docket. The docket is preliminarily reviewed by the Planning Commission and City Council for a determination on which, if any, proposed amendments will be advanced for full review in the coming year. Amendments selected by the City Council for the "final docket" are then put on the Community Planning and Development (CPD) work program for the next calendar year.

COMPREHENSIVE PLAN DOCKET PROCESS AND CRITERIA

Docketing - Procedure:

The Mercer Island City Code (MICC) describes the formal process in section 19.15.230 MICC:

"D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan in a manner that will ensure such suggested changes will be considered by the city and will be available for review by the public. The following process will be used to create the docket:

1. Preliminary Docket Review. By September 1, the city will issue notice of the annual comprehensive plan amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan amendment process but will be held for the next eligible comprehensive plan amendment process.

a. The code official shall compile and maintain for public review a list of suggested amendments and identified deficiencies as received

throughout the year.

b. The code official shall review all complete and timely filed applications proposing amendments to the comprehensive plan or code and place these applications and suggestions on the preliminary docket along with other city-initiated amendments to the comprehensive plan or code.

c. The planning commission shall review the preliminary docket at a public meeting and make a recommendation on the preliminary docket to the city council each year.

d. The city council shall review the preliminary docket at a public meeting. By December 31, the city council shall establish the final docket based on the criteria in subsection E of this section. Once approved, the final docket defines the work plan and resource needs for the following year's comprehensive plan and code amendments."

Public notice of the opportunity to submit docket requests was provided on August 9, 2021 in the permit bulletin and on the city website, as well as on August 11, 2021 in the Mercer Island Reporter. Thirteen comprehensive plan and code amendment proposals were received from the public. CPD staff have also identified three code amendments for consideration. All sixteen proposals are described below, and the original submissions are included as Attachment 2. It should be noted that three of the docket requests were received after the published deadline of October 1 at 5:00pm. Two were received later in the evening on October 1 (at 10:56pm), and one was received on October 15. City Code (MICC 19.15.230) states that "[p]roposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan and code amendment process but will be held for the next eligible comprehensive plan and code amendment process." Thus, the request received on October 15 is not eligible for consideration for the 2022 docket.

Docketing – Criteria:

Proposed comprehensive plan and code amendments should only be recommended for the final docket if the amendment will meet the criteria in MICC 19.15.230(E):

"E. Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

1. The request has been filed in a timely manner, and either:

a. State law requires, or a decision of a court or administrative agency has directed, such a change; or

b. All of the following criteria are met:

i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan or the code;

ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;

- iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;*
- iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city's vision; and*
- v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment."*

PROPOSED AMENDMENTS

The proposed amendments are summarized in the preliminary docket (Attachment 1) and are also described below. The full amendment proposals submitted by community members are included in Attachment 2.

Proposed Amendment 1

Proposed By: Carolyn Boatsman

Comprehensive Plan or Code Section: Residential Tree Code (MICC 19.10.060(A)(2)(a))

Proposal Summary: The amendment would increase the tree retention requirement from 30% to 50% of trees with a diameter of 10 inches or greater.

Staff Comments: This proposal would likely result in additional tree retention on development sites. However, on many development sites it would also likely reduce the available space and/or limit the configuration or size of new/redeveloped homes.

Note: This request was received after the deadline, on October 1 at 10:56pm.

Proposed Amendment 2

Proposed By: Carolyn Boatsman

Comprehensive Plan or Code Section: Comprehensive Plan – Capital Facilities Element

Proposal Summary: The amendment would add a new policy requiring the adoption of impact fees to help finance implementation of the City's Pedestrian and Bicycle Facilities Plan.

Staff Comments: State law authorizes local jurisdictions to adopt certain types of impact fees to offset a portion of the cost of providing infrastructure for new development. [RCW 82.02.050 - .110](#) and [WAC 365-196-850](#) authorize jurisdictions planning under the Growth Management Act (GMA) to impose four types of impact fees: 1) transportation, 2) parks and recreation, 3) schools and 4) fire protection facilities.

Transportation impact fees must be used for "public streets and roads" that are addressed by a capital facilities plan element of a comprehensive plan. While transportation impact fees can be used for multi-modal improvements within the street right-of-way, including sidewalks and bike lanes, local jurisdictions are not authorized to adopt an impact fee that is specific to pedestrian and bicycle improvements alone.

In Mercer Island, the transportation impact fee is already being used to fund pedestrian and bicycle facilities.

This request was received after the deadline, on October 1 at 10:56pm.

Proposed Amendment 3

Proposed By: Sarah Fletcher

Comprehensive Plan or Code Section: Comprehensive Plan – Transportation Element

Proposal Summary: This amendment would recategorize two intersections from “Town Center Intersections” to “Outside of Town Center Intersections”.

Staff Comments: none.

Proposed Amendment 4

Proposed By: Herzl Ner-Tamid

Comprehensive Plan or Code Section: Business Zone Regulations (MICC 19.04.050(B))

Proposal Summary: This amendment would add public and private schools to the list of allowed uses in the Business zone.

Staff Comments: none.

Proposed Amendment 5

Proposed By: Ray Liaw

Comprehensive Plan or Code Section: Critical Areas Regulations (MICC 19.07.130(A)(2))

Proposal Summary: This amendment would allow additions to nonconforming single-family homes located in wetland or watercourse buffers, when there is no net loss to critical area functions and values.

Staff Comments: The existing code language prohibits any additions to buildings within critical area buffers, even if the addition does not expand the building footprint (e.g. adding space on a second level, above existing ground floor space). Staff have inquired with the city’s environmental/biological consultants who have conveyed that additions that do not expand the building footprint have no impacts on critical areas or buffers, so this prohibition is not necessary from the perspective of “best available science”. Staff are aware of a handful of proposed residential additions that have been stymied by this code provision.

Note: This request was received after the deadline, on October 15, and is not eligible to be considered for the this year’s docket.

Proposed Amendment 6

Proposed By: Callie Ridolfi

Comprehensive Plan or Code Section: Town Center (MICC 19.11), Multi-Family (MICC 19.03), Commercial (MICC 19.04)

Proposal Summary: This amendment would require electric sources for space heating in new construction of commercial and multi-family buildings.

Staff Comments: This provision would go beyond the energy code requirements adopted by the City with the state building code amendments in January 2021. State law allows local jurisdictions to adopt more stringent provisions than the state building codes for commercial and multi-family buildings. The City of Seattle and a few other west coast cities have adopted similar provisions recently.

Note: This amendment would be best placed in the building code (MICC Title 17). The docketing process is only open to comprehensive plan amendments and amendments to the development code.

Proposed Amendment 7

Proposed By: Daniel Thompson

Comprehensive Plan or Code Section: Residential Development Standards (MICC 19.02.020(D)(2)(a) Gross Floor Area)

Proposal Summary: This amendment would reduce ceiling height from 12 feet to 10 feet before it is counted as clerestory space at 150% of gross floor area (GFA).

Staff Comments: A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted in 2017 is planned in 2022. Once this review is complete, the City may undertake additional code amendments to improve upon the prior code amendment.

Proposed Amendment 8

Proposed By: Daniel Thompson

Comprehensive Plan or Code Section: Residential Development Standards (MICC 19.02.020(D)(2)(a) Gross Floor Area)

Proposal Summary: This amendment would include exterior covered decks in the definition of GFA and include covered porches on the first level in the calculation of GFA.

Staff Comments: A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted in 2017 is planned in 2022. Once this review is complete, the City may undertake additional code amendments to improve upon the prior code amendment.

Proposed Amendment 9

Proposed By: Daniel Thompson

Comprehensive Plan or Code Section: Residential Development Standards (MICC 19.02.040(D)(1) Garages and Carports)

Proposal Summary: This amendment would either eliminate the ability to build garages and carports within 10 feet of the property line of the front yard, or, alternatively, would eliminate this option for waterfront lots that have flipped their front and back yards per MICC 19.02.020(c)(2)(a)(iii).

Staff Comments: A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted in 2017 is planned in 2022. Once this review is complete, the City may undertake additional code amendments to improve upon the prior code amendment.

Proposed Amendment 10

Proposed By: Daniel Thompson

Comprehensive Plan or Code Section: Residential Development Standards (MICC 19.02.020(D)(3)(b) Gross Floor Area Incentives for ADUs)

Proposal Summary: This amendment would limit the GFA incentives for ADUs to lots 8,400 square feet or smaller.

Staff Comments: A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted in 2017 is planned in 2022. Once this review is complete, the City may undertake additional code amendments to improve upon the prior code amendment.

Proposed Amendment 11

Proposed By: Daniel Thompson

Comprehensive Plan or Code Section: Administrative Code (MICC 19.15.030 Land Use Review Type Classification)

Proposal Summary: This amendment would change the type classifications of several permit actions, with the effect of adding public notification or public notice requirements to these actions.

Staff Comments: A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted in 2017 is planned in 2022. Once this review is complete, the City may undertake additional code amendments to improve upon the prior code amendment.

Note: this item was previously docketed and it is scheduled for further consideration by the Planning Commission beginning in December, 2021.

Proposed Amendment 12

Proposed By: Daniel Thompson

Comprehensive Plan or Code Section: Residential Development Standards (MICC 19.02.020(G)(2)(a) and (b) Parking Requirements)

Proposal Summary: This amendment would reduce the threshold for requiring only 2 parking spaces (1 covered and 1 uncovered) from 3,000 square feet to 2,000 square feet.

Staff Comments: A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted in 2017 is planned in 2022. Once this review is complete, the City may undertake additional code amendments to improve upon the prior code amendment.

Proposed Amendment 13

Proposed By: Ted Weinberg and Carolyn Boatsman

Comprehensive Plan or Code Section: Comprehensive Plan – Transportation Element

Proposal Summary: This amendment would add two new policies requiring the Bicycle and Pedestrian Facilities Plan to be updated related to the arrival of light rail service in Mercer Island, and then at least every 8 years.

Staff Comments: The [Bicycle and Pedestrian Facilities Plan](#) was originally adopted in 1996 and last updated in 2010. It does not reflect or respond to the opening of Eastlink light rail in the next 2 years, nor other changes to the city over the last 11-12 years. It also does not include advances in the transportation field related to building safe and inviting non-motorized facilities, nor does it reflect technological advances such as electric bikes and bike and scooter sharing services.

Proposed Amendment 14

Proposed By: City Staff

Comprehensive Plan or Code Section: MICC 19.16.010 definitions, possibly other sections of the development code.

Proposal Summary: This amendment will adopt permanent regulations that remove the previous limitation on unrelated persons cohabitating.

Staff Comments: The state legislature adopted [ESSB 5235](#) in 2021 prohibiting cities from regulating or limiting the number of unrelated people who may occupy a house or other dwelling unit. The legislation required a minor change to the city code, which was made via an interim ordinance in September. The City Council also adopted at that time a 12-month work plan for further evaluating the state legislation and the city code to determine the best approach for complying. The City will need to adopt permanent regulations before the interim regulations expire in September 2022.

Note: this item is necessary to replace the interim regulations adopted by City Council in 2021.

Proposed Amendment 15

Proposed By: City Staff

Comprehensive Plan or Code Section: MICC 19.16.010 definitions, possibly other sections of the development code.

Proposal Summary: This amendment will adopt permanent regulations that allow up to eight people to be served in Adult Family Homes.

Staff Comments: The state legislature adopted [ESHB 1023](#) in 2020, providing that the Department of Social and Health Services, in certain circumstances, can approve an adult family home to provide services to up to eight adults (previously, the limit was six adults). The legislation required a minor change to the city code, which was made via an interim ordinance in September. The City Council also adopted at that time a 12-month work plan for further evaluating the state legislation and the city code to determine the best

approach for complying. The City will need to adopt permanent regulations before the interim regulations expire in September 2022.

Note: this item is necessary to replace the interim regulations adopted by City Council in 2021.

Proposed Amendment 16

Proposed By: City Staff

Comprehensive Plan or Code Section: MICC 19.16.010 definitions, possibly other sections of the development code.

Proposal Summary: This amendment will adopt permanent regulations allowing transitional and permanent supportive housing in zones where residential homes or hotels are allowed.

Staff Comments: The state legislature adopted [E2SHB 1220](#) in 2021, to encourage cities to accommodate transitional housing, emergency shelters, and permanent supportive housing. The bill forbids cities from prohibiting transitional or permanent supportive housing in residential zones or zones where hotels are allowed. The bill also forbids cities from prohibiting indoor emergency shelters and indoor emergency housing in any zones in which hotels are allowed (except for cities that authorize indoor emergency shelters/housing in a majority of zones within a one-mile proximity to transit). Finally, any regulations regarding occupancy, spacing, and intensity of use requirements regarding the four types of housing listed above must be reasonable and designed to protect public health and safety. Further, such restrictions cannot be used to prevent the siting of a “sufficient number necessary to meet” Mercer Island’s projected need for such housing and shelter.

The legislation required a minor change to the city code, which was made via an interim ordinance in September. The City Council also adopted at that time a 12-month work plan for further evaluating the state legislation and the city code to determine the best approach for complying. The City will need to adopt permanent regulations before the interim regulations expire in September 2022.

Note: this item is necessary to replace the interim regulations adopted by City Council in 2021.

RECOMMENDATION

The Planning Commission will need to prepare a recommendation to the City Council on a preliminary docket of Comprehensive Plan and development code amendments.

1. Review the preliminary docket of proposed Comprehensive Plan and development code amendments.
2. Make a determination on whether each proposed amendment should be included in the recommended preliminary docket using the criteria from MICC 19.15.230 (E), provided above. Please carefully consider the workload for CPD staff and the Planning Commission related to the recommended items, especially in light of the items already planned in 2022 (discussed below).

The 2022 work plan for CPD and the Planning Commission is already quite full, and includes the following items:

- Continuing work on items docketed in 2021:

- Transportation, Park and Fire Impact Fee rate studies and code amendments
- Proposed amendment related to lighting and noise concerns
- Proposed amendment related to permit types and noticing requirements
- Commencing the required periodic update to the Comprehensive Plan due for completion by June 2024. Significant work will be required on the Housing Element as well as a new Economic Development Element.
- Completion of the Residential Development Standards analysis which may result in code amendments.

While not all of the items on this work plan require Planning Commission review, this work plan nevertheless represents a significant amount of CPD staff time, in support of Planning Commission, City Council and other processes. Staff anticipate the periodic comprehensive plan update will require several meetings at a minimum, and this item alone could easily take up at least half of the commission's bimonthly meetings in 2022.

Please be prepared to consider and make a recommendation to the City Council on the Planning Commission's preliminary docket of 2021 Comprehensive Plan amendments at the October 27, 2021 meeting.

ATTACHMENTS

1. Preliminary Docket
2. Proposed amendments Nos. 1-13, submitted by community members