



# PLANNING COMMISSION REGULAR MEETING AGENDA

Wednesday, June 6, 2018  
Mercer Island City Hall

**CALL TO ORDER & ROLL CALL**

**6:00 PM**

## **SPECIAL BUSINESS**

### **Agenda Item #1: Election of Chair and Vice-Chair**

Election of Planning Commission Chair and Vice-Chair.

### **Agenda Item #2: Planning Commission Bylaws**

Review and adopt amendments to the Planning Commission Bylaws.

## **APPEARANCES**

This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:

- Speak audibly into the podium microphone
- State your name and address for the record
- Limit your comments to three minutes

*The Commission may limit the number of speakers and modify the time allotted.  
Total time for appearances: 15 minutes*

## **REGULAR BUSINESS**

### **Agenda Item #3: CPA17-002 – SJCC / FASPS / Herzl-Ner Tamid**

Second meeting to review proposed amendments to the Comprehensive Plan and Code.

### **Agenda Item #4: CPA18-001 – Arts & Culture Comprehensive Plan Amendment**

Second meeting to review and discuss proposed Comprehensive Plan amendments prepared by the Arts Council, supporting the cultural arts.

### **Agenda Item #5: ZTR18-001 – Procedural Code Amendment**

Review and deliberation followed by recommendation to City Council on proposed Procedural Code amendments.

### **Agenda Item #6: CPA18-001 – Critical Areas Comprehensive Plan Amendment**

Introduction and discussion of docketed Comprehensive Plan Amendment No. 7, a place holder for possible critical areas goals and policies.

## **OTHER BUSINESS**

Planned Absences for Future Meetings

Next Regularly Scheduled Meeting: June 20, 2018 at 6:00PM

## **ADJOURN**

## **PLANNING COMMISSIONERS**

**Carolyn Boatsman**

**Bryan Cairns**

**Tiffin Goodman, Vice-Chair**

**Daniel Hubbell, Chair**

**Jennifer Mechem**

**Lucia Pirzio-Biroli**

**Ted Weinberg**

**PHONE: 206-275-7729**

**WEB: [www.mercergov.org](http://www.mercergov.org)**

**AGENDA TIMES ARE APPROXIMATE**

**CITY COUNCIL CHAMBERS - MERCER ISLAND CITY HALL  
9611 SE 36TH STREET; MERCER ISLAND, WA 98040**

**Mercer Island Planning Commission Bylaws**  
**(Rules of Procedure)**  
Adopted: \_\_\_\_\_

**ARTICLE I      GENERAL PROVISIONS**

Section 1.1      Relationship to Other Regulations. These bylaws are supplementary to chapter 3.46 Mercer Island City Code (“MICC”) and chapter 35A.63 Revised Code of Washington (“RCW”).

Section 1.2      Purpose and Responsibilities of Commission. The Planning Commission's role is to advise the City Council on growth management issues, land use policies, and development regulations. The Planning Commission (hereinafter “Commission”) is also responsible for making recommendations to the City Council on proposed street vacations and rezones. The members of the Commission accept the responsibility of the office and declare their intention to execute the duties defined under state law and city code to the best of their ability and to respect and observe the requirements established by the City Council.

**ARTICLE II      POWERS OF COMMISSION, MEMBERS, AND OFFICERS**

Section 2.1      Powers of Commission. The Commission shall undertake the duties and responsibilities defined in chapters 3.46 and 19.15 MICC, including acting as a research agency, and serving in an advisory capacity to the City Council.

Section 2.2      Members. The Commission shall consist of 7 members appointed by the Mayor and confirmed by the City Council. Membership on the Commission shall be limited to residents of Mercer Island. The term of each member is 4 years, unless removed earlier by the process set forth in Section 2.5 of these bylaws. No member may serve longer than two consecutive terms. Vacancies occurring other than through the expiration of terms shall be filled by the Mayor and confirmed by the City Council for the unexpired term.

Section 2.3      Officers and Duties. The officers of the Commission shall consist of a Chair and a Vice-Chair. Chair / Vice-Chair duties are to:

1. Run / Facilitate Commission meetings in a fair, efficient, productive, and informative manner;
2. Act as a spokesperson to City Council and, when necessary, to the public and/or media; and
3. Work with Development Services Group staff on schedule / calendar and meeting agendas.

Section 2.4 Officer Election and Vacancies. Officers shall be elected for a term of 1 calendar year at the first regular meeting on or after June 1 and annually thereafter. To elect a new Chair, Commissioners shall nominate members of the Commission for a given office. Nominations do not require a second. When it appears that no one else wishes to make any further nomination, the current Chair will ask again for further nominations and if there are none, the Chair will declare the nominations closed. A motion to close the nominations is not necessary.

After nominations have been closed, voting for the Chair takes place in the order nominations were made. A tie vote results in a failed nomination, and the Chair will call for a vote on the next nominee. As soon as one of the nominees receives a majority vote of the Commissioners present, the Chair will declare him/her elected. No votes may be taken on any remaining nominees. Upon election, the newly-appointed Chair conducts the election for Vice Chair following the same process.

In the event of an officer vacancy, a replacement Chair and/or Vice-Chair shall be elected following the same process as above to serve the unexpired term of the vacant office(s). In the absence of the Chair and Vice-Chair, members shall elect a Chair *pro tem* following the same process as above to serve only for the meeting at which he/she is elected.

Section 2.5 Removal. Members may be removed by the Mayor, after public hearing and with the approval of City Council, for inefficiency, neglect of duty, or malfeasance in office.

### **ARTICLE III MEETINGS**

Section 3.1 Regular Meetings. Regular meetings of the Commission shall be held on the first and third Wednesday of each month at 6:00 P.M., or such other day and time as determined by the Commission, in the Mercer Island City Hall or such other place as the Commission may determine. Any regular meeting may be canceled or re-scheduled by the Chair, or in his/her absence, by the Vice Chair. If a regular meeting falls on a legal holiday, the Commission shall have the discretion to hold the meeting on the next business day which is not a holiday.

Section 3.2 Special Meetings. Special meetings of the Commission may be called by any of the following: the Chair, or in his/her absence, by the Vice Chair, the City Manager, or the Mayor.

Section 3.3 Quorum. A majority of the Commission membership shall constitute a quorum. For the conduct of business, a majority vote of the members in attendance at a meeting, provided a quorum is present, shall be sufficient to act.

Section 3.4 Open to the Public. All regular and special meetings of the Commission are open to the public. The scheduling and holding of all Commission meetings is to be done in accordance with these bylaws and Washington state law.

Section 3.5 Legislative Public Hearings. The Commission is responsible for conducting public hearings. The Commission recognizes that public hearings are intended to obtain public input on legislative recommendations on matters of policy. Public hearings are required when the city addresses such matters as comprehensive land use plans, street vacations, or development regulations.

#### **ARTICLE IV CONDUCT OF MEETINGS**

Section 4.1 Conduct. All meetings of the Commission shall be conducted in accordance with these bylaws and Washington state law. Where these bylaws fail to provide otherwise, the meetings shall be conducted in accordance with parliamentary rules and procedures in the most current edition of the Robert's Rules of Order.

Section 4.2 Chair. The Chair shall preside at all Commission meetings and has the powers generally assigned such office in conducting the meetings. It shall be the Chair's duty to see that the transaction of Commission business is in accord with these bylaws and Washington state law. The Chair of the meeting shall be a full voting member but shall not initiate or second a motion.

Section 4.3 Agenda Setting. An agenda for every regular meeting shall be prepared and distributed by the Development Services Group to each member not less than 5 calendar days prior to the date of the meeting at which such agenda is to be considered. The agenda shall be accompanied with a complete copy of the unapproved minutes of the previous meeting, staff reports, and other materials as may pertain to the agenda.

Section 4.4 Agenda Modification. All meetings shall be conducted in accordance with the agenda. To the extent it does not violate public notice requirements, the printed agenda of a regular meeting may be modified, supplemented, or revised at the beginning of the meeting by the affirmative vote of the majority of Commission members present.

Section 4.5 Minutes. A staff liaison shall be provided by the Development Services Group to prepare minutes of meetings and keep such record, attend to correspondence of the Commission, and perform such other duties as may be deemed necessary. Minutes of all regular meetings shall be kept and made part of a permanent public record. All actions of the Commission shall be considered conclusive as to general import as of the date of such action. Details of phraseology, conditions,

etc., shall be subject to correction at the time of consideration and approval of the meeting minutes.

## **ARTICLE V PUBLIC INVOLVEMENT**

Section 5.1. Purpose. High quality public input is desired by the Commission and is needed to help inform the Commission's analysis, recommendations, and decisions. The Commission goals for public involvement are to:

1. Undertake a fair, meaningful, and effective outreach to affected parties for each work item, with opportunities for all interested parties to participate in a comfortable setting.
2. Use a consistent and adaptable process that allocates limited time efficiently and encourages input that is relevant, clear, and specific.

Section 5.2 Time Limits. Time limits on public input should be established to allow for the efficient use of the Commission's time. Generally, the Commission will establish time limits as follows:

1. For public comment related to legislative matters such as the adoption of amendments to development regulations or the Mercer Island Comprehensive Plan, each speaker is limited to 3 minutes speaking time.
2. For public comment related to quasi-judicial action on project reviews or appeals, the Commission shall establish a reasonable time limit for each speaker based upon the anticipated volume of public comment and the allotted time for the public hearing. Each speaker shall have a minimum of 3 minutes speaking time.
3. The Commission shall have the discretion to increase speaking times if necessary.

Section 5.3 Conduct. The public may address the Commission only after being recognized by the Chair of the meeting. All speakers must give their names and address. If audience dialogue becomes disruptive, the Chair may recess the meeting or request that the meeting be adjourned.

Section 5.4 Alternative Communication. To communicate with the Commission on a matter not scheduled for public hearing, the public may communicate with the Commission in writing and/or speak during an optional portion of each meeting entitled "Appearances" near the beginning of the agenda. The Commission shall have the discretion to omit "Appearances" from the agenda. The Chair of the meeting shall endeavor to minimize the amount of cumulative redundant testimony by the public.

## **ARTICLE VI CONFLICT OF INTEREST, EX-PARTE CONTACT, AND APPEARANCE OF FAIRNESS DOCTRINE**

Mercer Island Planning Commission Bylaws (adopted: \_\_\_\_\_)

Section 6.1 Conflict of Interest. Chapter 42.23 RCW prohibits commissioners from using their positions to secure special privileges or special exemptions for themselves or others. If an actual or perceived conflict of interest exists that affects the work of the Commission, it is each commissioner's responsibility to refrain from any prior discussion of such matter with other members of the Commission, to openly describe the issue, and then recuse him/herself from the meeting during the period of discussion and action thereon.

**ARTICLE VII DECISION-MAKING AND RECOMMENDATIONS**

Section 7.1 Recommendations on Legislative Matters. The Commission's goal is to provide a consensus recommendation to the City Council on legislative matters; in all cases, however, a majority vote is taken. To document the recommendations of the Commission, the Development Services Group shall prepare a written statement or memorandum, including the facts and rationale for the final recommendations. This statement is then approved by the Chair whose responsibility it is to present the recommendations to the City Council on behalf of the Commission when requested by either the City Council or City staff.

**ARTICLE VIII ATTENDANCE**

Section 8.1 Regular and Special Meetings. Attendance at regular and special meetings is expected of all Commission members.

Section 8.2 Absence. Any member anticipating absence from a meeting should notify the Chair and staff liaison from the Development Services Group.

Section 8.3 Chronic Absences. Chronic absences of any member may be referred by the Commission to the Mayor for a public hearing pursuant to Section 2.5 of these bylaws. "Chronic," for the purposes of this section, means 6 or more absences in a 12-month period.

**ARTICLE IX AMENDMENTS TO BYLAWS**

These bylaws may be amended by a majority vote (4 votes) of the entire membership of the Commission.

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

Planning Commission Chair: \_\_\_\_\_

Mercer Island Planning Commission Bylaws (adopted: \_\_\_\_\_)



## **DEVELOPMENT SERVICES GROUP**

9611 SE 36TH ST., MERCER ISLAND, WA 98040  
(206) 275-7605

**TO:** Planning Commission

**FROM:** Nicole Gaudette, Senior Planner

**DATE:** June 6, 2018

**RE:** CPA17-002 Proposed Comprehensive Plan Amendment

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### **Summary**

On April 4, 2018, staff and the applicant for the SJCC / FASPS / Herzl-Ner Tamid comprehensive plan amendment provided an introduction to the Planning Commission. The purpose of this introductory meeting provided an: 1) overview of the proposed legislative actions; 2) described the “concept” for the site that the applicant is proposing; and 3) solicited feedback or additional guidance from the Planning Commission.

The properties affected by these proposed legislative actions area: 3801 East Mercer Way (occupied by the Stroum Jewish Community Center or SJCC), 9824 SE 40<sup>th</sup> St and 3975 99<sup>th</sup> Ave SE (owned by the SJCC), 3700 and 3602 E Mercer Way and vacant properties to the west and south of 3700 E Mercer Way (occupied by Herzl-Ner Tamid), 3795 E Mercer Way (occupied by the French American School or FASPS), 3809 and 3901 97<sup>th</sup> Ave SE and a vacant property to the north of 3809 97<sup>th</sup>, and 9740 and 9756 SE 40<sup>th</sup> Street (owned by FASPS). All three of these organizations (collectively, the “Applicant”) are looking for ways to facilitate their long-term needs on these sites.

### **Proposed Legislative Actions**

The proposed comprehensive plan amendment will affect all contiguous properties, creating a new land use designation and associated comprehensive plan policies. Along with the proposed comprehensive plan amendment, the applicant has also proposed a code amendment and a rezone. The Applicant is interested in working with the City to first develop a set of comprehensive plan policies and goals, followed by a code amendment and rezone, and then develop a master plan for future development of their properties.

A comprehensive plan amendment, a code amendment, and a rezone are legislative actions. The final proposal for the comprehensive plan amendment will be brought to the Planning Commission for a public hearing, tentatively scheduled for August 29, 2018. Public comment is encouraged on the comprehensive plan amendment until the Planning Commission makes a recommendation, following

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CPA17-002 – SJCC / FASPS / Herzl-Ner Tamid Comprehensive Plan Amendment

the public hearing. Following the close of the public hearing, the Planning Commission will deliberate and vote on a recommendation to the City Council who will make the final decision on the proposed amendments.

Staff anticipates that the code amendment and rezone will be initiated later in the process, once the Planning Commission is largely done with their review of the comprehensive plan amendment. Public comment will also be encouraged on the code amendment and rezone, which will implement the comprehensive plan amendment.

Finally, a master plan is a process to provide greater flexibility and, consequently, more creative and imaginative design than generally is possible under conventional zoning regulations. A master plan allows development to occur in phases and provides additional long-term guidance for a large area so that the continuity of the overall development is maintained. A master plan can be used to coordinate multiple ownerships into a unified development. Staff anticipates that a master plan will make sense for this project.

### **Concept**

The proponents of the comprehensive plan amendment would like to do a land swap among themselves, so they can either build new facilities or expand existing facilities to provide additional programming at their facilities. The properties are currently zoned R-8.4, R-9.6, B, and C-O (Single-family residential, Business and Commercial-Office). Some properties span multiple zones. The development and impacts of the facilities would be better addressed by a new zone specific for community facilities.

The attached plans (Exhibit A) show an initial concept of how future land uses could be developed on the properties. The applicant has also provided an initial narrative (Exhibit B) describing how their initial proposal meets the criteria for a comprehensive plan amendment. The amendment may change as it progresses through the review process. The requested comprehensive plan amendment, code amendment, and accompanying rezone are necessary to facilitate the proposed development on these properties.

### **Comprehensive Plan Amendment Goals and Policies**

The applicant has provided draft goals and policies (Exhibit C) to be added to the Land Use chapter of the city's Comprehensive Plan. We will review these draft goals and policies at this meeting. One, or all, or any number of the draft goals and policies can be recommended to move forward towards final draft for adoption. The draft goals and polices can be modified by the planning commission to reflect the interests of the city. Current goals and policies of the Land Use chapter of the Comprehensive Plan have been provided for your reference (Exhibit D).

### **Criteria**

As the Commission considers the concept described by the applicant, staff recommends that the Commission keep in mind the criteria for amending a comprehensive plan (MICC 19.15.050), in particular:

- A. What aspects of the proposed Comprehensive Plan amendment address the changing needs of the community on Mercer Island?
- B. What design aspects should the applicant address to ensure that the proposed land use is consistent with adjacent land use and development patterns?



- C. What aspects of the proposed concept will benefit Mercer Island as a community?

**Process**

A comprehensive plan amendment is a legislative action. The final proposal will be brought to the Planning Commission at a public hearing to obtain comments. Following the close of the hearing, the Planning Commission will deliberate and vote on a recommendation to the City Council who will make the final decision on the proposed amendments.

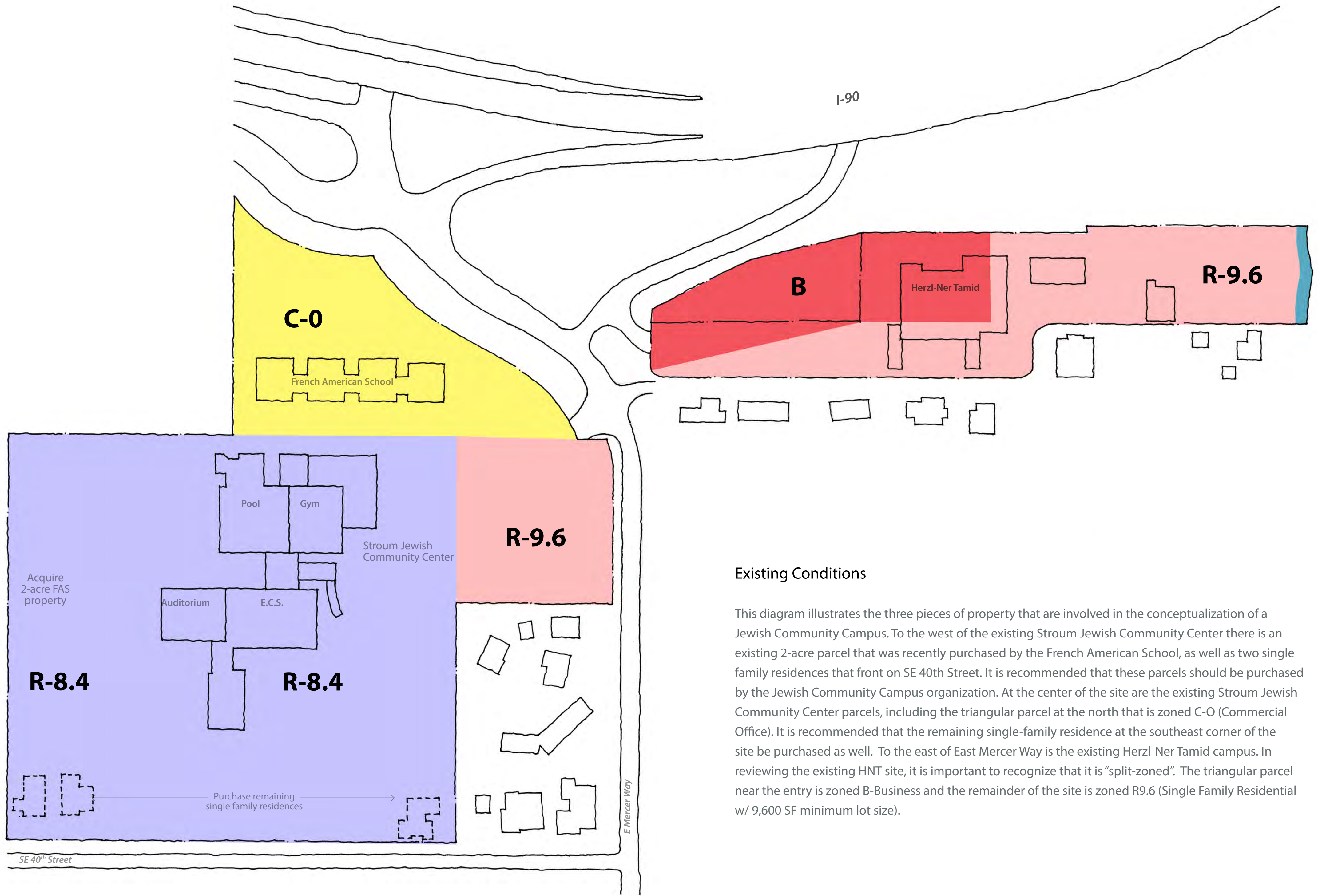
**Recommended Action**

Discuss the draft goals and policies of the Comprehensive Plan amendment taking into consideration the presentations by staff and the applicants, and comments from the public. Provide a recommendation to staff regarding which draft goals and policies should be moved forward in the process to be considered for adoption into the Comprehensive Plan, with or without recommended changes.

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Exhibits:

- A. Initial Concept Plans
- B. Initial Narrative
- C. Draft Goals and Policies
- D. Land Use Goals and Policies of the Comprehensive Plan

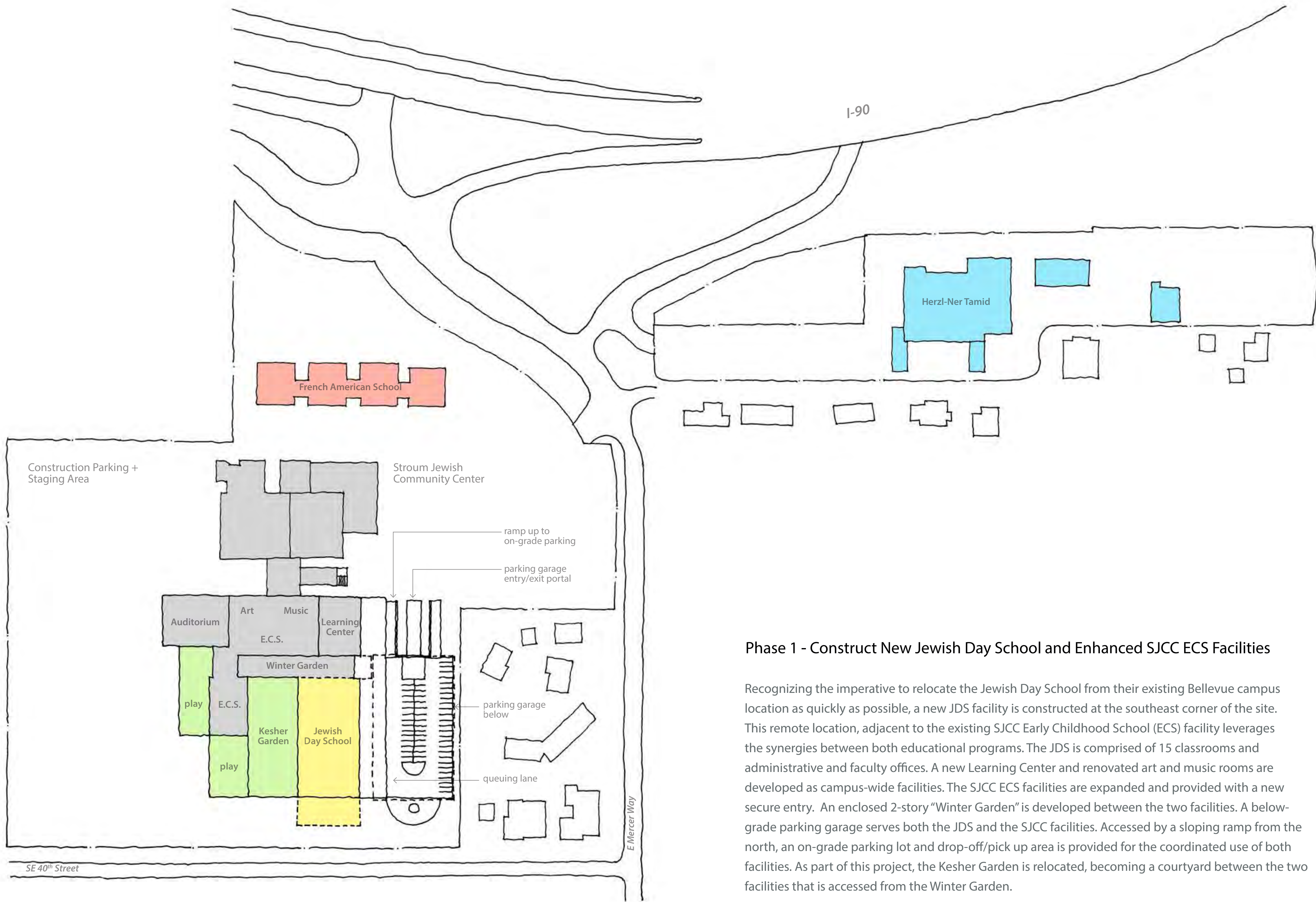


**Existing Conditions**

This diagram illustrates the three pieces of property that are involved in the conceptualization of a Jewish Community Campus. To the west of the existing Stroum Jewish Community Center there is an existing 2-acre parcel that was recently purchased by the French American School, as well as two single family residences that front on SE 40th Street. It is recommended that these parcels should be purchased by the Jewish Community Campus organization. At the center of the site are the existing Stroum Jewish Community Center parcels, including the triangular parcel at the north that is zoned C-O (Commercial Office). It is recommended that the remaining single-family residence at the southeast corner of the site be purchased as well. To the east of East Mercer Way is the existing Herzl-Ner Tamid campus. In reviewing the existing HNT site, it is important to recognize that it is "split-zoned". The triangular parcel near the entry is zoned B-Business and the remainder of the site is zoned R9.6 (Single Family Residential w/ 9,600 SF minimum lot size).

**Concept Design for Potential Jewish Community Campus**

June 13, 2017 / March 22, 2018

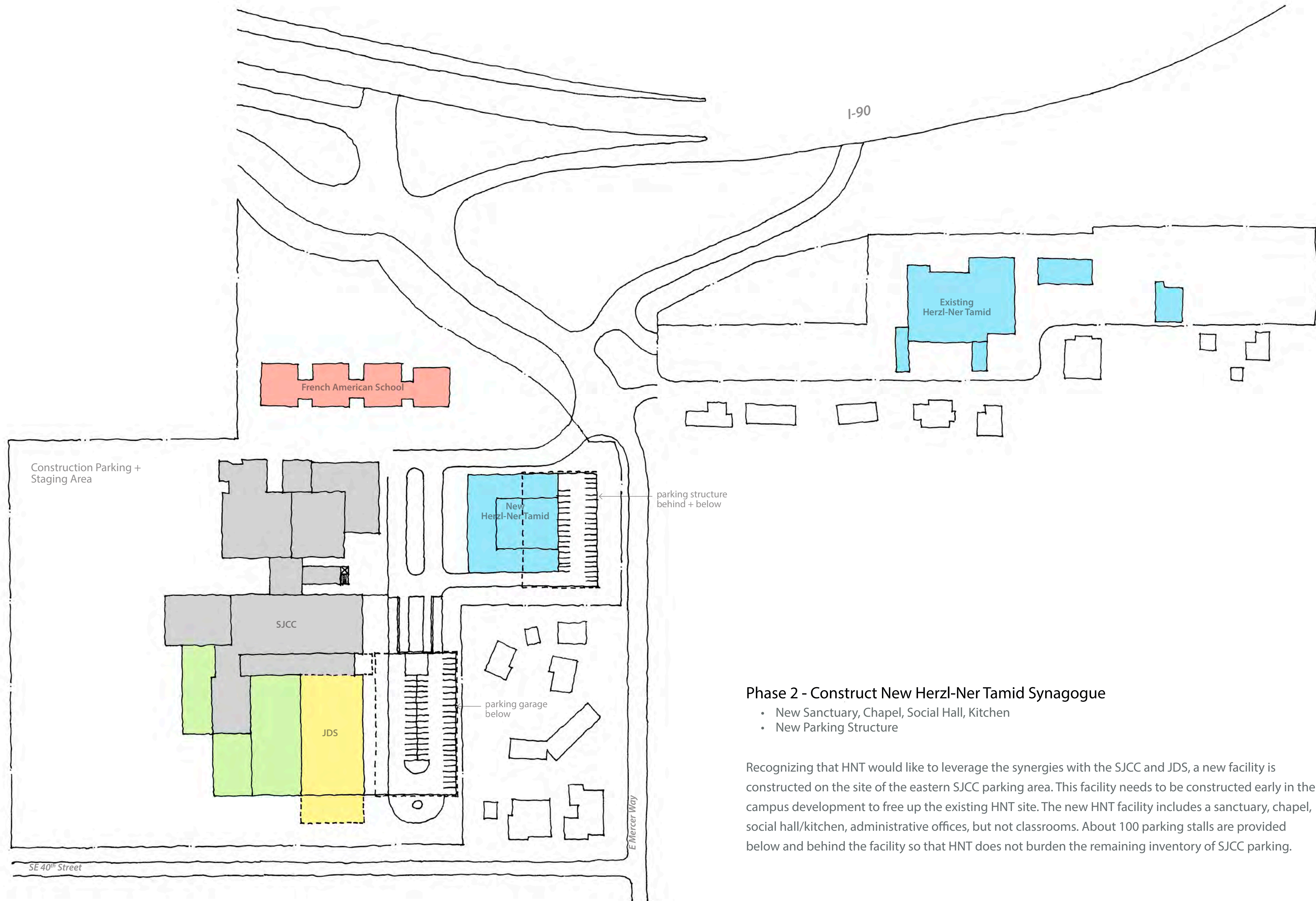


### Phase 1 - Construct New Jewish Day School and Enhanced SJCC ECS Facilities

Recognizing the imperative to relocate the Jewish Day School from their existing Bellevue campus location as quickly as possible, a new JDS facility is constructed at the southeast corner of the site. This remote location, adjacent to the existing SJCC Early Childhood School (ECS) facility leverages the synergies between both educational programs. The JDS is comprised of 15 classrooms and administrative and faculty offices. A new Learning Center and renovated art and music rooms are developed as campus-wide facilities. The SJCC ECS facilities are expanded and provided with a new secure entry. An enclosed 2-story "Winter Garden" is developed between the two facilities. A below-grade parking garage serves both the JDS and the SJCC facilities. Accessed by a sloping ramp from the north, an on-grade parking lot and drop-off/pick up area is provided for the coordinated use of both facilities. As part of this project, the Keshher Garden is relocated, becoming a courtyard between the two facilities that is accessed from the Winter Garden.

### Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018



### Phase 2 - Construct New Herzl-Ner Tamid Synagogue

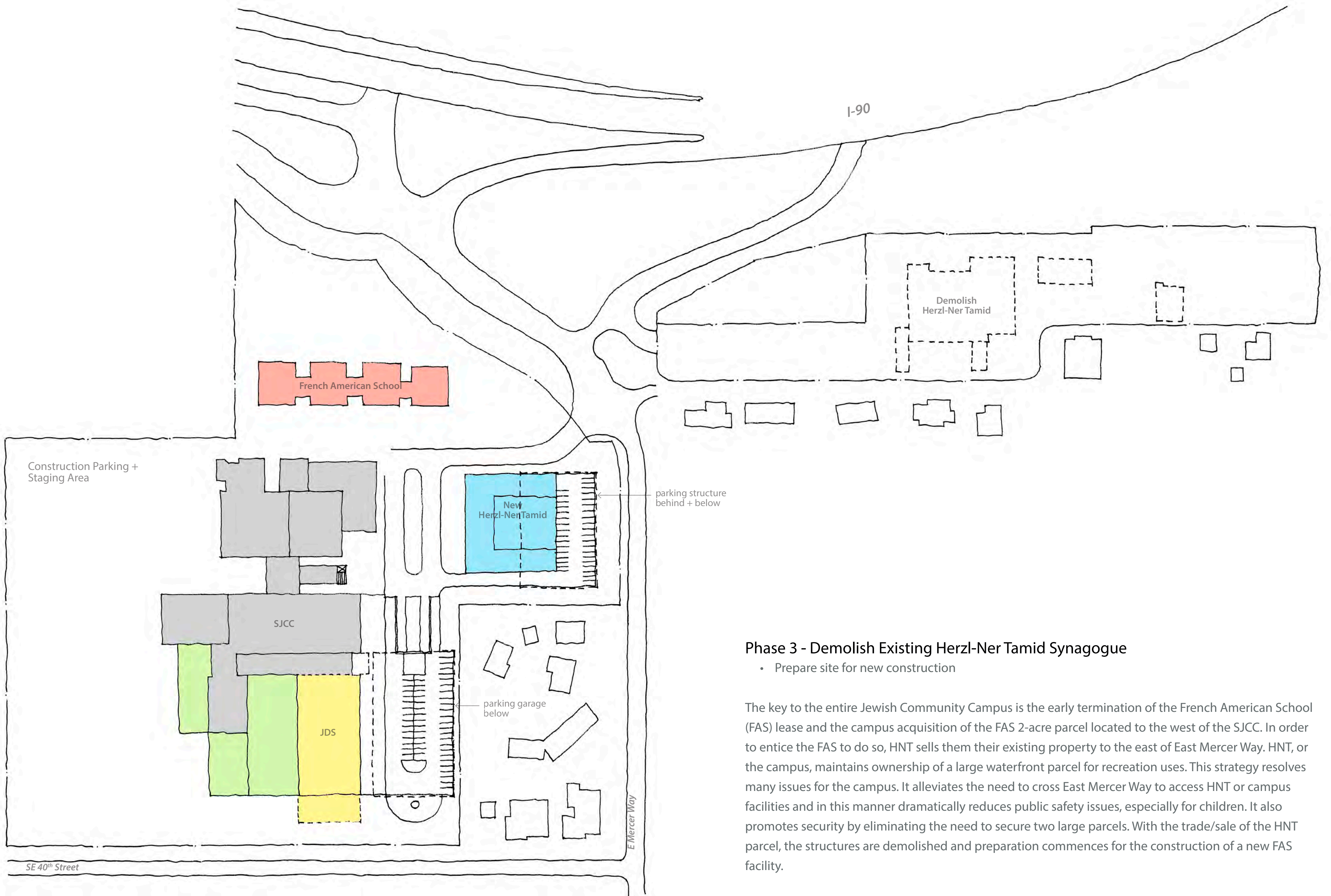
- New Sanctuary, Chapel, Social Hall, Kitchen
- New Parking Structure

Recognizing that HNT would like to leverage the synergies with the SJCC and JDS, a new facility is constructed on the site of the eastern SJCC parking area. This facility needs to be constructed early in the campus development to free up the existing HNT site. The new HNT facility includes a sanctuary, chapel, social hall/kitchen, administrative offices, but not classrooms. About 100 parking stalls are provided below and behind the facility so that HNT does not burden the remaining inventory of SJCC parking.

## Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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### Phase 3 - Demolish Existing Herzl-Ner Tamid Synagogue

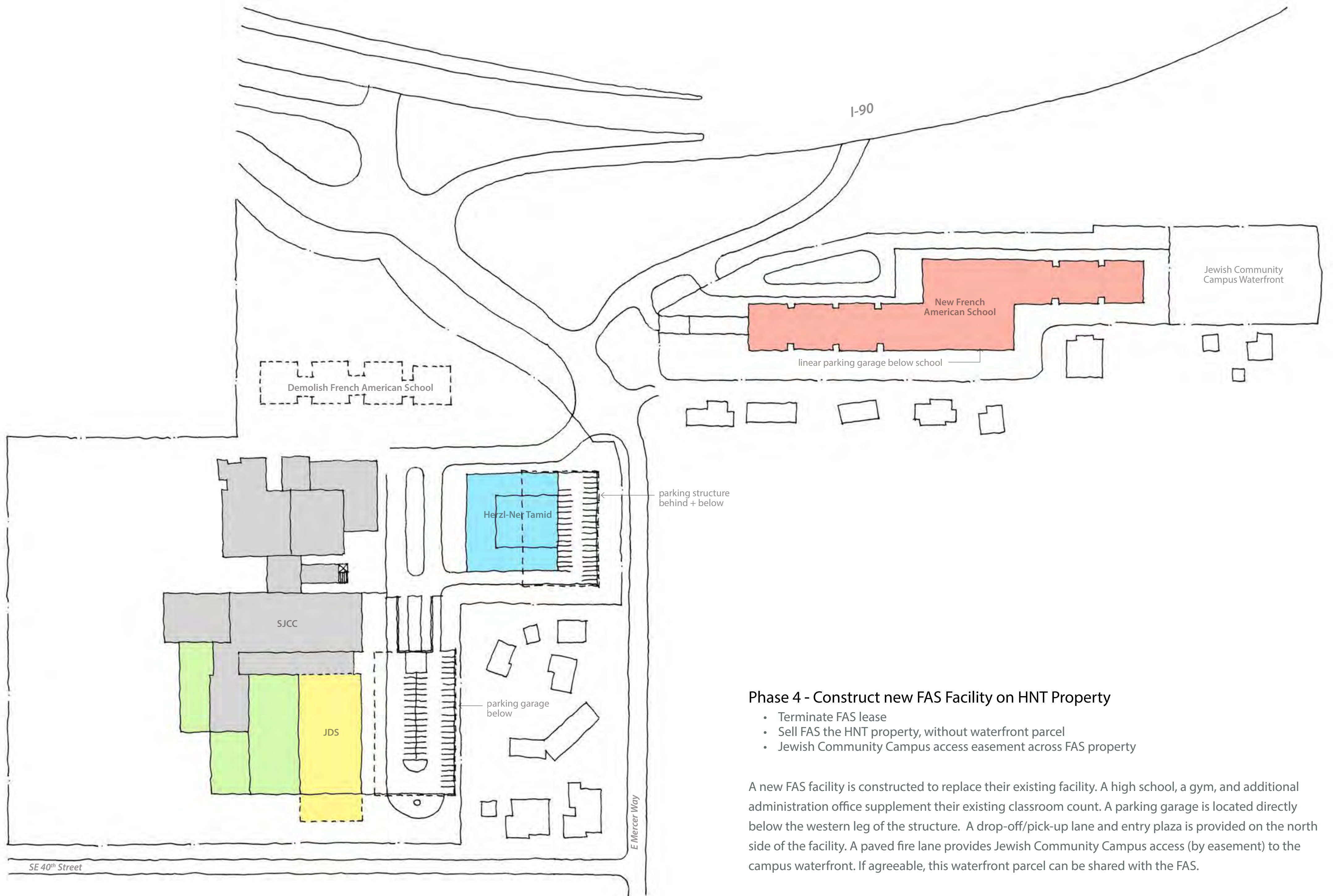
- Prepare site for new construction

The key to the entire Jewish Community Campus is the early termination of the French American School (FAS) lease and the campus acquisition of the FAS 2-acre parcel located to the west of the SJCC. In order to entice the FAS to do so, HNT sells them their existing property to the east of East Mercer Way. HNT, or the campus, maintains ownership of a large waterfront parcel for recreation uses. This strategy resolves many issues for the campus. It alleviates the need to cross East Mercer Way to access HNT or campus facilities and in this manner dramatically reduces public safety issues, especially for children. It also promotes security by eliminating the need to secure two large parcels. With the trade/sale of the HNT parcel, the structures are demolished and preparation commences for the construction of a new FAS facility.

## Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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#### Phase 4 - Construct new FAS Facility on HNT Property

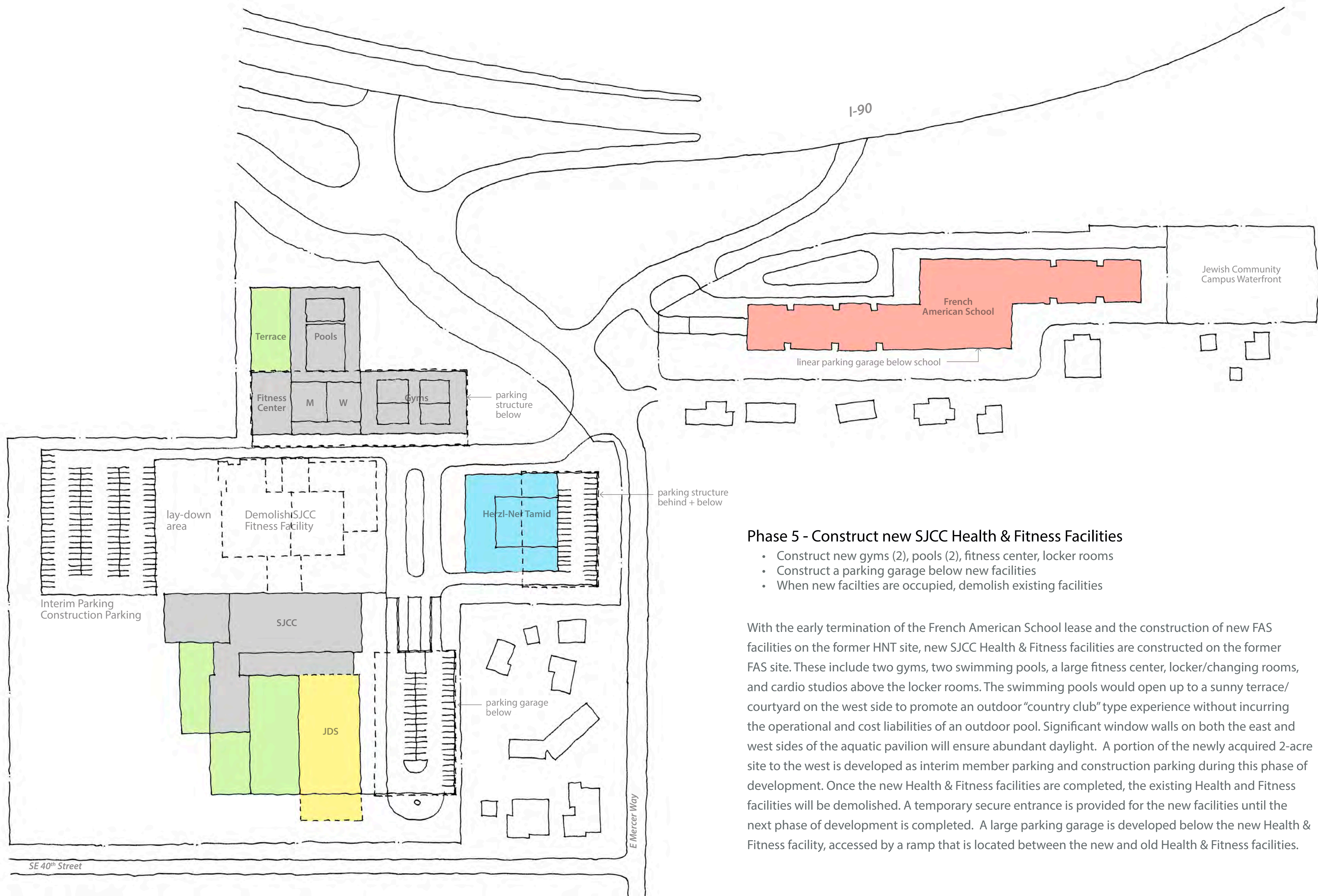
- Terminate FAS lease
- Sell FAS the HNT property, without waterfront parcel
- Jewish Community Campus access easement across FAS property

A new FAS facility is constructed to replace their existing facility. A high school, a gym, and additional administration office supplement their existing classroom count. A parking garage is located directly below the western leg of the structure. A drop-off/pick-up lane and entry plaza is provided on the north side of the facility. A paved fire lane provides Jewish Community Campus access (by easement) to the campus waterfront. If agreeable, this waterfront parcel can be shared with the FAS.

### Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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### Phase 5 - Construct new SJCC Health & Fitness Facilities

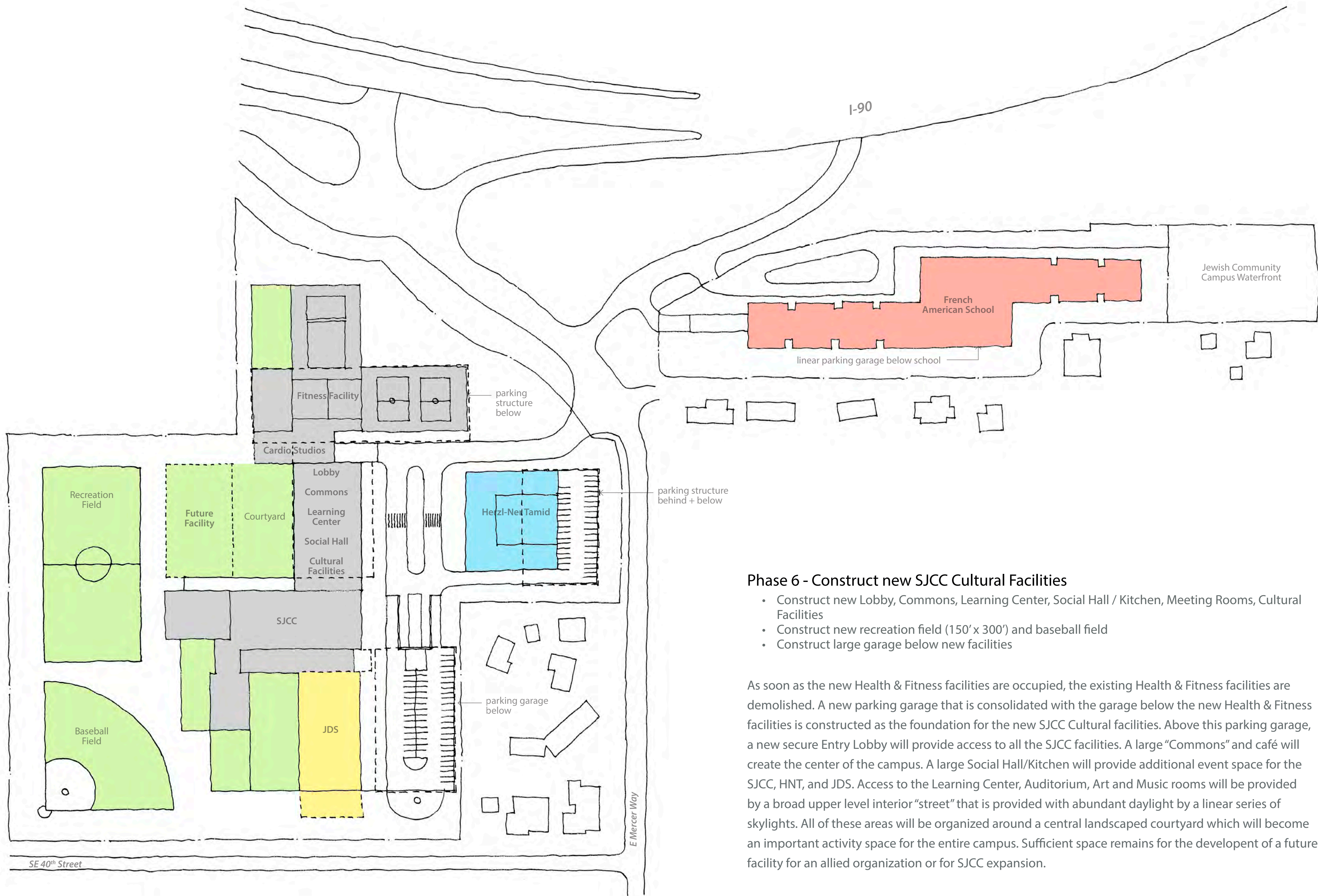
- Construct new gyms (2), pools (2), fitness center, locker rooms
- Construct a parking garage below new facilities
- When new facilities are occupied, demolish existing facilities

With the early termination of the French American School lease and the construction of new FAS facilities on the former HNT site, new SJCC Health & Fitness facilities are constructed on the former FAS site. These include two gyms, two swimming pools, a large fitness center, locker/changing rooms, and cardio studios above the locker rooms. The swimming pools would open up to a sunny terrace/courtyard on the west side to promote an outdoor “country club” type experience without incurring the operational and cost liabilities of an outdoor pool. Significant window walls on both the east and west sides of the aquatic pavilion will ensure abundant daylight. A portion of the newly acquired 2-acre site to the west is developed as interim member parking and construction parking during this phase of development. Once the new Health & Fitness facilities are completed, the existing Health and Fitness facilities will be demolished. A temporary secure entrance is provided for the new facilities until the next phase of development is completed. A large parking garage is developed below the new Health & Fitness facility, accessed by a ramp that is located between the new and old Health & Fitness facilities.

## Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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### Phase 6 - Construct new SJCC Cultural Facilities

- Construct new Lobby, Commons, Learning Center, Social Hall / Kitchen, Meeting Rooms, Cultural Facilities
- Construct new recreation field (150' x 300') and baseball field
- Construct large garage below new facilities

As soon as the new Health & Fitness facilities are occupied, the existing Health & Fitness facilities are demolished. A new parking garage that is consolidated with the garage below the new Health & Fitness facilities is constructed as the foundation for the new SJCC Cultural facilities. Above this parking garage, a new secure Entry Lobby will provide access to all the SJCC facilities. A large "Commons" and café will create the center of the campus. A large Social Hall/Kitchen will provide additional event space for the SJCC, HNT, and JDS. Access to the Learning Center, Auditorium, Art and Music rooms will be provided by a broad upper level interior "street" that is provided with abundant daylight by a linear series of skylights. All of these areas will be organized around a central landscaped courtyard which will become an important activity space for the entire campus. Sufficient space remains for the development of a future facility for an allied organization or for SJCC expansion.

## Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

**WEINSTEIN A+U**  
ARCHITECTS + URBAN DESIGNERS







### Illustrative Site Plan

This drawing illustrates the overall site plan at completion. Each organization (SJCC, JDS, and HNT) maintains visibility and identity upon entry to the campus. Each organization is provided with their own dedicated parking, but can utilize each other's parking on a scheduled basis. The ground level of the campus will be heavily landscaped and provided with significant entry plazas to each facility. Auto and bus drop-off/pick-up is accommodated in front of each facility.

Because of the need to move the new organizations onto the SJCC campus, as well as expanding the SJCC facilities and providing all the necessary parking, it is evident that the campus can only be realized by utilizing below-grade parking garages. These garages present unique security considerations for Jewish Organizations. The security of the campus, as well as the specific security of the parking garages need to be addressed comprehensively. It is anticipated that a tall security fence, merged and fronted with landscaping, will surround the entire campus. It is also anticipated that a staffed security control point will need to be provided at the entry road with sufficient stacking space behind it. Then each facility (SJCC ECS, SJCC Main Facility, HNT, JDS) will need to have secure vestibules and entry conditions.

### Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

**APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT**

Proposed Application and Clear Description of Proposal:

This proposal affects three contiguous properties on Mercer Island located at 3801 E. Mercer Way (currently occupied by Stroum Jewish Community Center), 3700 E. Mercer Way (currently occupied by Herzl-Ner Tamid), and 3795 E. Mercer Way (currently occupied by French American School). The three properties together comprise approximately 18 acres.

The owners of the properties are interested in the possibility of working together to develop a comprehensive master plan to coordinate future development and improvement of the properties for continued private community facilities uses. The properties are currently designated on the Comprehensive Plan, and zoned, R-8.4, R-9.6, Band C-0. All three properties are proximate to the E. Mercer Way intersection with 1-90. See Exhibit C, Vicinity Map and Existing Site Plan.

There is currently no private community facilities category in the City's Comprehensive Plan or Zoning Code. The applicants propose an Amendment to the City's Comprehensive Plan and Zoning Code to create a new Private Community Facilities designation that will enable the applicants to work with each other and with the City to develop a master plan for phased development of existing and future private community facilities on the properties, encompassing private school, religious institution, and non-profit community and recreational facilities. The applicants propose that these Plan and Zoning changes would accommodate flexible design and dimensional standards to encourage superior site and building design outcomes.

(a) How is the proposed amendment consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the Comprehensive Plan and City policies?

The proposed amendment is consistent with the Growth Management Act, RCW 36.70A, because it will facilitate development of private community facilities, including community centers, recreational facilities, schools and educational uses, serving Mercer Island urban residents within the urban area. Allowing comprehensive master planning of the properties will facilitate the efficient use of land. The proposed amendments are consistent with the county-wide planning policies for the same reasons.

The proposed amendments will further encourage and implement the City's Comprehensive Plan, in particular Land Use Goal 17.4, which recognizes that "social and recreation clubs, schools and religious institutions are predominantly located in single family residential areas of the Island," and that "development regulation should reflect the desire to retain valuable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island."

(b) Is there an obvious technical error in the information contained in the Comprehensive Plan, or does the amendment address changing circumstances of the City as a whole?

The existing Comprehensive Plan does not have a designation for Private Community Facilities. Adding such a designation and applying it to the properties owned by the applicants

will correct a deficiency in the current Comprehensive Plan and assist in the implementation of Land Use Goal 17.4.

(c) Is the amendment directed at a specific property? If so, address the following questions:

1. Is the amendment compatible with the adjacent land use and development pattern?

Yes. The properties are adjacent to 1-90 to the north, and residential zoned properties to the south, east and west. The uses proposed have been present on the site for many years and are recognized in the Comprehensive Plan as consistent with being located in single family residential areas of the Island. Land Use Goal 17.4

2. Is the property suitable for development in conformance with the standards under the potential zoning?

Yes. The properties are already developed for private community facilities. The amendments, if adopted, will ensure superior site planning and phased development with standards adopted to address pertinent City policies and priorities.

3. Will the amendment benefit the community as a whole and not adversely affect community facilities or the public health, safety, and general welfare.

The amendment will benefit the community as a whole and the public welfare by facilitating the renovation and improvement of site planning for the properties to serve as resources for the recreational, educational, and spiritual needs of Mercer Island.

# Draft Goals and Policies for the Proposed Community Facilities Zone

1. Staff suggests adding the following item to the existing list on page 10 of the Land Use chapter of the comprehensive plan.

## IV. LAND USE ISSUES

### Outside the Town Center

8. The community needs to accommodate community facilities that support the physical, mental and spiritual health of Mercer Island.

2. Staff suggests adding at least one, or any number of the following goals and policies, to Section V. LAND USE POLICIES, Outside the Town Center, starting on Page 18 of the Land Use chapter of the comprehensive plan.

#### Goal:

A Private Community Facilities Zone zoning designation should be added to the City Zoning Code to enable the co-location of private community facilities utilizing master planning techniques, and accommodating flexible design and dimensional standards, to encourage superior site and building design outcomes.

#### Policy:

Establish general standards regarding aesthetics, height, and other development standards for community facilities which ensure compatibility of design, construction and scale, and minimize the impact of these facilities on surrounding uses.

#### Policy:

Establish land use regulations to address appropriate mitigation of transportation and parking impacts.

#### Policy:

Establish general standards to ensure that the public is provided with safe and functional community facilities.

Policy:

Establish the opportunity to provide for community facility improvements and additions that will further local and regional goals and implement Mercer Island's Comprehensive Plan.

Policy:

Residential uses, including senior housing, affordable housing, workforce housing, and special needs housing, should be allowed when compatible in the community facilities zone.

Policy:

Community facilities are most appropriately located in the general vicinity of existing facilities.

Policy:

All activities in the CF zone are subject to design review and supplemental design guidelines may be adopted.

# Current Comprehensive Plan Land Use Goals and Policies

## IV. LAND USE ISSUES

### 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.
- 2.Accessory housing units are allowed by City zoning regulations, and offer a way to add housing capacity to single family residential zones without disrupting the character.
- 3.Commercial Office and PBZ zones must serve the needs of the local population while remaining compatible with the overall residential character of the community.
- 4.Ongoing protection of environmentally sensitive areas including steep slopes, ravines, watercourses, and shorelines is an integral element of the community's residential character.
- 5.View protection is important and must be balanced with the desire to protect the mature tree growth.
- 6.Within the bounds of limited public resources, open space and park land must be preserved to enhance the community's extraordinary quality of life and recreation opportunities.
- 7.There is a lack of pedestrian and transit connections between the Town Center, the Park and Ride, and Luther Burbank Park.

## V. LAND USE POLICIES

### Outside the Town Center

**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 3 to 5 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.

15.3 Multi-family areas will continue to be low rise apartments and condos and duplex/triplex designs, and with the addition of the Commercial/Office (CO) zone, will be confined to those areas already designated as multi-family zones.

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.

**GOAL 16: Achieve additional residential capacity in single family zones through flexible land use techniques.**

16.1 Use existing housing stock to address changing population needs. Accessory housing units and shared housing opportunities should be considered in order to provide affordable housing, relieve tax burdens, and maintain existing, stable neighborhoods.

16.2 Through zoning and land use regulations provide adequate development capacity to accommodate Mercer Island's projected share of the King County population growth over the next 20 years.

16.3 Promote a range of housing opportunities to meet the needs of people who work and desire to live in Mercer Island.

16.4 Promote accessory dwelling units in single-family districts subject to specific development and owner occupancy standards.



16.5 Infill development on vacant or under-utilized sites should occur outside of critical areas and ensure that the infill is compatible with the surrounding neighborhoods.

**GOAL 17: With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.**

17.1 The Planned Business Zone uses on the south end of Mercer Island are compatible with the surrounding single family zone needs. All activities in the PBZ are subject to design review. Supplemental design guidelines have been adopted.

17.2 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 CO zone are subject to design review and supplemental design guidelines may be adopted.

17.3 Inclusion of a range of residential densities should be allowed when compatible in the Commercial Office (CO) zones. Through rezones or changes in zoning district regulations, multi-family residences should be allowed in all commercial zones where adverse impacts to surrounding areas can be minimized. Housing should be used to create new, vibrant neighborhoods.

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.

#### **Natural Environment Policies**

**GOAL 18: The protection of the natural environment will continue to be a priority in all Island development. Protection of the environment and private property rights will be consistent with all state and federal laws.**

18.1 The City of Mercer Island shall protect environmentally sensitive lands such as watercourses, geologic hazard areas, steep slopes, shorelines, wildlife habitat conservation areas, and wetlands. Such protection should continue through the implementation and enforcement of critical areas and shoreline regulations.

18.2 Land use actions, storm water regulations and basin planning should reflect intent to maintain and improve the ecological health of watercourses and Lake Washington water quality.

18.3 New development should be designed to avoid increasing risks to people and property associated with natural hazards.

18.4 The ecological functions of watercourses, wetlands, and habitat conservation areas should be maintained and protected from the potential impacts associated with development.

18.5 The City shall utilize best available science during the development and implementation of critical areas regulations. Regulations will be updated periodically to incorporate new information and, at a minimum, every eight years as required by the Growth Management Act.

18.6 Encourage low impact development approaches for managing stormwater and protecting water quality and habitat.

18.7 Services and programs provided by the City with regards to land use should encourage residents to minimize their own personal carbon footprint, especially with respect to energy consumption and waste reduction.

18.8 The City's development regulations should encourage long term sustainable stewardship of the natural environment. Examples include preservation and enhancement of native vegetation, tree retention, and rain gardens.

18.9 Outreach campaigns and educational initiatives should inform residents of the collective impact of their actions on local, county, and state greenhouse gas emissions reduction goals.

### **Parks and Open Space Policies**

#### **GOAL 19: Continue to maintain the Island's unique quality of life through open space preservation, park and trail development and well-designed public facilities.**

19.2 More specific policy direction for parks and open space shall be identified in the Parks and Recreation Plan and the Pedestrian and Bicycle Facility Plan. These plans shall be updated periodically to reflect changing needs in the community.

19.3 Acquisition, maintenance and access to public areas, preserved as natural open spaces or developed for recreational purposes, will continue to be an essential element for maintaining the community's character.

19.4 View preservation actions should be balanced with the efforts to preserve the community's natural vegetation and tree cover.

19.5 Future land use decisions should encourage the retention of private club recreational facilities as important community assets.

19.6 Provide recreation and leisure time programs and facilities that afford equal opportunities for use by all Mercer Island residents while considering the needs of non-Mercer Island residents.

19.7 Provide a system of attractive, safe, and functional parks, and park facilities.

19.8 Preserve natural and developed open space environments and trails for the benefit of all existing and future generations.

19.9 Provide a broad representation of public art through cooperation with the Mercer Island Arts Council.

19.10 Funding for existing facilities should be a top priority and should be provided at a level necessary to sustain and enhance parks, trails and open space consistent with the Parks and Recreation Plan, the Trails Plan and the Capital Facilities Element.

19.11 Promptly investigate open space acquisition opportunities as they become available.

19.12 Pursue state and federal grant funding for parks and open space improvements.

19.13 Pursue a trail lease agreement from the Washington State Department of Transportation to allow for the development of an I-90 Connector Trail to establish a pedestrian connection between Luther Burbank and Town Center.

## **VI. ACTION PLAN**

### **GOAL 1: To implement land use development and capital improvement projects consistent with the policies of the comprehensive plan.**

1.1 To focus implementation of the Comprehensive Plan on those issues of highest priority to the City Council and community: Town Center development, storm drainage, critical lands protection, and a diversity of housing needs including affordable housing.

1.2 To create opportunities for housing, multi-modal transportation, and development consistent with the City's share of regional needs.

1.3 To make effective land use and capital facilities decisions by improving public notice and citizen involvement process.

1.4 To continue to improve the development review process through partnership relationships with project proponents, early public involvement, reduction in processing time, and more efficient use of staff resources.

1.5 To continue to improve the usability of the “Development Code” by simplifying information and Code format; eliminating repetitious, overlapping and conflicting provisions; and consolidating various regulatory provisions into one document.

1.6 Mercer Island has consistently accepted and planned for its fair share of regional growth, as determined by the GMPC and the King County CPPs. However, build out of the City is approaching, and could occur before 2035 or shortly thereafter. In the future, the City will advocate for future growth allocations from the GMPC which will be consistent with its community vision, as reflected in the Comprehensive Plan and development regulations; environmental constraints; infrastructure and utility limitations; and its remaining supply of developable land.



**DEVELOPMENT SERVICES GROUP**

9611 SE 36TH ST., MERCER ISLAND, WA 98040

(206) 275-7605

**TO:** Planning Commission

**FROM:** Evan Maxim, Planning Manager

**DATE:** June 6, 2018

**RE:** **2018 Comprehensive Plan Amendments No. 6 – Introduction**

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**Summary**

On November 6th, 2017 the City Council passed Resolution 1534 establishing the 2018 Comprehensive Plan amendment docket. The Mercer Island Arts Council has prepared an initial draft for Planning Commission review, related to creating goals and policies supporting the cultural arts. This draft was introduced to the Planning Commission on May 16, 2018. Following the discussion on May 16, 2018 the staff has prepared draft Comprehensive Plan amendment language, together with introductory language (Attachment A). The entire Arts and Culture Plan may then be attached as “Appendix B” to Comprehensive Plan.

On June 6, 2018, the staff is seeking Planning Commission guidance on:

1. Any preliminary revisions or corrections on the draft amendment; and,
2. Additional information that the Planning Commission will need to form a recommendation.

**Background**

Starting in January of 2018, the Arts Council has considered the question of what goals and policies are appropriate to support the cultural arts on Mercer Island. The Arts Council reviewed draft language in February, which was generated by Parks staff after a review of peer jurisdictions and existing programs and needs. In March, the Arts Council hosted a community meeting, which was well attended and ultimately generated their initial draft (Attachment B) in April of 2018 for further review by the Planning Commission.

Based upon the discussion on May 16, staff has prepared a draft amendment to the Comprehensive Plan (Attachment A), derived from the recommended goals and policies contained within the Arts and Culture plan. The language is largely unchanged from the initial draft language by the Arts Council. The entire Arts and Culture plan will be incorporated as Appendix B to the Comprehensive Plan.

Public Outreach. The Arts Council hosted a community meeting on March 14, which was well attended and generated public comment (included as Attachment C to this item in the May 16 Planning Commission Packet) to inform the Arts Council's drafting and the Planning Commission's eventual recommendation to the City Council.

On May 18, the City mailed a postcard to residents on Mercer Island, inviting the public to the June 6 meeting and to the August 29 public hearing both before the Planning Commission. The mailer also provided a link to a public survey related to the Arts; the survey information will be shared with the Planning Commission as soon as it is available.

**Next Steps**

At the June 6th meeting, staff will provide a brief overview of the Comprehensive Plan Amendments, answer questions the Planning Commission may have, and seek input. Staff will request the Commissioners' input on the following:

1. Any preliminary feedback on the proposed amendments; and,
2. Additional information that the Planning Commission will need to form a recommendation.

Based upon the feedback received from the Planning Commission on June 6, staff anticipates that this amendment will not require further review until after the August 29 public hearing.

I welcome questions you may have at this stage of the process, as well as identification of topics that you would like covered during the June 6<sup>th</sup> meeting. If you provide questions in advance, staff will attempt to address them at the meeting. I can be reached at [evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org) or 206-275-7732.

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Attachments:

- A. Draft Comprehensive Plan Amendments No. 6
- B. City of Mercer Island Arts and Culture Plan

# 2018 Comprehensive Plan Amendment No. 6 – Draft Text

## Amendment 6 – Arts & Cultural

Amend the Introduction, Section II Vision Statement Introduction to read:

...

The following Vision Statement is essentially the compilation of several long standing policies embodied in several existing planning documents including the Land Use Plan, Town Center Plan, ~~and~~ Park and Open Space Plan, and the Comprehensive Arts and Culture Plan. Reexamining these policies implies a reexamination of the City’s overall policy base.

This Vision Statement should satisfy (at least) the following three purposes: 1) City Boards, Commissions and Staff will use the Council’s explicit guidance in determining the priority and degree of evaluation of existing elements in the City’s Growth Management Act Policy & Planning Work Plan; 2) City employees will be guided in the provision of quality municipal services; 3) Most importantly, the Council, its advisory bodies and the community-as-a-whole will proceed with a common understanding of the quality of life values or themes that will shape our community for years to come.

...

Amend the Land Use Element, Section I Introduction to read:

...

Parks, open spaces, educational and recreational opportunities are highly valued and consume a large amount of land. The Island has 472 acres of park and open space lands including small neighborhood parks and trails as well as several larger recreational areas, including Luther Burbank Park and Aubrey Davis Park above the Interstate 90 tunnel. One hundred and fifteen acres of natural-forested land are set aside in Pioneer Park and an additional 150 acres of public open spaces are scattered across the community. There are four elementary schools (one scheduled to open in fall 2016), one middle school and a high school owned and operated by the Mercer Island School District. In addition, there are several private schools at the elementary and secondary education levels.

The City of Mercer Island is committed to supporting and sustaining its rich and diverse cultural and arts identity. The arts play an integral role in the vitality and connectedness of a community. Indeed, the arts, culture, and heritage of a community are its heart. In 2019, the City incorporated the Arts and Culture Comprehensive plan as an appendix to the Comprehensive Plan incorporating the goals and policies in the Arts and Culture Comprehensive into the City’s Comprehensive Plan.

The community strongly values environmental protection. As a result, local development regulations have sought to safeguard land, water and the natural environment, balanced with private property rights. To reflect community priorities, development regulations also attempt to balance views and tree conservation.

Amend the Land Use Element to create a new Goal 23, which reads:

Goal 23: Support the arts on Mercer Island.

Amend the Land Use Element to create new policies 23.1, 23.2 23.3, 23.4, and 23.5, which read:

23.1 Support implementation of accessible, high quality performing, visual and literary arts programs, projects, and events for all ages by providing educational art opportunities through Parks & Recreation curriculum; and maintaining a citizen Arts Council, which is advisory to the City Council and that spearheads arts programming and partnerships.

23.2 Promote cooperation among arts providers and organizations on and supporting Mercer Island by broadening the extent of local partnerships between the city, artists, regional art and architecture students, nonprofits, and architectural and urban designers to help improve the quality of the built environment; coordinating and collaborating with the local school district to broaden accessibility and awareness of local art opportunities; coordinating and collaborating with local, regional, and national art organizations, and through public and private partners to integrate art into the community via permanent installations and special events; and encouraging community involvement in art related projects and programs.

23.3 Assess community art needs through community engagement and public involvement.

23.4 Implement a creative district and accountability strategy to complement and enhance overall city economic development strategy and to foster a thriving creative economy.

23.5 Support efforts to secure space for art and culture activities by pursuing the establishment of a community makers' space; pursuing the development of affordable housing and studio/rehearsal space for artists including the construction of buildings or the provision of sections of buildings that include living, work, and gallery space for artists; pursuing replacement space for art activity that include storage, privacy blinds, and a hard multi-purpose floor; pursuing a community performing arts center; and pursuing storage space for historical documentation.

Amend the Land Use Element to create a new Goal 24, which reads:

Goal 24: Nurture public art on Mercer Island.

Amend the Land Use Element to create new policies 24.1, 24.2 24.3, 24.4, 24.5, 24.6, and 24.7 which read:

24.1 Encourage diversity in public art.

24.2 Maintain current and encourage new spaces for public art placement.



24.3 Maintain current collection and encourage the acquisition of additional public art.

24.4 Incorporate public art into capital improvement projects.

24.5 Maintain requirement that new public projects to provide at least 1% of construction costs to fund new public art.

24.6 Incorporate public art into and surrounding transportation projects.

24.7 Welcome and support community involvement in public art processes.

Amend the Land Use Element to create a new Goal 25, which reads:

Goal 25: Preserve Mercer Island's Heritage.

Amend the Land Use Element to create new policies 25.1, 25.2, and 25.3 which read:

25.1 Promote awareness and appreciation of Mercer Island's history and historic resources.

25.2 Support efforts to secure space for the preservation of Mercer Island's physical heritage.

25.3 Promote public engagement with culture and heritage organizations.

# CITY OF MERCER ISLAND COMPREHENSIVE ARTS AND CULTURE PLAN



\* Photo courtesy of Sandy Glass



\* Photo courtesy of Mercer Island Reporter



# TABLE OF CONTENTS

<u>PREFACE</u> .....	4
<u>INTRODUCTION</u> .....	4
<u>BACKGROUND</u> .....	5
Mercer Island has a Historic Tradition of Public Support for Art. ....	5
Mercer Island Supports a Diverse Series of Arts Programming. ....	6
Mercer Island is Home to an Array of Arts Organizations and Activities. ....	10
<u>CULTURAL VITALITY AND THE ISLAND’S ART GAPS</u> .....	11
Mercer Island Embraces Cultural Vitality. ....	11
The Island Lacks Adequate Arts Space. ....	12
Coordinated Arts Cooperation Will Benefit the Island. ....	12
<u>VISION AND GOALS</u> .....	13
<b><i>Vision: To assimilate positive art experiences into everyday life for all community members</i></b> .....	14
Mercer Island Aims for Deliberate, Focused Support for the Arts. ....	14
Arts add Vitality to the Economy .....	14
Approach .....	15
<b>Goal 1:</b> Support the arts on Mercer Island .....	15
<b>Goal 2:</b> Nurture public art on Mercer Island .....	16
<b>Goal 3:</b> Preserve Mercer Island’s Heritage .....	17
<u>ACTION AND ACHIEVEMENT</u> .....	17

## **PREFACE**

The Mercer Island Arts Council recognizes the importance of art as an enhancing event, occasion, and activity on Mercer Island. Inclusion of a culture component in the city comprehensive plan is a reflection of this community value. The council is committed to assimilating positive art experiences into everyday life for all community members and removing two basic barriers to advancement: (1) a lack of coordinated cooperation and (2) a lack of space. Our community has a historic tradition of public support for art, a value engendered in this cultural plan. Our objectives - aligned with those of the city council - are to embrace cultural vitality, identify and create adequate arts spaces, and to collaborate with our unique and diverse community partners on Mercer Island.

## **INTRODUCTION**

The city of Mercer Island is committed to supporting and sustaining its rich and diverse cultural and arts identity. The arts play an integral role in the vitality and connectedness of a community. Indeed, the arts, culture, and heritage of a community are its heart.

Mercer Island is a town unique in its geographical character: it is a small town with distinct borders etched of lake water. Yet it is the most populated island situated in a lake in the country, comprised of a diverse population with rich cultural variety that nurtures and incubates creativity and invention from within its tight boundaries. Its identity was forged of ancient myth – of a lake that sank into the water at night and resurfaced each dawn. Not unlike a more famous mythical island that is shrouded in mist and magic. But unlike Avalon, Mercer Island’s magic is real. It is home to innovators, intellects, and artists all deeply committed to shaping an enchanted quality of living for its community.

It is this drive, and a commitment to lacing the arts into a shared ethos, that led a sizeable effort in the early 1990’s to built art into public life on the island. It was a vision born then that still remains: ***to assimilate positive art experiences into everyday life for all community members.***

Yet more recently, division and process have weighted cultural and artistic progress on Mercer Island. Public input reveals ***two basic barriers to advancement: (1) a lack of coordinated cooperation and (2) a lack of space.*** The city now aspires to resurface its cultural code, to bridge the gaps serving as barriers to progress, and to recommit to the preservation and cultivation of its heritage and arts identity.

By establishing this arts and culture comprehensive plan, the city formalizes its dedication to advancing the enrichment and unification of the whole community

through the arts. By delineating Mercer Island’s vision, challenges, and goals, this plan serves as a city blueprint to build upon existing arts capital and ensure arts are an essential support for Mercer Island’s present and future.

## **BACKGROUND**

### **Mercer Island has a Historic Tradition of Public Support for Art.**

Mercer Island is a community deeply committed to enriching its quality of life through the arts. In 1985 the Mercer Island City Council passed ordinances establishing the Mercer Island Arts Council (MIAC) and the Municipal Art Fund. MIAC consists of 11 “working” board members who strive to nurture, promote, and support quality cultural art activities for the community. In 1985 MIAC won the National Parks and Recreation Association Dorothy Mullen Arts and Humanities award for its region. Its programs have won the award four additional times, and the national award in 1987.

In the early 1990’s Mercer Island experienced a dramatic reconfiguration of its landscape due to the widening of Interstate 90 and construction of the Aubrey Davis Park (formerly “The Lid” park). In this change, the city saw opportunity. It envisioned enhancing the open space created by the corridor and complimenting this unique landscape by providing positive public art experiences for a broad audience. To accomplish this, the city aimed to cover the entire two and a half mile strip of I90 running through the city with sculptures, water parks, and trees. In this process, Mercer Island became the first community in the state to adopt a comprehensive plan that included the incorporation of artwork into parkland, natural open spaces, trails, and public life.<sup>1</sup>

Building on this innovative foundation and a vision to bring art to all, Mercer Island has continued to support arts and culture through its own programming and in associations with local arts organizations.

A small snapshot of recent arts activity include the following:

In 2009, the City approved a one time emergency grant (funds moved from the Art in Public Places Fund for this purpose) to support Youth Theater Northwest.<sup>2</sup> In 2013, the city commissioned and installed a replacement play sculpture titled “Kenton’s Dragon” in Deane’s Children Park.<sup>3</sup> The city has partnered for twenty-five consecutive years with Wooden O Theater to present annual Shakespeare in the

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<sup>1</sup> Mercer Island 1994 Comprehensive Plan.

<sup>2</sup> Mercer Island City Council Meeting Minutes, June 15, 2009,

<sup>2</sup> Mercer Island City Council Meeting Minutes, June 15, 2009,  
<http://www.mercergov.org/Agendas.asp?AMID=1647>.

<sup>3</sup> See Mercer Island Arts Council Archive of Minutes,  
<http://www.mercergov.org/Agendas.asp?SectionID=-1&CCBID=2>.

Park performances at Luther Burbank Park. Each year the productions draw over five thousand attendees locally. <sup>4</sup> Either by acquisition or donation the city has added at least eight works to its public art collection in the past five years, including two murals at Luther Burbank park and a sculpture installation at Fire Station 92 on the south end commemorating 9/11.<sup>5</sup> The city maintains its indoor and outdoor galleries, which produce thousands of dollars of revenue for the city yearly. <sup>6</sup> The city supports local and regional musicians through its Mostly Music in the Park program, which produces live music performances for thousands of attendees yearly.<sup>7</sup>

### **Mercer Island Supports a Diverse Series of Arts Programming.**

The city provides art experiences that complement and celebrate its unique history, culture, and landscape. Mercer Island encourages positive art engagement for the broadest possible audience by offering regular music concerts, film series, outdoor Shakespeare performances, and community dances. It houses a rotating indoor art gallery, maintains an outdoor sculpture gallery, and sustains a large public art collection comprised of indoor and outdoor pieces, including paintings, sculpture, murals, and a town center streetscape project that embeds symbolic historical artwork into city infrastructure.

#### **Highlights:**

**Mostly Music in the Park:** Mercer Island Arts Council’s annual summer concert series. Concerts feature various bands and artists from around the region, performing a wide variety of music.



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<sup>4</sup> Ibid.

<sup>5</sup> Ibid, (In 2016, artists Sandy Glass and Jose Orantes completed a mosaic mural located in the Luther Burbank park playground incorporating student artwork. Fire Station 92 artwork “Gateway of Service” installed in 2015.).

<sup>6</sup> See Mercer Island Arts Council Archive of Minutes, <http://www.mercergov.org/Agendas.asp?SectionID=-1&CCBID=2>.

<sup>7</sup> Ibid.

**Mercer Gallery:** Artwork by regional artists on display and for sale at this public gallery. Exhibits are updated approximately every two months.



**The Greta Hackett Outdoor Sculpture Gallery:** Located along the I-90 Corridor on Sunset Highway between 77th Ave SE and 80th Ave SE, the gallery displays sculptures for at least one year, on a rotating basis. The Gallery was the first of its kind in the state. In 1997, in recognition of the gallery, the Arts Council received the Pacific Northwest Regional Arts and Humanities Award, given by the National Recreation & Park Association.



**Public Art Collection:** In addition to public outdoor sculpture, the city has a collection of small sculpture, paintings, murals, and other two-dimensional work in various public buildings, including the library, city hall, and the Mercer Island Community & Event Center.





**Sponsoring Community Building Art Events:** A community dance event is offered once a year incorporating live music, a dance lesson, and social dance time. Rock painting activities are sponsored at events to promote the community building “MI Rocks” movement. Interactive art installations are sponsored for the annual Summer Celebration event. MIAC hosted Washington State Poet Laureate, Todd Marshall in 2015 for readings, writing events, and workshops.



\* Photo courtesy of Ari Levitt



## **Mercer Island is Home to an Array of Arts Organizations and Activities.**

A sizable number organizations support and house arts focused programs on Mercer Island. The Island is home to hundreds of artists. It is the decades long home of an acclaimed youth theater group. It supports a world-renowned dance program for individuals with Parkinson's disease as well as a number of quality youth dance programs. It is home to a visual arts league as well as many art galleries. The arts play a central role in Mercer Island life and culture.

### **Highlights:**

**Carrucio's:** Culinary arts event space.

**Children's Youth Conservatory/Island Youth Ballet:** Youth ballet instruction and performances.

**Clarke and Clarke Art + Artifacts:** Art and objects of art gallery.

**Dance for PD®:** World acclaimed Dance for Parkinson's program is offered in conjunction with Seattle Theater Group, Mercer Island Parks and Recreation, and the Mercer Island Arts Council. The program provides adapted dance classes for people with Parkinson's disease and their caregivers.

**Fine Arts Advisory Council:** not-for-profit corporation dedicated to supporting K-12 fine arts education in the Mercer Island School District.

**Island Books:** Bookseller hosting author events, book clubs, and children's programs.

**Island Choral Experience:** Community based youth choral and performing arts company.

**Mercer Island Art Uncorked:** Annual music, art, food, and wine tasting festival held in the Greta Hackett Outdoor Sculpture Gallery.

**Mercer Island Center for the Arts:** Organization founded in 2013 with the goal of building a community arts facility on Mercer Island.

**Mercer Island Historic Society:** Established in 1954, the Mercer Island Historical Society collects, preserves, researches, records, and makes available the heritage of Mercer Island.

**Mercer Island School District:** Provides diverse art instruction and opportunity for students and includes the arts in its “Vision 2020” mission.

**Mercer Island Visual Arts League:** Founded in 1961, MIVAL supports the visual arts of its members and the community. Members show their work throughout the year in local businesses and at MIVAL Gallery in the Town Center.

**Musical Mind Studio:** Youth musical education featuring conventional and adaptive training techniques.

**Nancy Stewart:** In conjunction with her pilot project, Sing with Our Kids, Nancy provides music resources and events in the community.

**Russian Chamber Music Foundation:** Organization providing Russian music performances, programs, and education.

**Stoum Jewish Community Center:** Community center hosting a wide array of arts events including a film festival, films, music, speaker events, comedy, theater, and culinary arts events.

**SZ Gallery:** Art gallery offering monthly art walks and events.

**Youth Theatre Northwest:** Educational arts organization founded in 1984, providing drama education, performing opportunities, and live theater experiences for children and young adults.

## **CULTURAL VITALITY AND THE ISLAND’S ARTS GAPS**

Despite Mercer Island’s rich tapestry of art and cultural offerings, there are gaps to be bridged. ***Mercer Island needs community art and heritage space, and coordinated cooperation directing its art and culture activities.***

Numerous comments expressing the need for art space and cooperation amongst arts groups were collected at the Mercer Island Arts Council public engagement meeting on March 14, 2018.<sup>8</sup> It is not the first time the public has conveyed these challenges – they are long-standing issues that have been voiced in a variety of forums and engagement processes.

### **Mercer Island Embraces Cultural Vitality.**

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<sup>8</sup> Mercer Island Arts Council Meeting, March 14, 2018, *Public Comment to the Draft Comprehensive Art Plan*, <http://www.mercergov.org/files/PublicEngagementDraftResponses.pdf>.

A sparkling feature of input received through these public engagement processes is the confirmation that Mercer Islanders embrace the integration of arts and culture into the concept of quality of life. A belief that arts are integral to the sustenance of a good community is prevalent.<sup>9</sup> Indeed, cultural vitality is “the evidence of creating, disseminating, validating, and supporting arts and culture as a dimension of everyday life in communities.”<sup>10</sup> It is comprised of three chief domains: presence of opportunity for participation, cultural participation, and support.<sup>11</sup> Island community input demonstrates the need for further growth in the first domain: opportunity for participation, which flows from space availability and cooperation. Addressing these two unique Island needs will provide better opportunity for the fusion of art into the daily life of Islanders.

### **The Island Lacks Adequate Arts Space.**

Island children’s theater group, Youth Theatre Northwest (YTN), lost its permanent home when the school district reclaimed its district owned theater for construction of a new elementary school in 2011. Between 2011 and 2013 the city began addressing the impending need for a new home for YTN. In this process, it saw a larger community need for art space revealed.<sup>12</sup> Demand for art activity space has only compounded since this time.

In 2014, a “for profit business” displaced the community center art room.<sup>13</sup> Schedules at the two available performing art venues on the island, Mercer Island High School Performing Arts Center and the Stroum Jewish Community Center auditorium, are consistently full. Rents and fees for these spaces are rising. Churches on the island have historically provided space for art activities, however, changes in tax implications for these arrangements are leading to constraints on availability. The historical society has run out of space for storage of important historical documentation.

A multidisciplinary-oriented, centralized arts facility will serve not only to improve availability for arts on the island, it will also act as a magnet for collaborative force.

### **Coordinated Arts Cooperation Will Benefit the Island.**

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<sup>9</sup> Ibid.

<sup>10</sup> <https://www.urban.org/sites/default/files/publication/50676/311392-Cultural-Vitality-in-Communities-Interpretation-and-Indicators.PDF>

<sup>11</sup> Ibid.

<sup>12</sup> City of Mercer Island City Council Meeting and Study Session Agenda and Packet, February 6, 2018, <https://sirepub.mercergov.org/meetings/cache/108/1xvxwb55umwiz145ykh02k55/45220504102018113531804.PDF>.

<sup>13</sup> Mercer Island Arts Council Minutes, February June 11, 2014, <http://www.mercergov.org/Agendas.asp?Display=Minutes&AMID=2266> (describing need for art space and better collaboration).

A lack of coordination among arts groups on the island is a long standing issue and a distinct barrier to opportunity and rich cultural development. Island art groups have made regular appearances at Mercer Island Arts Council meetings expressing the insufficiency and ineffectiveness of arts collaboration resources in the community.<sup>14</sup>

Indeed, there is a long-standing perception in the community that the arts operate insularly on Mercer Island. Community art organizations have called for increased cooperation through resource development and focus on collaboration.<sup>15</sup>

Leadership at the Mercer Island Fine Arts Advisory Council has recently recognized this deficit and is working to improve island arts organizations' relationships by forming the "All for Arts" initiative.<sup>16</sup> Mercer Island is a small, robust, and tight-knit community. Communication among the arts organizations on the island should reflect this same sense of solidarity. Enhancing alliances of the local arts community will improve availability of resources and encourage healthier flow of information.

Building vision and goals into the city comprehensive plan that address the Island's arts and cultural needs operates as a first step in forging a thriving future for Mercer Island. By adopting this plan, the city welcomes the opportunity to address its gaps and to commit to enhancing the vitality and economic vibrancy of Mercer Island life.

## **VISION AND GOALS**

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<sup>14</sup> Mercer Island Arts Council Minutes, February 14, 2018, <http://www.mercergov.org/Agendas.asp?Display=Minutes&AMID=2656> (describing need for collaboration); Mercer Island Arts Council Minutes, April 13, 2016, <http://www.mercergov.org/Agendas.asp?Display=Minutes&AMID=2472> (documenting local organization request for collaboration); Mercer Island Arts Council Minutes, September 9, 2015, <http://www.mercergov.org/Agendas.asp?Display=Minutes&AMID=2391> (documenting need for space update); Mercer Island Arts Council Minutes, June 11, 2014, <http://www.mercergov.org/Agendas.asp?Display=Minutes&AMID=2266> (describing need for art space and better collaboration).

<sup>15</sup> Shirley Qiu, *Mercer Island Gets in Touch with its Artsy Side*, March 13, 2016 Crosscut, <https://crosscut.com/2016/03/merc-island-gets-in-touch-with-its-artsy-side>, (The need for better cooperation is historic and could be addressed through a community arts facility. Community arts advocates believe that arts organizations have "operated in different silos" and a central facility could act as a focal point for local organizations, improving cooperation challenges on the island.)

<sup>16</sup> Mercer Island Arts Council Minutes, February 14, 2018, <http://www.mercergov.org/Agendas.asp?Display=Minutes&AMID=2656> (documenting "All for Arts" presentation on the need for collaboration.)

**Vision: *To assimilate positive art experiences into everyday life for all community members.***

**Mercer Island Aims for Deliberate, Focused Support for the Arts.**

To realize its vision Mercer Island will build on its foundational support for the arts to help foster economic and cultural sustainability in the years ahead. Through creative placemaking and innovative approaches to town center planning and community development, Mercer Island looks to leverage the power of arts and culture to advance livability, sustainability, and equity. Using strategies that honor Mercer Island’s unique arts traditions and integrate innovative approaches to economic and cultural stimulation, Mercer Island will centralize and celebrate the role of art in our community as it crafts a vibrant future.

Broadly defined goals uphold the vision through targeted policies to guide the city in its planning processes. Mercer Island’s arts and culture comprehensive plan goals are: (1) to support the arts on Mercer Island; (2) to nurture public art on Mercer Island; and (3) preserve Mercer Island’s heritage.

These goals aim not only to foster community connection and improved quality of life but also to promote economic development. Direct and indirect economic impacts of investment in the arts are real and measurable. Using an input-output economic analysis model, Americans for the Arts’ economic impact study documents the cultural and economic benefits of the arts.<sup>17</sup> On a national level in 2015, the nation’s nonprofit arts and culture industry generated \$166.3 billion in commerce represented by \$63.8 billion in spending by arts organizations. This activity leveraged an additional \$102.5 billion in event-related spending by audiences. This economic activity supported 4.6 million jobs and generated \$27.5 billion in government revenue. The impact of this market is significant. Promoting increased arts investment and activity at a local level in the Mercer Island community would likewise drive substantial economic stimulus and revenue.

**Arts Add Vitality to the Economy.**

The city’s commitment to prioritizing the arts in its forecasting and visioning occurs simultaneous to a greater Washington state concept to build a network of arts driven communities that intentionally foster economic growth through the arts and creative industries.

In May 2017, governor Inslee signed into law HB 1183 which, “[a]uthoriz[es] specified local governments, including municipalities . . . to designate a portion of their territory as a creative district subject to certification by the Washington state

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<sup>17</sup> American for the Arts, *Arts & Economic Prosperity 5: Summary Report*, 2015, [https://www.americansforthearts.org/sites/default/files/aep5/PDF\\_Files/ARTS\\_AEPsummary\\_loRes.pdf](https://www.americansforthearts.org/sites/default/files/aep5/PDF_Files/ARTS_AEPsummary_loRes.pdf)

arts commission.”<sup>18</sup> As a result of this legislation, the state arts commission, ArtsWA launched an implementation program to develop certified creative districts in the state. Certified creative districts are community defined geographic areas that are devoted to developing and promoting the arts for the purpose of building and supporting a robust creative economy.

Indeed, the impact arts and culture have on economic vitality are well documented. In the United States, the arts and artists are drivers of innovation, help shape and direct economic achievement, and give the United States relevance in the global economy. Nationally, the arts have a remarkable presence. Over 670,000 or 4.01% of all businesses are involved in the creation or distribution of the arts, and they employ 3.48 million people (2.04% of all U.S. employees).<sup>19</sup> The vitality of Washington State’s creative economy reflects national statistics. In 2014, creative industries in Washington State represented \$19.2 billion in total industry earnings and employed over 147,000 people.<sup>20</sup> Mercer Island’s Creative Vitality Index surpasses the state value of .97. With a Creative Vitality Index value of 1.31 and a population of over 23,000 people in 2016, over 1,100 were employed in creative jobs.<sup>21</sup> Supporting the arts is not just good press or simply for the kids, it’s business best practice.

Through implementation of this arts and culture plan and leveraging its existing and potential arts and culture assets, the city seeks to expand opportunities to unite the community and address financial challenges.

### **Approach.**

**Goal 1:** Support the arts on Mercer Island.

- **Policy:** Support implementation of accessible, high quality performing, visual and literary arts programs, projects, and events for all ages by providing educational art opportunities through Parks & Recreation curriculum; and maintaining a citizen Arts Council, which is advisory to the City Council and that spearheads arts programming and partnerships.

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<sup>18</sup> HB 1183 – 2017-18,  
<http://apps2.leg.wa.gov/bills/summary?Year=2017&BillNumber=1183&Year=2017&BillNumber=1183>.

<sup>19</sup> Americans for the Arts, *The Creative Industries in the United States*, 2017,  
[https://www.americansforthearts.org/sites/default/files/pdf/2017/by\\_program/reports\\_and\\_data/creative/2017\\_UnitedStates\\_NationalOnePager\\_Color.pdf](https://www.americansforthearts.org/sites/default/files/pdf/2017/by_program/reports_and_data/creative/2017_UnitedStates_NationalOnePager_Color.pdf).

<sup>20</sup> Creative Vitality Suite, *Snapshot of the Arts in Washington State*, 2014,  
[https://www.arts.wa.gov/media/dynamic/docs/Washington\\_Page\\_1.jpg](https://www.arts.wa.gov/media/dynamic/docs/Washington_Page_1.jpg).

<sup>21</sup> Creative Vitality Suite, *Snapshot of the Arts in 98040*, 2016, [Attached as Appendix A].

- Policy: Promote cooperation among arts providers and organizations on and supporting Mercer Island by broadening the extent of local partnerships between the city, artists, regional art and architecture students, nonprofits, and architectural and urban designers to help improve the quality of the built environment; coordinating and collaborating with the local school district to broaden accessibility and awareness of local art opportunities; coordinating and collaborating with local, regional, and national art organizations, and through public and private partners to integrate art into the community via permanent installations and special events; and encouraging community involvement in art related projects and programs.
- Policy: Assess community art needs through community engagement and public involvement.
- Policy: Implement a creative district and accountability strategy to complement and enhance overall city economic development strategy and to foster a thriving creative economy.
- Policy: Support efforts to secure space for art and culture activities by pursuing the establishment of a community makers' space; pursuing the development of affordable housing and studio/rehearsal space for artists including the construction of buildings or the provision of sections of buildings that include living, work, and gallery space for artists; pursuing replacement space for art activity that include storage, privacy blinds, and a hard multi-purpose floor; pursuing a community performing arts center; and pursuing storage space for historical documentation.

**Goal 2**: Nurture public art on Mercer Island.

- Policy: Encourage diversity in public art.
- Policy: Maintain current and encourage new spaces for public art placement.
- Policy: Maintain current collection and encourage the acquisition of additional public art.
- Policy: Incorporate public art into capital improvement projects.
- Policy: Maintain requirement that new public projects to provide at least 1% of construction costs to fund new public art.
- Policy: Incorporate public art into and surrounding transportation projects.
- Policy: Welcome and support community involvement in public art processes.



**Goal 3:** Preserve Mercer Island’s Heritage.

- Policy: Promote awareness and appreciation of Mercer Island’s history and historic resources.
- Policy: Support efforts to secure space for the preservation of Mercer Island’s physical heritage.
- Policy: Promote public engagement with culture and heritage organizations.

**ACTION AND ACHIEVEMENT**

Adoption of this arts and culture comprehensive plan is the first step in supporting and directing action to sustain and implement the policies to achieve Mercer Island’s stated vision and goals. The city and public as a whole are eager to move forward together, as a unified body, to further enrich and enhance the community via arts and culture investment.

Art brings people together; it builds community. Mercer Island is a community accessed only via bridges. It is fortunate to have bridges linking to world-class art opportunities and facilities. However, bridges are needed not only to access art across a lake, bridges must be built within its community, to facilitate cooperation, solidify vision, and embolden a future flourishing with art opportunities of its own right.

The Bridge Builder

An old man going a lone highway,  
Came at the evening, cold and gray,  
To a chasm, vast, and deep and wide,  
Through which was flowing a sullen tide.

The old man crossed in the twilight dim;  
The sullen stream had no fear for him;  
But he turned, when safe on the other side,  
And built a bridge to span the tide.

"Old man," said a fellow pilgrim, near,  
"You are wasting strength with building here;  
Your journey will end with the ending day;  
You never again will pass this way;  
You've crossed the chasm, deep and wide-  
Why build you this bridge at the evening tide?"

The builder lifted his old gray head:

"Good friend, in the path I have come," he said,  
"There followeth after me today,  
A youth, whose feet must pass this way.

This chasm, that has been naught to me,  
To that fair-haired youth may a pitfall be.  
He, too, must cross in the twilight dim;  
Good friend, I am building this bridge for him."

- Will Allen Dromgoole

# APPENDIX A

# Snapshot of the Arts in 98040

2016

## Creative Vitality Index



**1.31**

CVI Value

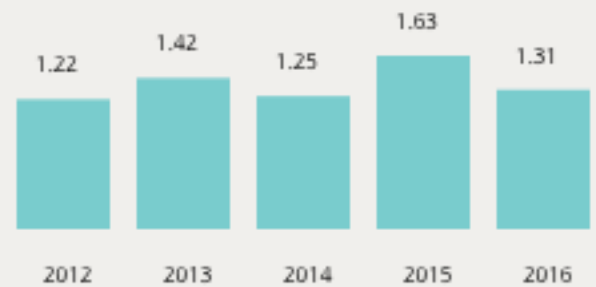
United States CVI = 1.0

This regional snapshot report gives the big picture of a region's creative landscape. It provides an overview of creative jobs, industry earnings, FDR grants, and Nonprofit revenues.

## Total Population

**23,429**

## Past 5 years of CVI Performance



### GAIN

## 2016 Creative Jobs



**1,105**

Total Creative Jobs

There are 30 more creative jobs in the region since 2015

▲ 3% since 2015

## Occupations with greatest number of jobs



### GAIN

## 2016 Creative Industries



**\$34.9M**

Total Industry Earnings

There is a gain of \$2.0 million in creative industry earnings in the region since 2015

▲ 6% since 2015

## Industries with greatest earnings



### LOSS

## 2016 Cultural Nonprofit



**\$2.2M**

Nonprofit Revenues

There are \$3.1 million less in revenues in the region since 2015

▼ 59% since 2015

CVSuite does not have grant data for 2016.



**CITY OF MERCER ISLAND  
PLANNING COMMISSION**

**AGENDA ITEM NO. 5**

**DATE: June 6, 2018**

File No.:	ZTR18-001
Description:	This proposal to amend the procedural requirements for the processing of land use applications. This proposal amends portions of several chapters of the MICC including Chapters 19.02, 19.06, 19.07, 19.08, 19.09, 19.11, 19.12, 19.15, and 19.16.
Sponsor:	City of Mercer Island, Development Services Group
Attachments:	<ol style="list-style-type: none"><li>1. Proposed Code Amendments (Attachments 1.a through 1.i)</li><li>2. Draft Ordinance</li><li>3. Response to Public Comments of George Steirer</li></ol>
Staff Contact:	Nicole Gaudette, Senior Planner

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**I. SUMMARY**

The proposal is to amend sections of Title 19, the city's zoning code, to update procedural requirements for land use applications. The amendments will affect how applications are processed but will not affect criteria or standards of the code.

The proposed amendments to the procedural requirements for land use applications are intended to:

- A. Clarify the review process and language;
- B. Re-organize and consolidate the procedural requirements and approval criteria;
- C. Ensure compliance with applicable state regulations (e.g. RCW 36.70B) and recent case law (e.g. Potala Village Kirkland, LLC v City of Kirkland); and,
- D. Simplify the regulations for readability, ease of use, and to eliminate unintended consequences.

The majority of the changes consisted of relocating existing code sections into centralized locations and simplifying and reconciling unclear language. Code sections related to the processing of reviews were moved into Chapter 19.15. Code sections related to review criteria were moved to the appropriate sections throughout Title 19. Also, code sections within Chapter 19.15 were rearranged so the code layout was more linear.

A new permit review typing system was created to better encompass the types of reviews that are conducted by DSG. The types of reviews in the current regulations were reduced in number and consolidated into four types. For instance, there used to be six types of reviews for design review. Now there are four. Legislative type items were separated from the reviews that result in permits and have a distinct process, similar to the one currently used. The legislative items include code updates, comprehensive plan updates, and rezones.

A new permit type called "Public Notification" was created. This permit type will be notated as a Type II review in accordance with the new permit typing system. This permit type includes a process where notice is provided to the public. The notice is a more limited format than the "Notice of Application" process in that notice will be provided in the DSG weekly bulletin and will not be mailed or posted on site. There will be no comment period, however public comments are allowed. The purpose of the Public Notification is to inform citizens of permits and licenses that have been applied for in their community. At this meeting, the Planning Commission and staff will need to determine which permits should be categorized as Type II permits.

A notable process change recommended by staff, is for preliminary long plats to be only reviewed by the hearing examiner rather than both the hearing examiner and city council, and for the hearing examiner to issue the decision for preliminary approval or denial after facilitating the public hearing. Currently, preliminary long plats are reviewed by the hearing examiner at a public hearing. The hearing examiners' recommendation is forwarded to the city council for a decision. Because state law restricts long plats to one public hearing, no new information can be entered into the record during the discussion with city council. Discussion is limited to the items discussed at the hearing. There is little to no value added by a closed record discussion by the city council.

New code sections were created. These sections include:

- 19.08.070 Lot line revisions;
- 19.15.170 Vesting;
- 19.15.190 Permit review for 6049 eligible facilities;
- 19.15.200 Revisions;
- 19.15.210 Compliance required;
- 19.15.260 Reclassification of property (rezones);
- 19.15.270 Zoning code text amendments Zoning code text amendments; and
- 19.15.280 Review procedures for comprehensive plan amendments, reclassification of property, and zoning code amendments

The purpose for creating some of these new sections is to fill in gaps of missing information, such as processing procedures, within our code (19.15.200, 19.15.260, 19.15.270, and 19.15.280).

The criteria for lot line revisions were moved from 19.08.010 through 19.08.050 to new section 19.08.070. Lot line revisions have completely different criteria and a different process than short and long plats, yet they were lumped together with short plats and long plats in 19.08.

The purpose of other new sections is to provide language that is completely missing in our code (19.15.170, 19.15.190, and 19.15.210).

The new section 19.15.170 clarifies what permit types vest, and what they vest to, when regulations change.

19.15.190 is a new section that was added in accordance with federal law. A “6409 eligible facility” request is a request to modify an existing wireless telecommunication facility that does not substantially change the physical dimensions of a tower or base station including collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment. The process for reviewing these facility requests is mandated by federal law (47 CFR 1.40001). Staff has been using federal code to process these applications since the federal regulations were approved. This code addition simply incorporates the federal regulations we are required to follow, into our city code. A notable change proposed in connection to the 6409 process is eliminating the public comment period. By law, we have 60 days of review time to approve or deny these projects. The 30-day comment period uses 1/2 of the allotted time for review. By eliminating the comment period, staff would have more time to provide review comments and ensure compliance with city code. Also, there is an expectation by the public that when they comment on a project that their comment could advocate for a modified outcome. These projects are only for repair and maintenance, replacement, removal, or collocation and have no substantial impact on neighboring properties. Public comment has little impact on the outcome of the project.

New section 19.15.210 is a statement that all structures, sites, lots and uses must comply with city code and with all conditions of approval.

A new process for determining which design review applications are reviewed by staff and which are reviewed by the design commission is being proposed.

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## **II. PROCEDURAL REQUIREMENTS**

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The City issued a Notice of Application, which was published in the City’s permit bulletin and posted at City Hall on April 16, 2018. One comment letter was received during the comment period which ran from April 16, 2018 through May 16, 2018. This comment letter was provided to the Planning Commission at the May 16, 2018 meeting. The responses to those comments are attached to this report as Attachment 3. The proposed code amendment is exempt from SEPA review pursuant to WAC 197-11-800(19)(a) which states that procedural actions relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment are exempt. A Notice of Open Record Hearing was published in the Mercer Island Reporter on March 14, 2018.

A Development Code amendment is a legislative action set forth in MICC 19.15.010(E). Applicable procedural requirements for a legislative action are contained within MICC 19.15.020, including the provision that the Planning Commission conduct an open

record public hearing for all legislative actions. The Planning Commission held an open record public hearing on April 14, 2018. The hearing was continued to May 16, 2018. Two people spoke at the hearing. The following are a summary of comments:

Dan Grausz: He requested a chart comparing the current permit process to the proposed permit process for each permit type. He also expressed concern about changing the process for preliminary long plats. The current proposal is for the Hearing Examiner to hold the public hearing and issue the decision regarding preliminary approval. The requested chart was provided to the Planning Commission at its May 16, 2018 meeting. Staff stands by its recommendation for the Hearing Examiner to hold the public hearing and issue the decision regarding preliminary approval for preliminary long plats.

George Steirer: He recommended a number of changes including changes to process involving shoreline permit hearings, requesting clarification of terminology, clarifying who is responsible for permit compliance, and numerous other requests. Responses to his comments are included as Attachment 3 to this report.

The Planning Commission will subsequently forward a recommendation for action to the City Council. As the final decision-making authority for legislative actions, the City Council will then consider the matter in an open public meeting prior to taking final action. The City Council's first reading of the code amendment is tentatively scheduled for June 2018. Final action on the proposal by the City Council is anticipated on July 2018, when the Council is scheduled to hold a second reading and render a decision on the proposed code amendments.

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### **III. CRITERIA FOR REVIEW**

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There are no specific criteria listed in the Mercer Island City Code for a code amendment. However, the proposed amendments cannot be inconsistent with the goals and policies set forth in the City's Comprehensive Plan. Staff conducted a review of the Comprehensive Plan in light of the proposed amendments and has identified no areas of conflict or inconsistency.

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### **IV. FINDINGS & ANALYSIS**

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The proposed amendment to Title 19 is contained within Attachment 1 and Attachment 2.c. The proposed language is underlined in Attachment 1. All language in Attachment 2.c is proposed.

This amendment would:

1. Clarify the review process and language;
2. Re-organize and consolidate the procedural requirements and approval criteria;
3. Ensure compliance with applicable state regulations (e.g. RCW 36.70B) and recent case law (e.g. Potala Village Kirkland, LLC v City of Kirkland); and,
4. Simplify the regulations for readability, ease of use, and to eliminate unintended consequences.



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## V. STAFF RECOMMENDATION

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Based on the analysis and findings included herein, staff recommends to the Planning Commission the following:

**Recommended Motion:** Move to recommend that the City Council approve the proposed amendments to Title 19, relating to permit processing and procedures, as presented in Attachment 1.

**Alternative Motion:** Move to recommend that the City Council approve the proposed amendments to Title 19, relating to permit processing and procedures, as presented in Attachment 1, provided that Attachment 1 shall be modified as follows: *[describe modifications]*.

19.02.030 Accessory dwelling units.

A. Purpose. It is the purpose of this legislation to implement the policy provisions of the housing element of the city’s comprehensive plan by eliminating barriers to accessory dwelling units in single-family residential neighborhoods and provide for affordable housing. Also, to provide homeowners with a means of obtaining rental income, companionship, security and services through tenants in either the accessory dwelling unit or principal unit of the single-family dwelling.

B. Requirements for Accessory Dwelling Units. One accessory dwelling unit is permitted as subordinate to an existing single-family dwelling; provided, the following requirements are met:

1. Owner Occupancy. Either the principal dwelling unit or the accessory dwelling unit must be occupied by an owner of the property or an immediate family member of the property owner. Owner occupancy is defined as a property owner, as reflected in title records, who makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means, and actually resides at the site more than six months out of any given year.
2. Number of Occupants. The total number of occupants in both the principal dwelling unit and accessory dwelling unit combined shall not exceed the maximum number established for a family as defined in MICC 19.16.010 plus any live-in household employees of such family.
3. Subdivision. Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit.
4. Size and Scale. The square footage of the accessory dwelling unit shall be a minimum of 220 square feet and a maximum of 900 square feet, excluding any garage area; provided, the square footage of the accessory dwelling unit shall not exceed 80 percent of the total square footage of the primary dwelling unit, excluding the garage area, as it exists or as it may be modified.
5. Location. The accessory dwelling unit may be added to or included within the principal unit, or located in a detached structure.
6. Entrances. The single-family dwelling containing the accessory dwelling unit shall have only one entrance on each front or street side of the residence except where more than one entrance existed on or before January 17, 1995.
7. Additions. Additions to an existing structure or newly constructed detached structures created for the purpose of developing an accessory dwelling unit shall be designed consistent with the existing roof pitch, siding, and windows of the principal dwelling unit.
8. Detached Structures. Accessory dwelling units shall be permitted in a detached structure.

1 9. Parking. All single-family dwellings with an accessory dwelling unit shall meet the parking  
2 requirements pursuant to MICC 19.02.020(G) applicable to the dwelling if it did not have such an  
3 accessory dwelling unit.

4 C. Exceptions – Ceiling Height. All existing accessory dwelling units that are located within a single-family  
5 dwelling, which was legally constructed but does not now comply with current ceiling height  
6 requirements of the construction codes set forth in MICC Title 17, shall be allowed to continue in their  
7 present form.

8 ~~D. Permitting and Enforcement~~Notice on title.

9 ~~1. Application. The property owner shall apply for an accessory dwelling unit permit with the~~  
10 ~~development services group. The application shall include an affidavit signed by the property owner~~  
11 ~~affirming that the owner or an immediate family member will occupy the principal dwelling unit or~~  
12 ~~accessory dwelling unit for more than six months per year.~~

13 ~~2. Notice. The city shall provide notice of the intent to issue a permit for an accessory dwelling unit~~  
14 ~~as required by MICC 19.15.020(D) and (E).~~

15 ~~3. Applicable Codes. The accessory dwelling unit shall comply with all construction codes set forth in~~  
16 ~~MICC Title 17 and any other applicable codes, except as provided in this chapter. The ADU shall~~  
17 ~~comply with all development code provisions for single family dwellings including height and~~  
18 ~~setbacks, and the ADU shall be included as part of the impervious surface and floor area limitations~~  
19 ~~for a building site.~~

20 ~~4. Inspection. After receipt of a complete application and prior to approval of an accessory dwelling~~  
21 ~~unit, the city shall inspect the property to confirm that all applicable requirements of this code and~~  
22 ~~other codes are met.~~

23 ~~5. Recording Requirements—Permits.~~ Approval of the accessory dwelling unit shall be subject to the  
24 applicant recording a document with the King County department of records and elections which  
25 runs with the land and identifies the address of the property, states that the owner(s) resides in  
26 either the principal dwelling unit or the accessory dwelling unit, includes a statement that the  
27 owner(s) will notify any prospective purchasers of the limitations of this section, and provides for  
28 the removal of the accessory dwelling unit if any of the requirements of this chapter are violated.

29 ~~6. Permit. Upon compliance with the provisions of this section, a permit for an accessory dwelling~~  
30 ~~unit will be issued.~~

31 ~~7. Enforcement. The city retains the right with reasonable notice to inspect the ADU for compliance~~  
32 ~~with the provisions of this section.~~

33 E. Elimination/Expiration. Elimination of an accessory dwelling unit may be accomplished by the owner  
34 recording a certificate with the King County department of records and elections and development  
35 services stating that the accessory dwelling unit no longer exists on the property.

1 ~~F. Variance. Variances to this chapter shall require variance approval as outlined in MICC~~  
2 ~~19.15.020(G)(4).~~

3 ~~G. Violations. Any violation of any provision hereof is a criminal violation under MICC 19.15.030.~~

4

**Chapter 19.06  
GENERAL REGULATIONS**

Sections:

- 19.06.010 Prohibited uses.**
- 19.06.020 Temporary signs.**
- 19.06.030 Antennas.**
- 19.06.040 Wireless communications.**
- 19.06.050 Commerce on public property.**
- 19.06.060 Encroachment into public right-of-way.**
- 19.06.070 *Repealed.***
- 19.06.080 Siting of group housing.**
- 19.06.090 Temporary encampment permit.**
- 19.06.100 Essential public facilities.**
- 19.06.110 Conditional use permits, variances, and setback deviations.**
- 19.06.120 Design review**

**19.06.040 Wireless communications.**

A. Town Center, Commercial/Office, Business and Planned Business Zones.

1. Permitted Use. Attached WCFs are permitted in the Town Center, commercial/office, business and planned business zones. WCFs with support structures are permitted in the commercial/office and planned business zone districts, and are not permitted in the Town Center district.

a. Town Center Zone (TC). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 15 feet. Wireless support structures are not allowed in the TC zone.

b. Commercial/Office Zone (C-O). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 10 feet. Structures shall not be located within front yard setbacks. Structures in the side and rear yards must be set back from adjacent property a distance equal to the height of the pole. New WCFs may be located on a monopole and shall not exceed 60 feet in height.

c. Planned Business Zone (PBZ) and Business Zone (B). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 10 feet. Structures shall not be located within the setbacks. New WCFs may be located on a monopole and shall not exceed 60 feet in height.

~~2. Approval Process/Review Performance Standards. Wireless communications facilities are subject to review by the code official as outlined shall comply with the standards in subsection E of this section and MICC 19.15.010(E). When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~

B. Public Institution Zone (I-90 Corridor).

1. Permitted Use. Wireless communications facilities, including antenna support structures and equipment cabinets, are permitted. Facilities must meet all of the following criteria:

a. Antennas shall not project more than two feet in height over the nearest I-90 retaining wall, unless they are located on an existing structure, and must be screened as much as possible from public views;

b. Equipment cabinet dimensions shall not exceed 480 cubic feet, should be placed underground if feasible and shall be completely screened from pedestrian and park activities with landscaping;

c. Facilities shall be within 15 feet of the pedestrian side of the I-90 retaining wall, unless they are located on an existing structure. Facilities may be located between the retaining walls in the traffic corridor;

d. Facilities shall be at least 300 feet from any single-family dwelling, unless located between and below the top of the retaining walls in the traffic corridor;

e. Applicants shall demonstrate that they have attempted to collocate on existing structures such as other wireless support structures, rooftops, light poles, utility poles, walls, etc.

~~2. Approval Process/Review Location. -~~

~~a. Wireless communications facilities are subject to review by the code official as outlined in subsection E of this section and MICC 19.15.010(E). When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~

~~b. No wireless communications facilities are allowed along the Mercer Island Artway Greta Hackett Outdoor Sculpture Gallery, defined as the south side of I-90 between 76th Avenue SE and 80th Avenue SE.~~

C. Island Crest Way Corridor.

1. WCFs are permitted within the right-of-way boundary along Island Crest Way from SE 40th Street to SE 53rd Place and from SE 63rd to SE 68th Street. WCFs must be attached directly to and incline with existing utility poles, with minimal overhang. WCF antennas shall not exceed 96 inches in length, 12 inches in width, and 12 inches in depth. The WCF must not project over the height of the pole, but a pole with a height of up to 70 feet may replace an existing pole or a pole with a height of up to 110 feet may replace an existing pole if the WCF is being collocated with another WCF consistent with subsection F of this section. All WCFs shall be set back from adjacent residential structures by a minimum of 40 feet.

~~2. Approval Process/Review. WCFs in the Island Crest right-of-way must be reviewed and approved by the code official in accordance with subsection E of this section and MICC 19.15.010(E) and be approved by the city engineer. When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~ Proponents ~~must~~ shall provide an agreement with the utility pole owner granting access to the pole.

#### D. Residential Districts.

1. Permitted Use. WCFs are prohibited in single-family and multifamily residential zones; provided, WCFs are permitted as stated below on the following public and utility properties:

a. South Mercer Island Fire Station, 8473 SE 68th Street. Maximum height: 60 feet;

b. Puget Sound Energy Power Substation, 8477 SE 68th Street. Maximum height: 60 feet;

c. Mercer Island Water Reservoir, 4300 88th Avenue SE. Maximum height: 60 feet;

d. Island Crest Park, if the WCF is either (i) attached to an existing ballfield light standard, or (ii) attached to a new stealth designed replacement ballfield light standard located along the eastern border of Island Crest Park.

i. Maximum number of support structures: A maximum of two support structures (existing or replacement ballfield light standards) with up to three WCFs on each such support structure;

ii. Maximum height: 110 feet; and

e. Certain rights-of-way adjacent to Clise Park.

i. Maximum number of support structures: One stealth support structure with up to three WCFs on such support structure located within the rights-of-way at the intersection of Island Crest Way, 84th Avenue SE

and SE 39th Street, in a location at such intersection abutting trees and having the least visual impact while ensuring the maximum protection of mature trees.

ii. Maximum number and location of equipment cabinets: Three equipment cabinets associated with such support structure located in that portion of the SE 39th Street or 84th Avenue SE rights-of-way adjacent to Clise Park, except that if such location does not permit the proper functioning of the WCF as determined by the code official, then the equipment cabinet shall be located in the Island Crest Way right-of-way adjacent to Clise Park.

iii. Maximum height: 110 feet.

WCFs on the above properties may be attached or have a monopole structure. Except as to the Puget Sound Energy Substation referred to above, equipment cabinets shall be placed underground if physically feasible. In Island Crest Park, 84th Avenue SE or SE 39th Street right-of-way, the equipment cabinets may be placed aboveground if the parks director determines there is a significant benefit to the parks by either the retention of trees and/or vegetation or the improvement of park uses. Any aboveground equipment cabinet must be properly screened consistent with subsection (E)(3) of this section. The setback of the support structure from any adjacent residential property line shall be equal to the height of the support structure except in Island Crest Park or those rights-of-way described in subsection (D)(1)(e) of this section, where the setback of the support structure shall be 40 feet from any residential structure.

~~2. Approval Process/Review. Wireless communications facilities are subject to review by the code official as outlined in subsection E of this section and MICC 19.15.010(E). When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~

#### E. Performance Standards.

1. Attached WCFs. Attached WCFs which are visible to the traveling public and/or neighboring residences shall be designed to blend in with the existing structure and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use compatible or neutral colors. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened.

2. WCFs with Support Structures. WCFs with support structures shall be designed to blend into the existing site and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use compatible or neutral colors. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened with landscaping and/or fencing.



3. Equipment Cabinets. Equipment cabinets that are visible to the traveling public and/or neighboring residences shall be designed to blend in with existing surroundings, be placed underground if feasible, or placed in a location as unobtrusive as possible consistent with proper functioning of the WCF, and use compatible or neutral colors. Screening may be required using landscaping or fencing.

4. Engineer Review. The city shall require any WCF applicant to present engineering data showing the coverage of its existing WCFs and establish that the proposed WCF is required in order to prevent a significant gap in service coverage. The city may hire an independent engineer or other telecommunications consultant to review the applicant's data. If such review is required by the city, the applicant shall pay all costs associated with the city hiring an independent engineer or consultant.

5. Priority Locations. WCFs shall be located only in the zones and properties described in this chapter and a WCF applicant shall locate any WCF in the following siting priority consistent with proper functioning of the WCF:

- a. Public properties described in subsections B and D of this section;
- b. Town Center, commercial/office and planned business zones described in subsection A of this section; and
- c. Island Crest Way corridor described in subsection C of this section.

F. Shared Facilities and Collocation. The applicant shall collocate the WCF with an existing WCF site unless the applicant can demonstrate to the city's satisfaction that such collocation is not feasible due to radio interference, usable signal, other engineering reason, property owner's refusal to lease property, or zoning restriction. The city also encourages WCF applicants to construct and site facilities with a view toward sharing sites and structures with other utilities and accommodating the future collocation of other future WCFs.

G. Electromagnetic Radiofrequency Emissions. The city recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of radio-frequency (RF) emissions and WCFs which meet FCC standards shall not be conditioned or denied on the basis of RF impacts. In order to provide information to its citizens, the city shall maintain file copies of ongoing FCC information concerning WCFs and radiofrequency standards. Applicants for WCFs shall be required to provide the city information on the projected power density of the facility and compliance with the FCC requirements.

~~H. Height Variance. If strict application of these provisions would preclude an antenna from receiving or transmitting a usable signal, or, if the property owner believes that an alternative exists which is less burdensome to adjacent property owners, an application for a variance may be filed under the provisions of MICC 19.15.020. The code official may grant a height variance upon finding that the criteria in MICC 19.15.020(G)(4) are met, and that one of the following criteria are also met:~~

~~1. Compliance with the above provisions would prevent the antenna from receiving or transmitting a usable signal; and the alternative proposed constitutes the minimum necessary to permit acquisition or transmission of a usable signal; or~~

~~2. The alternative proposed has less impact on adjacent property owners than strict application of the above provisions; or~~

~~3. In Island Crest Park if the parks director supports the variance because there will be a significant benefit to the park by either the retention of trees and/or vegetation or improvement of park uses.~~

~~IH. When there are more than six antennas at one site, the code official shall deem that site full and deny additional antennas.~~

~~I. 6409 Eligible Facilities. 6409 eligible wireless facilities shall be reviewed in accordance with 47 CFR § 1.40001 Wireless Facility Modifications or as hereafter amended.~~

~~J. Removal of WCFs. If a WCF becomes obsolete or unused, it must be removed within six months of cessation of operation at the site.~~

~~JK. Administration and Appeals. Applications to construct WCFs shall follow the permit review procedures in MICC 19.15.020. Appeals shall follow the appeal process outlined in MICC 19.15.020(J). (Ord. 11C-11 § 1; Ord. 11C-05 § 1; Ord. 08C-01 § 2; Ord. 04C-02 §§ 1, 3; Ord. 02C-10 §§ 1, 2, 3, 5; Ord. 99C-13 § 1).~~

#### 19.06.110 Conditional Use Permits, Variances, and Setback Deviations.

##### A. Conditional Use Permits

1. Purpose. A use may be authorized by a conditional use permit for those uses listed in chapters 19.02 and 19.11 MICC. The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards established in this title. The review shall determine if the development proposal should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.

2. Criteria for conditional use permits that are not located in Town Center. An applicant must demonstrate how the development proposal meets the following criteria.

- a. The permit is consistent with the regulations applicable to the zone in which the lot is located;
- b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

3. Criteria for conditional use permits that also require design review and are located in Town Center. An applicant must demonstrate how the development proposal meets the following criteria.

a. General Criteria.

- (i) The proposed use complies with all the applicable development and design provisions of this chapter.
- (ii) The proposed use is consistent with the comprehensive plan.
- (iii) The proposed use is harmonious and appropriate in design, character, and appearance with the existing or intended uses within the surrounding area.
- (iv) The proposed use will not generate excessive fumes, odor, dust, light, radiation, or refuse that would be injurious to surrounding uses.
- (v) The proposed use will not generate levels of noise that adversely impact the health, safety, or general welfare of surrounding uses.
- (vi) The proposed use will be served by adequate public services, including streets, fire and public safety protection, water, sewer, and storm water control, and will not adversely impact the level of service standards for such facilities.
- (vii) The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

b. Additional Criteria for Approval of a Conditional Use for Adult Entertainment in Town Center.

(i) The point of entry into the structure housing the adult entertainment use shall be located at least 100 feet, measured in a straight line, from the property line of: (1) any R-zoned property; (2) any public institution zoned property; (3) any property containing one or more of the following uses: residential uses including single- or multiple-family dwellings, or residential care facilities; schools including public, private, primary or secondary, preschool, nursery school, day care; recreational uses including publicly owned park or open space, commercial or noncommercial or private recreation facility; religious institutions; public institutions; or uses which cater primarily to minors.

(ii) No adult entertainment use shall be located closer than 400 feet to another adult entertainment use. Such distance shall be measured by following a straight line from the nearest point of entry into the proposed adult entertainment to the nearest point of entry into another adult entertainment use.

(iii) The point of entry into adult entertainment use shall not be located along 78th Avenue SE.

(iv) Signing shall be limited to words and letters only. Window or exterior displays of goods or services that depict, simulate, or are intended for use in connection with specified sexual activities as defined by Chapter 5.30 MICC are prohibited.

4. No building permit, business license, or other permits related to the use of the land shall be issued until final approval of the conditional use permit.

5. Change After Conditional Use Permit Granted.

a. Change of Ownership. Conditional use permits granted shall continue to be valid upon change of ownership of the site.

b. Change of Use. Modifications to the use shall require an amendment to the conditional use permit and shall be subject to the review process in chapter 19.15 MICC.

B. Variances.

1. 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 (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 (i) of this section:

2. Criteria.

a. The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-12, and R-15 zoning designations, an “unnecessary hardship” is limited to those circumstances where the adopted standards of this title prevent the construction of a single-family dwelling on a legally created, residentially zoned lot;

b. The variance is the minimum necessary to grant relief to the property owner;

c. No use variance shall be allowed;

d. There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;

e. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

f. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

g. The variance is consistent with the policies and provisions of the comprehensive plan and the development code;

h. The basis for requesting the variance is not the direct result of a past action by the current or prior property owner; and

i. Public and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent may request a variance to increase the impervious surface to a maximum 60 percent impervious surface and such variance application will be granted if the hearing examiner determines that the applicant has demonstrated that the following criteria are satisfied:

i. There will be no net loss of permeable surface from the existing permeable surface. No net loss will be determined by the code official and may be achieved by off-site mitigation and/or by reconstructing existing parking areas to allow stormwater penetration. This replacement will be an exception to subsection (D)(2)(b) of this section prohibiting parking areas from being considered as permeable surfaces;

ii. All storm water discharged shall be mitigated consistent with the most recent Washington State Department of Ecology Stormwater Management Manual for Western Washington, including attenuation of flow and duration. Mitigation will be required for any and all new and replaced impervious surfaces. In designing such

mitigation, the use of a continuous simulation hydrologic model such as KCRTS or WWHM shall be required; event based models will not be allowed. In addition, mitigation designs shall utilize flow control best management practices (BMPs) and low impact development (LID) techniques to infiltrate, disperse and retain stormwater on site to mitigate the increased volume, flow and pollutant loading to the maximum extent feasible;

iii. The director must approve a storm drainage report submitted by the applicant and prepared by a licensed civil engineer assuring the city that city infrastructure, in concert with the project design, is adequate to accommodate storm drainage from the project site, or identifying appropriate improvements to public and/or private infrastructure to assure this condition is met, at the applicant's expense; and

iv. The variance may not be used with other provisions to exceed this maximum 60 percent impervious surface coverage.

3. Height Variance for a Wireless Communication Facility. If strict application of the provisions of MICC 19.06.040 would preclude an antenna from receiving or transmitting a usable signal, or, if the property owner believes that an alternative exists which is less burdensome to adjacent property owners, an application for a variance may be filed under the provisions of MICC 19.15.020. The code official may grant a height variance upon finding that the criteria in MICC 19.15.020(G)(4) are met, and that one of the following criteria are also met:

a. Compliance with the above provisions would prevent the antenna from receiving or transmitting a usable signal; and the alternative proposed constitutes the minimum necessary to permit acquisition or transmission of a usable signal; or

b. The alternative proposed has less impact on adjacent property owners than strict application of the above provisions; or

c. In Island Crest Park if the parks director supports the variance because there will be a significant benefit to the park by either the retention of trees and/or vegetation or improvement of park uses.

4. The code official may grant a variance, with restrictions if deemed necessary, from the four-acre limitation for purpose of permitting short subdivision of property containing more than four acres into four or less lots when all of the following circumstances shall be found to apply:

a. That there are special circumstances applicable to the particular lot, such as type of ownership, restrictive covenants, physiographic conditions, location or surroundings, or other factors;

b. That the granting of the variance will not result in future uncoordinated development nor alter the character of the neighborhood; and

c. That granting the variance will not conflict with the general purposes and objectives of the comprehensive plan or the development code.

### C. Setback Deviations

1. Purpose. The purpose of a setback deviation is to increase protection of a critical area or critical area buffer. A setback deviation provides flexibility in design a development proposal to allow for increased protection of critical areas or critical area buffer.

2. Criteria. A setback deviation shall be granted by the city only if the applicant demonstrates all of the following:

a. No use deviation shall be allowed;

b. The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

c. The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

d. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code;

e. The basis for requesting the deviation is not the direct result of a past action by the current or prior property owner;

f. The setback deviation is associated with the approval of development of a single lot or subdivision that is constrained by critical areas or critical area buffers;

g. The building pad resulting from the proposed deviation will result in less impact to critical areas or critical area buffers; and

h. Yard setbacks shall not be reduced below the following minimums:

(i) Front and rear setbacks may not be reduced to less than 10 feet each;

(ii) Side setbacks may not be reduced to less than five feet.

### 19.06.120 Design Review.

A. Intent and Purpose. These regulations are intended to implement and further the comprehensive plan of the city and are adopted for the following purposes:

1. To promote the public health, safety and general welfare of the citizens of the city.

2. To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government.

3. To protect, preserve and enhance the social, cultural, economic, environmental, aesthetic, and natural values that have established the desirable quality and unique character of Mercer Island.

4. To promote and enhance construction and maintenance practices that will tend to promote visual quality throughout Mercer Island.

5. To recognize environmental and aesthetic design as an integral part of the planning process

B. Criteria for Design Review Decisions. Design objectives and standards for regulated improvements within the Town Center are set forth in Chapter 19.11 MICC. Design objectives and standards for regulated improvements in all zones outside the Town Center are set forth in Chapter 19.12 MICC. Following the applicable review process in chapter 19.15 MICC, the design commission or code official shall deny an application if it finds that all the following criteria have not been met, or approve an application, or approve it with conditions, based on finding that all the following criteria have been met:

a. The proposal conforms with the applicable design objectives and standards of the design requirements for the zone in which the improvement is located, provided further:

i. In the Town Center, particular attention shall be given to whether:

(A) The proposal meets the requirements for additional building height, if the proposal is for a building greater than two stories; and

(B) The proposal adheres to the required parking standards and a parking plan has been provided that demonstrates that the proposal meets the objectives of MICC 19.11.130.



1  
2  
3 **19.07.040 Review and construction requirements.**

4 A. Development Standards. The applicant will comply with the general development standards set forth in  
5 Chapter 19.09 MICC.

6 B. Native Growth Protection Areas.

7 1. Native growth protection areas may be used in development proposals for subdivisions and lot line  
8 revisions to delineate and protect contiguous critical areas.

9 2. Native growth protection areas shall be designated on the face of the plat or recorded drawing in a  
10 format approved by the city. The designation shall include an assurance that native vegetation will be  
11 preserved and grant the city the right to enforce the terms of the restriction.

12 C. Setback Deviation. An applicant may seek a deviation from required front, side, and back yard  
13 setbacks pursuant to MICC 19.15.020050.

14 D. Variances. Variances are not available to reduce any numeric requirement of this chapter. However,  
15 the allowed alterations and the reasonable use exception allowed pursuant to MICC 19.07.030 may result  
16 in city approvals with reduced numeric requirements.

17 E. Appeals. Appeals of decisions made under the provisions of this chapter shall follow the procedures  
18 described in MICC 19.15.020050 (J).

19 F. Fees.

20 a. Fees shall be set forth in a schedule adopted by city council resolution. The fee should be based on a  
21 submittal fee and the time required to review development applications for alterations within critical areas  
22 and buffers.

23 b. The city may require peer review of any report or study by a second qualified professional to verify the  
24 adequacy of the information and analysis. The applicant shall bear the cost of the peer review.

25 G. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees,  
26 Performance Bonds, Insurance. An applicant for a permit within a critical area will comply with the  
27 requirements of MICC 19.01.060, if required by the code official.

28 H. Erosion Control Measures.

1 1. A temporary erosion and sediment control plan shall be required for alterations on sites that contain  
2 critical areas.

3 2. Erosion control measures shall be in place, including along the outer edge of critical areas prior to  
4 clearing and grading. Monitoring surface water discharge from the site during construction may be  
5 required at the discretion of the code official.

6 I. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection and  
7 occupancy of a project. Upon a showing of good cause, the code official may extend the completion  
8 period.

9 J. Maintenance and Monitoring.

10 1. Landscape maintenance and monitoring may be required for up to five years from the date of project  
11 completion if the code official determines such condition is necessary to ensure mitigation success and  
12 critical area protection.

13 2. Where monitoring reveals a significant variance from predicted impacts or a failure of protection  
14 measures, the applicant shall be responsible for appropriate corrective action, which may be subject to  
15 further monitoring.

16 K. Suspension of Work. If the alteration does not meet city standards established by permit condition or  
17 applicable codes, including controls for water quality, erosion and sedimentation, the city may suspend  
18 further work on the site until such standards are met.

19

20 **19.07.060 Geologic hazard areas.**

21 A. Designation. All property meeting the definition of a geologic hazard area is designated as a geologic  
22 hazard area.

23 B. Buffers. There are no buffers for geologic hazard areas, but a geotechnical report is required prior to  
24 making alterations in geologic hazard areas. This provision shall not change development limitations  
25 imposed by the creation of building pads under MICC 19.09.090.

26 C. Geotechnical Review.

27 1. The applicant must submit a geotechnical report concluding that the proposal can effectively mitigate  
28 risks of the hazard. Consistent with MICC 19.07.050, the report shall suggest appropriate design and  
29 development measures to mitigate such hazards.

1 ~~2. The city may require peer review of the geotechnical report by a second qualified professional to verify~~  
2 ~~the adequacy of the information and analysis. The applicant shall bear the cost of the peer review.~~

3 ~~32.~~ The code official may waive the requirement for a geotechnical report when the proposed alteration  
4 does not pose a threat to the public health, safety and welfare in the sole opinion of the code official.

5 D. Site Development.

6 1. Development Conditions. Alterations of geologic hazard areas may occur if the code official concludes  
7 that such alterations:

8 a. Will not adversely impact other critical areas;

9 b. Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the  
10 subject property or adjacent properties;

11 c. Will mitigate impacts to the geologic hazard area consistent with best available science to the  
12 maximum extent reasonably possible such that the site is determined to be safe; and

13 d. Include the landscaping of all disturbed areas outside of building footprints and installation of all  
14 impervious surfaces prior to final inspection.

15 2. Statement of Risk. Alteration within geologic hazard areas may occur if the development conditions  
16 listed above are satisfied and the geotechnical professional provides a statement of risk with supporting  
17 documentation indicating that one of the following conditions can be met:

18 a. The geologic hazard area will be modified, or the development has been designed so that the risk to  
19 the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe;

20 b. Construction practices are proposed for the alteration that would render the development as safe as if it  
21 were not located in a geologic hazard area;

22 c. The alteration is so minor as not to pose a threat to the public health, safety and welfare; or

23 d. An evaluation of site specific subsurface conditions demonstrates that the proposed development is not  
24 located in a geologic hazard area.

25 3. Development Limitations. Within a landslide hazard area, the code official may restrict alterations to the  
26 minimum extent necessary for the construction and maintenance of structures and related access where  
27 such action is deemed necessary to mitigate the hazard associated with development.

1 4. Seasonal Limitations. Land clearing, grading, filling, and foundation work within geologic hazard areas  
2 are not permitted between October 1 and April 1. The code official may grant a waiver to this seasonal  
3 development limitation if the applicant provides a geotechnical report of the site and the proposed  
4 construction activities that concludes erosion and sedimentation impacts can be effectively controlled on-  
5 site consistent with adopted storm water standards and the proposed construction work will not subject  
6 people or property, including areas off-site, to an increased risk of the hazard. As a condition of the  
7 waiver, the code official may require erosion control measures, restoration plans, and/or an  
8 indemnification/release agreement. Peer review of the geotechnical report may be required in accordance  
9 with subsection C of this section. If site activities result in erosion impacts or threaten water quality  
10 standards, the city may suspend further work on the site and/or require remedial action.

11  
12  
13 19.07.110 Shoreline master program.

14 ...

15 F. Shoreline Permits.

16 1. Administrative Responsibility. Except as otherwise stated in this section, the code official is  
17 responsible for:

18 a. Administering shoreline permits.

19 b. Approving, approving with conditions or denying shoreline exemption permits,  
20 substantial development permits, shoreline conditional use permits, shoreline variances  
21 and permit revisions in accordance with applicable provisions.

22 c. Determining compliance with the State Environmental Policy Act.

23 d. No development shall be undertaken within the shorelands without first obtaining a  
24 shoreline exemption permit, substantial development permit, conditional use permit,  
25 and/or a variance permit in accordance with all applicable procedures unless it qualifies  
26 under a categorical exemption. In addition, such permit shall be in compliance with  
27 permit requirements of all other agencies having jurisdiction within the shorelands.  
28 Compliance with all applicable federal and state regulations is also required.

29 2. Shoreline Categorical Exemption. Any development that qualifies as being a shoreline  
30 categorical exemption, as specified in MICC 19.07.110, shall not require a shoreline permit, but  
31 must still meet all requirements of the Mercer Island Unified Land Development Code.

32 3. Shoreline Exemption.

1 a. Shoreline Exemption Criteria. A shoreline exemption ~~may~~ shall be granted to the  
2 following development as long as such development proposal is in compliance with all  
3 applicable requirements of ~~the Mercer Island Unified Land Development Code-Title 19~~  
4 of the Mercer Island City Code and any of the following:

5 (A) Any development of which the total cost or fair market value, whichever is  
6 higher, does not exceed \$7,047 or as periodically revised by the Washington  
7 State Office of Financial Management, if such development does not materially  
8 interfere with the normal public use of the water or shorelines of the state; or

9 (B) Normal maintenance or repair of existing structures or developments,  
10 including damage by accident, fire or elements. "Normal maintenance" includes  
11 those usual acts established to prevent a decline, lapse, or cessation from a  
12 lawfully established condition. "Normal repair" means to restore a development  
13 to a state comparable to its original condition within a reasonable period after  
14 decay or partial destruction, including complete replacement of legally existing  
15 structures. Normal maintenance of single-family dwellings is categorically  
16 exempt as stated above; or

17 (C) Construction of the normal protective bulkhead common to single-family  
18 dwellings. A "normal protective" bulkhead is constructed at or near the ordinary  
19 high water mark to protect a single-family dwelling and is for protecting land  
20 from erosion, not for the purpose of creating land. Where an existing bulkhead  
21 is being replaced, it shall be constructed no further waterward of the existing  
22 bulkhead than is necessary for construction of new footings; or

23 (D) Emergency construction necessary to protect property from damage by the  
24 elements. An "emergency" is an unanticipated and imminent threat to public  
25 health, safety, or the environment which requires immediate action within a  
26 time too short to allow full compliance with this section; or

27 (E) Construction or modification of navigational aids such as channel markers  
28 and anchor buoys; or

29 (F) Construction of a dock, designed for pleasure craft only, for the private  
30 noncommercial use of the owners, lessee, or contract purchaser of a single-  
31 family dwelling, for which the cost or fair market value, whichever is higher,  
32 does not exceed \$10,000; or

33 (G) Any project with a certification from the governor pursuant to Chapter 80.50  
34 RCW; or

35 (H) Projects for the restoration of ecological functions; or

36 (I) Any development proposal that meets the shoreline substantial development  
37 exemptions identified in WAC 173-27-040 or RCW 90.58, as amended.

1 b. Shoreline Exemption Process. The city shall send the shoreline letter of exemption  
2 decisions to the applicant and all applicable local, state, or federal agencies as required  
3 by state or federal law.

4 4. Substantial Development Permit Application Decision Criteria. A substantial development  
5 permit (SDP) is required for any development within shorelands that does not qualify as  
6 shoreline exempt.

7 All requirements of the Mercer Island Unified Land Development Code shall apply to the  
8 approval of a shoreline substantial development permit.

9  
10  
11 5. Shoreline Conditional Use Permit. The purpose of a shoreline conditional use permit is to  
12 provide a system which allows flexibility in the application of use regulations in a manner  
13 consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special  
14 conditions may be attached to the permit by the city of Mercer Island or the Department of  
15 Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the  
16 project with the Shoreline Management Act and the applicable city regulations.

17 a. Shoreline Conditional Use Permit Application Decision Criteria. All requirements of  
18 the Mercer Island Unified Land Development Code shall apply to the approval of a  
19 shoreline conditional use permit. Uses that require a shoreline conditional use permit  
20 may be authorized; provided, that the applicant demonstrates all of the following:

21 (A) That the proposed use is consistent with the policies of RCW 90.58.020 and  
22 the Mercer Island Uniform Land Development Code;

23 (B) That the proposed use will not detrimentally interfere with the normal public  
24 use of shorelands within the “urban park environment” shoreline environment  
25 designation;

26 (C) That the proposed use of the site and design of the project is compatible  
27 with other authorized uses within the area and with uses allowed for the area  
28 by the Mercer Island Uniform Land Development Code;

29 (D) That the proposed use will cause no significant adverse effects to the  
30 shoreline environment in which it is to be located; and

31 (E) That the public interest suffers no substantial detrimental effect.

32 (F) In applying the above criteria when reviewing shoreline conditional use  
33 applications, consideration shall be given to the cumulative impact of additional  
34 requests for like actions in the area. For example, if shoreline conditional use  
35 permits were granted for other developments in the area where similar

1 circumstances exist, the total of the shoreline conditional uses shall also remain  
2 consistent with the policies of RCW 90.58.020 and shall not produce substantial  
3 adverse effects to the shoreline environment.

4  
5 6. Shoreline Variance Criteria. Shoreline variances are strictly limited to granting relief from  
6 specific bulk, dimensional or performance standards set forth in the applicable regulations  
7 where there are extraordinary circumstances relating to the physical character or configuration  
8 of property such that the strict implementation of the regulations will impose unnecessary  
9 hardships on the applicant or thwarting of the policy enumerated in RCW 90.58.020. Shoreline  
10 variances for use regulations are prohibited. In addition, in all instances the applicant for a  
11 shoreline variance shall demonstrate strict compliance with all variance criteria set out in  
12 subsection (G)(4) of this section and the following additional criteria:

13  
14 -a. In the granting of all shoreline variance permits, consideration shall be given to the  
15 cumulative impact of additional requests for like actions in the area. For example, if  
16 shoreline variances were granted to other developments in the area where similar  
17 circumstances exist, the total of the shoreline variances shall also remain consistent  
18 with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to  
19 the shoreline environment.

20 b. Shoreline variance permits for development that will be located landward of the  
21 ordinary high water mark, and/or landward of any associated wetland, may be  
22 authorized; provided, the applicant can demonstrate all of the following:

23 (A) That the strict application of the bulk, dimensional or performance standards  
24 set forth in the applicable regulations precludes or significantly interferes with  
25 reasonable use of the property not otherwise prohibited;

26 (B) That the hardship in this subsection (G)(6)(f)(i) is specifically related to the  
27 property, and is the result of unique conditions such as irregular lot shape, size,  
28 or natural features and the application of the applicable regulations, and not,  
29 for example, from deed restrictions or the applicant's own actions;

30 (C) That the design of the project is compatible with other authorized uses in  
31 the area and will not cause adverse effects to adjacent properties or the  
32 shoreline environment;

33 (D) That the requested shoreline variance does not constitute a grant of special  
34 privilege not enjoyed by the other properties in the area, and is the minimum  
35 necessary to afford relief; and

36 (E) That the public interest will suffer no substantial detrimental effect.

1 c. Shoreline variance permits for development that will be located waterward of the  
2 ordinary high water mark or within any associated wetland may be authorized;  
3 provided, the applicant can demonstrate all of the following:

4 (A) That the strict application of the bulk, dimensional or performance standards  
5 set forth in the applicable regulations precludes reasonable use of the property;

6 (B) That the proposal is consistent with the criteria established under  
7 subsections (G)(6)(f)(i)(B)(1) through (5) of this section; and

8 (C) That the public rights of navigation and use of the shorelines will not be  
9 adversely affected.

10  
11 7. Revisions. When an applicant seeks to revise a substantial development permit, shoreline  
12 conditional use permit and/or shoreline variance permit, the requirements of WAC 173-27-100,  
13 as amended, shall be met.



Chapter 19.08  
SUBDIVISIONS

Sections:

19.08.010 General provisions for long subdivisions and short subdivisions.

19.08.020 Application procedures and requirements for long subdivisions and short subdivisions.

19.08.030 Design standards.

19.08.040 Plat improvements.

19.08.050 Final plats.

19.08.060 Condominium conversions.

19.08.070 Lot line revisions

19.08.010 General provisions.

A. No person shall subdivide land, either through a long subdivision or a short subdivision, ~~or make a lot line revision~~, without first obtaining official approval as herein provided.

B. All applications for long subdivisions, ~~or short subdivisions, or lot line revisions~~ are governed by the permit review procedures set out in MICC 19.15.020 except where superseded by language contained in this chapter.

C. Land contained in a prior short subdivision may not be further divided in any manner for a period of five years after the recording of the final plat with King County without the filing of a long subdivision plat; however when a short subdivision consists of less than four lots, an alteration to the short subdivision is permitted so long as no more than four lots are created through the total short subdivision process.

D. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public safety, health, and general welfare. This chapter is not intended to interfere with or abrogate or annul any easements, covenants, conditions, or restrictions created or imposed by plats or deeds or record or by agreements between parties, except where the provisions of this chapter are more restrictive, in which event the provisions of this chapter shall govern.

1 E. Preliminary long subdivision, ~~and~~ short subdivision, ~~and lot line revision~~ applications shall be  
2 processed simultaneously with all applications for rezones, variances, planned unit developments, and  
3 site plan approvals to the extent the procedural requirements of those actions allow simultaneous  
4 action.

5 F. Vacations of long subdivisions shall be governed by RCW 58.17.212. Alterations to long subdivisions  
6 shall be governed by RCW 58.17.215. All public hearings for both vacations and alterations of long  
7 subdivisions shall be before the hearing examiner, which shall make recommendations as to the  
8 vacation or alteration to the city council.

9 G. Vacations and alterations of short subdivisions shall be reviewed by the code official, and shall comply  
10 with the requirements of this chapter for the creation of short subdivisions, unless those requirements  
11 are waived by the code official. Vacations and alterations of short subdivisions that involve a public  
12 dedication shall be governed by subsection F of this section. (Ord. 17C-12 § 7; Ord. 08C-01 § 4; Ord. 99C-  
13 13 § 1).

14  
15 19.08.020 Application procedures and requirements.

16 A. Applications for short subdivisions or alterations or vacation thereof ~~and lot line revisions~~ shall be  
17 reviewed by the code official. Applications for long subdivisions or alteration or vacation thereof shall be  
18 reviewed by the hearing examiner, who shall make recommendations to the city council.

19 ~~B. The code official may grant a variance, with restrictions if deemed necessary, from the four-acre~~  
20 ~~limitation for purpose of permitting short subdivision of property containing more than four acres into~~  
21 ~~four or less lots when all of the following circumstances shall be found to apply:~~

22 ~~1. That there are special circumstances applicable to the particular lot, such as type of ownership,~~  
23 ~~restrictive covenants, physiographic conditions, location or surroundings, or other factors;~~

24 ~~2. That the granting of the variance will not result in future uncoordinated development nor alter the~~  
25 ~~character of the neighborhood; and~~

26 ~~3. That granting the variance will not conflict with the general purposes and objectives of the~~  
27 ~~comprehensive plan or the development code.~~

28 ~~C. Applicants shall prepare a concept sketch of the proposal for the preapplication meeting required~~  
29 ~~under MICC 19.09.010(A).~~

30 ~~B~~. Preliminary Application Contents. In addition to any documents, information, or studies required  
31 under Chapter 19.07 MICC, Environment, Chapter 19.10 MICC, Trees, or any other chapter of this title,  
32 an application for a long subdivision, ~~or~~ short subdivision, ~~or a lot line revision~~ shall include the  
33 documents set forth below and any other document or information deemed necessary by the code  
34 official upon notice to the applicant. All documents shall be in the form specified by the code official and  
35 shall contain such information as deemed necessary by the code official. The applicant shall submit the  
36 number of copies of each document specified by the code official.

1 1. Development Application Cover Form. The development application cover form shall be  
2 signed by all current property owners listed on the plat certificate, and shall list the legal parcel  
3 numbers of all property involved in the project.

4 2. Long Subdivision, ~~and~~ Short Subdivision, ~~or Lot Line Revision Plans~~. The applicant shall  
5 provide copies of fully dimensioned plans of the project prepared by a Washington registered  
6 civil engineer or land surveyor, meeting the requirements of Chapter 19.07 MICC, Environment,  
7 and containing any other information deemed necessary by the code official. The city engineer  
8 may waive the requirement that an engineer or surveyor prepare the plans for a short  
9 subdivision ~~or lot line revision~~. The submitted plans shall identify the proposed building pad  
10 location for each proposed lot pursuant to MICC 19.09.090.

11 3. Plat Certificate. Applicant shall provide a plat certificate issued by a qualified title insurance  
12 company not more than 30 days before filing of the application showing the ownership and title  
13 of all parties interested in the plat. If the plat certificate references any recorded documents  
14 (i.e., easements, dedications, covenants, etc.) copies of those documents shall also be provided.

15 4. Legal Documents. Applicants shall provide copies of each of the following documents (if  
16 applicable):

17 a. Proposed restrictive covenants.

18 b. Draft deeds to the city for any land to be dedicated.

19 c. Proposed easements.

20 5. Project Narrative. Applicants shall provide a clear and concise written description and  
21 summary of the proposed project.

22 6. Neighborhood Detail Map. Applicants shall provide copies of a map drawn at a scale specified  
23 by the code official showing the location of the subject site relative to the property boundaries  
24 of the surrounding parcels within approximately 1,000 feet, or approximately 2,500 feet for  
25 properties over four acres. The map shall identify the subject site with a darker perimeter line  
26 than that of the surrounding properties.

27 7. Topography Map. The applicant shall provide copies of a topographical map showing the  
28 existing land contours using vertical intervals of not more than two feet, completed and signed  
29 by a Washington licensed surveyor. For any existing buildings, the map shall show the finished  
30 floor elevations of each floor of the building. Critical slopes exceeding 30 percent must be  
31 labeled and delineated by a clearly visible hatching.

32 8. Detailed Grading Plan. If the grade differential on the site of the proposed project will exceed  
33 24 inches and/or if the amount of earth to be disturbed exceeds 50 cubic yards, the applicant  
34 shall provide copies of a detailed grading plan drawn by a Washington licensed engineer.

35 9. Street Profiles. The applicant shall provide copies of a street profile showing the profiles and  
36 grades of each street, together with typical cross sections indicating:

- 1 a. Width of pavement;
- 2 b. Location and width of sidewalks, trails, bike lanes, ditches, swales, etc.; and
- 3 c. Location of any utility mains.

4 10. Geotechnical Report. The applicant shall provide a geotechnical report meeting the  
5 requirements of Chapter 19.07 MICC, Critical Lands. This requirement may be waived by the city  
6 engineer under the criteria set out in MICC 19.07.010.

7 11. Utility Plan. Conceptual plan showing the locations of existing and proposed utilities.

8 E. Preliminary Application Procedure.

9 1. Findings of Fact. All preliminary approvals or denials of long subdivisions or short subdivisions  
10 shall be accompanied by written findings of fact demonstrating that:

- 11 a. The project does or does not make appropriate provisions for the public health,  
12 safety, and general welfare and for such open spaces, drainage ways, streets or roads,  
13 alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks  
14 and recreation, playgrounds, schools and schoolgrounds and all other relevant facts,  
15 including sidewalks and other planning features that assure safe walking conditions for  
16 students who only walk to and from school;
- 17 b. The public use and interest will or will not be served by approval of the project; and
- 18 c. The project does or does not conform to applicable zoning and land use regulations.

19 2. Short Subdivisions and Lot Line Revisions. The code official shall grant preliminary approval  
20 for a short subdivision or lot line revision if the application is in proper form and the project  
21 complies with the design standards set out in MICC 19.08.030, the comprehensive plan, and  
22 other applicable development standards.

23 3. Long Subdivisions.

24 a. At an open record hearing the hearing examiner shall review the proposed long  
25 subdivision for its conformance with the requirements of MICC 19.08.030, the  
26 comprehensive plan, and other applicable development standards.

27 b. The hearing examiner shall make a written recommendation on the long subdivision,  
28 containing findings of fact and conclusions, to the city council not later than 14 days  
29 following action by the hearing examiner.

30 c. Upon receipt of the hearing examiner's recommendation, the city council shall at its next  
31 public meeting set the date for the public hearing where it may adopt or reject the hearing  
32 examiner's recommendations.

1 ~~d. Preliminary approval of long subdivision applications shall be governed by the time limits and~~  
2 ~~conditions set out in MICC 19.15.020(E); except the deadline for preliminary plat approval is 90~~  
3 ~~days, unless the applicant consents to an extension of the time period.~~

4 4. Conditions for Preliminary Approval. As a condition of preliminary approval of a project, the  
5 ~~city council hearing examiner~~ in the case of a long subdivision, or the code official in the case of  
6 a short subdivision, may require the installation of plat improvements as provided in MICC  
7 19.08.040, which shall be conditions precedent to final approval of the subdivision.

8 5. No Construction before Application Approval. No construction of structures, utilities, storm  
9 drainage, grading, excavation, filling, or land clearing on any land within ~~the a~~ proposed long  
10 subdivision, ~~or short subdivision, or lot line revision~~ shall be allowed prior to ~~preliminary final~~  
11 plat approval of the application and until the applicant has secured the permits required under  
12 the Mercer Island City Code. (Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 7; Ord. 10C-07 § 2; Ord.  
13 08C-01 § 4; Ord. 99C-13 § 1).

14 ...

15 19.08.050 Final plats.

16 A. Required Signatures.

17 1. Before the original or extended deadline for recording the final plat as set forth in MICC  
18 19.15.020(K), the applicant may file with the city the final plat of the proposed long subdivision,  
19 ~~or short subdivision, or lot line revision~~ in the form prescribed by subsection C of this section.

20 2. The city engineer shall check the final plat and shall sign it when satisfied that it meets the  
21 requirements of subsection C of this section, adequately addresses sewage disposal and water  
22 supply, and complies with all conditions placed on the preliminary plat approval.

23 3. After the final plat has been signed by the city engineer, it shall go to the code official for final  
24 signature.

25 4. Each long subdivision plat submitted for final signature shall be accompanied by the  
26 recommendation for approval or disapproval of the city engineer as to the requirements of  
27 subsection (A)(2) of this section. The city engineer's signature on the final plat shall constitute  
28 such recommendation.

29 5. Final plats shall be approved, disapproved, or returned to the applicant within 30 days from  
30 the date of filing, unless the applicant consents to an extension of such time period.

31 B. Recording of the Final Plat.

32 1. The applicant shall deliver the ~~mylar signed plat~~ to King County for recording.

1 2. The recording of the final plat with the county department of records shall constitute the  
2 official approval of the subdivision, and lots may not be legally sold until the plat has received its  
3 recording number.

4 3. After the final plat has been recorded, the original plat shall be returned to the city engineer  
5 and filed as the property of the city.

6 C. Contents of the Final Plat. All final plats submitted to the city shall meet the requirements set out in  
7 Chapter 58.09 RCW, Chapter 332-130 WAC, and those requirements set out below.

8 Final plat documents submitted to the city shall contain the information set out below. The final plat  
9 documents shall be drawn on an 18-inch by 24-inch sheet size, allowing one-half inch for borders. The  
10 index sheet must show the entire subdivision, with street and highway names and block numbers.

11 1. Identification and Description.

12 a. Name of the long subdivision, short subdivision ~~or lot line revision~~.

13 b. A statement that the long subdivision or short subdivision has been made with the  
14 free consent and in accordance with the desires of the owner or owners.

15 c. Location by section, township and range, or by other legal description.

16 d. The name and seal of the registered engineer or the registered land surveyor.

17 e. Scale shown graphically, ~~date datum~~ and north point. The scale of the final plat shall  
18 be such that all distances and bearings can be clearly and legibly shown thereon in their  
19 proper proportions. Where there is a difference between the legal and actual field  
20 distances and bearings, both distances and bearings shall be shown with the field  
21 distances and bearings shown in brackets.

22 f. A description of property platted which shall be the same as that recorded in  
23 preceding transfer of said property or that portion of said transfer covered by plat.  
24 Should this description be cumbersome and not technically correct, a true and exact  
25 description shall be shown upon the plat, together with original description. The correct  
26 description shall follow the words: "The intent of the above description is to embrace all  
27 the following described property."

28 g. A vicinity map showing the location of the plat relative to the surrounding area.

29 2. Delineation.

30 a. Boundary plat, based on an accurate traverse, with angular and lineal dimensions.

31 b. Exact location, width, and name of all streets within and adjoining the plat, and the  
32 exact location and widths of all roadways, driveways, and trail easements. The name of

1 a street shall not duplicate that of any existing street in the city, unless the platted  
2 street be a new section or continuation of the existing street.

3 c. True courses and distances to the nearest established street lines or official  
4 monuments which shall accurately describe the location of the plat.

5 d. Municipal, township, county or section lines accurately tied to the lines of the  
6 subdivision by courses and distances.

7 e. Radii, internal angles, points of curvature, tangent bearings and lengths of all arcs.

8 f. All easements for rights-of-way provided for public services or utilities. Utility  
9 easements shall be designated as public or private.

10 g. All lot and block numbers and lines, with accurate dimensions in feet and hundredths.  
11 Blocks in numbered additions to subdivisions bearing the same name may be numbered  
12 or lettered consecutively through the several additions. The square footage for each lot  
13 less vehicular easements shall be shown.

14 h. Accurate location of all monuments, which shall be concrete commercial monuments  
15 four inches by four inches at top, six inches by six inches at bottom, and 16 inches long.  
16 One such monument shall be placed at each street intersection and at locations to  
17 complete a continuous line of sight and at such other locations as are required by the  
18 engineer.

19 i. All plat meander lines or reference lines along bodies of water shall be established  
20 above the ordinary high water line of such water.

21 j. Accurate outlines and legal description of any areas to be dedicated or reserved for  
22 public use, with the purpose indicated thereon and in the dedication; and of any area to  
23 be reserved by deed covenant for common uses of all property owners.

24 k. Critical areas as identified under Chapter 19.07 MICC.

25 l. Corner pins made of rebar with caps.

26 m. Designated building pads pursuant to MICC 19.09.090.

27 3. Other Marginal Data on Final Plat.

28 a. If the plat is subject to dedications to the city or any other party, the dedications shall  
29 be shown and shall be duly acknowledged. The plat shall also contain a waiver of all  
30 claims for damages against the city which may be occasioned to the adjacent land by  
31 the established construction, drainage and maintenance of any streets dedicated to the  
32 city.

33 b. A copy of the protective covenants, if any.

1 c. Certification by a Washington-registered civil engineer or land surveyor to the effect  
2 that the plat represents a survey made by that person and that the monuments shown  
3 thereon exist as located and that all dimensional and geodetic details are correct.

4 d. Proper forms for the approvals of the city engineer and the mayor, on behalf of the  
5 city council, in the case of a long subdivision; or the city engineer and the code official in  
6 the case of short subdivisions ~~or lot line revisions~~, with space for signatures.

7 e. Certificates by the county assessor showing that the taxes and assessments on the  
8 land to be submitted have been paid in accordance with law, including a deposit for the  
9 taxes for the following year.

10 f. Approval by the county department of records.

11 g. Conditions of approval created at preliminary subdivision approval that affect  
12 individual lots or tracts.

13 4. Other Documents. When filed with the city, the final plat shall be accompanied by the  
14 following additional documents.

15 a. "As Built" Drawings. A plan, profile and section drawing, prepared by a Washington  
16 licensed engineer showing all streets and other access ways, water, sewer, storm water  
17 detention facilities, retaining walls, and rockeries within the subdivision at a scale of one  
18 inch equal to 40 feet or less on a standard sheet 24 inches wide and 36 inches long.

19 b. Plat Certificate. A plat certificate issued by a qualified title insurance company not  
20 more than 30 days before filing of the final plat showing the ownership and title of all  
21 parties interested in the plat. If the plat certificate references any recorded documents  
22 (i.e., easements, dedications, covenants, etc.) copies of those documents shall also be  
23 provided. (Ord. 17C-15 § 1 (Att. A); Ord. 10C-07 § 3; Ord. 10C-06 § 2; Ord. 08C-01 § 4;  
24 Ord. 99C-13 § 1).

25 ...

26  
27 19.08.07~~10~~ Lot line revisions.

28 A. Purpose. The purpose of this section is to provide procedures and criteria for the review and approval  
29 of revisions to lot lines of legal lots or tracts.

30  
31 B. Requirements for a complete application.

32 1. A map at a scale of not less than one inch equal to 100 feet which depicts the existing and  
33 proposed property configuration, including all lot line dimensions.



1 2. Legal descriptions of the existing and proposed property configurations, prepared by a  
2 licensed professional land surveyor.

3 3. A completed application form.

4 4. Project Narrative. Applicants shall provide a clear and concise written description and  
5 summary of the proposed project.

6 4.5. Any other information required pursuant to Chapter 19.15 MICC.

7  
8 C. Approval criteria. The code official shall approve an application for a lot line revision if it is determined  
9 that:

10 1. No additional lot, tract, parcel, site or division will be created by the proposed revision;

11 2. No lot is created or modified which contains insufficient area and dimensions to meet the  
12 minimum requirements of the zone in which the affected lots are situated;

13 3. No lot is created or modified which does not have adequate drainage, water supply and  
14 sanitary sewage disposal, and access for vehicles, utilities and fire protection, and no existing  
15 easement in favor of the public is rendered impractical to serve its purpose;

16 4. No lot line revision shall reduce the overall area in a plat or short plat devoted to open space;

17 5. No lot line shall result in the creation of a lot or structure that is non-conforming with the  
18 provisions of Title 19 MICC;

19 6. The lot line revision shall be consistent with any restrictions or conditions of approval for a  
20 recorded plat or short plat; and

21 7. The lot line revision and the lots resulting from the lot line revision ~~is~~ are consistent with the  
22 applicable provisions of Title 19 MICC.

23 D. Requirements for Recording Documents.

24 1. A title insurance certificate updated not more than 30 days prior to recording of the revision,  
25 which includes all parcels within the revision, must be submitted to the Code Official with the  
26 final recording documents.

27 2. All persons having an ownership interest within the lot line revision shall sign the lot line  
28 revision documents that will be recorded in the presence of a notary public.

29 3. Lot line revision documents that will be recorded shall be in a form prescribed by the code  
30 official and be reviewed and approved by the code official prior to recording with the King  
31 County Recorder's office. Lot line revision approvals shall expire if the lot line revision

1 documents and real estate conveyance documents transferring ownership of the adjusted land  
2 area are not recorded and a copy submitted to the City within one year from the date of  
3 approval.

4 4. Lot line revision documents, including a record-of-survey document, must be prepared by a  
5 land surveyor in accordance with Chapter 332-130 WAC and Chapter 58.09 RCW. The document  
6 must contain a land surveyor's certificate and a recording certificate.

7 5. The lot line revision documents shall contain the following approval blocks:

8 a. The King County department of assessments;

9 b. The City of Mercer Island City Engineer; and

10 c. The City of Mercer Island Code Official.

11

12

Chapter 19.09  
PROPERTY DEVELOPMENT

**19.09.010 Preapplication and intake screening meetings.**

~~A. Preapplication meetings between the applicant, members of the applicant's project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030 (A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.~~

~~B. The preapplication meeting will include a preliminary examination of the proposed project and a review of codes as described in MICC 19.15.020(A). The purpose of a preapplication meeting is to provide the applicant with information that will assist in preparing a formal development application meeting city development standards and permit processing requirements.~~

~~CA. City staff are not authorized to approve any plan or design offered by the applicant at a preapplication or intake meeting.~~

~~BD. Intake screenings between the applicant and city staff are required for all building permits involving the following: expansion of a building footprint by 500 square feet or more; an increase in impervious surface of 500 square feet or more; or any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Applicants are encouraged to bring their project team. The purpose of an intake screening is to resolve issues that may cause delay in processing a permit prior to formal acceptance of a permit application. The intake screening will include a preliminary examination of the proposed project and a review of any applicable codes. City staff are not authorized to approve any plan or design offered by the applicant at an intake screening. (Ord. 10C-01 § 4; Ord. 08C-01 § 5; Ord. 05C-12 § 8).~~

Chapter 19.11

TOWN CENTER DEVELOPMENT AND DESIGN STANDARDS

19.11.150 Administration.

A. Design Review.

1. Authority. Design review shall be conducted by the city’s design commission or code official consistent with the procedure set forth in MICC 19.15.040 (F). The design commission or the code official shall review the applicability of the development and design standards and determine the project’s conformance with this chapter. The degree of conformance with all of the development and design standards will vary on a project by project basis. The design commission shall review each project on the project’s degree of overall conformity with the objectives, standards and the comprehensive plan. The design commission or the code official has the authority to approve, approve with conditions, or deny projects based on the criteria set forth in MICC 19.15.040(F).

2. Applicant’s Responsibility. It is the responsibility of the applicant to design a project in compliance with the objectives and development and design standards of this chapter.

3. Shall/Should. When a standard uses the word “shall,” the standard is mandatory. When a standard uses the word “should,” the standard is mandatory unless the applicant can demonstrate, to the satisfaction of the design commission, an equal or better means of satisfying the standard and objective.

4. Development Agreements. An applicant may request modifications to any development and design standards set forth in this chapter by requesting a development agreement consistent with RCW 36.70B.170 through 36.70B.210. All development agreements shall be in form and content acceptable to the city attorney and shall be reviewed and either approved or rejected by the city council after a public hearing pursuant to RCW 36.70B.200.

5. Changes of Use and Tenant Improvements. It is the property owners’ and tenants’ responsibility to ensure compliance with applicable development regulations when a change of use and/or a tenant improvement occurs.

~~B. Conditional Use Permit Review.~~

~~1. General.~~

~~a. Intent. The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards~~

1 established in this chapter. The review shall determine if the proposal should be permitted after  
2 weighing the public benefit and the need for the use with the potential impacts that the use may cause.

3 ~~b. Scope. The conditional use permit review process shall apply to all uses identified as requiring a  
4 conditional use permit in the chart of permitted uses set forth in MICC 19.11.020(A). No building permit,  
5 business license or other permits related to the use of the land shall be issued until final approval of the  
6 conditional use permit.~~

7 ~~c. Review Authority. The hearing examiner shall conduct the conditional use permit review process and  
8 determine whether the proposed conditional use shall be allowed.~~

9 ~~d. Process.~~

10 ~~i. Time Frame and Procedure. Conditional use permit review shall be conducted in accordance with the  
11 timelines and procedures set forth in MICC 19.15.020, Permit review procedures, except as the notice  
12 provisions are modified below.~~

13 ~~ii. Notice.~~

14 ~~(a) Public notice of any proposal in the Town Center which involves a conditional use shall be posted on  
15 the project site and mailed to all property owners within 500 feet of the proposed project site.~~

16 ~~(b) Legal notice shall be published in the official city newspaper (Chapter 2.10 MICC).~~

17 ~~(c) The notice shall identify the general project proposal and the date, time and location of the hearing  
18 examiner open record hearing, and shall be provided a minimum of 30 days prior to the hearing.~~

19 ~~iii. Written Decisions. All decisions of the hearing examiner shall be reduced to writing and shall include  
20 findings of fact and conclusions that support the decisions.~~

21 ~~iv. Expiration of Approval. If the activity approved by the conditional use permit has not been exercised  
22 within two years from the date of the notice of decision setting forth the conditional use decision, or if a  
23 complete application for a building permit has not been submitted within two years from the date of the  
24 notice of the conditional use decision, or within two years from the decision on appeal from the  
25 conditional use decision, conditional use approval shall expire. The design commission or code official  
26 may grant an extension for no longer than 12 months, for good cause shown, if a written request is  
27 submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the  
28 expiration date.~~

1 ~~2. Review Process.~~

2 ~~a. Application Submittal. A complete conditional use permit application, on forms provided by the city~~  
3 ~~development services group (DSG), shall be submitted at the same time as the application and materials~~  
4 ~~for design review. The applicant shall provide a written narrative of the proposed conditional use and~~  
5 ~~explain how the proposed use complies with the criteria for conditional use permit approval in~~  
6 ~~subsection (B)(2)(e) of this section. Depending on the type of conditional use proposed, the code official~~  
7 ~~may require additional information.~~

8 ~~b. SEPA Determination. If the project is not categorically exempt pursuant to WAC 197-11-800, the city~~  
9 ~~environmental official will review the SEPA environmental checklist, the proposal and other information~~  
10 ~~required for a complete application to assess the project's probable environmental impacts and issue a~~  
11 ~~determination pursuant to MICC 19.07.120.~~

12 ~~c. Acceptance. DSG staff shall determine if the required materials have been provided for review of the~~  
13 ~~conditional use permit, in conjunction with the applicable design review process. If so, the application~~  
14 ~~will be accepted and the process for determination of completeness and review set forth in MICC~~  
15 ~~19.15.020 shall commence.~~

16 ~~d. Review. The hearing examiner shall conduct an open record hearing to consider a conditional use~~  
17 ~~permit application. The hearing examiner may approve the application, or approve it with conditions,~~  
18 ~~only if all of the applicable criteria set forth below are met. The hearing examiner shall deny the~~  
19 ~~application if it finds that the applicable criteria set forth below have not been met. Conditions may be~~  
20 ~~attached to assure that the use is compatible with other existing and potential uses within the same~~  
21 ~~general area and that the use shall not constitute a nuisance. Conditional use permit application review~~  
22 ~~shall be coordinated with design review as follows:~~

23 ~~i. Major New Construction. If the conditional use permit application is part of a major new construction~~  
24 ~~project, design review shall commence in accordance with the time frames and procedures set forth in~~  
25 ~~MICC 19.15.040(F), except as follows: The hearing examiner shall review the conditional use permit~~  
26 ~~application at an open record hearing after the design commission's preliminary design review at a~~  
27 ~~public meeting. If the hearing examiner approves the conditional use permit (without or with~~  
28 ~~conditions), then the hearing examiner will forward the project to the design commission for the final~~  
29 ~~design review.~~

30 ~~ii. Change in Use and Minor Exterior Modifications. If the conditional use permit application proposes a~~  
31 ~~change in use but is not part of a major new construction project, or is part of a minor exterior~~  
32 ~~modification, then design review shall proceed administratively in accordance with the provisions in~~

1 MICC ~~19.15.040(F)~~, and the hearing examiner shall review the conditional use permit application at an  
2 open record hearing. If the staff determines that the minor exterior modification should be reviewed by  
3 the design commission as provided for in MICC ~~19.15.040(F)~~, then the design commission's review and  
4 decision shall be conducted at an open record hearing separate from the hearing examiner's open  
5 record hearing on the conditional use permit application.

6 e. Criteria for Approval of a Conditional Use Permit. Consistent with the applicable review process  
7 above, the hearing examiner shall approve, approve with conditions or deny a conditional use permit  
8 application based on finding that all of the following criteria have been met:

9 i. General Criteria.

10 (a) The proposed use complies with all the applicable development and design provisions of this  
11 chapter.

12 (b) The proposed use is consistent with the comprehensive plan.

13 (c) The proposed use is harmonious and appropriate in design, character, and appearance with the  
14 existing or intended uses within the surrounding area.

15 (d) The proposed use will not generate excessive fumes, odor, dust, light, radiation, or refuse that would  
16 be injurious to surrounding uses.

17 (e) The proposed use will not generate levels of noise that adversely impact the health, safety, or  
18 general welfare of surrounding uses.

19 (f) The proposed use will be served by adequate public services, including streets, fire and public safety  
20 protection, water, sewer, and storm water control, and will not adversely impact the level of service  
21 standards for such facilities.

22 (g) The proposed location, size, design, and operating characteristics of the proposed use will not be  
23 detrimental to the public interest, health, safety, convenience, or welfare of the city.

24 ii. Additional Criteria for Approval of a Conditional Use for Adult Entertainment.

25 (a) The point of entry into the structure housing the adult entertainment use shall be located at least  
26 100 feet, measured in a straight line, from the property line of: (1) any R-zoned property; (2) any public  
27 institution zoned property; (3) any property containing one or more of the following uses: residential  
28 uses including single- or multiple-family dwellings, or residential care facilities; schools including public,

1 private, primary or secondary, preschool, nursery school, day care; recreational uses including publicly  
2 owned park or open space, commercial or noncommercial or private recreation facility; religious  
3 institutions; public institutions; or uses which cater primarily to minors.

4 (b) No adult entertainment use shall be located closer than 400 feet to another adult entertainment use.  
5 Such distance shall be measured by following a straight line from the nearest point of entry into the  
6 proposed adult entertainment to the nearest point of entry into another adult entertainment use.

7 (c) The point of entry into adult entertainment use shall not be located along 78th Avenue SE.

8 (d) Signing shall be limited to words and letters only. Window or exterior displays of goods or services  
9 that depict, simulate, or are intended for use in connection with specified sexual activities as defined by  
10 Chapter 5.30 MICC are prohibited.

11 f. Appeal. The hearing examiner's decision is final unless appealed pursuant to MICC 19.15.020(J).

12 g. Change After Conditional Use Permit Granted.

13 i. Change of Ownership. Conditional use permits granted shall continue to be valid upon change of  
14 ownership of the site.

15 ii. Change of Use. Modifications to the use shall require an amendment to the conditional use permit  
16 and shall be subject to the above review process.

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Chapter 19.12  
DESIGN STANDARDS FOR ZONES OUTSIDE TOWN CENTER

**19.12.010 General.**

A. Applicability. This chapter establishes design standards for regulated improvements in all zones established by MICC 19.01.040, except Town Center. Design standards for Town Center are set forth in Chapter 19.11 MICC. These standards are in addition to any other standards that may be applicable to development in the zone in which the development occurs. In the PBZ, the terms of the PBZ site plan as set forth in MICC 19.04.010 shall control; provided, to the extent not inconsistent with MICC 19.04.010, the provisions of MICC 19.12.010 [excluding (D)(2)(b) and (c)], 19.12.030, 19.12.060, 19.12.070 and 19.12.080 shall apply. These design standards are not intended to slow or restrict development, but to add consistency and predictability to the permit review process.

B. Design Vision.

1. Site and Context. Non-Town Center areas are largely characterized by residential settings that are heavily vegetated, topographically diverse and enhanced with short and long-range views that are often territorial in nature. The design of new and remodeled structures should respond to this strong environmental context. Site design should maintain the natural character of the island and preserve vegetation concentrations, topography and the view opportunities that make Mercer Island special.

2. Building Design. Development of new and remodeled structures should conserve Mercer Island’s special environmental characteristics, such as steep slopes, watercourses, and large concentrations of mature trees. Buildings shall be designed to be architecturally compatible with other structures in the neighborhood with respect to human scale, form and massing, and relationship to natural site features. High quality and durable materials, complementary colors, texture, and architectural detail should be incorporated into the design. Use of materials such as natural wood and stone, and design elements such as large building overhangs and window exposure to natural light, are encouraged.

3. Landscaping and Amenities. Landscaping should reflect the natural wooded character of Mercer Island and provide visual separation between different land uses. Amenities such as street trees, plantings, and other landscape design elements, including fountains or water features, and art features should be integrated into new and remodeled structures and their sites.

C. Applicant’s Responsibility. It is the responsibility of the applicant to design a project in compliance with the objectives and standards of this chapter and all other regulations applicable to the zone in which the development occurs.

1 D. Design Review Process. Design review shall be conducted by the city’s design commission or code  
2 official consistent with the process provided in MICC 19.15.040 (F). The design commission or code  
3 official shall review each regulated improvement and determine each project’s conformance with the  
4 applicable objectives and standards of this chapter.

5 1. Full Application of Design Requirements: Major New Construction. All design requirements of  
6 Chapter 19.12 MICC shall apply, except as provided in MICC 19.01.050 (D)(3)(a), when there is  
7 new construction from bare ground, or intentional exterior alteration or enlargement of a  
8 structure over any three-year period that incurs construction costs in excess of 50 percent of the  
9 existing structure’s current King County assessed value as of the time the initial application for  
10 such work is submitted; provided, application of Chapter 19.12 MICC shall not be construed to  
11 require an existing structure to be demolished or relocated, or any portion of an existing  
12 structure that is otherwise not being worked on as part of the construction to be altered or  
13 modified.

14 2. Partial Application of Design Requirements: Minor Exterior Modification. The following design  
15 requirements shall apply when there is a minor exterior modification, as defined in MICC  
16 19.16.010:

17 a. MICC 19.12.030 pertaining to building design and visual interest;

18 b. MICC 19.12.040 (B)(5), (6), (7), (8), (9) and (11) pertaining to landscape design and  
19 outdoor spaces: entrance landscaping; planting types; screen types and widths by use  
20 and location; perimeter landscape screens; surface parking lot planting; and general  
21 planting, irrigation and maintenance standards;

22 c. MICC 19.12.050 pertaining to vehicular and pedestrian circulation;

23 d. MICC 19.12.060 pertaining to screening of service and mechanical areas;

24 e. MICC 19.12.070 pertaining to lighting;

25 f. MICC 19.12.080 pertaining to signs;

26 The design requirements pertaining to structures shall be applied only to that portion of an  
27 existing structure that undergoes minor exterior modification and shall not require any portion  
28 of an existing structure that is otherwise not being worked on as part of the construction to be  
29 altered or modified.

30 3. Value Measure When Structure Has No Assessed Value. For purposes of determining when a  
31 project will be considered major new construction or minor exterior modification, and the  
32 threshold for application of design requirements as set forth in subsections (D)(1) and (2) of this  
33 section, if there is no current King County assessed value for a structure, a current appraisal of  
34 the structure, which shall be provided by the applicant and acceptable to the code official, shall  
35 be used as the value point of reference.

1 E. Shall/Should. When a standard uses the word “shall,” the standard is mandatory. When a standard  
2 uses the word “should,” the standard is mandatory unless the applicant can demonstrate, to the  
3 satisfaction of the design commission or code official, an equal or better means of satisfying the  
4 standard and objective.

5 F. Development Agreements. An applicant may request modifications to any design and development  
6 standards set forth in this chapter by requesting a development agreement consistent with RCW  
7 36.70B.170 through 36.70B.210. All development agreements shall be in form and content acceptable to  
8 the city attorney and will be reviewed and either approved or rejected by the city council after a public  
9 hearing pursuant to RCW 36.70B.200.

10 G. Changes of Use and Tenant Improvements. It is the property owners and tenants’ responsibility to  
11 ensure compliance with applicable development regulations when a change of use and/or a tenant  
12 improvement occurs.

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# Attachment 1.h.1

## Chapter 19.15 ADMINISTRATION

### Sections:

19.15.010 Purpose, intent and roles.

19.15.020 Land use review types.

19.15.030 Legislative actions

19.15.040 Summary of approval and authorities

19.15.050 Permit review procedures

19.15.060 Preapplication

19.15.070 Application

19.15.080 Determination of completeness

19.15.090 Public notification

19.15.100 Notice of application

19.15.110 Public hearing notice

19.15.120 Response to comments and extensions

19.15.130 Notice of decision

19.15.140 Appeals

19.15.150 Open record public hearing

19.15.160 Expiration of approvals

19.15.170 Code interpretations

19.15.180 Vesting

19.15.190 Additional shoreline substantial development permit, shoreline conditional use permit, and shoreline variance procedures

19.15.200 Permit review for 6049 eligible facilities

19.15.210 Revisions

19.15.220 Compliance required

19.15.230 Design review and the design commission

19.15.240 Comprehensive plan amendments.

19.15.250 Reclassification of property (rezones).

19.15.260 Zoning Code text amendments.

19.15.270 Review procedures for comprehensive plan amendments, reclassification of property, and zoning code text amendments.

19.15.280 Enforcement (*Not part of this review*)

19.15.010 General procedures Purpose, intent and roles.

A. Purpose. Administration of the development code is intended to be expedient and effective. The purpose of this chapter is to identify the processes, authorities and timing for administration of development permits. Public noticing and hearing procedures, decision criteria, appeal procedures, dispute resolution and code interpretation issues are also described.

B. Objectives. Guide customers confidently through the permit process; process permits equitably and expediently; balance the needs of permit applicants with neighbors; allow for an appropriate level of public notice and involvement; make decisions quickly and at the earliest possible time; allow for administrative decision-making, except for those decisions requiring the exercise of discretion which are reserved for appointed decision makers; ensure that decisions are made consistently and predictably; and resolve conflicts at the earliest possible time.

C. Roles and Responsibilities. The roles and responsibilities for carrying out the provisions of the development code are shared by appointed boards and commissions, elected officials and city staff. The authorities of each of these bodies are set forth below.

1. City Council. The city council is responsible for establishing policy and legislation affecting land use within the city. The city council acts on recommendations of the planning commission and hearing examiner in legislative and quasi-judicial matters.

2. Planning Commission. The role of the planning commission in administering the development code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated planning agency for the city (see Chapter 35A.63 RCW). The planning commission makes recommendations to the city council on land use legislation, comprehensive plan amendments and quasi-judicial matters.

3. Design Commission. The role of the design commission in administering the development code is governed by Chapter 3.34 MICC and MICC 19.15.040. In general, the design commission is responsible for maintaining the city's design standards and action on sign, commercial and multiple-family design applications.

4. Development Services Group. The responsible officials in the development services group act upon ministerial and administrative permits.

- a. The code official is responsible for administration, interpretation and enforcement of the development code.
  - b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.
  - c. The city engineer is responsible for the administration and interpretation of engineering standards.
  - d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.
  - e. The fire code official is responsible for administration and interpretation of the International Fire Code.
5. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

19.15.020. Land Use Review Types.

There are four categories of ~~actions or permits~~ land use review that are reviewed occur under the provisions of the development code.

1. ~~Ministerial Actions~~ Type I. Ministerial ~~Type I actions~~ reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
2. ~~Administrative Actions~~ Type II. Administrative ~~Type II actions~~ are based on objective and subjective standards that require the exercise of discretion about nontechnical issues. reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that a Notice of Decision Public Notification shall be issued for Type II decisions
3. ~~Discretionary Actions~~ Type III. Discretionary ~~Type III actions~~ are based on standards that require substantial discretion and may be actions of broad public interest. Discretionary actions are only taken after an open record hearing. reviews are based on objective and subjective standards that require the exercise of discretion about nontechnical issues.
4. ~~Legislative Actions~~ Type IV. Legislative ~~Type IV actions~~ reviews are based on standards that require substantial discretion and may be actions of broad public interest. Decisions on Discretionary Type IV reviews are only taken after an open record hearing.
5. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.

6. Consolidated Permit Processing. An application for a development proposal that involves the approval of two or more Type II, III and IV reviews, may be processed and decided together, including any administrative appeals, using the highest numbered land use decision type applicable to the project application. The following permits and land use reviews are excluded from consolidated review and approval:

a. Building permits associated with the construction of one or more new single family dwellings on lots resulting from the final plat approval of a short subdivision or long subdivision.

b. Building permits associated with shoreline conditional use permits and shoreline variance.

c. Project SEPA reviews shall be processed as a Type III land use review.

d. When a review is heard by multiple decision bodies, the higher decision body will make the final decision, and the lower decision body will review the project at a public meeting and issue a recommendation that will be reviewed by the higher decision body. The higher decision body will either adopt the recommendation as part of the permit conditions, will remand the recommendation back to the lower body for further consideration, will amend the recommendation, or will deny adoption of the recommendation and will adopt their own permit conditions. The hierarchy of decision bodies is as follows, from highest to lowest:

(1). City council

(2). Hearing examiner

(3). Design commission

19.15.030. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to geographic areas and implement adopted City policy, promote the community interest, and are normally of interest to many property owners and citizens. Legislative actions are only adopted after an open record public hearing. Review procedures for legislative actions are located in subsection 19.15.270 of this chapter. Legislative actions include street vacations, comprehensive plan amendments, reclassification of property (rezones), and code amendments.

E-19.15.040 Summary of Actions-Reviews and Authorities. The following is a nonexclusive list of the actions-land use reviews that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
<b>Ministerial Actions</b>			
Tree Removal Permit	Code official	Chapter 19.10 MICC	Hearing examiner <sup>1</sup>
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner
Lot Line Revision	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review— Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review— Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) Less Than \$100,000	Code official	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Design commission
Design Review— Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) \$100,000 or Greater	Design commission	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Superior court
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.110, 19.07.060(D)(4)	Hearing examiner
Shoreline Exemption	Code official	MICC 19.07.110 and 19.15.020(G)(6)(c)(i)	Hearing examiner <sup>2</sup>



ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Major Single-Family Dwelling Building Permit	Code official	Chapter 19.02 MICC but not MICC Title 15 or 17	Hearing examiner
Administrative Actions			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Hearing examiner
Deviation	Code official	MICC 19.15.020(G)	Hearing examiner
Critical Areas Determination	Code official	Chapter 19.07 MICC	Hearing examiner
Shoreline—Substantial Development Permit	Code official	MICC 19.07.110 and 19.15.020(G)(6)	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Hearing examiner
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via hearing examiner	MICC 19.08.010(F)	Superior court
Temporary Encampment	Code official	MICC 19.06.090	Superior court
Wireless Communications Facility	Code official	MICC 19.06.040	Hearing examiner
Wireless Communications Facility Height Variance	Code official	MICC 19.06.040(H) and 19.15.020(G)	Hearing examiner
Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones	Code official via design commission and city engineer	MICC 19.03.020(B)(4), 19.04.040(B)(9),	Hearing examiner

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
		19.05.020(B)(9) and 19.15.020(G)	
Development Code Interpretations	Code official	MICC 19.15.020(L)	Hearing examiner <sup>5</sup>
Discretionary Actions			
Conditional Use Permit	Hearing examiner	MICC 19.11.150(B), 19.15.020(G)	Superior court
Reclassification (Rezone)	City council via planning commission <sup>3</sup>	MICC 19.15.020(G)	Superior court
Formal Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via hearing examiner <sup>3</sup>	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G)	Superior court
Variance from Short Plat Acreage Limitation	Code official	MICC 19.08.020	Hearing examiner
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission <sup>3</sup>	MICC 19.09.070	Superior court
Shoreline Conditional Use Permit	Code official and Department of Ecology <sup>4</sup>	MICC 19.15.020(G)(6)	State Shorelines Hearings Board

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Shoreline Variance	Code official and Department of Ecology <sup>3</sup>	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.050	Superior court
Legislative Actions			
Code Amendment	City council via planning commission <sup>3</sup>	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission <sup>2</sup>	MICC 19.15.020(G)	Growth management hearings board
<p>1 Tree removal associated with a development proposal and authorized through the issuance of a tree removal permit shall not commence until the later of the end of the appeal period associated with the tree removal permit, or a decision is issued on an administrative appeal of the tree removal permit.</p> <p>2 Final rulings granting or denying an exemption under MICC 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60).</p> <p>3 The original action is by the planning commission or hearing examiner which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.</p> <p>4 Must be approved by the city of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10).</p> <p>5 The development code interpretation may be appealed as applied to a project review as part of an appeal of the land use action.</p>			

(Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 10; Ord. 13C-12 § 5; Ord. 11C-05 § 2; Ord. 11C-04 § 2; Ord. 10C-06 § 5; Ord. 10C-01 § 5; Ord. 08C-01 § 8; Ord. 06C-06 § 2; Ord. 06C-05 § 2; Ord. 05C-12 § 9; Ord. 04C-12 § 16; Ord. 04C-08 § 3; Ord. 03C-08 §§ 9, 10; Ord. 02C-04 § 5; Ord. 02C-01 § 6; Ord. 99C-13 § 1).

TABLE A

LAND USE REVIEW TYPE

Type I	Type II	Type III	Type IV
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<p>Home business, seasonal development limitation waiver, non-major single-family dwelling building permits, tree removal permit, right of way permit, special needs group housing safety determination, tenant improvement/change of use, shoreline exemption<sup>1</sup>, critical areas determination (steep slope alteration), final short plat, temporary commerce on public property, site development permits.</p>	<p>Modified wireless communication facilities (6409 per 47.CFR.1.40001), lot line revision, setback deviations, final plat<sup>2, 3</sup>, code official design review, accessory dwelling unit, parking variances (reviewed by city engineer).</p>	<p>New and modified wireless (non-6409) communication facility, SEPA threshold determination, critical areas determination (wetland/watercourse buffer averaging/reduction, temporary encampment<sup>4</sup>, short plat alteration and vacations, preliminary short plat, development code interpretations, major single-family dwelling building permit, shoreline substantial development permit<sup>1</sup>, shoreline revision (substantial development)<sup>1</sup>.</p>	<p><b>Preliminary long plat approval, Conditional use permit, variance, critical areas reasonable use exception, long plat alteration and vacations, parking variance (reviewed by design commission), variance from short plat acreage limitation, wireless communication facility height variance, planned unit development, design commission design review, permanent commerce on public property, shoreline conditional use permit (SCUP)<sup>5</sup>, shoreline variance<sup>2</sup>, shoreline revision (variance and SCUP).</b></p>
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**TABLE B**  
**REVIEW PROCESSING PROCEDURES**

<sup>1</sup> Appeal will be heard by the Shoreline Hearings Board

<sup>2</sup> Decision is made by city council after discussion at a public meeting

<sup>3</sup> A Notice of Decision will be issued for a final long plat

<sup>4</sup> A public meeting is required

<sup>5</sup> Hearing examiner will forward a recommendation to Ecology for Ecology's decision

	<u>Type I</u>	<u>Type II</u>	<u>Type III</u>	<u>Type IV</u>
	No Notice of Application No Notice of Decision Code Official	Public Notification No Notice of Application No Notice of Decision Code Official	Notice of Application Notice of Decision Code Official	Notice of Application Public Hearing Notice of Decision Hearing Examiner / Design Commission
Pre-application meeting required	No	No	Yes	Yes
Letter of completion (within 28 days)	No	No	Yes	Yes
Public Notification	No	Yes	No	No
Notice of Application (mailing & posting)	No	No	Yes	Yes
Public Comment Period	None	None	30 days	30 days
Public Hearing (Open Record pre- decision)	No	No	No	Yes
Notice of Decision	Code official	Code official (Except final long-plats which go to City Council at a public meeting)	Code official	Hearing examiner or Design commission (Hearing examiner recommendation to Ecology for decision on Shoreline CUP/Variances)
Notice of decision	No	YesNo	Yes	Yes

	<b>Type I</b>	<b>Type II</b>	<b>Type III</b>	<b>Type IV</b>
Appeal Authority	Hearing examiner or Superior court (TBD)	Hearing examiner or Design Commission (Code Official Design Review)	Hearing examiner	Superior court or Shoreline Hearings Board (Shoreline permits)

19.15.0250 Permit review procedures.

The following are general requirements for processing a permit application under the development code. Additional or alternative requirements may exist for actions under specific code sections (see MICC 19.07.080, 19.07.110, and 19.08.020, and 19.08.070).

A19.15.060. Preapplication. Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.

A. Purpose. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood to inform the neighborhood of the project proposal are encouraged prior to the formal notice provided by the city.

B. Optional Pre-application meetings. Applicants for development proposals are encouraged to participate in informal meetings with city staff. Pre-application meetings may be held for any other development proposal at the request of the applicant.

C. Required Pre-application meetings. Pre-application meetings are required for Type III and Type IV land use reviews. Pre-application meetings may be held for any other development proposal at the request of the applicant. This requirement may be waived by the code official.

D. Application. Applicants shall prepare a concept sketch of the development proposal for the pre-application meeting along with any other information specified by the code official in the pre-application meeting form.

E. Validity. Successful completion of a pre-application meeting does not constitute approval of any plan or design. Pre-application meetings shall occur within one year of application submittal, or after a code change affecting the application has occurred.

B19.15.070. Application.

~~1A. All applications for permits or actions by the city shall be submitted on forms provided by the development services group.~~ The department shall not commence review of any application until the applicant has submitted the materials and fees specified for complete applications. An application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of the applicable development regulations. The applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. All land use applications shall include **at a minimum**, the following:

1. All applications for permits or land use reviews by the city shall be submitted on forms provided by the City;
2. A site plan, prepared in a form prescribed by the code official;
- 3, A completed SEPA environmental checklist, if required;
4. Any studies or reports required for the processing of the application;
5. A list of any permits or land use review types necessary for approval of the development proposal that have been obtained prior to filing the application or that are pending before the City or any other governmental entity;
6. Drainage plans and documentation required by the Stormwater Management Manual for Western Washington as adopted by MICC Chapter 15.09, **if applicable**;
7. Legal description of the site;
8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (1)(l) of this section shall satisfy the requirements of this subsection (1)(j); and
9. For Type II, III, and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.

10. All applications for preliminary design review shall contain all information and materials deemed necessary by **DSG staff the code official** to determine if the proposal complies with this chapter. Such materials may include a site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; parking plan; color and materials board; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards established in Chapters 19.11 or 19.12 MICC. For new construction, submittal of lighting and sign master plans may be deferred to the public hearing **if applicable**.

2B. A determination of completeness shall not preclude the code official from requesting additional information or studies either at the time of determination of completeness or subsequently if new or additional information is required or substantial changes in the proposed action occur, as determined by the code official.

3C2. All applications for permits or ~~actions~~ land use review by the city shall be accompanied by a filing fee in an amount established by city ordinance.

€19.15.080. Determination of Completeness and Letter of Completion.

1A. Complete Application Required. The city will not accept an incomplete application for processing and review. An application is complete only when all information required on the application form and all submittal items required by the development code have been provided to the satisfaction of the code official.

2B. Determination of Completeness. Within 28 days after receiving an ~~development permit~~ application for a Type III and Type IV land use review, the city shall mail, email, or provide in person a written ~~determination~~ Letter of Completion or Letter of In-Completion to the applicant, stating either that the application is complete or that the application is incomplete, ~~and~~ if an application is incomplete, the Letter of In-Completion shall identify what additional documentation is necessary to make the result in a complete application complete. An application shall be deemed complete if the city does not provide a written determination to the applicant stating that the application is incomplete **within 28 days after receiving an application.**

3C. Response to Letter of In-Completion. Within 14 days after an applicant has submitted all additional information identified as being necessary for a complete application, the city shall notify the applicant ~~whether that~~ the application is complete, ~~or what additional information is necessary~~ **indicate that the application is incomplete and specify additional documentation as specified in section B. above that is necessary to result in a complete application.**

4D. Completion Date. The date an application is determined complete is the date of receipt by the department of all of the information necessary to make the application complete as provided in this chapter. The department's issuance of a Letter of Complete application, or the failure of the department to provide such a letter as directed by this section, shall cause an application to be conclusively deemed to be complete as provided in this section.



~~45E.~~ If the applicant fails to provide the required information within 90 days of the determination ~~Letter of incompleteness~~In-Completion, the application shall lapse. ~~The applicant may request a refund of the application fee minus the city's cost of determining the completeness of the application.~~

19.15.090. Public Notification.

A. Public notification is distinct from a notice of application, a notice of decision, and a notice of public hearing. The purpose is to inform and notify the community of projects. No comment period is required for a Public Notification, although public comment is allowed.

B. Timing. A Public Notification will be issued for Type II permits listed in MICC 19.15.010(E) prior to issuance of a decision, and as soon as reasonably feasible after submittal of a complete application.

C. Distribution. A Public Notification shall be posted in the weekly DSG Bulletin.

D. Content. A Public Notification shall include the following information:

1. Permit number;

2. The name of the applicant;

3. The location and description of the project;

4. A link to a website where additional information about the project can be found; and

5. Any other information that the city determines appropriate.

~~D~~19.15.100. Notice of Application.

1. Timing. Within 14 days of the determination of completeness, the city shall issue a notice of application for all ~~administrative, discretionary, and legislative actions~~ Type III and Type IV permits listed in MICC 19.15.010(E) ~~and major single-family dwelling building permits.~~

2. Distribution. Notice shall be provided in the weekly DSG bulletin, mailed to all property owners within 300 feet of the property, posted on the site in a location that is visible to the public right-of-way, and made available to the general public upon request.

If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that contiguous land shall be treated as part of the long subdivision for notice purposes, and notice of the application shall be given to all owners of lots located within 300 feet of the proposed long subdivision and the applicant's contiguous land. The city shall provide written notice to the Department of Transportation of an application for a long subdivision or short subdivision that is abutting the right-of-way of a state highway. ~~The notice shall include a legal description of the long subdivision or short subdivision and a location map.~~

3. Content. The notice of application shall include the following information:

- a. The dates of the application, the determination of completeness, and the notice of application;
- b. The name of the applicant;
- c. The location and description of the project;
- d. The requested actions and/or required studies;
- e. The date, time, and place of the open record hearing, if one has been scheduled;
- f. Identification of environmental documents, if any;
- g. A statement of the public comment period, which shall be not less than 30 days following the date of notice of application; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights. ~~The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or if no open record predecision hearing is provided, prior to the decision on the project permit;~~
- h. The city staff contact and contact information;
- i. The identification of other permits not included in the application to the extent known by the city;
- j. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan;
- k. A link to a website where additional information about the project can be found; and
- l. Any other information that the city determines appropriate.

~~D3.~~ Open Record Hearing. If an open record hearing is required on the land use permit approval, the city shall:

~~a. Provide the notice of application at least 30 days prior to the hearing; and~~

~~b. Issue any threshold determination required under MICC 19.07.110 at least 30 days prior to the hearing.~~

~~4. Notice shall be provided in the bi-weekly DSG bulletin, posted at City Hall and made available to the general public upon request.~~

~~5E. All comments received on the notice of application must be received by the development services group by 5 pm on the last day of the comment period~~ Public Comment. The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or if no open record predecision hearing is provided, prior to the decision on the project permit and use review.

6. Except for a determination of significance, the city shall not issue a threshold determination under MICC 19.07.1120 or issue a decision on an application until the expiration of the public comment period on the notice of application.

7. A notice of application is not required for the following actions; provided, the action is either categorically exempt from SEPA or an environmental review of the action in accordance with SEPA has been completed:

- a. Building permit other than a major single-family dwelling building permit;
- b. Lot line revision;
- c. Right-of-way permit;
- d. Storm drainage permit;
- e. Home occupation permit;
- f. Design review – minor new construction;
- g. Final plat approval;
- h. Shoreline exemption permit;
- i. Seasonal development limitation waiver; and
- k. Tree removal permit.

19.15.110. Public Notice and Information Availability/Hearing Notice.

1A. In addition to the notice of application, a public hearing notice is required for all administrative, discretionary, and legislative actions Type IV land use reviews requiring a public hearing listed in MICC 19.15.010(E) and major single-family dwelling building permits. A Public Hearing Notice may be combined with a Notice of Application if all of the requirements of this section are met.

2B. Public hearing notice shall be provided at least 30 days prior to any required open record hearing. If no such hearing is required, public notice shall be provided 14 days prior to the decision on the application.

3C. The public hearing notice shall include the following:

- a1. A general description of the proposed project and the action to be taken by the city;
- b2. A nonlegal description address or parcel number of the property and a vicinity map or sketch;
- c3. The time, date and location of any required the open record public hearing;
- d4. A contact name and number where additional information may be obtained;
- e5. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal;
- f. A description of the deadline for submitting public comments;
- g6. A link to a website where additional information about the project can be found.

4D. Public hearing notices shall be provided in the following manner:

~~a1. Administrative and Discretionary Actions and Major Single Family Dwelling Building Permits. Notice shall be mailed to parties of record, all property owners within 300 feet of the property, published in the weekly DSG bulletin, and posted on the site in a location that is visible to the public right-of-way.~~

~~ia. Long Subdivisions. Additional notice for the public hearing for a preliminary long subdivisions approval shall be provided as follows:~~

~~(a1) Public nNotice of an application public hearing for a long subdivision shall also be published at least 30 days prior to the open record hearing on the application in a newspaper of general circulation within the city.~~

~~(b2) If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that contiguous land shall be treated as part of the long subdivision for notice purposes, and the Public Hearing Notice notice of the application shall be given to all owners of lots located within 300 feet of the proposed long subdivision and the applicant's contiguous land.~~

~~(c) The city shall provide written notice to the Department of Transportation of an application for a long subdivision or short subdivision that is located adjacent to the right-of-way of a state highway. The notice shall include a legal description of the long subdivision or short subdivision and a location map.~~

~~b. Legislative Action Type V Reviews. Notice Public hearing notices for Type V reviews shall be published in a newspaper of general circulation within the city and published in the weekly DSG bulletin. If applicable, notices shall also be mailed to parties of record, all property owners within 300 feet of the property and posted on the site in a location that is visible to the public right-of-way.~~

5E. Every complete ~~development permit~~ application for which notice is to be provided under subsection (D)(1) of this section together with all information provided by the applicant for consideration by the decision authority shall be posted by the city to a website accessible without charge to the public. Information shall be posted at the time the city issues the notice of application under subsection (D)(1) of this section and shall be updated as needed ~~and in any event~~ within seven days after additional information is received from the applicant. ~~The provisions of this subsection (E)(5) shall only apply to development permit applications filed on or after May 29, 2017.~~

F. ~~Open Record Public Hearing.~~

~~1. Only one open record public hearing shall be required prior to action on all discretionary and legislative actions except design review and street vacations.~~

~~2. Open record public hearings shall be conducted in accordance with the hearing body's rules of procedures. In conducting an open record public hearing, the hearing body's chair shall, in general, observe the following sequence:~~

~~a. Staff presentation, including the submittal of any additional information or correspondence. Members of the hearing body may ask questions of staff.~~

~~b. Applicant and/or applicant representative's presentation. Members of the hearing body may ask questions of the applicant.~~

~~c. Testimony by the public. Questions directed to the staff, the applicant or members of the hearing body shall be posed by the chairperson at his/her discretion.~~

~~d. Rebuttal, response or clarifying statements by the applicant and/or the staff.~~

~~e. The public comment portion of the hearing is closed and the hearing body shall deliberate on the action before it.~~

~~3. Following the hearing procedure described above, the hearing body shall:~~

~~a. Approve;~~

~~b. Conditionally approve;~~

~~c. Continue the hearing; or~~

~~d. Deny the application.~~

#### 19.15.120. Response to Comments and Extensions.

A. Request authorized. The official or entity reviewing a development proposal may request additional information or studies if:

1. New or additional information is required to complete a land use review and issue a decision;

2. Substantial changes in the development proposal are proposed by the applicant; or

3. The official or entity reviewing the development proposal determines additional information is required prior to issuance of a decision.

B. Deadline for response. The official or entity requesting information shall establish a time limit for the applicant to respond. The time limit for an applicant to respond to a request for information shall not be less than 30 days, provided an extension to applicant's time limit to respond may be authorized pursuant to section 3., below. If responses are not received within the established time limit and no extension has been authorized, the code official may cancel the land use review for inactivity.

C. Deadline extension. Applicants may request an extension to provide requested materials. Extension requests shall be in writing, shall include a basis for the extension and shall be submitted in writing prior to expiration of the time limit. The code official is authorized to extend the time limit in writing. There is no limit to the number of extensions an applicant may be granted, however the total time limit for a response shall not exceed 180 days unless there is an extenuating circumstance. An extenuating circumstance must be unexpected and beyond the control of the applicant.

#### 19.15.130. Notice of Decision.

The city will make an effort to process permits and land use reviews in a reasonable time subject to constraints related to staff workload and resources. The city shall provide notice in a timely manner of its final decision or recommendation on development proposals requiring Type II, III and IV land use decisions, including the SEPA threshold determination, if any, the dates for any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to the applicant, parties of record, agencies with jurisdiction. Notice of decision shall also be provided to the public as provided in MICC 19.15.100. The notice of decision may be provided by email or a hard copy may be mailed.

19.15.140. Administrative Appeals.

1A. Appeals to Shoreline Hearings Board. Appeals to any shoreline substantial development permit, shoreline conditional use permit, or shoreline variance decision, shall be in accordance with RCW 90.58.180. Appeals to shoreline exemptions permits shall be filed in accordance with subsection 2 of this section.

2B1. Administrative Appeals. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Any decision may be administratively appealed by filing a written appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision is made available to the public and applicant pursuant to MICC 19.15.130, if a notice of decision is required, or after the effective date of the decision subject to appeal if no notice of decision is required.

C. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;

3C2D. Written appeals shall include the following information:

1. The decision(s) being appealed;
  2. The development code interpretation, if any, associated with the proposed appeal;
  3. The name and address of the appellant and his/her interest in the matter;
  4. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;
  5. The desired outcome or changes to the decision; and
  6. Payment of the appeals fee, if any.
- E. Authority for appeals is specified in MICC 19.15.040(E).

F. Public nNotice of an open record public hearing for an appeal shall be provided in the manner specified in subsection E of this section consistent with the notice of public hearing provisions of MICC 19.15.110.

G. The rules of procedure for appeal hearings shall be as follows The hearing body may adopt rules of procedure in addition to the following required provisions. At a minimum, rules of procedure for appeal hearings shall be as follows provide that:

a. For development proposals that have been subject to an open record hearing, the appeal hearing shall be a closed record appeal, based on the record before the decision body, and no new evidence may be presented.

b. For development proposals that have not been subject to an open record hearing, the appeal hearing shall be an open record appeal and new information may be presented.

1. If the hearing body finds that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria, it may:

a. Reverse the decision.

b. Modify the decision and approve it as modified.

c. Remand the decision back to the decision maker for further consideration.

2. If the hearing body finds that none of the procedural or factual bases listed above exist and that there has been no substantial error, the hearing body may adopt the findings and/or conclusions of the decision body, concur with the decision of the decision body and approve the development proposal as originally approved, with or without modifications.

3. Final decision on the appeal shall be made within 30 days from the last day of the appeal hearing.

4. The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

H. When an applicant has opted for consolidated permit processing pursuant to subsection I of this section, administrative appeals of Type I, II, or III approvals listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner the highest level hearing body. For example, an appeal of a consolidated decision for a Type I and III decision, shall be heard by the Hearing Examiner.

#### 19.15.150. Open Record Public Hearing.

A. Only one open record public hearing shall be required prior to action on all Type IV actions or to hear an appeal of a Type I, II, or III decision.

B. Open record public hearings shall be conducted in accordance with the hearing body's rules of procedures. In conducting an open record public hearing, the hearing body's chair shall, in general, observe the following sequence:

1. Staff presentation, including the submittal of any additional information or correspondence. Members of the hearing body may ask questions of staff.
2. Applicant and/or applicant representative's presentation. Members of the hearing body may ask questions of the applicant.
3. Testimony by the public. Questions directed to the staff, the applicant or members of the hearing body shall be posed by the chairperson at his/her discretion.
4. Rebuttal, response or clarifying statements by the applicant and/or the staff and/or the public.
5. The public comment portion of the hearing is closed and the hearing body shall deliberate on the action before it.

C. Following the hearing procedure described above, the hearing body shall:

1. Approve;
2. Conditionally approve;
3. Continue the hearing;
4. Remand the application to staff; or
5. Deny the application.

#### 19.15.160. Expiration of Approvals.

A. General. Except as stated below, or as otherwise conditioned in the approval process, land use review approvals shall expire three years from the date of notice of decision if the development proposal authorized by the land use review is not commenced. For the purposes of this section, the development proposal shall be considered established if construction or substantial progress toward construction of a development proposal for which a land use review approval has been granted must be undertaken within two years of the date of notice of decision of the land use review. Where no construction activities are involved, the use or activity shall be commenced within three years of the date of notice of decision of the land use review.

B. Renewal. Renewal of expired land use approvals shall require a new application.

C. Long and Short Subdivisions. A final plat application meeting all requirements of this chapter shall be submitted to the code official and recorded within five years of the date of preliminary plat approval.

3D. Shoreline Land Use Reviews. The following time limits shall apply to all substantial development permits, shoreline conditional use permits and shoreline variance permits:



a1. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

b2. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

E. Design Review. If the applicant has not submitted a complete application for a building permit within ~~two~~ three years from the date of the notice of the final design review decision, or within ~~two~~ three years from the decision on appeal from the final design review decision, design review approval shall expire. The design commission or code official may grant an extension for no longer than 12 months, for good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.

F5. Responsibility for knowledge of the expiration date shall be with the applicant.

#### 19.15.170. Code Interpretations.

A. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:

1. The plain language of the code section in question;
2. Purpose and intent statement of the chapters in question;
3. Legislative intent of the city council provided with the adoption of the code sections in question;
4. Policy direction provided by the Mercer Island comprehensive plan;
5. Relevant judicial decisions;
6. Consistency with other regulatory requirements governing the same or similar situation;
7. The expected result or effect of the interpretation; and
8. Previous implementation of the regulatory requirements governing the situation.

2. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner.

### 19.15.180. Vesting

A. Purpose. The purpose of this section is to identify certain points in the land use approval process at which an applicant's rights become "vested." Vested rights is defined as the guarantee that an application will be reviewed and a development proposal can be developed (if a permit is issued) under regulations and procedures existing at one moment in time and regardless of changes that may have been made later and prior to final completion of a project or use.

B. Vesting for Land Use Reviews. Complete applications for land use review of Type 1 land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department's issuance of a Letter of Completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

#### C. Scope of Vested Rights.

1. Land use reviews that are subject to the provisions of this section shall be considered under the zoning and land use control ordinances (Titles 15 and 19 MICC) in effect on the date of complete application. Supplemental information and revisions to a development proposal design required by the City after vesting of a complete application shall not affect the validity of the vesting for such application.

2. An applicant must specifically identify a proposed land use or uses in the land use review application as the intended use of the development proposal site in order to vest the right to engage in a specific land use against an ordinance implementing a change in permitted land uses.

3. An application for a land use review may be denied or approved with conditions under the authority of the City to protect and enhance the public safety, health and welfare, and under the State Environmental Policy Act (SEPA) and the City of Mercer Island's SEPA regulations and policies as of the date of vesting, notwithstanding the fact that the applicant has attained a vested right against enforcement of an ordinance implementing changes in regulations, codes or procedures affecting that land use review application.

#### D. Termination of Vested Rights.

1. Termination of vested rights associated with a land use review for a development proposal shall occur at the time of expiration of land use review approval, as established in MICC 19.15.160 or when an applicant withdraws the land use application.

2. Applicant-generated modifications or requests for revision(s) to building permits, short subdivision, or long subdivisions which are not made in response to staff review, public process, appeal, or conditions of approval, and which result in substantial changes to a development proposal design, which includes but is not limited to include the creation of additional lots,

substantial change in access, substantial changes in project design, or additional impacts to critical areas shall be treated as new applications for purposes of vesting.

3. Applicant-generated proposals to create additional lots, substantially change access, increase critical area impacts, or change conditions of approval on an approved preliminary short subdivision or long subdivision shall also be treated as a new application for purposes of vesting.

G. Decision Criteria. Decisions shall be based on the criteria specified in the Mercer Island City Code for the specific action. An applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. A reference to the code sections that set out the criteria and standards for decisions appears in MICC 19.15.010(E). For those actions that do not otherwise have criteria specified in other sections of the code, the following are the required criteria for decision:

1. Comprehensive Plan Amendment.

a. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies; and:

i. There exists obvious technical error in the information contained in the comprehensive plan; or

ii. The amendment addresses changing circumstances of the city as a whole.

b. If the amendment is directed at a specific property, the following additional findings shall be determined:

i. The amendment is compatible with the adjacent land use and development pattern;

ii. The property is suitable for development in conformance with the standards under the potential zoning; and

iii. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

2. Reclassification of Property (Rezoning).

a. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;

b. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;

c. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;

d. The proposed reclassification does not constitute a "spot" zone;

e. The proposed reclassification is compatible with surrounding zones and land uses; and

f. The proposed reclassification does not adversely affect public health, safety and welfare.

### 3. Conditional Use Permit.

a. The permit is consistent with the regulations applicable to the zone in which the lot is located;

b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;

c. The use is consistent with policies and provisions of the comprehensive plan; and

d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

4. Variances. 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 (G)(4)(a) through (h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (G)(4)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (G)(4)(a) through (i) of this section:

a. The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R 8.4, R 9.6, R 12, and R 15 zoning designations, an "unnecessary hardship" is limited to those circumstances where the adopted standards of this title prevent the construction of a single family dwelling on a legally created, residentially zoned lot;

b. The variance is the minimum necessary to grant relief to the property owner;

c. No use variance shall be allowed;

d. There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;

e. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

f. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

g. The variance is consistent with the policies and provisions of the comprehensive plan and the development code;

h. The basis for requesting the variance is not the direct result of a past action by the current or prior property owner; and

i. Public and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent may request a variance to increase the impervious surface to a

maximum 60 percent impervious surface and such variance application will be granted if the hearing examiner determines that the applicant has demonstrated that the following criteria are satisfied:

i. There will be no net loss of permeable surface from the existing permeable surface. No net loss will be determined by the code official and may be achieved by off-site mitigation and/or by reconstructing existing parking areas to allow stormwater penetration. This replacement will be an exception to subsection (D)(2)(b) of this section prohibiting parking areas from being considered as permeable surfaces;

ii. All storm water discharged shall be mitigated consistent with the most recent Washington State Department of Ecology Stormwater Management Manual for Western Washington, including attenuation of flow and duration. Mitigation will be required for any and all new and replaced impervious surfaces. In designing such mitigation, the use of a continuous simulation hydrologic model such as KCRTS or WWHM shall be required; event based models will not be allowed. In addition, mitigation designs shall utilize flow control best management practices (BMPs) and low impact development (LID) techniques to infiltrate, disperse and retain stormwater on-site to mitigate the increased volume, flow and pollutant loading to the maximum extent feasible;

iii. The director must approve a storm drainage report submitted by the applicant and prepared by a licensed civil engineer assuring the city that city infrastructure, in concert with the project design, is adequate to accommodate storm drainage from the project site, or identifying appropriate improvements to public and/or private infrastructure to assure this condition is met, at the applicant's expense; and

iv. The variance may not be used with other provisions to exceed this maximum 60 percent impervious surface coverage.

5. Setback Deviation. A setback deviation shall be granted by the city only if the applicant demonstrates all of the following:

a. Setback Deviation Criteria. Setback deviations shall be subject to the following criteria:

i. No use deviation shall be allowed;

ii. The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

iii. The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

iv. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code;

v. The basis for requesting the deviation is not the direct result of a past action by the current or prior property owner;

vi. The setback deviation is associated with the approval of development of a single lot or subdivision that is constrained by critical areas or critical area buffers;

vii. ~~The building pad resulting from the proposed deviation will result in less impact to critical areas or critical area buffers; and~~

viii. ~~Yard setbacks shall not be reduced below the following minimums:~~

~~(a) Front and rear setbacks may not be reduced to less than 10 feet each;~~

~~(b) Side setbacks may not be reduced to less than five feet.~~

#### 19.15.190. Additional Shoreline Permits Procedures for Shoreline Review.

~~a. a. Administrative Responsibility. Except as otherwise stated in this section, the code official is responsible for:~~

~~i. Administering shoreline permits.~~

~~ii. Approving, approving with conditions or denying shoreline exemption permits, substantial development permits, shoreline conditional use permits, shoreline variances and permit revisions in accordance with applicable provisions.~~

~~iii. Determining compliance with the State Environmental Policy Act.~~

~~iv. No development shall be undertaken within the shorelands without first obtaining a shoreline exemption permit, substantial development permit, conditional use permit, and/or a variance permit in accordance with all applicable procedures unless it qualifies under a categorical exemption. In addition, such permit shall be in compliance with permit requirements of all other agencies having jurisdiction within the shorelands. Compliance with all applicable federal and state regulations is also required.~~

~~b. Shoreline Categorical Exemption Decision Criteria and Process. Any development that qualifies as being a shoreline categorical exemption, as specified in MICC 19.07.110, shall not require a shoreline permit, but must still meet all requirements of the Mercer Island Unified Land Development Code.~~

~~c. Shoreline Exemption Permit Decision Criteria and Process.~~

~~i. Shoreline Exemption Permit Application Criteria. A shoreline exemption permit may be granted to the following development as long as such development is in compliance with all applicable requirements of the Mercer Island Unified Land Development Code and any of the following:~~

~~(A) Any development of which the total cost or fair market value, whichever is higher, does not exceed \$6,416 or as periodically revised by the Washington State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state; or~~

~~(B) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts established to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or~~

partial destruction, including complete replacement of legally existing structures. Normal maintenance of single family dwellings is categorically exempt as stated above; or

(C) Construction of the normal protective bulkhead common to single family dwellings. A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single family dwelling and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings; or

(D) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this section; or

(E) Construction or modification of navigational aids such as channel markers and anchor buoys; or

(F) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family dwelling, for which the cost or fair market value, whichever is higher, does not exceed \$10,000; or

(G) Any project with a certification from the governor pursuant to Chapter 80.50 RCW; or

(H) Projects for the restoration of ecological functions.

ii. Shoreline Exemption Permit Application Process. The city shall issue or deny the shoreline exemption permit within 10 calendar days of receiving a complete application, or 10 days after issuance of a DNS, MDNS or EIS if SEPA review is required. The city shall send the shoreline permit decisions to the applicant and all applicable local, state, or federal agencies as required by state or federal law.

d. Substantial Development Permit Application Decision Criteria and Process. A substantial development permit (SDP) is required for any development within shorelands not qualifying as being subject to a categorical exemption or shoreline exemption permit. Requirements and procedures for securing a substantial development permit are established below.

i. SDP Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a shoreline development permit.

ii. Substantial Development Permit (SDP) Application Process. The applicant shall attend a preapplication meeting prior to submittal of a substantial development permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.

(A)a. Once a complete application has been submitted, public notice of an application for a substantial development permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for administrative actions; provided, such notice shall be given at least 30 days before the date of final action by the city. The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or request a copy of the decision(s) to the city within 30 days from the last date the notice is published. If a hearing is to be held on an application, notices of such hearing shall

include a statement that any person may submit oral or written comments on an application at the hearing.

~~(B)b.~~ Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.

A. Open record public hearing. An open record public hearing before the code official, as set out in subsection F of this section, shall be conducted on the shoreline substantial development permits, shoreline conditional use permits, and shoreline variances when the following factors exist:

(1) 1. The proposed development has broad public significance; or

(2) 2. Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or

(3) 3. At the discretion of the code official.

eB. Ecology filing. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

~~(C)c.~~ The technical review of shoreline substantial development permits must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code.

Cd. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with conditions, or denying any substantial development permit or shoreline exemption is final unless an appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

~~(E)e.~~ The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

e2. Shoreline Conditional Use Permit Application Decision Criteria and Process. The purpose of a shoreline conditional use permit is to provide a system which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the city of Mercer Island or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the applicable city regulations.

i. Shoreline Conditional Use Permit Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a shoreline conditional use permit. Uses that require a shoreline conditional use permit may be authorized; provided, that the applicant demonstrates all of the following:



~~(A) That the proposed use is consistent with the policies of RCW 90.58.020 and the Mercer Island Uniform Land Development Code;~~

~~(B) That the proposed use will not detrimentally interfere with the normal public use of shorelands within the “urban park environment” shoreline environment designation;~~

~~(C) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses allowed for the area by the Mercer Island Uniform Land Development Code;~~

~~(D) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and~~

~~(E) That the public interest suffers no substantial detrimental effect.~~

~~(F) In applying the above criteria when reviewing shoreline conditional use applications, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the shoreline conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.~~

~~ii.a. Shoreline Conditional Use Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a shoreline conditional use permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.~~

~~(A)i. Once a complete application has been submitted, public notice of an application for a shoreline conditional use permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for discretionary actions; provided, such notice shall be given at least 30 days before the date of decision by the city.~~

~~The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.~~

~~If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)ii. Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.~~

~~(C)iii. The technical review of shoreline conditional use permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in~~

subsection F of this section, shall be conducted on the shoreline conditional use permits when the following factors exist:

~~(1A) The proposed development has broad public significance; or~~

~~(2B) Within the 30 day comment period, 10 or more interested citizens file a written request for a public hearing; or~~

~~(3C) At the discretion of the code official.~~

~~(D)D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit or shoreline variance is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal laws. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.~~

~~(E)v. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

### ~~f3. Shoreline Variance Permit Decision Criteria and Application Process.~~

~~i. Shoreline Variance Criteria. Shoreline variances are strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable regulations where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the regulations will impose unnecessary hardships on the applicant or thwarting of the policy enumerated in RCW 90.58.020. Shoreline variances for use regulations are prohibited. In addition, in all instances the applicant for a shoreline variance shall demonstrate strict compliance with all variance criteria set out in subsection (G)(4) of this section and the following additional criteria:~~

~~(A) In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.~~

~~(B) Shoreline variance permits for development that will be located landward of the ordinary high water mark, and/or landward of any associated wetland, may be authorized; provided, the applicant can demonstrate all of the following:~~

~~(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes or significantly interferes with reasonable use of the property not otherwise prohibited;~~

~~(2) That the hardship in this subsection (G)(6)(f)(i) is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the applicable regulations, and not, for example, from deed restrictions or the applicant's own actions;~~

~~(3) That the design of the project is compatible with other authorized uses in the area and will not cause adverse effects to adjacent properties or the shoreline environment;~~

~~(4) That the requested shoreline variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and~~

~~(5) That the public interest will suffer no substantial detrimental effect.~~

~~(C) Shoreline variance permits for development that will be located waterward of the ordinary high water mark or within any associated wetland may be authorized; provided, the applicant can demonstrate all of the following:~~

~~(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes reasonable use of the property;~~

~~(2) That the proposal is consistent with the criteria established under subsections (G)(6)(f)(i)(B)(1) through (5) of this section; and~~

~~(3) That the public rights of navigation and use of the shorelines will not be adversely affected.~~

~~ii.a. Shoreline Variance Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a shoreline variance. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.~~

~~(A)ii. Once a complete application has been submitted, public notice of an application for a shoreline variance shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for discretionary actions; provided, such notice shall be given at least 30 days before the date of decision by the city.~~

~~The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.~~

~~If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)ii. Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.~~

~~(C)iii. The technical review of shoreline variance permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in~~

subsection F of this section, shall be conducted on the shoreline variance permits when the following factors exist:

~~(1A) The proposed development has broad public significance; or~~

~~(2B) Within the 30 day comment period, 10 or more interested citizens file a written request for a public hearing; or~~

~~(3C) At the discretion of the code official.~~

~~(D)iv. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal agencies. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.~~

~~(E)v. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

~~iiib. The reasonable use exemption provided in MICC 19.07.030(B) does not apply in the shorelands. The provision of reasonable use in the shorelands shall be accomplished through a shoreline variance.~~

~~g4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development permits, shoreline conditional use permits and shoreline variance permits:~~

~~ia. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.~~

~~iiib. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.~~

~~h5. Appeals. Appeals to any shoreline permit decision, except shoreline exemption permits, shall be in accordance with RCW 90.58.180. Appeals to shoreline exemptions permits shall be filed in accordance with subsection JI of this section.~~

j. Revisions. When an applicant seeks to revise a substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met.

#### H. Notice of Decision.

1. Unless the city and applicant have mutually agreed in writing to an extension of time, project review shall be completed within 120 days from the date the application is determined to be complete. Time required for the submittal of additional information, preparation of environmental impact statement, and hearing of appeals shall be excluded from this 120-day period.

2. Written notice of the decision shall be provided to the applicant and all parties of record. Notice of decision shall also be provided in the biweekly DSG bulletin.

#### I. Optional Consolidated Permit Processing.

1. An application that involves two or more permits may be processed concurrently and the decision consolidated at the request of the project applicant. If an applicant elects the consolidated permit processing, the code official shall determine the appropriate application and review procedures for the project.

2. If a project requires action from more than one hearing body, the decision authority in the consolidated permit review shall be by the decision body with the broadest discretionary powers.

#### J. Administrative Appeals.

1. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision, if a notice of decision is required, or after the effective date of the decision subject to appeal if no notice of decision is required. The term "party of record," for the purposes of this chapter, shall mean any of the following:

a. The applicant and/or property owner;

b. Any person who testified at the open record public hearing on the application;

c. Any person who individually submits written comments concerning the application for the open record public hearing, or to the code official prior to a decision on the project permit if there is no open record public hearing. Persons who have only signed petitions are not parties of record;

d. The city of Mercer Island.

2. Appeals shall include the following information:

a. The decision being appealed;

b. The development code interpretation, if any, associated with the proposed appeal;

c. The name and address of the appellant and his/her interest in the matter;

d. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially

affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;

e. The desired outcome or changes to the decision; and

f. The appeals fee, if required.

3. Authority for appeals is specified in MICC 19.15.010(E).

4. Public notice of an appeal shall be provided in the manner specified in subsection E of this section.

5. The rules of procedure for appeal hearings shall be as follows:

a. For development proposals that have been subject to an open record hearing, the appeal hearing shall be a closed record appeal, based on the record before the decision body, and no new evidence may be presented.

b. For development proposals that have not been subject to an open record hearing, the appeal hearing shall be an open record appeal and new information may be presented.

c. If the hearing body finds that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria, it may:

i. Reverse the decision.

ii. Modify the decision and approve it as modified.

iii. Remand the decision back to the decision maker for further consideration.

d. If the hearing body finds that none of the procedural or factual bases listed above exist and that there has been no substantial error, the hearing body may adopt the findings and/or conclusions of the decision body, concur with the decision of the decision body and approve the development proposal as originally approved, with or without modifications.

e. Final decision on the appeal shall be made within 30 days from the last day of the appeal hearing.

f. The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

6. When an applicant has opted for consolidated permit processing pursuant to subsection I of this section, administrative appeals of ministerial, administrative or discretionary actions listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner.

K. Expiration of Approvals.

1. General. Except for long and short subdivisions, building permits or as otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised.

~~2. Long and Short Subdivision.~~

~~a. Once the preliminary plat for a long subdivision has been approved by the city, the applicant has five years to submit a final plat meeting all requirements of this chapter to the city council for approval.~~

~~b. Once the preliminary plat for a short subdivision has been approved by the city, the applicant has one year to submit a final plat meeting all requirements of this chapter. A plat that has not been recorded within one year after its preliminary approval shall expire, becoming null and void. The city may grant a single one-year extension, if the applicant submits the request in writing before the expiration of the preliminary approval.~~

~~c. In order to renew an expired preliminary plat, a new application must be submitted.~~

~~3. Responsibility for knowledge of the expiration date shall be with the applicant.~~

~~L. Code Interpretations.~~

~~1. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:~~

~~a. The plain language of the code section in question;~~

~~b. Purpose and intent statement of the chapters in question;~~

~~c. Legislative intent of the city council provided with the adoption of the code sections in question;~~

~~d. Policy direction provided by the Mercer Island comprehensive plan;~~

~~e. Relevant judicial decisions;~~

~~f. Consistency with other regulatory requirements governing the same or similar situation;~~

~~g. The expected result or effect of the interpretation; and~~

~~h. Previous implementation of the regulatory requirements governing the situation.~~

~~2. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner. (Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 10; Ord. 16C-13 § 1; amended during 3/15 supplement; Ord. 13C-12 § 6; Ord. 10C-06 § 6; Ord. 08C-01 § 8; Ord. 02C-04 § 7; Ord. 02C-01 § 6; Ord. 99C-13 § 1).~~

19.15.200. Permit review for 6409 eligible wireless communications facilities

A. Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the city shall approve the application unless it determines that the application is not covered by 47 CFR 1.40001.

B. Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the city determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (l)(1) of this section.

2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

3. Following a supplemental submission, the city will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (l)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

C. Failure to act. In the event the city fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

19.15.210. Revisions. Revisions of approved permits are as follows. A complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards except for building permits which shall be reviewed in accordance with Title 17. All revisions shall be subject to the vesting provisions in MICC 19.15.170.

A. Revisions for approved Type I, II, and III land use permits, except shoreline permits, are as follows:

1. Revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. For the purposes of this section, substantial change includes changes to conditions of approval.

2. Approval of ~~typographical errors, minor omissions, or minor corrections, the following modifications~~ by the code official shall not be considered revisions.:

~~a. Typographical errors and minor omissions.~~

B. Revisions for approved Type IV land use permits, except shoreline permits, are as follows:

1. Revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. For the purposes of this section, substantial change includes the creation of additional lots, the elimination of open space, substantial changes in



access, or changes to conditions of approval. Additionally, the need for the modification was not known and could not have been reasonably known before the approval was granted.

2. Approval of the following modifications by the code official shall not be considered revisions:

a. Engineering design, unless the proposed design alters or eliminates features required as a condition of preliminary approval.

b. Changes in lot or tract dimensions that are consistent with MICC 19.02.

c. A decrease in the number of lots to be created.

d. Typographical errors and minor omissions.

3. The code official shall have the authority to administratively review and approved modifications described in subsection (2) of this section through review procedures established by the department.

C. Revisions for shoreline permits are as follows. When an applicant seeks to revise an approved shoreline substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met. If these requirements are met, the decision will be processed per the following.

1. Revision of substantial development permit:

a. A decision will be provided to the applicant and parties of record and posted in DSG's weekly permit bulletin.

b. The city shall send the revised permit to all applicable local, state or federal agencies including the Attorney General, as required by state or federal law within eight days of issuing he decision.

c. Appeals shall be in accordance with RCW 90.58.180.

2. Revision of a shoreline CUP or shoreline variance:


a. The application for a revision shall be submitted to the Washington State Department of Ecology. Within 15 days of receipt, Ecology will issue a decision of approval, approval with conditions, or denial of the revision.

19.15.220. Compliance required.

A. It is the intent of this section to require that non-conforming sites, structures, lots, and uses, which were created without prior City approval, comply with the applicable provisions of Title 19 MICC.

B. If development inconsistent with the purposes and requirements of this Title 19 has occurred on a development proposal site without prior City approval, the City shall not issue any land use review approvals for the development proposal site unless the land use review approval requires the restoration of the site to a state that complies with the purposes and requirements of Title 19 MICC are addressed.

C. Suspension of Land Use Approvals. When the conditions of a permit have been violated, the city may suspend any land use review approval, including shoreline permits, when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a code violation. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.280, Enforcement.

19.15.040230 Design Review and the Design commission. 

A. Intent and Purpose. These regulations are intended to implement and further the comprehensive plan of the city and are adopted for the following purposes:

1. To promote the public health, safety and general welfare of the citizens of the city.
2. To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government.
3. To protect, preserve and enhance the social, cultural, economic, environmental, aesthetic, and natural values that have established the desirable quality and unique character of Mercer Island.
4. To promote and enhance construction and maintenance practices that will tend to promote visual quality throughout Mercer Island.
5. To recognize environmental and aesthetic design as an integral part of the planning process.

B. Creation of Design Commission. A design commission is established as provided for in Chapter 3.34 MICC.

CA. Rules and Records.

1. The design commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the city council.
2. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the design commission shall be by majority vote of the members constituting the quorum. A tie vote on a motion to approve shall constitute a failure of the motion and a denial of the application.
3. The code official shall serve as executive secretary of the design commission and shall be responsible for all records. All meetings of the design commission shall be open to the public. The design commission shall keep minutes of its proceedings and such minutes and a copy of its rules shall be kept on file in the office of the city clerk and open to inspection by the public.

DB. Powers of the Design Commission and Additional Functions.

1. No building permit or other required permit shall be issued by the city for any major new construction or minor exterior modification of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E). Certain development and activities that do not require a permit are subject to design review as provided in MICC 19.15.230(C)(1)(c).

2. The design commission or code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to secure the installation and maintenance of landscaping, screens, and other similar site improvements.

3. When the city council deems it necessary to retain consultants for a proposed capital improvement, the council shall seek recommendations from the design commission as to the selection of consultants to provide design services.

4. Consultants or city officials charged with the design responsibility for a major capital improvement shall hold preliminary discussions on the proposed project with the design commission to obtain its preliminary recommendations as to aesthetic, environmental and design principles and objectives. In addition, the design commission shall review major capital improvements at the completion of the design development phase. A capital improvement approved by the city council after review and recommendations by the design commission may be implemented on a phasing basis without further review so long as the improvement is developed in substantial conformity with the reviewed plan. Significant deviations from an approved plan shall be submitted to the design commission for its further review and recommendations.

5. The design commission or code official shall complete its review and make its decision and/or recommendations pursuant to the process set forth in subsection F of this section, and the review and decision and/or recommendations shall be based upon the design objectives and standards set forth in subsection G of this section, with such amendments as may be made from time to time.

6E. Additional Functions. The Design Commission may undertake the following additional functions as needed:

1a. The design commission may assist any person, group, or agency who requests design advice on matters not requiring formal commission action.

2b. The design commission shall consult and cooperate with the planning commission and other governmental bodies on matters affecting the appearance of the Island. The design commission may offer recommendations to the appropriate city agencies and officials on legislation to promote aesthetic and environmental values.

3c. The design commission shall act as the appeal authority for design review decisions made by the code official ~~for minor exterior modifications.~~

FC. Design Review Procedure.

1. General.

a. Intent. The intent of the design review process is to ensure that regulated development in all land use zones complies with design objectives and standards established in Chapters 19.11 and 19.12 MICC.

b. Scope. No building permit or other required permit shall be issued by the city for ~~any major new construction or minor exterior modification~~ development of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E)040. Deviations from a plan approved by the design commission or code official shall be permitted only upon the filing and approval of an amended plan. In no instance shall the design commission's or code official's action conflict with the city's development code or other applicable city ordinances or with state or federal requirements. Certain development and activities that do not require a permit are subject to design review as provided in MICC 19.15.240(C)(1)(c).

c. Review Authority.

i. Major New Construction Design Commission Review. The design commission shall conduct the design review and make compliance determinations regarding major new construction:

(A) New structures/buildings

(B) New additions, remodels (exterior only), and roof and façade changes equal to or exceeding 50 percent of the structure's current appraised value as of the time the initial application for the work is submitted. 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. The applicant may use the King County Assessor's appraised value;

(C) Signs where a master sign plan has been approved for the site;

(D) Site plan layout resulting from an additional parking lot or structured parking lot, or the enlargement of an existing parking lot or structured parking lot;

(E) Landscaping modifications that diminish an existing perimeter landscape screen; and

(F) Other improvements such as paving and landscaping when they are made in conjunction with changes to a structure/building.

ii. Minor Exterior Modifications Code Official Review. The design commission or the code official shall conduct the design review and make compliance determinations regarding:

(A) New additions, remodels (exterior only), and roof and façade changes not exceeding 50 percent of the structure's current appraised value as of the time the initial application for the work is submitted. 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;

(B) Signs where an approved master sign plan has been approved for the site;

(C) Relocating, modifying or adding mechanical equipment;

iii. The code official shall have the authority to determine that an application normally reviewed by code official shall require design commission review and approval, based on factors such as the scope, location, context and visibility of the change or modification; and

iv. The tenant and property owner are responsible for ensuring that all development and activities, including but not limited to painting and landscaping, comply with Chapters 19.11 and 19.12.

i. The following development proposals shall require Design Commission review:

(A). New buildings;

(B). Any additions of gross floor area to an existing building(s)

(C). Any alterations to an existing building that will result in a change of 50%, or more, of the exterior surface area;

(D). Any alterations to a site, where the alteration will result in a change to the site design that affects more than 50% of the development proposal site; and,

(E). Any alterations to existing facades, where the building is identified by the City as an historic structure.

ii. All other development proposals requiring design review and not requiring Design Commission review under subsection (A) of this section shall be reviewed by the Code Official. The Code Official shall have the authority to determine that an application normally reviewed by Code Official shall require Design Commission review and approval, based on factors such as the scope, location, context, and visibility of the proposed change or modification; and

ii. Exemptions from Design Review – The following activities shall be exempt from either Design Commission or Code Official Design Review:

(A). Any activity which does not require a building permit; or

(B). Interior work that does not alter the exterior of the structure; or

(C). Normal building and site maintenance including repair and replacement that involves no material expansion or material change in design. For example, replacement in kind of roof mounted heating and cooling equipment or ventilation equipment does not require design review.

d. Process.

i. Time Frame and Procedure. Design review shall be conducted in accordance with the timelines and procedures set forth in MICC 19.15.050, Permit review procedures. Design review is not subject to the one open record hearing requirement or consolidated permit review processing.

ii. Written Recommendations. All decisions of the design commission and code official shall be reduced to writing and shall include findings of fact and conclusions that support the decisions.

~~iii. Expiration of Approvals. If the applicant has not submitted a complete application for a building permit within two years from the date of the notice of the final design review decision, or within two years from the decision on appeal from the final design review decision, design review approval shall expire. The design commission or code official may grant an extension for no longer than 12 months, for good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.~~

## 2. Review Process for Major New Construction.

~~a. Scope of Review. Design review of major new construction shall include new structures, new additions, remodeled structures, and site plan layout, and other improvements such as paving and landscaping when they are made in conjunction with changes to a structure.~~

### ~~b. Presubmittal Concept Review.~~

~~i. Required: Predesign Preapplication Meeting. A predesign preapplication meeting must be scheduled with staff from the development services group (DSG) prior to formal project development and application. The applicant may present schematic sketches and a general outline of the proposed project. This meeting will allow city staff to acquaint the applicant with the design standards, submittal requirements, and the application procedures and provide early input on the proposed project.~~

~~ii. A complete application on forms provided by the development services group (DSG) and all materials pertaining to the project shall be submitted at a formal preapplication meeting with DSG staff. A preapplication meeting shall not be required if the applicant is only seeking an exemption from Design Commission review pursuant to MICC 19.15.040(F)(3)(a).~~

~~iii. Acceptance. DSG staff shall determine if the required materials have been provided for preliminary design review. If so, the application will be accepted and the process for determination of completeness and review set forth in MICC 19.15.020 shall commence.~~

~~a. Optional: Study Session. In addition to the predesign preapplication meeting, an applicant for a project that will require design review and approval by the design commission may shall meet with the design commission or code official in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.~~

### ~~c. Preliminary Design Review Submittal.~~

~~i. Preapplication Meeting. A complete application on forms provided by the development services group (DSG) and all materials pertaining to the project shall be submitted at a formal preapplication meeting~~

with DSG staff. A preapplication meeting shall not be required if the applicant is only seeking an exemption from formal design review pursuant to MICC 19.15.040(F)(3)(a).

ii. ~~Materials.~~ All applications for preliminary design review shall contain all information and materials deemed necessary by DSG staff to determine if the proposal complies with this chapter. Such materials may include a site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; parking plan; color and materials board; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards established in Chapters 19.11 or 19.12 MICC. Submittal of lighting and sign master plans may be deferred to final design review.

iii. ~~Acceptance.~~ DSG staff shall determine if the required materials have been provided for preliminary design review. If so, the application will be accepted and the process for determination of completeness and review set forth in MICC 19.15.020 shall commence.

~~dc. SEPA Determination.~~ The city environmental official will review the SEPA environmental checklist (if one is required), the project proposal and other information required for a complete application to assess the project's probable environmental impacts and issue a determination pursuant to MICC 19.07.120. Any SEPA appeal shall be pursuant to MICC 19.07.120. The design commission's decision on the preliminary plans shall represent an action on the proposal for SEPA appeal purposes.

~~e. Preliminary Design Commission Review.~~

i. ~~Public Meeting.~~ The design commission shall hold a public meeting to consider the completed preliminary design review application. The design commission may approve, approve with conditions or deny an application or continue the meeting. The commission may identify additional submittal items required for the final design review.

ii. ~~Additional Requirements.~~ If additional submittal items are required, or the preliminary design application is approved with conditions, the conditions must be addressed and any additional items must be submitted at least 21 days prior to the final design commission review.

~~fb. Final Design Commission Review~~Plan Submittal.

i. ~~Submittal of Final Plan.~~ All materials pertaining to the final plan shall be submitted a minimum of 370 days prior to the design commission final review hearing ~~date~~any meeting dates including study sessions, public meetings, and public hearings. The final plans shall be in substantial conformity with approved preliminary plans.

ii. ~~Open Record Hearing.~~ The design commission shall hold an open record hearing to consider the final proposal, at the conclusion of which it may approve, approve with conditions, deny the proposed final plans, or continue the hearing.

~~g. Appeal.~~ Only the final design commission review decision may be appealed, in a closed record appeal to the hearing examiner, pursuant to MICC 19.15.020(J).

~~3. Review Process for Minor Exterior Modification.~~

~~a. Scope of Review.~~

~~i. Design review of minor exterior modifications shall include review of exterior modifications to any existing structures including paint, material, minor roof or facade changes, new additions, landscaping changes, and site plan modifications that do not qualify as major new construction or are undertaken independently from modification of an existing structure, and new or modified signs.~~

~~ii. The code official shall have the authority to determine if a is not significant, and therefore does not require formal design review, based on factors such as the scope, location, context and visibility of the change or modification. The may determine that is not required for including, but not limited to: repainting structures to similar colors; relocating, modifying or adding mechanical equipment; reorganization of portions of parking lots involving less than five spaces; modifications to existing signs pertaining to sign locations or minor changes to color or text; modifications to locations of existing lighting; or minor changes to existing, approved landscaping. iii. There shall be a rebuttable presumption of nonsignificance, and therefore no requirement of a formal design review, if all of the following conditions are met: (1) the cost of the work does not exceed 15 percent of the structure's current King County assessed value as of the time the initial application for the work is submitted (2) there is no additional structure or parking lot, or any enlargement of or addition to an existing structure or parking lot, (3) the work does not cause the landscape area to fall below or further below the minimum landscape area requirements in MICC 19.12.040(B)(4), (4) the work does not remove or diminish an existing perimeter landscape screen, (5) the work does not include new or additional service or mechanical areas referred to in MICC 19.12.060, and (6) the work does not include additional exterior lighting or a new or enlarged exterior sign. 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.~~

~~b. Application Submittal. A development application, accompanied by supporting materials, shall be submitted to the city, on a form provided by the development services group (DSG), for any proposed minor exterior modification. DSG staff shall meet with the applicant A preapplication meeting with DSG staff prior to submission of the application is optional to determine, depending on the scope of the project, what supporting materials are required. Such materials may include site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; lighting plan, sign master plan, parking plan; color and material samples; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards set forth in subsection G of this section. No applicant shall be required to provide materials unless they are both necessary for design review and reflect a change in, or consequence of a change in, the existing development. For the purpose of making a determination of nonsignificance under MICC 19.15.040(F)(3)(a) under circumstances where the project is presumed to be nonsignificant as therein provided, the code official shall only require the submittal of materials demonstrating the entitlement to the presumption and the absence of other material impacts.~~

~~c. Review. The designated DSG staff shall determine administratively if the proposal is in compliance with the requirements of this chapter and may approve, approve with conditions, or deny the application. Staff has the discretion to send any minor exterior modification proposal to the design commission for review and decision at an open record hearing a public meeting.~~



d. Appeal. The code official's decision on an application for minor exterior modification is final unless appealed to the design commission pursuant to MICC 19.15.020(J). The design commission's decision on an application (not an appeal) for minor exterior modification is final unless appealed to the hearing examiner pursuant to MICC 19.15.020(J).

4. Criteria for Design Review Decisions. Following the applicable review process above, the design commission or code official shall deny an application if it finds that all the following criteria have not been met, or approve an application, or approve it with conditions, based on finding that all the following criteria have been met:

a. The proposal conforms with the applicable design objectives and standards of the design requirements for the zone in which the improvement is located, as set forth in subsection G of this section:

i. In the Town Center, particular attention shall be given to whether:

(A) The proposal meets the requirements for additional building height, if the proposal is for a building greater than two stories; and

(B) The proposal adheres to the required parking standards and a parking plan has been provided that demonstrates that the proposal meets the objectives of MICC 19.11.130.

b. The proposal is consistent with the comprehensive plan.

c. The proposal does not increase the project's degree of nonconformity.

G. Design Objectives and Standards.

1. Town Center. Design objectives and standards for regulated improvements within the Town Center are set forth in Chapter 19.11 MICC.

2. Zones Outside Town Center. Design objectives and standards for regulated improvements in all zones outside the Town Center are set forth in Chapter 19.12 MICC.

H. Appeals. Appeals shall be consistent with the appeal procedures specified in MICC 19.15.020(J). (Ord. 17C-12 § 10; amended during 3/15 supplement; Ord. 11C-04 § 3; Ord. 04C-08 § 4; Ord. 03C-10 § 6; Ord. 03C-06 § 4; Ord. 02C-04 § 4; Ord. 99C-13 § 1).

19.15.050240 Comprehensive plan amendments.

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

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

C. Frequency of Amendments.

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

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

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

D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan in a manner that will ensure such suggested changes will be considered by the city and will be available for review by the public. The following process will be used to create the docket:

1. Preliminary Docket Review. By September 1, the city will issue notice of the annual comprehensive plan amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year’s comprehensive plan amendment process but will be held for the next eligible comprehensive plan amendment process.

a. The code official shall compile and maintain for public review a list of suggested amendments and identified deficiencies as received throughout the year.

b. The code official shall review all complete and timely filed applications proposing amendments to the comprehensive plan and place these applications on the preliminary docket along with other city-initiated amendments to the comprehensive plan.

c. The planning commission shall review the preliminary docket at a public meeting and make a recommendation on the preliminary docket to the city council each year.

d. The city council shall review the preliminary docket at a public meeting. By December 31, the city council shall establish the final docket based on the criteria in subsection E of this section. Once approved, the final docket defines the work plan and resource needs for the following year's comprehensive plan amendments.

## 2. Final Docket Review.

a. Placement on the final docket does not mean a proposed amendment will be approved. The purpose of the final docket is to allow for further analysis and consideration by the city.

b. All items on the final docket shall be considered concurrently so that the cumulative effect of the various proposals can be ascertained. Proposed amendments may be considered at separate meetings or hearings, so long as the final action taken considers the cumulative effect of all proposed amendments to the comprehensive plan.

c. The code official shall review and assess the items placed on the final docket and prepare a ~~staff report~~ including recommendations for each proposed amendment. The code official shall be responsible for developing an environmental review of the combined impacts of all proposed amendments on the final docket, except that applicants seeking a site-specific amendment shall be responsible for submittal of a SEPA environmental checklist and supporting information. The applicant will need to submit SEPA and any other accompanying permits legislative actions such as a rezone or a zoning code text amendment at this time. The code official may require an applicant to pay for peer review and/or additional resources needed to review the proposal. The code official shall set a date for consideration of the final docket by the planning commission and timely transmit the ~~staff report(s)~~ recommendation prior to the scheduled date.

d. The planning commission shall review the proposed amendments contained in the final docket based on the criteria set forth in MICC 19.15.02240(GF)(1). The planning commission shall hold at least one public hearing on the proposed amendments. The planning commission shall make a recommendation on the proposed amendments and transmit the recommendation to the city council.

e. After issuance of the planning commission's recommendation, the code official shall set a date for consideration of the final docket by the city council. The city council shall review the proposed amendments taking into consideration the recommendations of the planning commission and code official. The city council may deny, approve, or modify the planning commission's recommendations consistent with the criteria set forth in MICC 19.15.02240(GF)(1). The city council's establishment of a final docket of proposed amendments is not appealable.

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

E. Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

1. The request has been filed in a timely manner, and either:

a. State law requires, or a decision of a court or administrative agency has directed, such a change; or

b. All of the following criteria are met:

- i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan;
- ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;
- iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;
- iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city's vision; and
- v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

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

1. The amendment is consistent with the Growth Management Act, the county-wide 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
- bi. The amendment addresses changing circumstances of the city as a whole.

2. If the amendment is directed at a specific property, the following additional findings shall be determined:

- a. The amendment is compatible with the adjacent land use and development pattern;
- b. The property is suitable for development in conformance with the standards under the potential zoning; and
- c. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

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

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

- 1. The effect of the proposed amendment on the surrounding area or city;

2. The effect of the proposed amendment on the land use and circulation pattern of the surrounding area or city; and
3. The effect of the proposed amendment on the future development of the surrounding area or city. (Ord. 16C-13 § 2).

19.15.250. Reclassification of Property (Rezoning).

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 19.15.270.

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 a “spot” zone-an illegal site-specific rezone;

5. The proposed reclassification is compatible with surrounding zones and land uses; and

6. The proposed reclassification does not adversely affect public health, safety and welfare.

7. If a Comprehensive Plan amendment is required in order to satisfy MICC 19.15.250(C)(1), approval of the Comprehensive Plan amendment is required prior to or concurrent with the granting of an approval of the rezone.

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.

19.15.260. Zoning Code Text Amendment

A. Purpose. The purpose of this section is to establish the process and criteria for amendment of this Code.

B. Process. Zoning Code amendments shall be considered as provided in MICC 19.15.270.

C. Initiation of zoning code amendment request. A zoning code amendment request may be initiated by the City Council, Planning Commission, or Code Official.

D. Criteria. The City may approve or approve with modifications a proposal to amend the text of this Code 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.

E. ~~Code change~~Codification. Following approval of an amendment, the City shall amend this Code to reflect the ~~change~~amendment.

19.15.270 Review procedures for Comprehensive Plan Amendments, Reclassification of Property, and Zoning Code Text Amendments

A. The city shall issue a notice for comprehensive plan amendments, reclassifications of property, and zoning code text amendments as described in MICC 19.15.240, 19.15.250, and 19.15.260. Notice shall be provided in the weekly DSG bulletin, made available to the general public upon request, and, if the proposed amendment will affect a specific property or defined area of the City, mailed to all property owners within 300 feet of the ~~property~~affected property or defined area, and -posted on the site in a location that is visible to the public right-of-way.

1. The notice shall include the following information:

i. The name of the party proposing the proposed amendment or change;

ii. The location and description of the project, if applicable;

iii. The requested actions and/or required studies;

iv. The date, time, and place of the open record hearing;

v. Identification of environmental documents, if any;

vi. A statement of the public comment period which shall not be less than 30 days. The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights.;

vii. The city staff contact and contact information;

viii. The identification of other reviews or permits that are associated with the review of the proposed Comprehensive Plan, zoning text, or zoning map amendment, to the extent known by the city;

ix. A description of those development regulations used in determining consistency of the review with the city's comprehensive plan;

x. A link to a website where additional information about the project can be found; and

xi. Any other information that the city determines appropriate.

2. Timing of notice. The city shall provide the notice at least 30 days prior to the hearing.

3. The city shall accept public comments at any time prior to the closing of the record of an open record public hearing.

D. Review ~~at~~-after Public Hearing

1. ~~At an~~ Following the completion of the open record public hearing the planning commission shall consider the proposed ~~review~~amendment for conformance with the criteria as listed in the applicable section, the comprehensive plan and other applicable development standards.

2. The planning commission shall make a written recommendation on the review to the city council.

3. The city council shall consider the planning commission's recommendation at a public meeting where it may adopt or reject the planning commission's recommendations or remand the review back to the planning commission.

19.15.280 Enforcement (Not part of this review)

Attachment 1.h.2

\*CROSSOUTS REMOVED\*

Chapter 19.15  
ADMINISTRATION

Sections:

19.15.010 Purpose, intent and roles.

19.15.020 Land use review types.

19.15.030 Legislative actions

19.15.040 Summary of approval and authorities

19.15.050 Permit review procedures

19.15.060 Preapplication

19.15.070 Application

19.15.080 Determination of completeness

19.15.090 Public notification

19.15.100 Notice of application

19.15.110 Public hearing notice

19.15.120 Response to comments and extensions

19.15.130 Notice of decision

19.15.140 Appeals

19.15.150 Open record public hearing

19.14.160 Expiration of approvals

19.15.170 Code interpretations

19.15.180 Vesting



1 19.15.190 Additional shoreline substantial development permit, shoreline conditional use permit,  
2 and shoreline variance procedures

3 19.15.200 Permit review for 6409 eligible facilities

4 19.15.210 Revisions

5 19.15.220 Compliance required

6 19.15.230 Design review and the design commission

7 19.15.240 Comprehensive plan amendments.

8 19.15.250 Reclassification of property (rezones).

9 19.15.260 Code amendments.

10 19.15.270 Review procedures for comprehensive plan amendments, reclassification of property,  
11 and code amendments.

12 19.15.280 Enforcement (Not part of this review)

13  
14  
15 19.15.010 Purpose, intent and roles.

16 A. Purpose. Administration of the development code is intended to be expedient and effective. The  
17 purpose of this chapter is to identify the processes, authorities and timing for administration of  
18 development permits and land use reviews. Public noticing and public hearing procedures, decision  
19 criteria, appeal procedures, dispute resolution and code interpretation issues are also described.

20 B. Objectives. Guide customers confidently through the permit and land use review process; process  
21 land use reviews and permits equitably and expediently; balance the needs of applicants with neighbors;  
22 allow for an appropriate level of public notice and involvement; make decisions quickly and at the  
23 earliest possible time; allow for administrative decision-making, except for those decisions requiring the  
24 exercise of discretion which are reserved for appointed decision makers; ensure that decisions are made  
25 consistently and predictably; and resolve conflicts at the earliest possible time.

26 C. Roles and Responsibilities. The roles and responsibilities for carrying out the provisions of the  
27 development code are shared by appointed boards and commissions, elected officials and city staff. The  
28 authorities of each of these bodies are set forth below.

29 1. City Council. The city council is responsible for establishing policy and legislation affecting land  
30 use within the city. The city council acts on recommendations of the planning commission and  
31 hearing examiner.

1 2. Planning Commission. The role of the planning commission in administering the development  
2 code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated  
3 planning agency for the city (see Chapter 35A.63 RCW). The planning commission makes  
4 recommendations to the city council on land use legislation, comprehensive plan amendments  
5 and quasi-judicial matters.

6 3. Design Commission. The role of the design commission in administering the development  
7 code is governed by Chapter 3.34 MICC and MICC 19.15.040. In general, the design commission  
8 is responsible for maintaining the city's design standards and action on sign, commercial and  
9 multiple-family design applications.

10 4. Development Services Group.

11 a. The code official is responsible for administration, interpretation and enforcement of  
12 the development code.

13 b. The building official is responsible for administration and interpretation of the  
14 building code, except for the International Fire Code.

15 c. The city engineer is responsible for the administration and interpretation of  
16 engineering standards.

17 d. The environmental official is responsible for the administration of the State  
18 Environmental Policy Act and shoreline master program.

19 e. The fire code official is responsible for administration and interpretation of the  
20 International Fire Code.

21 5. Hearing Examiner. The role of the hearing examiner in administering the development code is  
22 governed by Chapter 3.40 MICC.

23 19.15.020. Land Use Review Types.

24 There are four categories of land use review that occur under the provisions of the development code.

25 1. Type I. Type I reviews are based on clear, objective and nondiscretionary standards or  
26 standards that require the application of professional expertise on technical issues.

27 2. Type II. Type II- reviews are based on clear, objective and nondiscretionary standards or  
28 standards that require the application of professional expertise on technical issues. The  
29 difference between Type I and Type II review is that Public Notification shall be issued for Type II  
30 decisions

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32 3. Type III. Type III reviews require the exercise of discretion about nontechnical issues.

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2 4. Type IV. Type IV reviews require discretion and may be actions of broad public interest. Type  
3 IV reviews are only taken after an open record hearing.

4 5. The types of land use approvals are listed in Table A of this section. The required public  
5 process for each type of land use approval are listed in Table B of this section.

6 6. Consolidated review and approval. An application for a development proposal that involves  
7 the approval of two or more Type I, II, III and IV reviews, may be processed and decided  
8 together, including any administrative appeals, using the highest numbered land use decision  
9 type applicable to the project application. The following permits and land use reviews are  
10 excluded from consolidated review and approval:

11 a. Building permits associated with the construction of one or more new single family  
12 dwellings on lots resulting from the final plat approval of a short subdivision or long  
13 subdivision.

14 b. Building permits associated with shoreline conditional use permits and shoreline  
15 variances.

16 c. Project SEPA reviews shall be processed as a Type III land use review.

17 d. When a review is heard by multiple decision bodies, the higher decision body will  
18 make the final decision, and the lower decision body will review the project at a public  
19 meeting and issue a recommendation that will be reviewed by the higher decision body.  
20 The higher decision body will either adopt the recommendation as part of the permit  
21 conditions, will remand the recommendation back to the lower body for further  
22 consideration, will amend the recommendation, or will deny adoption of the  
23 recommendation and will adopt their own permit conditions. The hierarchy of decision  
24 bodies is as follows, from highest to lowest:

25 (1). City council

26 (2). Hearing examiner

27 (3). Design commission

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29 19.15.030. Legislative Actions. Legislative actions involve the creation, amendment or implementation of  
30 policy or law by ordinance. In contrast to the other types of actions, legislative actions generally apply to  
31 geographic areas and implement adopted City policy, promote the community interest, and are  
32 normally of interest to many property owners and citizens. Legislative actions are only adopted after an  
33 open record public hearing. Procedures for legislative actions are located in subsection 19.15.270 of this  
34 chapter. Legislative actions include street vacations, comprehensive plan amendments, reclassification  
35 of property (rezones), and code amendments.

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19.15.040 Summary of Reviews and Authorities. The following is a nonexclusive list of the land use reviews that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, or city staff have authority to make the decisions and to hear appeals of those decisions.

TABLE A

LAND USE REVIEW TYPE

Type I	Type II	Type III	Type IV
<u>Home business, seasonal development limitation waiver, non-major single-family dwelling building permit, right of way permit, tree removal permits, special needs group housing safety determination, tenant improvement/change of use, shoreline exemption<sup>1,2</sup>, critical areas determination (steep slope alteration), final short plat, temporary commerce on public property, site development permit.</u>	<u>Modified wireless communication facilities (6409 per 47.CFR.1.40001), lot line revision, setback deviations, final plat<sup>2,3</sup>, code official design review, accessory dwelling unit, and parking variances by city engineer.</u>	<u>New and modified wireless (non-6409) communication facility, SEPA threshold determination, critical areas determination (wetland/watercourse buffer averaging/reduction), temporary encampment<sup>4</sup>, short plat alteration and vacations, preliminary short plat, development code interpretations, major single-family dwelling building permit, shoreline substantial development permit<sup>1</sup>, shoreline revision (substantial development)<sup>1</sup>.</u>	<u>Preliminary long plat approval, conditional use permit, variance, critical areas reasonable use exception, long plat alteration and vacations, parking variance (reviewed by design commission), variance from short plat acreage limitation, wireless communication facility height variance, planned unit development, design commission design review, permanent commerce on public property, shoreline conditional use permit (SCUP)<sup>5</sup>, shoreline variance<sup>5</sup>, shoreline revision (variance and SCUP).</u>

<sup>1</sup> Appeal will be heard by the Shoreline Hearings Board  
<sup>2</sup> Decision is made by city council after discussion at a public meeting  
<sup>3</sup> A Notice of Decision will be issued for a final long plat  
<sup>4</sup> A public meeting is required  
<sup>5</sup> Hearing examiner will forward a recommendation to Ecology for Ecology's decision

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TABLE B  
REVIEW PROCESSING PROCEDURES

	Type I	Type II	Type III	Type IV
	No Notice of Application  No Notice of Decision  Code Official	<b>Public Notification</b>  No Notice of Application  <b>No Notice of Decision</b>  Code Official	Notice of Application  Notice of Decision  Code Official	Notice of Application  Public Hearing  Notice of Decision  Hearing Examiner/Design Commission
Pre-application meeting required	No	No	Yes	Yes
Letter of Completion  (within 28 days)	No	No	Yes	Yes
<b>Public Notification</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
Notice of Application (mailing & posting)	No	No	Yes	Yes
Public Comment Period	None	None	30 days	30 days
Public Hearing  (Open Record pre-decision)	No	No	No	Yes

	Type I	Type II	Type III	Type IV
Decision	Code official	Code official	Code official	Hearing examiner or Design Commission (Hearing examiner recommendation to Ecology for decision on Shoreline CUP / Variances)
Notice of Decision	No	No	Yes	Yes
Appeal Authority	Superior Court	Hearing Examiner or Design Commission (Code Official Design Review)	Hearing Examiner	Superior Court or Shoreline Hearings Board (Shoreline Permits)

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2 19.15.050 Review procedures.

3 The following are general requirements for processing a permit or land use review application under the  
4 development code. Additional or alternative requirements may exist for actions under specific code  
5 sections (see MICC 19.07.080, 19.07.110, and 19.08.020, and 19.08.070).

6 19.15.060. Preapplication.

7 A. Purpose. Meetings with the staff provide an opportunity to discuss the proposal in concept terms,  
8 identify the applicable city requirements and the project review process. Meetings or correspondence  
9 with the neighborhood to inform the neighborhood of the project proposal are encouraged prior to the  
10 formal notice provided by the city.

11 B. Optional Pre-application meetings. Applicants for development proposals are encouraged to  
12 participate in informal meetings with city staff. Pre-application meetings may be held for any other  
13 development proposal at the request of the applicant.

1 C. Required Pre-application meetings. Pre-application meetings are required for Type III and Type IV  
2 land use reviews. Pre-application meetings may be held for any other development proposal at the  
3 request of the applicant. This requirement may be waived by the code official.

4 D. Application. Applicants shall prepare a concept sketch of the development proposal for the pre-  
5 application meeting along with any other information specified by the code official in the pre-application  
6 meeting form.

7 E. Validity. Successful completion of a pre-application meeting does not constitute approval of any plan  
8 or design. Pre-application meetings shall occur within one year of application submittal, or after a code  
9 change affecting the application has occurred.

10 19.15.070. Application.

11 A. The department will begin review of any application for a development proposal after the applicant  
12 has submitted the materials and fees specified below for a complete application(s). An application shall  
13 contain all information deemed necessary by the code official to determine if the proposed  
14 development proposal will comply with the requirements of the applicable development regulations.  
15 The applicant for a development proposal shall have the burden of demonstrating that the proposed  
16 development complies with the applicable regulations and decision criteria. All applications for a  
17 development proposal shall include at a minimum, the following:

18 1. All applications for permits or land use reviews by the city shall be submitted on forms  
19 provided by the City;

20 2. A site plan and documentation supporting the development proposal, prepared in a form  
21 prescribed by the code official;

22 3. A completed SEPA environmental checklist, if required;

23 4. Any studies or reports required for the processing of the application;

24 5. A list of any permits or land use review types necessary for approval of the development  
25 proposal that have been obtained prior to filing the application or that are pending before the  
26 City or any other governmental entity;

27 6. Drainage plans and documentation required by the Stormwater Management Manual for  
28 Western Washington as adopted by MICC Chapter 15.09, if applicable;

29 7. Legal description of the site;

30 8. Verification that the property affected by the application is in the exclusive ownership of the  
31 applicant, or that the applicant has a right to develop the site and that the application has been  
32 submitted with the consent of all owners of the affected property; and

33 9. For Type III and IV reviews, a title report from a title company indicating that the applicant has  
34 either sole marketable title to the development site or has a publicly recorded right to develop

1 the site (such as an easement). If the title report does not clearly indicate that the applicant has  
2 such rights, then the applicant shall include the written consent of the record holder(s) of the  
3 development site. The code official may waive this requirement if the title report will not  
4 substantively inform the review of the development proposal.

5 10. All applications for design review shall contain all information and materials deemed  
6 necessary by the code official to determine if the proposal complies with this chapter. Such  
7 materials may include a site survey; site plans; elevations; sections; architectural plans; roof  
8 plans; renderings and/or models; landscaping plan; parking plan; color and materials board;  
9 vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation  
10 plans; and written narrative describing the project proposal and detailing how the project is  
11 meeting the applicable design objectives and standards established in Chapters 19.11 or 19.12  
12 MICC. For new construction, submittal of lighting and sign master plans may be deferred to the  
13 public hearing if applicable.

14 11. Any additional information specified by the Code Official and necessary to allow for  
15 substantive review of the application.

16 B. A determination of completeness shall not preclude the code official from requesting additional  
17 information or studies either at the time of determination of completeness or subsequently if new or  
18 additional information is required or substantial changes in the proposed action occur, as determined by  
19 the code official.

20 C. All applications for permits or land use review by the city shall be accompanied by a filing fee in an  
21 amount established by city ordinance.

22 19.15.080. Determination of Completeness and Letter of Completion.

23 A. Complete Application Required. The city will not accept an incomplete application for processing and  
24 review. An application is complete only when all information required on the application form and all  
25 submittal items required by the development code have been provided to the satisfaction of the code  
26 official.

27 B. Determination of Completeness. Within 28 days after receiving an application for land use review, the  
28 city may mail, email, or provide in person a written Letter of Completion or Letter of In-Completion to  
29 the applicant, stating either that the application is complete or that the application is incomplete. If an  
30 application is incomplete, the Letter of In-Completion shall identify what additional documentation is  
31 necessary to result in a complete application. An application shall be deemed complete if the city does  
32 not provide a written determination to the applicant stating that the application is incomplete within 28  
33 days after receiving an application.

34 C. Response to Letter of In-Completion. Within 14 days after an applicant has submitted all additional  
35 information identified as being necessary for a complete application, the city shall notify the applicant  
36 that the application is complete, or indicate that the application is incomplete and specify additional  
37 documentation as specified in section B. above that is necessary to result in a complete application.



1 D. Completion Date. The date an application is determined complete is the date of receipt by the  
2 department of all of the information necessary to make the application complete as provided in this  
3 chapter. The department's issuance of a Letter of Complete application, or the failure of the department  
4 to provide such a letter as directed by this section, shall cause an application to be conclusively deemed  
5 to be complete as provided in this section.

6 E. If the applicant fails to provide the required information within 90 days of the Letter of In-Completion,  
7 the application shall lapse.

8 19.15.090. Public Notification.

9 A. Public notification is distinct from a notice of application, a notice of decision, and a notice of public  
10 hearing. The purpose is to inform and notify the community of projects. No comment period is  
11 required for a Public Notification, although public comment is allowed.

12 B. Timing. A Public Notification will be issued for Type II permits listed in MICC 19.15.010(E) prior to  
13 issuance of a decision, and as soon as reasonably feasible after submittal of a complete application.

14 C. Distribution. A Public Notification shall be posted in the weekly DSG Bulletin.

15 D. Content. A Public Notification shall include the following information:

16 1. Permit number;

17 2. The name of the applicant;

18 3. The location and description of the project;

19 4. A link to a website where additional information about the project can be found; and

20 5. Any other information that the city determines appropriate.

21 19.15.100. Notice of Application.

22 A. Timing. Within 14 days of the determination of completeness, the city shall issue a notice of  
23 application for all Type III and Type IV permits listed in MICC 19.15.010(E).

24 B. Distribution. Notice shall be provided in the weekly DSG bulletin, mailed to all property owners  
25 within 300 feet of the property, posted on the site in a location that is visible to the public right-of-way,  
26 and made available to the general public upon request.

27 If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that  
28 contiguous land shall be treated as part of the long subdivision for notice purposes, and notice of the  
29 application shall be given to all owners of lots located within 300 feet of the proposed long subdivision  
30 and the applicant's contiguous land. The city shall provide written notice to the Department of  
31 Transportation of an application for a long subdivision or short subdivision that is abutting the right-of-  
32 way of a state highway.

1 C. Content. The notice of application shall include the following information:

2 1. The dates of the application, the determination of completeness, and the notice of  
3 application;

4 2. The name of the applicant;

5 3. The location and description of the project;

6 4. The requested actions and/or required studies;

7 5. The date, time, and place of the open record public hearing, if one has been scheduled;

8 6. Identification of environmental documents, if any;

9 7. A statement of the public comment period, which shall be not less than 30 days following the  
10 date of notice of application; and a statement of the rights of individuals to comment on the  
11 application, receive notice and participate in any public hearings, request a copy of the decision  
12 once made and any appeal rights.

13 8. The city staff contact and contact information;

14 9. The identification of other permits not included in the application to the extent known by the  
15 city;

16 10. A description of those development regulations used in determining consistency of the  
17 project with the city's comprehensive plan;

18 11. A link to a website where additional information about the project can be found; and

19 12. Any other information that the city determines appropriate.

20 D. Open Record Public Hearing. If an open record hearing is required on the land use review, the city  
21 shall provide the notice of application at least 30 days prior to the public hearing.

22  
23 E. Public Comment. The city shall accept public comments at any time prior to the closing of the record  
24 of an open record predecision public hearing, if any, or if no open record predecision public hearing is  
25 provided, prior to the decision on the project land use review.

26 F. Except for a determination of significance, the city shall not issue a threshold determination under  
27 MICC 19.07.120 or issue a decision on an application until the expiration of the public comment period  
28 on the notice of application.

1 19.15.110. Public Hearing Notice.

2 A. A public hearing notice is required for Type IV land use reviews. A Public Hearing Notice may be  
3 combined with a Notice of Application.

4 B. Public hearing- notice shall be provided at least 30 days prior to any required open record public  
5 hearing

6 C. The public hearing notice shall include the following:

7 1. A general description of the proposed project and the action to be taken by the city;

8 2. A address or parcel number of the property and a vicinity map or sketch;

9 3. The time, date and location of the open record public hearing;

10 4. A contact name and number where additional information may be obtained;

11 5. A statement that only those persons who submit written comments or testify at the open  
12 record hearing will be parties of record; and only parties of record will receive a notice of the  
13 decision and have the right to appeal;

14 6. A link to a website where additional information about the project can be found.

15 D. Public hearing notices shall be provided in the following manner:

16 1. Notice shall be mailed to parties of record, all property owners within 300 feet of the property,  
17 published in the weekly DSG bulletin, and posted on the site in a location that is visible to the public  
18 right-of-way.

19 a. Long Subdivisions. Additional notice for the public hearing for a preliminary long subdivision  
20 approval shall be provided as follows:

21 (1) Notice of public hearing shall also be published in a newspaper of general  
22 circulation within the city.

23 (2) If the owner of a proposed long subdivision owns land contiguous to the  
24 proposed long subdivision, that contiguous land shall be treated as part of the  
25 long subdivision for notice purposes, and the Public Hearing Notice shall be  
26 given to all owners of lots located within 300 feet of the proposed long  
27 subdivision and the applicant's contiguous land.

28 E. Every complete application for which notice is to be provided under subsection (D)(1) of this section  
29 together with all information provided by the applicant for consideration by the decision authority shall  
30 be posted by the city to a website accessible without charge to the public. Information shall be posted at  
31 the time the city issues the notice of application under subsection (D)(1) of this section and shall be  
32 updated within seven days after additional information is received from the applicant.

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19.15.120. Response to Comments and Extensions.

A. Request authorized. The code official reviewing a development proposal may request additional information, corrections to the project design, or technical studies as needed to substantively complete the project review.

B. Deadline for response. The code official or entity requesting information shall establish a time limit for the applicant to respond. The time limit for an applicant to respond to a request for information shall not be less than 30 days, and provided an extension to applicant’s time limit to respond may be authorized pursuant to section C., below. If responses are not received within the established time limit and no extension has been authorized, the code official may cancel the land use review for inactivity.

C. Deadline extension. Applicants may request an extension to provide requested materials. Extension requests shall be in writing, shall include a basis for the extension, and shall be submitted in writing prior to expiration of the time limit. The code official is authorized to extend the time limit in writing. There is no limit to the number of extensions an applicant may be granted, however the total time limit for a response shall not exceed 180 days unless there is an extenuating circumstance. An extenuating circumstance must be unexpected and beyond the control of the applicant.

19.15.130. Notice of Decision. The city will make an effort to process permits and land use reviews in a reasonable time subject to constraints related to staff workload and resources. The city shall provide notice in a timely manner of its final decision or recommendation on development proposals requiring Type II, III and IV land use decisions, including the SEPA threshold determination, if any, the dates for any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to the applicant, parties of record, agencies with jurisdiction. Notice of decision shall also be provided to the public as provided in MICC 19.15.100. The notice of decision may be provided by email or a hard copy may be mailed.

19.15.140. Appeals.

A. Appeals to Shoreline Hearings Board. Appeals to any shoreline substantial development permit, shoreline conditional use permit, or shoreline variance decision, shall be in accordance with RCW 90.58. Appeals to shoreline exemptions permits shall be filed in accordance with subsection B of this section.

B. Administrative Appeals. Any decision may be administratively appealed by filing a written appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision is made available to the public and applicant pursuant to MICC 19.15.130, if a notice of decision is required, or after the effective date of the decision subject to appeal if a notice of decision is not required.

1 C. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the  
2 proceedings were materially affected by irregularities in procedure, or the decision was unsupported by  
3 evidence in the record, or that the decision is in conflict with the standards for review of the particular  
4 action;

5 D. Written appeals shall include the following information:

6 1. The decision(s) being appealed;

7 2. The development code interpretation, if any, associated with the proposed appeal;

8 3. The name and address of the appellant and interest in the matter;

9 4. The specific reasons why the appellant believes the decision to be wrong.

10 5. The desired outcome or changes to the decision; and

11 6. Payment of the appeals fee, if any.

12 E. Authority for appeals is specified in MICC 19.15.040(E).

13 F. Notice of an open record public hearing for an appeal shall be provided consistent with the notice of  
14 public hearing provisions of MICC 19.15.110.

15 G. The hearing body may adopt rules of procedure in addition to the following required provisions. At a  
16 minimum, rules of procedure for appeal hearings shall provide that:

17 1. If the hearing body finds that there has been substantial error, or the proceedings were  
18 materially affected by irregularities in procedure, or the decision was unsupported by material  
19 and substantial evidence in view of the entire record, or the decision is in conflict with the city's  
20 applicable decision criteria, it may:

21 a. Reverse the decision.

22 b. Modify the decision and approve it as modified.

23 c. Remand the decision back to the decision maker for further consideration.

24 2. If the hearing body finds that none of the procedural or factual bases listed above exist and  
25 that there has been no substantial error, the hearing body may adopt the findings and/or  
26 conclusions of the decision body, concur with the decision of the decision body and approve the  
27 development proposal as originally approved, with or without modifications.

28 3. Final decision on the appeal shall be made within 30 days from the last day of the appeal  
29 hearing.

1 4. The city's final decision on a development proposal may be appealed by filing a land use  
2 petition in King County superior court. Such petition must be filed within 21 days of the issuance  
3 of the decision.

4 H. When an applicant has opted for consolidated permit processing pursuant to subsection I of this  
5 section, administrative appeals of Type I, II, or III approvals listed in MICC 19.15.010(E) for a single  
6 project shall be consolidated and heard together in a single appeal by the highest level hearing body.  
7 For example, an appeal of a consolidated decision for a Type I and III decision, shall be heard by the  
8 Hearing Examiner.

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10 19.15.150. Open Record Public Hearing.

11 A. Only one open record public hearing shall be required prior to action on all Type IV actions or to hear  
12 an appeal of a Type I, II, or III decision.

13 B. Open record public hearings shall be conducted in accordance with the hearing body's rules of  
14 procedures. In conducting an open record public hearing, the hearing body's chair shall, in general,  
15 observe the following sequence:

16 1. Staff presentation, including the submittal of any additional information or correspondence.  
17 Members of the hearing body may ask questions of staff.

18 2. Applicant and/or applicant representative's presentation. Members of the hearing body may  
19 ask questions of the applicant.

20 3. Testimony by the public. Questions directed to the staff, the applicant or members of the  
21 hearing body shall be posed by the chairperson at his/her discretion.

22 4. Rebuttal, response or clarifying statements by the applicant and/or the staff and/or the  
23 public.

24 5. The public comment portion of the public hearing is closed and the hearing body shall  
25 deliberate on the action before it.

26 C. Following the hearing procedure described above, the hearing body shall:

27 1. Approve;

28 2. Conditionally approve;

29 3. Continue the public hearing;

30 4. Remand the application to staff; or

31 5. Deny the application.

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19.15.160. Expiration of Approvals.

A. General. Except as stated below, or as otherwise conditioned in the approval process, land use review approvals shall expire three years from the date of notice of decision if the development proposal authorized by the land use review is not commenced. For the purposes of this section, the development proposal shall be considered established if construction or substantial progress toward construction of a development proposal for which a land use review approval has been granted must be undertaken within three years of the date of notice of decision of the land use review. Where no construction activities are involved, the use or activity shall be commenced within three years of the date of notice of decision of the land use review.

B. Renewal. Renewal of expired land use approvals shall require a new application.

C. Long Subdivisions. A final plat application meeting all requirements of this chapter shall be submitted to the code official and recorded within five years of the date of preliminary plat approval.

D. Shoreline Land Use Reviews. The following time limits shall apply to all substantial development permits, shoreline conditional use permits and shoreline variance permits:

1. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

2. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

E. Responsibility for knowledge of the expiration date shall be with the applicant.

19.15.170. Code Interpretations.

A. Upon application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:

- 1. The plain language of the code section in question;
- 2. Purpose and intent statement of the chapters in question;

1 3. Legislative intent of the city council provided with the adoption of the code sections in  
2 question;

3 4. Policy direction provided by the Mercer Island comprehensive plan;

4 5. Relevant judicial decisions;

5 6. Consistency with other regulatory requirements governing the same or similar situation;

6 7. The expected result or effect of the interpretation; and

7 8. Previous implementation of the regulatory requirements governing the situation.

8 B. The code official may also bring any issue of interpretation before the planning commission for  
9 determination. Anyone in disagreement with an interpretation by the code official may also appeal the  
10 code official's interpretation to the hearing examiner.

11  
12 19.15.180. Vesting

13 A. Purpose. The purpose of this section is to identify certain points in the land use approval process at  
14 which an applicant's rights become "vested." Vested rights is defined as the guarantee that an  
15 application will be reviewed and a development proposal can be developed (if a permit is issued) under  
16 regulations and procedures existing at one moment in time and regardless of changes that may have  
17 been made later and prior to final completion of a project or use.

18 B. Vesting for Land Use Reviews. Complete applications for land use review of Type I land use reviews,  
19 building permits, conditional use permits, design review, short subdivisions, and long subdivisions, shall  
20 vest on the date a complete application is filed. The department's issuance of a Letter of Completion for  
21 Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide  
22 such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be  
23 vested as provided herein.

24 C. Scope of Vested Rights.

25 1. Land use reviews that are subject to the provisions of this section shall be considered under  
26 the zoning and land use control ordinances in effect on the date of complete application.  
27 Supplemental information and revisions to a development proposal design required by the City  
28 after vesting of a complete application shall not affect the validity of the vesting for such  
29 application.

30 2. An applicant must specifically identify a proposed land use or uses in the land use review  
31 application as the intended use of the development proposal site in order to vest the right to  
32 engage in a specific land use against an ordinance implementing a change in permitted land  
33 uses.



1 3. An application for a land use review may be denied or approved with conditions under the  
2 authority of the City to protect and enhance the public safety, health and welfare, and under the  
3 State Environmental Policy Act (SEPA) and the City of Mercer Island's SEPA regulations and  
4 policies as of the date of vesting, notwithstanding the fact that the applicant has attained a  
5 vested right against enforcement of an ordinance implementing changes in regulations, codes or  
6 procedures affecting that land use review application.

7 D. Termination of Vested Rights.

8 1. Termination of vested rights associated with a land use review for a development proposal  
9 shall occur at the time of expiration of land use review approval, as established in MICC  
10 19.15.160 or when an applicant withdraws the land use application.

11 2. Applicant-generated modifications or requests for revision(s) to building permits, short  
12 subdivision, or long subdivisions which are not made in response to staff review, public process,  
13 or appeal, or conditions of approval, and which result in substantial changes to a development  
14 proposal design, which includes but is not limited to include the creation of additional lots,  
15 substantial change in access, substantial changes in project design, or additional impacts to  
16 critical areas shall be treated as new applications for purposes of vesting.

17 3. Applicant-generated proposals to create additional lots, substantially change access, increase  
18 critical area impacts, or change conditions of approval on an approved preliminary short  
19 subdivision or long subdivision shall also be treated as a new application for purposes of vesting.

20  
21 19.15.190. Additional Procedures for Shoreline Review.

22 A. Open record public hearing. An open record public hearing before the code official shall be  
23 conducted on the shoreline substantial development permits when within the 30-day comment period,  
24 10 or more interested citizens file a written request for a public hearing

25 B. Ecology filing. The applicant shall not begin construction until after 21 days from the date of receipt  
26 by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant  
27 shall also comply with all applicable federal, state and city standards for construction.

28 C. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with  
29 conditions, or denying any substantial development permit or shoreline exemption is final unless an  
30 appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to  
31 the applicant, the Department of Ecology, the Washington State Attorney General and to all other  
32 applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by  
33 return receipt requested mail or as regulated by WAC 173-27-130.

34 D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving,  
35 approving with conditions, or denying a shoreline conditional use permit or shoreline variance is  
36 rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable  
37 local, state, or federal laws. The city shall send the shoreline permit decision to the applicant, the

1 Department of Ecology, the Washington State Attorney General and to all other applicable local, state,  
2 or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested  
3 mail or as regulated by WAC 173-27-130.

4  
5 19.15.200. Permit review for 6409 eligible wireless communications facilities

6 A. Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking  
7 approval under this section, the city shall approve the application unless it determines that the  
8 application is not covered by 47 CFR 1.40001.

9 B. Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and  
10 may be tolled only by mutual agreement or in cases where the city determines that the application is  
11 incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

12 1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant  
13 within 30 days of receipt of the application, clearly and specifically delineating all missing  
14 documents or information. Such delineated information is limited to documents or information  
15 meeting the standard under paragraph (I)(1) of this section.

16 2. The timeframe for review begins running again when the applicant makes a supplemental  
17 submission in response to the city's notice of incompleteness.

18 3e. Following a supplemental submission, the city will have 10 days to notify the applicant that the  
19 supplemental submission did not provide the information identified in the original notice  
20 delineating missing information. The timeframe is tolled in the case of second or subsequent  
21 notices pursuant to the procedures identified in this paragraph (I)(3). Second or subsequent  
22 notices of incompleteness may not specify missing documents or information that were not  
23 delineated in the original notice of incompleteness.

24 C. Failure to act. In the event the city fails to approve or deny a request seeking approval under this  
25 section within the timeframe for review (accounting for any tolling), the request shall be deemed  
26 granted. The deemed grant does not become effective until the applicant notifies the city in writing  
27 after the review period has expired (accounting for any tolling) that the application has been deemed  
28 granted.

29  
30 19.15.210. Revisions. Revisions of approved permits are as follows. A complete application, filing fees  
31 and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance  
32 with development codes and standards except for building permits which shall be reviewed in  
33 accordance with Title 17. All revisions shall be subject to the vesting provisions in MICC 19.15.170.

34 A. Revisions for approved Type I, II, and III land use decisions, except shoreline permits, are as follows:

1 1. Revisions that result in substantial changes, as determined by the code official, shall be treated  
2 as a new application for purposes of vesting. For the purposes of this section, substantial change  
3 includes changes to conditions of approval.

4 2. Approval of **typographical errors, minor omissions, or minor corrections** by the code official shall  
5 not be considered revisions.

6 B. Revisions for approved Type IV land use decision, except shoreline permits, are as follows:

7 1. Revisions that result in substantial changes, as determined by the code official, shall be treated  
8 as a new application for purposes of vesting. For the purposes of this section, substantial change  
9 includes the creation of additional lots, the elimination of open space, substantial changes in  
10 access, or changes to conditions of approval. Additionally, the need for the modification was not  
11 known and could not have been reasonably known before the approval was granted.

12 2. Approval of the following modifications by the code official shall not be considered revisions:

13 a. Engineering design, unless the proposed design alters or eliminates features required as a  
14 condition of preliminary approval.

15 b. Changes in lot or tract dimensions that are consistent with MICC 19.02.

16 c. A decrease in the number of lots to be created.

17 d. Typographical errors and minor omissions.

18 3. The code official shall have the authority to administratively review and approved modifications  
19 described in subsection (2) of this section through review procedures established by the  
20 department.

21 C. Revisions to shoreline permits. When an applicant seeks to revise an approved shoreline substantial  
22 development permit, shoreline conditional use permit, and/or shoreline variance decision, the  
23 requirement of WAC 173-27-100, as amended, shall be met. If these requirements are met, the decision  
24 will be processed per the following.

25 1. Revision of substantial development permit:

26 a. A decision will be provided to the applicant and parties of record and posted in DSG's weekly  
27 permit bulletin.

28 b. The city shall send the revised permit to all applicable local, state or federal agencies including  
29 the Attorney General, as required by state or federal law within eight days of issuing he  
30 decision.

31 c. Appeals shall be in accordance with RCW 90.58.180.

32 2. Revision of a shoreline CUP or shoreline variance:

33 a. The application for a revision shall be submitted to the Washington State Department of  
34 Ecology. Within 15 days of receipt, Ecology will issue a decision of approval, approval with  
35 conditions, or denial of the revision.

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19.15.220. Compliance required.

A. It is the intent of this section to require that non-conforming sites, structures, lots, and uses, which were created without prior City approval, comply with the applicable provisions of Title 19 MICC.

B. If development inconsistent with the purposes and requirements of this Title 19 has occurred on a development proposal site without prior City approval, the City shall not issue any land use review approvals for the development proposal site unless the land use review approval requires the restoration of the site to a state that complies with the purposes and requirements of Title 19 MICC are addressed.

C. Suspension of Land Use Approvals. When the conditions of a permit have been violated, the city may suspend any land use review approval, including shoreline permits. Such noncompliance may be considered a code violation. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.280, Enforcement.

19.15.230 Design Review and the Design commission.

A. Rules and Records.

1. The design commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the city council.

2. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the design commission shall be by majority vote of the members constituting the quorum. A tie vote on a motion to approve shall constitute a failure of the motion and a denial of the application.

3. The code official shall serve as executive secretary of the design commission and shall be responsible for all records. All meetings of the design commission shall be open to the public. The design commission shall keep minutes of its proceedings and such minutes and a copy of its rules shall be kept on file in the office of the city clerk and open to inspection by the public.

B. Powers of the Design Commission and Additional Functions.

1. No building permit or other required permit shall be issued by the city for development of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.040. Certain development and activities that do not require a permit are subject to design review as provided in MICC 19.15.230(C)(1)(c).

1 2. The design commission or code official may require a bond or assignment of funds as set out  
2 in MICC 19.01.060(C) to secure the installation and maintenance of landscaping, screens, and  
3 other similar site improvements.

4 3. When the city council deems it necessary to retain consultants for a proposed capital  
5 improvement, the council shall seek recommendations from the design commission as to the  
6 selection of consultants to provide design services.

7 4. Consultants or city officials charged with the design responsibility for a major capital  
8 improvement shall hold preliminary discussions on the proposed project with the design  
9 commission to obtain its preliminary recommendations as to aesthetic, environmental and  
10 design principles and objectives. In addition, the design commission shall review major capital  
11 improvements at the completion of the design development phase. A capital improvement  
12 approved by the city council after review and recommendations by the design commission may  
13 be implemented on a phasing basis without further review so long as the improvement is  
14 developed in substantial conformity with the reviewed plan. Significant deviations from an  
15 approved plan shall be submitted to the design commission for its further review and  
16 recommendations.

17 5. The design commission or code official shall complete its review and make its decision and/or  
18 recommendations pursuant to the process set forth in subsection F of this section, and the  
19 review an decision and/or recommendations shall be based upon the design objectives and  
20 standards set forth in subsection G of this section, with such amendments as may be made from  
21 time to time.

22 6. Additional Functions. The Design Commission may undertake the following additional  
23 functions as needed:

24 a. The design commission may assist any person, group, or agency who requests design  
25 advice on matters not requiring formal commission action.

26 b. The design commission shall consult and cooperate with the planning commission  
27 and other governmental bodies on matters affecting the appearance of the Island. The  
28 design commission may offer recommendations to the appropriate city agencies and  
29 officials on legislation to promote aesthetic and environmental values.

30 c. The design commission shall act as the appeal authority for design review decisions  
31 made by the code official.

32 C. Design Review Procedure.

33 1. General.

34 a. Intent. The intent of the design review process is to ensure that regulated development in all  
35 land use zones complies with design objectives and standards established in Chapters 19.11 and  
36 19.12 MICC.

1 b. Scope. No building permit or other required permit shall be issued by the city for any  
2 development of any regulated improvement without prior approval of the design commission or  
3 code official as authorized pursuant to MICC 19.15.040. Applicant proposed revisions to a plan  
4 approved by the design commission or code official shall be permitted only upon the filing and  
5 approval of an amended plan. In no instance shall the design commission's or code official's  
6 action conflict with the city's development code or other applicable city ordinances or with state  
7 or federal requirements.

8 c. Review Authority.

9 i. The following development proposals shall require Design Commission review:

10 (A). New buildings;

11 (B). Any additions of gross floor area to an existing building(s)

12 (C). Any alterations to an existing building that will result in a change of  
13 50%, or more, of the exterior surface area;

14 (D). Any alterations to a site, where the alteration will result in a change to the  
15 site design that affects more than 50% of the development proposal site; and,

16 (E). Any alterations to existing facades, where the building is identified by  
17 the City as an historic structure.

18 ii. All other development proposals requiring design review and not requiring Design  
19 Commission review under subsection (A) of this section shall be reviewed by the Code  
20 Official. The Code Official shall have the authority to determine that an application  
21 normally reviewed by Code Official shall require Design Commission review and  
22 approval, based on factors such as the scope, location, context, and visibility of the  
23 proposed change or modification; and

24 ii. Exemptions from Design Review – The following activities shall be exempt from either  
25 Design Commission or Code Official Design Review:

26 (A). Any activity which does not require a building permit; or

27 (B). Interior work that does not alter the exterior of the structure; or

28 (C). Normal building and site maintenance including repair and replacement  
29 that involves no material expansion or material change in design. For example,

1 replacement in kind of roof mounted heating and cooling equipment or  
2 ventilation equipment does not require design review.

3 d. Process.

4 i. Time Frame and Procedure. Design review shall be conducted in accordance with the  
5 timelines and procedures set forth in MICC 19.15.050, Permit review procedures. Design  
6 review is not subject to the one open record hearing requirement or consolidated  
7 permit review processing.

8 ii. Written Decision. All decisions of the design commission shall be reduced to writing  
9 and shall include findings of fact and conclusions that support the decisions.

10 2. Review Process.

11 a. Study Session. In addition to the preapplication meeting, an applicant for a project that will  
12 require design review and approval by the design commission shall meet with the design  
13 commission in a study session to discuss project concepts before the plans are fully developed.  
14 At this session, which will be open to the public, the applicant should provide information  
15 regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The  
16 design commission may provide feedback to be considered in the design of the project.

17 b. Plan Submittal. All materials shall be submitted a minimum of 30 days prior to any meeting  
18 dates including study sessions, public meetings, and public hearings. The final plans shall be in  
19 substantial conformity with approved preliminary plans.

20  
21 19.15.240 Comprehensive plan amendments.

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

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

1 C. Frequency of Amendments.

2 1. Periodic Review. The comprehensive plan shall be subject to continuing review and evaluation  
3 by the city (“periodic review”). The city shall take legislative action to review and, if needed,  
4 revise its comprehensive plan to ensure the plan complies with the requirements of the GMA  
5 according to the deadlines established in RCW 36.70A.130.

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

11 3. More frequent amendments may be allowed under the circumstances set forth within RCW  
12 36.70A.130(2). Amendments processed outside of the annual amendment cycle under RCW  
13 36.70A.130(2) may be initiated by action of the city council. The city council shall specify the  
14 scope of the amendment, identify the projected completion date, and identify and, if necessary,  
15 fund resources necessary to accomplish the work. Amendments allowed to be processed  
16 outside of the annual amendment cycle are not subject to the docketing process outlined within  
17 subsection D of this section.

18 D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and  
19 maintaining a list of suggested changes to the comprehensive plan in a manner that will ensure such  
20 suggested changes will be considered by the city and will be available for review by the public. The  
21 following process will be used to create the docket:

22 1. Preliminary Docket Review. By September 1, the city will issue notice of the annual  
23 comprehensive plan amendment cycle for the following calendar year. The amendment request  
24 deadline is October 1. Proposed amendment requests received after October 1 will not be  
25 considered for the following year’s comprehensive plan amendment process but will be held for  
26 the next eligible comprehensive plan amendment process.

27 a. The code official shall compile and maintain for public review a list of suggested  
28 amendments and identified deficiencies as received throughout the year.

29 b. The code official shall review all complete and timely filed applications proposing  
30 amendments to the comprehensive plan and place these applications on the preliminary  
31 docket along with other city-initiated amendments to the comprehensive plan.

32 c. The planning commission shall review the preliminary docket at a public meeting and  
33 make a recommendation on the preliminary docket to the city council each year.

34 d. The city council shall review the preliminary docket at a public meeting. By December  
35 31, the city council shall establish the final docket based on the criteria in subsection E  
36 of this section. Once approved, the final docket defines the work plan and resource  
37 needs for the following year’s comprehensive plan amendments.



1 2. Final Docket Review.

2 a. Placement on the final docket does not mean a proposed amendment will be  
3 approved. The purpose of the final docket is to allow for further analysis and  
4 consideration by the city.

5 b. All items on the final docket shall be considered concurrently so that the cumulative  
6 effect of the various proposals can be ascertained. Proposed amendments may be  
7 considered at separate meetings or hearings, so long as the final action taken considers  
8 the cumulative effect of all proposed amendments to the comprehensive plan.

9 c. The code official shall review and assess the items placed on the final docket and  
10 prepare recommendations for each proposed amendment. The code official shall be  
11 responsible for developing an environmental review of the combined impacts of all  
12 proposed amendments on the final docket, except that applicants seeking a site-specific  
13 amendment shall be responsible for submittal of a SEPA environmental checklist and  
14 supporting information. The applicant will need to submit SEPA and any other  
15 accompanying **legislative actions** such as a rezone or a code amendment at this time.  
16 The code official may require an applicant to pay for peer review and/or additional  
17 resources needed to review the proposal. The code official shall set a date for  
18 consideration of the final docket by the planning commission and timely transmit the  
19 staff recommendation prior to the scheduled date.

20 d. The planning commission shall review the proposed amendments contained in the  
21 final docket based on the criteria set forth in MICC 19.15.240(F)(1). The planning  
22 commission shall hold at least one public hearing on the proposed amendments. The  
23 planning commission shall make a recommendation on the proposed amendments and  
24 transmit the recommendation to the city council.

25 e. After issuance of the planning commission's recommendation, the code official shall  
26 set a date for consideration of the final docket by the city council. The city council shall  
27 review the proposed amendments taking into consideration the recommendations of  
28 the planning commission and code official. The city council may deny, approve, or  
29 modify the planning commission's recommendations consistent with the criteria set  
30 forth in MICC 19.15.240(F)(1). The city council's establishment of a final docket of  
31 proposed amendments is not appealable.

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

34 E. Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment  
35 is added to the final docket in subsection D of this section:

36 1. The request has been filed in a timely manner, and either:

37 a. State law requires, or a decision of a court or administrative agency has directed, such  
38 a change; or

1 b. All of the following criteria are met:

2 i. The proposed amendment presents a matter appropriately addressed through  
3 the comprehensive plan;

4 ii. The city can provide the resources, including staff and budget, necessary to  
5 review the proposal, or resources can be provided by an applicant for an  
6 amendment;

7 iii. The proposal does not raise policy or land use issues that are more  
8 appropriately addressed by an ongoing work program item approved by the city  
9 council;

10 iv. The proposal will serve the public interest by implementing specifically  
11 identified goals of the comprehensive plan or a new approach supporting the  
12 city's vision; and

13 v. The essential elements of the proposal and proposed outcome have not been  
14 considered by the city council in the last three years. This time limit may be  
15 waived by the city council if the proponent establishes that there exists a  
16 change in circumstances that justifies the need for the amendment.

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

21 1. The amendment is consistent with the Growth Management Act, the county-wide planning  
22 policies, and the other provisions of the comprehensive plan and city policies; and:

23 a. There exists obvious technical error in the information contained in the  
24 comprehensive plan; or

25 bi. The amendment addresses changing circumstances of the city as a whole.

26 2. If the amendment is directed at a specific property, the following additional findings shall be  
27 determined:

28 a. The amendment is compatible with the adjacent land use and development pattern;

29 b. The property is suitable for development in conformance with the standards under  
30 the potential zoning; and

31 c. The amendment will benefit the community as a whole and will not adversely affect  
32 community facilities or the public health, safety, and general welfare.

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

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

- 8 1. The effect of the proposed amendment on the surrounding area or city;
- 9 2. The effect of the proposed amendment on the land use and circulation pattern of the  
10 surrounding area or city; and
- 11 3. The effect of the proposed amendment on the future development of the surrounding area or  
12 city. (Ord. 16C-13 § 2).

13  
14 19.15.250. Reclassification of Property (Rezoning).

15 A. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property  
16 from one zoning designation to another.

17 B. Process. A rezone shall be processed as provided in MICC 19.15.270.

18 C. Criteria. The city council may approve a rezone only if all of the following criteria are met:

19 1. The proposed reclassification is consistent with the policies and provisions of the Mercer  
20 Island comprehensive plan;

21 2. The proposed reclassification is consistent with the purpose of the Mercer Island  
22 development code as set forth in MICC 19.01.010;

23 3. The proposed reclassification is an extension of an existing zone, or a logical transition  
24 between zones;

25 4. The proposed reclassification does not constitute an illegal site-specific rezone;

26 5. The proposed reclassification is compatible with surrounding zones and land uses; and

27 6. The proposed reclassification does not adversely affect public health, safety and welfare.

28 7. If a Comprehensive Plan amendment is required in order to satisfy MICC 19.15.250(C)(1),  
29 approval of the Comprehensive Plan amendment is required prior to or concurrent with the  
30 granting of an approval of the rezone.

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

4  
5 19.15.260. Code Amendment

6 A. Purpose. The purpose of this section is to establish the process and criteria for amending the code of  
7 Title 19 MICC.

8 B. Process. Code amendments shall be considered as provided in MICC 19.15.270.

9 C. Initiation of code amendment request. A code amendment request may be initiated by the City  
10 Council, Planning Commission, or Code Official.

11 D. Criteria. The City may approve or approve with modifications a proposal to amend the Code if:

12 1. The amendment is consistent with the Comprehensive Plan; and

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

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

15 E. Codification. Following approval of an amendment, the City shall amend this Code to reflect the  
16 amendment.

17  
18 19.15.270 Review Procedures for Comprehensive Plan Amendments, Reclassification of Property, and  
19 Code Amendments

20 A. The city shall issue a notice of public hearing for comprehensive plan amendments, reclassifications  
21 of property, and code amendments as described in MICC 19.15.240, 19.15.250, and 19.15.260. Notice  
22 shall be provided in the weekly DSG bulletin, published in the local newspaper of general circulation  
23 within the city, made available to the general public upon request, and, if the proposed amendment will  
24 affect a specific property or defined area of the City, mailed to all property owners within 300 feet of  
25 the affected property or defined area, and -posted on the site in a location that is visible to the public  
26 right-of-way.

27 1. The notice shall include the following information:

28 i. The name of the party proposing the proposed amendment or change;

29 ii. The location and description of the project, if applicable;

30 iii. The requested actions and/or required studies;

- 1 iv. The date, time, and place of the open record public hearing;
- 2 v. Identification of environmental documents, if any;
- 3 vi. The city staff contact and contact information;
- 4 vii. An identification of the applicable development regulations;
- 5 viii. A link to a website where additional information about the project can be found;
- 6 and
- 7 ix. Any other information that the city determines appropriate.

8 2. Timing of notice. The city shall provide the notice at least 30 days prior to the public hearing.

9 3. The city shall accept public comments at any time prior to the closing of the record of an  
10 open record public hearing.

11 **D. Review after Public Hearing**

12 1. Following the completion of the open record public hearing, the planning commission shall  
13 consider the proposed amendment for conformance with the criteria as listed in the applicable  
14 section, the comprehensive plan, and other applicable regulations.

15 2. The planning commission shall make a written recommendation on the review to the city  
16 council.

17 3. The city council shall consider the planning commission's recommendation at a public meeting  
18 where it may adopt or reject the planning commission's recommendations or remand the  
19 review back to the planning commission.

20  
21 19.15.280 Enforcement (Not part of this review)

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**19.16.010 Definitions.**

Words used in the singular include the plural and the plural the singular.

Definitions prefaced with (SMP) are applicable only to the shoreline master program, MICC 19.07.110.

B

Base station: A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

3. The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

4. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

C

Change of Use: When a change in the specified land use of a property, building, or portion of a building occurs.

1 Collocation: The mounting or installation of transmission equipment on an eligible support structure for  
2 the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

3  
4 E

5 Eligible facilities request (6409 Wireless Communication Facility): Any request for modification of an  
6 existing tower or base station that does not substantially change the physical dimensions of such tower  
7 or base station, involving:

- 8 1. Collocation of new transmission equipment;
- 9 2. Removal of transmission equipment; or
- 10 3. Replacement of transmission equipment.

11  
12 Existing Wireless Communication Facility: A constructed tower or base station is existing for purposes of  
13 this section if it has been reviewed and approved under the applicable zoning or siting process, or under  
14 another State or local regulatory review process, provided that a tower that has not been reviewed and  
15 approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing  
16 for purposes of this definition.

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19 S

20 Substantial change, Wireless Communication Facility: A modification substantially changes the physical  
21 dimensions of an eligible support structure if it meets any of the following criteria:

- 22 1. For towers other than towers in the public rights-of-way, it increases the height of the tower  
23 by more than 10% or by the height of one additional antenna array with separation from the  
24 nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible  
25 support structures, it increases the height of the structure by more than 10% or more than ten  
26 feet, whichever is greater;

27 a. Changes in height should be measured from the original support structure in cases  
28 where deployments are or will be separated horizontally, such as on buildings' rooftops;  
29 in other circumstances, changes in height should be measured from the dimensions of  
30 the tower or base station, inclusive of originally approved appurtenances and any  
31 modifications that were approved prior to the passage of the Spectrum Act.

1 2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance  
2 to the body of the tower that would protrude from the edge of the tower more than twenty  
3 feet, or more than the width of the tower structure at the level of the appurtenance, whichever  
4 is greater; for other eligible support structures, it involves adding an appurtenance to the body  
5 of the structure that would protrude from the edge of the structure by more than six feet;

6 3. For any eligible support structure, it involves installation of more than the standard number  
7 of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for  
8 towers in the public rights-of-way and base stations, it involves installation of any new  
9 equipment cabinets on the ground if there are no pre-existing ground cabinets associated with  
10 the structure, or else involves installation of ground cabinets that are more than 10% larger in  
11 height or overall volume than any other ground cabinets associated with the structure;

12 4. It entails any excavation or deployment outside the current site;

13 5. It would defeat the concealment elements of the eligible support structure; or

14 6. It does not comply with conditions associated with the siting approval of the construction or  
15 modification of the eligible support structure or base station equipment, provided however that  
16 this limitation does not apply to any modification that is non-compliant only in a manner that  
17 would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

18  
19  
20 T

21 Tenant Improvement: Changes made to the interior of a commercial or industrial property by its owner  
22 to accommodate the needs of a tenant such as floor and wall coverings, ceilings, partitions, air  
23 conditioning, fire protection, and security. A tenant improvement is not a change of use of the building  
24 or tenant space; however, it often occurs when a new tenant occupies a building.

25 Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or  
26 authorized wireless communication service, including, but not limited to, radio transceivers, antennas,  
27 coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment  
28 associated with wireless communications services including, but not limited to, private, broadcast, and  
29 public safety services, as well as unlicensed wireless services and fixed wireless services such as  
30 microwave backhaul.

31  
32 W

33 Wireless Communication Facility Site: For towers other than towers in the public rights-of-way, the  
34 current boundaries of the leased or owned property surrounding the tower and any access or utility  
35 easements currently related to the site, and, for other eligible support structures, further restricted to



1 that area in proximity to the structure and to other transmission equipment already deployed on the  
2 ground.

3  
4 Wireless Communication Facility Tower. Any structure built for the sole or primary purpose of  
5 supporting any Commission-licensed or authorized antennas and their associated facilities, including  
6 structures that are constructed for wireless communications services including, but not limited to,  
7 private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless  
8 services such as microwave backhaul, and the associated site.

**CITY OF MERCER ISLAND  
ORDINANCE NO. 18C-\_\_**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING  
MERCER ISLAND CITY CODE TITLES 17 AND 19 MICC REGARDING  
CODE AMENDMENTS TO CLARIFY DEVELOPMENT STANDARDS**

WHEREAS, the Mercer Island City Code (MICC) establishes procedures for the processing of permits as part of its development regulations that are intended to result in the implementation of the Mercer Island Comprehensive Plan pursuant to RCW 36.70A.040; and,

WHEREAS, the Mercer Island City Council determined that amendments to the permit processing procedures were necessary to ensure that permit processing was clear to staff and to the public was occurring consistent with the provisions of the Mercer Island Comprehensive Plan; and,

WHEREAS, the Mercer Island City Council directed the Planning Commission to periodically review Title 19 of the Mercer Island City Code and recommend amendments to clarify the regulations to the City Council; and,

WHEREAS, on April 16, 2018, a Public Notice of Application was published in the City of Mercer Island Permit Bulletin regarding the zoning code text amendment proposal to give public notice of the proposed text amendment; and

WHEREAS, a public comment period was provided from April 16, 2018 through May 16, 2018 to obtain public comments regarding the proposed zoning code text amendment; and

WHEREAS, the adoption of procedures related to the processing of permits is exempt from SEPA review pursuant to WAC 197-11-800(19)(a) which states that procedural actions relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment are exempt from SEPA review.

WHEREAS, on March 14, 2018, a Notice of Public Hearing was published in the Mercer Island Reporter, giving public notice of the open record hearing in front of the Planning Commission and encouraging public participation; and

WHEREAS, the Mercer Island Planning Commission held a public hearing on April 18, 2018, and held two public meetings to consider clarifying amendments to the development standards; and

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the development regulations on June XX, 2018;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

- Section 1:**     **Adoption of amendments to Title 19 of the Mercer Island Municipal Code.**  
The amendments to the Mercer Island City Code as set forth in Attachment “A” to this ordinance are hereby adopted.
- Section 2:**     **Codification of the regulations.** The City Council authorizes the Development Services Group Director and the City Clerk to correct errors in Attachment A, codify the regulatory provisions of the amendment into Title 19 of the Mercer Island City Code, and publish the amended code.
- Section 3:**     **Interpretation.** The City Council authorizes the Development Services Group Director to adopt administrative rules, interpret, and administer the amended code as necessary to implement the legislative intent of the City Council.
- Section 4:**     **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.
- Section 5:**     **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.
- Section 6:**     **Effective Date.** This Ordinance shall take effect and be in force on 5 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_ 2018 and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

\_\_\_\_\_  
Kari Sand, City Attorney

\_\_\_\_\_  
Allison Spietz, City Clerk

Date of Publication: \_\_\_\_\_

## Responses to George Steirer's Comments

The following is a summary of the proposed changes and why and how some have been integrated into the proposed code, and why some changes have not been integrated into the proposed code.

\*Note: The code reference numbers, e.g. MICC 19.15.160, have changed since the commenter submitted his comments. All sections previously numbered 19.15.140 and greater, have been reduced by one section, e.g. 19.15.140 is now 19.15.130. The reference numbers refer to the numbers in effect during submission of the comments.

1. Table B – All shoreline review types are appealable to the Shoreline Hearings Board. Staff will add the SHB to the “Appeal Authority” column to any permit type that contains a shoreline review. The review type whose appeal is subject to review by the SHB will be designated by a footnote.
2. MICC 19.15.070(A)(6) – add “if applicable” at the end of the statement. This should be added.
3. MICC 19.15.070(A)(9) – define “reputable”. The word “reputable” was removed.
4. MICC 19.15.070(A)(9) – provide example of permit reviews that may not benefit from a title report. An example would be a shoreline permit where someone is fixing up an existing dock. Or an application for a new wall sign.
5. MICC 19.15.070(A)(10) – add “if applicable” at the end of the statement. This should be added.
6. MICC 19.15.090(1) – Require that NOA 's for Type I and Type II permits be issued within 14 days of the determination of completeness. This change will not be implemented because NOA's are not required for Type I and Type II permits.
7. MICC 19.15.090(2) – The suggestion is to change the wording from “provided in the weekly DGS bulletin” to “publish online”. The commenters reason is that this change would provide more flexibility for the dates on which permits are issued. The proposed change will not be implemented. Where would the permits be published other than the bulletin? When there has been time sensitivity in the timing of permit issuance, DSG has issued supplemental DGS bulletins to accommodate the need. The proposed change is not necessary.

8. MICC 19.15.120 – The commenter wants staff to add verbiage stating the Notice of Decision shall be mailed the date the decision is made. His concern is that a potential appellant may not have adequate time to file an appeal if the NOD is not issued on the day that the decision is issued. The appeal period starts on the day the NOD is issued, not on the day the decision is made. The proposed change is not necessary.
9. MICC 19.15.130(B) – The commenter wants to add the verbiage “after the notice of decision is made available to the public and the applicant” after the words “14 days after the notice of decision. Rather than adding the verbiage suggested by the commenter, staff added “is provided pursuant to MICC 19.15.120” so that it is clear how the decision is to be provided.
10. MICC 19.15.130(C)(4) – The commenter suggests moving the second sentence of the paragraph to another location. A new section G was created for the verbiage regarding burden of proof.
11. MICC 19.15.120 – The commenter suggests adopting rules to be used by the Hearing Examiner. Hearing examiner rules were addressed by Ordinance 17C and are referenced in Title 3.
12. MICC 19.15.160(A)(3) and (7)– The commenter wants to eliminate two of the criteria for code interpretations. All of the code interpretation criteria are existing in the current code. No changes have been proposed to this section. Also revising the code interpretation criteria is beyond the current scope of work, which is to review process, not criteria.
13. MICC 19.15.170(B) – The commenter questions how the date of vesting will be known for Type I and II permits since a notice of complete application is not required. A possible rewording of this section to clarify could be:  
“Type 1 land use reviews” can be removed from the first sentence. At the end of the first sentence, a new sentence can be added that states: “Type 1 land use reviews shall vest on the date the application is filed.” After staff and the planning commission determine which permits will be classified as either Type I or Type II permits, let’s decide on the wording for this section.
14. MICC 19.15.170(D) – The commenter suggests removing the word “review” from the phrase “land use review approval”. This change should not occur. The proposed code uses the word “review rather than “application” or “permit”. In this case, “review” is a noun, not a verb. This sentence makes sense when considered in this context.
15. MICC 19.15.180(A)(1) and (3)– The commenter wants to eliminate two of the factors that determine if a shoreline CUP or variance needs to undergo a public hearing. All the factors are existing in the current code. These factors have been removed.

16. MICC 19.15.210(B) – The commenter suggests removing the responsibility of compliance from the permittee. This section has been reworded to eliminate the word “permittee”.
17. MICC 19.15.260(C)(4) – The commenter suggests adding a definition for spot zone. This section has been reworded to eliminate the word “spot zone”.



**DEVELOPMENT SERVICES GROUP**

9611 SE 36TH ST., MERCER ISLAND, WA 98040

(206) 275-7605

**TO:** Planning Commission

**FROM:** Robin Proebsting, Senior Planner

**DATE:** May 31, 2018

**RE:** Critical Areas Code and Shoreline Master Program Updates: Comprehensive Plan Amendment

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**Summary**

The Planning Commission has the opportunity to recommend an amendment pertaining to critical areas for inclusion in the 2018 Comprehensive Plan Amendments, for review and possible adoption by the City Council. There is no requirement to recommend or adopt such a comprehensive plan amendment; however, there are several ways in which opting to do so may be helpful to the critical areas code update process. At the June 6<sup>th</sup> Planning Commission meeting, staff will request ideas for comprehensive plan amendments.

**Background**

The Growth Management Act (GMA, RCW 36.70A) requires certain cities and counties to adopt development regulations that are consistent with and implement the comprehensive plan. In its approved list of items to be considered in this year’s docket, the City Council last year included a placeholder for a possible comprehensive plan amendment regarding critical areas. This presents an opportunity to review, and if the Planning Commission wishes, amend the City’s comprehensive plan to support the Critical Areas Code update. There is no requirement, under the GMA or City Code, to amend the comprehensive plan; however, doing so may assist the code update process.

The City’s current comprehensive plan policies provides general guidance on the topic of critical areas protection (Attachment 1), with many policies simply restating requirements from state law. The Planning Commission may wish to create policies with more specificity and a narrower policy direction, which would likely make the critical areas code update process more straightforward. If the Planning Commission desires to revise, or supplement, the existing Comprehensive Plan goals and policies, it would be helpful to identify and articulate this direction in the form of a recommended comprehensive plan amendment for inclusion on this year’s amendment cycle. Modifications and additions to the comprehensive plan may provide the following advantages:

- A. Maintenance of consistency between the comprehensive plan and development regulations, as required by the GMA
- B. Support for future regulations to be consistent with existing regulations; and
- C. Memorialization of the intent behind code standards.



Comprehensive plan amendments can speak to a variety of topics or aspects of code development. Staff recommend that the Planning Commission develop a recommendation for the City Council if the Commission expects to do either of the following:

1. *Establish a more specific or different policy direction than is currently provided.* If the Planning Commission wishes to prioritize certain considerations (e.g. minimizing risk to life and property, or encouraging flexibility for standards when applied to existing housing etc.), these priorities can be captured in comprehensive plan policies;
2. *Recommend code standards for additional fish and/or wildlife species.* If the Planning Commission would like to establish standards for habitats or species other than bald eagles, which are currently addressed in the critical areas code, staff recommend designating these in the comprehensive plan.

### **Next Steps**

Staff request that commissioners bring ideas regarding potential comprehensive plan amendments to the June 6<sup>th</sup> meeting for discussion. Based upon the Planning Commission discussion and direction, the staff will develop draft policy language for the Planning Commission to review in June through August.

I welcome questions you may have at this stage of the process, as well as topics that you would like covered during the June 6<sup>th</sup> meeting. If you provide questions in advance, staff will attempt to address them at the meeting. I can be reached at [robin.proebsting@mercergov.org](mailto:robin.proebsting@mercergov.org) or 206-275-7717.

---

### Attachments:

- A. Comprehensive Plan Policies (excerpt) related to Critical Areas

## Excerpted Comprehensive Plan Policies

<b>Policy Number</b>	<b>Policy text</b>
LU 16	Achieve additional residential capacity in single family zones through flexible land use techniques
LU 16.1	Use existing housing stock to address changing population needs. Accessory housing units and shared housing opportunities should be considered in order to provide affordable housing, relieve tax burdens, and maintain existing, stable neighborhoods.
LU 16.2	Through zoning and land use regulations provide adequate development capacity to accommodate Mercer Island's projected share of the King County population growth over the next 20 years
LU 16.3	Promote a range of housing opportunities to meet the needs of people who work and desire to live in Mercer Island.
LU16.4	Promote accessory dwelling units in single-family districts subject to specific development and owner occupancy standards
LU 16.5	Infill development on vacant or under-utilized sites should occur outside of critical areas and ensure that the infill is compatible with the surrounding neighborhoods
LU 18	The protection of the natural environment will continue to be a priority in all Island development. Protection of the environment and private property rights will be consistent with all state and federal laws
LU 18.1	The City of Mercer Island shall protect environmentally sensitive lands such as watercourses, geologic hazard areas, steep slopes, shorelines, wildlife habitat conservation areas, and wetlands. Such protection should continue through the implementation and enforcement of critical areas and shoreline regulations.
LU 18.2	Land use actions, storm water regulations and basin planning should reflect intent to maintain and improve the ecological health of watercourses and Lake Washington water quality.
LU 18.3	New development should be designed to avoid increasing risks to people and property associated with natural hazards.
LU 18.4	The ecological functions of watercourses, wetlands, and habitat conservation areas should be maintained and protected from the potential impacts associated with development.
LU 18.5	The City shall utilize best available science during the development and implementation of critical areas regulations. Regulations will be updated periodically to incorporate new information and, at a minimum, every eight years as required by the Growth Management Act.
LU 18.6	Encourage low impact development approaches for managing stormwater and protecting water quality and habitat.

LU 19.3	Acquisition, maintenance and access to public areas, preserved as natural open spaces or developed for recreational purposes, will continue to be an essential element for maintaining the community's character.
LU 19.8	Preserve natural and developed open space environments and trails for the benefit of all existing and future generations
T 3.3	Construct transportation improvements with sensitivity to existing trees and vegetation
T 6.1	Ensure compatibility between transportation facilities and services and adjacent land uses, evaluating aspects such as: <ul style="list-style-type: none"><li>•potential impacts of transportation on adjacent land use;</li><li>•potential impacts of land development and activities on transportation facilities and services; and</li><li>•need for buffering and/or landscaping alongside transportation facilities.</li></ul>