
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

To: Planning Commission

From: Jeff Thomas, Interim Director

Sarah Bluvas, Economic Development Coordinator

Date: January 26, 2022

RE: ZTR21-004 Town Center Commercial Requirements

Exhibits:

1. MICC 19.11.020(B) Proposed Code Amendments v(5) – TRACK CHANGES version
2. MICC 19.11.020(B) Proposed Code Amendments v(5) – CLEAN version

SUMMARY

In June 2020, the City Council placed a moratorium on major new construction in the southeast corner of the Town Center zoning designation. Over the last six months the City Council has engaged in a discussion on how to retain and expand commercial space in the Town Center.

On November 3, 2021, the Planning Commission conducted a Public Hearing on proposed amendments to Mercer Island City Code (MICC) 19.11.020(B) and transmitted a recommendation to not adopt the proposal to the City Council on November 16, 2021. The City Council subsequently conducted first and second ordinance readings on November 16, 2021, and December 7, 2021, for the proposed amendments, at which time they proposed amending elements related to the commercial floor area ratio (FAR) / no net loss requirements and remanded the matter back to the Planning Commission to work with staff on the following:

- A. Reconcile the definition of Personal Services as defined in MICC 19.16.010 and work with staff to add a definition for Visual or Performing Arts Centers;
- B. Exempt visual or performing arts centers from the 60' contiguous street frontage requirement; and
- C. Establish a 5,000-square foot cap for visual or performing arts centers that can be applied to the FAR or no net loss requirement.

Additionally, it was directed that a Planning Commission recommendation be presented to the City Council at a regular business meeting on or before March 15, 2022, during a third reading of the ordinance.

Tonight, staff will present an updated draft of the proposed amendments, which incorporates the City Council's requests, as well as review next steps for reaching a Planning Commission recommendation. The

proposal would repeal and replace MICC 19.11.020(B) and modify one or more definitions contained in MICC 19.16.010.

BACKGROUND

The current Town Center development regulations were established in June 2016. Per the current code, major new development located north of SE 29th Street in the Town Center must provide ground floor street frontage commercial space for use by retail, restaurant, or personal services (e.g. barber shop, nail salon, fitness center, etc.). Between 40 and 60 percent of the ground floor street frontage north of SE 29th Street must be designed for retail, restaurant, or personal services; 40 percent is required for those major new developments that provide public parking, while 60 percent is required for those developments that do not provide public parking. Commercial space is allowed, but not required, south of SE 29th Street in the Town Center zoning designation (“TC zone”).

In June 2020, the City Council enacted a moratorium on major new construction generally in the southeast quadrant of the TC zone. This moratorium was intended to temporarily prevent submittal of development applications while the City considers potential updates and/or amendments to development regulations within the Town Center, including requirements for ground-floor retail use and for preserving existing commercial square footage in the TC zone. The City Council cited the goal of protecting and expanding Mercer Island’s retail sector to maintain and improve the community’s quality of life and emergency preparedness as primary drivers for enacting the moratorium.

Since enacting the moratorium, City staff, the City Council, the Planning Commission, and consulting firm Community Attributes, Inc., participated in several discussions to present findings and arrive at a proposal to amend MICC 19.11.020(B), including 11 City Council meetings and three Planning Commission meetings. The Planning Commission held the required Public Hearing on the proposal on November 3, 2021, and ultimately recommended in a 5-1 vote to not approve the proposed amendments as presented. The City Council reviewed the proposed amendments on November 16 and December 7, 2021, amended the proposal, and voted 7-0 to remand the matter back to the Planning Commission. (See complete legislative history at the end of this memo.)

The following sections provide more details about the City Council’s amendments and direction to staff and the Planning Commission.

Amendments Made by the City Council

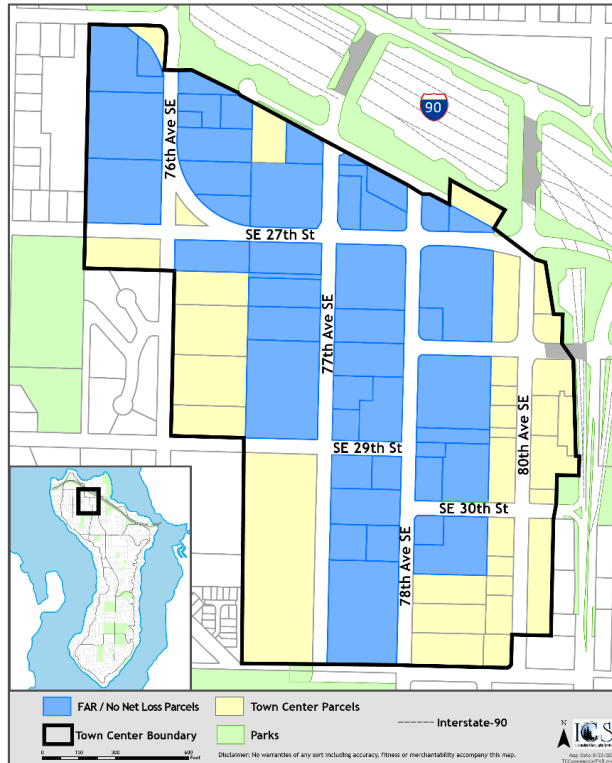
During the first reading of Ordinance No. 21C-28 on November 16, 2021, the City Council voted 6-0 to make a handful of amendments to the proposal prior to the second reading (Denoted in blue in **Exhibit 1**). The most significant of these amendments pertained to the commercial floor area ratio (FAR) and no net loss requirements outlined in the proposal as well as to the eligible uses required adjacent to street frontages.

Revision to Commercial FAR and No Net Loss Requirements

Per the City Council’s amendments, the revised code would include a “greater of the two” requirement for parcels subject to either the commercial FAR *or* no net loss of existing commercial space upon redevelopment. An updated Figure 3 identifies the parcels subject to this requirement. It also effectively combines and replaces the previously proposed Figures 3 and 4, which identified the parcels subject to the FAR and to no net loss (respectively) in separate maps. (See revised Figure 3 on the next page.) Additionally, the City Council added an evaluation requirement of five

years from the date of the Ordinance adoption or after 75,000 square feet of retail, restaurant, and/or personal service commercial uses has been authorized through Building Permit issuance.

Figure 3. *Parcels Subject to FAR or No Net Loss Requirement for Required Street Frontage Uses*



Addition of Visual or Performing Arts Uses

The City Council also amended the list of uses required adjacent to street frontages identified in Figure 2 (the “pink lines map”) to include visual or performing arts centers as eligible uses to meet the commercial FAR or no net loss requirement. During the second reading of Ord. No. 21C-28, the Council provided additional direction related to this amendment. That direction is addressed in the next section of this memo.

City Council Direction to Staff and the Planning Commission

On December 7, 2021, the City Council remanded the proposal with amendments back to the Planning Commission to reconcile the definitions for eligible uses required adjacent to street frontages and to incorporate additional code language related to visual and performing arts centers. **Exhibit 1** includes staff’s recommendations for addressing the Council’s requests (denoted in red in the exhibit). More details about these recommendations are provided below.

Defining Eligible Uses

To date, discussion regarding eligible commercial uses has been framed in three categories: restaurant, retail, and personal service uses. MICC 19.16.010 defines these categories as follows:

- a) *Restaurant:* An establishment where food and drink are prepared and consumed. Such establishment may also provide catering services.

- b) *Retail use*: An establishment engaged in selling goods or merchandise and rendering services incidental to the sale of such goods.
- c) *Personal services*: A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons.

While the definitions for restaurant and retail use are relatively straight-forward, there has been previous discussion of whether the definition of personal services should be expanded, or another eligible use added, to cover personal affairs services such as banks. Currently, banks are included in the definition for “financial and insurance services” in MICC 19.16.010. The Planning Commission may choose to amend the definition for personal services, define a new term such as “personal affairs services,” or simply add banks to the list of eligible uses should they wish to do so.

The City Council also added visual arts and performing centers as eligible uses during the first reading of Ord. No. 21C-28. MICC 19.16.010 includes the following definitions that align with the intent of the Council’s additions:

- a) *Museums and art exhibitions*: The exhibition of objects of historical, cultural, and/or educational value that are not offered for sale.
- b) *Theaters*: Establishments primarily engaged in either (1) producing live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, and other performing artists or (2) exhibiting motion pictures or videos.

Staff recommend using the complete definition of “museums and art exhibitions” and the first definition of “theaters” (producing live presentations involving the performance of...and other performing artists) to satisfy the “visual arts and performing arts centers” requirement.

The revised code language proposed for MICC 19.11.020(B)(1) references MICC 19.16.010 and incorporates the five definitions outlined above.

Other Amendments Pertaining to Visual or Performing Arts Center Uses

Finally, staff incorporated language into the revised proposal to satisfy the City Council’s direction to provide the following for a development that elects to pursue visual or performing arts centers as its eligible use:

- a) An exemption from the 60’ contiguous street frontage requirement; and
- b) The establishment of a 5,000-square foot cap for these uses that can be applied to the commercial FAR or no net loss requirement.

The Planning Commission may propose alternatives to these provisions should they wish to do so.

Public Outreach on ZTR21-004

In preparation for the Public Hearing scheduled for February 16, 2022, City staff have conducted/planned the following outreach:

- Bulletin Notice: January 10, 2022
- Published in *Mercer Island Reporter*: January 12, 2022
- Posted on City Website and Planning Commission Calendar: January 13, 2022

- Mailed (700+ addressees) and Posted On-Site: January 14, 2022
- Business E-mail List (900+ addressees): Scheduled for January 27, 2022

Additionally, City staff and the Chamber of Commerce are conducting targeted outreach to Town Center commercial property owners and managers to solicit feedback on the proposed amendments and to make them aware of the Public Hearing. Staff will share relevant input from these efforts with the Planning Commission at least five business days before the scheduled Public Hearing.

NEXT STEPS

Staff will research and address any questions raised after tonight's presentation and discussion no later than five business days before the Public Hearing scheduled for February 16, 2022. The Planning Commission will conduct the Public Hearing and then deliberate a recommendation to the City Council, to be delivered no later than March 15, 2022, as directed.

EXHIBITS

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LEGISLATIVE HISTORY

- June 2, 2020: The City Council passed [Ordinance No. 20-12](#), which established a 6-month moratorium on major new construction south of SE 29th Street in the TC zoning designation. The City Council indicated that the City desired to possibly complete updates and/or amendments to development regulations within the Mercer Island Town Center, including requirements for various types of commercial space.
- July 21, 2020: The City Council completed the required Public Hearing for Ordinance No. 20-12 on the Town Center Moratorium and directed staff to prepare an amended interim Ordinance reducing the size of the geographic area subject to moratorium and include additional findings of fact.
- September 1, 2020: The City Council adopted [Ordinance No. 20-18](#) with a reduced size of the geographic area subject to moratorium and included additional findings of fact. Additionally, the City Council provided direction to staff to prepare a scope of work for a Town Center commercial analysis to inform options for resolving the moratorium and a corresponding budget appropriation request.
- November 17, 2020: The City Council completed the required Public Hearing and adopted [Ordinance No. 20-26](#) renewing the moratorium for another 6-month period with its current geographic area as previously amended.
- December 1, 2020: The City Council adopted [Ordinance No. 20-29](#), the 2021-22 Biennial Budget. Included in the budget is a \$50,000 one-time appropriation for qualified professional services to perform a Town Center commercial analysis and support the completion of any necessary updates and/or amendments to development regulations within the Mercer Island Town Center to be responsive to the moratorium. The City Council also approved [Resolution No. 1594](#), establishing the 2021 docket for amendments to the Comprehensive Plan and development regulations. Included in the docket is a placeholder for amending the Town Center Sub-Area Plan and corresponding development regulations as necessary to be responsive to the moratorium.
- April 6 and 20, 2021: The City contracted with the firm Community Attributes, Inc. (CAI) to analyze the demand for additional ground floor commercial uses and the feasibility of requiring such uses in new buildings. On April 6, the City Council received a presentation on the findings of this analysis and

commenced discussion ([AB 5841](#) and [associated presentation](#)). Further City Council discussion ensued on April 20, and the Council directed staff to complete additional analysis and to research legislative options in addition to a “no net loss” option.

- May 4, 2021: The City Council completed the required Public Hearing and adopted [Ordinance No. 21-09](#) renewing the moratorium for another 6-month period with its current geographic area as previously amended.
- July 6, 2021: Staff presented a number of legislative options to City Council ([AB 5910](#) and [associated presentation](#)). Council provided further direction to review and propose:
 - Updates to [MICC 19.11.020\(B\)](#) Retail Use Required Adjacent to Street Frontages;
 - A new TC commercial Floor Area Ratio (FAR) requirement; and
 - The applicability of a new TC “no net loss” requirement.
- September 21, 2021: The City Council directed staff to work with the Planning Commission to develop the necessary code amendments to [MICC 19.11.020\(B\)](#), including updating [MICC 19.11.020\(B\)](#) Figure 2 Retail Use Required Adjacent to Street Frontages; instituting a Town Center Commercial FAR requirement; and adding a selective “No Net Loss” provision ([AB 5933](#) and [associated presentation](#)).
- September 22, and October 20, 2021: Staff presented the necessary code amendments to implement the City Council direction to the Planning Commission for review and comment. (Video recordings: [September 22](#) and [October 20](#))
- November 3, 2021: The Planning Commission completed the required Public Hearing, deliberated the proposed amendments, and voted 5-1 on a recommendation to send to the City Council to not adopt the proposed amendments on November 16. ([Video recording](#))
- November 16, 2021: The City Council adopted [Ordinance No. 21C-27](#), which renews the moratorium for an additional 6-month period with its current geographic area as previously amended ([AB 5976](#)), held the required Public Hearing, and conducted the first reading of Ordinance No. 21C-28 ([AB 5977](#)).
- December 7, 2021: The City Council conducted the second reading of Ordinance No. 21C-28 and remanded the ordinance back to the Planning Commission for a new public hearing and recommendation ([AB 5985](#)).