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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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## PLANNING COMMISSION

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**To:** Planning Commission

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

**Date:** January 14, 2020

**RE:** ZTR21-001 Goldbach I Code Amendment (Comprehensive Plan Implementation)

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### SUMMARY

The proposed code amendment repeals MICC 19.15.230(I), removing from the city code direction on how the Comprehensive Plan is to be implemented. Instead, this will be governed by state statute.

### BACKGROUND

Matthew Goldbach suggested through the annual docketing process and the City Council placed on the final docket a proposed code amendment repealing MICC 19.15.230(I), as outlined in Attachment 1. The effect of this code amendment is to remove reference to Comprehensive Plan implementation from the city code; these procedures would instead be governed by state regulations under the Growth Management Act (e.g. [Chapter 365-196 WAC](#)).

Mr. Goldbach stated in his docket application that this code amendment would remove the risk that the city code “might fail to comply with the GMA and might condone a future failure of the City to ensure that Comprehensive Plan policies are implemented by consistent development regulations”.

When the adoption of MICC 19.15.230(I) was appealed to the Growth Management Hearings Board (Board), the Board decided that the adoption of code by the City Council was legal. The Board, however, cautioned that even though the code is legal, implementation of the code in certain circumstances could result in a GMA violation.

The City agrees that state statute and regulations provide sufficient guidance to properly implement Comprehensive Plan amendments and to adopt consistent development regulations. Consequently, there is no need to keep MICC 19.15.230(I) in the city code in light of the Board’s caution.

The Mercer Island City Code specifies the following decision criteria for code amendments (MICC 19.15.250 (D)), which should be used to evaluate the proposed amendment:

*Criteria.* The [city](#) may approve or approve with modifications a proposal to amend this code only if:

1. The amendment is consistent with the comprehensive plan; and

2. The amendment bears a substantial relation to the public health, safety, or welfare;  
and
3. The amendment is in the best interest of the community as a whole.

City staff believe this proposal meets all three criteria and recommend adopting the proposed amendment.

#### **NEXT STEPS**

Please review the attached proposed code amendment. At the January 20 meeting the Commission will discuss the proposal and provide feedback to staff on any revisions. A Public Hearing is scheduled during the Planning Commission's February 17 meeting. After hearing public comments on the proposal, the Commission should make a recommendation to the City Council.

#### **ATTACHMENTS**

1. Proposed amendment to MICC 19.15.230

## Attachment 1

### ZRT21-001 – Proposed Code Amendment

#### 19.15.230 Comprehensive plan amendments and docketing procedures.

A. *Purpose.* The Growth Management Act (GMA), Chapter [36.70A](#) RCW, requires that the [city](#) include within its [development](#) regulations a procedure for any interested [person](#) to suggest plan amendments. The suggested amendments will be docketed for consideration. The purpose of this section is to establish a procedure for amending the [city](#)'s comprehensive plan text and maps. Amendments to the comprehensive plan are the means by which the [city](#) may modify its 20-year plan for land use, [development](#) or growth policies in response to changing [city](#) needs or circumstances. All plan amendments will be reviewed in accordance with the GMA and other applicable state laws, the countywide planning policies, the adopted [city](#) of Mercer Island comprehensive plan, and applicable capital facilities plans.

B. *Application Requirements.* Proposed amendment requests may be submitted by the public, [city](#) manager, [city department](#) directors or by majority vote of the [city](#) council, planning commission or other [city](#) board or commission. Proposed amendments submitted by the public shall be accompanied by application forms required by this title and by the [code official](#) and the filing fees established by resolution. All application forms for amendments to the comprehensive plan shall include a detailed description of the proposed amendment in nontechnical terms.

C. *Frequency of Amendments.*

1. *Periodic Review.* The comprehensive plan shall be subject to continuing review and evaluation by the [city](#) ("periodic review"). The [city](#) shall take legislative action to review and, if needed, revise its comprehensive plan to ensure the plan complies with the requirements of the GMA according to the deadlines established in RCW [36.70A.130](#).

2. *Annual Amendment Cycle.* Updates, proposed amendments, or revisions to the comprehensive plan may be considered by the [city](#) council no more frequently than once every calendar year as established in this section (the "annual amendment cycle"). During a year when periodic review of the comprehensive plan is required under RCW [36.70A.130](#), the annual amendment cycle and the periodic review shall be combined.

3. More frequent amendments may be allowed under the circumstances set forth within RCW [36.70A.130\(2\)](#). Amendments processed outside of the annual amendment cycle under RCW [36.70A.130\(2\)](#) may be initiated by action of the [city](#) council. The [city](#) council shall specify the scope of the amendment, identify the projected completion date, and identify and, if necessary, fund resources necessary to accomplish the work. Amendments allowed to be processed outside of the annual amendment cycle are not subject to the docketing process outlined within subsection [D](#) of this section.

D. *Docketing of Proposed Amendments.* For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or code in a manner that will ensure such suggested changes will be considered by the [city](#) and will be available for review on the [city](#)'s website 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 and code 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 and code amendment process but will be held for the next eligible comprehensive plan and code amendment process.

- a. The [code official](#) shall compile and post 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 and suggestions 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.

2. *Final Docket Review.*

- a. Placement on the final docket does not mean a proposed amendment will be approved. The purpose of the final docket is to allow for further analysis and consideration by the [city](#).
- b. All items on the final docket shall be considered concurrently so that the cumulative effect of the various proposals can be ascertained. Proposed amendments may be considered at separate meetings or hearings, so long as the final action taken considers the cumulative effect of all proposed amendments to the comprehensive plan.
- c. The [code official](#) shall review and assess the items placed on the final docket and prepare recommendations for each proposed amendment. The [code official](#) shall be responsible for developing an environmental review of the combined impacts of all proposed amendments on the final docket, except that [applicants](#) seeking a site-specific amendment shall be responsible for submittal of a SEPA environmental checklist and supporting information. The [applicant](#) will need to submit SEPA and any other accompanying legislative actions such as a rezone or a code amendment at this time. The [code official](#) may require an [applicant](#) to pay for peer review and/or additional resources needed to review the proposal. The [code official](#) shall set a date for consideration of the final docket by the planning commission and timely transmit the staff recommendation prior to the scheduled date.
- d. The planning commission shall review the proposed amendments contained in the final docket based on the criteria set forth in subsection [\(F\)\(1\)](#) of this section. The planning commission shall hold at least one public hearing on the proposed amendments. The planning commission shall make a recommendation on the proposed amendments and transmit the recommendation to the [city](#) council.

e. After issuance of the planning commission's recommendation, the code official shall set a date for consideration of the final docket by the city council. The city council shall review the proposed amendments taking into consideration the recommendations of the planning commission and code official. The city council may deny, approve, or modify the planning commission's recommendations consistent with the criteria set forth in subsection (F)(1) of this section. The city council's establishment of a final docket of proposed amendments is not appealable.

f. The planning commission and the city council may hold additional public hearings, meetings, or workshops as warranted by the proposed amendments.

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.

F. *Decision Criteria.* Decisions to amend the comprehensive plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria.

1. The amendment is consistent with the Growth Management Act, the countywide planning policies, and the other provisions of the comprehensive plan and city policies; and:

- a. There exists obvious technical error in the information contained in the comprehensive plan; or
  - b. The amendment addresses changing circumstances of the city as a whole.
2. If the amendment is directed at a specific property, the following additional findings shall be determined:
  - a. The amendment is compatible with the adjacent land use and development pattern;
  - b. The property is suitable for development in conformance with the standards under the potential zoning; and
  - c. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

G. *Combined Comprehensive Plan Amendment and Rezone.* In cases where both a comprehensive plan amendment and a rezone are required, both shall be considered together, and all public notice must reflect the dual nature of the request.

H. *Expansion of Land Use Map Amendment.* The city may propose to expand the geographic scope of an amendment to the comprehensive plan land use map to allow for consideration of adjacent property, similarly situated property, or area-wide impacts. The following criteria shall be used in determining whether to expand the geographic scope of a proposed land use map amendment:

1. The effect of the proposed amendment on the surrounding area or city;
2. The effect of the proposed amendment on the land use and circulation pattern of the surrounding area or city; and
3. The effect of the proposed amendment on the future development of the surrounding area or city.

~~I. *Implementation of Comprehensive Plan Amendments.* It is the city's intent to comply with the Growth Management Act (Chapter 36.70A RCW) and the guidelines for implementation of comprehensive plan goals and policies contained in Chapter 365.196 WAC. It is also the city's intent to allow sufficient time for review of regulations or programs that are intended to implement new or significantly amended policy direction within the comprehensive plan.~~

~~1. Where amendments to existing comprehensive plan goals and policies represent an adjustment to an existing policy direction, the city should generally prepare, review, and adopt implementing development regulations or programs concurrently with the adoption of the amendments to the comprehensive plan.~~

~~2. Where amendments to existing comprehensive plan goals and policies represent a new policy direction, or a significant amendment to the current policy direction within the comprehensive plan, the city should prepare, review, and adopt implementing development regulations or programs as soon as reasonably practicable following the adoption of the amendments to the comprehensive plan. (Ord. 19C-21 § 1 (Att. A); Ord. 18C-08 § 1 (Att. A); Ord. 16C-13 § 2. Formerly 19.15.050).~~

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## PLANNING COMMISSION

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**To:** Planning Commission

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

**Date:** February 11, 2021

**RE:** ZTR21-001 Goldbach I Code Amendment (Comprehensive Plan Implementation)

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### SUMMARY

The proposed code amendment repeals MICC 19.15.230(I), removing from the city code direction on how the Comprehensive Plan is to be implemented. Instead, this will be governed by state statute.

### BACKGROUND

On January 20, 2021, the Planning Commission reviewed the proposed code amendment. The Commission did not request further revisions to the amendment, and the proposal for consideration at the February 17, 2021 meeting is unchanged. This meeting will include a public hearing on the proposal, and then the Commission will have time for discussion and a recommendation.

The Mercer Island City Code specifies the following decision criteria for code amendments (MICC 19.15.250 (D)), which should be used to evaluate the proposed amendment:

*Criteria.* The [city](#) may approve or approve with modifications a proposal to amend this code only if:

1. The amendment is consistent with the comprehensive plan; and
2. The amendment bears a substantial relation to the public health, safety, or welfare; and
3. The amendment is in the best interest of the community as a whole.

City staff believe this proposal meets all three criteria and recommend adopting the proposed amendment.

### NEXT STEPS

Hold the public hearing and receive public comment. After hearing public comments on the proposal, the Commission should make a recommendation to the City Council.

### ATTACHMENTS

1. Proposed amendment to MICC 19.15.230