

(Date)

To: Mercer Island City Council

From: Mercer Island Planning Commission

RE: Planning Commission comments and recommendations regarding the docket process

Members of the Planning Commission have taken note of possible inconsistencies in the criteria for docketing citizen-proposed amendments to the Mercer Island Comprehensive Plan and the development code. This letter summarizes our concerns and recommends solutions.

We have concerns in three areas: 1) appropriate docketing criteria for the use of the Commission and Council; 2) whether existing criteria are appropriate; 3) confusing code language; and 4) whether criteria are appropriately used during deliberations regarding proposed amendments.

We are guided in our recommendations by the City's commitment to citizen participation as stated in the Comprehensive Plan as well as the Growth Management Act's (GMA) requirements regarding public involvement as it pertains to the docket.

The docket process can be a powerful tool for citizen input because it requires local governments to give preliminary consideration to citizen-proposed amendments to the Comprehensive Plan and development code and to respond. Unlike typical public input, citizens can expect official consideration of the possible value of a proposed amendment, acceptance or rejection of further consideration, and a basic explanation for rejection, if that is the outcome.

The GMA doesn't provide criteria for Commissioners or the Council to use in deciding which proposed amendments to docket, stating only that public involvement should be "early and continuous" (RCW 36.70A.140) and that "once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the Comprehensive Plan amendment process" (WAC 365-196-640(6)(d)).

It's clear that cities have the authority to accept or reject amendments for the docket. The criteria used to make these decisions, however, should be substantial and logical, in keeping with the GMA.

Notes:

1. City code governing docketing and approval of Comprehensive Plan and development code amendments is found in MICC 19.15.230, 240, 250, and 260.
2. State law and regulations referenced for this letter are in RCW 36.70A.130, 140, and 470 and WAC 365-196-640(6).

**Our concerns and recommendations:**

**Concern 1: The City Code does not specify criteria for the Commission to use in recommending to the Council amendments for inclusion in the final docket. The Commission and Council, historically, have used the same criteria, which can be problematic.**

Section 230.D.1.c requires the Commission to review the preliminary docket and make a recommendation to the Council for the final docket, yet the code does not specify criteria on which the Commission must base its recommendations. We have used, on staff's recommendation, the criteria in Section 230.E. for our deliberations. These criteria are, however, specified only for use by the Council (230.D.1.d). They are problematic for the Commission because two of the criteria (E.1.b.ii. and iii.) consider whether the City can provide resources, staff, and budget or whether the amendment can be addressed in an existing work program item, matters which are not in the purview of the Commission. Attempting to apply these criteria without expertise could cause the Commission to discourage Council approval of docket items. This could contribute to a negative reception to an amendment at the Council, which seems unfair for the proponent.

The Commission's specialty is knowledge and guidance regarding the Comprehensive Plan and development regulations, rather than priorities, work plans, and resources. Further, the Commission does not know how the Council's priorities and work plans might change upon their consideration of proposed amendments.

**Recommendation 1: Consider establishing different criteria for the Commission and the Council for use in evaluating proposed amendments. It would be helpful if criteria for the Commission were to emphasize the potential of a proposal to further the goals of the Comprehensive Plan and development code, rather than priorities and budget.**

**Concern 2: Criteria may discourage docketing of matters that might be appropriate for consideration.**

**Concern 2a: Criterion 230.E.1.b.iii. requires that "The proposal not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;"**

Folding an amendment that otherwise meets criteria into an ongoing work program or holding it over for an anticipated work program item would seem to be a more logical step, rather than rejection. We have noticed that schedules shift and work program items that seemed imminent get moved back, so that the ongoing work program item that was the reason for rejecting a proposed amendment, does not necessarily occur as scheduled. The Council has, per city code and the GMA, the authority to hold proposed amendments over for future review. Doing so might be more orderly than the prospect of a proponent resubmitting the amendment year after year.

It is typically noted, when amendments are rejected for this reason, that the proponent can bring the amendment to the Council at the time that a work program item is in progress. That experience of doing so, is, however, not comparable. During the docket process, a proponent will receive an up or down on docketing and, if docketed, an up or down on the amendment. During regular public input, a citizen may propose amendments during a public meeting or via mail or Let's Talk, and may not receive

a reply at all. For this reason and because of the type of public input envisioned by the GMA, it is best to docket or hold over proposed amendments that otherwise meet criteria.

It is also important to note that, when work program items actually are initiated, they are typically limited in scope. For example, the Comprehensive Plan amendments currently under consideration are “surgical” rather than comprehensive. There is a good chance that a proposed amendment that was rejected from the docket because of an upcoming work program item will not be appropriate to the scope of said work program item when it comes due.

The update of single sections of the Comprehensive Plan or code might be seen as an inefficient use of staff time when compared to more comprehensive updates. It may be beneficial, therefore, and more orderly for Mercer Island to hold over acceptable amendment proposals, as needed, for updates at regular intervals. A decision could be made as to whether to consider the amendment in the upcoming year or during regularly scheduled updates at, say, four or eight year intervals. This appears to be King County’s approach. It avoids the rejection of otherwise beneficial amendments.

**Recommendation 2a: Delete criterion iii. respecting that there are any number of ways for the Council to schedule or hold over proposed amendments that meets criteria.**

**Concern 2b: Section E.1.b.v. excludes proposals and outcomes that have been considered in the past three years unless there has been a change in circumstances.**

A new approach to the same issue may be important and change receptivity. It’s a high bar to require changed circumstances in the City in order to take another crack at an issue. Valuable time may be lost to address an issue of some urgency. It would be safer to simply consider the proposed amendment on its merits and give it thumbs up or down.

**Recommendation 2b: Consider amending criterion v. to allow for a different approach to an issue even if there is not much of a change in circumstances in the City.**

**Concern 3: The code is confusing.**

MICC 19.15.230, 240, 250, and 260 all address Comprehensive Plan and code amendments. While it may be possible to reconcile these code sections, it is difficult, at best. We will not make specific recommendations regarding the organization and presentation of the code, but will rather point out the areas of difficulty or confusion. We recommend that staff review these code sections and prepare code amendments for ease of understanding and to incorporate the above changes. The following should be addressed:

- 1) It seems unclear when Comprehensive Plan amendments or code amendments or both are being treated by the code;
- 2) Section 230 is titled “Comprehensive Plan amendments and docketing procedures”, but halfway through it begins to include code amendments in the docketing requirements and criteria, yet by the time the decision criteria are presented, the code again addresses only Comprehensive Plan amendments;

- 3) While Section 230 pertains at times to both the Comprehensive Plan and the development code, Section 250 is dedicated to the development code only; Yet criteria for final approval of code amendments in 250 differs from decision criteria in 230.F.; and
- 4) Criteria for making decisions may be unclear as to whether:
  - a) they are for Comprehensive Plan amendments or code amendments or both;
  - b) they are for use of the Planning Commission or the City Council or both;
  - c) they are for use in evaluating the preliminary docket, approving the final docket, approving the proposed amendment, or some combination of the preceding;
  - d) they pertain to specific properties only.

**Concern 4: We tend to try to decide the question before docketing.**

In our discussions regarding proposed amendments, we tend to focus on whether individual members favor or don't favor of the proposal, for reasons which may be outside of the docketing criteria. In other words, we tend to try to decide the question prior to docketing. The criteria for docketing, in contrast, seem to direct the City to consider whether the topic is worth examining and whether we have the resources to do so. They seem to direct us to decide whether the proposal raises an important question that it is appropriate for the Comprehensive Plan or code to address. Were a proposed amendment to be docketed, we would, during our investigation, obtain the information to decide if the amendment should be approved, but we don't have that information during the brief consideration given to docketing. It seems important that we should try to identify worthy investigations rather than try to decide if we're in favor of the amendment. It would focus our deliberations to the criteria if we were to document which criteria are met.

**Recommendation 4: The Commission should document which criteria favor or do not favor a proposed amendment in making a decision regarding docketing.**

We hope that these comments and recommendations inspire improvement in the important annual docketing process. Thank you for your consideration.