



# PLANNING COMMISSION REGULAR MEETING AGENDA

Wednesday, May 2, 2018  
Mercer Island City Hall

## CALL TO ORDER & ROLL CALL

6:00 PM

## MINUTES

April 18, 2018

## 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 #1: ZTR18-004 – Code Compliance Code Amendment**

Review of draft amendments to the code compliance regulations, which will result in the creation of Title 6 of the Mercer Island City Code consolidating and simplifying the City's code compliance procedures.

### **Agenda Item #2: ZTR18-002 – Critical Areas Code Amendment**

Follow up discussion of a decision-making framework to aid in the review of anticipated amendments to the critical areas regulations.

## OTHER BUSINESS

Planning Manager report  
Planned Absences for Future Meetings  
Next Regularly Scheduled Meeting: May 16, 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



# PLANNING COMMISSION MEETING MINUTES APRIL 18, 2018

## CALL TO ORDER:

The Planning Commission was called to order by Chair Daniel Hubbell at 6:05 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

## ROLL CALL:

Chair Daniel Hubbell, Vice Chair Tiffin Goodman, Commissioners Ted Weinberg, Lucia Pirzio-Biroli, Bryan Cairns, and Carolyn Boatsman were present. Commissioner Jennifer Mechem arrived at 6:15

City staff was represented by Evan Maxim, Planning Manager, Andrea Larson, Administrative Assistant, Bio Park, Assistant City Attorney, Nicole Gaudette, Senior Planner, Robin Proebsting, Senior Planner, Andrew Leon, Planner,

Commissioner Boatsman moved to approve the April 4, 2018 minutes, Commissioner Weinberg seconded the motion. The minutes were approved as amended 6-0-0.

## APPEARANCES:

There were no public appearances.

## PUBLIC HEARING:

### Agenda Item #1: ZTR18-001 – Procedural Code Amendment

The Commission opened the public hearing to consider proposed code amendments to the procedural regulations. The public hearing will be continued to May 16, 2018.

Dan Grausz, 3215 74<sup>th</sup> PI SE, Mercer Island, WA 98040. Mr. Grausz spoke regarding the purposed changes to long plats and subdivisions and removing the authority from City Council on final approval. Mr. Grausz indicated that it is key for City Council to remained involved in these decisions as subdivisions are subjective about advancing City goals, it is key for residents to know that City Council is supporting them and that it is more appropriate for City Council to make the hard decisions. Mr. Grausz also spoke regarding the difficulty in reading the purposed amendments to the code. Mr. Grausz encouraged the Planning Commission to ask staff to provide a chart that would show how different permit types would be affected by the purposed change.

George Steirer, 7233 Douglas Ave SE, Snoqualmie, WA 98065. Mr. Steirer provided the Commission with printed copies of his written comments. Mr. Steirer provided the Commission with an overview of his written comments.

Chair Hubbell tabled the public hearing until May 16, 2018.

Commissioner Pirzio-Biroli asked for clarification regarding the Design Commission Review. Commissioner Boatsman asked if there were any changes to the approval criteria and requested a table that summarized the current procedural requirements and the proposed procedural requirements. Staff responded to Commissioner questions. Staff agreed to provide the requested table at the May 16, 2018 meeting and a clean copy (not legislative line in / line out) of the proposed amendments to MICC 19.15.

### Agenda Item #2: ZTR18-002 – Code Cleanup Code Amendment

The Commission opened the public hearing to consider proposed code amendments to clarify existing development standards. The public hearing will be continued to May 16, 2018

Dan Grausz, 3215 74<sup>th</sup> PI SE, Mercer Island, WA 98040. Mr. Grausz provided the Commission with an overview of his submitted written comments.

Chair Hubbell tabled the public hearing until May 16, 2018.

### **REGULAR BUSINESS:**

#### **Agenda Item #3: ZTR18-002 – Critical Areas Code Amendment**

Robin Proebsting gave a staff presentation on a study session with the Planning Commission.

The Commission held a study session on the code amendment. The Commission reviewed the definitions, foundational concepts and terms and discussed a decision-making framework for the Critical Areas code amendment.

The commission discussed the code amendment and definitions provided by the staff. Commissioner Cairns asked to have the definitions of yard and landslide hazard area clarified. Vice Chair Goodman asked for clarification on when and how City Council determines what are wildlife habitat conservation areas. Chair Hubbell asked for clarification regarding stormwater swales versus a watercourse. Chair Hubbell asked if man-made watercourses and swales can be included in the definition of watercourse.

Commissioner Mechem left at 7:20pm.

Commissioner Pirzio-Biroli indicated that text about wildlife should be added to the Comprehensive plan.

The Commission began to discuss policy aspects that should be considered in their decision-making process. Commissioner Weinberg stated that individual rights, public rights and environmental sustainability all need to be considered. Commissioner Weinberg noted that there needs to be the ability to make allowances for certain circumstances. Chair Hubbell stated that there are three competing interests, economic, social and environmental.

Commissioner Pirzio-Biroli indicated that the definition of sustainability is preserving the environment for future generations, providing stewardship. Commissioner Pirzio-Biroli indicated that this needs to be considered in the context of the greater region, not just Mercer Island; don't consider what the values are just for our community, but to consider what it is for the region. Commissioner Pirzio-Biroli also expressed that the Commission needs to contemplate growth in the region and how do we maintain critical areas with growth that cannot be deny.

Commissioner Cairns indicated that there is value in placing priorities based on what is on Mercer Island. Commissioner Cairns stated that safety in geologically hazard areas needs to be considered. Vice Chair Goodman indicated that there need to be mechanisms in place to ensure safety for building on slopes.

Commissioner Pirzio-Biroli stated that staff and the Commission should look at Bainbridge Island to see if they have regulations that they have instituted that could be applied to Mercer Island. Chair Hubbell stated the effects on social interaction and outdoor recreation should be considered.

Commissioner Weinberg expressed that there needs to be a way to weight the criteria for making the determination and that there may be "strong" or "weak" effects in each policy category.

The Commission indicated that they do not want any large negative effects in the critical areas that are defined. The Commission also expressed a desire for a simple or "elegant" critical areas code.

The Commission recessed at 8:30pm

The Commission reconvened at 8:39pm

#### **Agenda Item #4: CPA18-001 Comprehensive Plan Amendment**

Evan Maxim gave a staff presentation on the second meeting regarding Comprehensive Plan Amendments Nos. 10 and 14.

The commission discussed Comprehensive Plan Amendment No. 10.

The commission provided clarification on the wording of goal 2 under the housing element.

“Provide a variety of housing types and densities to address the current and future needs to all Mercer Island residents, support the creation of a variety of housing types that will support different family living needs and aging in place.”

Commissioner Mechem added additional items for amendment No. 10, including items to the housing element, for the land use element, and capital facilities element.

Chair Hubbell stated it should be considered to replace the term special needs with accessible housing in policy 2.3.

Chair suggests that we look at the title “special needs” and have Commissioner Mechem, Chair Hubbell and Evan Maxim meet to determine the best term to be used.

Commission stated that they would like to proceed with the edits provided by Commissioner Mechem.

The commission discussed Comprehensive Plan amendment No. 14.

The Commission provided feedback on suggested changes to the amendment.

Vice Chair Goodman suggested that the amendment be tabled and brought back with examples on what other communities were able to achieve with this type of goal.

**OTHER BUSINESS:**

Evan Maxim provided a Planning Manger report regarding the user group meeting that was held on April 16, 2018 and resulted in a docket of proposed code amendments for further consideration.

**PLANNED ABSENCES**

Commissioner Boatsman will be absent on May 2, 2018.

**NEXT MEETING:**

The next regularly scheduled Planning Commission meeting will be May 2, 2018 at 6:00PM at Mercer Island City Hall.

**ADJOURNMENT:**

Chair Daniel Hubbell adjourned the meeting at 10:05pm



## **DEVELOPMENT SERVICES GROUP**

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

**TO:** Planning Commission

**FROM:** Alison Van Gorp, Administrative Services Manager

**DATE:** May 2, 2018

**RE:** ZTR18-004 – Code Compliance Regulations Amendment – Narrative

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### **Problem Statement:**

Currently, the code compliance staff struggle with a large and growing caseload, with some cases being very difficult and time-consuming to bring into compliance. The existing code does not have strong “teeth” and the City’s practice to-date has been focused on gaining voluntary compliance through gentle reminders and working with property owners. It is rare that the City will levy fines or penalties, except in extreme cases. The City has also heard from the community that there is a desire to increase the effectiveness and timely resolution of code compliance cases. A code amendment is proposed to consolidate, clarify and simplify the code language, as well as adding additional tools to aid in achieving compliance efficiently and effectively.

### **Approach**

An amendment is proposed to the code compliance regulations that is intended to:

1. Re-organize and consolidate code compliance-related code language;
2. Clarify the code compliance process and penalties;
3. Simplify the regulations for readability and ease of use;
4. Add regulatory tools to aid staff in effectively and efficiently gaining compliance.

### **Draft Code Amendment**

This attached draft is preliminary; it includes only the proposed new code compliance chapter – Title 6. A full code amendment including the other code sections that are proposed to be repealed or amended will be provided in the May 21 Public Hearing draft. Due to the preliminary nature of this draft, and the work yet to come with integrating Title 6 into a comprehensive code amendment, the staff are anticipating that changes to the formatting and numbering, definitions and other cleanup will be needed in the next draft to insure consistency with the existing city code.

This new code chapter consolidates the code compliance provisions and establishes a suite of enforcement tools that are broadly applicable to violations of the nuisance, animal, construction, land development and water, sewer and public utility codes. It includes new monetary penalties intended to

spur compliance from people that are responsible for violations. It addresses repeat violations, excessive or frivolous complaints and broadens the definition of person responsible to include developers, builders, contractors and other companies doing work on a property. It provides a description of the process for each of the enforcement tools, as well as provisions for appeals and recovery of penalties and costs. Finally, it includes a set of definitions for clarity and ease of use.

In drafting this new code chapter, staff have sought to achieve a balance between delineating a clear, transparent process for enforcement with providing discretion to staff to determine appropriate procedures, penalties and when to provide leniency.

### User Group Input

The City has convened a group of residents and professionals as well as Planning Commission members to give feedback on the implementation of the recent updates to the residential development code. At the inaugural meeting a few weeks ago, the city received input that is relevant to the proposed code compliance amendments, which is summarized below:

1. Under the current code enforcement procedure, people may feel uneasy reporting violations since their names would be attached to the report of violation. Allow anonymous reporting.
2. Trees are occasionally removed without permits; there is not a strong enforcement mechanism. Revisit code enforcement in terms of the tree code and its effect on residents.
3. Trees are occasionally removed without permits; there is not a strong enforcement mechanism. Require tree removal companies/arborists to be responsible for obtaining permits or verifying that a permit has been obtained.

### Action

At the May 2, 2018 meeting, staff will review the provisions of the new Title 6 with the Planning Commission and seek input regarding the following high-level questions, as well as general questions and comments on the draft. The Commission is encouraged to provide detailed text revisions and non-substantive comments to staff electronically either before or soon after the May 2<sup>nd</sup> meeting.

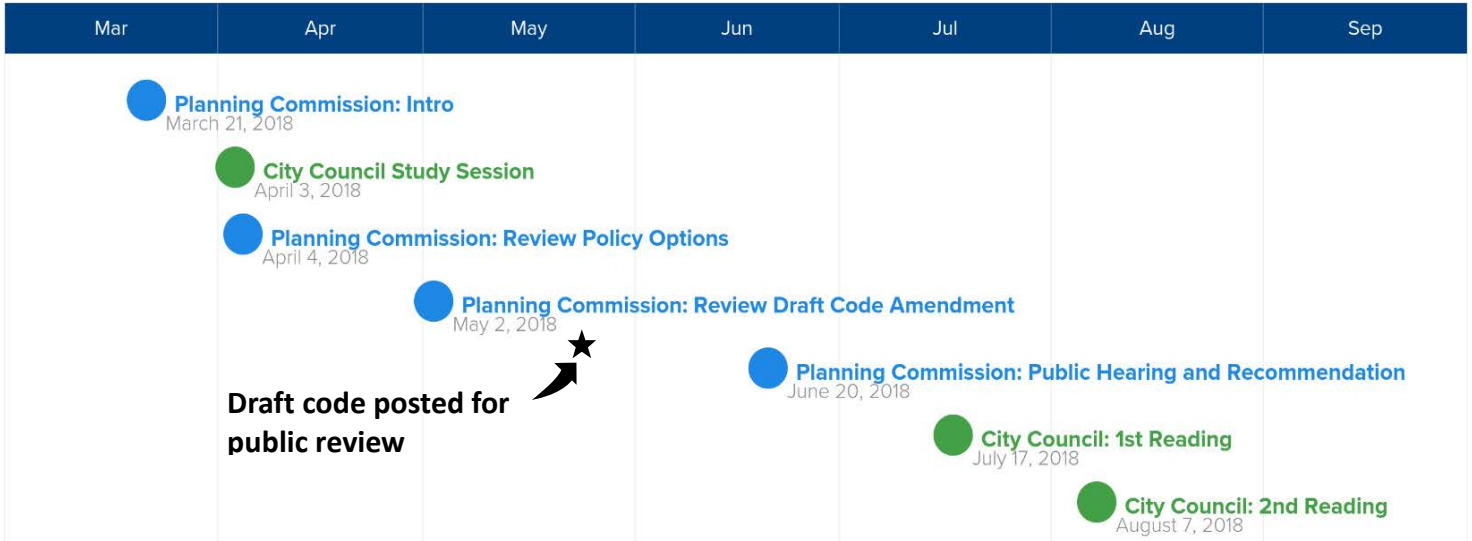
### Discussion Questions

1. How should fines be set (is the draft about right, or too low/high)?
2. How much discretion should be given to staff and to what degree should details be included in code?
  - a. To what degree should the process and procedures be spelled out in code? Should more be left to be defined by administrative procedures rather than the code?
  - b. Should the code be more specific in setting fines for priority violations?
  - c. When is it appropriate to offer leniency rather than demanding strict compliance?

## Next Steps

The draft code will be revised based on the Commission’s feedback at the May 2 meeting and posted online as a part of the 30-public hearing notice on or before May 21, 2018. The public hearing is scheduled on June 20, 2018 and the Commission is expected to finalize its recommendations following the public hearing. Planning Commission recommendations will be transmitted to City Council on July 17, 2018, with a second reading planned for August 7, 2018.

**Table 1: Meeting Schedule**



**PLANNING COMMISSION – REVIEW DRAFT**  
**Draft Code Compliance Amendment**  
**APRIL 26, 2018**

**Title 6**

**CODE COMPLIANCE**

12 Chapters:

- 13 6.10 Purpose and Scope
- 14 6.20 General Provisions
- 15 6.30 Right of Entry
- 16 6.40 Service of Written Notice
- 17 6.50 Enforcement Provisions
- 18 6.60 Voluntary Compliance Agreements
- 19 6.70 Stop Work Orders
- 20 6.80 Abatement
- 21 6.90 Appeals
- 22 6.100 Recovery of Penalties and Costs
- 23 6.110 Definitions



1 **6.10.010 Purpose and Intent**

2 The purpose of this title is to ensure compliance with the City’s adopted building, land development,  
 3 land use, nuisance and related codes as specified in section 6.10.020 Scope, enabling the City to fulfil its  
 4 duty to protect the health, safety and welfare of the public. These regulations establish procedures and  
 5 mechanisms to resolve violations of the City’s adopted building, land development, land use, nuisance,  
 6 and related codes. Chapter 6.10 MICC establishes penalties for violations, provides an opportunity for a  
 7 prompt hearing, decision, and appeal as to alleged code violations, provides for abatement when  
 8 necessary, and provides a mechanism to recover the City’s costs. This chapter shall be enforced for the  
 9 benefit of the general public, not for the benefit of any particular person or class of persons.

10 It is the intent of this title to place the obligation for code compliance on the person responsible for a  
 11 violation, within the scope of this title, and not to impose any duty upon the City or any of its officers,  
 12 officials or employees, which would subject them to damages in a civil action.

13 **6.10.020 Scope**

14 This chapter may be applied for the purposes of enforcing the Mercer Island City Code (MICC) Title 8.24  
 15 Nuisance Control Code, Title 7 Animal code, Title 15, Water, Sewers and Public Utilities, Title 17,  
 16 Construction Codes and Title 19, Land Development Code and other codes, ordinances, resolutions,  
 17 permit conditions, or public rules that promote or protect the public health, safety or welfare and the  
 18 environment. The provisions of this title are not exclusive and may be used in addition to other  
 19 applicable provisions of the Mercer Island City Code or other applicable law or regulation.

21 **6.20 GENERAL PROVISIONS**

22 **6.20.010 Declaration of Public Nuisance**

23 All code violations are determined to be detrimental to the public health, safety, welfare and  
 24 environment, and are declared to be public nuisances. All conditions determined to be code violations  
 25 may be subject to and enforced pursuant to the provisions of this title, except where specifically  
 26 excluded by law or regulation.  
 27

28 **6.20.020 Authority and Approach**

29 The director is authorized to enforce the provisions of the MICC Title 8.24, Nuisance Control Code, Title  
 30 15, Water, Sewers and Public Utilities, Title 17, Construction Codes and Title 19, Land Development  
 31 Code and other codes, ordinances, resolutions, or public rules that promote or protect the public health,  
 32 safety or welfare and the environment. The violation of any regulation is unlawful, and the director may  
 33 take reasonable action to bring about compliance through the use of the provisions of this chapter and  
 34 any other applicable provisions of the Mercer Island City Code, including but not limited to the  
 35 revocation or modification of permits, and/or through the enforcement, penalty and abatement  
 36 provisions described in this chapter.

37 Code compliance actions will be pursued primarily in a complaint driven manner. Responses to  
 38 complaints or evidence of a civil violation shall be prioritized based on significance and severity, with

1 potential violations concerning health, safety and welfare of the public or damage to the environment  
 2 receiving highest priority.

3  
 4 After a complaint has been investigated, the director will determine the course of action. If a violation is  
 5 present, the City will pursue compliance with City codes through the provisions of this chapter. The  
 6 director shall have discretion to follow an incremental approach to securing compliance. This means  
 7 starting by contacting the person responsible, explaining the violation and requesting voluntary  
 8 correction. The director has the authority to reasonably determine the level of compliance, mitigation or  
 9 remediation that is required. When appropriate, the director may secure compliance by proceeding  
 10 incrementally to higher penalty levels by using the techniques and options in this title.

11  
 12 Alternatively, in the course of the investigation, the director may determine: a) no violation exists; or b)  
 13 the basis of the issue is civil in nature; or c) the violation is a low risk, *de minimus* violation. In which  
 14 case, the director may decide to take no further action. Further, the director may find that a complaint  
 15 or series of complaints between two or more individuals are frivolous, excessive and/or a form of  
 16 harassment. In this case, the director will work with the complainant(s) to identify alternative means of  
 17 dispute resolution (e.g. mediation), and may, under consultation with the City attorney, choose to limit  
 18 communication with complainants and responses to complaints that are frivolous or excessive. The City  
 19 does not intend to ignore complaints and will continue to investigate subsequent, unrelated complaints  
 20 from the complainant.

21  
 22 Nothing in this section shall preclude the director from taking appropriate enforcement action to  
 23 preclude harm to the health, safety or welfare of the public or the environment.

24  
 25 **6.20.030 Duty to Comply**

26 It shall be the responsibility of any responsible person to cure the violation, and if property is involved,  
 27 to bring the property into compliance. Payment of fines, applications for permits, acknowledgment of  
 28 stop work orders, and compliance with other remedies does not substitute for performing the corrective  
 29 work required and having the property brought into compliance to the maximum extent reasonably  
 30 possible under the circumstances. The date set for compliance in the notice of violation takes  
 31 precedence over any date established for the expiration of any required permit(s) and will be  
 32 subordinate only to written extension of the notice of violation.

33  
 34 The responsible person has a duty to notify the Director of any actions taken to achieve compliance. A  
 35 violation shall be considered ongoing until the responsible person has come into compliance and has  
 36 notified the Director of this compliance, and an official inspection has verified compliance and all  
 37 assessed penalties and costs have been paid to the City.

38  
 39 **6.20.040 Additional Enforcement Provisions**

40 The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner  
 41 limit or restrict the City from remedying or abating code violations in any other manner authorized by  
 42 law.

43  
 44 **6.30 RIGHT OF ENTRY**

1 The director is authorized to enter any property or premises at any reasonable time to determine  
2 whether a civil violation has occurred or is occurring, or to enforce any provision of the Mercer Island  
3 City Code or any City ordinance, violation of which is a civil violation under this title and could be a  
4 criminal violation under the Mercer Island City Code, or to perform follow up inspections related to such  
5 a violation. The director may make examinations, surveys, and studies as may be necessary in the  
6 performance of his or her duties. These may include the taking of photographs, digital images,  
7 videotapes, video images, audio recordings, samples, or other physical evidence. If the property or  
8 premises is occupied, the director shall first present credentials and request entry. If an owner,  
9 occupant, or agent refuses entry, the City may apply to a court of competent jurisdiction for a search  
10 warrant authorizing access.

#### 11 **6.40 SERVICE OF WRITTEN NOTICE**

12 Service of a notice of violation, stop work order, infraction or other official written notice of violation  
13 issued by the director shall be made by one or more of the following methods:

14 (a) Personal service. By personal service to the person responsible for the code violation, or by leaving a  
15 copy of the written notice at such person's place of residence with a person of suitable age and  
16 discretion who resides there, or by leaving it at such person's place of employment with a person in  
17 charge. Personal service may also be accomplished by the hearing examiner or his or her assistant  
18 handing any order, ruling, decision, or other document to a person prior to, during, or after a hearing.

19 (b) Service by posting. By posting the written notice in a conspicuous place on the property where the  
20 violation occurred and concurrently sending a notice either by electronic mail or by first class mail.

21 (c) Service by mail. By mailing the written notice by regular first class mail , to the person responsible  
22 for the code violation at his, her or its last known address, at the address of the violation, or at the  
23 address of the place of business of the person responsible for the code violation. The taxpayer's address  
24 as shown on the tax records of the county shall be deemed to be the proper address for the purpose of  
25 mailing such notice to the landowner of the property where the violation occurred. Service by mail shall  
26 be presumed effective upon the third business day following the day upon which the official written  
27 notice of violation was placed in the mail.

28 (d) Service by publication. For notice of violation only, when the address of the person responsible for  
29 the code violation cannot reasonably be determined, service may be made by publishing the document  
30 as set forth in RCW [4.28.100](#) and [4.28.110](#), as currently enacted or hereafter amended.

31 The failure of the director to make or attempt service of written notice shall not invalidate any  
32 proceedings as to any other person duly served.

#### 34 **6.50 ENFORCEMENT PROVISIONS**

35 Violations may be enforced by issuing civil infractions or notices of violation. In addition, any violation  
36 of this chapter shall constitute a misdemeanor, unless a different criminal category is specified. The City  
37 shall have discretionary authority to enforce a violation as either a civil infraction or civil violation  
38 pursuant to this chapter, or as a criminal misdemeanor.

39 Each day during which a violation of this code occurs or continues is a separate offense.

1 **6.50.010 Misdemeanors**

2 Any person who willfully or knowingly causes, aids or abets a code violation by any act of commission or  
 3 omission is guilty of a misdemeanor, where such code violation results, or is likely to result, in a threat to  
 4 public health, life, or safety or in significant harm to the environment. Upon conviction, the person shall  
 5 be punished by a fine not to exceed \$1,000 and/or imprisonment in the County jail for a term not to  
 6 exceed 90 days.

7 **6.50.020 Code Violations**

8 Whenever the director has reason to determine that a code violation occurred or is occurring, or that  
 9 the code violations cited in an infraction have not been corrected, or that the terms of a Voluntary  
 10 Correction Agreement have not been met, the director is authorized to issue a notice of violation and  
 11 order to correct to any person responsible for the code violation.

12 Subsequent violations shall be treated as new violations for purposes of this section.

13 **A. Notice of Violation and Order to Correct**

14 A notice of violation and order to correct shall be completed in a form approved by the director and the  
 15 City attorney, and shall be served consistent with MICC 6.40 and shall, at minimum, include the  
 16 following:

17 (1) The tax parcel number(s), address, when available, or description sufficient for identification of the  
 18 building, structure, premises or land upon which or within which the violation has occurred or is  
 19 occurring;

20 (2) A statement of each ordinance, regulation, code provision or permit requirement violated, and the  
 21 facts to support that the violation(s) occurred or is occurring;

22 (3) The name of the City official issuing the notice and order and the name(s), if known, of the  
 23 responsible party(ies) to whom the notice and order is being issued;

24 (4) The required corrective action that is necessary to achieve compliance and a date by which the  
 25 correction must be completed;

26 (5) An explanation of the appeal process and the specific information required to file an appeal;

27 (6) A statement that if the violation is not corrected and the notice and order is not appealed, the  
 28 determination is final and a monetary penalty shall be assessed according to this title;

29 (7) The amount of penalty that will be assessed; and

30 (8) A statement advising of the right to appeal the Notice of Violation and Order to Correct to the  
 31 Hearing Examiner.

32 **B. Supplementation, revocation or modification**

33 (1) Whenever there is new information or a change in circumstances, the director may add to, rescind in  
 34 whole or in part or otherwise modify a notice and order by issuing a supplemental notice of violation.  
 35 The supplemental notice shall be governed by the same procedures applicable to all notices of violation  
 36 contained in this title, including the right to appeal to the hearing examiner. In addition, the director is  
 37 authorized to issue penalties accrued as a part of the supplemental notice of violation.

1 (2) The director may revoke or modify a notice of violation issued under this title if the original notice of  
 2 violation was issued in error or if a party was incorrectly named. The revocation or modification shall  
 3 identify the reason and underlying facts for revocation and may be recorded with the King County  
 4 recorder’s office, or its successor agency, if the underlying notice of violation was recorded.

5 **C. Failure to correct**

6 Failure to correct the code violation in the manner prescribed in the notice of violation subjects the  
 7 person responsible to any of the compliance remedies provided by this chapter:

- 8 1. civil penalties and costs;
- 9 2. continued responsibility for abatement, remediation and/or mitigation;
- 10 3. permit suspension, revocation, modification and/or denial;
- 11 4. costs of abatement by the City; and/or
- 12 5. other remedies that may be available to the city.

13 **D. Time Limits**

14 (1) Persons receiving a notice of violation shall rectify the code violations identified within the time  
 15 period specified by the director in the notice of violation issued pursuant to this title.

16 (2) Unless an appeal is filed with the City for a hearing before the hearing examiner in accordance with  
 17 the provisions of this chapter, the notice of violation shall become the final administrative order of the  
 18 director, and the civil penalties assessed and accrued shall be immediately due and subject to  
 19 collection.

20 **E. Appeals**

21 Any person identified in a notice of violation or supplemental notice of violation as a person responsible  
 22 for a violation may appeal the notice of violation within 14 days of service, according to the procedures  
 23 described in **MICC 6.90**. Failure to appeal the notice of violation within 14 days of issuance shall render  
 24 the notice of violation a final determination that the conditions described in the notice of violation  
 25 existed and constituted a code violation, assesses and accrued civil penalties due, and that the named  
 26 party is liable as a person responsible.

27 **F. Recording**

28 (1) Whenever a code violation is related to a condition on real property, and a notice of violation is  
 29 served on a responsible party who owns said property, the City may record a copy of the notice of  
 30 violation with the King County recorder’s office, or its successor agency.

31 (2) When all violations specified in the notice of violation have been corrected or abated, the director  
 32 shall record a release of notice and order with the King County recorder’s office, or its successor agency,  
 33 if the underlying notice and order was recorded.

34 **6.50.030 Civil Infractions**

35 Whenever the director has reason to determine that a civil code violation occurred or is occurring, the  
 36 director is authorized to issue an infraction in accordance with Chapter 7.80 RCW, which is incorporated  
 37 herein by this reference, upon the person responsible for the condition. Issuance of an infraction

1 constitutes a civil infraction. First offenses shall be class 2 civil infractions, for which the maximum  
 2 penalty and the default amount shall be \$125 for each infraction, and second or subsequent violations  
 3 shall be class 1 civil infractions, for which the maximum penalty and the default amount shall be \$250  
 4 for each infraction, not including fees, costs, and assessments. The Mercer Island Municipal Court shall  
 5 have jurisdiction over all infractions issued under this title.

6 **6.50.040 Civil Penalties**

7 **A. Civil Penalties**

8 A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or  
 9 voluntary correction agreement shall be imposed at the rate of \$100 per day for each violation, accruing  
 10 for every day after the compliance date listed in the notice of violation. Thirty days after the compliance  
 11 date, the penalty will increase to a rate of \$250 per day for each violation. Sixty days after the  
 12 compliance date, the penalty will increase to a rate of \$500 per day for each violation, up to a maximum  
 13 total penalty of \$50,000 for each violation.

14 **B. Priority Violations**

15 In addition to the penalties described above in Section A, any person that is responsible for a violation of  
 16 the provisions of the following regulations will be subject to additional penalties. These penalties for  
 17 priority violations will be assessed one time and will not accrue daily, as described below:

18

Violation	Penalty
Damage or removal of trees in violation of MICC 19.10	Triple the value of the cut or damaged tree, plus the cost of remediation. See MICC 19.10.160 for details.
Ecological damage in violation of MICC 19.07	Up to \$25,000, plus the cost of remediation.
Failure to meet storm water, erosion control requirements in violation of MICC 15.09	Up to \$10,000, plus the cost of remediation.
Fat, oil, grease discharge in violation of MICC 15.06	Up to \$10,000, plus the cost of remediation.
Violation of stop work order or voluntary compliance agreement in violation of MICC 6.60 or 6.70	Up to \$10,000

19  
 20 When the potential penalty amount is listed as a range, the director will set the penalty based on the  
 21 following criteria:

- 22 a) The significance and severity of the violation and its impact on the public and the environment
- 23 b) The difficulty and time involved in resolving the violation and mitigating or remediating the area  
 24 impacted by the violation
- 25 c) The resulting economic benefit and savings of construction costs realized by the person  
 26 responsible for the violation

27  
 28 **C. Repeat Violations**

1 A repeat violation is a violation that has occurred on the same property or that has been committed by  
 2 the same person responsible elsewhere within the city, for which voluntary compliance previously has  
 3 been sought or any enforcement action taken, within the previous 36-month period. (For purposes of  
 4 this subsection, repeat violation does not include each day in violation being counted as a separate  
 5 violation.) To constitute a repeat violation, the violation need not be the same violation as the prior  
 6 violation. Violation of a written order of the hearing examiner that has been served as provided in this  
 7 chapter shall also constitute a repeat violation. Repeat violations will incur double the civil penalties set  
 8 forth in Sections A and B, above. If a violation is repeated a third or subsequent time within a 36-month  
 9 period, the penalties will be five times those set forth above.

10 **D. Deliberate Violation**

11 If a violation was deliberate, the result of blatant disregard for direction from the City or knowingly false  
 12 information submitted by the property owner, agent or their contractor, civil penalties will be incurred  
 13 at double those set forth above in Sections A, B and C.

14 **E. Voluntary compliance**

15 The director may reduce penalties up to 80%, at their discretion, if voluntary compliance is achieved and  
 16 the City is reimbursed its reasonable staff and professional costs incurred in enforcing a notice of  
 17 violation, stop work order or voluntary compliance agreement.

18  
 19 **6.50.050 Suspension, Revocation or Limitation of a Permit**

20 The Director may suspend, revoke or limit any permit issued whenever:

- 21 a. The permit holder has committed a code violation in the course of performing activities subject  
 22 to that permit;
- 23 b. The permit holder has interfered with the Director in the performance of his or her duties  
 24 relating to that permit;
- 25 c. The permit was issued in error or on the basis of materially incorrect information supplied to  
 26 the City; or
- 27 d. Permit fees or costs were paid to the City by check and returned from a financial institution  
 28 marked nonsufficient funds (NSF) or cancelled.

29 Such suspension, revocation or modification shall be carried out through the civil violation provisions of  
 30 this subchapter and shall be effective upon the compliance date established by the notice of violation.  
 31 Such revocation, suspension or cancellation may be appealed to the Hearing Examiner using the appeal  
 32 provisions of this chapter. Notwithstanding any other provision of this chapter, the Director may  
 33 immediately suspend operations under any permit by issuing a stop work order.

34 **6.50.060 Hold on Future Permits**

35 The director may place a hold on the issuance of future permits on a property if:

- 36 a. A notice of violation or stop work order has been issued, and
- 37 b. The appeal period has passed, or an appeal was brought but overturned, and
- 38 c. The violation has not been corrected and/or penalties or fines have not been paid, and

1           d. The permits relate to the violation.

2 A hold on future permits will prevent the issuance of any land use or building permit for the subject  
 3 property, and for the person responsible on any other property within the City, until the violation is  
 4 resolved, corrective actions are taken and penalties are paid. The director may use their discretion to  
 5 issue exceptions to this subsection for emergencies or hazardous situations, or any other situation they  
 6 deem reasonable.

7           **6.50.070 Notice on Title**

8 The director may file a notice with the records and elections division of King County if:

- 9           a. A notice of violation or stop work order has been issued, and
- 10           b. The appeal period has passed, or an appeal was brought but overturned, and
- 11           c. The violation has not been corrected and/or penalties or fines have not been paid, and
- 12           d. The violation relates to real property owned by the responsible party.

13 The notice shall inform the public of the presence of an unresolved notice of violation or stop work  
 14 order on the subject property. The notice shall run with the land.

15  
 16           **6.60 VOLUNTARY COMPLIANCE AGREEMENTS**

17           **6.60.010 Timing**

18 A voluntary compliance agreement (VCA) may be used to resolve code compliance cases, and may be  
 19 entered into at any time before an administrative appeal is decided.

20           **6.60.020 Contents**

21 A VCA is a written contract between the person responsible for the violation and the City, where such  
 22 person agrees to abate the violation within a specified time and according to specified conditions. The  
 23 VCA shall be completed on a form approved by the director and the City attorney and shall, at minimum,  
 24 include the following:

- 25 (1) The name and address of the person responsible;
- 26 (2) The street address or other description sufficient for identification of the building, structure,  
 27 premises, or land upon which the violation has occurred or is occurring;
- 28 (3) A description of the violation(s) and a reference to the code(s) which has been violated;
- 29 (4) The necessary corrective action to be taken, and the date by which the correction must be  
 30 completed;
- 31 (5) An agreement by the person responsible that the City may inspect the premises as may be necessary  
 32 to determine compliance with the VCA;
- 33 (6) The amount of the civil penalty that will be imposed pursuant to this title if the person responsible  
 34 does not meet his or her obligations under the VCA;
- 35 (7) A statement that the person responsible acknowledges that the violation occurred as described in  
 36 the VCA and waives the right to an administrative or judicial hearing for appeal purposes; and



1 (8) An agreement by the person responsible that if the City determines that such person does not meet  
 2 his or her obligations specified in the VCA, the City may impose any remedy authorized by this title,  
 3 including, but not limited to:

- 4 (a) Assessment of civil penalties as established by resolution or otherwise identified in the VCA;
- 5 (b) Abatement of the violation;
- 6 (c) Assessment of all costs and expenses incurred by the City to pursue code enforcement and to  
 7 abate the violation, including legal and incidental expenses; and
- 8 (d) Suspension, revocation, or limitation of a permit.

9 **6.60.030 Waiver of Appeal**

10 In consideration of the City’s agreement to enter into a VCA, the person responsible shall completely  
 11 surrender and have no right to an administrative or judicial hearing, under this title or otherwise,  
 12 regarding the matter of the violation and/or the required corrective action. The VCA is a final, binding  
 13 agreement, it is not a settlement agreement, and its contents are not subject to appeal.

14 **60.60.040 Amendment**

15 The director may grant an extension of the time limit for compliance, or a modification of the required  
 16 corrective action may be granted, if the person responsible has shown due diligence and/or substantial  
 17 progress in correcting the violation but unforeseen circumstances or circumstances beyond the control  
 18 of the person responsible, render full and timely compliance under the original conditions unattainable.  
 19 Such request shall be made in writing by the person responsible and clearly establish the need for such  
 20 an extension.

21  
 22 **6.70 STOP WORK ORDERS**

23 **6.70.010 Issuance**

24 The director shall issue a stop work order if the director finds that:

- 25 a. The work is not authorized by a valid permit or inaccurate information was used to obtain the  
 26 permit; or
- 27 b. The permittee is not complying with the terms or conditions of the permit or approved plans,  
 28 including storm water management and erosion control requirements, conditions of a seasonal  
 29 development deviation, construction impact mitigation plan; or
- 30 c. Previously unknown contamination of site soils from hazardous materials is encountered and  
 31 poses a potential risk to human health and the environment; or
- 32 d. Adverse weather is causing significant problems on or off site; or
- 33 e. The work is adversely affecting the public health, safety, or welfare; or
- 34 f. The work is a hazard to property or is adversely affecting, or could adversely affect, adjacent  
 35 property including: a right-of-way, a drainage way, a watercourse, an environmentally critical  
 36 area, a storm water facility or a storm water treatment and flow control BMP; or

1 g. Otherwise materially impairs the director’s ability to secure compliance with the Mercer Island  
 2 City Code.

3 The stop work order shall state the reasons for the order, specify the violation(s) and prohibit any work  
 4 or other activity at the site. The stop work order may be appended to, or incorporate by reference, a  
 5 notice of violation. However, issuance of a notice of violation is not a condition precedent to the  
 6 issuance of a stop work order. A stop work order shall be served consistent with **MICC 6.40** and shall  
 7 take effect immediately upon service.

8 **6.70.020 Effect**

9 When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful to  
 10 conduct the activity or perform the work covered by the order, even if the order has been appealed,  
 11 until the director has removed the copy of the order, if posted, and issued written authorization for the  
 12 activity or work to be resumed. Any violation of a stop work order is hereby declared to be a nuisance  
 13 and the director is authorized to enjoin or abate such nuisance by any legal or equitable means  
 14 available. The costs, specifically including reasonable attorney and expert witness fees, for the injunction  
 15 or abatement, shall be recovered by the City from the person responsible for the code violation in the  
 16 manner provided by law. Failure to comply with the terms of a stop work order subjects the person  
 17 responsible for the code violation to civil penalties and costs as set forth in this title, including a  
 18 monetary penalty that shall accrue for each day that a violation of a stop work order occurs, as  
 19 described in **MICC 6.50.040**. In addition to such criminal or monetary penalties, the city may enforce a  
 20 stop work order pursuant to any other provision of this chapter and enforce it in superior court.

21 **6.70.030 Appeal**

22 A stop work order may be appealed according to the procedures prescribed by **MICC 6.90**. During any  
 23 such appeal, the stop work order shall remain in effect. Failure to appeal the stop work order within the  
 24 applicable time limits renders the stop work order a final determination that the civil code violation  
 25 occurred and that work was properly ordered to cease.

26 **6.70.040 Removal of a Stop Work Order**

27 When a stop work order has been posted in conformity with the requirements of this chapter, removal  
 28 of such order without the authorization of the city, or the hearing examiner if the matter has been heard  
 29 by the hearing examiner, is unlawful and a violation. The director will remove the stop work order and  
 30 write a letter of authorization to resume work only when the director finds that the reason for the order  
 31 has been resolved or abated.

32  
 33 **6.80 ABATEMENT**

34 **6.80.010 Abatement**

35 Upon prior approval by the City Manager, the City may abate a condition which was caused by or  
 36 continues to be a code violation when:

- 37 (a) The terms of the Voluntary Correction Agreement pursuant to this title have not been met; or
- 38 (b) A notice of violation or stop work order has been issued, the period for filing an appeal with  
 39 the hearing examiner has expired, and the required correction has not been completed; or

1 (c) A notice of violation or stop work order has been issued, a timely appeal was filed, the  
 2 appellant failed to appear at the scheduled hearing or a hearing was held as provided in this title  
 3 and the required correction has not been completed by the date specified by an order of the  
 4 hearing examiner; or

5 (d) The condition is subject to summary abatement as provided for in this chapter or other  
 6 provisions of City or state law.

7 **6.80.020 Summary Abatement**

8 When a code violation causes a condition, the continued existence of which constitutes an immediate  
 9 and emergent threat to the public health, safety, or welfare or to the environment, the City may  
 10 summarily, and without prior notice to the person responsible, abate the condition. Notice of such  
 11 abatement, including the reason for it, shall be given to the person responsible for the violation as soon  
 12 as reasonably possible after the abatement.

13 **6.80.030 Authorized Action by the City**

14 Using any lawful means, the City may enter upon the subject property and may remove or correct the  
 15 condition which is subject to abatement. The City may seek judicial process as it deems necessary to  
 16 effect the removal or correction of such condition.

17 **6.80.040 No Cause of Action Against City**

18 No cause of action shall lie against the City or its agents, officers, or employees for actions reasonably  
 19 taken, or not taken, to prevent or cure any immediate threats.

20  
 21 **6.90 APPEALS**

22 **6.90.010 Administrative Appeal – Filing Requirements**

23 Any person named in a notice of violation or stop work order, or any owner of the land where the  
 24 violation for which such a notice or order is issued, may file with the City Clerk a notice of appeal within  
 25 14 days of the service of the notice or order. The notice of appeal shall be made in writing using the  
 26 appropriate city form, clearly explaining the basis for the appeal, and shall include the applicable appeal  
 27 fee as established in a fee schedule adopted by the Mercer Island City Council.

28 **6.90.020 Administrative Appeal – Procedures**

- 29 1) Upon receipt of the appeal, the City shall schedule an appeal hearing before the hearing examiner.  
 30 The hearing shall be conducted in accordance with the procedures set forth in **MICC 19.15** and the  
 31 rules of procedure of the hearing examiner.
- 32 2) Enforcement of any notice of violation issued pursuant to this chapter shall be stayed as to the  
 33 appealing party during the pendency of any administrative appeal under this section, except when  
 34 the Director determines that the violation poses a significant threat of immediate and/or irreparable  
 35 harm and so states in any notice issued.
- 36 3) Enforcement of any stop work order issued pursuant to this chapter shall not be stayed during the  
 37 pendency of any administrative appeal under this section.
- 38 4) When multiple stop work orders or notices of violation have been issued for any set of facts  
 39 constituting a violation, the enforcement actions appeal may be consolidated.

**6.90.030 Administrative Appeal – Final Order**

1) Following review of the evidence submitted, if the examiner finds that no violation has occurred, the hearing examiner shall uphold the appeal and reverse the notice of violation or stop order. If the hearing examiner finds that a violation has occurred, the hearing examiner shall issue an order to the person responsible for the violation which includes the following information:

- (a) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
- (b) The required corrective action;
- (c) The date by which the correction must be completed; and
- (d) The civil penalties assessed based on the provisions of this title and the fee resolution;

2) If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner’s knowledge or consent, such property owner shall be responsible only for abatement of the violation.

**6.90.050 Effect of Decision**

The decision of the hearing examiner shall constitute the final decision of the City, and the failure to comply with the decision of the hearing examiner shall constitute a misdemeanor punishable by a fine of not more than \$1,000 or up to 90 days’ imprisonment, or both. In addition to criminal punishment pursuant to this section, the City may pursue collection and abatement as authorized by law.

**6.100 RECOVERY OF PENALTIES AND COSTS**

**6.100.010 Payment**

Any monetary penalties or costs assessed pursuant to this chapter constitute a personal obligation of the person responsible for the violation. In addition, the monetary penalties or costs assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. The city attorney is authorized to collect the monetary penalty or costs by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem monetary penalties so long as the violation continues.

**6.100.020 Recovery of Costs**

All reasonable expenses incurred by the City in correcting a violation shall be billed to the person responsible for the violation and shall become due and payable to the City within 30 calendar days from the date of the bill. Such costs may include, but are not limited to, the following:

- (a) “Legal expenses,” which shall include, but are not limited to:
  - (i) Personnel costs, both direct and indirect, including attorney’s fees and all costs incurred by the City attorney’s office or its designee;

(ii) Actual and incidental expenses and costs incurred by the City in preparing notices, contracts, court pleadings, and all other necessary documents; and

(iii) All costs associated with retention and use of expert witnesses or consultants.

(b) "Abatement expenses," which shall include, but are not limited to:

(i) Costs incurred by the City for preparation of notices, contracts, and related documents;

(ii) All costs associated with inspection of the abated property and monitoring of said property consistent with orders of compliance issued by the City's hearing examiner or a court of competent jurisdiction;

(iii) All costs incurred by the City for hauling, storage, disposal, or removal of vegetation, trash, debris, dangerous structures or structures unfit for occupancy, potential vermin habitat or fire hazards, junk vehicles, obstructions to public rights-of-way, and setback obstructions;

(iv) All costs incurred by law enforcement or related enforcement agencies;

(v) All costs incurred by the City during abatement of nuisance and code violations may include interest in an amount as prescribed by law; and

The city manager or designee, or the hearing examiner, may in their discretion waive in whole or part the assessment of any costs upon a showing that abatement has occurred or is no longer necessary or that the costs would cause a significant financial hardship for the person responsible for the violation. Any challenge to the amount of the legal or abatement costs must be made within 14 days of issuance of the bill and shall be heard by the hearing examiner. The hearing examiner shall make a determination as to whether or not the city's costs were accurate and necessary for correcting the violation.

**6.100.030 Use of Collection Agency**

Pursuant to Chapter 19.16 RCW, as currently enacted or hereafter amended, the city may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law.

**6.100.040 Continuing Duty to Abate Violations**

Payment of a monetary penalty or costs pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct or abate the violation. Additional notices of violation may be issued and/or criminal charges filed for continuing failure to correct or abate a violation.

**6.110 DEFINITIONS**

Except where specifically defined in this section, all words used in this title shall carry their customary meanings. The word "shall" is always mandatory, and the word "may" denotes a use of discretion in making a decision. The following words and phrases used in this title shall have the following meanings:

"Abate" means to take whatever steps are deemed necessary in the interest of the general health, safety, and welfare of the City by the director to return a property to the condition in which it existed before a civil code violation occurred or to assure that the property complies with applicable code

1 requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal,  
 2 replacement or repair.

3 “Appeal hearing” means a hearing requested in response to a notice of violation and order to correct,  
 4 stop work order, infraction or other official written notice of violation issued by the director to contest  
 5 the finding that a violation occurred or to contest that the person cited for a violation is responsible for  
 6 the violation.

7 “Civil penalty” or “monetary penalty,” means a fine or fee levied as a consequence for a civil violation,  
 8 civil infraction or stop work order.

9 “Civil violation” or “code violation” or “violation” means and includes one or more of the following:

10 (1) Any act or omission contrary to any ordinance, resolution, regulation or public rule of the City  
 11 that regulates or protects public health, the environment or the use and development of land or  
 12 water, whether or not the ordinance, resolution or regulation is codified; and

13 (2) Any act or omission contrary to the conditions of any permit, violation notice or stop work or  
 14 other order issued pursuant to any such ordinance, resolution, regulation or public rule.

15 “Compliance” means the violation has been abated, remediated or otherwise resolved and any  
 16 applicable penalties or costs have been paid.

17 “Complainant” means the person that makes a complaint to the City reporting a violation or potential  
 18 violation.

19 “Costs” means, but is not limited to, contract expenses and city employee labor expenses incurred in  
 20 abating a nuisance; a rental fee for city equipment used in abatement; costs of storage, disposal, or  
 21 destruction; legal expenses and attorneys’ fees associated with civil judicial enforcement of abatement  
 22 orders or in seeking abatement orders; and any other costs incurred by the city, excluding fees and  
 23 expenses associated with appeals authorized by this code or by state law.

24 “*De minimus* violation” means a civil violation that is of very low impact and poses low risk to the health,  
 25 safety and welfare of the public and to the environment.

26 “Development” means the erection, alteration, enlargement, demolition, maintenance or use of any  
 27 structure or the alteration or use of land above, at, or below ground or water level, and all acts  
 28 authorized by a City permit or regulation.

29 “Director” means the director of the development services group, or their designee.

30 “Excessive Complaint” means a complainant that repeatedly reports to the city the same or closely  
 31 related issues in a manner that may be intended to harass or antagonize the alleged responsible person.

32 “Found in violation” means that:

33 (1) A notice of violation, stop work order or infraction has been issued and not timely appealed; or

1 (2) The hearing examiner has determined that the violation has occurred and the hearing examiner's  
 2 determination has not been stayed or reversed on appeal.

3 "Frivolous complaint" means a complaint that is based on an issue that is not a code violation or is a *de*  
 4 *minimus* violation. The complaint may be an attempt to harass or antagonize the alleged responsible  
 5 person.

6 "Hearing examiner" means the City of Mercer Island hearing examiner, as provided in MICC 3.40.

7 "Infraction" or "civil infraction" means any code violation designated as an infraction or civil infraction  
 8 by the director pursuant to Chapter 7.80 RCW, incorporated herein by reference.

9 "Mortgagee" means a financial institution, including a bank, credit union or other commercial lender,  
 10 which holds mortgaged property as security for repayment of a loan.

11 "Notice of violation" means a written statement, issued by the director, that contains the information  
 12 required under MICC 6.50.020 and notifies a person that they are responsible for one or more civil  
 13 violations of the Mercer Island City Code.

14 "Nuisance" (also referred to herein as "violation" or "nuisance violation") means:

15 (1) A violation of any City of Mercer Island development, land use, or public health ordinance;

16 (2) Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission  
 17 that annoys, injures, or endangers the comfort, repose, health, or safety of others, is unreasonably  
 18 offensive to the senses, or that obstructs or interferes with the free use of property so as to  
 19 interfere with or disrupt the free use of that property by any lawful owner or occupant;

20 (3) Potential vermin habitat or fire hazard; or

21 (4) Junk Vehicles. A "junk vehicle" includes apparent inoperable, immobile, disassembled, or  
 22 extensively damaged vehicles. In addition, any wrecked inoperable, abandoned, or disassembled  
 23 trailer, house trailer, boat, tractor, automobile, other vehicle, or any parts thereof.

24 "Owner" means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint  
 25 tenant, or tenant by the entirety, of the whole or of a part of a building or land.

26 "Permit" means any form of certificate, approval, registration, license or any other written permission  
 27 issued by the City of Mercer Island. All conditions of approval, and all easements and use limitations  
 28 shown on the face of an approved final plat which are intended to serve or protect the general public  
 29 are deemed conditions applicable to all subsequent plat property owners and their tenants and agents  
 30 as permit requirements enforceable under this title.

31 "Person responsible for the violation" or "person responsible" or "violation" means any of the following:  
 32 the person doing the work, a person who has titled ownership or legal control of the property or  
 33 structure that is subject to the violation; an occupant or other person in control of the property or  
 34 structure that is subject to the violation; a developer, builder, business operator, or owner who is

1 developing, building, or operating a business on the property or in a structure that is subject to the  
2 violation; a mortgagee that has filed an action in foreclosure on the property that is subject to the  
3 violation, based on breach or default of the mortgage agreement, until title to the property is  
4 transferred to a third party; a mortgagee of property that is subject to the violation and has not been  
5 occupied by the owner, the owner's tenant, or a person having the owner's permission to occupy the  
6 premises for a period of at least 90 days; or any person who created, caused, participated in, or has  
7 allowed a violation to occur.

8 "Public nuisance" means a nuisance that affects equally the rights of an entire community or  
9 neighborhood, although the extent of the damage may be unequal.

10 "Resolution" means any resolution adopted by the Mercer Island City Council.

11 "Repeat violation" means a violation that has occurred on the same property or that has been  
12 committed by the same person responsible elsewhere within the city, for which voluntary compliance  
13 previously has been sought or any enforcement action taken, within the previous 36-month period. (For  
14 purposes of this subsection, repeat violation does not include each day in violation being counted as a  
15 separate violation.) To constitute a repeat violation, the violation need not be the same violation as the  
16 prior violation. Violation of a written order of the hearing examiner that has been served as provided in  
17 this chapter shall also constitute a repeat violation.

18 "Stop work order" means a written order specifying code violations and prohibiting any work or other  
19 activity at a particular site.

20 "Voluntary compliance agreement" or "VCA" means a written contract between the person responsible  
21 for the violation and the City, under which such person agrees to abate the violation within a specified  
22 time and according to specified conditions.





## DEVELOPMENT SERVICES GROUP

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

(206) 275-7605

**TO:** Planning Commission

**FROM:** Robin Proebsting, Senior Planner

**DATE:** April 26, 2018

**RE:** Critical Areas Code and Shoreline Master Program Updates: Draft decision-making tool

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### Summary

This memo introduces a draft decision-making framework for the Critical Areas Code and Shoreline Master Program updates. The term “decision-making framework” refers to the method by which inputs to the code review process will be evaluated to arrive at the Planning Commission’s recommend code standard. The Planning Commission previously provided input to staff on this topic at its April 18, 2018 meeting. Staff have used this input to formulate a draft decision-making tool (Attachment A) and are seeking the Planning Commission’s feedback on the draft.

### Background

At the Planning Commission’s April 18, 2018 meeting, staff introduced the idea of developing a decision-making tool for use during review and update of the Critical Areas Code and Shoreline Master Program (SMP). The purpose of such a tool would be to provide a shared system for organizing the multiple information inputs, legislative requirements, and decision-making factors that are part of the code update process.

Staff have used the Planning Commission’s input on a decision-making framework to draft a tool for use during the code update and review process (Attachment A). The decision-making tool is a matrix with criteria on one axis and alternative policy or code options on the other axis. Criteria are divided into 1) “gate-keeper questions”, which include items that must be met to produce a legally-defensible code standard, and 2) “decision-making factors”, which are those issues identified by the Planning Commission as being priorities for consideration during code review. The topics of the gate-keeper questions are:

1. Best available science, included because state law requires that local critical areas code to either be consistent with the best available science or to have identified the risks of departing from the best available science and mitigation for the identified risk;
2. Comprehensive plan policies, included because state law also requires that local codes be consistent with comprehensive plans; and
3. Case law, included because any new codes adopted by the City should be consistent with

precedent set by case law; otherwise, codes could be vulnerable to legal challenge.

The decision-making factors are drawn from Planning Commission input on the aspects of code that should be prioritized during code review. They each provide a lens for considering candidates for new code standards. The topics of the decision-making factors are:

1. Property owner interest, which includes economic benefit to and flexibility for individual property owners;
2. Community interest, which includes community safety, social interaction, and the City's ability to meet future growth targets;
3. Environmental interest, which includes local and regional environmental quality; and
4. Administration, which includes clarity and objectivity of code administration.

The decision-making tool would be used by assigning a pass/fail rating to each gatekeeper question and a qualitative rating ranging from strongly positive to strong negative to each decision-making factor. Code options receiving a "fail" rating to a gatekeeper question would not advance for further consideration. Code options receiving a strongly negative rating on any decision-making factor would either need to be modified to no longer be strongly negative in any one category or removed from consideration for the Planning Commission-recommended code.

No single code standard is likely to be able to advance all of the above interests equally. However, the intent behind providing multiple lenses through which to evaluate code options is to have a decision-making framework that, on balance, best fits local conditions. The decision-making tool aims to do this by bringing focus on *how* code options are evaluated, rather than on *what* the final outcome, providing a shared basis developing a recommendation.

Public input is also an important component of the code update process. It will be a constant and dynamic input, considered throughout the code review and update process. It is not expressly in the draft decision-making tool because it will not be limited to the Planning Commission review phase of the project. Staff urge the Planning Commission to take public input into consideration during review of potential code updates, and to consider how issues raised in public comment might affect how code options perform against the different decision-making factors.

### **Next Steps**

At the May 2, 2018 meeting, staff will ask for feedback on the draft decision-making tool. Staff invite any feedback the Planning Commission may have, and in particular would like to understand 1) whether this captures the commission's previous input, and 2) whether the commission thinks this would be a useful tool for weight code options. Staff will use commission input to make revisions.

The revised decision-making tool will then be presented at the Planning Commission's joint meeting with the City Council, scheduled for the second half of May.

### **Attachments:**

- A. Draft Decision-making Tool

		<i>Code Option 1</i>	<i>Code Option 2</i>	<i>Code Option 3</i>	
<b>Gatekeeper Questions</b>	<b>Best available science</b> Does the proposed policy follow the best available science? If not, have the risks of departing been identified and mitigated?	Yes/no	Yes/no	Yes/no	"No" answer alternatives do not advance to evaluation under decision-making factors
	<b>Comprehensive Plan</b> Is the comprehensive plan consistent, inconsistent, or silent on the proposed standard?	Consistent/ Inconsistent/ Silent	Consistent/ Inconsistent/ Silent	Consistent/ Inconsistent/ Silent	"No" answer alternatives do not advance to evaluation under decision-making factors "Null" answer alternatives may prompt a comprehensive plan update
	<b>Case law</b> Is the proposed standard consistent with case law?	Yes/no	Yes/no	Yes/no	"No" answer alternatives do not advance to evaluation under decision-making factors
<b>Decision-making factors</b>	<b>Property owner interest</b> How will the proposed standard affect: ... flexibility for development? ... individual economic return?				Decision-making factors may be rated on a scale of strong positive to strong negative denoted by the following: * "P" = Strongly positive effect * "p" = Weak positive effect * "O" = Neutral effect * "n" = Weak negative effect * "N" = Strong negative effect  Code Options receiving a "N" rating on any decision-making factor are either: 1) modified to no longer receive a "N"; or 2) removed from consideration for the Planning Commission-recommended code.
	<b>Community interest</b> How will the proposed standard affect: ... future growth targets? ... community safety from natural hazards? ... social interaction?				
	<b>Environmental interest</b> How will the proposed standard affect: ... local environmental quality and ecosystem function? ... regional environmental quality and ecosystem function?				
	<b>Administration</b> To what extent is the standard: ... clear? ... objective? ... simple?				