

# PROPOSAL 1

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Jessie Clawson

Address: 8475 SE 45th Street, Mercer Island

Phone: 206-313-0981

Email: jessie@mhseattle.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone?

Yes

No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that the application is submitted with consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

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## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS


Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

10/1/2024

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Please attach a separate narrative  
responding to the above questions.

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## DOCKETING CRITERIA

[MICC 19.15.230\(E\) 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.

## COMPREHENSIVE PLAN DECISION CRITERIA

[MICC 19.15.230\(F\) 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.

## DEVELOPMENT CODE AMENDMENT DECISION CRITERIA

[MICC 19.15.250\(D\) 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.

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## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer. The application will be considered incomplete without a narrative answering all five questions.

**1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.** a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend. b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with strikeouts. c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.

### **Proposed code amendment:**

#### **19.01.050 - Nonconforming structures, sites, lots and uses. (code section applies to non-single-family structures outside of Town Center only)**

4.D.3.b. *Intentional ~~exterior alteration or enlargement~~.* Legal nonconforming status of any legally nonconforming structure not covered under subsection (D)(1) or (2) of this section is lost, and the structure and site shall be required to come into conformance with all current code requirements, including design review, if there is an intentional ~~exterior alteration or enlargement~~ of the structure over any three-year period that incurs construction costs in excess of 50 percent of the structure's current King County assessed value as of the time the initial application for such work is submitted; provided, application of this subsection shall not be construed to require an existing structure to be demolished or relocated, or any portion of an existing structure that is otherwise not being worked on as part of the construction to be altered or modified. If there is no current King County assessed value for a structure, a current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference. No structure may be altered or enlarged so as to increase the degree of nonconformity or create any new nonconformance.

#### **19.01.010 – Definitions.**

**E**

*Enlargement:* An increase of a structure's total gross floor area.

### **Description of code amendment:**

As someone who has been involved with several institutions on the Island and is familiar with many of the institutions' challenges, I see the "exterior alteration" language as a barrier to institutions being able to remodel their buildings, without expanding and creating new nonconformities. The language increases the situations in which remodels would require bringing buildings entirely up to the land use code, which would be impossible due to the gross floor area limitations in the single-family zones where all of these institutions are located. Striking this language, and adding a

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definition of what “enlargement” means, will add clarity to the intent of the code. As an example, if an institutional use needs to change out windows or rebuild a wall, even in the same location as part of a remodel, that would be construed as a “exterior alteration” which would trigger the 50% cost limitation. Given the Comprehensive Plan goals to encourage institutions to be able to remodel and remain on the Island, I believe this is an appropriate code amendment that makes clear that institutions may not expand if they are nonconforming, but allows them to remodel and take on larger projects even though it may mean they have to alter an exterior wall or window system.

As a note to staff, the way my proposed amendment is written a remodel without an expansion would not trigger design review. I think it would be fair to trigger design review for remodels that include exterior changes. I was trying to be as surgical as possible in this code amendment, and didn’t want to disturb the code section more. I am very open to staff suggestions or council amendments regarding how design review might be triggered when a remodel makes exterior changes to an existing nonconforming building. I am also very open to staff suggestions or council amendments regarding how this might be more narrowly tailored to institutional uses if the current language feels too broad, or if there are too many structures that would be impacted. Again, I was sensitive to making as few changes to the code as possible.

## **2. How does the proposal benefit the community or the environment?**

**Answer:** The proposed code amendment would allow institutions and other structures that exist in zones outside of Town Center to remodel their buildings without creating a new nonconformity or expanding, and not be subject to the 50% valuation rule. It would make it much easier for institutions to upgrade their buildings without losing their nonconforming status—recall that any institution in a single family zone is subject to a low single family square footage limitation that none of them can meet. Remodels are expensive, and being held to 50% of assessed value can be very difficult. This code amendment benefits the community members who utilize these organizations for clubs, gyms, pools, and places of worship.

Encouraging efficient remodels without creating new nonconformities is positive for the City and the public and creates a public benefit. Since remodels are subject to new building codes, this would mean that existing nonconforming institutions will become more structurally sound and safer against earthquakes. The remodels will also be subject to new energy codes, meaning buildings use less energy and are built more efficiently. Remodels are subject to new stormwater codes, which will mean that stormwater runoff and will become more environmentally sound and compliant with current energy codes.

The code amendment will also ensure that institutions remain the same size, but are simply allowed to efficiently remodel.

## **3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).**

MICC 19.15.230(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:

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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;**

**Answer:** Yes. This is a code amendment and therefore it is appropriately addressed through the code. There is not another way to change this code section.

**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;**

**Answer:** Yes. I believe this is a very small code amendment that requires very little staff time. I'm happy to provide my own resources to assist in any sort of review process as appropriate.

**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;**

**Answer:** Yes. I am unaware of any existing work program item that addresses institutional nonconformity issues in the single family zones. I am aware of the implementation deadline for HB 1110, which would amend single family zones, which could potentially touch some of these code sections if the City chose, but I am not aware of the City's time or scope for this implementation.

**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**

**Answer:** es. The proposal is consistent with the following elements of the newly-proposed Draft Comprehensive Plan:

- “How the values are manifested; Neighborhood Pride: Civic, recreation, education, and religious organizations are important and integral elements of the community character and fabric. Their contribution and importance to the established community character should be reflected and respected in land use permit processes.”
- “Community Values: Education Is the Key: The community and its public and private institutions are committed to providing excellence in education.”
- Land Use Goal 15.4: Social and recreation clubs, schools, and religious institutions are predominantly located in single-family residential areas of the Island. The City Council may consider measures within the land use code to address the maintenance, updating, and renovation of these facilities, while ensuring compatibility with surrounding neighborhoods. Such facilities contribute to the mental, physical, and spiritual well-being of Mercer Island residents. Land use decisions should balance the retention of these facilities with overall community planning and zoning regulations.

**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**

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**proponent establishes that there exists a change in circumstances that justifies the need for the amendment.**

**Answer:** Yes. I am unaware of this issue having been considered by the City Council in the last three years.

**MICC 19.15.250(D) 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**

**Answer:** Please see above. Yes. The amendment is consistent with the comprehensive plan's language regarding maintenance, updating, and renovation of the facilities.

**2. The amendment bears a substantial relation to the public health, safety, or welfare; and**

**Answer:** Yes. The amendment will facilitate more remodels of institutions, which in turn will allow buildings to become compliant with building, energy and stormwater codes. These codes, much more than land use codes, protect the safety and welfare of the public and users of the building.

**3. The amendment is in the best interest of the community as a whole.**

**Answer:** Yes. As stated, the amendment will assist Island institutions with being able to more easily remodel without losing their nonconforming status. One of the things that makes Mercer Island special is all of these community organizations to which we all belong.

**4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?**

**Answer:** Not applicable.

**5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan? Please sign and date below acknowledging application requirements.**

**Answer:** See above. The code amendment is consistent with the Comprehensive Plan.

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## CITY OF MERCER ISLAND COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercerisland.gov/cpd](http://www.mercerisland.gov/cpd)



CITY USE ONLY	
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## ENVIRONMENTAL CHECKLIST

### PURPOSE OF CHECKLIST

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

### PRE-APPLICATION MEETING

A pre-application meeting is used to determine whether a land use project is ready for review, to review the land use application process, and to provide an opportunity for initial feedback on a proposed application. Some land use applications require a pre-application – in particular: short and long subdivisions, lot line revisions, shoreline permits, variances, and critical area determinations. The City strongly recommends that all land use applications use the pre-application process to allow for feedback by City staff.

**Please note:** pre-application meetings are held on Tuesdays, by appointment. To schedule a meeting, submit the meeting request form and the pre-application meeting fee (see fee schedule). Meetings must be scheduled at least one week in advance. Applicants are required to upload a project narrative, a list of questions/discussion points, and preliminary plans to the Mercer Island File Transfer Site one week ahead of the scheduled meeting date.

### SUBMITTAL REQUIREMENTS

In addition to the items listed below, the code official may require the submission of any documentation reasonably necessary for review and approval of the land use application. An applicant for a land use approval and/or development proposal shall demonstrate that the proposed development complies with the applicable regulations and decision criteria.

- A. **Completed pre-application.**
- B. **Development Application Sheet.** Application form must be fully filled out and signed.
- C. **Development Plan Set.** Please refer to the Land Use Application- Plan Set Guide in preparing plans.
- D. **Title Report.** Less than 30 days old.
- E. **SEPA checklist.**



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## INSTRUCTIONS FOR APPLICANTS

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later. Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you. The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

## USE OF CHECKLIST FOR NONPROJECT PROPOSALS

For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal. For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

### A. BACKGROUND

1. Name of proposed project, if applicable:

MIMC 19.01.050 code amendment

2. Name of applicant:

Jessie Clawson

3. Address and phone number of applicant and contact person:

8475 SE 45th Street, 206-313-0891

4. Date checklist prepared:

September 30, 2024

5. Agency requesting checklist:

City of Mercer Island

6. Proposed timing or schedule (including phasing, if applicable):

Docketing decision by December 2024, TBD on consideration by Planning Commission and City Council.

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7. Do you have any plans for future additions, expansions, or further activity related to or connected with this proposal? If yes, explain:

No, this is a non-project action.

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8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal:

The City's Comprehensive Plan included environmental review, which included goals related to this proposal. Other than that, none known.

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9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain:

The current Comprehensive Plan is awaiting full City Council adoption by the end of this year. Other than that, none know.

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10. List any government approvals or permits that will be needed for your proposal, if known:

The City Council would need to adopt the code amendment.

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11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The proposal would change the code to allow exterior alterations NOT to trigger the nonconforming provisions found in MIMC 19.01.050.4.D.3.b. This would allow non-single family structures located outside of Town Center to alter the exteriors of their buildings without triggering nonconforming valuation thresholds.

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12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The code amendment only applies to non-single family structures outside of Town Center.

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## B. ENVIRONMENTAL ELEMENTS

### 1. Earth

a. General description of the site (check one):

Flat  Rolling  Hilly  Steep slopes  Mountainous  Other

b. What is the steepest slope on the site (approximate percent slope)?

N/A

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

N/A

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

N/A

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

None.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

No.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

N/A

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

N/A

### 2. Air

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- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, and industrial wood smoke) during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

None.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

No.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

N/A

### 3. Water

- a. Surface:

- i. Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

This is a non-project action and does not apply to a "site."

- ii. Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

No.

- iii. Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

None.

- iv. Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

No.

- v. Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

No.

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- vi. Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

No.

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b. Ground

- i. Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

No.

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- ii. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, [containing the following chemicals...]; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

None.

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c. Water runoff (including stormwater):

- i. Describe the source of runoff (including stormwater) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

None.

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- ii. Could waste materials enter ground or surface waters? If so, generally describe.

No.

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- d. Proposed measures to reduce or control surface, ground, runoff water, and drainage pattern impacts, if any:

N/A

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## 4. Plants

- a. Check types of vegetation found on the site
- Deciduous tree: Alder, Maple, Aspen, other
  - Evergreen tree: Fir, Cedar, Pine, other
  - Shrubs
  - Grass

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- Pasture
- Crop or grain
- Wet soil plants: Cattail, buttercup, bulrush, skunk cabbage, other
- Water plants: Water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

None.

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c. List threatened or endangered species known to be on or near the site.

NA.

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d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

None.

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e. List all noxious weeds and invasive species known to be on or near the site.

None.

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## 5. Animals

a. State any birds and animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: hawk, heron, eagle, songbirds, other:

Mammals: deer, bear, elk, beaver, other:

Fish: bass, salmon, trout, herring, shellfish, other:

None.

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b. List any threatened or endangered species known to be on or near the site.

None.

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c. Is the site part of a migration route? If so, explain.

None.

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d. Proposed measure to preserve or enhance wildlife, if any:

None.

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- e. List any invasive animal species known to be on or near the site.

None.

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## 6. Energy and natural resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

N/A.

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- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

No.

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- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

None.

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## 7. Environmental health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.

No.

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- i. Describe any known or possible contamination at the site from present or past uses.

None.

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- ii. Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

None.

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- iii. Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

None.

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iv. Describe special emergency services that might be required.

None.

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v. Proposed measures to reduce or control environmental health hazards, if any:

N/A.

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b. Noise

i. What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

None.

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ii. What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

None.

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iii. Proposed measures to reduce or control noise impacts, if any:

N/A

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## 8. Land and shoreline use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

N/A

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b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

N/A; no.

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c. Describe any structures on the site.

N/A.

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d. Will any structures be demolished? If so, what?



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No.

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e. What is the current zoning classification of the site?

The code amendment would apply to all zones except the Town Center zone. however, it would only apply to non single-family structures in these areas.

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f. What is the current comprehensive plan designation of the site?

NA

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g. If applicable, what is the current shoreline master program designation of the site?

NA

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h. Has any part of the site been classified as an “environmentally sensitive” area? If so, specify.

NA

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i. Approximately how many people would reside or work in the completed project?

None

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j. Approximately how many people would the completed project displace?

None

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k. Proposed measures to avoid or reduce displacement impacts, if any:

NA

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l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

The code amendment is consistent with the comprehensive plan.

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## 9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

None

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- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

None

- c. Proposed measures to reduce or control housing impacts, if any:

NA

## 10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas? What is the principal exterior material(s) proposed?

NA

- b. What views in the immediate vicinity would be altered or obstructed?

None

- c. Proposed measures to reduce or control aesthetics impacts, if any:

NA

## 11. Light and glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

None

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

No

- c. What existing off-site sources of light or glare may affect your proposal?

None

- d. Proposed measures to reduce or control light and glare impacts, if any:

None

## 12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

None

# PROPOSAL 1

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b. Would the proposed project displace any existing recreational uses? If so, describe.

No

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c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

NA

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## 13. Historic and cultural preservation

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.

No

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b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

No

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c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

NA

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d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

NA

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## 14. Transportation

a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

NA

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# PROPOSAL 1

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

NA

- c. How many additional parking spaces would the completed project or nonproject proposal have? How many would the project or proposal eliminate?

NA

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

No.

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No.

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and non-passenger vehicles). What data or transportation models were used to make these estimates?

NA

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

No

- h. Proposed measures to reduce or control transportation impacts, if any:

NA

## 15. Public services

- a. Would the project result in an increased need for public services (for example; fire protection, police protection, health care, schools, other)? If so, generally describe.

no.

- b. Proposed measures to reduce or control direct impacts on public services, if any.

# PROPOSAL 1

None

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## 16. Utilities

a. Check utilities currently available at the site:

Electricity       Natural Gas       Water       Refuse Service   
Telephone       Sanitary sewer       Septic system       Other

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

NA

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## C. SIGNATURE

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the answers to the attached SEPA Checklist are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

## SEPA RULES

### SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; productions, storage, or release of toxic or hazardous substances; or production of noise?
-

# PROPOSAL 1

The proposal would not impact any of these areas of the environment. A specific project using the code amendment would be subject to project-specific SEPA at the time of application; this is when these impacts would be disclosed and, if appropriate, mitigated by the City.

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Proposed measures to avoid or reduce increases are:

See above--project level SEPA review.

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2. How would the proposal be likely to affect plants, animals, fish, or marine life?

See #1.

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Proposed measures to protect or conserve plants, animals, fish, or marine life are:

See above--project level SEPA review.

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3. How would the proposal be likely to deplete energy or natural resources?

See #1.

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Proposed measures to protect or conserve energy and natural resources are:

See above--project level SEPA review.

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4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

See#1.

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Proposed measures to protect such resources or to avoid or reduce impacts are:

See above--project level SEPA review.

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5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Existing plans call for the retention of institutions on the Island; this proposal would encourage land uses that are consistent with existing plans and policies.

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Proposed measures to avoid or reduce shoreline and land use impacts are:

The code amendment is consistent with the comprehensive plan.

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# PROPOSAL 1

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

See #1.

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Proposed measures to reduce or respond to such demand(s) are:

Project level SEPA review.

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7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

The proposal does not conflict with laws or requirements for the protection of the environment.

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[Statutory Authority: RCW [43.21C.110](#), WSR 16-13-012 (Order 15-09), § 197-11-960, filed 6/2/16, effective 7/3/16. Statutory Authority: RCW [43.21C.110](#) and [43.21C.100](#) [43.21C.170]. WSR 14-09-026 (Order 13-01), § 197-11-960, filed 4/9/14, effective 5/10/14. Statutory Authority: RCW [43.21C.110](#), WSR 13-02-065 (Order 12-01), § 197-11-960, filed 12/28/12, effective 1/28/13; WSR 84-05-020 (Order DE 83-39), § 197-11-960, filed 2/10/84, effective 4/4/84.]

# PROPOSAL 2

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Sarah Fletcher

Address: 2500 81st Ave SE, Mercer Island, WA 98040

Phone: 206-236-3028

Email: fletchsa1@gmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone?

Yes

No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that that the application is submitted with consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application



# PROPOSAL 2

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:



Date:



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Please attach a separate narrative  
responding to the above questions.

## PROPOSAL 2

Hello, re the Land Use, does the 472 acres include The Linnear Park and does it include The Greta Hackett Park which a section of it is going to become paved parking spaces? You are deeming the I-90 freeway “Linnear Park,” which it certainly is not, and you are deeming the Park and Ride part of Linnear Park, but that is actually “Public Facility.” So are you trying to tell me that the 472 acres of park and open space includes the I-90 freeway and the transit centers below and the Park and Ride, and includes airspace in the 472 acres?

If it were me, I would delete the reference to Linnear Park altogether as it looks like you are trying to make it a park, when it is not exactly “park” and it is not clear if that acreage is included in the park space.

And the area by Tully’s, that is for transportation purposes only. So, how could you make it TC-5? It needs to be reverted back to park space and not TC-5 which is what it is zoned for.

With regards to VII Land Use Designations on **page 33**, please remove Linnear Park. How can the I-90 freeway be “park space”? And there is no mention of the acreage, where the legal description can be found, where it says that the Aubrey Davis Park and The Greta Hackett Sculpture Gallery are a part of Linnear Park and why are you deeming it “PI?” None of this makes sense, so just remove any mention of Linnear Park as the “land use designation is not “also improved”, and it includes open space and green space and the park and ride and transit centers (public facilities):

Linear Park (I-90)	PI	The linear park (I-90) land use designation primarily contains the Interstate 90 right-of-way. The land use designation is also improved
--------------------	----	--

Mercer Island, Washington, Comprehensive Plan, Element 2 - Land Use -  
Page 33 of 36

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June 12, 2024

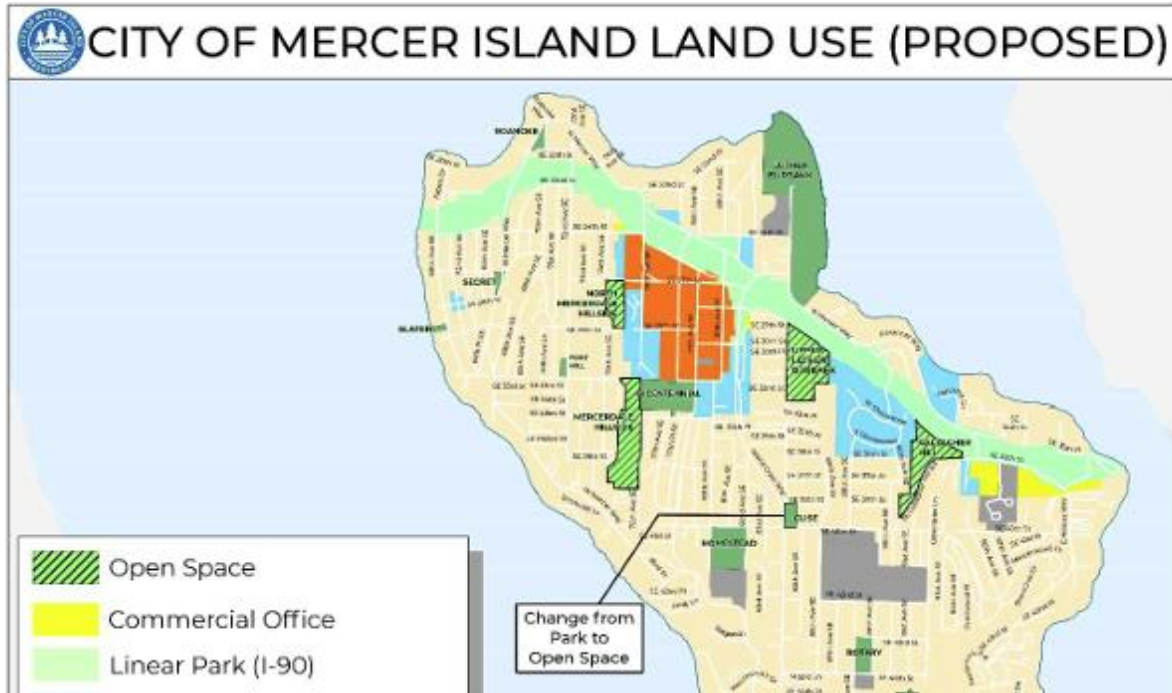
		with parks and recreational facilities (e.g., Aubrey Davis park, I-90 Outdoor Sculpture Gallery, etc.) adjacent to and on the lid above the Interstate 90 freeway.
--	--	--

And on your map on page 35, you are showing Linnear Park but there has never been a legal description of this new park, Sound Transit never referred to it either, no-one has except whoever is responsible for this update to the Comprehensive Plan. If you look at the Capital

## PROPOSAL 2

Facilities, every other park is mentioned, but not one mention of Linnear Park. Linnear Park needs to be removed altogether. And the open space and parks needs to be combined as I don't know how you can have one section as open space and one section as park, but the title is park, not open space, so for example, it is not called "Mercerdale Open Space", it is called "Mercerdale Park". I don't know what you are trying to do, but it is confusing.

**Figure 1. Land Use Map.**



And with regards to "the community strongly values environmental protection," you have got to be kidding. If you are going to make a statement, please add the definition of what environmental protections you have added exactly. Like have you added significant trees will not be able to be cut down, there are protections for them, groves will not be able to be removed, and add a grove can mean Lleylandi trees which the city arborist removed from the list of protected trees. And adding toxic herbicides to our parks, how exactly does that offer "environmental protection." You see, unless I see that you are going to specifically add these examples of protections, the words are just meaningless. You might as well just take it out entirely and not waste our time.

And "development regulations also attempt to balance views and tree conservation", you do nothing of the sort. You don't even attempt to do anything except give carte blanche to the developer.

## PROPOSAL 2

And this is not true – “Requiring that new projects include additional public amenities for building height above the two-story minimum, please tell me exactly what did The Legacy/Chinn and The Aviara offer in regards to “public amenities.” And if you think a sign on the wall stating that this is a “public facility” is a public facility, it is not. Not to mention that the water feature, that became unusable, yet the developer managed to get a few additional stories out of that, and as for the public plaza, that is locked to people who don’t live at the apartments. How is that a public facility when it locks people out from it? You got done. So, please remove that sentence.

And between 2001 and 2007, and between 2007 and 2014, why don’t you just make it between 2001 and 2014 tell us that 870 units got added? And it is all very well stating that so much of commercial square feet was added, but the city has just lost 6,000 sq ft where Xing Hua is going and will be losing more commercial where the Baskin Robbins is going, so has that been mentioned in the Land Use?

And something is not quite right. It is all very well mentioning what the city council in June 2020 except Xing Hua did not adhere to any of these things not to mention, they did not provide on-street parking which was also supposed to be added to the regulations, so please remove this as it is meaningless:

***“The City Council adopted new Town Center regulations and resolved the moratorium in 2022. The new regulations established commercial use standards for street frontage, a minimum floor area ratio for commercial uses along specific street frontages, and a standard of no net loss of commercial square footage. The principal purpose of the new development regulations is to support commercial uses in Town Center”.***

In fact, it is safe to say that every single thing that the regulations were supposed to establish got broken.

Under II Existing Conditions, you omit to mention how there are a ton of exercise places, as well as pizza parlors. And with a “diffused development pattern, is not conducive to “browsing,” making movement around the town difficult for pedestrians, I have never heard of any pedestrians having “difficulties getting around,” it is more like you just don’t see the shops as they are not prominent.

And why are you using a “Snapshot” from 2015 in your table? I keep asking and no-one seems to know. How many housing units are there on Mercer Island, broken down into Town Center and the rest of the island as of 2024, not outdated year 2015? Why did no-one update the information?

## PROPOSAL 2

And with the proposed Temple Herzl, JCC, this is not true in that they will be in the CO zones as well:

***“Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones.”***

And in the 2015 Table, it has:

Total Net Residential Density	25 units/acre (Approx. 75 units/acre on sites with residential uses)
-------------------------------	--

How many units per acre in the Town Center are allowed?

Covenant Shores is planning on adding 16 units to 237 units to make it **253 units not 237 units, that needs to be updated.**

The average allowed density in the City of Mercer Island is more than 6.2 dwelling units per acre. This figure is based on the proportional acreage of each land use designation (or zones) that allows residential development, the densities permitted under the regulations in place today for that zone, and an assumption that the average practical allowed density for the Town Center is 99.16 units per acre. Since there is no maximum density in the Town Center and density is controlled instead by height limits and other requirements, the figure of 99.16 units per acre represents the overall achieved net density of the mixed-use projects in the Town Center constructed since 2006.

And if I do a Bing search, it says that there are **10,514 housing units** on Mercer Island, but this table is showing there to be 9,615 by 2030, so doesn't it sound like we have surpassed the housing units required?:

**Table 4. 2010-2030 Housing Unit and Population Forecast**

Year	Overall Household Size	SFR Units	Multi-family Units	Total Increase in units per decade	Total Housing Units	Population
2010 (Census)	2.48	6,873	2,236	N/A	9,109	22,699
2020 (Forecast)	2.54	7,201	2,257	349	9,458	24,991
2030 (Forecast)	2.53	7,349	2,266	157	9,615	25,243

2010 household size data obtained from the 2010 Census. All other data is from PSRC, using their 2013 Forecast parcel-based land use model using Urban Sim.

## PROPOSAL 2

I am sorry, but apart from these figures in the table, it has that apart from the 2010 Census figures, the rest are **models**, that **is not actual and is outdated information**, why are you putting outdated information in the Table?

And I am going off the meter rate replacement project in which it says that **7,416** smart meters have been replaced which is 70% of the total amount, if you add 30% which is **2,225**, the amount of housing units on Mercer Island is **9,641**, which is more than the forecasted amount of housing units. Perhaps, someone in the City could verify out of all those smart meters installed, were they all for housing, or were some for commercial, and how do they work out for the multifamily properties, is one meter per multifamily building which could have hundreds of apartments?

And in the [2023 Population Trends \(wa.gov\)](#) (page 31), it has that MI had 10,570 housing units in April 1, 2020, and they estimate 10,605 as of April 1, 2023.

# PROPOSAL 2

**Table 8. Housing units by structure type for cities, towns and counties: April 1, 2020, and April 1, 2023 (continued)**

County Municipality	April 1, 2020, Structure Type				Estimated April 1, 2023, Structure Type			
	Total	1 Unit	2+ Units	MH/TR/Spec	Total	1 Unit	2+ Units	MH/TR/Spec
<b>Grays Harbor</b> <i>continued</i>								
Aberdeen	7,236	4,823	2,045	368	7,271	4,840	2,049	382
Cosmopolis	712	601	41	70	728	603	47	78
Elma	1,381	901	303	177	1,402	912	303	187
Hoquiam	3,908	2,866	894	148	3,930	2,865	894	171
McCleary	823	706	95	22	853	736	95	22
Montesano	1,786	1,356	344	86	1,799	1,366	346	87
Oakville	287	206	0	81	290	211	0	79
Ocean Shores	5,518	4,412	431	675	6,188	4,966	470	752
Westport	1,486	961	356	169	1,555	1,017	360	178
<b>Island</b>	<b>41,922</b>	<b>32,603</b>	<b>4,565</b>	<b>4,754</b>	<b>42,678</b>	<b>33,153</b>	<b>4,681</b>	<b>4,844</b>
Unincorporated	30,106	25,271	785	4,050	30,747	25,765	822	4,160
Incorporated	11,816	7,332	3,780	704	11,931	7,388	3,859	684
Coupeville	1,016	688	200	128	1,032	695	208	129
Langley	743	526	217	0	754	533	221	0
Oak Harbor	10,057	6,118	3,363	576	10,145	6,160	3,430	555
<b>Jefferson</b>	<b>19,087</b>	<b>14,406</b>	<b>1,453</b>	<b>3,228</b>	<b>19,481</b>	<b>14,699</b>	<b>1,481</b>	<b>3,301</b>
Unincorporated	13,395	10,109	363	2,923	13,677	10,327	369	2,981
Incorporated	5,692	4,279	1,090	305	5,804	4,372	1,112	320
Port Townsend	5,692	4,279	1,090	305	5,804	4,372	1,112	320
<b>King</b>	<b>969,234</b>	<b>516,685</b>	<b>434,586</b>	<b>17,963</b>	<b>1,020,823</b>	<b>522,651</b>	<b>480,294</b>	<b>17,878</b>
Unincorporated	92,938	79,169	7,960	5,809	94,329	80,046	8,506	5,777
Incorporated	876,296	437,516	426,626	12,154	926,494	442,605	471,788	12,101
Algona	1,048	824	43	181	1,061	833	47	181
Auburn (part)	28,049	15,313	10,065	2,671	28,720	15,468	10,575	2,677
Beaux Arts Village	118	118	0	0	118	118	0	0
Bellevue	64,688	32,823	31,860	5	66,315	32,929	33,381	5
Black Diamond	1,841	1,569	57	215	2,761	2,276	263	222
Bothell (part)	12,682	5,514	6,137	1,031	12,901	5,587	6,283	1,031
Burien	20,785	12,736	8,038	11	21,065	12,796	8,258	11
Carnation	814	704	64	46	854	718	90	46
Clyde Hill	1,098	1,086	12	0	1,099	1,083	16	0
Covington	7,149	6,171	904	74	7,513	6,446	993	74
Des Moines	13,222	7,789	5,225	208	13,485	7,843	5,439	203
Duvall	2,778	2,411	182	185	3,009	2,440	382	187
Enumclaw (part)	5,365	3,536	1,341	488	5,609	3,767	1,346	496
Federal Way	37,677	20,529	15,818	1,330	38,079	20,647	16,068	1,364
Hunts Point	185	185	0	0	186	186	0	0
Issaquah	17,303	8,059	9,242	2	18,000	8,222	9,776	2
Kenmore	9,589	6,598	2,704	287	9,797	6,679	2,827	291
Kent	49,157	27,352	19,923	1,882	50,362	27,760	20,737	1,865
Kirkland	40,019	22,020	17,945	54	42,956	22,337	20,567	52
Lake Forest Park	5,565	4,653	908	4	5,589	4,658	927	4
Maple Valley	9,435	8,070	814	551	9,948	8,481	916	551
Medina	1,131	1,131	0	0	1,140	1,138	2	0
Mercer Island	10,570	7,431	3,139	0	10,605	7,451	3,154	0

And there is a concern that the PSRC and Sound Transit, all their focus on is allowing more housing near where the Transit Centers are for light rail, but they were advertising coming to Lynnwood via lightrail and all what was around the Transit Center was housing and a park and ride, but there was absolutely nothing for people to do. There was no park and no shops and the nearest mall was a mile away. All it showed was apartments overlooking the light rail track and station. Is that the vision for Mercer Island – just to have a whole lot of micro-sized multifamily units in the Town Center and minimal retail and restaurants? Because that is how it is looking. They are trying to stuff as many people into a small area as possible like sardines.

## PROPOSAL 2

If you look at the future picture for Mercer Island, it seems that we are losing more and more retail and gaining more and more residential housing units, but they are micro-sized. My Linh Thai is promoting micro-sized apartments and shared kitchens, we are not a communist city. Why would anyone want to downsize to a micro-sized apartment? Let's just say, if one were advertising Mercer Island, what would you say about our Town Center? That it is pretty dead would be accurate and that there is not enough population to support the retail sector.

I totally agree with this:

***“(3) The Town Center is poorly identified. The major entrance points to the downtown are not treated in any special way that invites people into the business district.”***

I don't know what you mean by this:

***“(4) Ongoing protection of environmentally sensitive areas including steep slopes, ravines, watercourses, and shorelines is an integral element of the community's residential character.”***

And I don't know what you mean by this in that all you need to do is get off the bus and walk to the park, are you trying to honestly say that you would want a bus to take someone from the Park and Ride to Luther Burbank Park? What on earth do you mean?

***“(7) There is a lack of pedestrian and transit connections between the Town Center, the Park and Ride, and Luther Burbank Park.”***

And with regards to this:

***“2.2 Establish a minimum commercial square footage standard in Town Center to preserve the existing quantity of commercial space in recent developments as new development occurs.”***

It was supposed to be 60% residential to 40% commercial, what happened? If you look at Xing Hua, it is about 10% retail and the rest parking and residential with token greenscape. It is one complete failure.

And I am sorry, you don't just offer a developer additional stories for public amenities and enhanced design features, that is ridiculous. If you want to allow them to add more stories, each storey has to be affordable. They could deem a walkway a “public amenity” which offers nothing as they would have had to have constructed that anyway. So, please either remove this sentence or elaborate, but you certainly don't just offer the developer these two incentives:

***“3.1 Buildings taller than two stories may be permitted if appropriate public amenities and enhanced design features are provided.”***



## PROPOSAL 2

And if you take Xing Hua for instance, there is let's say an 11ft difference between 77<sup>th</sup> Ave SE and 78<sup>th</sup> Ave SE. The building height should have been let's say 36ft from the height of the lower street, not 36ft from the higher 78<sup>th</sup> Ave SE.

***"3.3 Calculate building height on sloping sites by measuring height on the lowest side of the building."***

And you need to add something about not being allowed to deem 4 buildings as one which again Xing Hua deemed in order to get a higher level because a section of roof was slanted which is what allowed them to get a higher building. Had it been deemed 4 separate buildings, only the section of roof on the one section of building should have been allowed to go higher, not the entire building block.

And one minute, you are talking about having taller buildings on the north end of the Northend Town Center, but then you are talking about:

***"5.2 Encourage development of low-rise multi-family housing in the TCMF subareas of the Town Center."***

So which is it? And where exactly is the TCMF subarea of the Town Center, in that most of it seems TCMF.

And what on earth do you mean by individuals with disabilities to "roll" and if you mean "rollerblade," I can't very well see an elderly person roller blading?

7.2 Design streets using universal design principles to allow older adults and individuals with disabilities to "stroll or roll," and cross streets safely.

And I don't know why they would want to put up canopies when you can barely see what the retail shop is and there are trees, but the city is removing most of them:

***"Be pedestrian-friendly, with amenities, tree-lined streetscapes, wide sidewalks, storefronts with canopies, and cross-block connections that make it easy to walk around."***

And don't you want to add "to shop":

***"8.1 Provide convenient opportunities to walk throughout Town Center."***

And I don't know what you mean by "off-street parking? And if there is open-air parking already there, that is what we prefer, so why would you encourage structured and underground parking, leave that well alone.

## PROPOSAL 2

***“Have ample parking, both on-street and off, and the ability to park once and walk to a variety of retail shops.*”**

***9.1 Reduce the land area devoted to parking by encouraging structured and underground parking. If open-air, parking lots should be behind buildings.”***

And if you reduce the land area devoted to parking, why not not reduce the land area devoted to parking? Imagine if you replaced Metropolitan’s outdoor parking with underground parking? That would be positively awful and would impact their sales. So, how about you remove the sentence altogether?

***“9.5 Develop long-range plans for the development of additional commuter parking to serve Mercer Island residents.”***

Make sure you add “not at the expense of taking away dedicated parkspace or taking away park space” like you did with the commuter parking of the Greta Hackett Park which was a terrible thing that you did. That is like giving a gift and taking it back.

And you might as well remove the next two as they are a waste of time:

***“GOAL 10: Prioritize Town Center transportation investments that promote multi-modal access to regional transit facilities.*”**

***GOAL 11: Promote the development of pedestrian linkages between public and private development and transit in and adjacent to the Town Center.”***

And with regards to this:

***“12.2 Encourage the provision of on-site public open space in private developments. ~~But~~ This can include incentives, allowing development agreements, and payment of a calculated amount of money as an ~~option~~ alternative to dedication of land. In addition, encourage aggregation of smaller open spaces between parcels to create a more substantial open space.”***

I am sorry, but you will not allow payment of a calculated amount of money as an alternative to dedication of land. I don’t even know what you mean exactly. What do you mean? What does it mean to encourage the provision of an on-site public open space in private developments? The City will not be purchasing any portion should the opportunity should arise which is shown on page 21 on the map so please remove that, and remove the mention of the triangle. Unless you can give an example, this whole section and Open Space Proposed Sites should be removed in its entirety.

## PROPOSAL 2

And I am sorry, but what on earth is “an anchor?” Please remove this whole section. It is not your business purchasing any properties. You have already spent hundreds of thousands purchasing the green grass by Tully’s, the Tully’s building, the property at Island Crest Way and 40<sup>th</sup>, and I find it quite unbelievable that whilst everyone makes money, with every single purchase, the City loses money. You can’t make it up. The City needs to stop getting involved in useless purchases of properties. I just don’t know why you get yourselves involved in purchasing real estate. I don’t care what the cause is, just stay out of it.

***“12.3 Investigate potential locations and funding sources for the development (and acquisition if needed) of one or more significant public open space(s) that can function as an anchor for the Town Center’s character and redevelopment. Identified “opportunity sites” are shown in Figure TC-2 and described below. These opportunity sites should not preclude the identification of other sites, should new opportunities or circumstances arise.”***

***And this should be removed in its entirety:***

“15.3 Encourage multifamily and mixed-use housing within the existing boundaries of the Town Center, multifamily, and Commercial Office zones to accommodate moderate- to extremely low-income households.”

Why would we want to allow poor people to live in another part of Mercer Island which is not even near any public transit? And until you know what the plan is with the JCC, Temple Herzl, Yeshiva, The Beach Club, The Shore Club, The Country Club, you will not “encourage multifamily and mixed use housing in Commercial Office zones and certainly not for extremely low income households. Please remove this in its entirety. Let me explain. Let’s say, you approve the CO zones to allow for these things, what you have just gone and allowed is for every CO zone as the ones I have described to allow for multifamily and to allow for low-income households to live in those areas. You have not even asked neighbors if that is what they want.

And you need to add “for Mercer Island citizens.” You see, the Bellevue School wants to relocate to the Herzl property. That does not benefit local residents:

15.4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect recognize the ~~desire-need and support the ability to retain viable maintain, update, and renovate and healthy~~ social, recreational, educational, and religious organizations facilities as allowed by the land use code. Such facilities are ~~as~~ community assets which are essential for the mental, physical and spiritual health of Mercer Island. Future land use decisions should encourage the retention of these facilities.

## PROPOSAL 2

And with 15.6, there has to be something about not being allowed to replace a recreational facility with a new building like what O'Brien did with the Old Boys and Girls Club. So, if 25% of the property was recreational facility/volleyball field, that can't be replaced with a building. Please provide language to that effect.

And please remove the last sentence "with preference given to areas near high capacity transit." Who cares less about that? What people don't realize is that you have lovely waterfront houses within ¼ mile of the Transit Centers. Are you trying to tell me that middle housing is to be encouraged on the waterfront properties by high capacity transit just because we have a transit center?

16.5 Infill Encourage development of middle housing where mandated by state law, on vacant or under-utilized sites should occur outside of critical areas and ensure that the infill it is compatible with the surrounding neighborhoods, with preference given to areas near high capacity transit.

Add a section to the end of this in which "some fire code regulations with regards to the older buildings should be grandfathered in."

***"16.8 Evaluate locally adopted building and fire code regulations within existing discretion to encourage the preservation of existing homes."***

And I am sorry, but you are all aware that the JCC and Herzl and The Beach Club and Yeshiva all want to have certain things, and in order to have those certain things, the zone needs to be changed to "CO Zone." So, you should not be allowing these things in a CO Zone until you know for sure what is going to happen with the JCC, Herzl property and others. You see, let's just say that the zone gets adopted, you have now allowed them to allow multifamily and other commercial uses in the zone. So, would someone like to address this CO zone?

Please remove the last sentence of this next paragraph, you will not be allowing supplemental design guidelines:

"17.1 Commercial uses and densities near the I-90/East Mercer Way exit and SE 36th Street are appropriate for that area. All activities in the COCommercial Office zone are subject to design review and supplemental design guidelines may be adopted."

## PROPOSAL 2

~~17.3 Inclusion of a range of Add multifamily residential and other commercial densities should be allowed when compatible uses to in the Commercial Office (CO) zones. This should be accomplished through rezones or changes in zoning district regulations, multi-family residences should be allowed in all commercial zones where that minimize consider adverse impacts to surrounding areas, especially residential zones can be minimized. Housing should be used to create new, vibrant neighborhoods.~~

And there needs to be something in here about not allowing toxic chemicals to be used and there is loud freeway noise and bright lighting, but you come along and say that you will reduce impact to people how exactly do you plan on ensuring we have a clean and healthy environment? It would be nice if you built a LID over the I-90 freeway, what about setting that as a goal?:

18.11 Ensure all people in Mercer Island have a clean and healthy environment, regardless of race, social, or economic status.

18.12 Reduce impacts to people and areas that have been disproportionately affected by noise, air, pollution, or other environmental impacts.

And if you remember, when it comes to CO land use, you allowed a retirement home in the one CO land use, but there is no mention of that being permitted as a “complementary land use”, and etc is etc of what exactly?:

Commercial Office	C-O B	The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office. Complementary land uses (e.g., healthcare uses, schools, places of worship, etc.) are also generally supported within this land use designation.
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And I got these definitions from the EPA [Green Streets and Community Open Space | US EPA](#):

And the definition of “park” is a “large public green area in a town, used for recreation”

And the definition of “open space” is: “Open space is any open piece of land that is undeveloped and is accessible to the public. In your community, there could be many creative opportunities for open space preservation that could help connect the community and revitalize its economy and social connectivity. Some opportunities for community open space can include:

## PROPOSAL 2

- Schoolyards
- Playgrounds
- Public seating areas
- Public plazas
- Vacant lots
- Green space (land that is partly or completely covered with grass, trees, shrubs, or other vegetation)
  - Parks
  - Community gardens
  - Cemeteries

They refer to “green streets” which I don’t see mentioned.

And where can I find something on retaining mature trees? Aren’t you all concerned with all the mature trees that are being cut down for development or in rights-of-way? I don’t know where that would go, but it needs to go somewhere in The Comprehensive Plan. Thanks.

# PROPOSAL 3

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Matthew Goldbach

Address: 9980 SE 40th St, Mercer Island, WA 98040

Phone: 954-806-2489

Email: blkship@yahoo.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone?

Yes

No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that the application is submitted with consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

# PROPOSAL 3

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

Sept. 28 2024

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Please attach a separate narrative  
responding to the above questions.



# PROPOSAL 3

## SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.15.240 Reclassification of Properties (Rezoning)

MICC 19.15.240(C) Criteria

### Suggested Code Amendment:

I suggest MICC 19.15.240(C) be amended to prohibit single-family, residentially-zoned property as delineated in Appendix D - Zoning Map from being rezoned to any other zone.

MICC 19.15.240(C) will then read with the suggested amendment **Subsection 8** as follows:

19.15.240 - Reclassification of property (rezoning).

- A. Purpose. The purpose of this section is to establish the process and criteria for a rezoning of property from one zoning designation to another.
- B. Process. A rezoning shall be considered as provided in MICC 19.15.260.
- C. Criteria. The city council may approve a rezoning only if all of the following criteria are met:
  - 1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;
  - 2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;
  - 3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;
  - 4. The proposed reclassification does not constitute an illegal site-specific rezoning;
  - 5. The proposed reclassification is compatible with surrounding zones and land uses;
  - 6. The proposed reclassification does not adversely affect public health, safety and welfare; and
  - 7. If a comprehensive plan amendment is required in order to satisfy subsection (C)(1) of this section, approval of the comprehensive plan amendment is required prior to or concurrent with the granting of an approval of the rezoning.
  - 8. **“No single-family, residentially-zoned property as delineated in Appendix D – Zoning Map – MICC 19.02.010 may be rezoned to any other zone.”**

## PROPOSAL 3

D. Map change. Following approval of a rezone, the city shall amend the zoning map to reflect the change in zoning designation. The city shall also indicate on the zoning map the number of the ordinance adopting the rezone.

(Ord. 18C-08 § 1 (Att. A))

### ANALYSIS:

A. The Mercer Island Comprehensive Plan Supports Preserving Single-Family Residential Zoned Properties.

Attached as Exhibit 1 to this suggested amendment is Appendix D – Zoning Map.

The following Comprehensive Policy directions provided by the Mercer Island Comprehensive Plan are from the City of Mercer Island Community Planning and Development Code Interpretation 22-004 dated November 21, 2022 regarding Variances for Non-Residential Structures in Residential Zones, which is attached as Exhibit 2:

E. (4) Policy direction provided by the Mercer Island comprehensive plan;

Analysis: Review of the Comprehensive Plan results in the following findings:

- (1) The Comprehensive Plan envisions Mercer Island as a residential community:
  - (a) "Mercer Island prides itself on being a residential community. As such, most of the Island's approximately 6.2 square miles of land area is developed with single family homes." [Land Use Element, Introduction]
  - (b) "Single family residential zoning accounts for 88 percent of the Island's land use. There are 3,534 acres zoned for single family residential development. This compares to 77 acres in the Town Center zones, 19 acres for Commercial Office zone, and 103 acres in multi-family zones (Table 2). City Hall is located in a Commercial Office zone, while other key civic buildings such as the Post Office and the Main Fire Station are located in the Town Center and City Hall. Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones." [Land Use Element, II Existing Conditions and Trends, Areas outside the Town Center]

## PROPOSAL 3

- (c) "OUTSIDE THE TOWN CENTER (1) The community needs to accommodate two important planning values - maintaining the existing single family residential character of the Island, while at the same time planning for population and housing growth." [Land Use Element, IV. Land Use Issues, Outside the Town Center (1)]
- (2) A primary component of the housing element is the City's desire to protect single-family residential neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. City code provisions were specifically designed to protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character. This includes limiting the size and scope of nonresidential uses to be consistent with existing neighborhood character.
- (a) "Housing Element
- III. Neighborhood Quality
- Mercer Island single family neighborhoods pride themselves on their narrow, quiet streets and dense plantings. The City protects these neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. Parks, open spaces and trails also contribute to the neighborhood quality." [Housing Element, III. Neighborhood Quality]
- b) "GOAL 1:
- Ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.
- 1.1 Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character." [Housing Element, III. Neighborhood Quality, Goal 1.1]

## PROPOSAL 3

(3) The Comprehensive Plan evidences an intent to retain certain non-residential structures located in residential zones. However, the Comprehensive Plan is silent on whether such structures would be eligible for variances from otherwise applicable numerical standards.

(a) "GOAL 17:

With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

17 .4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island." [Land Use Elements, IV Land Use Issues Outside the Town Center]

(4) The Comprehensive Plan also evidences an intent to preserve existing conditions and to generally permit changes only through amendments to the development code, rather than through granting numerous of variances to that development code. At the same time, there is also recognition that some non-residential structures and uses are compatible with residential zones.

(a) "GOAL 15: -

Mercer Island should remain principally a low density, single family residential community.

15.1 Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments.

15.2 Residential densities in single family areas will generally continue to occur at three to five units per acre, commensurate with current zoning. However, some adjustments may be made to allow the development of innovative housing types, such as accessory dwelling units and compact courtyard homes at slightly higher densities as outlined in the Housing Element.

...

## PROPOSAL 3

15.4 As a primarily single family residential community with a high percentage of developed land, the community cannot provide for all types of land uses. Certain activities will be considered incompatible with present uses. Incompatible uses include landfills, correctional facilities, zoos and airports. Compatible permitted uses such as education, recreation, open spaces, government social services and religious activities will be encouraged." [Land Use Elements, IV Land Use Issues Outside the Town Center].

Pages 4 – 6

### **B. The Region Is Facing A Housing Shortage.**

Attached as Exhibit 3 are public announcements by Governor Inslee encouraging the Legislature to “go big” to meet the scale of the housing crisis, and the enormous investments the state and county are making to scale-up construction of housing.

Attached as Exhibit 4 are pages from the PSRC’s 2050 Vision Statement on Housing noting:

**“Housing is a basic need for every individual. Yet, residents in many communities in the region are facing an unprecedented challenge in finding and keeping a home that they can afford. The central Puget Sound region is expected to grow by an additional 1.8 million residents and 830,000 households by the year 2050. Simply put, the region needs more housing of varied types in all communities. Meeting the housing needs of all households at a range of income levels is integral to promoting health and well-being and creating a region that is livable for all residents, economically prosperous, and environmentally sustainable.”**

PSRC 2050 Vision Statement, p.82

Currently Mercer Island has a housing allocation of approximately 1,200 units left to permit pursuant to the GMPC’s housing allocations. In 2023, the Legislature adopted HB 1110 that requires every residential lot on Mercer Island to allow two separate housing units, and four housing units per lot without parking mandates within a quarter of a mile of the light rail station, including the residential neighborhood to the north.

## PROPOSAL 3

It would be contrary to state, county and city policies for Mercer Island to now allow single-family residential zoned properties to be rezoned to a different non-housing zone, and would shift Mercer Island's housing allocation burden to the other residential zones and property.

**C. The Conditional Use Permit Process Allows A Fair And Equitable Non-Conforming Use In A Single-Family Residential Zone.**

The Conditional Use Permit (CUP) process MICC 19.06.110 allows an organization to obtain a non-conforming use in the single-family home residential zone, and allows that non-conforming CUP to combine residential properties and eliminate the side-yard setbacks between the properties.

At the same time, the Conditional Use Permit process MICC 19.06.110(a) and (b) protects the surrounding single-family home residential zones and requires that the scale of the development, in consideration of the privilege of a non-conforming use, is consistent with all properties in the single-family home residential zone.

The mere existence of MICC 19.06.110 highlights that the restrictions on conditional uses in the single-family home residential zone is not consistent with a different zone with different regulatory limits in the single-family residential zone.

**D. To Allow One Property Owner Or Conditional Use Permit To Rezone Single-Family Zoned Residential Properties To Another Zone Will Allow All Property Owners The Same Right.**

MICC 19.15.240(C)(4) specifically states the "proposed reclassification does not constitute an illegal site-specific rezone." If the Council allows single-family residential zoned properties to be rezoned contrary to state, county and city policies preserving and expanding housing, that would require the Council to allow **any** single-family home residential property owner to request the same change in zoning or upzone. If the requested rezone is site specific, it violates MICC 19.15.240(4)(C). If it is not site specific, it effectively eliminates the single-family residential zone.

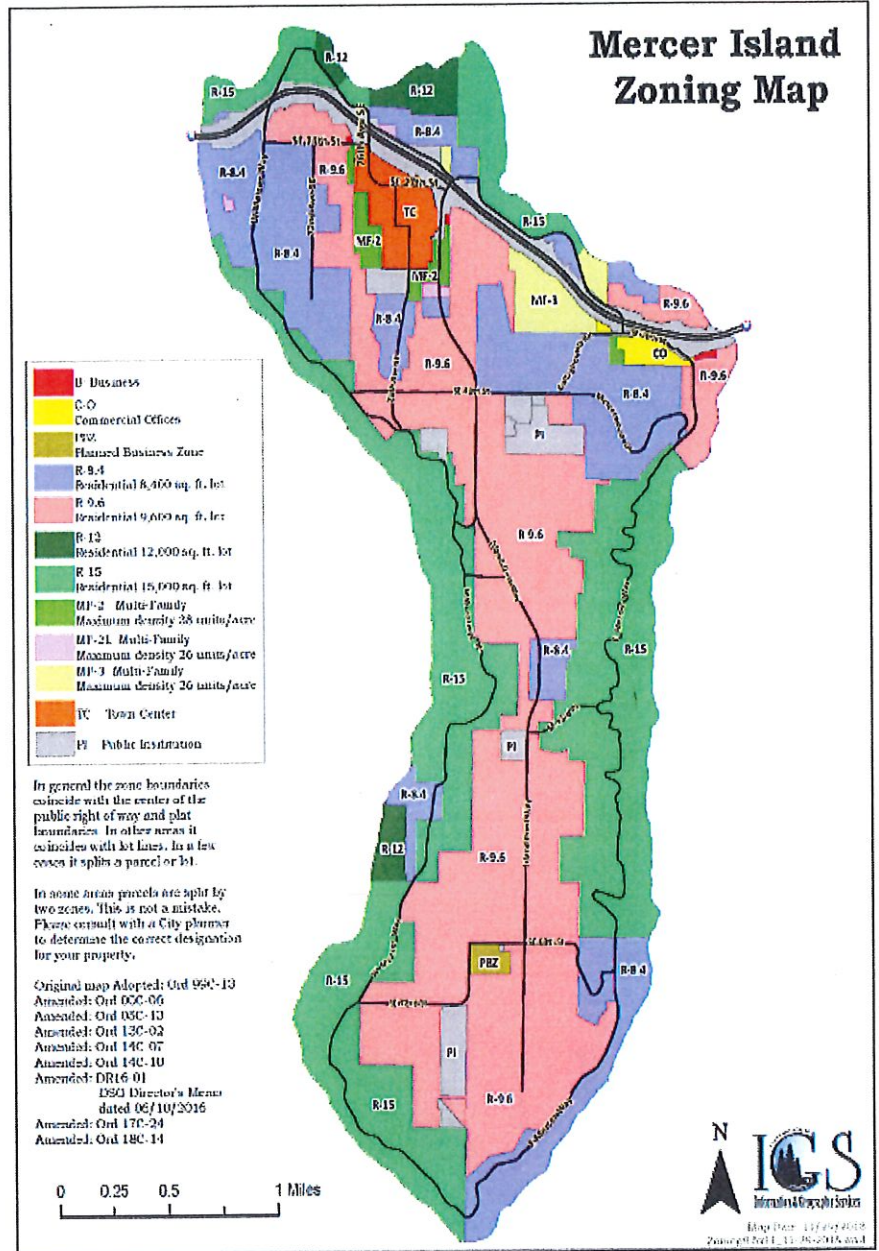
The Council cannot favor one property owner or CUP over another, otherwise it would be an illegal spot zone. Such a huge change in zoning and policy would effectively abrogate the policies towards preserving single-family home residential zoning on Mercer Island contrary to The Comprehensive Plan.

# Exhibit 1

# PROPOSAL 3

## Appendix D - ZONING MAP

View city of Mercer Island Zoning Map.





# Exhibit 2

**Development Code Interpretation  
22-004**

**CITY OF MERCER ISLAND**

**COMMUNITY PLANNING & DEVELOPMENT**  
9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



**TO:** CPD Staff  
**FROM:** Jeff Thomas, Interim CPD Director  
**DATE:** November 21, 2022  
**RE:** Variances for Non-Residential Structures in Residential Zones

**A. MICC SECTION(S) INTERPRETED**  
MICC 19.06.110(B)

**B. AUTHORITY**  
This development code interpretation is issued under the authority of sections 19.15.030 and 19.15.160 of the Mercer Island City Code (MICC).

**C. ISSUE**  
MICC 19.06.110(B), *Variances*, imposes a hardship criterion that requires applicants requesting variances in residential zones to demonstrate that strict enforcement of Title 19 MICC will prevent the construction of a single-family dwelling on a legally created residentially zoned lot. MICC 19.06.110(B)(2)(a).

Can the City grant a variance from numeric standards for a non-residential structure sited in a residential zone, if under MICC 19.06.110(B)(1), all criteria in subsection(B)(2)(a) through (B)(2)(h) must be met, and that for a variance to lot coverage standards, the criteria in subsection (B)(2)(a) through (B)(2)(i) must be met?

**D. BACKGROUND**  
The hardship criterion contained in MICC 19.06.110(B)(2)(a) was adopted by Ordinance No. 17C-15 on September 19, 2017. The criterion contained in MICC 19.06.110(B)(2)(i), relating to variances as to lot coverage for specific non-residential structures, existed in the MICC prior to the adoption of Ordinance No. 17C-15. However, that language was moved to MICC 19.06.110(B)(2)(i) within Ordinance No. 17C-15 to consolidate criteria relating to variances.

# PROPOSAL 3

## E. FINDINGS

1. Per MICC 19.15.160, the Code Official may issue a written interpretation of the meaning or application of provisions of the development code.<sup>1</sup>
2. This written interpretation is intended to interpret the scope of the hardship criteria as applied to non-residential structures in residential zones.
3. MICC 19.06.110(B)(1)(a) could be read to foreclose variances from numeric standards for non-residential structures in residential zones because the hardship criterion limits the application of variances to instances where strict application of Title 19 would prohibit construction of one single family residence on a legally created residential lot. The applicant or property owner of a non-residential structure would not be able to demonstrate an unnecessary hardship because there are no circumstances where the adopted standards of Title 19 MICC are preventing construction of a single-family dwelling; rather the applicant or property owner is seeking a variance for a non-residential structure. It is not Title 19 that would preclude the construction of a residential structure, but rather the choice of the applicant or property owner. However, MICC 19.06.110(B)(2)(i) explicitly affords the applicant or property owner of a non-residential structure the opportunity for a variance from impervious surface standards for particular types of non-residential structures.
4. This apparent conflict within MICC 19.06.110(B) requires interpretation to administer.
5. A plain reading of MICC 19.06.110(B), giving meaning to all of the text within that section, results in the following conclusions:
  - a. Non-residential structures in residential zones are generally precluded from receiving variances from numeric standards of Title 19, because they cannot meet the hardship criterion—to wit, they cannot demonstrate that Title 19 prevents the construction of a single-family dwelling on a legally created residential lot.
  - b. The one exception is that certain enumerated non-residential structures (public and private schools, religious institutions, private clubs, and public facilities) within residential zones with slopes of less than 15 percent *can* receive a variance to increase impervious surface to a maximum of 60 percent if the Hearing Examiner determines the applicant has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv).
  - c. Further, an applicant or property owner would also be required to demonstrate the other criteria outlined in subsection (B)(2)(a) through (B)(2)(i), with the exception of being able to demonstrate inability to construct a single-family residence on a legally created residential lot. The applicant or property owner would still have to demonstrate an unnecessary hardship to the property owner, because the first sentence of MICC 19.06.110(B)(2)(a) requires proof that “[t]he strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner.”
6. As discussed further below, the legislative history relating to Ordinance No. 17C-15 supports this conclusion. During the process of adopting Ordinance No. 17C-15, discussion between the City Council and the City’s then Community Planning and Development (CPD) Director reflected an intent to greatly reduce the number of variances granted, which was the impetus behind adding the hardship criterion now contained in MICC 19.06.110(B)(2)(a).
7. In issuing an interpretation, the Code Official is directed to consider eight factors specified in MICC 19.15.160(A). These factors are:

**(1.) The plain language of the code section in question;**

**Analysis:** A reading of the plain language of MICC 19.06.110 results in the following findings:

<sup>1</sup> Under the MICC, variances are granted by the Hearing Examiner. MICC 19.15.030 and Tables A-B.

# PROPOSAL 3

- i. MICC 19.06.110(B), *Variances*, imposes a hardship criterion; an applicant or owner applying for variance must show that strict enforcement of Title 19 will create an unnecessary hardship to the property owner. MICC 19.06.110(B)(2)(a). For properties in residential zones, “unnecessary hardship” is limited to those circumstances where the adopted standards of Title 19 MICC prevent the construction of a single-family dwelling on a legally created residential zoned lot. *Id.*
- ii. However, MICC 19.06.110(B)(2) also includes a criterion for variances to impervious surface standards for “[p]ublic and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent.” MICC 19.06.110(B)(2)(i).
- iii. MICC 19.06.110(B)(1) further provides: “[a] variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section.”

## (2.) Purpose and intent statement of the chapters in question;

Analysis: Chapter 19.06 MICC does not contain a general purpose statement; however, MICC 19.06.110(B)(1) provides a purpose statement for the MICC section in question: “*Purpose.* An applicant or property owner may request a variance from any numeric standard, except for the standards contained within chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section.”

## (3.) Legislative intent of the city council provided with the adoption of the code sections in question;

Analysis: Review of the legislative history of MICC 19.06.110(B) results in the following findings:

- i. On September 19, 2017, the Mercer Island City Council adopted Ordinance No. 17C-15, adding the unnecessary hardship criterion currently contained in MICC 19.06.110(B)(2)(a).
- ii. The minutes from the relevant City Council meetings indicate the following:  
The July 5, 2017 minutes contains the following discussion:

### **Variance Criteria:**

- Planning Commission Recommendation: prohibit / limit variances to GFA, minimum lot size, height, fence height and staff does not recommend adopting this amendment
- Alternative: Limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from “d.”

Council Direction: Staff propose a solution for “flag lots.” Support alternative to limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from “d.”

# PROPOSAL 3

iii. The packet from the July 5, 2017, reading of the later adopted ordinance included the following discussion of the options before City Council with respect to the hardship criterion ultimately added to MICC 19.06.110(B)(2)(a):

Variance Criteria				
Draft Page #	Planning Commission Recommendation	Proposed Amendment	Source	Staff Recommendation / Rationale
17 Page 71 – Variances	Allow for an application for a variance to any numeric standard, except for the standards in Chapter 19.07.	Prohibit the application for a variance to minimum lot area requirements, gross floor area, building height, or lot coverage.	Dan Grausz	Staff does not recommend adopting this amendment. There are some circumstances where allowing for a variance to these standards is appropriate to avoid a regulatory takings. The variance criteria have been revised to limit variances to only those circumstances where a variance is warranted.
		Alternatively, limit variance approvals to those situations where a property owner cannot both comply with existing standards and build a home on a legally created residential lot.		Staff recommends further revising the criteria for approval. In particular, staff recommends limiting variances to situations where a property owner cannot comply with all of the development standards and build a new single family home.  This item was discussed by the Planning Commission.

- iv. The discussion between the then CPD Director and City Council regarding the hardship criterion further indicates the intent of restricting variances in residential zones only to those instances where a variance is necessary to permit the construction of a single-family residence on a legally created residential lot.
- v. The Code Official is unaware of any discussion by City Council or other materials regarding the resulting conflict between the language in MICC 19.06.110(B)(2)(a) and the language in MICC 19.06.110(B)(2)(i).

**(4.) Policy direction provided by the Mercer Island comprehensive plan;**

Analysis: Review of the Comprehensive Plan results in the following findings:

- (1) The Comprehensive Plan envisions Mercer Island as a residential community:
  - (a) "Mercer Island prides itself on being a residential community. As such, most of the Island's approximately 6.2 square miles of land area is developed with single family homes." [Land Use Element, Introduction]
  - (b) "Single family residential zoning accounts for 88 percent of the Island's land use. There are 3,534 acres zoned for single family residential development. This compares to 77 acres in the Town Center zones, 19 acres for Commercial Office zone, and 103 acres in multi-family zones (Table 2). City Hall is located in a Commercial Office zone, while other key civic buildings such as the Post Office and the Main Fire Station are located in the Town Center and City Hall. Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones." [Land Use Element, II Existing Conditions and Trends, Areas outside the Town Center]
  - (c) "OUTSIDE THE TOWN CENTER (1) The community needs to accommodate two important planning values — maintaining the existing single family residential character of the Island, while at the same time planning for

## PROPOSAL 3

population and housing growth.” [Land Use Element, IV. Land Use Issues, Outside the Town Center (1)]

- (2) A primary component of the housing element is the City’s desire to protect single-family residential neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. City code provisions were specifically designed to protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character. This includes limiting the size and scope of nonresidential uses to be consistent with existing neighborhood character.

- (a) “Housing Element

III. Neighborhood Quality

Mercer Island single family neighborhoods pride themselves on their narrow, quiet streets and dense plantings. The City protects these neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. Parks, open spaces and trails also contribute to the neighborhood quality.” [Housing Element, III. Neighborhood Quality]

- (b) “GOAL 1: -

Ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.

1.1 Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character.” [Housing Element, III. Neighborhood Quality, Goal 1.1]

- (3) The Comprehensive Plan evidences an intent to retain certain non-residential structures located in residential zones. However, the Comprehensive Plan is silent on whether such structures would be eligible for variances from otherwise applicable numerical standards.

- (a) “GOAL 17: -

With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

17.4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island.” [Land Use Elements, IV Land Use Issues Outside the Town Center]

- (4) The Comprehensive Plan also evidences an intent to preserve existing conditions and to generally permit changes only through amendments to the development code, rather than through granting numerous of variances to that development code. At the same

## PROPOSAL 3

time, there is also recognition that some non-residential structures and uses are compatible with residential zones.

(a) "GOAL 15: -

Mercer Island should remain principally a low density, single family residential community.

15.1 Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments.

15.2 Residential densities in single family areas will generally continue to occur at three to five units per acre, commensurate with current zoning. However, some adjustments may be made to allow the development of innovative housing types, such as accessory dwelling units and compact courtyard homes at slightly higher densities as outlined in the Housing Element.

...

15.4 As a primarily single family residential community with a high percentage of developed land, the community cannot provide for all types of land uses. Certain activities will be considered incompatible with present uses. Incompatible uses include landfills, correctional facilities, zoos and airports. Compatible permitted uses such as education, recreation, open spaces, government social services and religious activities will be encouraged." [Land Use Elements, IV Land Use Issues Outside the Town Center].

### (5.) Relevant judicial decisions;

Analysis: The Code Official is unaware of any relevant judicial decisions related to this issue. However, the Code Official is aware of several cases regarding code interpretation. Municipal ordinances are subject to the same rules of statutory interpretation as are statutory enactments. *Hassan v. GCA Production Services, Inc.*, 17 Wn.App. 625, 637, 487 P.3d 203 (2021). Additionally, the goal of code interpretation is to give effect to the intentions of the drafters. *Jametsky v. Olsen*, 179 Wash. 2d 756, 762, 317 P.3d 1003, 1006 (2014). Absurd results are to be avoided in construing ambiguous language, although the principle is to be used sparingly. *Seattle Hous. Auth. v. City of Seattle*, 3 Wash. App. 2d 532, 538-39, 416 P.3d 1280, 1283 (2018); *Samish Indian Nation v. Wash. Dep't of Licensing*, 14 Wash.App.2d 437, 444, 471 P.3d 261 (2020). Further, when possible, legislation must be construed so that no clause, sentence, or word is rendered superfluous, void, or insignificant. *Coates v. City of Tacoma*, 11 Wash. App. 2d 688, 695, 457 P.3d 1160, 1164 (2019).

### (6.) Consistency with other regulatory requirements governing the same or similar situation;

Analysis: The Code Official is unaware of other regulatory requirements governing the same or similar situations.

### (7.) The expected result or effect of the interpretation; and

Analysis: The interpretation will result in clarifying the position of the Code Official in that the MICC prohibits variances from numerical standards for non-residential structures in residential zones, with the sole exception of the specific types of non-residential structures enumerated in MICC 19.06.110(B)(2)(i) from impervious surface standards.

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## **(8.) Previous implementation of the regulatory requirements governing the situation.**

Analysis: The Code Official is unaware of any previous implementation of regulatory requirements relating to variances for non-residential structures within residential zones since the addition of the hardship criterion in September 2017.

## **F. CONCLUSIONS**

1. MICC 19.06.110(B) contains conflicting language as to variances for non-residential structures in residential zones. Reconciling this conflict, the Code Official makes the following interpretations:
  - a. The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if:
    - i. The Hearing Examiner finds that the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) have been satisfied, and
    - ii. The Hearing Examiner finds compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the second sentence of (B)(2)(a) due to the conflict with subsection (B)(2)(i).
  - b. The MICC prohibits other variances from numerical standards for non-residential structures in residential zones.
2. Both conclusions enumerated above are based upon the following:
  - a. It is apparent from the relevant legislative history that City Council's stated intent was to restrict variances in residential zones only to those circumstances in which construction of a single-family residence upon a legally created residential lot would be prohibited. The Code Official did not find any evidence that City Council was aware of the conflict between MICC 19.06.110(B)(2)(a) and (B)(2)(i).

Because the language regarding variances from impervious surface standards for certain specified non-residential structures in residential zones was also reorganized by City Council to MICC 19.06.110(B) contemporaneously with the creation of the hardship criterion, it is the position of the Code Official that the language in MICC 19.06.110(B)(2)(i) must be also given effect as a narrow exception to the prohibition against variances for non-residential structures in residential zones as put forth in MICC 19.06.110(B)(2)(a). This conclusion is necessary in order to give the fullest effect to the legislative enactment of the City Council.

- b. Utilizing statutory interpretation principles, the Code Official is required to construe the MICC to give the fullest effect to the legislative intent of the City Council, to utilize the principles of avoiding absurd results (but in a sparing manner), and to avoid making code language superfluous, void, or insignificant. Other than variances from impervious surface standards, no other variances for non-residential structures within residential zones are listed in MICC 19.06.110(B)(2).
- c. There is nothing in the City's Comprehensive Plan to contradict the conclusions of the Code Official. The Comprehensive Plan prioritizes residential uses while also recognizing certain non-residential uses within residential zones. The interpretation of the Code Official does not prohibit the siting of non-residential structures in residential zones where otherwise permitted, but it does limit the type of variances available for such structures.



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## G. INTERPRETATION

The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if the Hearing Examiner determines the application has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) and the applicant or property owner demonstrates compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the conflicting second sentence of (B)(2)(a).

Having not been expressly included in MICC 19.06.110(B)(2), the position of the Code Official is that all other variances from numerical standards for non-residential structures in residential zones are prohibited by MICC 19.06.110(B)(2)(a).

# Exhibit 3

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/ Washington "goes big" on housing in 2023

# Washington "goes big" on housing in 2023

May 08, 2023



*Gov. Jay Inslee signs legislation to help overcome racist real estate covenants that pervaded until the 1960s and caused intergenerational harm.*

From Vancouver to Bellingham and Pullman to La Push, the cost of housing has soared. In the last decade, one million new residents arrived while only one-quarter as many homes went up. When demand exceeds supply, prices rise. Rise they have.

Rents are up. Prices are up. Accordingly, homelessness is up. And too many families are just a paycheck away from trouble.

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To begin the 2023 legislative session, Gov. Jay Inslee encouraged the Legislature to “go big” to meet the scale of the housing crisis. On Monday, the governor and lawmakers gathered to sign a slate of housing-related bills to clear obstacles to housing construction and right historic wrongs related to housing discrimination.

At a later date, the governor will sign a budget that allocates more than \$1 billion over the next biennium to address homelessness and affordable housing.

[Read the rest of the story on Gov. Inslee's Medium page.](#)

# PROPOSAL 3

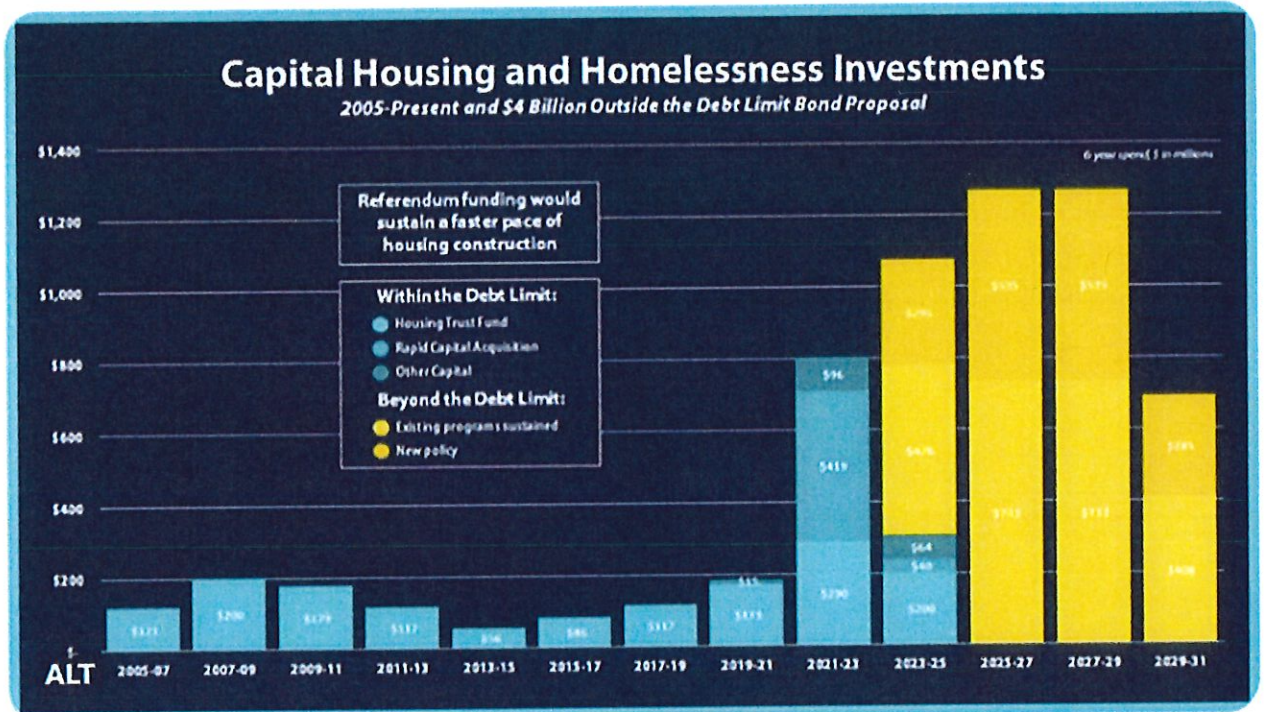
← Post



Governor Jay Inslee

@GovInslee

In the past two years we were able to make historic investments to scale up and speed up construction of housing and shelters. The problem is growing, not shrinking, so our response must match the moment. (2/3)



5:26 PM · Mar 20, 2023 · 12.7K Views

# Exhibit 4



# Housing

*GOAL: The region preserves, improves, and expands its housing stock to provide a range of affordable, accessible, healthy, and safe housing choices to every resident. The region continues to promote fair and equal access to housing for all people.*

Housing is a basic need for every individual. Yet, residents in many communities in the region are facing an unprecedented challenge in finding and keeping a home that they can afford. The central Puget Sound region is expected to grow by an additional 1.8 million residents and 830,000 households by the year 2050. Simply put, the region needs more housing of varied types in all communities. Meeting the housing needs of all households at a range of income levels is integral to promoting health and well-being and creating a region that is livable for all residents, economically prosperous, and environmentally sustainable.

Housing affordability continues to be a major challenge for the region. The housing market has experienced great highs and lows that have benefitted some and created and exacerbated hardship and inequalities for others. Following the precipitous drop in housing prices and foreclosures of the recession, the region's economic upswing and strong job growth in the 2010s have fueled dramatic increases in rents and home prices. Despite job losses due to the COVID-19 pandemic and the resulting financial

impact on many households, home prices have continued to increase in the region. Some may have been able to take advantage of historically low mortgage interest rates or lower rents, while others are in a challenging position due to loss of income and face the potential of eviction or foreclosure. A potentially imbalanced recovery may further the threat of displacement of low-income households and people of color. As a result, housing costs are a greater burden for many households today than a decade ago, leaving less for other basic needs and amenities. Renters, and renters of color in particular, face a considerable shortage of affordable housing opportunities. And these households are often the most at risk of losing their housing and experiencing homelessness.

A primary goal of the Growth Management Act is to make housing affordable to “all economic segments of the population, providing a variety of residential densities and housing types and encouraging preservation of existing housing stock. Local governments are required to plan for housing that meets the varied needs of their diverse communities and residents and to ensure





they are providing sufficient residential zoned land capacity for housing to accommodate 20-year growth targets.

VISION 2050's housing policies respond to the urgency of changing demographics and the need to increase and diversify the region's housing supply. They identify coordinated strategies, policies, and actions to ensure that the region's housing needs are met.

## A Regional Challenge

The complexity of addressing the full range of housing needs and challenges requires a coordinated regional-local approach. A coordinated, regionwide effort to build and preserve housing accessible to all residents is not just about housing. It is also about building healthy, complete, and welcoming communities where all families and people, regardless of income, race, family size or need, are able to live near good schools, transit, employment opportunities, and open space.

Through the Regional Growth Strategy, the region has articulated a preferred pattern of urbanization that will help direct new housing development to the urban growth area and designated growth centers while preserving industrial lands. Focusing housing in urban areas, specifically centers and station areas, supports and leverages the region's ongoing prioritization of infrastructure investment in central urban places. To assist counties and cities, PSRC serves as a forum for setting regional priorities and facilitating coordination among its member jurisdictions and housing interest groups.

Through data, guidance, and technical assistance, PSRC encourages jurisdictions to adopt best housing practices and establish coordinated local housing and affordable housing targets. PSRC supports jurisdictions in their development of effective local housing elements, strategies, and implementation plans. Housing data and information tracking the success of various housing efforts are monitored and reported regionally at PSRC.

## The Need for Local Action

Local governments play a critical role in housing, including its production and preservation. Local governments possess regulatory control over land use and development. They are key players, both individually and in cooperation with other housing interests, in stimulating various types of development activity through zoning, incentives, and funding, streamlined development review and permitting processes.

## Local Housing Responsibilities Under the Growth Management Act

Local housing elements should ensure the vitality and character of established residential neighborhoods and include the following components:

1. an inventory and analysis of existing and projected housing needs,
2. goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing,
3. identification of sufficient land for a range of housing types to match community needs, and
4. adequate provisions for the needs of all economic segments of the community. (RCW 36.70A.070)

There are numerous tools and strategies available to local governments to encourage housing diversity and promote affordable housing. Many of these tools can be applied in a manner that is tailored to and respectful of local market conditions, community characteristics, and the vision for growth embodied in local comprehensive plans. Since VISION 2040 was adopted in 2008, housing planning and implementation has advanced through the ongoing work of state, regional, and local agencies and organizations. These efforts have yielded new resources, promoted best practices, established community-based housing strategies, and coordinated efforts across multiple jurisdictions.

## Housing Choices to Reflect Changing Demographics

The characteristics of the region's households have been changing over time and will continue to do so. The size of the average household has been decreasing. Fewer people are living in family households with two parents and children. More households are comprised of singles, couples without children, or single-parent families. Many households have two or more workers. The region's population is becoming far more racially and ethnically diverse. As the population ages and new generations enter the housing market, there will be demands and preferences for new and different types of housing. While the region has a changing population with a wide range of housing needs, the vast majority of owner-occupied homes are larger single-family homes. Moderate density housing, ranging from duplexes to townhomes to garden apartments, bridge a gap between single-family housing and more intense multifamily and commercial areas and provide opportunities for housing types that are inclusive to people of different ages, life stages, and income ranges. Regional and local tools can help to promote and incentivize the development and preservation of more moderate density housing to give people greater housing choices, and produce urban densities that support walkable communities, local retail and commercial services, and efficient public transit.

### Affordability

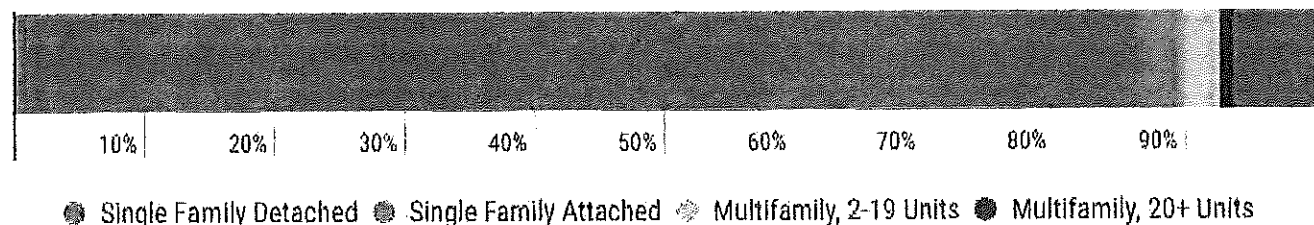
The region continues to experience an affordability crisis. Rising housing costs can be particularly devastating for low-income renters, particularly renters of color, many who

pay more than 50% of their income on housing. Many middle- and lower-income households struggle to find housing that fits their income in an increasingly competitive and expensive housing market due, in part, to zoning practices that have prevented the development of more affordable, smaller homes, and apartments. Home ownership may seem like less of a reality for potential first-time buyers as home prices continue to climb. This is especially true for people of color, who have been historically excluded from homeownership opportunities.

The central Puget Sound region's housing landscape reflects more than market forces and conditions. It is also the product of decades of public policies and private practices that, throughout the 20th century, often excluded lower income households and immigrant communities, and prevented people of color from accessing housing and living in certain areas. Past and current housing practices have perpetuated substantial inequities in wealth, ownership, and opportunity, and they continue to create barriers to rectifying these conditions. Regional housing work is approached with an awareness of this legacy and of the comprehensive work needed to redress it.

Low- to middle-wage workers – such as teachers, health care professionals, retail workers, administrative personnel, police officers, and firefighters – who are essential to the economic and social vitality of a community, often cannot afford to live in the places where they work. As affordable housing options become scarce, households are forced to move farther from their jobs and communities, resulting in increased traffic congestion and transportation costs and fragmentation of communities. This spatial mismatch also leads to an inability of certain segments of the labor market to fill positions.

Figure 27 – Ownership Housing Stock by Housing Type, Central Puget Sound Region



Source: 2017 American Community Survey

### Common Housing Terms

**Affordable Housing** is commonly defined in terms of housing costs as a percentage of household income. Housing is considered unaffordable when a household’s monthly housing costs exceed a certain threshold – most commonly 30% of gross income – thereby reducing the budget available for basic necessities.

**Housing Affordability** refers to the balance (or imbalance) between incomes and housing costs within a community or region. A common measurement compares the number of households in certain income categories to the number of units in the market that are affordable at 30% of gross income.

Providing housing affordable to households earning different incomes requires different approaches. To craft effective strategies, it is imperative to understand the types and cost of housing needed in a community relative to the supply of housing available to households at each income level. Over one-third of households in the region earn less than 80% area median income (AMI). Ideally, the supply of housing affordable to moderate and low-income households should mirror the number of households at those income levels. The current distribution of households in the region is:

- 15% of households earn 50-80% AMI (Moderate Income)
- 9% of households earn 30-50% AMI (Low Income)
- 11% of households earn less than 30% AMI (Very Low Income)

Providing affordable units for very low-income residents and providing housing options for residents experiencing homelessness cannot be fully addressed by the private market alone. Public intervention is necessary to ensure housing units

Figure 28 – Lower Housing Costs Require Greater Public Intervention				
<p><b>0–30% AMI Rental:</b></p> <p>public support needed in all markets</p>	<p><b>30–50% AMI Rental:</b></p> <p>public support needed in most markets</p>	<p><b>50–80% AMI Rental:</b></p> <p>incentives needed in many markets</p> <p><b>Home Ownership:</b></p> <p>subsidy or incentives needed in many markets</p>	<p><b>80–125% AMI Rental or Home Ownership:</b></p> <p>incentives or zoning flexibility needed in some markets</p>	<p><b>Above 125% AMI Market Rent and Home Ownership</b></p>

### Anticipated Households in the Region in 2050

274,000 11%	222,000 9%	355,000 15%	558,000 23%	1,012,000 42%
----------------	---------------	----------------	----------------	------------------

are affordable to households at the lowest income levels now and in the future.

While the current housing production rate in 2017 meets the average annual need in the region, the market has yet to make up for the slow growth in the years directly following the recession resulting in a supply and demand imbalance. Increasing the supply of housing throughout the region and providing a variety of housing types and densities for both renters and owners will help the region meet its housing goals. Special emphasis is placed on providing affordable housing for low-, moderate-, and middle-income households across the region, with a focus on promoting housing opportunities near transit, and appropriate housing for special needs populations. VISION 2050 also encourages more homeownership opportunities for low-income, moderate-income, and middle-income households and acknowledges historic and current inequities in access to homeownership opportunities for people of color and how this

long history of exclusion and discrimination has prevented communities of color from accessing housing, ownership, and opportunity.

### Focusing Housing Near Transit Options

Within the central Puget Sound region, jurisdictions are planning for housing and job growth in places designated for higher densities, a mix of land uses, and transportation choices. Communities across the region are realizing these aims by encouraging infill, redevelopment, and more compact development, especially in designated regional growth centers and around transit stations. However, rents and home prices are rising quickly, making it often challenging to find affordable housing close to jobs.

The region's continuing expansion of high-capacity transit provides one of the best opportunities to expand accessible housing options to a wider range of incomes. Promoting or



requiring affordable housing in walking distance – about ¼ to ½ mile—from high-capacity transit stations and in regional growth centers can help to ensure all residents have opportunities to live in accessible and connected communities. Such housing will be particularly valuable to low-income households, who are the most dependent on transit and are at risk for displacement as housing costs rise.

### Displacement and Community Stability

Displacement occurs when housing or neighborhood conditions force residents to move. Displacement can be physical, when building conditions deteriorate or are taken off the market for renovation or demolition, or economic, as costs rise. Many communities in the central Puget Sound region, like the Central District in Seattle and the Hilltop neighborhood in Tacoma, have documented displacement. Once physical and economic displacement occur, the social and cultural composition of the neighborhood will be disrupted, thus affecting the cohesion and stability of a community and the well-being of local residents and businesses.

Several key factors can drive displacement: proximity to rail stations, proximity to job centers, historic housing stock, and location in a strong real estate market. Displacement is a regional concern as it is inherently linked to shifts in the regional housing and job market. Many of these factors put communities of color and neighborhoods with high concentrations of renters at a higher risk of displacement.

Regional growth centers and communities near transit are home to more people of color and higher concentrations of poverty than the region as a whole. As these central places connected by transit continue to grow and develop, residents and businesses who contribute to these communities should have the option to remain and thrive and take advantage of new amenities and services.

### Jobs-Housing Balance

Jobs-housing balance is a planning concept which advocates that housing and employment be close together, with an emphasis on matching housing options with nearby jobs, to reduce the length of commute travel and number of vehicle trips. A lack of housing, especially affordable housing close to job centers, will continue to push demand for affordable homes to more distant areas, increasing commute times and the percentage of household income spent on transportation costs. Housing policies encourage adding housing opportunities to job-rich places. It is imperative that there are a variety of housing choices available to a variety of incomes in proximity to job centers to provide opportunities for residents to live close to where they work regardless of their income. Policies in the Economy chapter promote economic development to bring jobs to all four counties. Policies are also located in the Regional Growth Strategy chapter related to balancing jobs and housing growth.



**Housing POLICIES**

**MPP-H-1**

Plan for housing supply, forms, and densities to meet the region's current and projected needs consistent with the Regional Growth Strategy and to make significant progress towards jobs/housing balance.

**MPP-H-2**

Provide a range of housing types and choices to meet the housing needs of all income levels and demographic groups within the region.

**MPP-H-3**

Achieve and sustain – through preservation, rehabilitation, and new development – a sufficient supply of housing to meet the needs of low-income, moderate-income, middle-income, and special needs individuals and households that is equitably and rationally distributed throughout the region.

**MPP-H-4**

Address the need for housing affordable to low- and very low-income households, recognizing that these critical needs will require significant public intervention through funding, collaboration, and jurisdictional action.

**MPP-H-5**

Promote homeownership opportunities for low-income, moderate-income, and middle-income families and individuals while recognizing historic inequities in access to homeownership opportunities for communities of color.

**MPP-H-6**

Develop and provide a range of housing choices for workers at all income levels throughout the region that is accessible to job centers and attainable to workers at anticipated wages.

**MPP-H-7**

Expand the supply and range of housing at densities to maximize the benefits of transit investments, including affordable units, in growth centers and station areas throughout the region.

**MPP-H-8**

Promote the development and preservation of long-term affordable housing options in walking distance to transit by implementing zoning, regulations, and incentives.

**MPP-H-9**

Expand housing capacity for moderate density housing to bridge the gap between single-family and more intensive multifamily development and provide opportunities for more affordable ownership and rental housing that allows more people to live in neighborhoods across the region.

**MPP-H-10**

Encourage jurisdictions to review and streamline development standards and regulations to advance their public benefit, provide flexibility, and minimize additional costs to housing.

**MPP-H-11**

Encourage interjurisdictional cooperative efforts and public-private partnerships to advance the provision of affordable and special needs housing.

**MPP-H-12**

Identify potential physical, economic, and cultural displacement of low-income households and marginalized populations that may result from planning, public investments, private redevelopment, and market pressure. Use a range of strategies to mitigate displacement impacts to the extent feasible.

# Housing ACTIONS

## REGIONAL ACTIONS

### H-Action-1

Regional Housing Strategy: PSRC, together with its member jurisdictions, state agencies, housing interest groups, housing professionals, advocacy and community groups, and other stakeholders will develop a comprehensive regional housing strategy to support the 2024 local comprehensive plan update. The housing strategy will provide the framework for regional housing assistance (see H-Action-2, below) and shall include the following components:

- In the near term, a regional housing needs assessment to identify current and future housing needs to support the regional vision and to make significant progress towards jobs/housing balance and quantify the need for affordable housing that will eliminate cost burden and racial disproportionality in cost burden for all economic segments of the population, including those earning at or below 80 percent of Area Median Income throughout the region. This will provide necessary structure and focus to regional affordable housing discussions
- Strategies and best practices to promote and accelerate: housing supply, the preservation and expansion of market rate and subsidized affordable housing, housing in centers and in proximity to transit, jobs-housing balance, and the development of moderate-density housing options
- Coordination with other regional and local housing efforts

### H-Action-2

Regional Housing Assistance: PSRC, in coordination with subregional, county, and local housing efforts, will assist implementation of regional housing policy and local jurisdiction and agency work. Assistance shall include the following components:

- Guidance for developing local housing targets (including affordable housing targets), model housing policies, and best housing practices
- Technical assistance, including new and strengthened tools, to support local jurisdictions in developing effective housing strategies, action plans, and programs
- Collection and analysis of regional housing data, including types and uses of housing and effectiveness of zoning, regulations, and incentives to achieve desired outcomes

- Technical assistance in support of effective local actions to address displacement, including data on displacement risk and a toolbox of local policies and actions

### H-Action-3

State Support and Coordination: PSRC will monitor and support as appropriate members' efforts to seek new funding and legislative support for housing; and will coordinate with state agencies to implement regional housing policy.

## LOCAL ACTIONS

### H-Action-4

Local Housing Needs: Counties and cities will conduct a housing needs analysis and evaluate the effectiveness of local housing policies and strategies to achieve housing targets and affordability goals to support updates to local comprehensive plans. Analysis of housing opportunities with access to jobs and transportation options will aid review of total household costs.

### H-Action-5

Affordable Housing Incentives: As counties and cities plan for and create additional housing capacity consistent with the Regional Growth Strategy, evaluate and adopt techniques such as inclusionary or incentive zoning to provide affordability.

### H-Action-6

Displacement: Metropolitan Cities, Core Cities, and High Capacity Transit Communities will develop and implement strategies to address displacement in conjunction with the populations identified of being at risk of displacement including residents and neighborhood-based small business owners.

### H-Action-7

Housing Choice: Counties and cities will update regulations and strategies to reduce barriers to the development and preservation of moderate density housing to address the need for housing between single-family and more intensive multifamily development, consistent with the Regional Growth Strategy.

### H-Action-8

Housing Production: Counties and cities will review and amend, where appropriate and consistent with the Regional Growth Strategy, development standards and regulations to reduce barriers to the development of housing by providing flexibility and minimizing additional costs

# PROPOSAL 4

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Matthew Goldbach

Address: 9980 SE 40th St, Mercer Island, WA 98040

Phone: 954-806-2489

Email: blkship@yahoo.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone?

Yes

No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application



# PROPOSAL 4

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Sept 28 2024

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Please attach a separate narrative responding to the above questions.

# PROPOSAL 4

## SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.15.240 Reclassification of Properties (Rezoning)

MICC 19.15.240(C) Criteria

### Suggested Code Amendment:

I suggest MICC 19.15.240(C) be amended to prohibit a non-residential structure or use in the single-family residential zone, including a Conditional Use Permit, from requesting or obtaining a rezoning or reclassification of any single-family residential zoned properties.

MICC 19.240(C) will then read with the suggested amendment **Subsection 8** as follows:

19.15.240 - Reclassification of property (rezoning).

- A. Purpose. The purpose of this section is to establish the process and criteria for a rezoning of property from one zoning designation to another.
- B. Process. A rezoning shall be considered as provided in MICC 19.15.260.
- C. Criteria. The city council may approve a rezoning only if all of the following criteria are met:
  - 1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;
  - 2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;
  - 3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;
  - 4. The proposed reclassification does not constitute an illegal site-specific rezoning;
  - 5. The proposed reclassification is compatible with surrounding zones and land uses;
  - 6. The proposed reclassification does not adversely affect public health, safety and welfare; and
  - 7. If a comprehensive plan amendment is required in order to satisfy subsection (C)(1) of this section, approval of the comprehensive plan amendment is required prior to or concurrent with the granting of an approval of the rezoning.
  - 8. **"A non-residential structure or use in the single-family residential zone, including a Conditional Use Permit (CUP), is prohibited from requesting or obtaining a rezoning or reclassification of single-family residential zoned properties."**

## PROPOSAL 4

D. Map change. Following approval of a rezone, the city shall amend the zoning map to reflect the change in zoning designation. The city shall also indicate on the zoning map the number of the ordinance adopting the rezone.

(Ord. 18C-08 § 1 (Att. A))

### ANALYSIS:

A. **The Mercer Island Comprehensive Plan Supports Preserving Single-Family Residential Zoned Properties.**

Attached as Exhibit 1 to this suggested amendment is Appendix D – Zoning Map.

The following Comprehensive Policy directions provided by the Mercer Island Comprehensive Plan are from the City of Mercer Island Community Planning and Development Code Interpretation 22-004 dated November 21, 2022 regarding Variances for Non-Residential Structures in Residential Zones, which is attached as Exhibit 2:

E. (4) **Policy direction provided by the Mercer Island comprehensive plan;**

**Analysis:** Review of the Comprehensive Plan results in the following findings:

- (1) The Comprehensive Plan envisions Mercer Island as a residential community:
  - (a) "Mercer Island prides itself on being a residential community. As such, most of the Island's approximately 6.2 square miles of land area is developed with single family homes." [Land Use Element, Introduction]
  - (b) "Single family residential zoning accounts for 88 percent of the Island's land use. There are 3,534 acres zoned for single family residential development. This compares to 77 acres in the Town Center zones, 19 acres for Commercial Office zone, and 103 acres in multi-family zones (Table 2). City Hall is located in a Commercial Office zone, while other key civic buildings such as the Post Office and the Main Fire Station are located in the Town Center and City Hall. Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones." [Land Use Element, II Existing Conditions and Trends, Areas outside the Town Center]

## PROPOSAL 4

- (c) "OUTSIDE THE TOWN CENTER (1) The community needs to accommodate two important planning values - maintaining the existing single family residential character of the Island, while at the same time planning for population and housing growth." [Land Use Element, IV. Land Use Issues, Outside the Town Center (1)]
- (2) A primary component of the housing element is the City's desire to protect single-family residential neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. City code provisions were specifically designed to protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character. This includes limiting the size and scope of nonresidential uses to be consistent with existing neighborhood character.
- (a) "Housing Element
- III. Neighborhood Quality
- Mercer Island single family neighborhoods pride themselves on their narrow, quiet streets and dense plantings. The City protects these neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. Parks, open spaces and trails also contribute to the neighborhood quality." [Housing Element, III. Neighborhood Quality]
- b) "GOAL 1:
- Ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.
- 1.1 Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character." [Housing Element, III. Neighborhood Quality, Goal 1.1]

## PROPOSAL 4

(3) The Comprehensive Plan evidences an intent to retain certain non-residential structures located in residential zones. However, the Comprehensive Plan is silent on whether such structures would be eligible for variances from otherwise applicable numerical standards.

(a) "GOAL 17:

With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

17.4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island." [Land Use Elements, IV Land Use Issues Outside the Town Center]

(4) The Comprehensive Plan also evidences an intent to preserve existing conditions and to generally permit changes only through amendments to the development code, rather than through granting numerous of variances to that development code. At the same time, there is also recognition that some non-residential structures and uses are compatible with residential zones.

(a) "GOAL 15: -

Mercer Island should remain principally a low density, single family residential community.

15.1 Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments.

15.2 Residential densities in single family areas will generally continue to occur at three to five units per acre, commensurate with current zoning. However, some adjustments may be made to allow the development of innovative housing types, such as accessory dwelling units and compact courtyard homes at slightly higher densities as outlined in the Housing Element.

...

## PROPOSAL 4

15.4 As a primarily single family residential community with a high percentage of developed land, the community cannot provide for all types of land uses. Certain activities will be considered incompatible with present uses. Incompatible uses include landfills, correctional facilities, zoos and airports. Compatible permitted uses such as education, recreation, open spaces, government social services and religious activities will be encouraged." [Land Use Elements, IV Land Use Issues Outside the Town Center].

*Pages 4 – 6*

### **B. The Region Is Facing A Housing Shortage.**

Attached as Exhibit 3 are public announcements by Governor Inslee encouraging the Legislature to “go big” to meet the scale of the housing crisis, and the enormous investments the state and county are making to scale-up construction of housing.

Attached as Exhibit 4 are pages from the PSRC’s 2050 Vision Statement on Housing noting:

**“Housing is a basic need for every individual. Yet, residents in many communities in the region are facing an unprecedented challenge in finding and keeping a home that they can afford. The central Puget Sound region is expected to grow by an additional 1.8 million residents and 830,000 households by the year 2050. Simply put, the region needs more housing of varied types in all communities. Meeting the housing needs of all households at a range of income levels is integral to promoting health and well-being and creating a region that is livable for all residents, economically prosperous, and environmentally sustainable.”**

PSRC 2050 Vision Statement, p.182

Currently Mercer Island has a housing allocation of approximately 1,200 units left to permit pursuant to the GMPC’s housing allocations. In 2023, the Legislature adopted HB 1110 that requires every residential lot on Mercer Island to allow two separate housing units, and four housing units per lot without parking mandates within a quarter of a mile of the light rail station, including the residential neighborhood to the north.

## PROPOSAL 4

It would be contrary to state, county and city policies for Mercer Island to now allow single-family residential zoned properties to be rezoned to a different non-housing zone, and would shift Mercer Island's housing allocation burden to the other residential zones and property.

**C. The Conditional Use Permit Process Allows A Fair And Equitable Non-Conforming Use In A Single-Family Residential Zone.**

The Conditional Use Permit (CUP) process MICC 19.06.110 allows an organization to obtain a non-conforming use in the single-family home residential zone, and allows that non-conforming CUP to combine residential properties and eliminate the side-yard setbacks between the properties.

At the same time, the Conditional Use Permit process MICC 19.06.110(a) and (b) protects the surrounding single-family home residential zones and requires that the scale of the development, in consideration of the privilege of a non-conforming use, is consistent with all properties in the single-family home residential zone.

The mere existence of MICC 19.06.110 highlights that the restrictions on conditional uses in the single-family home residential zone is not consistent with a different zone with different regulatory limits in the single-family residential zone.

**D. To Allow One Property Owner Or Conditional Use Permit To Rezone Single-Family Zoned Residential Properties To Another Zone Will Allow All Property Owners The Same Right.**

MICC 19.15.240(C)(4) specifically states the "proposed reclassification does not constitute an illegal site-specific rezone." If the Council allows single-family residential zoned properties to be rezoned contrary to state, county and city policies preserving and expanding housing, that would require the Council to allow **any** single-family home residential property owner to request the same change in zoning or upzone. If the requested rezone is site specific, it violates MICC 19.15.240(4)(C). If it is not site specific, it effectively eliminates the single-family residential zone.

The Council cannot favor one property owner or CUP over another, otherwise it would be an illegal spot zone. Such a huge change in zoning and policy would effectively abrogate the policies towards preserving single-family home residential zoning on Mercer Island contrary to The Comprehensive Plan.

## PROPOSAL 4

- E. Can A Specifically Enumerated Non-Residential Structure Listed in MICC.19.06.110(B)(2)(i) That Are Prohibited From Receiving a Variance Other Than From The Impervious Surface Standards Be Prohibited From Requesting A Rezone Or Reclassification Of The Single-Family Residential Zone Property Included In The CUP?

### HISTORY OF THE CUP'S EFFORTS TO OBTAIN INCREASED REGULATORY LIMITS.

#### 1) COMMUNITY FACILITIES ZONE

In 2018, the JCC applied to amend the City's Comprehensive Plan to create a Community Facilities Zone with different regulatory limits for CUPs in a single-family home residential zone without concurrent development regulations. Various citizens and groups appealed the lack of concurrent development regulations to the Growth Management Hearings Board which agreed with the Appellants and remanded the matter back to the City with directions to draft and adopt the concurrent development regulations. This holding was later codified in MICC. 19.15.240(C)(7).

Upon remand, the Council determined that allowing CUPs' different regulatory limits in a different zone in a single-family home residential zone was unwise and unworkable, and instead repealed the Community Facilities Zone.

#### 2) THE HILL AMENDMENTS

Subsequently, the Applicant, JCC filed a series of proposed site specific development code amendments to allow regulatory limits for the JCC greater than those allowed a CUP in the single-family home residential zone. These Amendments were then voluntarily withdrawn by the Applicant when it became apparent:

- 1) They were a spot zone in violation of MICC 19.15.240(C)(4);
- 2) The Council would not approve the Hill Amendments because they were contrary to The Comprehensive Plan, City Policies, MICC, and citizen opinion.

#### 3) APPLICATION FOR VARIANCES

Subsequently, the JCC applied for various variances to the regulatory limits applicable to the single-family home residential properties in its CUP. In response, CPD Director Jeff Thomas issued Development Code Interpretation 22-004 that found that based on the City's Development Codes and Comprehensive Plan a CUP was prohibited from obtaining any variance other than impervious surface limits from the numerical standards pursuant to MICC 19.06.110(B)(2)(a).



## PROPOSAL 4

The Applicant JCC then appealed Interpretation 22-004 to the Hearing Examiner. On the eve of the hearing, the Applicant JCC voluntarily withdrew its appeal, and conceded that Interpretation 22-004 was a correct interpretation of Mercer Island's Development Code that prohibits a CUP from requesting or obtaining variances from the single-family home residential development regulatory limits.

Based on the history and Administrative Interpretation 22-004, it would be inconsistent for the Council to allow single-family residential zoned properties in a CUP to be rezoned, especially to CO (Commercial Office), when these same CUPs are prohibited from obtaining variances for regulatory limits other than impervious surface limits.

Furthermore, pursuant to MICC 19.15.240(C)(4), the Council would have to allow **ALL** CUPs throughout the island the same right to rezone single-family residential zoned properties in their CUPs to CO or another zone, which is directly contrary to the Mercer Island Comprehensive Plan, AI 22-004, the provisions in MICC 19.06.110(a) and (b) regulating CUPs in the single-family residential zone, and the history of the JCC property and its attempts to obtain preferential regulatory limits for its single-family residentially zoned properties.

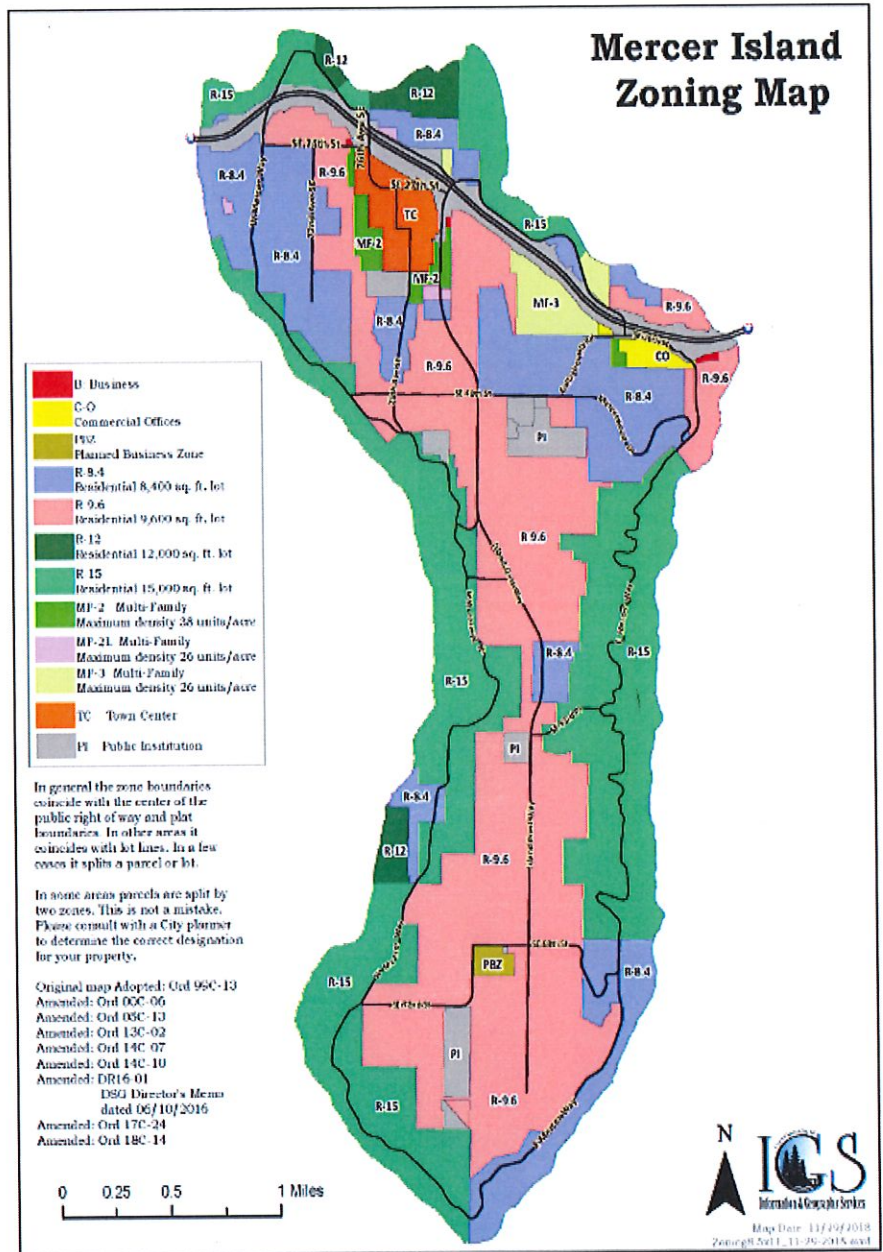
Therefore, MICC 19.15.240(C) should be amended to clarify that a non-residential structure or CUP in the single-family residential zone may not rezone its single-family residential zoned properties in the CUP.

# Exhibit 1

# PROPOSAL 4

## Appendix D - ZONING MAP

View city of Mercer Island Zoning Map.



# Exhibit 2

**Development Code Interpretation  
22-004**

**CITY OF MERCER ISLAND**

**COMMUNITY PLANNING & DEVELOPMENT**  
9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



**TO:** CPD Staff  
**FROM:** Jeff Thomas, Interim CPD Director  
**DATE:** November 21, 2022  
**RE:** Variances for Non-Residential Structures in Residential Zones

**A. MICC SECTION(S) INTERPRETED**  
MICC 19.06.110(B)

**B. AUTHORITY**  
This development code interpretation is issued under the authority of sections 19.15.030 and 19.15.160 of the Mercer Island City Code (MICC).

**C. ISSUE**  
MICC 19.06.110(B), *Variances*, imposes a hardship criterion that requires applicants requesting variances in residential zones to demonstrate that strict enforcement of Title 19 MICC will prevent the construction of a single-family dwelling on a legally created residentially zoned lot. MICC 19.06.110(B)(2)(a).

Can the City grant a variance from numeric standards for a non-residential structure sited in a residential zone, if under MICC 19.06.110(B)(1), all criteria in subsection(B)(2)(a) through (B)(2)(h) must be met, and that for a variance to lot coverage standards, the criteria in subsection (B)(2)(a) through (B)(2)(i) must be met?

**D. BACKGROUND**  
The hardship criterion contained in MICC 19.06.110(B)(2)(a) was adopted by Ordinance No. 17C-15 on September 19, 2017. The criterion contained in MICC 19.06.110(B)(2)(i), relating to variances as to lot coverage for specific non-residential structures, existed in the MICC prior to the adoption of Ordinance No. 17C-15. However, that language was moved to MICC 19.06.110(B)(2)(i) within Ordinance No. 17C-15 to consolidate criteria relating to variances.

# PROPOSAL 4

## E. FINDINGS

1. Per MICC 19.15.160, the Code Official may issue a written interpretation of the meaning or application of provisions of the development code.<sup>1</sup>
2. This written interpretation is intended to interpret the scope of the hardship criteria as applied to non-residential structures in residential zones.
3. MICC 19.06.110(B)(1)(a) could be read to foreclose variances from numeric standards for non-residential structures in residential zones because the hardship criterion limits the application of variances to instances where strict application of Title 19 would prohibit construction of one single family residence on a legally created residential lot. The applicant or property owner of a non-residential structure would not be able to demonstrate an unnecessary hardship because there are no circumstances where the adopted standards of Title 19 MICC are preventing construction of a single-family dwelling; rather the applicant or property owner is seeking a variance for a non-residential structure. It is not Title 19 that would preclude the construction of a residential structure, but rather the choice of the applicant or property owner. However, MICC 19.06.110(B)(2)(i) explicitly affords the applicant or property owner of a non-residential structure the opportunity for a variance from impervious surface standards for particular types of non-residential structures.
4. This apparent conflict within MICC 19.06.110(B) requires interpretation to administer.
5. A plain reading of MICC 19.06.110(B), giving meaning to all of the text within that section, results in the following conclusions:
  - a. Non-residential structures in residential zones are generally precluded from receiving variances from numeric standards of Title 19, because they cannot meet the hardship criterion—to wit, they cannot demonstrate that Title 19 prevents the construction of a single-family dwelling on a legally created residential lot.
  - b. The one exception is that certain enumerated non-residential structures (public and private schools, religious institutions, private clubs, and public facilities) within residential zones with slopes of less than 15 percent *can* receive a variance to increase impervious surface to a maximum of 60 percent if the Hearing Examiner determines the applicant has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv).
  - c. Further, an applicant or property owner would also be required to demonstrate the other criteria outlined in subsection (B)(2)(a) through (B)(2)(i), with the exception of being able to demonstrate inability to construct a single-family residence on a legally created residential lot. The applicant or property owner would still have to demonstrate an unnecessary hardship to the property owner, because the first sentence of MICC 19.06.110(B)(2)(a) requires proof that “[t]he strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner.”
6. As discussed further below, the legislative history relating to Ordinance No. 17C-15 supports this conclusion. During the process of adopting Ordinance No. 17C-15, discussion between the City Council and the City’s then Community Planning and Development (CPD) Director reflected an intent to greatly reduce the number of variances granted, which was the impetus behind adding the hardship criterion now contained in MICC 19.06.110(B)(2)(a).
7. In issuing an interpretation, the Code Official is directed to consider eight factors specified in MICC 19.15.160(A). These factors are:

### **(1.) The plain language of the code section in question;**

Analysis: A reading of the plain language of MICC 19.06.110 results in the following findings:

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<sup>1</sup> Under the MICC, variances are granted by the Hearing Examiner. MICC 19.15.030 and Tables A-B.

## PROPOSAL 4

- i. MICC 19.06.110(B), *Variances*, imposes a hardship criterion; an applicant or owner applying for variance must show that strict enforcement of Title 19 will create an unnecessary hardship to the property owner. MICC 19.06.110(B)(2)(a). For properties in residential zones, "unnecessary hardship" is limited to those circumstances where the adopted standards of Title 19 MICC prevent the construction of a single-family dwelling on a legally created residential zoned lot. *Id.*
- ii. However, MICC 19.06.110(B)(2) also includes a criterion for variances to impervious surface standards for "[p]ublic and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent." MICC 19.06.110(B)(2)(i).
- iii. MICC 19.06.110(B)(1) further provides: "[a] variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section."

### (2.) Purpose and intent statement of the chapters in question;

**Analysis:** Chapter 19.06 MICC does not contain a general purpose statement; however, MICC 19.06.110(B)(1) provides a purpose statement for the MICC section in question: "*Purpose.* An applicant or property owner may request a variance from any numeric standard, except for the standards contained within chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section."

### (3.) Legislative intent of the city council provided with the adoption of the code sections in question;

**Analysis:** Review of the legislative history of MICC 19.06.110(B) results in the following findings:

- i. On September 19, 2017, the Mercer Island City Council adopted Ordinance No. 17C-15, adding the unnecessary hardship criterion currently contained in MICC 19.06.110(B)(2)(a).
- ii. The minutes from the relevant City Council meetings indicate the following:  
The July 5, 2017 minutes contains the following discussion:

#### **Variance Criteria:**

- Planning Commission Recommendation: prohibit / limit variances to GFA, minimum lot size, height, fence height and staff does not recommend adopting this amendment
- Alternative: Limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from "d."

**Council Direction:** Staff propose a solution for "flag lots." Support alternative to limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from "d."

# PROPOSAL 4

iii. The packet from the July 5, 2017, reading of the later adopted ordinance included the following discussion of the options before City Council with respect to the hardship criterion ultimately added to MICC 19.06.110(B)(2)(a):

Variance Criteria					
Draft Page #	Planning Commission Recommendation	Proposed Amendment	Source	Staff Recommendation / Rationale	
17	Page 71 – Variances	Allow for an application for a variance to any numeric standard, except for the standards in Chapter 19.07.	Prohibit the application for a variance to minimum lot area requirements, gross floor area, building height, or lot coverage.	Dan Grausz	Staff does not recommend adopting this amendment. There are some circumstances where allowing for a variance to these standards is appropriate to avoid a regulatory takings. The variance criteria have been revised to limit variances to only those circumstances where a variance is warranted.
		Alternatively, limit variance approvals to those situations where a property owner cannot both comply with existing standards and build a home on a legally created residential lot.		Staff recommends further revising the criteria for approval. In particular, staff recommends limiting variances to situations where a property owner cannot comply with all of the development standards and build a new single family home.  This item was discussed by the Planning Commission.	

- iv. The discussion between the then CPD Director and City Council regarding the hardship criterion further indicates the intent of restricting variances in residential zones only to those instances where a variance is necessary to permit the construction of a single-family residence on a legally created residential lot.
- v. The Code Official is unaware of any discussion by City Council or other materials regarding the resulting conflict between the language in MICC 19.06.110(B)(2)(a) and the language in MICC 19.06.110(B)(2)(i).

**(4.) Policy direction provided by the Mercer Island comprehensive plan;**

**Analysis:** Review of the Comprehensive Plan results in the following findings:

- (1) The Comprehensive Plan envisions Mercer Island as a residential community:
  - (a) “Mercer Island prides itself on being a residential community. As such, most of the Island’s approximately 6.2 square miles of land area is developed with single family homes.” [Land Use Element, Introduction]
  - (b) “Single family residential zoning accounts for 88 percent of the Island’s land use. There are 3,534 acres zoned for single family residential development. This compares to 77 acres in the Town Center zones, 19 acres for Commercial Office zone, and 103 acres in multi-family zones (Table 2). City Hall is located in a Commercial Office zone, while other key civic buildings such as the Post Office and the Main Fire Station are located in the Town Center and City Hall. Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones.” [Land Use Element, II Existing Conditions and Trends, Areas outside the Town Center]
  - (c) “OUTSIDE THE TOWN CENTER (1) The community needs to accommodate two important planning values — maintaining the existing single family residential character of the Island, while at the same time planning for



## PROPOSAL 4

population and housing growth.” [Land Use Element, IV. Land Use Issues, Outside the Town Center (1)]

- (2) A primary component of the housing element is the City’s desire to protect single-family residential neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. City code provisions were specifically designed to protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character. This includes limiting the size and scope of nonresidential uses to be consistent with existing neighborhood character.

(a) “Housing Element

III. Neighborhood Quality

Mercer Island single family neighborhoods pride themselves on their narrow, quiet streets and dense plantings. The City protects these neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. Parks, open spaces and trails also contribute to the neighborhood quality.” [Housing Element, III. Neighborhood Quality]

(b) “GOAL 1: -

Ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.

- 1.1 Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character.” [Housing Element, III. Neighborhood Quality, Goal 1.1]

- (3) The Comprehensive Plan evidences an intent to retain certain non-residential structures located in residential zones. However, the Comprehensive Plan is silent on whether such structures would be eligible for variances from otherwise applicable numerical standards.

(a) “GOAL 17: -

With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

17.4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island.” [Land Use Elements, IV Land Use Issues Outside the Town Center]

- (4) The Comprehensive Plan also evidences an intent to preserve existing conditions and to generally permit changes only through amendments to the development code, rather than through granting numerous of variances to that development code. At the same

## PROPOSAL 4

time, there is also recognition that some non-residential structures and uses are compatible with residential zones.

(a) "GOAL 15: -

Mercer Island should remain principally a low density, single family residential community.

15.1 Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments.

15.2 Residential densities in single family areas will generally continue to occur at three to five units per acre, commensurate with current zoning. However, some adjustments may be made to allow the development of innovative housing types, such as accessory dwelling units and compact courtyard homes at slightly higher densities as outlined in the Housing Element.

...

15.4 As a primarily single family residential community with a high percentage of developed land, the community cannot provide for all types of land uses. Certain activities will be considered incompatible with present uses. Incompatible uses include landfills, correctional facilities, zoos and airports. Compatible permitted uses such as education, recreation, open spaces, government social services and religious activities will be encouraged." [Land Use Elements, IV Land Use Issues Outside the Town Center].

### (5.) Relevant judicial decisions;

Analysis: The Code Official is unaware of any relevant judicial decisions related to this issue. However, the Code Official is aware of several cases regarding code interpretation. Municipal ordinances are subject to the same rules of statutory interpretation as are statutory enactments. *Hassan v. GCA Production Services, Inc.*, 17 Wn.App. 625, 637, 487 P.3d 203 (2021). Additionally, the goal of code interpretation is to give effect to the intentions of the drafters. *Jametsky v. Olsen*, 179 Wash. 2d 756, 762, 317 P.3d 1003, 1006 (2014). Absurd results are to be avoided in construing ambiguous language, although the principle is to be used sparingly. *Seattle Hous. Auth. v. City of Seattle*, 3 Wash. App. 2d 532, 538–39, 416 P.3d 1280, 1283 (2018); *Samish Indian Nation v. Wash. Dep't of Licensing*, 14 Wash.App.2d 437, 444, 471 P.3d 261 (2020). Further, when possible, legislation must be construed so that no clause, sentence, or word is rendered superfluous, void, or insignificant. *Coates v. City of Tacoma*, 11 Wash. App. 2d 688, 695, 457 P.3d 1160, 1164 (2019).

### (6.) Consistency with other regulatory requirements governing the same or similar situation;

Analysis: The Code Official is unaware of other regulatory requirements governing the same or similar situations.

### (7.) The expected result or effect of the interpretation; and

Analysis: The interpretation will result in clarifying the position of the Code Official in that the MICC prohibits variances from numerical standards for non-residential structures in residential zones, with the sole exception of the specific types of non-residential structures enumerated in MICC 19.06.110(B)(2)(i) from impervious surface standards.

## PROPOSAL 4

### **(8.) Previous implementation of the regulatory requirements governing the situation.**

*Analysis:* The Code Official is unaware of any previous implementation of regulatory requirements relating to variances for non-residential structures within residential zones since the addition of the hardship criterion in September 2017.

### **F. CONCLUSIONS**

1. MICC 19.06.110(B) contains conflicting language as to variances for non-residential structures in residential zones. Reconciling this conflict, the Code Official makes the following interpretations:
  - a. The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if:
    - i. The Hearing Examiner finds that the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) have been satisfied, and
    - ii. The Hearing Examiner finds compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the second sentence of (B)(2)(a) due to the conflict with subsection (B)(2)(i).
  - b. The MICC prohibits other variances from numerical standards for non-residential structures in residential zones.
2. Both conclusions enumerated above are based upon the following:
  - a. It is apparent from the relevant legislative history that City Council's stated intent was to restrict variances in residential zones only to those circumstances in which construction of a single-family residence upon a legally created residential lot would be prohibited. The Code Official did not find any evidence that City Council was aware of the conflict between MICC 19.06.110(B)(2)(a) and (B)(2)(i).

Because the language regarding variances from impervious surface standards for certain specified non-residential structures in residential zones was also reorganized by City Council to MICC 19.06.110(B) contemporaneously with the creation of the hardship criterion, it is the position of the Code Official that the language in MICC 19.06.110(B)(2)(i) must be also given effect as a narrow exception to the prohibition against variances for non-residential structures in residential zones as put forth in MICC 19.06.110(B)(2)(a). This conclusion is necessary in order to give the fullest effect to the legislative enactment of the City Council.

- b. Utilizing statutory interpretation principles, the Code Official is required to construe the MICC to give the fullest effect to the legislative intent of the City Council, to utilize the principles of avoiding absurd results (but in a sparing manner), and to avoid making code language superfluous, void, or insignificant. Other than variances from impervious surface standards, no other variances for non-residential structures within residential zones are listed in MICC 19.06.110(B)(2).
- c. There is nothing in the City's Comprehensive Plan to contradict the conclusions of the Code Official. The Comprehensive Plan prioritizes residential uses while also recognizing certain non-residential uses within residential zones. The interpretation of the Code Official does not prohibit the siting of non-residential structures in residential zones where otherwise permitted, but it does limit the type of variances available for such structures.

# PROPOSAL 4

## G. INTERPRETATION

The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if the Hearing Examiner determines the application has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) and the applicant or property owner demonstrates compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the conflicting second sentence of (B)(2)(a).

Having not been expressly included in MICC 19.06.110(B)(2), the position of the Code Official is that all other variances from numerical standards for non-residential structures in residential zones are prohibited by MICC 19.06.110(B)(2)(a).

# Exhibit 3

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/ Washington "goes big" on housing in 2023

# Washington "goes big" on housing in 2023

May 08, 2023



*Gov. Jay Inslee signs legislation to help overcome racist real estate covenants that pervaded until the 1960s and caused intergenerational harm.*

From Vancouver to Bellingham and Pullman to La Push, the cost of housing has soared. In the last decade, one million new residents arrived while only one-quarter as many homes went up. When demand exceeds supply, prices rise. Rise they have.

Rents are up. Prices are up. Accordingly, homelessness is up. And too many families are just a paycheck away from trouble.

## PROPOSAL 4

To begin the 2023 legislative session, Gov. Jay Inslee encouraged the Legislature to “go big” to meet the scale of the housing crisis. On Monday, the governor and lawmakers gathered to sign a slate of housing-related bills to clear obstacles to housing construction and right historic wrongs related to housing discrimination.

At a later date, the governor will sign a budget that allocates more than \$1 billion over the next biennium to address homelessness and affordable housing.

[Read the rest of the story on Gov. Inslee's Medium page.](#)

# PROPOSAL 4

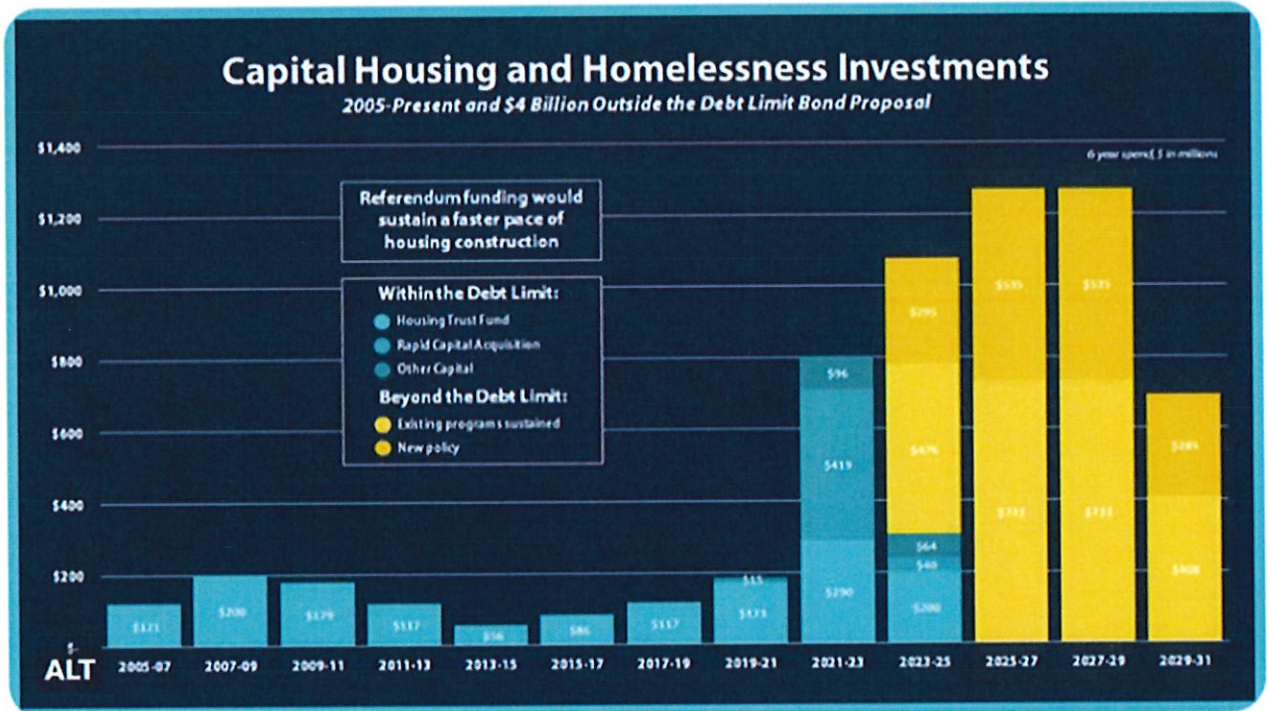
← Post



Governor Jay Inslee

@GovInslee

In the past two years we were able to make historic investments to scale up and speed up construction of housing and shelters. The problem is growing, not shrinking, so our response must match the moment. (2/3)



5:26 PM · Mar 20, 2023 · 12.7K Views



# Exhibit 4

# Housing

**GOAL:** *The region preserves, improves, and expands its housing stock to provide a range of affordable, accessible, healthy, and safe housing choices to every resident. The region continues to promote fair and equal access to housing for all people.*

Housing is a basic need for every individual. Yet, residents in many communities in the region are facing an unprecedented challenge in finding and keeping a home that they can afford. The central Puget Sound region is expected to grow by an additional 1.8 million residents and 830,000 households by the year 2050. Simply put, the region needs more housing of varied types in all communities. Meeting the housing needs of all households at a range of income levels is integral to promoting health and well-being and creating a region that is livable for all residents, economically prosperous, and environmentally sustainable.

Housing affordability continues to be a major challenge for the region. The housing market has experienced great highs and lows that have benefitted some and created and exacerbated hardship and inequalities for others. Following the precipitous drop in housing prices and foreclosures of the recession, the region's economic upswing and strong job growth in the 2010s have fueled dramatic increases in rents and home prices. Despite job losses due to the COVID-19 pandemic and the resulting financial

impact on many households, home prices have continued to increase in the region. Some may have been able to take advantage of historically low mortgage interest rates or lower rents, while others are in a challenging position due to loss of income and face the potential of eviction or foreclosure. A potentially imbalanced recovery may further the threat of displacement of low-income households and people of color. As a result, housing costs are a greater burden for many households today than a decade ago, leaving less for other basic needs and amenities. Renters, and renters of color in particular, face a considerable shortage of affordable housing opportunities. And these households are often the most at risk of losing their housing and experiencing homelessness.

A primary goal of the Growth Management Act is to make housing affordable to “all economic segments of the population, providing a variety of residential densities and housing types and encouraging preservation of existing housing stock. Local governments are required to plan for housing that meets the varied needs of their diverse communities and residents and to ensure



they are providing sufficient residential zoned land capacity for housing to accommodate 20-year growth targets.

VISION 2050's housing policies respond to the urgency of changing demographics and the need to increase and diversify the region's housing supply. They identify coordinated strategies, policies, and actions to ensure that the region's housing needs are met.

## A Regional Challenge

The complexity of addressing the full range of housing needs and challenges requires a coordinated regional-local approach. A coordinated, regionwide effort to build and preserve housing accessible to all residents is not just about housing. It is also about building healthy, complete, and welcoming communities where all families and people, regardless of income, race, family size or need, are able to live near good schools, transit, employment opportunities, and open space.

Through the Regional Growth Strategy, the region has articulated a preferred pattern of urbanization that will help direct new housing development to the urban growth area and designated growth centers while preserving industrial lands. Focusing housing in urban areas, specifically centers and station areas, supports and leverages the region's ongoing prioritization of infrastructure investment in central urban places. To assist counties and cities, PSRC serves as a forum for setting regional priorities and facilitating coordination among its member jurisdictions and housing interest groups.

Through data, guidance, and technical assistance, PSRC encourages jurisdictions to adopt best housing practices and establish coordinated local housing and affordable housing targets. PSRC supports jurisdictions in their development of effective local housing elements, strategies, and implementation plans. Housing data and information tracking the success of various housing efforts are monitored and reported regionally at PSRC.

## The Need for Local Action

Local governments play a critical role in housing, including its production and preservation. Local governments possess regulatory control over land use and development. They are key players, both individually and in cooperation with other housing interests, in stimulating various types of development activity through zoning, incentives, and funding, streamlined development review and permitting processes.

### Local Housing Responsibilities Under the Growth Management Act

Local housing elements should ensure the vitality and character of established residential neighborhoods and include the following components:

1. an inventory and analysis of existing and projected housing needs,
2. goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing,
3. identification of sufficient land for a range of housing types to match community needs, and
4. adequate provisions for the needs of all economic segments of the community. (RCW 36.70A.070)

There are numerous tools and strategies available to local governments to encourage housing diversity and promote affordable housing. Many of these tools can be applied in a manner that is tailored to and respectful of local market conditions, community characteristics, and the vision for growth embodied in local comprehensive plans. Since VISION 2040 was adopted in 2008, housing planning and implementation has advanced through the ongoing work of state, regional, and local agencies and organizations. These efforts have yielded new resources, promoted best practices, established community-based housing strategies, and coordinated efforts across multiple jurisdictions.

## Housing Choices to Reflect Changing Demographics

The characteristics of the region’s households have been changing over time and will continue to do so. The size of the average household has been decreasing. Fewer people are living in family households with two parents and children. More households are comprised of singles, couples without children, or single-parent families. Many households have two or more workers. The region’s population is becoming far more racially and ethnically diverse. As the population ages and new generations enter the housing market, there will be demands and preferences for new and different types of housing. While the region has a changing population with a wide range of housing needs, the vast majority of owner-occupied homes are larger single-family homes. Moderate density housing, ranging from duplexes to townhomes to garden apartments, bridge a gap between single-family housing and more intense multifamily and commercial areas and provide opportunities for housing types that are inclusive to people of different ages, life stages, and income ranges. Regional and local tools can help to promote and incentivize the development and preservation of more moderate density housing to give people greater housing choices, and produce urban densities that support walkable communities, local retail and commercial services, and efficient public transit.

### Affordability

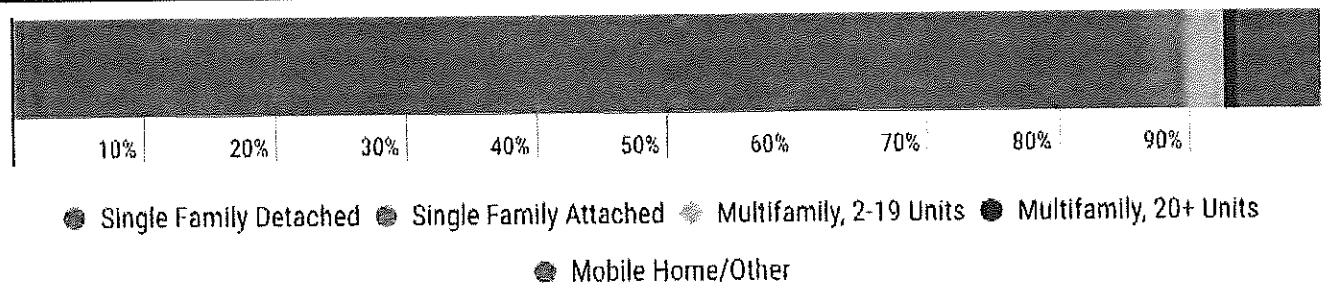
The region continues to experience an affordability crisis. Rising housing costs can be particularly devastating for low-income renters, particularly renters of color, many who

pay more than 50% of their income on housing. Many middle- and lower-income households struggle to find housing that fits their income in an increasingly competitive and expensive housing market due, in part, to zoning practices that have prevented the development of more affordable, smaller homes, and apartments. Home ownership may seem like less of a reality for potential first-time buyers as home prices continue to climb. This is especially true for people of color, who have been historically excluded from homeownership opportunities.

The central Puget Sound region’s housing landscape reflects more than market forces and conditions. It is also the product of decades of public policies and private practices that, throughout the 20th century, often excluded lower income households and immigrant communities, and prevented people of color from accessing housing and living in certain areas. Past and current housing practices have perpetuated substantial inequities in wealth, ownership, and opportunity, and they continue to create barriers to rectifying these conditions. Regional housing work is approached with an awareness of this legacy and of the comprehensive work needed to redress it.

Low- to middle-wage workers – such as teachers, health care professionals, retail workers, administrative personnel, police officers, and firefighters – who are essential to the economic and social vitality of a community, often cannot afford to live in the places where they work. As affordable housing options become scarce, households are forced to move farther from their jobs and communities, resulting in increased traffic congestion and transportation costs and fragmentation of communities. This spatial mismatch also leads to an inability of certain segments of the labor market to fill positions.

Figure 27 – Ownership Housing Stock by Housing Type, Central Puget Sound Region



Source: 2017 American Community Survey

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### Common Housing Terms

**Affordable Housing** is commonly defined in terms of housing costs as a percentage of household income. Housing is considered unaffordable when a household’s monthly housing costs exceed a certain threshold – most commonly 30% of gross income – thereby reducing the budget available for basic necessities.

**Housing Affordability** refers to the balance (or imbalance) between incomes and housing costs within a community or region. A common measurement compares the number of households in certain income categories to the number of units in the market that are affordable at 30% of gross income.

Providing housing affordable to households earning different incomes requires different approaches. To craft effective strategies, it is imperative to understand the types and cost of housing needed in a community relative to the supply of housing available to households at each income level. Over one-third of households in the region earn less than 80% area median income (AMI). Ideally, the supply of housing affordable to moderate and low-income households should mirror the number of households at those income levels. The current distribution of households in the region is:

- 15% of households earn 50-80% AMI (Moderate Income)
- 9% of households earn 30-50% AMI (Low Income)
- 11% of households earn less than 30% AMI (Very Low Income)

Providing affordable units for very low-income residents and providing housing options for residents experiencing homelessness cannot be fully addressed by the private market alone. Public intervention is necessary to ensure housing units

**Figure 28 – Lower Housing Costs Require Greater Public Intervention**

0–30% AMI Rental:	30–50% AMI Rental:	50–80% AMI Rental:	80–125% AMI Rental or Home Ownership:	Above 125% AMI Market Rent and Home Ownership
public support needed in all markets	public support needed in most markets	incentives needed in many markets  Home Ownership:  subsidy or incentives needed in many markets	incentives or zoning flexibility needed in some markets	

### Anticipated Households in the Region in 2050

274,000 11%	222,000 9%	355,000 15%	558,000 23%	1,012,000 42%
----------------	---------------	----------------	----------------	------------------

AMI: Area Median Income.

Source: 2016 ACS 1-Year Estimates | PCB 24-18 | EXHIBIT 2 | PAGE 103

are affordable to households at the lowest income levels now and in the future.

While the current housing production rate in 2017 meets the average annual need in the region, the market has yet to make up for the slow growth in the years directly following the recession resulting in a supply and demand imbalance. Increasing the supply of housing throughout the region and providing a variety of housing types and densities for both renters and owners will help the region meet its housing goals. Special emphasis is placed on providing affordable housing for low-, moderate-, and middle-income households across the region, with a focus on promoting housing opportunities near transit, and appropriate housing for special needs populations. VISION 2050 also encourages more homeownership opportunities for low-income, moderate-income, and middle-income households and acknowledges historic and current inequities in access to homeownership opportunities for people of color and how this

long history of exclusion and discrimination has prevented communities of color from accessing housing, ownership, and opportunity.

### Focusing Housing Near Transit Options

Within the central Puget Sound region, jurisdictions are planning for housing and job growth in places designated for higher densities, a mix of land uses, and transportation choices. Communities across the region are realizing these aims by encouraging infill, redevelopment, and more compact development, especially in designated regional growth centers and around transit stations. However, rents and home prices are rising quickly, making it often challenging to find affordable housing close to jobs.

The region’s continuing expansion of high-capacity transit provides one of the best opportunities to expand accessible housing options to a wider range of incomes. Promoting or



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Seattle



requiring affordable housing in walking distance – about ¼ to ½ mile—from high-capacity transit stations and in regional growth centers can help to ensure all residents have opportunities to live in accessible and connected communities. Such housing will be particularly valuable to low-income households, who are the most dependent on transit and are at risk for displacement as housing costs rise.

## Displacement and Community Stability

Displacement occurs when housing or neighborhood conditions force residents to move. Displacement can be physical, when building conditions deteriorate or are taken off the market for renovation or demolition, or economic, as costs rise. Many communities in the central Puget Sound region, like the Central District in Seattle and the Hilltop neighborhood in Tacoma, have documented displacement. Once physical and economic displacement occur, the social and cultural composition of the neighborhood will be disrupted, thus affecting the cohesion and stability of a community and the well-being of local residents and businesses.

Several key factors can drive displacement: proximity to rail stations, proximity to job centers, historic housing stock, and location in a strong real estate market. Displacement is a regional concern as it is inherently linked to shifts in the regional housing and job market. Many of these factors put communities of color and neighborhoods with high concentrations of renters at a higher risk of displacement.

Regional growth centers and communities near transit are home to more people of color and higher concentrations of poverty than the region as a whole. As these central places connected by transit continue to grow and develop, residents and businesses who contribute to these communities should have the option to live and take advantage of transit services.

## Jobs-Housing Balance

Jobs-housing balance is a planning concept which advocates that housing and employment be close together, with an emphasis on matching housing options with nearby jobs, to reduce the length of commute travel and number of vehicle trips. A lack of housing, especially affordable housing close to job centers, will continue to push demand for affordable homes to more distant areas, increasing commute times and the percentage of household income spent on transportation costs. Housing policies encourage adding housing opportunities to job-rich places. It is imperative that there are a variety of housing choices available to a variety of incomes in proximity to job centers to provide opportunities for residents to live close to where they work regardless of their income. Policies in the Economy chapter promote economic development to bring jobs to all four counties. Policies are also located in the Regional Growth Strategy chapter related to balancing jobs and housing growth.



Point Ruston  
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## Housing POLICIES

### MPP-H-1

Plan for housing supply, forms, and densities to meet the region’s current and projected needs consistent with the Regional Growth Strategy and to make significant progress towards jobs/housing balance.

### MPP-H-2

Provide a range of housing types and choices to meet the housing needs of all income levels and demographic groups within the region.

### MPP-H-3

Achieve and sustain – through preservation, rehabilitation, and new development – a sufficient supply of housing to meet the needs of low-income, moderate-income, middle-income, and special needs individuals and households that is equitably and rationally distributed throughout the region.

### MPP-H-4

Address the need for housing affordable to low- and very low-income households, recognizing that these critical needs will require significant public intervention through funding, collaboration, and jurisdictional action.

### MPP-H-5

Promote homeownership opportunities for low-income, moderate-income, and middle-income families and individuals while recognizing historic inequities in access to homeownership opportunities for communities of color.

### MPP-H-6

Develop and provide a range of housing choices for workers at all income levels throughout the region that is accessible to job centers and attainable to workers at anticipated wages.

### MPP-H-7

Expand the supply and range of housing at densities to maximize the benefits of transit investments, including affordable units, in growth centers and station areas throughout the region.

### MPP-H-8

Promote the development and preservation of long-term affordable housing options in walking distance to transit by implementing zoning, regulations, and incentives.

### MPP-H-9

Expand housing capacity for moderate density housing to bridge the gap between single-family and more intensive multifamily development and provide opportunities for more affordable ownership and rental housing that allows more people to live in neighborhoods across the region.

### MPP-H-10

Encourage jurisdictions to review and streamline development standards and regulations to advance their public benefit, provide flexibility, and minimize additional costs to housing.

### MPP-H-11

Encourage interjurisdictional cooperative efforts and public-private partnerships to advance the provision of affordable and special needs housing.

### MPP-H-12

Identify potential physical, economic, and cultural displacement of low-income households and marginalized populations that may result from planning, public investments, private redevelopment, and market pressure. Use a range of strategies to mitigate displacement impacts to the extent feasible.

# Housing ACTIONS

## REGIONAL ACTIONS

### H-Action-1

Regional Housing Strategy: PSRC, together with its member jurisdictions, state agencies, housing interest groups, housing professionals, advocacy and community groups, and other stakeholders will develop a comprehensive regional housing strategy to support the 2024 local comprehensive plan update. The housing strategy will provide the framework for regional housing assistance (see H-Action-2, below) and shall include the following components:

- In the near term, a regional housing needs assessment to identify current and future housing needs to support the regional vision and to make significant progress towards jobs/housing balance and quantify the need for affordable housing that will eliminate cost burden and racial disproportionality in cost burden for all economic segments of the population, including those earning at or below 80 percent of Area Median Income throughout the region. This will provide necessary structure and focus to regional affordable housing discussions
- Strategies and best practices to promote and accelerate: housing supply, the preservation and expansion of market rate and subsidized affordable housing, housing in centers and in proximity to transit, jobs-housing balance, and the development of moderate-density housing options
- Coordination with other regional and local housing efforts

### H-Action-2

Regional Housing Assistance: PSRC, in coordination with subregional, county, and local housing efforts, will assist implementation of regional housing policy and local jurisdiction and agency work. Assistance shall include the following components:

- Guidance for developing local housing targets (including affordable housing targets), model housing policies, and best housing practices
- Technical assistance, including new and strengthened tools, to support local jurisdictions in developing effective housing strategies, action plans, and programs
- Collection and analysis of regional housing data, including types and uses of housing and effectiveness of zoning, regulations, and incentives to achieve desired outcomes

- Technical assistance in support of effective local actions to address displacement, including data on displacement risk and a toolbox of local policies and actions

### H-Action-3

State Support and Coordination: PSRC will monitor and support as appropriate members' efforts to seek new funding and legislative support for housing; and will coordinate with state agencies to implement regional housing policy.

## LOCAL ACTIONS

### H-Action-4

Local Housing Needs: Counties and cities will conduct a housing needs analysis and evaluate the effectiveness of local housing policies and strategies to achieve housing targets and affordability goals to support updates to local comprehensive plans. Analysis of housing opportunities with access to jobs and transportation options will aid review of total household costs.

### H-Action-5

Affordable Housing Incentives: As counties and cities plan for and create additional housing capacity consistent with the Regional Growth Strategy, evaluate and adopt techniques such as inclusionary or incentive zoning to provide affordability.

### H-Action-6

Displacement: Metropolitan Cities, Core Cities, and High Capacity Transit Communities will develop and implement strategies to address displacement in conjunction with the populations identified of being at risk of displacement including residents and neighborhood-based small business owners.

### H-Action-7

Housing Choice: Counties and cities will update regulations and strategies to reduce barriers to the development and preservation of moderate density housing to address the need for housing between single-family and more intensive multifamily development, consistent with the Regional Growth Strategy.

### H-Action-8

Housing Production: Counties and cities will review and amend, where appropriate and consistent with the Regional Growth Strategy, development standards and regulations to reduce barriers to the development of housing by providing flexibility and minimizing additional costs.

# PROPOSAL 5

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Matthew Goldbach

Address: 9980 SE 40th St, Mercer Island, WA 98040

Phone: 954-806-2489

Email: blkship@yahoo.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment  Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion  Application

# PROPOSAL 5

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:



Date:

Sept 30 2024

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Please attach a separate narrative responding to the above questions.

## SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.06.110 Criteria for Approval - Conditional Use Permits

MICC 19.06.110(A)(5) Change after conditional use permit granted.

### Suggested Code Amendment:

I suggest that MICC 19.06.110(A)(5) be amended to add a section (d) that states that no conditional use permit on a residential property shall be used for any use or purpose by a separate property zoned TC, CO, B, or PBZ.

### Analysis:

In 2021, the council amended MICC 19.06.110(A)(5) to add Section C that states:

(c.) *“Applicability.* A conditional use permit shall be applicable only to the property for which it was granted, as defined by the legal description of the property boundaries submitted with the conditional use permit application (“permitted property”). The use(s) permitted under a conditional use permit shall not extend beyond the permitted property to adjoining property or property added to the permitted property unless the conditionally approved use(s) are already allowed on the adjoining or added property or a new conditional use permit is granted for the adjoining or added property.”

Section (c) was designed to prevent a non-conforming conditional use permit in the residential zone from expanding its non-conforming uses to adjacent residential properties not part of the CUP and in effect expanding the boundaries of the CUP beyond its permit.

A new concern is properties not zoned residential using CUPs on adjacent residential properties to expand their non-residential uses onto the residentially-zoned property in order to transfer required amenities, such as parking, playgrounds or other uses, from the non-residentially-zoned property to the residentially-zoned property. This then allows a property zoned TC, CO, B, or PBZ to impermissibly expand its non-residentially zoned property into the residential zone.

As a result, MICC MICC 19.06.110(A)(5) should be amended to clarify that a property zoned TC, CO, B, or PBZ may not use a CUP on residentially-zoned property for uses for any uses or required amenities required under the zoning for TC, CO, B, or PBZ zoned properties.

# PROPOSAL 6

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Matthew Goldbach

Address: 9980 SE 40th St, Mercer Island, WA 98040

Phone: 954-806-2489

Email: blkship@yahoo.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone?

Yes

No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that the application is submitted with consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

# PROPOSAL 6

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

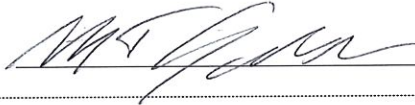
Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:



Date:

Sept 30 2024

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Please attach a separate narrative  
responding to the above questions.

# PROPOSAL 6

## SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.15.240 Reclassification of Properties (Rezones)

MICC 19.15.240(C) Criteria

### Suggested Code Amendment:

I suggest MICC 19.15.240(C)(4) be amended to set forth the legal criteria to determine whether the proposed reclassification does not constitute an illegal site-specific rezone.

MICC 19.15.240(C) will then read with the bolded suggested amendment as follows:

19.15.240 - Reclassification of property (rezones).

- A. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property from one zoning designation to another.
- B. Process. A rezone shall be considered as provided in MICC 19.15.260.
- C. Criteria. The city council may approve a rezone only if all of the following criteria are met:
  - 1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;
  - 2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;
  - 3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;
  - 4. The proposed reclassification does not constitute an illegal site-specific rezone. **A proper reclassification is not an illegal site-specific rezone if the applicant of the rezone establishes that conditions have substantially changed since the original zone adoption, and that the rezone bears a substantial relationship to the public health, safety, morals or welfare.**
  - 5. The proposed reclassification is compatible with surrounding zones and land uses;
  - 6. The proposed reclassification does not adversely affect public health, safety and welfare; and
  - 7. If a comprehensive plan amendment is required in order to satisfy subsection (C)(1) of this section, approval of the comprehensive plan amendment is required prior to or concurrent with the granting of an approval of the rezone.



## PROPOSAL 6

D. Map change. Following approval of a rezone, the city shall amend the zoning map to reflect the change in zoning designation. The city shall also indicate on the zoning map the number of the ordinance adopting the rezone.

### ANALYSIS:

Attached to this suggested Residential Code Amendment to MICC 19.15.240(C)(4) is a 2013 article from Municipal Research and Services Center of Washington (MSRC) entitled: *The Multipersonalities of Site-Specific Rezones – or – A Cheat Sheet for Everything you Need to Know about Site Specific Rezones* discussing the criteria for a legal site-specific rezone with footnotes to legal citations.

MICC 19.15.240(C)(4) does not set forth the legal requirements to determine whether a requested rezone is a legal site-specific rezone. This is confusing for both the applicant and the council.

Some cities and council simply believe that site specific rezones are purely discretionary acts and no standards are necessary. The Courts, however, have disagreed. The Courts have ruled that site-specific rezones are subject to legal review standards by the Court, regardless of whether or not the city has adopted their own.

The legal criteria for a site-specific rezone are designed to prevent political favoritism by a council for a single property owner. There must be valid evidentiary criteria to support the site-specific rezone, most importantly, that the applicant and council can identify that the conditions have substantially changed since the original adoption of the zoning; otherwise, there is no legal or practical basis for a rezone.

By setting forth the legal criteria for a legal site-specific rezone in MICC 19.15.240(C)(4), the applicant and council will fully understand the legal criteria required for a legal site-specific rezone, which will assist the applicant in its application and the council in its deliberation. It does not make sense to have MICC 19.15.240(C)(4) silent on the legal criteria necessary for a legal site-specific rezone despite a specific requirement that the proposed rezone does not constitute a site-specific rezone, and then have the council and applicant, as well as any opponent, wait until an appeal to the Courts to find out what criteria will be applied, which often means that the record below has not properly addressed the legal criteria with an evidentiary basis.



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> [The Multi-Personalities of Site Specific Rezones - Or - A Cheat Sheet for Everything You Need to Know about Site-Specific Rezones](#)

## The Multi-Personalities of Site Specific Rezones - Or - A Cheat Sheet for Everything You Need to Know about Site-Specific Rezones

March 31, 2013 by [Phil Olbrechts](#)

Category: [Guest Author](#), [Land Use Administration](#)

By [Phil Olbrechts](#), [Olbrechts and Associates, PLLC](#)

We just can't help ourselves. We have to categorize everything. Put them into neat little boxes. We especially like to do that in the laws we pass. Land use laws are no exception. We start the boxing process for land use laws by throwing an issue in either the "legislative" or "permitting" box. That's usually an easy task. Except for site specific rezones. Sometimes site specific rezones act like a piece of legislation, other times a permit, and more often than not they're a little bit of each. This does not make the legislative bill writers happy, but does keep the lawyers busy and well fed. This article is your cliff notes on dispelling the mysteries and multiple personalities of the ubiquitous site specific rezone. Once you've digested its contents, you will be able to amaze your friends at cocktail parties<sup>1</sup> with your in-depth knowledge. Or you can just toss this article into an agenda packet as background material for those times your city council or planning commission is considering a site specific rezone.

### A Site-Specific Rezone Must be Adopted by Ordinance by the City Council

All site specific rezones for cities must be adopted by ordinance adopted by a city council.

Ordinances are by definition legislative. They can only be adopted by a city council. Zoning maps are required by the Growth Management Act, [chapter 36.70A RCW](#), and all other city planning enabling legislation to be adopted

## PROPOSAL 6

by ordinance. You can only amend an ordinance by another ordinance. So if you want to amend a small piece of your zoning map (i.e. approve a site specific rezone), it must be approved by ordinance, which must be done by your city council. Planning commissions and hearing examiners can make recommendations on site specific rezones, but the final decision must be made by the city council.

Most people get this. What's not so apparent is that the courts have also ruled that planned unit developments (PUDs) that authorize the approval of densities and uses that are inconsistent with underlying zoning requirements are themselves considered zoning map amendments<sup>2</sup>. As zoning map amendments, they must be adopted by ordinance and approved by the city council. A lot of cities don't get this and have PUD review processes that don't involve ordinances or the city council.

### Site-Specific Rezones are Subject to Review Criteria Even if Your City Hasn't Adopted Any

The first hint of trouble in the legislative/permitting boxing process is that the courts will apply review criteria to site specific rezones whether the city has adopted some or not. Many city codes, especially prior to the 1990s, had no review standards for site-specific rezones. The codes would simply provide that the planning commission was to make recommendations on site-specific rezones and the city council adopted them by ordinance. The code didn't say anything about under what circumstances the rezones should be approved. With some justification, cities simply believed that site specific rezones were purely legislative acts and no standards were necessary.

The courts, however, disagreed. They ruled that a site specific rezone was subject to review standards, regardless of whether or not a city had adopted their own. The courts require that the proponents of a rezone must establish that conditions have substantially changed since the original adoption and that the rezone must bear a substantial relationship to the public health, safety, morals or welfare<sup>3</sup>. If a rezone implements the comprehensive plan, a showing that a change of circumstances has occurred is not required.

So even if your city code has no standards for consideration of site specific rezones, you still have to meet the standards imposed by the courts. Be sure those standards are addressed in the findings and conclusions of your final decision.

### A Site-Specific Rezone Is Subject to the Appearance of Fairness Doctrine

## PROPOSAL 6

Site specific rezones are quasi-judicial<sup>4</sup>, which means they are subject to the appearance of fairness doctrine. For the uninitiated, the appearance of fairness doctrine requires hearings to appear to be fair so that the public can have faith in an impartial permitting process. It's beyond the scope of this article to get into the issue in any detail, but to keep it simple let's just say that there are scores of court opinions involving situations where land use decisions are thrown out because the review process didn't appear to be fair. For this reason, when you hold a hearing on a site specific rezone you can't participate as a decision maker if there's anything about you that could appear to be biased and you're not allowed to discuss the application outside of the public hearing.

Why is this odd? Because just about any other hearing regarding the adoption of an ordinance is not considered quasi-judicial. All text amendments to a comprehensive plan or zoning code, as well as any "area-wide" rezones are not quasi-judicial because those decisions are considered legislative<sup>5</sup>. You can be as biased as you want (excluding some instances of self-interest like bribery) and talk as much as you want to anyone you want outside the hearing process. Even more confusing, a comprehensive plan map amendment to a parcel of property is not subject to the appearance of fairness doctrine even though a site specific rezone for exactly the same parcel is quasi-judicial. The comprehensive plan map/site specific zoning map amendment dichotomy on the appearance of fairness highlights the most dysfunctional depths of the multiple personality of a site specific rezone.

### Site Specific Rezones Must Be Decided within 120 Days and are Limited to One Hearing

You can only hold one public hearing on a rezone and you have to issue a final decision within 120 days of the filing of a complete application. The reason is that the Regulatory Reform Act, [chapter 36.70B RCW](#), defines a project permit application to include a site specific rezone<sup>6</sup> and project permits can only be subject to one public hearing and a final decision must be issued within 120 days of the submission of a complete application<sup>7</sup>.

### Superior Courts have Exclusive Jurisdiction to Review Appeals of Site Specific Rezones

The Land Use Petition Act ("LUPA"), [Chapter 36.70C RCW](#), governs the judicial appeal of all site specific rezones<sup>8</sup>. This is a big deal because decisions subject to LUPA are appealed to superior court and the courts can toss those decisions out if an appeal isn't filed within 21 days of issuance of the decision.

## PROPOSAL 6

All other amendments to zoning and comprehensive plans, including area-wide rezones, have to be appealed to the Growth Management Hearings Board instead of superior court. You get 60 days to file that appeal.

### The Courts can Make You Approve a Site Specific Rezone

The courts can make you approve a rezone that your city denied, or deny a rezone that your city approved. LUPA gives the courts the authority to reverse or remand any land use decision and as previously discussed, site specific rezones are subject to LUPA. This is in stark contrast to all other comprehensive plan and zoning code amendments. As noted previously, those amendments can only be appealed to the Growth Management Hearings Board. The Board has no authority to require a city to approve a proposed amendment. All they can do is invalidate or remand amendments.

Although site specific rezones behave very much like permit applications when it comes to judicial review, there are still some vestiges of its legislativeness given some respect by the courts. In a decision issued in 2011,<sup>9</sup>, the state supreme court recognized that it should give deference to the Growth Management Act policy choices made in a site specific rezone decision. This type of deference would probably not be granted for any other type of permit application, because the objective of all other types of land use permitting decision is to implement Growth Management Act policy choices that have already been made. That policy deference recognizes that there is still a bit of legislating going on when a site specific rezone is under consideration.

### Bad Site Specific Rezone Decisions are Not Subject to 64.40 or Section 1983 Damages

Just when you get to the point where you're thinking that it's just a fluke that site specific rezones are adopted by ordinance and that they're really permit applications, they act just like legislation when it comes to permitting liability. At least sometimes.

Probably the two most common sources of permitting liability are "64.40" and "Section 1983 claims". A "64.40" claim derives from RCW 64.40.010, which provides that a city will be held liable to owners of property for decisions on "an application for a permit" that are arbitrary, capricious, unlawful or exceed lawful authority. The courts recently ruled that a site specific rezone is not "an application for a permit" so 64.40 doesn't apply<sup>10</sup>.

## PROPOSAL 6

A "Section 1983 claim" refers to a cause of action filed under 42 USC Section 1983. This federal statute allows plaintiffs to recoup damages against municipalities for violating their federal constitutional rights when that municipality is acting under color of state law. One of the key elements to a Section 1983 claim is that the municipality must have infringed upon a protected federal constitutional right. Our state supreme court ruled a few years ago that one of those protected federal rights under the due process clause is to have a permit application processed under the laws that were in effect when a complete application was filed<sup>11</sup>, i.e. if the permit application meets applicable permitting criteria, the permit holder has a due process right to have that permit approved. The courts recently ruled that applicants do not have a federal due process right to have a rezone application approved even if it meets local rezone criteria<sup>12</sup>. This is because a rezone applicant isn't seeking to have a permit processed under the laws in effect; the applicant is seeking to change those laws (i.e. the zoning map). In essence, a site specific rezone isn't subject to Section 1983 damages because it fits in the legislative as opposed to permitting box.

Does this mean you can deny rezones with impunity? Absolutely not. There are other limited circumstances in which you can still be held liable. Most notably if a rezone meets your code criteria and the applicant makes it known to you that he or she has some purchasers for the property ready to write a check once the rezone is approved, you could be held liable for denying the application under "tortious interference with a business expectancy". Courts often find some way to make cities pay when they act in disregard of their permitting requirements. Also, as discussed in the next section, if it's a really bad decision the courts will reverse your decision anyway.

### You can Condition a Rezone

Like any other permit, you can condition a rezone. That's probably best done through the execution of a development agreement<sup>13</sup>. Unlike for a typical permit however, rezone conditions are usually a very bad idea. Typical permit conditions just govern how a specific development is to be constructed and then they disappear, except perhaps with some limitations on the operation of the development. Even under the latter circumstances, those conditions will disappear when the development project disappears (burns to the grounds, stops operating, etc.). Rezone conditions, however, linger. Since they usually address how property is to be used, they outlast whatever development the property owner initially had in mind and then show up 30 years later when they make absolutely no sense given how the property and

## PROPOSAL 6

the vicinity have developed. Just ask any 50+ year old city attorney about what they think of rezone agreements. They'll have fonder memories of their colonoscopy.

1. Do people still actually hold cocktail parties? I wouldn't know. No one has ever invited me for some reason.
2. See *Lutz v. City of Longview*, 83 Wn.2d 566, 620 P.2d 1374 (1974) *Johnson v. City of Mount Vernon*, 37 Wn. App. 214, 218, 679 P.2d 405 (1984); *Kenart v. Skagit County*, 37 Wn. App. 295, 298, 680 P.2d 439 (1984); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 874, 947 P.2d 1208 (1997).
3. See *Ahmann-Yamane, LLC v. Tabler*, 105 Wn. App. 103, 111 (2001).
4. See *Smith v. Skagit County*, 75 Wn.2d 715 (1969)
5. See RCW 42.36.010
6. Technically, the site-specific rezone must be "authorized by a comprehensive plan or subarea plan" to qualify as a project permit. See RCW 36.70B.020(4).
7. See RCW 36.70B.050; 36.70B.080(1).
8. See RCW 36.70C.020(2); RCW 36.70C.030.
9. See *Phoenix Development v. Woodinville*, 171 Wn.2d 820 (2011).
10. *Manna Funding, LLC v. Kittitas County*, 295 P.3d 1197 (2013).
11. *Mission Springs v. City of Spokane*, 134 Wn.2d 947 (1992).
12. *Manna Funding, LLC v. Kittitas County*, 295 P.3d 1197 (2013).
13. See RCW 36.70B.170

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## PROPOSAL 6



### About Phil Olbrechts

Phil Olbrechts is the lead attorney at Olbrechts and Associates, PLLC. Phil is heavily involved in local government, currently serving as hearing examiner for 14 municipalities, alternate examiner for 4 others, and land use counsel and city attorney for 4 cities. He writes about land use law and is the editor of the Short Course on Local Planning, published by the Washington State Department of Commerce. He has taught several land use courses at the University of Washington and frequently makes presentations on land use law throughout the state.

[VIEW ALL POSTS BY PHIL OLBRECHTS](#)

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PROPOSAL 7

**DOCKET REQUEST FORM**

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

**APPLICANT INFORMATION**

Name: Daniel Grove  
Address: 3515 72nd Ave SE, Mercer Island, WA 98040  
Phone: 650-200-0326  
Email: dan@grove.cx

**AGENT/CONSULTANT/ATTORNEY**  
Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**REQUEST INFORMATION**  
Important: A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
County Assessor's Parcel No.: \_\_\_\_\_  
Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment  Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to applicable permit fees.

Suggestion  Application

**DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS**

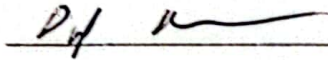
Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

The application will be considered incomplete without a narrative answering all five questions.

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:



Date:

9/30/2024

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Please attach a separate narrative responding to the above questions.

# PROPOSAL 7

## Docket Request Narrative, submitted for 2025 Docket by Daniel Grove

1. Detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.

2.

In 2024, Docket proposal 14 suggested a massive change to the downhill building facade requirement. This change differed from City Staff's suggested change, and would allow much larger downhill facades on sloping lots than the current code.

The proposal would add these words "A building face can be articulated/divided into multiple façades. Those façades each have their own relationship to grade, and shall be treated as separate walls for determining maximum building façade height on the downhill side of a sloping lot."

Grade is already difficult to determine around the perimeter of a structure, and must be clarified in this case. Grade should be defined as the lower of existing or finished grade immediately below each point on a facade, and facade height is defined at the maximum distance from the top of the facade to the grade immediately below.

In addition, separate facades must be separate enough to be visually distinct. I suggest that there be a minimum 10 foot setback between facades to have them be considered separately.

The relevant Code sections with the proposed amendment are as follows:

### MICC 19.16.010 - Definitions

Façade: Any exterior wall of a structure, including projections from and attachments to the wall. Projections and attachments include balconies, decks, porches, chimneys, unenclosed corridors and similar projections.

### MICC 19.02.020.E Building Height Limit

1. Maximum building height. No building shall exceed 30 feet in height above the average building elevation to the highest point of the roof. (emphasis added)
2. Maximum building height on downhill building façade. The maximum building façade height on the downhill side of a sloping lot shall not exceed 30 feet in height. The building façade height shall be measured from the existing grade or finished grade, whichever is lower, at the furthest downhill extent of the proposed building, to the top of the exterior wall facade supporting the roof framing, rafters, trusses, etc. A building face can be articulated/divided into multiple façades where each facade is separated by a minimum of 10 horizontal feet. Those façades each have their own relationship to the lower of the existing grade or finished grade immediately below each point on each

## PROPOSAL 7

facade. Those facades shall be treated as separate walls for determining maximum building façade height on the downhill side of a sloping lot.

2. This benefits the community and environment by limiting the impact of 2024 Docket item 14, which would allow much larger façades than have been permitted in the past.
3. This request is appropriate to the Docket Process as a Code Amendment.
4. The request meets the criteria of MICC 19.15.250(D): a) Presents a matter appropriately addressed through the code. b) The scope of the request can be easily provided by the city. c) This does not raise land issues more appropriately addressed by any ongoing item by the city council. d) This will serve the public's interest, i.e. and landowner interested in developing their residential property and ensuring that sloped lots that are otherwise developable can in fact be reasonably developed. e) This has not been considered by the city council 4. This proposal does not seek to amend the Comprehensive Plan.
5. The proposal aligns with the goals of the City's Comprehensive Plan in providing reasonable development of residential property while maintaining aesthetic goals.

# PROPOSAL 8

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Jeff Haley

Address: 5220 Butterowrth Rd

Phone: 206 919 1798

Email: Jeff@Haley.net

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment  Development code Amendment

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Suggestion  Application

**DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS**

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4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_ Date: Sept 10, 2024

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Please attach a separate narrative responding to the above questions.

## DOCKETING CRITERIA

[MICC 19.15.230\(E\) 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.

## COMPREHENSIVE PLAN DECISION CRITERIA

[MICC 19.15.230\(F\) 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.

## DEVELOPMENT CODE AMENDMENT DECISION CRITERIA

[MICC 19.15.250\(D\) 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.

**Jeff Haley**  
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September 10, 2024

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**Re: Narrative in Support of Proposed Docket Request for an Ordinance Limiting Height of Hedges**  
Submitted with Docket Request Form

### **Introduction**

Mercer Island needs an ordinance limiting heights of hedges to preserve access to sunlight and views, protect neighborhood aesthetics, and resolve neighbor conflicts. Most cities have one and many examples are cited in the notes below.

In the late 1900's, many cities repealed such ordinances because they were too expensive to enforce. But there is a new approach to achieving the benefits at no cost to the city. The parties bear all costs and enforcement is through arbitration or the courts. The city is not involved. Examples from Normandy Park and Yarrow Point are discussed below.

The following documents accompany this narrative:

- A draft of the proposed ordinance with notes stating origins and differences from the Yarrow Point and Normandy Park ordinances;
- An agenda memo prepared by staff of Yarrow Point discussing the Normandy Park ordinance and suggesting to the city council language that the council should adopt;
- A data table of a few examples of objected to Mercer Island hedges with a photograph of each; and
- A list of a few Mercer Island voters who support adoption of the proposed ordinance.

While soliciting support from Island voters, I encountered more than four who said they strongly support the proposal and are burdened by a neighbor's hedge that is too high, but they do not want to say so publicly because of conflict with the neighbor. They would offer confidential support for a citizen's initiative and would be pleased to vote in favor by secret ballot. There must be many on the Island who feel the same.

If staff or the Planning Commission or the Council would like me to present or discuss any part of this by Zoom or in person, I will make myself available to do so. Other supporters and I would be pleased to speak at public meetings.

### **Narrative Response to the Five Questions**

1. Nothing would be deleted from the present city code. A complete draft (in Word) of the proposed ordinance accompanies this Request.
2. As stated in the accompanying draft, the proposed ordinance benefits the residents and the environment by preserving access to sunlight and views, protecting neighborhood aesthetics, and resolving neighbor conflicts.



3. As stated in the accompanying draft, the proposed ordinance (1) is consistent with the comprehensive plan; (2) bears a substantial relation to the public health, safety, or welfare; and (3) is in the best interest of the community as a whole.

**Examples from other cities of old and new Hedge Height Limiting Ordinances**

Most cities have codes that limit the heights of hedges in single family residential zones along with limiting heights of fences. The most common height limitation for both fences and hedges in side yards and rear yards is 6 feet. (Most codes have 3.5 feet or 4 feet limits for front yards.) There are thousands of examples in the US<sup>1</sup> and at least 33 in western Washington.<sup>2</sup> This is the standard adopted for the Uniform Zoning Code, now called the International Zoning Code, section 802.

[https://codes.iccsafe.org/content/IZC2021P1/chapter-8-general-provisions#IZC2021P1\\_Ch08\\_Sec802](https://codes.iccsafe.org/content/IZC2021P1/chapter-8-general-provisions#IZC2021P1_Ch08_Sec802)

A few local governments, including at least 13 in Washington, have raised the height limit to 7 or 8 or 10 feet, or reduced the limitation to an area to along the property line rather than the entire setback area, or allowed for variances up to 10 feet.<sup>3</sup>

In 2007, by copying models from other cities, Normandy Park adopted a detailed new code to resolve hedge height disputes that requires no city resources or funding. Disputes under the new code are resolved by mediation, arbitration, or litigation entirely at the expense of the parties. This code is an excellent model for what Mercer Island should adopt. Here is a link to the ordinance

<https://www.codepublishing.com/WA/NormandyPark/html/NormandyPark18/NormandyPark1835.html>

Here are highlights:

- Normandy Park ordinance: “Hedges, or other plantings having a barrier, screen or partition nature, shall not be more than 10 feet in height when located within 10 feet of any adjacent owner’s property line.”

<https://www.codepublishing.com/WA/NormandyPark/html/NormandyPark18/NormandyPark1835.html#18.35.040>

In 2019 after 12 years of experience with the new code, the City Manager of Normandy Park reported that the ordinance “provides options and requirements for Normandy Park property owners who have view or sunlight disputes over hedges ... The city has no role and needs no notice of any of the above.”

<https://normandyparkblog.com/2019/12/08/city-managers-weekly-report-for-week-ending-dec-6-2019/>

In 2023, the Town of Yarrow Point adopted a similar ordinance expressly based on the model of Normandy Park. This ordinance is also an excellent model for what Mercer Island should adopt.

- Yarrow Point ordinance: “a hedge located within a setback shall not exceed” 6.5 feet. 20.23.030 “A hedge located within a setback that exceeds the permitted height established in YPMC 20.23.030 constitutes a private nuisance.” “The town has no right nor obligation to enforce any of the provisions of this chapter.”

<https://www.codepublishing.com/WA/YarrowPoint/html/YarrowPoint20/YarrowPoint2023.html>

There were fifteen years of experience with the Normandy Park hedge ordinance before Yarrow Point drafted its ordinance based on the Normandy Park code and it is likely that the Yarrow Point ordinance includes worthy improvements based on that experience. I found no provision in the Yarrow Point hedge

code that I think should be not be copied for Mercer Island. I have no preference for setting the default height limitation. It could be 6.5 feet or 7 or 8 feet.

The Normandy Park hedge ordinance, particularly the methods for privately resolving disputes over growth of hedges or trees blocking sunlight or views at no cost to the city, was based on similar ordinances previously drafted for other cities:

- In 1991, the Town of Tiburon CA adopted an ordinance to protect sunlight and views that “removed the Town from direct involvement and enforcement of view or sunlight blockage issues stemming from the growth of trees, thus removing the Town from exposure to litigation over the application and/or enforcement of the regulations.” “The Town' s ordinance has been widely consulted and is frequently used as a model for the regulation of view and sunlight blockage from trees in other communities.”  
[https://townoftiburon.granicus.com/MetaViewer.php?view\\_id=8&clip\\_id=84&meta\\_id=5062](https://townoftiburon.granicus.com/MetaViewer.php?view_id=8&clip_id=84&meta_id=5062)
- Los Altos Hills CA adopted a similar ordinance in 2003. <https://ecode360.com/43815113#43815124>
- Marin County CA considered a similar ordinance in 2004 and staff wrote comments explaining the background of some of the provisions. [https://www.marincounty.org/-/media/files/departments/cd/meetingcalendar/planning-commission/04\\_0223\\_it\\_040223072729.pdf](https://www.marincounty.org/-/media/files/departments/cd/meetingcalendar/planning-commission/04_0223_it_040223072729.pdf)

Sincerely,



Jeff Haley and Carol Glass  
5220 Butterworth Rd

## Notes

### 1. Examples of 6 feet limitations in the US outside western Washington:

Clatskanie, OR, [https://codelibrary.amlegal.com/codes/clatskanieor/latest/clatskanie\\_or/0-0-0-1862](https://codelibrary.amlegal.com/codes/clatskanieor/latest/clatskanie_or/0-0-0-1862)

Hercules, CA, <https://www.herculesca.gov/government/planning/fence-wall-and-hedge-standards>

Forsyth Montana, [https://codelibrary.amlegal.com/codes/forsythmt/latest/forsyth\\_mt/0-0-0-1946](https://codelibrary.amlegal.com/codes/forsythmt/latest/forsyth_mt/0-0-0-1946)

Bellevue OH, [https://codelibrary.amlegal.com/codes/bellevue/latest/bellevue\\_oh/0-0-0-20200#JD\\_1215.01](https://codelibrary.amlegal.com/codes/bellevue/latest/bellevue_oh/0-0-0-20200#JD_1215.01)

Stockton, IL, [https://codelibrary.amlegal.com/codes/stocktonil/latest/stockton\\_il/0-0-0-3781](https://codelibrary.amlegal.com/codes/stocktonil/latest/stockton_il/0-0-0-3781)

Chesterton, IN, [https://codelibrary.amlegal.com/codes/chesterton/latest/chesterton\\_in/0-0-0-5028](https://codelibrary.amlegal.com/codes/chesterton/latest/chesterton_in/0-0-0-5028)

Bell Gardens, Los Angeles County, CA,

<https://www.codepublishing.com/CA/BellGardens/html/BellGardens09/BellGardens0932.html>

North Platte, NE, [https://codelibrary.amlegal.com/codes/northplatte/latest/northplatte\\_ne/0-0-0-6014](https://codelibrary.amlegal.com/codes/northplatte/latest/northplatte_ne/0-0-0-6014)

Foster City, San Mateo County, CA,

[https://www.fostercity.org/sites/default/files/fileattachments/community\\_development/page/8641/amended-chapter-17-52-fences-walls-and-hedges.pdf](https://www.fostercity.org/sites/default/files/fileattachments/community_development/page/8641/amended-chapter-17-52-fences-walls-and-hedges.pdf)

Oberlin OH, [https://codelibrary.amlegal.com/codes/oberlin/latest/oberlin\\_oh/0-0-0-35862](https://codelibrary.amlegal.com/codes/oberlin/latest/oberlin_oh/0-0-0-35862)

Spencer IA, [https://codelibrary.amlegal.com/codes/spenceria/latest/spencer\\_ia/0-0-0-5526](https://codelibrary.amlegal.com/codes/spenceria/latest/spencer_ia/0-0-0-5526)

Pismo Beach, CA, [https://codelibrary.amlegal.com/codes/pismoeach/latest/pismo\\_ca/0-0-0-16041](https://codelibrary.amlegal.com/codes/pismoeach/latest/pismo_ca/0-0-0-16041)

Minooka, IA, [https://codelibrary.amlegal.com/codes/minookail/latest/minooka\\_il/0-0-0-6128](https://codelibrary.amlegal.com/codes/minookail/latest/minooka_il/0-0-0-6128)

Kern County, California: In certain residential districts (such as E (¼), E (½), E (1), E (2½), R-1, R-2, and R-3), fences, walls, or hedges limited to **six feet**. [http://www.kerncounty-ca.elaws.us/code/coor\\_title19\\_ch19.08\\_sec19.08.210](http://www.kerncounty-ca.elaws.us/code/coor_title19_ch19.08_sec19.08.210)

Ellwood, PA, [https://codelibrary.amlegal.com/codes/ellwoodcity/latest/ellwoodcity\\_pa/0-0-0-8630](https://codelibrary.amlegal.com/codes/ellwoodcity/latest/ellwoodcity_pa/0-0-0-8630)

Desert Hot Springs, CA, <https://ecode360.com/43992644#43992688> 17.40.110

San Gabriel CA, <https://www.sangabrielcity.com/FAQ.aspx?QID=215>

2. These are a few in western Washington with 6 feet limitations that were easy to find. There must be many more.

Aberdeen, <https://aberdeen.municipal.codes/AMC/17.56.150>

Algona, <https://algona.municipal.codes/Code/22.62.010>

Battle Ground

<https://www.codepublishing.com/WA/BattleGround/#!/BattleGround17/BattleGround17135.html#17.135.080>

Bellingham, <https://bellingham.municipal.codes/BMC/20.30.110>

Blaine, <https://www.codepublishing.com/WA/Blaine/#!/Blaine17/Blaine17128.html>

Bonney Lake, <https://www.codepublishing.com/WA/BonneyLake/#!/BonneyLake18/BonneyLake1822.html>

Bothell, <https://bothell.municipal.codes/BMC/12.14.150>

Bremerton, <https://www.codepublishing.com/WA/Bremerton/#!/Bremerton20/Bremerton2078.html>

Buckley, <https://www.codepublishing.com/WA/Buckley/#!/Buckley19/Buckley1912.html#19.12.225> and

<https://www.codepublishing.com/WA/Buckley/#!/html/Buckley16/Buckley1612.html>

Castle Rock, <https://www.codepublishing.com/WA/CastleRock/#!/html/CastleRock17/CastleRock1748.html> and [https://www.codepublishing.com/search/?cmd=getdoc&DocId=538&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fCastleRock&HitCount=1&hits=1230+&SearchForm=html%3A%2FWA%2FCastleRock%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=538&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fCastleRock&HitCount=1&hits=1230+&SearchForm=html%3A%2FWA%2FCastleRock%2Fsearch_form.html)

Centralia, <https://www.codepublishing.com/WA/Centralia/#!/html/Centralia20/Centralia2050.html>

Clyde Hill, <https://www.codepublishing.com/WA/ClydeHill/#!/html/ClydeHill17/ClydeHill1737.html> and

<https://www.codepublishing.com/WA/ClydeHill/html/ClydeHill17/ClydeHill1704.html#17.04.230>

Des Moines

<https://www.codepublishing.com/WA/DesMoines/html/DesMoines18/DesMoines18190.html#18.190.200>

DuPont, <https://www.codepublishing.com/WA/DuPont/html/DuPont25/DuPont2510.html#25.10.060.020> and

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=712&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fDuPont&HitCount=9&hits=7dc+7f9+adf+b97+b9a+bad+bba+d9c+da3+&SearchForm=html%3A%2FWA%2FDuPont%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=712&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fDuPont&HitCount=9&hits=7dc+7f9+adf+b97+b9a+bad+bba+d9c+da3+&SearchForm=html%3A%2FWA%2FDuPont%2Fsearch_form.html)

Edgewood, <https://www.codepublishing.com/WA/Edgewood/html/Edgewood18/Edgewood1890.html#18.90.060>

Gig Harbor, <https://gigharbor.municipal.codes/GHMC/17.78.095> and

<https://gigharbor.municipal.codes/GHMC/17.01.080>

Granite Falls

<https://www.codepublishing.com/WA/GraniteFalls/html/GraniteFalls19/GraniteFalls1906.html#19.06.030>

Kelso, <https://www.codepublishing.com/WA/Kelso/#!/Kelso17/Kelso1722.html#17.22.080>

Lynnwood, <https://lynnwood.municipal.codes/LMC/21.10.100>

Marysville, <https://www.codepublishing.com/WA/Marysville/#!/Marysville22C/Marysville22C010.html#22C.010.380>

Montesano, <https://www.codepublishing.com/WA/Montesano/html/Montesano17/Montesano1744.html#17.44.026>

Mount Vernon,

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=833&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fMountVernon&HitCount=39&hits=4+a+11+1f+27+31+37+53+67+7e+9e+e0+108+139+151+173+1a4+1c5+1dd+208+228+252+26a+28a+2db+2f5+338+39a+3b8+3be+3d0+3f0+402+419+41e+452+459+45f+47e+&SearchForm=html%3A%2FWA%2FMountVernon%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=833&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fMountVernon&HitCount=39&hits=4+a+11+1f+27+31+37+53+67+7e+9e+e0+108+139+151+173+1a4+1c5+1dd+208+228+252+26a+28a+2db+2f5+338+39a+3b8+3be+3d0+3f0+402+419+41e+452+459+45f+47e+&SearchForm=html%3A%2FWA%2FMountVernon%2Fsearch_form.html) and

<https://www.codepublishing.com/WA/MountVernon/html/MountVernon17/MountVernon1706.html#17.06.060>

Mountlake Terrace

<https://www.codepublishing.com/WA/MountlakeTerrace/html/MountlakeTerrace19/MountlakeTerrace19120.html#19.120.200>

North Bend, <https://www.codepublishing.com/WA/NorthBend/html/NorthBend16/NorthBend1612.html#16.12.145>

Oak Harbor <https://www.codepublishing.com/WA/OakHarbor/html/OakHarbor19/OakHarbor1946.html#19.46.050>

Ocean Shores

<https://www.codepublishing.com/WA/OceanShores/#!/OceanShores17/OceanShores1750.html#17.50.120>

Olympia

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=18844&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fOlympia&HitCount=61&hits=215+267+26f+276+27c+2b7+2be+2c4+2fb+304+390+392+3a1+3fb+414+418+42e+446+4c3+4d4+4dc+55e+5af+5cd+5e3+5e6+5eb+60f+613+648+660+686+6ac+6eb+709+71f+726+73b+76b+78c+7a0+7aa+7c0+7c8+7d8+7e3+7f8+7ff+814+82f+847+85d+862+88a+8cc+8e6+8fc+91f+92f+96d+d3f+&SearchForm=D%3A%5Cinetpub%5Cwwwroot%5Cpublic\\_html%5CWA%5COlympia%5COlympia\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=18844&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fOlympia&HitCount=61&hits=215+267+26f+276+27c+2b7+2be+2c4+2fb+304+390+392+3a1+3fb+414+418+42e+446+4c3+4d4+4dc+55e+5af+5cd+5e3+5e6+5eb+60f+613+648+660+686+6ac+6eb+709+71f+726+73b+76b+78c+7a0+7aa+7c0+7c8+7d8+7e3+7f8+7ff+814+82f+847+85d+862+88a+8cc+8e6+8fc+91f+92f+96d+d3f+&SearchForm=D%3A%5Cinetpub%5Cwwwroot%5Cpublic_html%5CWA%5COlympia%5COlympia_form.html) and

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=18778&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fOlympia&HitCount=2&hits=31be+54d5+&SearchForm=D%3A%5Cinetpub%5Cwwwroot%5Cpublic\\_html%5CWA%5COlympia%5COlympia\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=18778&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fOlympia&HitCount=2&hits=31be+54d5+&SearchForm=D%3A%5Cinetpub%5Cwwwroot%5Cpublic_html%5CWA%5COlympia%5COlympia_form.html)

Orting WA, [https://codelibrary.amlegal.com/codes/ortingwa/latest/orting\\_wa/0-0-0-7499](https://codelibrary.amlegal.com/codes/ortingwa/latest/orting_wa/0-0-0-7499)

SeaTac

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=1014&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fSeaTac&HitCount=70&hits=4+8+18+20+3e+58+63+6d+7c+86+8c+ac+b4+bc+d5+e4+e7+f0+108+10b+111+114+122+131+138+13e+158+15d+16c+186+197+19e+1a3+1b3+1ca+1d8+1f0+204+20e+215+222+23a+24e+28b+28f+2a7+2b2+2cd+2cf+2d3+2e0+301+306+352+356+391+394+39a+3b3+3c7+3de+3fe+433+44b+45b+47f+488+492+4be+4c5+&SearchForm=html%3A%2FWA%2FSeaTac%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=1014&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fSeaTac&HitCount=70&hits=4+8+18+20+3e+58+63+6d+7c+86+8c+ac+b4+bc+d5+e4+e7+f0+108+10b+111+114+122+131+138+13e+158+15d+16c+186+197+19e+1a3+1b3+1ca+1d8+1f0+204+20e+215+222+23a+24e+28b+28f+2a7+2b2+2cd+2cf+2d3+2e0+301+306+352+356+391+394+39a+3b3+3c7+3de+3fe+433+44b+45b+47f+488+492+4be+4c5+&SearchForm=html%3A%2FWA%2FSeaTac%2Fsearch_form.html)

South Bend <https://www.codepublishing.com/WA/SouthBend/html/SouthBend15/SouthBend1520.html#15.20.200>

Sumas <https://www.codepublishing.com/WA/Sumas/#!/Sumas20/Sumas2018.html#20.18.030>

Sumner

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=1268&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fSumner&HitCount=6&hits=bba+bd1+bf0+bf+cd0+cdb+&SearchForm=html%3A%2FWA%2FSumner%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=1268&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fSumner&HitCount=6&hits=bba+bd1+bf0+bf+cd0+cdb+&SearchForm=html%3A%2FWA%2FSumner%2Fsearch_form.html)

Westport <https://www.codepublishing.com/WA/Westport/html/Westport17/Westport1736.html#17.36.170> and

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=249&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fWestport&HitCount=11&hits=5eb+617+621+627+62b+642+64a+66c+672+67e+1286+&SearchForm=html%3A%2FWA%2FWestport%2Fsearch\\_formSML.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=249&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fWestport&HitCount=11&hits=5eb+617+621+627+62b+642+64a+66c+672+67e+1286+&SearchForm=html%3A%2FWA%2FWestport%2Fsearch_formSML.html)

Woodinville <https://www.codepublishing.com/WA/Woodinville/html/Woodinville21/Woodinville2140.html#21.40.010>

and <https://www.codepublishing.com/WA/Woodinville/html/Woodinville21/Woodinville2111A.html#21.11A.070>

### 3. Examples of raised height limits from other cities:

Clyde Hill, WA, hedges limited to **8 feet** tall.

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=554&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fClydeHill&HitCount=37&hits=4+8+12+16+1f+32+4d+5a+71+74+8e+9b+b9+db+ec+f8+11b+131+145+16d+17d+198+23b+2a3+2cf+2e8+2ee+314+31b+31f+35c+366+384+394+3d0+3d2+3f6+&SearchForm=html%3A%2FWA%2FClydeHill%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=554&Index=%2fvar%2fplib%2fdtsearch%2fhtml%2fWA%2fClydeHill&HitCount=37&hits=4+8+12+16+1f+32+4d+5a+71+74+8e+9b+b9+db+ec+f8+11b+131+145+16d+17d+198+23b+2a3+2cf+2e8+2ee+314+31b+31f+35c+366+384+394+3d0+3d2+3f6+&SearchForm=html%3A%2FWA%2FClydeHill%2Fsearch_form.html)

Pacific, King Co, hedges limited to **8 feet** within the setback area.

<https://www.codepublishing.com/WA/Pacific/html/Pacific20/Pacific2068.html#20.68.100>

Ellensburg, WA, hedges allowed up to **8 feet**.

[https://library.municode.com/wa/ellensburg/codes/code\\_of\\_ordinances?nodeId=TIT15LADECO\\_DIVPRDE\\_CH15.52OSIPLDEEL\\_15.520.020SIREYADE](https://library.municode.com/wa/ellensburg/codes/code_of_ordinances?nodeId=TIT15LADECO_DIVPRDE_CH15.52OSIPLDEEL_15.520.020SIREYADE)

Forks, WA, hedges allowed up to **8 feet**. <https://www.codepublishing.com/WA/Forks/#!/Forks17/Forks1775.html>

Everett, hedges limited to **7 feet** within the setback area. <https://everett.municipal.codes/EMC/17.08.140> and <https://everett.municipal.codes/EMC/19.40.010>

Lacey, WA, hedges limited to 7 feet within the setback area. <https://lacey.municipal.codes/LMC/16.03.070>

Anacortes WA, along/near any internal side property line, 7 feet tall.

<https://anacortes.municipal.codes/AMC/19.66.030>

Chehalis, WA, hedges limited to 7 feet within the setback area.

<https://www.codepublishing.com/WA/Chehalis/#!/Chehalis17/Chehalis1754.html>

Hunts Point, WA, hedges limited to 6.5 feet within the setback area.

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=225&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fHuntsPoint&HitCount=4&hits=233+24c+3cb+3f1+&SearchForm=D%3A%5Cinetpub%5Cwwwroot%5Cpublic\\_html%5CWA%5CHuntsPoint%5CHuntsPoint\\_formSML.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=225&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fHuntsPoint&HitCount=4&hits=233+24c+3cb+3f1+&SearchForm=D%3A%5Cinetpub%5Cwwwroot%5Cpublic_html%5CWA%5CHuntsPoint%5CHuntsPoint_formSML.html)

Tumwater, WA hedges limited to 78 inches (6' 6") within the setback area.

[https://www.codepublishing.com/search/?cmd=getdoc&DocId=1054&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fTumwater&HitCount=52&hits=4+8+11+17+2b+51+56+ba+f4+ff+106+12d+13e+16a+1a3+1bf+1c6+1cd+1f2+1fa+21e+231+24d+256+26c+287+2a5+2ae+2b6+2bd+2e2+2ea+2fc+31a+323+32b+332+357+35f+37b+3a9+3e0+3fc+403+40a+42e+441+448+46a+46e+485+49a+&SearchForm=html%3A%2FWA%2FTumwater%2Fsearch\\_form.html](https://www.codepublishing.com/search/?cmd=getdoc&DocId=1054&Index=%2fvar%2flib%2fdtsearch%2fhtml%2fWA%2fTumwater&HitCount=52&hits=4+8+11+17+2b+51+56+ba+f4+ff+106+12d+13e+16a+1a3+1bf+1c6+1cd+1f2+1fa+21e+231+24d+256+26c+287+2a5+2ae+2b6+2bd+2e2+2ea+2fc+31a+323+32b+332+357+35f+37b+3a9+3e0+3fc+403+40a+42e+441+448+46a+46e+485+49a+&SearchForm=html%3A%2FWA%2FTumwater%2Fsearch_form.html) and <https://www.codepublishing.com/WA/Tumwater/html/Tumwater18/Tumwater1804.html#18.04.060>

Thurston County, WA, hedges limited to 78 inches (6' 6") within the setback area.

[https://library.municode.com/wa/thurston\\_county/codes/code\\_of\\_ordinances?nodeId=TIT22TUURGRARZO\\_CH22.04DE\\_22.04.210FE](https://library.municode.com/wa/thurston_county/codes/code_of_ordinances?nodeId=TIT22TUURGRARZO_CH22.04DE_22.04.210FE)

[https://library.municode.com/wa/thurston\\_county/codes/code\\_of\\_ordinances?nodeId=TIT22TUURGRARZO\\_CH22.46FE\\_22.46.030FEEIRE](https://library.municode.com/wa/thurston_county/codes/code_of_ordinances?nodeId=TIT22TUURGRARZO_CH22.46FE_22.46.030FEEIRE)

Los Angeles Municipal Code §12 22.C.20.(f) provides:

8 feet maximum height – R zone if lot width is 40 ft. or greater and not in hillside area.

6 feet maximum height – R zone if lot width is less 40 ft

6 feet maximum height – R zone, hillside area.

Shady Grove, OR, hedges limited to 6 feet within 10 feet of a property line. The Planning Commission may approve a variance to the height requirement for reasons of security or visual screening, to a maximum height of ten feet.

[https://codelibrary.amlegal.com/codes/shadycove/latest/shadycove\\_or/0-0-0-3540](https://codelibrary.amlegal.com/codes/shadycove/latest/shadycove_or/0-0-0-3540)

Azusa, CA, hedges limited to 6 feet within 6 feet of a property line.

<https://www.azusaca.gov/DocumentCenter/View/101/88-30020?bidId=88.30.020>

Proposed **Private Hedge Code** for Mercer Island – Version 1, September 2024

**19.010 Purpose and intent.**

This chapter is enacted to provide a voluntary mechanism for the resolution of disputes involving the height of hedges. It shall not be construed to provide rights inconsistent with Washington law. The City of Mercer Island has no right nor obligation to enforce any provision of this chapter.

- A. Among the features that contribute to the attractiveness and livability of the City of Mercer Island are its hedges and landscaping, both native and introduced.
- B. Hedges and landscaping provide a wide variety of psychological and tangible benefits for both residents and visitors but they also impose detriments when they block sunlight or views.
- C. It is in the interest of the public welfare, health and safety to establish standards for the resolution of hedge code violation claims and to establish a structure for resolution of such claims.
- D. When a hedge dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.<sup>1</sup>

**19.020 Definitions.**

- A. “Complainant” means a complaining property owner in the City of Mercer Island who alleges that one or more hedges on adjoining property of another are not compliant with this chapter.
- B. “Crown” means the portion of a planting containing leaf or needle bearing branches.
- C. “Hedge owner” means the owner of the real property on which a hedge is located, which can be two parties if the hedge is jointly owned by agreement or because trunks of the hedge just below the first branch are on both sides of a property line.
- D. “Hedge” means three or more plantings planted or growing in: (1) a continuous row where the crowns of the plantings touch and/or overlap, and (2) is 10 feet in length or longer along the crowns, and (3) that forms a physical and/or visual barrier, and (4) has a height in excess of three feet.
- E. “Property owner” means any individual, firm, partnership, corporation, trust or other legal entity owning an involved property.
- F. “Plantings” means any flora on a property including but not limited to plants, grasses, trees, or shrubs.

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<sup>1</sup> Copied from Yarrow Point Code with “beyond those entitled under” changed to inconsistent with and addition “but they also impose detriments when they block sunlight or views” taken from Normandy Park Code.

G. “Row” means a line which may be straight, curved, or otherwise irregular.<sup>2</sup>

**19.\_\_.030 General requirements.**

A. A hedge or portion of a hedge located within a setback shall not exceed six feet, six inches, or a height mutually agreed upon by current adjoining property owners and established in writing.

B. Hedge height shall be measured from existing grade, immediately adjacent to the hedge.

C. Plantings which are along or inside of a hedge that do not have overlapping crowns with other plantings shall not be regulated as part of a hedge.<sup>3</sup>

D. If a hedge straddles a property line, each property owner may cut trunks, roots, and branches at the property line.<sup>4</sup>

**19.\_\_.040 Rights established.**

A complainant shall have the right to use the processes set forth in this chapter to limit the height of a hedge in a setback to the permissible height set forth herein, so long as the hedge alleged to violate this chapter is located adjacent to a property line that the complainant shares with the hedge owner.<sup>5</sup>

**19.\_\_.050 Private nuisance.**

A hedge located within a setback that exceeds the permitted height established in \_\_\_\_\_ constitutes a private nuisance subject to redress as provided in this chapter. If a property owner plants, maintains, or permits to grow any hedge which exceeds the permitted height established in MIC 19.\_\_.030, then a complainant shall have the rights set forth in this chapter.<sup>6</sup>

**19.\_\_.060 Methods of relief.**

Methods of relief that may be granted include pruning, thinning, windowing, topping, or removal of a hedge. Where the hedge is jointly owned by agreement or because trunks of the hedge just below

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<sup>2</sup> Copied from Yarrow Point Code. with additions “on adjoining property of another”, “which can be two parties if the hedge is jointly owned by agreement or because trunks of the hedge just below the first branch are on both sides of a property line”, and “along the crowns”.

<sup>3</sup> Copied from Yarrow Point Code with, in paragraph A, “adjacent” changed to adjoining and addition “D. If a hedge straddles a property line, each property owner may cut trunks, roots, and branches at the property line.” The City Council may wish to raise the default height limit to 7 or 8 feet. Also “Removal or modification of a hedge comprised in part, or entirely, of significant trees, as defined in \_\_\_\_\_, shall also comply with Chapter \_\_\_\_\_ where applicable” in the Yarrow Point Code is deleted.

<sup>4</sup> This is consistent with state law expressed in *Mustoe v. Ma*, 193 Wash.App. 161, 164–65 (2016) (citing *Gostina v. Ryland*, 116 Wash. 228, (1921)). The reason this clarification of hedge law is needed is because some litigants have increased the cost of litigation by arguing that *Herring v. Pelayo*, 198 Wn.App. 828, 836 (2017) which limits rights to cut at the property line branches, trunks, or roots of a single tree that straddles a property line also applies to hedges.

<sup>5</sup> Copied from Yarrow Point Code with “the complainant establishes that” deleted.

<sup>6</sup> Copied from Yarrow Point Code.

the first branch straddle a property line, the granted relief may include reaching across the property line to trim tops of the hedge on both sides of the property line to be uniform.<sup>7</sup>

**19.\_\_.070 Process for resolution of hedge disputes.**

A. The following process shall be used in the resolution of hedge code violations:

1. Initial Reconciliation. A complainant who believes that hedge growth does not meet the requirements of this chapter shall first notify the hedge owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and hedge owner to attempt to reach a mutually agreeable solution.

2. Mediation. If the initial reconciliation attempt fails, the complainant shall propose, in writing to the hedge owner, to submit the dispute to mediation.

3. Binding Arbitration. If mediation fails, the complainant shall propose, in writing to the hedge owner, to submit the dispute to binding arbitration.

4. Litigation. If the hedge owner fails to participate in binding arbitration, the complainant may pursue civil action to resolve the dispute.<sup>8</sup>

**19.\_\_.080 Mediation.**

A. Acceptance of mediation by the hedge owner shall be voluntary; however, the hedge owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days of acceptance by the hedge owner of the mediation process.

B. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center.

C. The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the hedge owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for the methods of relief established by MIC 19.\_\_.060 but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.<sup>9</sup>

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<sup>7</sup> Copied from Yarrow Point Code with addition “Where the hedge is jointly owned by agreement or because trunks of the hedge just below the first branch straddle a property line, the granted relief may include reaching across the property line to trim tops of the hedge on both sides of the property line to be uniform.”

<sup>8</sup> Copied from Yarrow Point Code.

<sup>9</sup> Copied from Yarrow Point Code which was copied from the Normandy Park Code.



**19.\_\_.090 Hedge claim preparation.**

In the event that the initial reconciliation process fails, and mediation either is declined by the hedge owner or fails, the complainant must prepare a hedge claim and provide a copy to the hedge owner in order to pursue either binding arbitration or litigation as set forth in this chapter. A hedge claim shall consist of all of the following:

- A. A description of the nature and extent of the alleged violation, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, digital photographs or photographic prints.
- B. Complainant's address and contact information.
- C. A site plan with the location of the hedge alleged to cause the violation.
- D. The address of the property upon which the hedge is located, and name of hedge owner.
- E. Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, email correspondence with both parties' responses, copies of and receipts for certified or registered mail correspondence.
- F. Evidence that mediation has been attempted and has failed, or has been declined by the hedge owner.
- G. The specific relief proposed by the complainant to resolve the violation.<sup>10</sup>

**19.\_\_.100 Binding arbitration.**

- A. In those cases where the initial reconciliation process fails and where mediation is declined by the hedge owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the hedge owner may elect binding arbitration.
- B. The hedge owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 10 days, and shall indicate such agreement in writing.
- C. The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the hedge owner. The report shall include the arbitrator's findings with respect to MIC 19.\_\_.030, a pertinent list of mandated relief with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. The decision of the arbitrator is binding on the parties. A copy of the arbitrator's report shall be filed with the city clerk. Any decision of the arbitrator may be enforced by civil action, as provided by law.<sup>11</sup>

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<sup>10</sup> Copied from Yarrow Point Code which was copied from the Normandy Park Code.

<sup>11</sup> Copied from Yarrow Point Code, which was copied from the Normandy Park Code, with addition: "If a court or arbitrator finds that the hedge owner opposed the granting of relief without reasonable justification or that

**19.\_\_.110 Litigation.**

A. In those cases where binding arbitration is declined by the hedge owner, then civil action may be pursued by the complainant for resolution of the hedge dispute under the provisions and guidelines set forth in this chapter.

B. The complainant must state in the lawsuit that mediation and binding arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk.<sup>12</sup>

**19.\_\_.120 Apportionment of costs.**

A. Mediation and Arbitration. The complainant and hedge owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.

B. Relief. The costs of relief requested shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement. If a court or arbitrator finds that the hedge owner opposed the granting of relief without reasonable justification or that the complaint lacked a reasonable factual basis, the court or arbitrator shall award costs and reasonable attorney fees to the prevailing party.<sup>13</sup>

**19.\_\_.130 Limitation.**

A. This chapter shall not be construed to affect obligations imposed by easement, covenants or agreements.

B. This chapter shall not apply to hedges located on city property or right-of-way.

C. Under no circumstances shall the city have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a hedge complaint, including, but not limited to, agreements arrived at during the initial reconciliation or mediation process. Failure of the city to enforce provisions of this chapter shall not give rise to any civil or criminal liabilities on the part of the city. A failure to comply with the provisions of this chapter is not a misdemeanor, and the enforcement of this chapter shall be only by the affected and interested private parties.<sup>14</sup>

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the complaint lacked a reasonable factual basis, the court or arbitrator shall award costs and reasonable attorney fees to the prevailing party.”

<sup>12</sup> Copied from Yarrow Point Code which was copied from the Normandy Park Code.

<sup>13</sup> Copied from Yarrow Point Code which was copied from the Normandy Park Code.

<sup>14</sup> Copied from Yarrow Point Code.

**COMMISSION CHAIRPERSON** | Carl Hellings

**COMMISSIONER** | Chuck Hirsch, David Feller, Jeffrey Shiu, Lee Sims

**TOWN ATTORNEYS** | Scott Missall and Emily Miner

**CLERK-TREASURER** | Bonnie Ritter

**DEPUTY CLERK** | Austen Wilcox

### **Meeting Participation**

Members of the public may participate in person at Town Hall or by phone/online. Town Hall has limited seating available up to 15 public members. Individuals who call in remotely who wish to speak live should register their request with the Deputy Clerk at 425-454-6994 or email [depclerk@yarrowpointwa.gov](mailto:depclerk@yarrowpointwa.gov) and leave a message before 4:30PM on the day of the July 25, 2022, special Planning Commission meeting. Wait for the Deputy Clerk to call on you before making your comment. If you dial in via telephone, please unmute yourself by dialing \*6 when it is your turn to speak. Speakers will be allotted 3-minutes for comments. Please state your name and whether you are a Yarrow Point resident. You will be asked to stop when you reach the 3-minute limit.

**Join on computer, mobile app, or phone**

1-253-215-8782

Meeting ID: 865 1724 5339#

<https://us02web.zoom.us/j/86517245339>

### **PLEDGE OF ALLEGIANCE**

**CALL TO ORDER:** Commission Chairperson, Carl Hellings

**ROLL CALL:** Chuck Hirsch, David Feller, Jeffrey Shiu, Lee Sims

### **1. APPROVAL OF AGENDA:**

### **2. STAFF REPORTS:**

### **3. MINUTES:**

May 23, 2022 special Planning Commission meeting

### **APPEARANCES/PUBLIC COMMENT:**

Members of the public may speak concerning items that either are or are not on the agenda. The Council takes these matters under advisement. Please state your name and address and limit comments to 3 minutes. If you call in via telephone, please unmute yourself by dialing \*6 when it is your turn to speak. Comments via email may be submitted to [depclerk@yarrowpointwa.gov](mailto:depclerk@yarrowpointwa.gov) or regular mail to: Town of Yarrow Point 4030 95<sup>th</sup> Ave NE Yarrow Point, WA. 98004

### **REGULAR BUSINESS:**

4. **AB 22-08** – Proposed Code Amendments: Discussion and Possible Vote

5. **AB 22-09** – Proposed Hedge Code Amendments: Discussion Only

### **6. ADJOURNMENT**

*To subscribe to our email list, email Town Hall at: [townhall@yarrowpointwa.gov](mailto:townhall@yarrowpointwa.gov)  
Town of Yarrow Point 4030 95<sup>th</sup> Ave NE, Yarrow Point, WA. 98004  
425-454-6994, [www.yarrowpointwa.gov](http://www.yarrowpointwa.gov)*

**TOWN OF YARROW POINT  
PLANNING COMMISSION SPECIAL MEETING MINUTES  
May 23, 2022**

The following is a condensation of the proceedings and is not a verbatim transcript.

**CALL TO ORDER:**

Substitute Planning Commission Chairman David Feller called the meeting to order at 7:06 p.m.

**PRESENT:**

Chairman: Carl Hellings

Commissioners: Chuck Hirsch  
Jeffrey Shiu  
David Feller  
Lee Sims

Staff: Austen Wilcox – Deputy Clerk  
Emily Miner – Deputy Attorney  
Steve Wilcox – Building Official

Guests: Carl Scandella – Councilmember  
Dicker Cahill – Resident  
Mary Jane Swindley – Resident  
Debbie Prudden – Resident

**APPEARANCES:**

**MOTION:** Motion by Chairman Hellings seconded by Commissioner Sims to add a second public appearance item to the agenda.

**VOTE:** 4 For, 0 Against. Motion carried.

**MINUTES:**

- April 18, 2022 Regular Meeting

**MOTION:** Motion by Commissioner Feller seconded by Commissioner Sims to approve the minutes of the April 18, 2022 regular meeting as presented.

**VOTE:** 4 For, 0 Against. Motion carried.

**STAFF REPORTS:**

Deputy Clerk Wilcox gave a recap of the May Council meeting:

- First review of 2023-2028 Capital Improvement and Transportation Improvement Plan. The Council will have a public hearing at the June Council meeting.

- Town entered into a design agreement with Puget Sound Energy to provide an underground conversion design for the 4000 - 4700 block of 94th.

- Approved lowest bidder for the 2022 Stormwater annual clean & camera project.
- Approved a Resolution approving and authorizing ILA Disposition of property agreement with KCWDI.
- Approval of Honorary Payment adjustment increase to the Mayor.
- Approval of two additional little lending libraries- one at Town Hall and the other at Road End Beach.
- A 25th work anniversary celebration at Town Hall between 5-7 will take place Public Works Coordinator Istvan.

**REGULAR BUSINESS:**

Chairman Feller seconded by Commissioner Sims moved to switch PCAB 22-07 to the top of regular business. Commissioner Sims seconded.

**PCAB 22-07 – Review tree and hedge complaints**

Building Official Steve Wilcox discussed his enforcement experience and examples of hedge code complaints in Yarrow Point.

The Planning Commission further discussed:

- Neighbor communication.
- Leyland Cypress issues; rapid growth and loss of sunlight.
- Challenging to enforce current code between two private property owners.
- Agreements are to hard find.
- “Spite” hedges.
- Hedges when they’re not maintained can turn into trees.
- Code enforcement mediation services or use of a hearing examiner to resolve private property hedge code issues.

*Commissioner Feller joined the meeting at 7:34p.m.*

The Town Attorney recommends removing the town from the position of enforcing hedge code complaints between private properties.

The Planning Commission directed Town Legal Staff to present the following options at their next meeting.

- Definition of a hedge.
- Mitigation options for hedge code complaints.

**APPEARENCES:**

Debbie Prudden resident 3805 94<sup>th</sup> Ave NE discussed harm from hedge heights, sunlight loss, damage from non-bordering properties and code enforcement. She discussed right of way hedges that need maintenance, penalties, and mediation to provide resolution.

Mary Swindley resident at 3813 94<sup>th</sup> Ave NE discussed a current hedge complaint she is involved in. She recommends that Leyland Cypress hedges be outlawed in Yarrow Point.

*Commissioner Feller left the meeting at 8:05p.m.*

**PCAB 22-05 – Discuss alternative incentives and funding options for tree mitigation from legal staff**

Attorney Emily Miner discussed Council direction to the Planning Commission to research additional incentive options to encourage residents to retain significant trees. She provided detail on the options and the Planning Commission discussed.

Incentives:

- The Planning Commission has thoroughly researched incentives and funding options. There are limited resources and they do not have any recommendations currently. Attorney Miner will report to Council.

Enforcement Options:

- Replanting of trees and ensuring permits are obtained.
- Penalties.
- Education to public on tree code.
- Option to conduct additional outreach to companies performing work in Yarrow Point informing them of the new tree code requirements.

Assurance Options That Mitigation Trees Are Preserved:

- Record significant trees on title report.
- Require property owners to provide affidavit to buyers informing them that significant trees are on private property.
- Requiring a bond or deposit to make sure that trees are preserved.
- Tree contribution fund to use for trees that fail.

**PCAB 22-06 – Discuss trees and hedges**

The Planning Commission directed legal staff to bring back the following options at the next Planning Commission meeting:

- Awareness options provided by town notifying residents of significant tree on their property when they purchase.
- Code amendment options for a 1:1 up to the density requirement.

**APPEARENCES:**

Debbie Prudden resident at 3805 94<sup>th</sup> Ave NE discussed security deposits to assure the preservation of significant trees.

**ADJOURNMENT:**

MOTION: Motion by Commissioner Shiu seconded by Commissioner Sims to adjourn the meeting at 8:36 p.m.

VOTE: 4 For, 0 Against, 0 Abstain. Motion carried.

APPROVED:

ATTEST:

\_\_\_\_\_  
Carl Hellings, Chairman

\_\_\_\_\_  
Austen Wilcox, Deputy Clerk

DRAFT

**Business of The Town Planning Commission  
Town of Yarrow Point, WA**

Agenda Bill 22-08  
July 25, 2022

<b>Tree Code Amendments</b>	<b>Proposed Planning Commission Action: Discussion and Possible Vote</b>
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<b>Presented by:</b>	Deputy Town Attorney – Emily Miner
<b>Exhibits:</b>	Proposed Code Amendments

**Summary:**

At the May Planning Commission meeting, staffed discussed with Planning Commission the need for additional enforcement mechanisms for mitigation trees planted under the private property tree code. Planning Commission directed staff to prepare sample code amendments.

As previously discussed, it is important to put future property owners on notice of any trees planted for mitigation purposes. Trees planted for mitigation purposes tend to be smaller and thus easily overlooked. The proposed code amendments offer two different ways to ensure that future property owners receive notice of the need to maintain those mitigation trees.

**Recommended Action:**

Discuss options and vote on an enforcement mechanism.



**Chapter 20.22**

**PRIVATE PROPERTY TREE CODE**

Sections:

- 20.22.010 Title, purpose, and intent.
- 20.22.020 Definitions.
- 20.22.030 Tree removal and minimum significant tree density.
- 20.22.040 Exemptions.
- 20.22.050 Tree removal permit – Application process.
- 20.22.060 Tree removal permit – Notification.
- 20.22.070 Tree removal permit – Expiration.
- 20.22.080 Mitigation.
- 20.22.085 [Required Notification.](#)
- 20.22.090 Construction site tree protection.
- 20.22.100 Appeals.
- 20.22.110 Violation – Penalty for unpermitted tree removal.

**20.22.010 Title, purpose, and intent.**

A. Title. This chapter shall be known as the private property tree code of the town of Yarrow Point.

B. Purpose and Intent. The general purpose of the private property tree code is to protect, preserve, and replenish significant trees on private property in Yarrow Point in order to promote the public health, safety, and general welfare of the residents of the town. The private property tree code is intended to:

1. Retain the town’s existing character;
2. Maintain an equitable distribution of significant trees on properties throughout the town;
3. Mitigate the consequences of significant tree removal through tree replacement;
4. Implement the goals and objectives of the town’s comprehensive plan, the town’s shoreline master program, and the State Environmental Policy Act. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.020 Definitions.**

A. “Caliper” means the American Association of Nurserymen standard for trunk measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured six inches above the ground for up to and including four-inch caliper size and 12 inches above the ground for larger sizes.

B. “Crown” means the area of a tree containing leaf- or needle-bearing branches.

C. “Diameter at breast height (DBH)” means the diameter or thickness of a tree trunk measured at four and one-half feet from the ground.

D. Hazardous Tree. Any significant tree is considered hazardous when it has been assessed by a qualified professional and found to be likely to fail and cause an unacceptable degree of injury, damage, or disruption.

E. Mitigation Tree Species. Mitigation trees shall comply with the following: any evergreen tree species that has the potential to grow to the size of a significant tree or any deciduous tree species that has the potential to grow to the size of a significant tree. Species considered unsuitable for mitigation are identified in a document entitled “Yarrow Point Mitigation Vegetation,” on file with the town clerk.

F. “Pruning” means the act of trimming or lopping off what is superfluous; specifically, the act of cutting off branches or parts of trees with a view to strengthening those that remain or to bringing the tree into a desired shape. Pruning that results in the removal of at least half of the live crown shall be considered tree removal.

G. “Qualified professional” means an individual with relevant education and training in arboriculture or urban forestry. The individual shall be an arborist certified by the International Society of Arboriculture (ISA) or a registered consulting arborist from the American Society of Consulting Arborists (ASCA). A qualified professional shall possess the ability to perform tree risk assessments, as well as experience working directly with the protection of trees during construction.

H. “Significant tree” means any tree that is at least 18 inches in diameter at DBH, as measured at four and one-half feet from the ground or any tree planted as mitigation. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.030 Tree removal and minimum significant tree density.**

A. Removal. A tree removal permit shall be required for the removal of any significant tree.

B. Density. A minimum of one significant tree per 5,000 square feet of property shall be required and maintained following the removal of any significant tree.

C. The required tree density may be accomplished through the preservation and maintenance of existing stock, or through the planting of mitigation trees. When calculating the required number of trees per property, fractional tree portions shall be rounded up or down to the nearest whole number.

D. Significant tree trunks that straddle a private property line shall be assigned a tree density value of 0.49 for each property. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.040 Exemptions.**

A. Emergency Tree Removal. Any hazardous tree that poses an imminent threat to life or property may be removed prior to the issuance of a tree removal permit. The town shall be notified within seven days of the emergency tree removal with evidence of the threat or status justifying the removal of the significant tree. The notification of emergency removal shall contain a site plan showing remaining significant trees on the lot with a calculation demonstrating compliance with the minimum significant tree density. The standard of one significant tree per 5,000 square feet of property, i.e., tree density, shall be documented and may be fulfilled through the remaining trees on site or through planting of mitigation trees.

B. Utility Maintenance. Trees may be removed by the town or utility provider in situations involving actual interruption of services provided by a utility only if pruning cannot solve utility service issues. Mitigation shall be required by the underlying property owner pursuant to YPMC 20.22.080 (Mitigation). Utility maintenance within the right-of-way shall conform to the town’s public property tree code (Chapter 12.26 YPMC). (Ord. 715 § 2 (Exh. A), 2021)

**20.22.050 Tree removal permit – Application process.**

A. Any property owner intending to remove a significant tree shall submit a tree removal permit application on a form provided by the town. The application shall include:

1. The name, address, and contact information of the property owner and/or agent.
2. A site plan showing the location, size, and species of all significant trees, including those proposed for removal, on the property. For applications associated with construction or site development, the site plan must also label and identify all trees within 20 feet of the proposed construction and/or site development activity.
3. A tree protection plan per YPMC 20.22.090 (Construction site tree protection) for applications associated with construction or site development.
4. A mitigation plan, if required per YPMC 20.22.080 (Mitigation), indicating the location and species for all trees to be planted.
5. The current permit fee, as established by the town council.

B. Identification on Site. Concurrent with submittal of the tree removal permit application, the owner shall identify every significant tree proposed for removal by placing a yellow tape around the circumference of the tree at the DBH.

C. Shoreline Jurisdiction. Properties located within the town’s shoreline jurisdiction (200 feet landward of Lake Washington) are subject to additional tree removal and replacement standards per the town of Yarrow Point Shoreline Master Program Section 5.6 – Vegetation Management.

D. Review by Staff and/or Town Arborist. Except in cases of emergency tree removal, the tree removal application shall be reviewed within 28 days in the case of permits not associated with development activity or shall be reviewed and issued concurrently with the site development or building permit, as applicable. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.060 Tree removal permit – Notification.**

A notice of the proposed removal of one or more significant trees shall be posted within five business days of receipt of a complete application. The notice shall be posted by the town on site, on the appropriate mailbox pagoda, and on the town’s website. The town shall send a letter via U.S. mail to all property owners abutting the site. The letter shall include a site plan with all trees identified for removal. A minimum two-week notification period shall be required prior to issuance of any tree removal permit. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.070 Tree removal permit – Expiration.**

A tree removal permit shall expire six months from the date of issue, requiring reissuance of a new permit. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.080 Mitigation.**

A. Whenever a significant tree is planned for removal pursuant to an issued tree removal permit, the applicant shall demonstrate that, after the removal of the tree(s), the property will meet the requirement of YPMC 20.22.030 (Tree removal and minimum significant tree density). Should the property fail to meet this requirement, the applicant shall provide a tree mitigation plan that satisfies the requirements of YPMC 20.22.030 (Tree removal and minimum significant tree density).

B. Mitigation trees shall be a minimum of 10 feet tall or have a three-inch caliper, and have a full well-developed crown.

C. Mitigation requirements shall be met within six months of tree removal. In the case of concurrent new construction, mitigation requirements shall be met prior to final inspection. Trees planted as mitigation shall be maintained with adequate water and care to survive a three-year warranty period or be replaced. (Ord. 715 § 2 (Exh. A), 2021)

OPTION 1:

20.22.085 Notice Required.

When mitigation trees are planted pursuant to YPMC 20.22.080, a Town-approved site plan required pursuant to YPMC 20.22.050 shall be recorded on the property title by the applicant and submitted to the Town. The face of the site plan must include a statement that the provisions of YPMC Chapter 20.22 as currently enacted or hereafter amended control the maintenance and removal of the subject trees, and provide for any responsibility of the property owner for the maintenance or correction of any latent defects or deficiencies.

OPTION 2:

20.22.085 Notice Required.

When mitigation trees are planted pursuant to YPMC 20.22.080, and a Town-approved site plan has been issued, it shall be unlawful for the owner of the subject property to sell, transfer, mortgage, lease or otherwise dispose of the subject property unless such owner has first furnished the grantee, transferee, mortgagee or lessee a true copy of the Town-approved site plan and furnished to the Town a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such site plan and fully accepting the responsibility without condition for ensuring compliance with YPMC Chapter 20.22.

**20.22.090 Construction site tree protection.**

A. All significant trees to be retained on a construction site, and all trees on the adjacent and otherwise affected town rights-of-way, and all trees on adjacent private properties impacted by site development as regulated under YPMC Title 20, or construction as regulated under YPMC Title 15, shall be protected during such activity.

B. The property owner shall submit a report prepared by a qualified professional that evaluates the significant trees on site, as well as all trees in the adjacent areas impacted by the proposed construction. Tree protection measures shall be clearly described and illustrated on a site plan. Best management practices shall be employed as referenced in “Tree Protection on Construction and Development Sites: A Best Management Guidebook for the Pacific Northwest,” or other such guidance as approved by the town arborist.

C. The town may waive the requirement for a report when it is determined by the town staff that the scope of the project will not impact the significant tree(s) on site or any trees on adjacent properties.

D. A stop work order may be issued by the building official if site tree protection guidelines are not followed. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.100 Appeals.**

Any tree permit applicant aggrieved by any action of the town relating to a tree removal permit may, within 10 days of such action, file a notice of appeal to the town council, setting forth the reasons for such appeal and the relief requested. The town council shall hear and determine the matter and may affirm, modify, or disaffirm the administrative decision within 60 days of timely appeal. (Ord. 715 § 2 (Exh. A), 2021)

**20.22.110 Violation – Penalty for unpermitted tree removal.**

A. A violation of any of the provisions of this chapter shall be a civil violation and any person, corporation or other entity that violates this chapter shall receive a fine of \$10,000 per violation, plus \$1,000 per inch of diameter (DBH) for each significant tree over 18 inches DBH that is removed without a permit; provided, that the maximum fine for the removal of each significant tree shall not exceed \$25,000. It shall be a separate offense for each and every significant tree removed in violation of this chapter.

B. In addition to the penalty set forth in subsection A of this section, significant trees that were unlawfully removed or damaged shall be replaced in accordance with YPMC 20.22.080 (Mitigation).

C. Fines levied under this chapter shall be deposited into a tree mitigation account and shall be used by the town for acquiring, maintaining, and preserving wooded areas, and for the planting and maintenance of trees within the town’s public places and rights-of-way. (Ord. 715 § 2 (Exh. A), 2021)

**Business of The Town Planning Commission  
Town of Yarrow Point, WA**

Agenda Bill 22-09  
July 25, 2022

<b>Hedge Code Amendments</b>	<b>Proposed Planning Commission Action: Discussion Only</b>
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<b>Presented by:</b>	Deputy Town Attorney – Emily Miner
<b>Exhibits:</b>	Sample codes from <ul style="list-style-type: none"> <li>• Normandy Park</li> <li>• Lynwood</li> <li>• Medina</li> </ul>

**Summary:**

As discussed during the May Planning Commission meeting, there are ambiguities in the definition of the Town’s Hedge Code.

Chapter 17.08 YPMC states that a “hedge exist whenever a row of two or more trees, shrubs, or other plants constitute a barrier in excess of six linear feet and establish a boundary, or hinder free passage of humans or animals on the surface of the ground, or screen or obscure vision, or baffle sound.”

The code then prohibits hedges in the setback from exceeding 6 feet in height. YPMC 17.12.030.

Finally, there is an entirely separate section for hedge code enforcement in Chapter 17.32 YPMC. The procedure outlined in Chapter 17.32 YPMC is separate and distinct from the Town’s standard code enforcement process established in Chapter 1.08 YPMC.

The definition of “hedge” is also problematic because it includes the word “tree” which creates a conflict with the private property tree code at Chapter 22.02 YPMC.

These ambiguities in the code create challenges for enforcement, as illustrated by the Town Building Official’s presentation. Mr. Wilcox noted that it is difficult to enforce the code because of how flexible the hedge definition is. He further noted that during his ten plus years working in Yarrow Point, he has mediated 40-50 hedge complaints and in only one case did the offending hedge owner reduce the hedge height to the code mandated 6 feet. In all other cases, the parties agreed to a negotiated hedge height taller than 6 feet.

He also stated that the increasing prevalence of Leland Cypresses appears to have increased the number of hedge complaints. This is because of how quickly these types of plants grow. While initially planted as a hedge, they quickly grow into trees, and it is extremely challenging to maintain a “hedge” that is 30-50 feet tall.

Governmental regulations are based on ensuring the public's health, safety, and welfare. From this perspective, the Town has no public policy reason to regulate hedges between private properties. Hedges between private properties do not infringe on the sight lines for safe travel, nor damage public streets and sidewalks, nor cause harm to utility lines – in short, they do not impact the public sphere. Thus, there is little to justify governmental regulation of such hedges.

As you'll see from the sample codes, there are some jurisdictions that still regulate hedges, but most have moved away from private property hedge regulations likely due in part to the lack of governmental purpose in such regulations and the challenges of enforcement – it can be difficult to gain access to the backyards of private properties where these hedges exist.

In contrast, there is good public policy to support a hedge code that addresses right-of-way hedge concerns. In a 2016 Washington State Supreme Court decision, the court held that a municipality can be held liable for hazardous conditions on its roads created by sight-obstructing roadside vegetation. *Wurthrich v. King County*. The court noted that whether a condition is inherently dangerous does not depend on whether the condition "exists in the roadway itself." This means requiring property owners to maintain hedges that adjacent to the ROW to ensure a clear line of site on the roadway.

With this background context, there are few different ways to proceed with revising the YPMC:

1. Eliminate the private property component of the hedge code and create regulations for hedges adjacent to the ROW. This follows sound public policy and can be clearly enforced.
2. Retain and revise the private property component of the hedge code, and develop regulations for hedges adjacent to the ROW but have different enforcement mechanisms for each hedge category. Since Mr. Wilcox has noted the challenges of enforcing hedges between private properties and the fact that most times, the parties agree to higher height than the code allows for, staff is recommending that the parties submitting the complaint go to mediation rather than have Town staff be involved. This reduces staff time, ensures there is a neutral third party available to resolve the matter, and allows for flexible resolutions. One option for a mediation resource is Resolution Washington <https://www.resolutionwa.org/>. The City of Medina has taken this approach for their view and sunlight ordinance. See attached example.
3. In conjunction with the options above, consider creation of a permitted plant species list (or alternatively, a prohibited plant species list) that regulates what kind plants can be used as hedges. This could assist with enforcement if only certain plants of certain heights were allowed to be planted as hedges.

**Recommended Action:**

Discuss options.

**Chapter 18.35**

**FENCES, WALLS AND HEDGES**

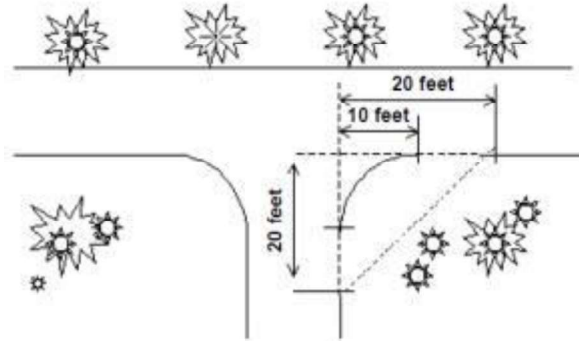
Sections:

- 18.35.010 General.
- 18.35.020 Definitions.
- 18.35.030 Design and ornamental features.
- 18.35.040 Findings – Hedges.
- 18.35.041 Rights established.
- 18.35.042 Process for resolution of obstruction disputes.
- 18.35.043 Hedge claim preparation.
- 18.35.044 Binding arbitration.
- 18.35.045 Litigation.
- 18.35.046 Apportionment of costs.
- 18.35.047 Limitation.
- 18.35.048 Application.
- 18.35.050 Variance and appeal procedures.

**18.35.010 General.**

- (1) In the R-5 and single-family zones, fences and walls shall not be more than four feet in height in the front yard setback nor more than six feet in height in the side or rear yard setbacks, as measured from the top of the fence or wall to the lowest original grade.
- (2) At a road intersection, no sight obstruction is permitted within 10 feet from the intersection. Obstructions such as fences and hedges located over 10 feet and up to 20 feet from the intersection shall not be more than 42 inches in height. (See Fig. 1, Sight Distance Triangle).
- (3) For R-5 and single-family lots fronting on First Avenue South, the front yard fence and wall height maximum may be increased to six feet to provide noise attenuation, privacy and protection; provided, that the provisions of subsection (2) of this section regarding restrictions on fence and hedge height at intersections shall apply.
- (4) A fence permit shall be required for any fence or wall over six feet in height. Height shall be measured from the top of the fence or wall to the lowest original grade.
- (5) A fence permit shall be required for any fence or wall within an environmentally sensitive area or its buffer.
- (6) No fence, wall or hedge shall be located in a public right-of-way.
- (7) No fence, wall or hedge shall be allowed where it creates a hazard or obstruction to users of the road, sidewalk or nearby property.
- (8) Where a retaining wall protects a cut below the natural grade and is located on the line separating lots or parcels, the retaining wall may be topped by a fence or wall of the same height that would otherwise be permitted at the location if no retaining wall existed.
- (9) Where a retaining wall contains a fill, the height of the wall retaining the fill shall be included within the permissible height of a fence, except a protective fence not more than 42 inches in height may be erected at the top of the retaining wall. Any portion of a protective fence over 72 inches above the base of the fill at the retaining wall shall be an openwork fence as defined in NPMC 18.35.030.
- (10) Fence, hedge or screening requirements adopted as part of Chapter 18.100 NPMC, Design Standards and Guidelines, covering the RM-1800, RM-2400 and commercial zoning districts shall be followed where there is a conflict between this chapter and the design standards.

Fig. 1 Sight Distance Triangle<sup>1</sup>



(Ord. 888 § 2 (Exh. A), 2012; Ord. 752 § 1, 2005).

**18.35.020 Definitions.**

“Complainant” means a complaining property owner in the city of Normandy Park who alleges that a hedge located on the adjacent property of another is causing an unreasonable obstruction of preexisting views or sunlight.

“Hedge” means a row of closely planted trees, shrubs or grasses forming a fence, screen or boundary.

“Hedge owner” means the record owner of the real property on which a hedge is located.

“Owner” means any individual, firm, partnership, corporation, trust or other legal entity owning property in the city of Normandy Park.

“Primary living or entertaining area” means an area located on the lot. The determination of primary living or entertaining area is to be made on a case-by-case basis.

“Substantial obstruction of sunlight” means the loss of a substantial portion of direct or indirect sunlight in a primary living or entertaining area or in a significant portion of the complainant’s real property.

“View” means an actual or potential vista. (Ord. 790 § 1, 2007; Ord. 752 § 1, 2005).

**18.35.030 Design and ornamental features.**

(1) Fences, both new and rebuilt, should be made of material such as masonry, ornamental metal, wood, or some combination thereof. The use of chain link fencing is prohibited in a front yard unless it is fully screened from view by year-round vegetation or is vinyl-coated with a neutral color (i.e., green, black, brown).

(2) Notwithstanding any required permits, the following may be constructed without a variance:

- (a) A trellis added to the top of a fence up to two additional feet higher than the allowed height, but not more than a height of eight feet.
- (b) An arbor to a maximum height of nine feet over a gate, walkway or entrance.
- (c) Decorative or ornamental features such as, but not limited to, columns, posts or other vertical focal points, spaced no less than eight feet apart, up to two additional feet higher than the allowed height to a maximum height of eight feet.
- (d) An openwork name sign over a driveway.

(3) For purposes of regulation under this chapter, a trellis shall be considered to be a fence, subject to the same height limitations and permit requirements. A trellis that has a horizontal element wider than 36 inches measured perpendicular to the fence or trellis shall be considered an arbor, subject to an arbor’s siting requirements. (Ord. 752 § 1, 2005).



**18.35.040 Findings – Hedges.**

This section is enacted in recognition of the importance of views and sunlight to properties within the city of Normandy Park and to provide a fair and structured mechanism for resolving hedge disputes relating to views and sunlight. This chapter is based upon the following findings which are adopted by the city council of Normandy Park.

- (1) It is in the interest of the public welfare, health and safety to establish standards for the resolution of view and sun obstruction claims and to establish a structure for resolution of such claims which will provide a reasonable balance between the values of hedge ownership and view and sunlight related values.
- (2) When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.
- (3) It is the intent of the city that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this chapter. (Ord. 790 § 2, 2007; Ord. 752 § 1, 2005).

**18.35.041 Rights established.**

Hedges, or other plantings having a barrier, screen or partition nature, shall not be more than 10 feet in height when located within 10 feet of any adjacent owner’s property line; provided, that no hedge more than 10 feet in height and within 10 feet of the property line shall create a nuisance or safety hazard, or unreasonably interfere with access to sunlight and/or views enjoyed by the complainant. The provisions of NPMC 18.35.010(2) regarding restrictions on fence and hedge height at intersections shall apply.

A person shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased, when such views or sunlight are from the primary living or entertainment area and have subsequently been unreasonably obstructed by the hedge.

In order to establish such rights pursuant to this chapter, the person must follow the process established in this chapter. In addition to the rights described in this section, private parties have the right to seek remedial action for imminent danger caused by trees. (Ord. 790 § 3, 2007).

**18.35.042 Process for resolution of obstruction disputes.**

The following process shall be used in the resolution of view and sunlight obstruction disputes:

- (1) Initial Reconciliation. A complainant who believes that hedge growth on the property of another has caused unreasonable obstruction of views or sunlight from a primary living or entertaining area shall notify the hedge owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and hedge owner to attempt to reach a mutually agreeable solution.
- (2) Mediation. If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute. Acceptance of mediation by the hedge owner shall be voluntary, but the hedge owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center. The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the hedge owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation. (Ord. 790 § 4, 2007).

**18.35.043 Hedge claim preparation.**

- (1) In the event that the initial reconciliation process fails, and mediation either is declined by the hedge owner or fails, the complainant must prepare a hedge claim and provide a copy to the hedge owner in order to pursue either binding arbitration or litigation under the authority established by this chapter.

(2) A hedge claim shall consist of all of the following:

- (a) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, photographic prints, negatives or slides. Evidence of the date of property acquisition by the complainant must be included;
- (b) The location of all hedges alleged to cause the obstruction, the address of the property upon which the hedges are located, and the present hedge owner's name and address;
- (c) Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence;
- (d) Evidence that mediation has been attempted and has failed, or has been declined by the hedge owner;
- (e) The specific restorative actions proposed by the complainant to resolve the unreasonable obstruction. (Ord. 790 § 5, 2007).

**18.35.044 Binding arbitration.**

In those cases where the initial reconciliation process fails and where mediation is declined by the hedge owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the hedge owner may elect binding arbitration. The hedge owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.

The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the hedge owner. The report shall include the arbitrator's findings with respect to NPMC 18.35.042(1) and (2), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. Any decision of the arbitrator may be enforced by civil action by either party. A copy of the arbitrator's report shall be filed with the city clerk. (Ord. 790 § 6, 2007).

**18.35.045 Litigation.**

In those cases where binding arbitration is declined by the hedge owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction from the hedge under the provisions and guidelines set forth in this chapter. The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk. (Ord. 790 § 7, 2007).

**18.35.046 Apportionment of costs.**

- (1) Mediation and Arbitration. The complainant and hedge owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- (2) Restorative Action. The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement. (Ord. 790 § 8, 2007).

**18.35.047 Limitation.**

This chapter shall not be construed to affect obligations imposed by easements, covenants or agreements. (Ord. 790 § 9, 2007).

**18.35.048 Application.**

(1) This chapter shall not apply to hedges located on property owned by the city (not including rights-of-way). Individuals who are adversely affected by hedges located on property owned by the city may approach the city for requested relief. The potential for obstruction of views or substantial obstruction of sunlight shall be considered by the city when planting hedges on property owned by the city.

(2) This chapter shall not apply to hedges located within city rights-of-way. (Ord. 790 § 10, 2007).

**18.35.050 Variance and appeal procedures.**

(1) The city manager or designee may grant a variance from the height restrictions of this chapter for special needs such as, but not limited to, game courts or protective requirements; provided, that:

(a) The owner or representative of the owner shall submit a detailed plan and written presentation of reasons why the height restriction should be allowed to be exceeded;

(b) The city shall send, at the applicant’s expense, the request and its accompanying documents to all property owners in the surrounding area, as defined in subsection (6) of this section; and

(c) There is no written objection to the requested variance.

(2) The city manager or designee may conduct research to determine the need for a variance and any impacts on the surrounding area, and may request the advice of a consultant, whose services shall be payable by petitioner.

(3) If there is an objection in writing which cannot be resolved by agreement, the hearing examiner shall conduct a public hearing, with proper legal notice of the hearing to all property owners in the surrounding area as provided in Chapter 18.150 NPMC.

(4) The hearing examiner shall base his or her determination solely on the information furnished by the petitioner, the objector(s) and the city manager or designee, and shall not grant the variance unless the hearing examiner finds that the requested variance is reasonably required and will not unreasonably interfere with the rights of the objecting property owners.

(5) Any party aggrieved by a decision of the hearing examiner may appeal the decision to the King County superior court, following the procedure given in Chapter 18.150 NPMC.

(6) For the purposes of this variance procedure, the owners of surrounding properties shall be those owning properties adjacent to petitioner’s property, those across the street from any proposed fence and those within 100 feet of the proposed fence.

(7) The appellant shall pay in accordance with the appeals fee schedule established by resolution of the city council. (Ord. 924 § 2(K), 2015; Ord. 833 § 9, 2009; Ord. 752 § 1, 2005).

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<sup>1</sup> Code reviser’s note: In Fig. 1, the vertical measurement of “20 feet” was added editorially at the request of the city.

**21.02.390 Hedge.**

“Hedge” means a row of closely planted shrubs or trees forming a boundary or barrier. (Ord. 2020 § 2, 1994; Ord. 190 Art. IV § 408, 1964)

**Chapter 21.10**

**FENCE, HEDGE AND VISION OBSTRUCTION REGULATIONS**

Sections:

- 21.10.050 Purpose.
- 21.10.100 Fence and hedge standards.
- 21.10.200 Electric fences.
- 21.10.300 Barbed wire fences.
- 21.10.400 Vision obstruction by signs along public streets.
- 21.10.900 Exceptions.

**21.10.050 Purpose.**

The purpose of this chapter is to provide regulations for fences, hedges, and other partially or totally vision obscuring installations to assure that desirable objectives of providing privacy, security, and screening of certain uses from streets and less intense uses can be met while minimizing undesirable obstruction of views, light, air, and motorists’ and pedestrians’ vision. It is recognized that along streets these goals may conflict. Fences along streets provide privacy and security, but long expanses of such fencing generally are undesirable due to the visual monotony and restricted vistas such expanses create. Moreover, fencing needs along streets differ between front yards, which are traditionally open and unobscured and contain vehicular access to streets, and side and rear yards, where family activities more often take place and thus require more privacy. Therefore, it is further stated that exceptions to the regulations of this chapter to allow site-screening fences in front yards are strongly discouraged and that where these regulations allow a continuous expanse of site-screening fencing along side and/or rear property lines abutting a street, the adverse aesthetic impacts of such fencing should be mitigated. (Ord. 2020 § 6, 1994; Ord. 1473 § 1, 1985; Ord. 1257 § 1, 1982)

**21.10.100 Fence and hedge standards.**

The following regulations shall apply to all fences, hedges, and other vision-obscuring structures:

A. Height and Composition of Fences and Hedges, and General Standards.

1. Vision-Obscuring Fences and Hedges. “Vision-obscuring fences and hedges” shall mean solid or partially open fences and hedges more than three feet in height, but not exceeding six feet in height or eight feet in height with an attached adornment (i.e., arbor, trellis, or other decorative features attached on the top of a fence) in residential-zoned areas and not exceeding eight feet in height in commercial-zoned areas. Maximum height shall be measured from the elevation of the ground adjacent to the fence or hedge on the higher side.

2. Non-Vision-Obscuring Fences and Hedges. “Non-vision-obscuring fences and hedges” shall include solid or partially open fences and hedges not exceeding three feet in height, and open fences not exceeding six feet in height or eight feet in height with an attached adornment in residential zones and eight feet in height in commercial zones. “Open fences” shall mean those fences consisting of open chain link, widely spaced board rails or other materials which provide adequate driver visibility through the fence. Rail fences shall consist of horizontal rails not more than four inches wide and at least one foot between rail edges. Deviation from horizontal rails and from these dimensions may be allowed, providing the applicant can demonstrate to the satisfaction of the appropriate city officials that such deviation will provide at least as much visibility through the fence. Maximum height shall be measured from the elevation of the ground adjacent to the fence on the higher side; however, within sight distance triangles (see subsections (B)(1)(b) and (B)(1)(c) of this section) maximum height of solid or partially open fences and hedges not exceeding three feet shall be measured from the elevation of the street adjacent to such sight distance triangle.

3. Maintenance. All fences and hedges shall be maintained in a condition of repair so as not to be dangerous to human life or a danger to the property.

4. Conflicting Limitations. Where the limitations of this chapter conflict with site-screening or fencing required by this or other city ordinances, requirements relating to the site-screening and other required fences shall apply, subject only to adequate provisions for driver visibility.

5. Continuous Fencing Along Streets. Where continuous fencing along a street between intersections is allowed due to the length and/or number of side and/or rear lot lines abutting that street, landscaping shall be required between the fence and the property line in order to mitigate the adverse aesthetic impacts of such fencing. Where such landscaping is required, the fence may be built along the property line except for offset sections to contain the landscaping.

Such landscaping shall consist of ornamental landscaping of low plantings and high plantings. The minimum height of trees shall be eight feet for evergreen trees and 10 feet for all other species. Trees shall be spaced a maximum of 25 feet on center with branches eliminated to a height of six feet where necessary to prevent vision obstruction. Low evergreen plantings or a mixture of low evergreen and deciduous plantings with a maximum height of 30 inches, in bark or decorative rock, shall be provided so as to achieve 50 percent groundcover within two years.

**B. Location of Fences and Hedges.**

1. Residential Zones. Non-vision-obscuring fences and hedges may be located on any portion of a residential-zoned lot. Vision-obscuring fences and hedges may be located on portions of a residential-zoned lot other than the following:

- a. Within 15 feet of the front lot line.
- b. Within a triangular area at street intersections. Such “intersection sight distance triangle” is defined as having two sides of 30 feet, measured along the property lines from the property corner at the street intersection, and a third side connecting the ends of the two aforementioned sides.
- c. Within a triangular area adjacent on one side to a street, and on a second side to a property having frontage on and requiring access from that street. Such “driveway sight distance triangle” is defined as having two sides of 15 feet measured along the property lines from the property corner common to the subject and adjacent property, and a third side connecting the end points on the two aforementioned sides. If any adjacent lot is undeveloped, it shall be construed as having access from all adjacent streets until the direction of access has been established, either by development or by waiver of right of direct access as per RCW 58.17.165.
- d. However, fences, walls and hedges between three and six feet in height or fences up to eight feet in height with an attached adornment that comply with applicable design guidelines may be located in any portion of a multiple-family residential-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC 21.25.145(B)(3), and are approved through project design review (Chapter 21.25 LMC).

2. Commercial Zones. In commercial zones, vision-obscuring or non-vision-obscuring fences or hedges up to eight feet in height may be located on side and rear property lines and within side and rear yards, but not nearer to any public street than a point equal to the closest part of any building thereon to that street.

However, fences, walls and hedges up to six feet high that comply with applicable design guidelines may be located in any portion of a commercial-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC 21.25.145(B)(3), and are approved through project design review (Chapter 21.25 LMC).

C. Referrals to Hearing Examiner. Any fence or wall approved through project design review (Chapter 21.25 LMC) does not have to be approved by the hearing examiner. The hearing examiner may review applications for fence permits in the following situations:

1. Appeal. As an appeal of an administrative determination when:
  - a. An applicant proposes a fence which he/she believes meets the stated purpose of this section, but does not strictly conform to the regulations;
  - b. City staff believes that a proposed fence, while meeting regulations, may still obstruct visibility to such an extent that hazardous conditions would exist; or
  - c. There is a disagreement between staff and an applicant regarding interpretation of the fence and hedge regulations.

In such cases, the hearing examiner may stipulate standards for fence composition, height, and location.

2. Variance. As a variance, when an applicant believes the regulations of this chapter cause hardship. (Ord. 3192 § 5, 2016; Ord. 2388 § 6, 2001; Ord. 2020 § 6, 1994; Ord. 1582 § 1, 1987; Ord. 1473 §§ 1, 2, 1985; Ord. 1257 §§ 1, 2, 1982; Ord. 849 § 1, 1976; Ord. 686 § 1, 1973; Ord. 615 § 2, 1971; Ord. 190 Art. X § 10.1, 1964)

**21.10.200 Electric fences.**

Electric fences are permitted provided they comply with the requirements in this section.

An electric fence using an interrupted flow of current at intervals of about one second on and two seconds off shall be limited to 2,000 volts at 17 milliamperes current. All electric fences shall be posted with permanent signs a minimum of 36 square inches in area at intervals of 100 feet, stating that the fence is electrified. Electric fences manufactured by an established and reputable company and sold as a complete assembled unit carrying a written guarantee that complies with the requirements of this paragraph can be installed by an owner if the controlling elements of the installation carry a “U.L. Approved” seal. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.2, 1964)

**21.10.300 Barbed wire fences.**

No fences incorporating barbed wire are permitted except that barbed wire may be used on top of a six-foot high solid or chain link fence surrounding a public utility, an industrial plant site or a whole property, or barbed wire may be used when the fence is not a property line fence. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.3, 1964)

**21.10.400 Vision obstruction by signs along public streets.**

The legal setback for signs shall comply with the sign regulations of Chapter 21.16 LMC. This limitation does not apply to signs established or required by a public agency to service a public purpose. (Ord. 2310 § 29, 2000)

**21.10.900 Exceptions.**

The director may allow fences that do not conform to the regulations of this title at the following situations if the director finds that such fences are needed to protect the public health and safety:

- A. Outdoor recreation establishments or park and recreation facilities; or
- B. To prohibit illegal dumping.

As part of approving fences under this section, the director may impose conditions or limitations on fences allowed under this section in order to insure that such fences conform with the purpose and intent of this chapter and this title. (Ord. 2295 § 15, 2000)

**CHAPTER 14.08. TREES—VIEW AND SUNLIGHT OBSTRUCTION**

**14.08.010. Purpose and findings.**

This chapter is enacted to provide a voluntary mechanism for the resolution of disputes involving preserving and enhancing views and access to sunlight between Medina neighbors. It should not be construed to provide rights beyond those entitled under Washington law. The city has no right or obligation to enforce any of the provisions in MMC 14.08.030 through 14.08.150. This chapter is enacted in recognition of the importance of views and sunlight to properties within the City of Medina and to provide a fair and structured mechanism for resolving disputes relating to views and sunlight. The Medina comprehensive plan recognizes the importance of views and access to sunlight as well as the importance of preservation of trees and other vegetation. This chapter is based upon the following findings which are adopted by the city council of Medina following extensive study and public input from multiple public hearings.

- A. Among the features that contribute to the attractiveness and livability of the City of Medina are its trees, both native and introduced, and the views obtained from a variety of elevations throughout the city.
- B. Trees, whether growing singly, in clusters or in woodland settings, provide a wide variety of psychological and tangible benefits for both residents and visitors. Trees contribute to the natural environment by modifying temperatures and winds, replenishing oxygen to the atmosphere and water to the soil, controlling soil erosion, and providing wildlife habitat. Trees contribute to the visual environment by providing scale, color, silhouette and mass, by creating visual screens and buffers to separate structures, and by promoting individual privacy. Trees contribute to the economic environment of the city by stabilizing property values and reducing the need for surface drainage systems. Trees contribute to the cultural environment by becoming living landmarks of the city's history and providing a critical element of nature in the midst of urban development.
- C. Views also produce a variety of significant and tangible benefits for both residents and visitors to the city. Views contribute to the economic environment by substantially enhancing property values. Views contribute to the visual environment by providing inspiring panoramic vistas. Views of attractive subjects with significant horizontal expanse add substantial value to real property. Such views are considered significant in adding to the value of real property by the King County assessor. Access to plentiful sunlight enhances livability and promotes the general welfare of the entire community.
- D. Trees, views and access to sunlight and the benefits to be derived from each may come into conflict. Tree planting locations and species selections may produce both intended beneficial effects on the property where they are planted, and unintended deleterious effects on neighboring properties. Trees may block light, cause the growth of moss, harbor plant disease, retard the growth of grass and interfere with the enjoyment of views and sunlight, leading to the lessening of property values.
- E. With appropriate safeguards requiring consideration of all the factors set forth herein, affected property owners requesting view or sunlight access improvement can be given substantial relief without infringing upon the rights of the owners of properties containing trees.
- F. It is in the interest of the public welfare, health and safety to establish standards for the resolution of view and sun obstruction claims and to establish a structure for resolution of such claims which will provide a reasonable balance between the values of tree ownership and view and sunlight related values.
- G. When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional

means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.

- H. It is the intent of the city that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this chapter.

(Code 1988 § 18.16.010; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 1, 2007)

#### **14.08.020. Definitions.**

The definitions contained in Chapter 16.12 MMC shall apply to this chapter except that the definitions of this section shall apply in the case of any conflict with the definitions in Chapter 16.12 MMC.

- A. *Complainant* means a complaining property owner in the City of Medina who alleges that trees located on the property of another are causing an unreasonable obstruction of preexisting views or sunlight.
- B. *Owner* means any individual, firm, partnership, corporation, trust or other legal entity owning property in the City of Medina.
- C. *Tree* means a woody perennial plant which usually, but not necessarily, has a single trunk and a height of 15 feet or more, or has a diameter of five inches measured one foot above the root crown; references herein to "tree" shall include the plural. "Tree" shall also include any plant material or shrubbery planted or growing in a dense continuous line 20 feet in length or longer so as to form a thicket or naturally grown fence with an average height in excess of eight feet.
- D. *Historic tree* means any tree whose age precedes the incorporation of Medina in 1955.
- E. *Tree owner* means the record owner of the real property on which a tree is located.
- F. *View* means an actual or potential vista.
- G. *Significant view* means an actual or potential vista observable from within a primary living or entertaining area of a residence which has a significant horizontal expanse and which includes a vista of the surface of Lake Washington, the opposite shore of Lake Washington, Mercer Island, a bridge, the Olympic or Cascade Mountains, Mount Rainier, the golf course or the skylines of Seattle or Bellevue.
- H. *Substantial deprivation of sunlight* means the loss of a substantial portion of direct or indirect sunlight in a primary living or entertaining area or in a significant portion of the complainant's real property.
- I. *Primary living or entertaining area* means an area located between the exterior walls of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living or entertaining area is to be made on a case-by-case basis.
- J. *Dense screening* means trees which are planted or growing closely together which combine to block views or obstruct access to sunlight.
- K. *Objective evaluation* means an evaluation based upon the values assigned to tree ownership, views and access to sunlight by reasonable persons in the community as opposed to the views of individual parties.
- L. *Windowing* means a form of thinning by which openings or "windows" are created to restore views or sunlight.

(Code 1988 § 18.16.020; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 2, 2007)



**14.08.030. Rights established.**

A person shall have the right to use the processes set forth in this chapter and to seek to preserve and restore views or sunlight which existed at any time since he or she purchased or occupied a property, when such views or sunlight are from the primary living or entertainment area and have subsequently been unreasonably obstructed by the growth of trees.

In addition to the rights described in this section, private parties have the right to seek remedial action for imminent danger caused by trees.

All persons are advised that trees which are located within public rights-of-way are governed by Chapter 16.52 MMC and that properties undergoing development are subject to the tree preservation and landscaping requirements of Chapter 16.52 MMC.

(Code 1988 § 18.16.030; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 3, 2007)

**14.08.040. Unreasonable obstruction—Nuisance.**

The unreasonable obstruction of views or sunlight by planting, uncontrolled growth or maintenance of trees satisfying the minimum requirements for relief in MMC 14.08.050(A) constitutes a private nuisance subject to redress as provided in this chapter. If a person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from or sunlight reaching the primary living or entertainment area of any other parcel of property within the City of Medina as set forth in MMC 14.08.050, then a complainant shall have the rights set forth in this chapter.

(Code 1988 § 18.16.040; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 4, 2007)

**14.08.050. City guidelines concerning restorative action.**

- A. *Minimum requirements.* No complainant shall be entitled to seek restorative action unless the complainant meets one of the following minimum criteria:
  - 1. If the application is based on loss of view: that the claimant has a significant view as defined herein or has had a significant view at some time since purchasing the property; that the tree alleged to be interfering with a significant view is located within 300 feet of the exterior wall of a primary living or entertaining area from which the significant view could be seen; and that more than 60 percent of the horizontal expanse of that portion of the view which is seen over the property of the tree owner is obscured by trees or structures located on the tree owner's property.
  - 2. If the application is based on interference with access to sunlight: that the claimant suffers from a substantial deprivation of access to sunlight which had existed at some time subsequent to purchasing the property; and that the tree allegedly causing the substantial deprivation of sunlight is located within 50 feet of the complainant's property line.
- B. *Additional elements for consideration.* No claimant shall be entitled to seek restorative action unless the claimant's view or access to sunlight is unreasonably obstructed based upon an objective evaluation. In determining whether view or access to sunlight is unreasonably obstructed, the following guidelines, if relevant, shall be considered:
  - 1. The extent of the alleged view obstruction, expressed as percentage of the total view, and calculated by means of a survey or by photographs or both;

2. The extent to which one or more of the unique view features described in MMC 14.08.020(G) are obstructed;
3. The extent to which the tree causes shade, reducing access to sunlight;
4. The extent to which the tree provides benefits to the tree owner or others including but not limited to visual screening, wildlife habitat, soil stability (as measured by soil structure, degree of slope and extent of root system), energy conservation and/or climate control;
5. The extent to which the tree affects neighboring vegetation;
6. The visual quality of the tree, including but not limited to species characteristics, size, form, texture, color, vigor, location and other tree factors, including such items as indigenous tree species, specimen tree quality and rare tree species;
7. The extent to which the provisions of Chapter 16.50 MMC, Critical Areas, and of Chapter 16.52 MMC, Tree Management Code, may be inconsistent with any portion of the relief requested;
8. The extent to which the proposed action may have an adverse affect on the health or stability of other trees.

(Code 1988 § 18.16.050; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 5, 2007)

#### **14.08.060. Objective criteria to govern.**

In determining whether relief may be granted, the objective criteria set forth in this chapter shall govern. No party shall be entitled to an unobstructed view.

(Code 1988 § 18.16.060; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 6, 2007)

#### **14.08.070. Methods of relief.**

Methods of relief that may be granted include pruning, thinning, windowing, topping, or removal of the tree.

(Code 1988 § 18.16.070; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 7, 2007)

#### **14.08.080. Limitations on relief.**

Any relief which may be granted shall be limited by the following standards:

- A. No relief shall be granted unless the relief will substantially improve a significant view or access to sunlight.
- B. Only the least invasive procedure which would grant reasonable relief can be required.
- C. Removal will not be required unless pruning or topping would not provide adequate relief.
- D. If removal or topping are required, on the request of the tree owner, the tree shall be replaced at the complainant's expense. The replacement tree shall be chosen by the tree owner from a list of trees established by the city which will not cause a reoccurrence of the unreasonable obstruction.
- E. If one or more methods of relief would provide reasonable relief to the complainant, the reasonable desires of the tree owner shall govern.

(Code 1988 § 18.16.080; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 8, 2007)

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**14.08.090. Limitations on pruning.**

All pruning ordered to be performed will conform to the following limitations:

- A. No more than one-third of the tree canopy shall be removed during any growing season.
- B. If the tree canopy is raised, removal of the lower branches shall not exceed 25 percent of the total tree canopy.
- C. In pruning to reduce the height of a tree, all cuts shall be made to strong laterals or to the parent limb. Whenever possible, limbs shall be cut back to laterals that are at least one-third the size of the parent limb.
- D. Pruning shall be evenly distributed throughout a tree's canopy.
- E. When appropriate based on the genus of the tree, pruning shall be performed only during the horticulturally approved times.
- F. In addition to the standards set forth herein, pruning shall comply with guidelines for pruning established by the National Arborist Association.

(Code 1988 § 18.16.090; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 9, 2007)

**14.08.100. Process for resolution of obstruction disputes.**

The following process shall be used in the resolution of view and sunlight obstruction disputes:

- A. *Initial reconciliation.* A complainant who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from a primary living or entertaining area shall notify the tree owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and tree owner to attempt to reach a mutually agreeable solution.
- B. *Mediation.* If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute.

Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days.

It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center.

The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the tree owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.

(Code 1988 § 18.16.100; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 10, 2007)

**14.08.110. Tree claim preparation.**

In the event that the initial reconciliation process fails, and mediation either is declined by the tree owner or fails, the complainant must prepare a tree claim and provide a copy to the tree owner in order to pursue either binding arbitration or litigation as set forth in this chapter. A tree claim shall consist of all of the following:

- A. A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, photographic prints, negatives or slides. Evidence of the date of property acquisition by the complainant must be included.
- B. The location of all trees alleged to cause the obstruction, the address of the property upon which the trees are located, name and address.
- C. Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.
- D. Evidence that mediation has been attempted and has failed, or has been declined by the tree owner.
- E. The specific restorative actions proposed by the complainant to resolve the unreasonable obstruction.

(Code 1988 § 18.16.110; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 11, 2007)

**14.08.120. Binding arbitration.**

In those cases where the initial reconciliation process fails and where mediation is declined by the tree owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the tree owner may elect binding arbitration.

The tree owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.

The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the tree owner. The report shall include the arbitrator's findings with respect to MMC 14.08.050(A) and (B), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the city clerk. The decision of the arbitrator is binding on the parties. Any decision of the arbitrator may be enforced by civil action, as provided by law.

(Code 1988 § 18.16.120; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 12, 2007)

**14.08.130. Litigation.**

In those cases where binding arbitration is declined by the tree owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction dispute under the provisions and guidelines set forth in this chapter.

The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk.

(Code 1988 § 18.16.130; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 13, 2007)

**14.08.140. Apportionment of costs.**

- A. *Mediation and arbitration.* The complainant and tree owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- B. *Restorative action.* The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement.

(Code 1988 § 18.16.140; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 14, 2007)

**14.08.150. Limitation.**

This chapter shall not be construed to affect obligations imposed by easement, covenants or agreements.

(Code 1988 § 18.16.150; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 15, 2007)

**14.08.160. Application.**

- A. This chapter shall not apply to trees located on property owned by the city (not including rights-of-way). Individuals who are adversely affected by trees located on property owned by the city may approach the city park board for requested relief. The potential for obstruction of views or substantial obstruction of sunlight shall be considered by the city when planting trees on property owned by the city.
- B. This chapter shall not apply to trees located within city rights-of-way which trees shall continue to be subject to the requirements of Chapter 16.52 MMC.
- C. This chapter shall not apply to historic trees.

(Code 1988 § 18.16.160; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 16, 2007)

# PROPOSAL 9

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Adam Ragheb

Address: 9703 Mercerwood Drive, Mercer Island, WA 98040

Phone: (217) 417-5097

Email: adam.ragheb@gmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment  Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion  Application

**DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS**

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_ Date: 9/26/2024

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Please attach a separate narrative responding to the above questions.

## DOCKETING CRITERIA

[MICC 19.15.230\(E\) 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.

## COMPREHENSIVE PLAN DECISION CRITERIA

[MICC 19.15.230\(F\) 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.

## DEVELOPMENT CODE AMENDMENT DECISION CRITERIA

[MICC 19.15.250\(D\) 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.



# Suggestion for Residential Code Amendment

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(G)(2)(c) Parking Requirements (proposing a new item (c) )

## **Suggested Code Amendment:**

I suggest adding a new Residential Development Standards Section 19.02.020(G)(2)(c) - Parking Requirements. It would require that **"each residential dwelling unit in a residential zone with a gross floor area of less than 3,000 sqft shall have at least two parking spaces sufficient in size to park a passenger automobile and charge it. Any residential dwelling unit with a gross floor area of 3,000 sqft or more shall be treated the same as a single family residence and subject to the requirements of 19.02.020(G)(2)(a)."**

To clarify, a "residential dwelling unit" would include DADUs, duplexes, triplexes, etc. in the R-\* zones, but the intent is to not affect the areas currently zoned as MF-\*.

If MICC 19.02.020(G)(2)(a) and (b) are reduced from 3,000 sqft GFA to 2,000 sqft GFA per a past Docket Request submission, then it would be reasonable and prudent to also reduce the proposed (G)(2)(c) threshold to 2,000 sqft GFA. For the sake of consistency, if this code amendment is incorporated, it would be reasonable to update the language in 19.02.020(G)(2)(a) and (b) to reflect that a parking space should be sufficient in size for vehicle parking **and charging**.

## **Docket Request Narrative:**

The intent of this code amendment is to ensure that newer development on Mercer Island is capable of supporting off-street EV use and charging, among other goals. Current parking requirements (2)(a) and (2)(b) refer only to single-family dwellings, so small multifamily dwellings or other non-single-family dwellings have no current parking requirements outside of Town Center. I do not wish to burden any future apartment development in the Town Center, nor come into conflict with MICC 19.11.130(B)(1)(a), hence the exclusion of the Town Center area.

## **Supporting EV Adoption**

Supporting EV use and charging is well within the goals of the Comprehensive Plan as it benefits the environment by encouraging people to use EVs which are less-polluting than fossil-fuel powered vehicles. Off-street, or curbside EV charging generally falls on municipalities to install and maintain and thus those costs would be passed on to all residents – the community benefits from off-street EV charging because it does not add additional costs to the city.

### **Safety for All**

The community also benefits from off-street EV charging because less cars on the sides of the street is safer for vehicle drivers or passengers, pedestrians, bicyclists, and other non-automobile users of the streets. This is a significant safety issue as many Mercer Island residential neighborhoods do not have sidewalks, many streets are narrow, winding, have significant flora along their edges, have no painted lines, have no curbs, or are steep; thus I am confident that an empirical study would clearly demonstrate that not enacting these parking requirements would be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists.

### **The Public has Requested This**

During the public comment period for the Comprehensive Plan, the Planning Commission received six public comments on the Transportation Element asking that the commission note that off-street parking is important to families and those who are handicapped – this was added to the Planning Commission findings with a 5-0 vote at its June 5, 2024 meeting (see Finding H of Planning Commission’s Comprehensive Plan Periodic Review – Findings and Recommendation, dated June 12, 2024). Additionally, the results of the city-administered survey also indicated residents’ desire to reduce the impacts of denser housing through regulations (see Findings C.1 through C.3 of aforementioned document). Both findings H and C.1 – C.3 are snapshotted below for reference:

- H. Transportation Element Policy Goal 4.10 received six public comments asking that we note that off-street parking is important to families and those who are handicapped.
  
- C. Identify regulations that can reduce the following impacts when establishing regulations for moderate density:
  - 1. More people parking on neighborhood streets;
  - 2. Traffic and parked cars affecting pedestrian safety;
  - 3. Reduced parking requirements in areas close to transit causing more residents to park on the street; and

### **Supports CAP, the Comprehensive Plan, and our Children**

Mercer Island’s Climate Action Plan, and multiple parts of the Comprehensive Plan address reductions in greenhouse gases and promotion of EV use. Additionally, proposed revisions to the Comprehensive Plan articulate that too much on-street parking can cause risk to pedestrians, cyclists, and other non-automobile users of the streets. Of particular interest to me as a parent is the safety of children walking to and from school, especially during the dark mornings and early evenings, respectively, of our PNW winters.

**Specifically Called-For by Land Use Element of the Comprehensive Plan**

The Land Use Element of the Comprehensive Plan most-directly addresses the issue of off-street parking. As MICC 19.02.020(G)(2) currently refers to only single-family dwellings, some of the middle housing that must now be allowed as new development in residential zones will have no parking regulations. This code gap is in direct conflict with Land Use Element Goal 15.6A which reads:

15.6 Manage impacts that could result from new development in residential zones by establishing standards to:

15.6.A Regulate on- and off-street parking;

Additionally, it can be reasonably concluded that preserving the low density neighborhood character in all residential zones (Land Use Goals 15 and 15.1 plus Substantive City Council Comment CC-12 as adopted by a 7-0 vote on 9/3/2024) includes keeping the streets clear of excessive amounts of parked automobiles.

**Protects the City from Costs and Delivers Higher-Quality Results**

It is well documented that on-street/curbside EV charging can be expensive, unreliable and inconvenient. Additionally, the infrastructure needs then inevitably fall on the municipalities. To ensure that EVs park in a potential on-street EV spot, a parking enforcement or registration program would have to be grown, also coming at a cost to the city.

Some neighborhoods do not have electrical poles on which to install curbside EV chargers. Those chargers would then have to be installed at ground level and would be prone to copper thieves, a well-documented occurrence nearby in Seattle.

**Time Sensitivity**

This is also a time-sensitive matter - as new, smaller residential units are soon to be allowed outside of the Town Center, we run the risk of builders building the minimum necessary to close the sale. Only after inhabiting a dwelling unit would a resident observe the significant downsides of curbside EV charging compared to off-street charging. Residents being stuck with curbside EV charging will work against EV adoption (and thus against the city's goal of encouraging greener transportation). Alternatively, residents stuck with curbside EV charging would be saddled with an expensive retrofit to dwellings which in turn would cause financial strain to new residents or drive them to not purchase an EV and instead purchase a fossil-fueled vehicle. Since the Residential Development Codes will be updated as a follow-on to the Comprehensive Plan update, the time to address this is now.

This proposal **satisfies the five decision criteria in MICC 19.15.250(D)** as summarized below:

- i. Parking is mentioned in the Comprehensive Plan and City Codes, thus this concern is appropriately addressed through comp plan and/or code revisions too.
- ii. This is a simple code revision (addition) that fills a newly-created gap in the code and the City will already be revisiting the Residential Development Code as part of the Comprehensive Plan updates.
- iii. I am not aware of an ongoing work plan related to on-street parking outside of the City Center
- iv. Supports Mercer Island's documented vision of reducing its carbon footprint. Also, various elements of the Comprehensive Plan encourage the use of EVs or reduction of greenhouse gas emissions while the Land Use Element specifically calls for managing impacts of new residential development by regulating parking as well as maintaining its principally low density neighborhood character in all residential zones; and
- v. This is a new proposal based on new state laws, Emergency Ordinance 24C-08, and recent/pending revisions to as well as existing goals of the Comprehensive Plan.

Please support this code addition.

- (1) It will encourage and facilitate the use of EVs on Mercer Island and is thus environmentally friendly.
- (2) It will avoid the City having to install and maintain curbside EV charging which benefits all residents by not adding additional work and cost to the city.
- (3) Off-street parking is important for families and those who are handicapped, and six public comments were received on the Transportation Element requesting that the Commission mention that.
- (4) Finally, it will make the streets safer for pedestrians, cyclists, and all other non-motorized users of our mostly-sidewalkless streets. These are all in the best interests of the Mercer Island community as a whole, will help improve public health and safety, and is consistent with the Comprehensive Plan.

This code addition addresses public comments received on the Comprehensive Plan and fills a gap that will be newly-created in the MICC with the addition of middle housing to the residential zones – without this addition, the MICC would be inconsistent with the Comprehensive Plan and significant portion of the public commenters and survey respondents will have their concerns go unaddressed.

Thank you for your time and consideration.

# PROPOSAL 10

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Daniel P. Thompson

Address: 7265 North Mercer Way, Mercer Island, WA 98040

Phone: 206-622-0670

Email: danielphompson@hotmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment  Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion  Application

# PROPOSAL 10

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
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  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:



Date:

Sept. 26, 2024

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Please attach a separate narrative responding to the above questions.

I

**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development  
Standards MICC 19.02.020(D)(2)(a)  
Gross Floor Area

**Suggested Code Amendment:**

I suggest MICC 19.02.020(D)(2)(a) be amended to reduce ceiling height from 12 feet to 10 feet before it is counted as clerestory space at 150% of GFA.

**Analysis:**

The Citizens and Council spent approximately three years rewriting the Residential Development Code. A primary motivation in the rewrite was to deal with citizen concern over "massing", or what citizens considered out-of-scale residential development, which the Planning Commission addressed as Gross Floor Area to Lot Area Ratio (GFAR).

One of the factors that increased GFAR and led to the code rewrite was Administrative Interpretation 13-01 that allowed all clerestory space to be counted as 100% GFA.

Massing is a three-dimensional concept based on the exterior volume of the house. Whether interior space is counted as GFA or not, it is a reality in the exterior volume, or massing, of the house. GFA, meanwhile, is a two-dimensional term subject to exemption.

Ten-foot ceiling height is the industry standard for a maximum non-cathedral ceiling. The Planning Commission never recommended a 12-foot ceiling height in its recommendation to the Council, but recommended 10 feet. 12 feet was the sudden recommendation of former council member Dan Grausz at the Council's final adoption hearing for the new Residential Development Code.

A ceiling height of 12 feet, before counting as clerestory space allows each floor of a two-story house to increase its interior and exterior volume by 20%, directly contrary to the goals of the RDS. Furthermore, it creates a much greater need for heating and cooling, and is contrary to the purposes of green building standards.

**12 Foot Ceiling Heights Are Inconsistent With The Climate Action Plan And Land Use Goal 27.6.4.**

Land Use Goal 27.6.4 adopted by this Planning Commission reads:

*"Reducing greenhouse gas emissions from the construction, heating, and cooling of residential structures by encouraging smaller single family residential housing units, including moderate density housing and the use of green building materials and techniques."*

## PROPOSAL 10

Twelve foot ceilings create an additional 20% of interior house volume to heat and cool with **no** increase in livable square footage for the homeowner. This 20% at the top of the ceiling is the most intensive to heat and cool without increasing usable house gross floor area on the Island one inch.

As a result, 12 ft high ceilings before counting as clevestory space is inconsistent with The Climate Action Plan and Land Use Goal 27.6.4.



# PROPOSAL 11

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Daniel P. Thompson

Address: 7265 North Mercer Way, Mercer Island, WA 98040

Phone: 206-622-0670

Email: danielpthompson@hotmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that the application is submitted with consent. Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

# PROPOSAL 11

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:  Date: Sept 26 2024

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Please attach a separate narrative responding to the above questions.

II

**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(D)(2) Gross Floor Area

MICC 19.16.010(G)(2)(b) Gross Floor Area Exemption for Covered Decks on the First Level

**Suggested Code Amendment:**

I suggest MICC 19.02.020(D)(2) be amended to include exterior covered decks in the definition of Gross Floor Area, which presently only references exterior walls even though covered decks on levels above the first level are counted towards the GFA limit.

I further suggest that MICC 19.02.020(D)(2) and 19.16.010(G)(2)(b) be amended to include covered porches on the first level in the calculation of Gross Floor Area.

**Analysis:**

The Citizens and Council spent approximately three years rewriting the Residential Development Code. A primary motivation in the rewrite was to deal with citizen concern over “massing”, or what citizens considered out of scale residential development, which the Planning Commission addressed as Gross Floor Area to Lot Area Ratio (GFAR).

One of the main actions in the new Residential Development Code was to remove discretion from the City Planning Department (Development Services Group at that time, now Community Planning Department), especially when it came to deviations and variances. Unfortunately, that led the prior director to simply amend the entire code when attempting to address a request from a citizen for relief from the Code.

One of these Amendments was to exempt covered decks on the first level from the GFA limits because the applicant wished to have a covered barbecue area. Instead, the code amendment exempts all covered decks on the first level from the GFA limit.

There is very little difference in massing between a deck with a railing and roof from a room. The only difference is a window. Exempting first level decks from GFA limits greatly expands the massing of the house.

## PROPOSAL 11

To be fair to Evan Maxim, amending this definition to limit its scope was on his agenda before his departure.

A homeowner already has the benefit of an 18-inch eave that is exempt from the GFA limit. At most, any barbecue area that needed to be sheltered from the elements would be 5'x 5', or 25 square feet. I suggest that covered decks on the first level be counted in their entirety towards the GFA limit, or in the alternative a 25-foot exemption be allowed for a barbecue area.

# PROPOSAL 12

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Daniel P. Thompson

Address: 7265 North Mercer Way, Mercer Island, WA 98040

Phone: 206-622-0670

Email: danielpthompson@hotmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone?

Yes

No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

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Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

# PROPOSAL 12

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

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1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
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3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

Sept. 26 2024

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Please attach a separate narrative responding to the above questions.

III

**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(c)(2)(a)(iii) Yards for Waterfront Lots

MICC 19.02.040(D)(1) Garages and Carports/Yard Intrusion

**Suggested Code Amendment:**

I suggest MICC 19.02.040(D)(1) be eliminated. In the alternative, I suggest that MICC 19.02.040(D)(1) not be applicable to a waterfront lot if the waterfront lot has switched its front and rear yards subject to MICC 19.02.020(c)(2)(a)(iii).

**Analysis:**

MICC 19.02.020(c)(2)(a)(iii) allows a waterfront lot to switch its front and rear yard because the Department of Ecology requires a 25-foot buffer between the structure and the ordinary high water mark.

However, MICC 19.02.040(D)(1) allows garages and carports to be built within 10 feet of the property line of the *front* yard if there is more than 4 vertical feet difference as measured between the bottom wall of the building and ground elevation of the front yard property line where such property is closest to the building.

Ideally, 19.02.040(D)(1) should be eliminated. It is a building or structure above the ground level that extends into the yard setback. However, in the alternative, 19.02.040(D)(1) should not be available to waterfront lots that have flipped their front and rear yards pursuant to 19.02.020(c)(2)(a)(iii) because essentially it reduces the yard between the upper house to 10 feet. The effect of this provision can easily be seen as one takes a boat around Lake Washington. The waterfront house and the house directly behind look as though they are one contiguous property.

# PROPOSAL 13

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Daniel P. Thompson  
Address: 7265 North Mercer Way, Mercer Island, WA 98040  
Phone: 206-622-0670  
Email: danielpthompson@hotmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

### REQUEST INFORMATION

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Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
County Assessor's Parcel No.: \_\_\_\_\_  
Parcel Size (sq. ft.): \_\_\_\_\_

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Comprehensive Plan Amendment  Development code Amendment

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**Note:** Applications are subject to [applicable permit fees](#).

Suggestion  Application



# PROPOSAL 13

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

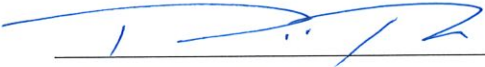
Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

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4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

Sept. 26, 2024

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Please attach a separate narrative  
responding to the above questions.

IV

**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(D)(3)(b) Gross Floor Area Incentives for ADU's

**Suggested Code Amendment:**

I suggest limiting the Gross Floor Area Incentives for ADU's in MICC 19.02.020(D)(3)(b) to lots 8,400 square feet or smaller.

**Analysis:**

One of the primary purposes of the rewrite of the Residential Development Code was to address the massing and out of scale development in the smaller lot neighborhoods, with lots 8,400 square feet and less. MICC 19.02.020(D)(3)(b) allows a lot 10,000 square feet or less to have up to 5% additional Gross Floor Area for an ADU. (19.02.020(D)(3)(a) already allows a lot 7,500 sf lot or below an additional 5% GFA or 3,000 sf for either an ADU or the main house.)

A 10,000-square foot lot that can have a 4,000-square foot house does not need an additional 5% Gross Floor Area for an ADU. The primary tool used by the Planning Commission to reduce massing and out-of-scale residential development was to reduce GFAR from 45% to 40%, except this provision is directly contrary to that goal.

MICC 19.02.020(D)(3)(b) should be amended to limit the 5% additional GFA to lots 8,400 square feet and less.

# PROPOSAL 14

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Daniel P. Thompson

Address: 7265 North Mercer Way, Mercer Island, WA 98040

Phone: 206-622-0670

Email: danielpthompson@hotmail.com

### AGENT/CONSULTANT/ATTORNEY

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

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### REQUEST INFORMATION

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Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

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Comprehensive Plan Amendment

Development code Amendment

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**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

# PROPOSAL 14

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

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4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

Sept 26, 2024

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Please attach a separate narrative responding to the above questions.

V

**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(G)(2)(a) and (b) Parking Requirements

**Suggested Code Amendment:**

I suggest that MICC 19.02.020(G)(2)(b) should be amended due to the adoption of Ordinance No. 24C-08. MICC 19.02.020(G)(2)(a) states: "Each single-family dwelling with a gross floor area of 3,000 square feet or more shall have at least three parking spaces sufficient in size to park a passenger automobile." MICC 19.02.020(G)(2)(b) states: "Each single-family dwelling with a gross floor area of less than 3,000 square feet shall have at least two parking spaces sufficient in size to park a passenger automobile." However, Ordinance No. 24C-08 eliminates requirements for covered parking spaces. MICC 19.02.020(G)(2)(b) should require three onsite parking spaces per lot, covered or uncovered for houses 2,000 sf or larger.

**Analysis:**

During the Residential Development Code rewrite, parking requirements for residential houses were reduced based upon the square footage of the house pursuant to MICC 19.02.020(G)(2)(a) and (b). This was a very contentious amendment. A house less than 3,000 sf was required to have only one covered parking space.

Recently, the council amended 19.02.020(G)(2)(a) and (b) to eliminate requirements for covered parking spaces in Ordinance No. 24C-08 to comply with changes to state law. A copy of Ordinance No. 24C-08 is attached to this suggested amendment.

A 3,000 sf home is quite large. For example, I have raised two children in a 2,700 sf house with a 3-car garage on Mercer Island. A 2,000 sf to 3,000 sf house can accommodate three uncovered parking spaces.

Ancillary issues from reducing parking requirements for houses 3,000 sf and below include:

## PROPOSAL 14

1. Mercer Island effectively has no Intra-Island transit. The 201 that circled the Mercers was eliminated because of low ridership, in part because it is very difficult for citizens to even get up their steep drives to the Mercers, and the 201 was very slow. Reducing onsite parking requirements moves these cars to the public streets.
2. The purpose of 19.02.020(G)(2)(b) was to allow more GFA for smaller houses by reducing covered parking spaces that count toward GFAR limits. Ordinance 24C-08 eliminates the requirement for covered parking spaces so 19.02.020(G)(2)(b) is no longer necessary or relevant.

# PROPOSAL 14

## CITY OF MERCER ISLAND ORDINANCE NO. 24C-08

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, ADOPTING INTERIM ZONING REGULATIONS FOR RESIDENTIAL PARKING IN RESPONSE TO SENATE BILL 6015; ADOPTING A WORK PLAN; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Washington passed Substitute Senate Bill 6015, effective June 6, 2024, adopting minimum parking requirements for residential development by adding a new section to chapter 36.70A RCW; and

**WHEREAS**, the City of Mercer Island must amend several code sections to ensure that the Mercer Island City Code (MICC) is consistent with state requirements for residential parking configurations; and

**WHEREAS**, the City of Mercer Island must adopt regulations consistent with state requirements for residential parking configurations; and

**WHEREAS**, the City is authorized under RCW 35A.63.220 and 36.70A.390 to pass an interim zoning and official control ordinance for up to one year, provided a work plan is developed for related studies providing for such a longer period; and

**WHEREAS**, the City Council held a public hearing on June 4, 2024 which satisfies the requirements on RCW 35A.63.220 and RCW 36.70A.390; and

**WHEREAS**, to be compliant with Substitute Senate Bill 6015 and prevent the potential harm to public health, safety, property, and welfare resulting from the MICC being noncompliant with state requirements, the City Council finds that immediate action is necessary to adopt the interim zoning regulations in this ordinance; and

**WHEREAS**, this ordinance, as an interim zoning and official control ordinance, is not subject to referendum;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Whereas Clauses Adopted.** The “Whereas Clauses” set forth in the recital of this ordinance are adopted as the findings of fact and/or conclusions of law of the City Council as support for passing this ordinance.

**Section 2. MICC 19.02.020 Amended.** MICC Subsection 19.02.020 is amended as shown on the attached Exhibit A.


**Section 3. MICC 19.03.020 Amended.** MICC Subsection 19.03.020 is amended as shown on the attached Exhibit B.

PROPOSAL 14

- Section 4. MICC 19.11.130 Amended.** MICC Subsection 19.11.130 is amended as shown on the attached Exhibit C.
- Section 5. MICC 19.12.050 Amended.** MICC Subsection 19.12.050 is amended as shown on the attached Exhibit D.
- Section 6. MICC Title 19, Appendix A, Amended.** MICC Title 19, Appendix A is amended as shown on the attached Exhibit E.
- Section 7. Work Plan adopted.** The Work Plan attached as Exhibit F is adopted pursuant to RCW 35A.63.220 and RCW 36.70A.390 and indicates the City's plans for considering permanent regulations during the pendency of the interim regulations.
- Section 8. Duration of Interim Zoning and Official Controls.** The interim zoning and official controls approved by this ordinance shall continue in effect for an initial period of one year from the effective date, unless repealed, extended or modified by the City Council pursuant to RCW 35A.63.220 and RCW 36.70A.390.
- Section 9. Severability.** If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property, or circumstance.
- Section 10. Effective Date.** The City Council hereby finds and declares that the effective date in SB 6015 causes an emergency which necessitates that this ordinance become effective immediately in order to preserve the public health, safety, and welfare. This ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, so long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.13.190.

PASSED BY AT LEAST A MAJORITY PLUS ONE OF THE WHOLE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AT ITS MEETING ON JUNE 4, 2024.

CITY OF MERCER ISLAND

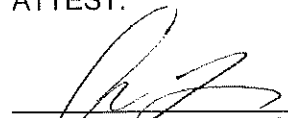


Salim Nice, Mayor

APPROVED AS TO FORM:

s/Bio Park  
 \_\_\_\_\_  
 Bio Park, City Attorney

ATTEST:



Andrea Larson, City Clerk

Date of Publication: June 12, 2024



# PROPOSAL 14

single-family home shall not incorporate any weeds identified on the King County Noxious Weed list, as amended. Provided, that removal shall not be required if the removal will result in increased slope instability or risk of landslide or erosion.

- e. *Allowed adjustments.* A one-time reduction in required landscaping area and an increase in the maximum lot coverage are allowed, provided:
- i. The total reduction in the required landscaping area shall not exceed five percentage points, and the total increase in the maximum lot coverage shall not exceed five percentage points; and
  - ii. The reduction in required landscaping area and increase in maximum lot coverage are associated with:
    - (a) A development proposal that will result in a single-story single-family dwelling with a wheelchair accessible entry path, and may also include a single-story accessory building; or
    - (b) A development proposal on a flag lot that, after optimizing driveway routing and minimizing driveway width, requires a driveway that occupies more than 25 percent of the otherwise allowed lot coverage area. The allowed reduction in the required landscaping area and increase in maximum lot coverage shall not exceed five percent, or the area of the driveway in excess of 25 percent of the lot coverage, whichever is less.

For example, a development proposal with a driveway that occupies 27 percent of the otherwise allowed lot coverage may increase the total lot coverage by two percent; and

- iii. A recorded notice on title, covenant, easement, or other documentation in a form approved by the city shall be required. The notice on title or other documentation shall describe the basis for the reduced landscaping area and increased lot coverage.

## G. *Parking.*

1. *Applicability.* Subsection (G)(2) of this section shall apply to all new construction and remodels where more than 40 percent of the length of the structure's external walls have been intentionally structurally altered, except as provided below.
2. *Parking required.*
  - a. Each single-family dwelling with a gross floor area of 3,000 square feet or more shall have at least three parking spaces sufficient in size to park a passenger automobile; ~~provided, at least two of the stalls shall be covered stalls.~~
  - b. Each single-family dwelling with a gross floor area of less than 3,000 square feet shall have at least two parking spaces sufficient in size to park a passenger automobile; ~~provided, at least one of the stalls shall be a covered stall.~~
3. No construction or remodel shall reduce the number of parking spaces on the lot below the number existing prior to the project unless the reduced parking still satisfies the requirements set out above.
4. Except as otherwise provided in this chapter, each lot shall provide parking deemed sufficient by the code official for the use occurring on the lot; provided, any lot that contains ten or more parking spaces shall also meet the parking lot requirements set out in appendix A of this development code, except as provided below.
5. Garages and carports are not required in order to meet minimum parking requirements for residential development.
6. Parking spaces that count towards minimum parking requirements may be enclosed or unenclosed.

# PROPOSAL 14

7. Parking spaces in tandem shall count towards meeting minimum parking requirements at a rate of one space for every 20 linear feet with any necessary provisions for turning radius. For purposes of this subsection, "tandem" is defined as having two or more vehicles, one in front of or behind the others with a single means of ingress and egress.
8. Existence of legally nonconforming gravel surfacing in existing designated parking areas may not be a reason for prohibiting utilization of existing space in the parking area to meet parking standards, up to a maximum of six parking spaces.
9. Parking spaces are not required to exceed eight feet by 20 feet, except for required parking for people with disabilities.
10. Required off-street parking shall not be a condition of permitting a residential project if compliance with tree retention pursuant to Chapter 19.10 MICC would otherwise make a proposed residential development or redevelopment infeasible.
11. Parking spaces that consist of grass block pavers may count toward minimum parking requirements.
12. Existing parking spaces that do not conform to the requirements of this section by June 6, 2024 are not required to be modified or resized, except for compliance with the Americans with Disabilities Act. Existing paved parking lots are not required to change the size of existing parking spaces during resurfacing if doing so will be more costly or require significant reconfiguration of the parking space locations.

H. *Easements.* Easements shall remain unobstructed.

1. *Vehicular access easements.* No structures shall be constructed on or over any vehicular access easement. A minimum five-foot yard setback from the edge of any easement that affords or could afford vehicular access to a property is required for all structures; provided, that improvements such as gates, fences, rockeries, retaining walls and landscaping may be installed within the five-foot yard setback so long as such improvements do not interfere with emergency vehicle access or sight distance for vehicles and pedestrians.
2. *Utility and other easements.* No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trail or other public purposes unless it is permitted within the language of the easement or is mutually agreed in writing between the grantee and grantor of the easement.

I. *Large lots.* The intent of this section is to ensure that the construction of a single-family dwelling on a large lot does not preclude compliance with applicable standards related to subdivision or short subdivision of the large lot. Prior to approval of a new single-family dwelling and associated site improvements, accessory buildings, and accessory structures on large lots, the applicant shall complete one of the following:

1. *Design for future subdivision.* The proposed site design that shall accommodate potential future subdivision of the lot as follows:
  - a. The proposed site design shall comply with the applicable design requirements of chapters 19.08, Subdivision, 19.09, Development, and 19.10, Trees, MICC.
  - b. The proposed site design shall not result in a circumstance that would require the removal of trees identified for retention, as part of a future subdivision.
  - c. The proposed site design shall not result in a circumstance that would require modifications to wetlands, watercourses, and associated buffers as part of a future subdivision.
  - d. Approval of a site design that could accommodate a potential future subdivision does not guarantee approval of such future subdivision, nor does it confer or vest any rights to a future subdivision.

# PROPOSAL 15

## DOCKET REQUEST FORM

The following information is required. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Joe White

Address: 3046 61st Ave SE, Mercer Island, WA 98040

Phone: (425) 698 9989

Email: jjbtw15@gmail.com

### AGENT/CONSULTANT/ATTORNEY

Complete this section if the primary contact is different from the applicant.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

**Important:** A separate Docket Request Form must be completed for each docket item requested.

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

County Assessor's Parcel No.: \_\_\_\_\_

Parcel Size (sq. ft.): \_\_\_\_\_

If the application is submitted by an agent/consultant/attorney, please attach a signed letter of consent from all owners of the affected property demonstrating that that the application is submitted with consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan Amendment

Development code Amendment

Is this submission a **suggestion** for a Comprehensive Plan or Development Code amendment, or is this an **application** for a specific amendment? (Check one box below.)

**Note:** Applications are subject to [applicable permit fees](#).

Suggestion

Application

# PROPOSAL 15

## DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a separate narrative responding to all five (5) questions outlined below. Attach additional sheets, supporting maps, or graphics as necessary. Answer each question separately and reference the question number in your answer.

**The application will be considered incomplete without a narrative answering all five questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

Please sign and date below acknowledging application requirements.

Signature:



Date:

Sept 27, 2024

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Please attach a separate narrative responding to the above questions.

# PROPOSAL 15

## DOCKETING CRITERIA

[MICC 19.15.230\(E\) 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.

## COMPREHENSIVE PLAN DECISION CRITERIA

[MICC 19.15.230\(F\) 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.

## DEVELOPMENT CODE AMENDMENT DECISION CRITERIA

[MICC 19.15.250\(D\) 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.

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.

a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.

b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with strikeouts.

c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.

*This docket proposes a minor ordinance in the Mercer Island City Code to include a height limit on hedges in the shared boundary of single-family properties. **It is proposed that hedges shall not be more than 12 feet in height when located within the side yard setback of any adjoining owners' property line, unless mutually agreed upon by the adjoining property owners.***

*The proposed amendment to the city code is included as follows. The specific changes are limited to 19.02.020, 19.02.050 and 19.16.010 as highlighted below.*

**19.02.020 - Development standards.**

3. Intrusions into required yards.

c. Fences, hedges, retaining walls and rockeries. Fences, hedges, retaining walls and rockeries are allowed in required yards as provided in MICC 19.02.050.

**19.02.050 - Fences, hedges, retaining walls and rockeries**

A. Location in required yard. Fences, hedges, retaining walls and rockeries may be located within any required yard as specified below.

C. Height measurement.

1. Fences/hedges/gates. The height of a fence, hedge or gate is measured from the top of the fence, hedge or gate, including posts, to the existing grade or finished grade, whichever is lower, directly below the section of the fence, hedge or gate being measured.

E. Fences, hedges and gates.

1. Fences, hedges or gates in required yard.

a. Height limits.

i. Side and rear yards.

*(a) Fences and gates are allowed to a maximum height of 72 inches within required side or rear yards, provided the combined height of a fence and retaining wall or rockery for a fill slope authorized pursuant to subsection (D)(5) of this section shall not exceed a total height of 72 inches.*

*(b) Hedges shall not be more than 12 feet in height when located within the side yard setback of any adjoining owners' property line, unless mutually agreed upon by the adjoining property owners.*

**19.16.010 - Definitions.**

*Hedge: a row of 4 or more closely planted trees, shrubs or grasses forming a fence, screen or boundary.*

**2. How does the proposal benefit the community or the environment?**

*Although hedges serve as good privacy screens, they can be damaging to the community and environment if they are not kept at a reasonable height by:*

- *shadowing solar panels of nearby buildings. This makes it more difficult for a residential property to get natural solar power, natural heating and can significantly impair the effectiveness of roof-top solar systems on nearby buildings. Reduced solar access jeopardizes the city's projected solar-powered energy savings.*
- *accumulating leaves on solar cells. This can cause localized shading on the panels. The inactive cells act as a load on the rest of the cells and develop hotspots. The thermal stress can cause irreparable damage to the solar cells and reduce the overall output of the entire panel. The heat from the hotspots can cause a chain reaction and spread to neighboring cells, reducing the useful life of the solar panels and increasing the risk of electrical fires. The damaged equipment will also add to the burden on landfills.*
- *preventing the residents of adjacent properties from seeing sunshine, which is crucial for the community's and the locals' continued health and wellbeing.*
- *posing a risk to public safety from falling trees and/or broken branches during a storm. This may result in injuries, fatalities, and property damage due to falling trees or tree parts landing on nearby buildings or utility infrastructure.*

*Hedge height restrictions will align city code with the city's goal of lowering danger to people and property and support the city's commitment to local solar power generation. This proposed amendment will promote the longevity of solar equipment, reduce the burden on municipal emergency resources by lowering the possibility of electrical fires and storm dangers, reduce unnecessary waste in public landfills, and achieve the city's overall goals of guiding Mercer Island towards a healthy, sustainable, thriving community.*

**3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).**

*This request is consistent and supports the City Comprehensive Plan to combat climate change. It is related to MICC 19.15.250(D) by offering a way to reduce solar panel shadowing on nearby homes, allowing property owners access to natural sunlight and natural heating, and by reducing storm threats to property and human life.*

*Unrestricted hedge growth limits the full potential of the city's green energy initiative and leads to non-compliance with the Washington State Energy Code. Because unrestricted hedge growth increases the risk to and compromises the safety and well-being of residential and community infrastructure, it can strain both public health infrastructure and public safety facilities. This proposed amendment is related to MICC 19.15.230(F) as it addresses and supports the purpose and goals of the City's Comprehensive Plan and the Growth Management Act by combating climate change, reducing greenhouse gas emission and supporting the overall health and well-being of the community.*

**4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?**

*When property owners decide to install solar systems, two of their primary considerations are cost-benefit analysis and electrical fire safety. This amendment will encourage the installation of solar panels on residential properties by granting property owners safe access to solar energy. It will also give people access to solar heating and natural sunlight, subsequently reducing the demand on electricity. For these reasons, this proposal supports the Growth Management Act and King County Planning Policies which promote solar power as a clean and renewable energy source and a community in the future that is powered by sustainable energy with reduced greenhouse gas emission.*

*By reducing the risk of falling tree parts landing on neighboring buildings and utility infrastructure, the proposed change also improves community safety during a storm. Solar owners will have security in knowing hedges shadowing their solar panels can be maintained to reduce leaves and debris accumulation, thus decreasing the likelihood of hotspots and electrical fires. This will allow residents to live in peace and comfort in their homes. These objectives directly align with King County's Countywide Planning Policies' goals of protecting citizens from risks to their health and safety, and the Growth Management Act's goal of balancing growth with community well-being. It also has a significant impact on the health and welfare of residents, which will benefit medical facilities, emergency services and our community's vulnerable populations.*



5. For development code amendments: How does the proposal align with the goals of the City's Comprehensive Plan?

*The proposal will improve safe solar access to residents and minimize safety risks posed by overgrown trees in a storm, thereby improving energy efficiency and promoting the health and well-being of community members.*

*The proposal aligns with the City's Comprehensive Plan as it supports:*

- A. Capital Facilities Goal 1.11 of the city's adoption of a Hazard Mitigation Plan to address the vulnerabilities associated with electrical fire risks resulting from shading of solar cells. By granting solar owners the ability to control the height of hedges, hotspots on solar panels caused by uneven energy generation can be minimized. This will decrease the risk of electrical fires on properties near solar panels and the risk of personal injuries, fatalities and property damage caused by falling tree parts.*
- B. Land Use Policy Goal 22 to review the city's emergency management plans and adopt regulations to mitigate and control hazards that are created by a natural event (storm and fire) [Ref. 1 and 2].*
- C. Land Use Policy Goal 27 of the city's effort to prioritize actions that reduce community-wide greenhouse gas emission and to meet the reduction targets recommended by the King County-Cities Climate Collaboration (K4C). Solar panels installed to replace natural gas usage can reduce approximately 208 to 236 times more CO<sub>2</sub> than trees occupying the same footage [Ref. 3].*
- D. Land Use Policy Goal 27 of the city's goal to reduce its community-wide carbon footprint impacts and supports the city's partnership with the King County-Cities Climate Collaboration (K4C). By mitigating the negative impact of hedge shadows on adjacent single home dwellings, this proposal enables residents to contribute to the efficient use of solar energy. Single-family dwellings contribute to 88 percent of land use on the island [Ref. 4]. The proposal will support the city's aim to promote the use of zero- and low greenhouse gas emitting energy sources and to enhance the solar potential of single-family dwellings on Mercer Island.*
- E. Land Use Policy Goal 28 of the City's commitment to develop and implement a Climate Action Plan. The amendment supports the city's goal of a 50% reduction in community emissions by 2030 as outlined in its Climate Action Plan. It will allow residents to efficiently utilize solar energy, whether it be through the use of solar panels or natural heating of a building, or simply having access to natural sunlight in their living spaces. This helps the city achieve its objective of reducing overall negative environmental impacts caused by residents. It also aids in individual and community-wide efforts to reverse the trend of a 9% increase in community-wide emission in 2022 [Ref. 5].*

F. *Land Use Policy Goal 29 of the City's commitment to adapt to and mitigate local climate change impacts by adapting the city code to prioritize access to and use of solar panels on residential buildings. This represents an efficient way to support carbon sequestration, such as by using locally generated solar power instead of fossil fuels to charge an electric car which reduces community-wide carbon emission. Solar energy installation is essential to the city's initiative to promote green energy use in combating climate change. Hedges are typically grown adjacent to single family dwellings, and this zoning occupies 3,534 acres of land and accounts for 88 percent of Mercer Island's land use [Ref. 4]. The roofs of these single-family dwellings are where private-use solar panels are installed. The effectiveness of these solar installation is highly dependent on the ability of solar panels to access sunlight. For example, on cloudy days solar systems only produce 10 to 25 percent of their normal output, depending on cloud coverage. An overgrown hedge will cast shadows on these rooftops, with a similar detrimental effect on the efficiency of the solar installation. This will impair the energy performance and affect the energy analysis of a residential solar installation and potentially lead to non-compliance with Washington State Energy Code R405.3, specifically in regard to the projected carbon emissions of newer family homes with extensive conditioned floor areas and lighting throughout the house and property.*

## References

1. Jessica Goodman, Cox Media Group National Content Desk, Kiro7 News  
"Solar panel fires: How common are they, how you can prevent them"
2. [Kochbuch PV-Brandschutz \(energy.gov\)](https://www.energy.gov/eere/energy-efficiency/assessing-fire-risks-in-photovoltaic-systems-and-developing-safety-concepts-for-risk-minimization), Office of Energy Efficiency & Renewable Energy,  
"Assessing Fire Risks in Photovoltaic Systems and Developing Safety Concepts for Risk Minimization"
3. Matthew Eisenson, the Sabin Center for Climate Change Law,  
<https://blogs.law.columbia.edu/climatechange/2022/10/25/response-to-the-new-york-times-essay-are-there-better-places-to-put-large-solar-farms-than-these-forests/>
4. City of Mercer Island, "Mercer Island Comprehensive Plan 2II"
5. City of Mercer Island, "Eastside Climate Partnership Greenhouse Gas Emission Analysis, 2022 Annual Report"