



TO: Mercer Island Planning Commission Members

FROM: Bio Park, City Attorney

DATE: September 26, 2025

RE: Quasi Judicial Proceeding of Site Specific Rezone Application

Planning Commissioners:

At the September 16, 2025 City Council Meeting, the City Council authorized the City Manager to pursue a rezone of the City Hall and Public Works parcels ("Parcels"). The rezone process includes review and recommendation by the Planning Commission ("PC"). The purpose of this memo is to provide you with a basic explanation and a simple list of "dos and don'ts" in preparation of the rezone application review.

The Public Works Department submitted an application last Wednesday (9/17/25) to rezone the Parcels to Public Institution (PI) based on the site layout of the Public Safety and Maintenance Facility. The application will be processed by CPD, and will be reviewed by the PC. The PC will hold a public hearing, after which, it will send a recommendation to the City Council for final review and decision.

This rezone application is "site specific," as opposed to "area wide," because it involves a small number of contiguous parcels that are all owned by the City. Unlike area wide rezones, which are legislative, site specific rezones must be reviewed and decided through a quasi-judicial proceeding.

Quasi-judicial proceedings are "court-like" or "almost judicial" proceedings where the decision maker determines the legal rights, duties, or privileges of specific parties in a hearing or other contested proceedings. In this case, the decision makers will be the PC and City Council, who will determine whether the City, as applicant and owner of the Parcels, has the legal right to have the Parcels rezoned.

The PC will review and issue a recommendation on the rezone application as a quasi-judicial body. And as a quasi-judicial body, the PC will be subject to the Appearance of Fairness Doctrine ("Appearance of Fairness"). In a nutshell, Appearance of Fairness requires the proceedings to be conducted in ways that are fair and unbiased both in fact as well as

appearance. It prohibits the decision maker from prejudging the decision; being biased against a party; having a personal conflict of interest; and being partial in any other way.

Another very important aspect of Appearance of Fairness is the restriction on ex parte communications. Under RCW 42.36.060, during the pendency of a quasi-judicial proceeding, no member of a decision making body may engage in ex parte (one sided only) communications with opponents or proponents with respect to the proposal which is the subject of the proceeding.

Ex parte communication covers verbal and all forms of written communication. This restriction is to ensure that the recommendation issued by the PC as a quasi-judicial body is based solely on the evidence in the record and applicable legal criteria for granting or denying a rezone. Engaging in ex parte communication in violation of Appearance of Fairness may result in disqualification from participating in the proceeding, and invalidation of the final decision of the City's rezone application.

The following is a list of recommendations to comply with Appearance of Fairness and to avoid ex parte communications:

- Do not initiate communications substantively discussing the rezone of the Parcels with anyone, including the public, staff and City Manager, Councilmembers, and other PC members.
- If approached by someone wishing to discuss the rezone, decline and explain to them that because the rezone is site specific and quasi-judicial, you are prohibited by law from discussing it outside the formal proceeding. Direct them to the City Clerk for information on how they can participate in the proceeding.
- Avoid reading social media postings, news articles, editorials, or other materials about the rezone of the Parcels, unless they are part of the record. The record will be provided once the rezone application comes before the PC.
- If, during the pendency of the rezone application, you receive any email, text, letter or other form of written communication that includes substantive mention of the rezone, forward it to the City Clerk, so it can be made part of the record.
- There are exceptions that may excuse an ex parte communication should it occur unavoidably. Should it occur, please inform me.

I will be supplementing this memo, if necessary, with more information and additional best practices recommendations as the application makes its way to the PC. But for now, please be cognizant of, and focus on avoiding ex parte communications.

If you have procedural questions about the quasi-judicial proceeding covered in this memo, please contact me. Thank you very much.