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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

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## PLANNING COMMISSION

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**To:** Planning Commission

**From:** Alison Van Gorp, Deputy CPD Director

**Date:** November 12, 2020

**RE:** 2020 Comprehensive Plan and Development Code Amendment Preliminary Docket

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### 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.

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### 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 was provided on August 19, 2020 in the newspaper as well as the permit bulletin. However, it was later discovered that a staff error omitted the words "code amendment" from the public notice. The City Council later took action to extend the deadline for amendment proposals to November 2, 2020 and additional public notice was given for the new deadline. Eleven Comprehensive Plan and code amendment proposals were received from the public prior to the deadline. CPD staff have also identified five comprehensive plan and code amendments for consideration. All sixteen proposals are discussed below.

#### Docketing – Criteria:

Proposed comprehensive plan and code amendments should only be placed on the docket if the amendment will meet the following criteria:

*"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 Attachment 1, including the amendments proposed by CPD staff. The full amendment proposals submitted by community members are included in Attachment 2.

### Proposed Amendment 1

**Proposed By:** City staff

**Comprehensive Plan or Code Section:** Comprehensive Plan/Land Use Element/Land Use Plan Map

**Proposal Summary:** This amendment would correct an error in the City's Land Use Plan Map. One of the land use designations listed in Sect. VII of the Land Use Element is "Neighborhood Business", for which the implementing zone is "PBZ". The area currently zoned PBZ, and previously designated as Neighborhood Business, is erroneously identified as "Commercial Office" on the current Land Use Plan Map.

**Context and Staff Comments:** A scrivener's error resulted in the south-end shopping center being mis-designated in the Land Use Plan Map. This is a simple correction to update the map and re-instate the Neighborhood Business designation. This is a necessary correction that will require a limited amount of staff, Planning Commission and City Council resources.

### Proposed Amendment 2

**Proposed By:** City staff

**Comprehensive Plan or Code Section:**

- Comprehensive Plan/Land Use Element, Section V. Land Use Policies, Town Center
- Town Center Development and Design Standards (MICC 19.11)

**Proposal Summary:** This item is a placeholder for any code or comprehensive plan amendments that may be proposed related to the Town Center development moratorium.

**Context and Staff Comments:** In June, the City Council adopted an interim ordinance instituting a development moratorium in the south portion of the Town Center. The Council would like to analyze the city's requirement for retail frontage in the town center and determine whether amendments to the Town Center development regulations or the Comprehensive plan are needed to preserve and promote retail and small businesses in the Town Center. This analysis and potential amendments are required to resolve the existing interim ordinance, and will require substantial staff and consultant resources. A budget proposal is under consideration to support the consultant work. Any Comprehensive Plan or code amendments that are undertaken will also require Planning Commission and City Council resources.

### Proposed Amendment 3

**Proposed By:** City staff

**Comprehensive Plan or Code Section:**

- Comprehensive Plan/Land Use, Transportation and Capital Facilities Elements

- Transportation, Park and Fire Impact Fees (MICC 19.17, MICC 19.18, New chapter Title 19)

**Proposal Summary:** The city intends to prepare new rate studies and update the Transportation and Park Impact Fees, and establish a Fire Impact Fee. This is a placeholder for the related code amendments.

**Context and Staff Comments:** Transportation and park impact fees were first adopted in 2015. The city would like to update the rate studies for these fees and then amend the code to update the fees based on the findings of the rate studies. In addition, the city is also planning to adopt a fire impact fee to help offset the costs of additional capacity to provide fire services for new development. This analysis and code amendments will require substantial staff and consultant resources. A budget proposal is under consideration to support the consultant work. The code amendments will also require Planning Commission and City Council resources.

#### Proposed Amendment 4

**Proposed By:** City staff

**Comprehensive Plan or Code Section:** Sign Regulations (MICC 19.06.020, MICC 19.11.140, and MICC 19.12.080)

**Proposal Summary:** Due to changes in case law, the City is now required to update the Sign Code.

**Context and Staff Comments:** This is an important code amendment that is needed to align city regulations with recent changes in case law. In 2015, the Supreme court ruling in *Reed v. Town of Gilbert* restricted the ability to regulate signs related to First Amendment concerns. The City needs to amend the sign regulations so they are not based on content of the sign. Consideration of this code amendment was initiated with the Planning Commission in early 2020 but was postponed due to the COVID-19 pandemic. Re-starting the review process in 2021 will require moderate staff, Planning Commission and City Council resources.

#### Proposed Amendment 5

**Proposed By:** City staff

**Comprehensive Plan or Code Section:** Wireless and Small Cell Regulations (MICC 19.06.040)

**Proposal Summary:** Due to recently promulgated FCC regulations, staff are required to update the City Code related to wireless and small cell facilities.

**Context and Staff Comments:** Federal regulations now pre-empt many local regulations related to wireless and small cell facilities. Local governments are now limited to regulating mostly aesthetics and the regulations may not “effectively prohibit” wireless facilities. The city has had an interim ordinance in place governing these issues and permanent regulations now need to be developed and implemented. The proposed code amendment will resolve the existing interim ordinance, align city regulations with FCC rules, add definitions of new terms and make additional clarifying updates to the code. Consideration of this code amendment was by the Planning Commission was underway in early 2020 but was postponed due to the COVID-19 pandemic. Re-starting the review process in 2021 will require moderate staff, Planning Commission and City Council resources.

#### Proposed Amendment 6

**Proposed By:** Matthew Goldbach

**Comprehensive Plan or Code Section:** Implementation of Comprehensive Plan Amendments (MICC 19.15.230(I))

**Proposal Summary:** The amendment would repeal 19.15.230(I) to ensure the code does not condone a future failure of the City to ensure that Comprehensive Plan policies are implemented by consistent development regulations.

**Context and Staff Comments:** Mr. Goldbach’s application refers to Growth Management Hearings Board (GMHB) No. 18-3-0010, *Coen v. City of Mercer Island*. The Petitioner in this case made a similar argument to Mr. Goldbach’s suggestion; however, the GMHB did not find that *Coen* had met his burden of proof that MICC 19.15.230(I) purportedly violates the goals and requirements of the GMA. To the contrary, MICC 19.15.230(I) does not permit the City to violate the GMA nor does it automatically result in GMA violations. As briefed in the *Coen* proceeding, neither the Growth Management Act nor Chapter 365-196 WAC **require** that comprehensive plan amendments and development plans be adopted concurrently. Indeed, concurrent adoption of development regulations may be unnecessary if existing regulations are consistent and continue to implement the comprehensive plan. Finally, the wording “within such time as reasonably practicable” allows the City the flexibility to enact development regulations with sufficient citizen participation and meaningful input in implementing development regulations, which is a GMA goal pursuant to RCW 36.70A.020. Therefore, staff believes the suggested code change is unnecessary. However, if this amendment were to be placed on the final docket, staff, Planning Commission and City Council resources would be required to amend the code.

Proposed Amendment 7

**Proposed By:** Matthew Goldbach

**Comprehensive Plan or Code Section:** Condition Use Permit Regulations (MICC 19.06.110(A)(5))

**Proposal Summary:** This amendment would add a new subsection to the code clarifying that conditional use permits (CUPs) are only applicable to the property for which it was granted (regardless of whether additional property is added to that property in the future).

**Context and Staff Comments:** Under MICC 19.15.060, the City’s Code official has authority to require “all information deemed necessary by the code official...” as a part of applications for development approval. The City’s application form requires the applicant to provide a Tax Parcel Number. Further, MICC 19.15.060 (A)(2) requires a site plan at application submittal and MICC 19.15.060(A)(7) requires a legal description of the site. This information will create an administrative record establishing the boundaries of the property to which the CUP, if granted, will apply. Thus, staff believes this suggestion is unnecessary, as the City’s application and approval procedures already make it clear that a Conditional Use Permit is only applicable to the property for which it was originally granted. However, if this amendment were to be placed on the final docket, staff, Planning Commission and City Council resources would be required to amend the code.

Proposed Amendment 8

**Proposed By:** Matthew Goldbach

**Comprehensive Plan or Code Section:** Comprehensive Plan/Land Use Element/Land Use Plan Map

**Proposal Summary:** Replace the incorrect City Land Use Map to correctly identify the south-end shopping center as “PBZ” or Neighborhood Business.

**Context and Staff Comments:** The City supports the content of this suggestion but is recommending not advancing it because a duplicate item has been suggested by the city (Proposed Amendment 1, above).

#### Proposed Amendment 9

**Proposed By:** Carolyn Boatsman

**Comprehensive Plan or Code Section:** Nuisance Control Code (MICC 8.24)

**Proposal Summary:** Make amendments to the nuisance code to : 1) limit commercial landscaping operations using power tools to the same hours as construction noise from work under city permit, and 2) require that residential use of spot lighting be directed toward the owner’s property.

**Context and Staff Comments:** The City receives a modest number of code compliance requests each year related to landscaping related noise (leaf blowers, etc.) and lighting concerns in residential neighborhoods. These issues are not currently regulated in the city code, and city staff are largely unable to assist residents with these concerns. Even if these issues were regulated, however, the Code Compliance Officer position has been reduced from full-time to half-time and taken in the big picture, these are lower priority issues compared issues like building without permits, damage to critical areas, and unauthorized tree removal, which are prioritized for enforcement action. Finally, amendments of this type may be better considered in a more comprehensive update to the nuisance and animal codes in the future. However, if this amendment were to be placed on the final docket, staff, Planning Commission and City Council resources would be required to amend the code.

#### Proposed Amendment 10

**Proposed By:** Carolyn Boatsman

**Comprehensive Plan or Code Section:** Comprehensive Plan

**Proposal Summary:** Adopt goals and policies related to the prioritization of the use of the public right of way, based on the public good.

**Context and Staff Comments:** Ms. Boatsman did not specify her rationale for requesting this amendment. She states that “uses that should, at the least, be allowed and included in the priority are roads and appurtenances, utility installation, residential parking, and environmental benefit”. In later correspondence, Ms. Boatsman asked that “residential parking” be changed to “temporary parking”. The public right of way is a critical, though limited resource. Multiple demands are often placed on a given stretch of right of way – for the uses specified by Ms. Boatsman, and more. The prioritization and balancing of needs related to these multiple uses is currently determined in a site-specific manner during development review. City staff including planners, engineers, the arborist and fire marshal coordinate their input and code requirements to optimize the use of the right of way any time it is impacted by a development proposal. It is unclear how additional Comprehensive Plan goals or policies could improve this process, and in fact having a comprehensive prioritization that is not adaptable to the context and intricacies of each proposed improvement in the right of way may actually hinder this optimization process. Staff are not in favor of creating an environment of competing priorities. However, if this amendment were to be placed on the final docket, staff, Planning Commission and City Council resources would be required to amend the code.

Proposed Amendment 11

**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).

**Context and Staff Comments:** A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted three years ago is planned in 2022. Once this review is complete, the city may undertake additional code amendments to improve upon the prior code amendment. Staff does not recommend advancing this amendment at this time; it could be reconsidered in a future year when the review of the RDS and administrative code amendments is complete.

Proposed Amendment 12

**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.

**Context and Staff Comments:** A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted three years ago is planned in 2022. Once this review is complete, the city may undertake additional code amendments to improve upon the prior code amendment. Staff does not recommend advancing this amendment at this time; it could be reconsidered in a future year when the review of the RDS and administrative code amendments is complete.

Proposed Amendment 13

**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).

**Context and Staff Comments:** A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted three years ago is planned in 2022. Once this review is complete, the city may undertake additional code amendments to improve upon the prior code amendment. Staff does not recommend advancing this amendment at this time; it could be reconsidered in a future year when the review of the RDS and administrative code amendments is complete.

Proposed Amendment 14

**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.

**Context and Staff Comments:** A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted three years ago is planned in 2022. Once this review is complete, the city may undertake additional code amendments to improve upon the prior code amendment. Staff does not recommend advancing this amendment at this time; it could be reconsidered in a future year when the review of the RDS and administrative code amendments is complete.

Proposed Amendment 15

**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.

**Context and Staff Comments:** A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted three years ago is planned in 2022. Once this review is complete, the city may undertake additional code amendments to improve upon the prior code amendment. Staff does not recommend advancing this amendment at this time; it could be reconsidered in a future year when the review of the RDS and administrative code amendments is complete.

Proposed Amendment 16

**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.

**Context and Staff Comments:** A full review and report on the effect and impact of the Residential Development Standards and administrative code amendments that were adopted three years ago is planned in 2022. Once this review is complete, the city may undertake additional code amendments to improve upon the prior code amendment. Staff does not recommend advancing this amendment at this



time; it could be reconsidered in a future year when the review of the RDS and administrative code amendments is complete.

## **RECOMMENDATION**

The preliminary 2021 work plan for CPD and the Planning Commission is significantly full, with the following tentatively scheduled items:

- Town Center Retail Analysis and potential code and Comprehensive Plan amendments
- Ongoing regional growth strategy and growth target review
- Sign code amendment
- Wireless/Small cell code amendment
- Transportation, Park and Fire Impact Fee rate studies and 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. CPD staff recommends that no additional comprehensive plan or code amendments beyond those proposed by city staff be docketed in 2021 as the City does not have adequate staff and budgetary resources to support additional work items.

## **NEXT STEPS**

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 (F), provided above. Please consider carefully the workload for CPD staff and the planning commission related to the recommended items, given the preliminary CPD and Planning Commission work plan.

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 November 12, 2020 meeting.

## **ATTACHMENTS**

1. Preliminary Docket
2. Proposed amendments Nos. 6-16, submitted by community members