

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



PLANNING COMMISSION

To: Planning Commission
From: Alison Van Gorp, Deputy CPD Director
Date: ~~October 20, 2022~~ **October 26, 2022 ***UPDATED*****
RE: 2023 Comprehensive Plan and Development Code Amendment Docket

*****The staff memo has been updated to reflect emerging information on the scope of the 2024 Comprehensive Plan periodic update. The staff proposals for the 2023 docket have been withdrawn.*****

SUMMARY

The City provides 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, typically for the next calendar year when time and resources permit.

DOCKET PROCESS

The Mercer Island City Code (MICC) describes the formal process for soliciting and reviewing docket proposals 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

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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 22, 2022 in the permit bulletin and on the City website, as well as on August 24, 2022 in the Mercer Island Reporter. Eight code amendment proposals were received from the public. ~~CPD staff have also identified four code amendments for consideration. All twelve~~ eight proposals are summarized in Attachment 1 and described below; the original submissions are included in Attachment 2.

DOCKETING CRITERIA

Proposed comprehensive plan and development 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.”

CPD WORK PLAN

The docketing criteria, shown above, include a requirement that the City “can provide resources, including staff and budget, necessary to review the proposal”. As has been the case in the last several years, City staff capacity for legislative review is limited. In addition, the existing CPD work plan already includes several major work items that will continue in 2023, summarized below. Any work items added to the docket will need to be additive to the items already on the work plan.

1. **Periodic Update of the Comprehensive Plan:** work on the periodic update will continue through 2023, including significant work on the Housing Element as well as the new Economic Development Element (due for completion by December 2024).
 - a. Note: the scope of work for the Housing Element update ~~is likely~~ will need to be significantly expanded in early 2023 based on forthcoming guidance from the Washington State Department of Commerce on new requirements for this element established by the legislature in 2021 (HB 1220).
 - b. Additional information and draft guidance are now becoming available on this subject from the Washington State Department of Commerce and King County Growth Management Planning Council. The new requirements for the Housing Element are more expansive than originally anticipated and additional time will be needed for analysis, public engagement and policy development. It has become clear City Council will need to consider approving amendments to the scope, schedule and public participation plan for the 2024 Comprehensive Plan periodic update directly related to HB 1220 implementation.
2. **Residential Development Standards Analysis:** the City had planned to conduct this work in 2022 and propose any related code amendments for the 2023 docket, however, due to significant staff turnover in the planning team this year, work on this project was delayed and will need to be picked up again in 2023. Any needed code amendments would then be proposed for the 2024 docket.
3. **2022 Docket:** items from this year’s docket that are not yet completed will be carried over for review in 2023
 - a. Permanent regulations related to HB 1220 compliance allowing transitional and permanent supportive housing in zones where residential homes or hotels are allowed (to replace interim legislation adopted by the City Council in September 2022).
 - b. Amending the Business Zone to add public and private schools to the list of allowed uses.

The existing work plan items represent a significant amount of CPD staff time, as well as a significant portion of the available Planning Commission, City Council and community bandwidth. Staff anticipate the periodic update of the Comprehensive Plan will require at least half of the time available at the Planning Commission’s monthly meetings in 2023, as well as several briefings of the City Council. Each of the other proposed code amendments will require at least three touches by the Planning Commission and two by the City Council.

As such, time available for review and consideration of additional docket items will be very limited. Each item added to the final docket typically requires at least three touches by the Planning Commission and two by the City Council, a process that typically takes 6 months or more to complete. In 2022, only four

items were docketed, in addition to two items that were carried over from the 2021 docket. As outlined above, review of two of these six items has not yet commenced.

~~With all this in mind, the staff was very selective with their proposals for the docket this year. While we had a long list of code amendments the staff would have liked to propose, only four were put forward. The items proposed for the 2023 docket by staff are all considered high priority, “need to have” amendments to the city code. Many other less critical, “want to have” amendments were not proposed. Consequently, City staff are not recommending any additional amendments for consideration; the previously proposed items numbered 9 through 12 have been withdrawn from consideration for the 2023 docket. The withdrawal of these items will assist in directing as much staff time and focus as possible to completing the 2024 Comprehensive Plan periodic update. These items may be re-proposed for a docket in the future.~~

Similarly, staff have provided recommendations on each proposal submitted by community members related to the priority of reviewing the proposed amendment in 2023. Staff evaluated the priority of these proposals ~~using the same bar as the staff proposed items~~, with “need to have” items identified as high priority and “want to have” items rated as low priority. These ratings are not intended to reflect on the quality or merits of the proposal. Rather, the ratings are intended to evaluate the importance of reviewing the proposed amendment in the coming year. In determining this prioritization, staff considered whether foregoing the amendment in 2023 would leave the city open to legal or financial risk, lost opportunities or other negative consequences. Staff also considered whether there were any other compelling reasons that an amendment should be considered in the very near term.

PROPOSED AMENDMENTS

The proposed amendments are summarized in 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: Mercer Island Beach Club

Comprehensive Plan or Code Section: MICC 19.13.040 Table B Shoreland Uses Waterward of the Ordinary High Water Mark

Proposal Summary: This amendment would allow private clubs or residential communities serving more than 10 families to use the Shoreline Conditional Use Permit process for the redevelopment of moorage facilities, floating platforms, mooring piles, diving boards, diving platforms, swim areas and other accessory uses.

Staff Comments: The Mercer Island Beach Club (MIBC) has proposed a substantial update and reconfiguration of their moorage and swimming dock facilities. The existing code provisions in MICC 19.13.040 do not include a non-residential/large moorage facility as an allowed use. While state regulations allow unlisted uses to be reviewed via a Shoreline Conditional Use Permit ([WAC 173-27-160](#)), the MICC states that uses not listed in the code are not permitted within shorelands. This leaves the MIBC with no path forward for permitting the proposed project as currently designed. The proposed code amendment would enable the MIBC and similar organizations to apply for a Shoreline Conditional Use Permit for permitting these types of uses.

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Note: this proposal was submitted as an application, along with a \$22,503 fee. If docketed, this fee will help to cover staff costs related to the review of the proposed code amendment.

Priority Level: Medium priority. Staff generally support the concept of the proposed amendment. It could correct an inconsistency between the City code and state regulations that should be addressed. The proposed amendment is located within the City's Shoreline Master Program (SMP). The WA State Shoreline Management Act requires cities to periodically review and update their SMP every eight years. The Mercer Island SMP was last updated in 2019 and it must be reviewed again by June 30, 2027 ([RCW 90.58.080\(4\)\(b\)\(i\)](#)). Thus, work on the SMP update will need to begin shortly after completing the Comprehensive Plan periodic update. If the City is not able to take up this amendment for consideration prior to this time, it could be folded into the regular SMP review process.

Proposed Amendment 2

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: The applicant submitted this proposal during the 2020 and 2021 Annual Docket processes. In both cases, the City Council decided not to docket this project at that time.

Priority Level: Low priority. The City Council has already considered the proposed code amendment project in the previous two annual docket cycles and decided not to add it to the CPD work plan. The CPD Work Plan for 2023 already includes an analysis of the Residential Development Standards, and that process will allow members of the public to provide feedback and propose amendments to the city code.

Proposed Amendment 3

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: The applicant submitted this proposal during the 2020 and 2021 Annual Docket processes. In both cases, the City Council decided not to docket this project at that time.

Priority Level: Low priority. The City Council has already considered the proposed code amendment project in the previous two annual docket cycles and decided not to add it to the CPD work plan. The CPD Work Plan for 2023 already includes an analysis of the Residential Development Standards, and that process will allow members of the public to provide feedback and propose amendments to the city code.

Proposed Amendment 4

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: The applicant submitted this proposal during the 2020 and 2021 Annual Docket processes. In both cases, the City Council decided not to docket this project at that time.

Priority Level: Low priority. The City Council has already considered the proposed code amendment project in the previous two annual docket cycles and decided not to add it to the CPD work plan. The CPD Work Plan for 2023 already includes an analysis of the Residential Development Standards, and that process will allow members of the public to provide feedback and propose amendments to the city code.

Proposed Amendment 5

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: The applicant submitted this proposal during the 2020 and 2021 Annual Docket processes. In both cases, the City Council decided not to docket this project at that time.

Priority Level: Low priority. The City Council has already considered the proposed code amendment project in the previous two annual docket cycles and decided not to add it to the CPD work plan. The CPD Work Plan for 2023 already includes an analysis of the Residential Development Standards, and that process will allow members of the public to provide feedback and propose amendments to the city code.

Proposed Amendment 6

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: The applicant submitted this proposal during the 2020 and 2021 Annual Docket processes. In both cases, the City Council decided not to docket this project at that time.

Priority Level: Low priority. The City Council has already considered the proposed code amendment project in the previous two annual docket cycles and decided not to add it to the CPD work plan. The CPD Work Plan for 2023 already includes an analysis of the Residential Development Standards, and that process will allow members of the public to provide feedback and propose amendments to the city code.

Proposed Amendment 7

Proposed By: Michael Murphy

Comprehensive Plan or Code Section: MICC 19.07.180 Watercourses and MICC 19.16.010 Definitions

Proposal Summary: This amendment would repeal regulations related to Piped Watercourses.

Staff Comments: This proposal indicates that piped watercourses are storm mains. This characterization is incorrect. Storm mains are pipes typically installed in the public right-of-way that carry storm water collected from impervious surfaces such as streets, roofs and driveways. The MICC definition of “piped watercourse” specifically excludes drainage ditches and storm water runoff devices, “unless they are used by fish or to convey waters that were naturally occurring prior to construction.” Further, many examples exist throughout Mercer Island where watercourses move between open stream beds and pipes as they proceed along their course and discharge into Lake Washington. These are naturally occurring watercourses where a portion of the stream’s course has been diverted into a pipe or culvert.

Staff concur with Mr. Murphy’s assessment that the piped watercourse setbacks impact many existing properties and homes in Mercer Island, and that many homeowners are likely unaware of their property’s non-conforming status related to these regulations, and the impact that could have on future improvements.

Staff believe that prior to considering the proposed code amendment, additional analysis is required to better understand the conditions on the ground and to evaluate if code changes are needed to better support protection of the Mercer Island’s watercourses and provide incentives for daylighting streams when appropriate. An analysis of neighboring jurisdictions’ approaches to these matters would also be informative.

All this to say, while fairly simple in its drafting, the proposed code amendment would require substantial time for review. Furthermore, in addition to the processes required for review of all code amendments (SEPA determination, notification to Department of Commerce, public hearing, etc), an update to critical areas regulations and the Shoreline Master Program would also require substantial public engagement as well as consultation and review by the Department of Ecology, which is typically a lengthy process.

Priority Level: Low priority. This is a large project and will require considerable time for review. Given the existing commitments of staff time in the CPD work plan, if this proposal is docketed, it may need to be carried over to a future year for review.

Proposed Amendment 8

Proposed By: Carolyn Boatsman

Comprehensive Plan or Code Section: MICC 19.15.230(E) Docketing Criteria

Proposal Summary: This amendment would repeal the docketing criterion in MICC 19.15.230(E)(1)(b)(ii), which states, “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.”

Staff Comments: Council already has the ability to direct staff to fold proposals into ongoing work items.

Priority Level: Low priority. Given the existing commitments of staff time in the CPD work plan, if this proposal is docketed, it may need to be carried over to a future year for review.

Proposed Amendment 9

Proposed By: City Staff

Comprehensive Plan or Code Section: MICC 19.11.030 Bulk Regulations, possibly other sections of the development code

Proposal Summary: The Town Center code currently limits commercial buildings to 2 stories/27 feet in height. This amendment would provide an allowance for commercial buildings to exceed two stories in the Town Center.

Staff Comments: Staff have identified what is believed to be an unintended omission in the drafting of the current Town Center code provisions. While MICC 19.11.030 contains provisions that enable residential and mixed-use buildings to achieve bonus height through the inclusion of 10% of the residential units as income-restricted affordable housing, no such bonus height provisions exist for purely commercial buildings. As such, commercial buildings are currently limited to 2 stories or 27 feet in height. Staff have proposed the addition of an allowance that would enable commercial buildings to achieve the same building heights currently allowed for residential and mixed-use buildings. Consideration of such a code amendment will include an analysis of options including: 1) allowing taller commercial buildings outright or 2) bonus height provisions requiring community benefits be provided in exchange for the additional building height.

Priority Level: High priority. The City Council has identified implementing an economic development program as a priority, and this code amendment supports that goal and aligns with other economic development activities focused on the Town Center. Waiting to address this issue in the future could result in significant missed opportunities for commercial development in the Town Center.

Proposed Amendment 10

Proposed By: City Staff

Comprehensive Plan or Code Section: MICC 19.15 Administration

Proposal Summary: Surgical amendments to the administrative code to correct errors and improve clarity and consistency, including: correcting the appeal process for shoreline exemptions and clarifying the notice of decision requirements for Type II land use approvals.

Staff Comments: Staff have identified some incorrect and unclear language in the administrative code. MICC 19.15.030 states that shoreline exemptions should be appealed to the shoreline hearings board. This is incorrect, only shoreline substantial development permits are appealed to the shoreline hearings board ([RCW 90.58.180](#)). Shoreline exemption appeals should be heard by the City's Hearing Examiner. In addition, MICC 19.15.030 and 19.15.120 are inconsistent on whether a notice of decision is required for Type II land use approvals. This should be clarified.

Priority Level: High Priority. These are simple code amendments that are needed to provide clear direction to staff and the public on how to correctly process applications and appeals.

Proposed Amendment 11

Proposed By: City Staff

Comprehensive Plan or Code Section: MICC 19.01.050 Nonconforming structures, sites, lots and uses; possibly other sections of the development code

Proposal Summary: This amendment would expand and clarify the legal lot regulations, including adding provisions for testamentary lot division and innocent purchaser verification.

Staff Comments: RCW Ch. 58.17, the subdivision statute, generally regulates subdivision of land. Illegally subdivided land is not generally buildable or otherwise permissible. There are some exceptions to the subdivision process, however, such as division through testamentary provisions or through the laws of descent (e.g. when land is divided and distributed to heirs in a will). Further, RCW 58.17.210 provides that innocent purchasers for value without actual notice of the illegal subdivision are exempt from the general prohibition against issuance of permits for illegally subdivided land. The MICC's current provisions regarding legal lots lack provisions for an innocent purchaser verification process, as well as any recognition of testamentary division per RCW 58.17.040. Staff propose revisions to the MICC to recognize these principles. Review of this proposal will include research of other jurisdictions' code provisions relating to testamentary division and innocent purchaser verification.

Priority Level: High Priority. These code amendments are needed to comply with state law and avoid associated legal risk.

Proposed Amendment 12

Proposed By: City Staff

Comprehensive Plan or Code Section: Add a new section to MICC 19.06 to regulate temporary uses, amend MICC 19.09.060 Right-of-way use and repeal MICC 10.060.050 Commerce on Public Property

Proposal Summary: This amendment will update the code provisions regulating temporary uses on private property and in the right-of-way. Provisions regarding the sale of goods and services on public property will be incorporated into the temporary uses and right-of-way use sections, as appropriate.

Staff Comments: Temporary uses could include many different types of things from outdoor dining adjacent to restaurants/cafes, to large tents for events like weddings or reunions, the farmer's market, Christmas tree sales, produce stands, food trucks or even garage sales.

In 2020, the City adopted Ordinance 20C-17, which established temporary regulations for commerce on public property to allow for outdoor dining during the COVID-19 pandemic. These temporary regulations will eventually expire. Permanent amendments to regulations for outdoor dining, temporary uses, and commerce on public property are needed for outdoor dining to continue to be an allowed use.

In addition, the MICC currently does not allow any temporary uses outside the Town Center and the provisions for commerce on public property and right-of-way use are also outdated and do not meet the current needs of the City. For example, when the Parks and Recreation team plans events such as the upcoming Pumpkin Walk, the current code provisions do not provide a permitting process for vendor booths or food trucks to be located in the right-of-way.

City staff propose updating and modernizing these provisions to better fit with the types of temporary uses that are currently happening in Mercer Island and those that would be appropriate in the future.

Priority Level: High priority. The City Council has identified implementing an economic development program as a priority, and this code amendment supports that goal and aligns with efforts to support local business. Waiting to address this issue in the future could result in missed opportunities and negatively impact local businesses.

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. Hear from proponents of each proposed amendment (5 minutes per person)
2. Review the proposed Comprehensive Plan and development code amendments.
3. Make a recommendation on whether each proposed amendment should be added to the final docket and the CPD work plan. The Planning Commission should consider the criteria from MICC 19.15.230 (E), provided above, to determine whether to recommend adding a project to the final docket. Please carefully consider the workload for CPD staff and the Planning Commission related to the recommended items, especially in light of existing work plan items already planned for 2023 (discussed above).

Please be prepared to consider and make a recommendation to the City Council on the proposals that should be included in the final docket at the October 26, 2022 meeting.

ATTACHMENTS

1. 2023 Docket Proposals
2. Proposed amendments Nos. 1-8, submitted by community members