



PLANNING COMMISSION REGULAR MEETING AGENDA

Wednesday, March 21, 2018
Mercer Island City Hall

CALL TO ORDER & ROLL CALL

6:00 PM

MINUTES

March 7, 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: Code Compliance Ordinance

Introduction to the proposed code compliance ordinance.

Agenda Item #2: ZTR2018-002 Critical Areas

Review of the 2005 update, existing Comprehensive Plan policies, and critical area regulations.

OTHER BUSINESS

Planned Absences for Future Meetings

Next Regularly Scheduled Meeting: April 4, 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

AGENDA TIMES ARE APPROXIMATE

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



PLANNING COMMISSION MEETING MINUTES MARCH 7, 2018

CALL TO ORDER:

The Planning Commission was called to order by Vice Chair Tiffin Goodman at 6:02 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:

Vice Chair Tiffin Goodman, Commissioner Ted Weinberg, Lucia Pirzio-Biroli, Bryan Cairns, Jennifer Mechem, and Carolyn Boatsman were present. Chair Dan Hubbell was absent.

City staff was represented by Evan Maxim, Planning Manager, Lauren Anderson, Planner, and Kelsey Salvo, Administrative Assistant.

Commissioner Pirzio-Biroli moved approve the amended February 7, 2018 minutes, Commissioner Boatsman and Commissioner Mechem seconded the motion. The minutes were approved 6-0.

Commissioner Weinberg moved to approve February 21, 2018 minutes, Commissioner Boatsman seconded the motion. Commissioner Pirzio-Biroli amended the minutes to note that the Comprehensive Plan Amendment needed to include a Land Use designation for Public Facilities. The minutes were approved 6-0.

APPEARANCES:

No public appearances.

REGULAR BUSINESS:

Agenda Item #1: 2018 Comprehensive Plan Amendments No. 11 – Green Building

Lauren Anderson presented the review of the draft language for Comprehensive Plan Amendments 11.

The Commission discussed aspects of a Green Building program to follow the Comprehensive Plan Amendment, and information that would be necessary to implement such a program.

The Commission directed staff to amend the draft Comprehensive Plan language to read as follows:

The Introductory language was amended to read:

In 2018, the City continued to promote and support sustainable development, through the development of green building goals and policies for residential development.

These measures, and others under consideration, are identified in more detail in a rolling 6-year Sustainability Plan, to be adopted in 2018-2019, which will guide the City's internal and external actions while taking into account the interrelated issues of climate change, population change, land use, public infrastructure, transportation choices, natural resources management, quality of life, public health, and economic development.

Goal 20 was amended to read: Encourage the use of green building methods and materials, for residential development, to reduce impacts on the built and natural environment and to improve the quality of life. Green building should result in demonstrable benefits, through the use of programs such as, but not limited to, Built Green, LEED, the Living Building Challenge, Passive House, Salmon Safe, or similar regional and recognized green building programs.

The draft policies were amended to read as follows:

20.1 Eliminate regulatory and administrative barriers, where feasible, to residential green building.

20.2 Develop a green building program that creates incentives for residential development and building construction to incorporate green building techniques into new construction.

20.3 Evaluate requiring the use of green building techniques for new construction and development of subdivisions as a component of a green building program.

There was consensus to eliminate proposed policy 20.4.

20.5 Educate and provide technical resources to the citizens and building community on Mercer Island regarding green building as a part of sustainable development.

20.6 Conduct annual tracking of new, or significantly-remodeled, structures verified under various green building programs on Mercer Island and incorporate statistics into the City's sustainability tracking system and performance measures.

The Commission adjourned at 7:32. The Commission reconvened at 7:41.

Agenda Item #2: Comprehensive and Code Presentation and Discussion

Evan Maxim presented to Planning Commission regarding the Comprehensive Plan, Municipal Code, and project review.

Staff will present this topic to the commission at other meetings throughout the year.

OTHER BUSINESS:

Commissioner Mechem provided some comments about proposed Comprehensive Plan Amendment No. 10. The World Health Organization has developed eight principals to support age friendly development, which the City should consider. Commissioner Mechem will be meeting with a representative from AARP to learn more information.

PLANNED ABSENCES

NEXT MEETING:

The next regularly scheduled Planning Commission meeting will be March 21, 2018 at 6:00PM at Mercer Island City Hall.

ADJOURNMENT:

Vice Chair Tiffin Goodman adjourned the meeting at 8:55pm



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: March 15, 2018

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

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.

Intent and Scope

The proposed amendments to the code compliance regulations are intended to:

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

This code amendment will relate to enforcement of the nuisance, building, and development codes. Enforcement of fire codes is handled by the Fire Marshal (Fire Department) and amendments to these codes will be handled via a separate process at a future date.

Background

Current Code Compliance Process and Staffing

The Mercer Island City Code (MICC) currently contains sections of code compliance related language in 3 major sections (MICC 8.24 Nuisance Control Code, MICC 19.10.160 Trees/Enforcement, MICC 19.15.030 Land Development/Enforcement, see Attachment 1), as well as several other smaller sections. Cross referencing these code sections can be confusing, particularly when violations cross multiple categories. Many cities consolidate code compliance provisions within a single code chapter to alleviate confusion and make it easier to locate everything in one place.

The City currently employs two half-time code compliance officers (CCO), who are supervised by the Administrative Services Manager and receive some administrative support from one of the Administrative assistants (roughly 0.1 FTE). Together these two CCO's cover two types of code compliance work – construction monitoring and complaint driven compliance requests.

Construction Monitoring

This work scope was recently added, following the adoption of the Residential Development Standards fall of 2017, when City Council approved expansion of the CCO position to 1.0 FTE. The purpose of this work is to better enforce code and permit conditions on active construction sites. Construction monitoring is performed proactively across all active, single family residential construction sites. This work is in addition to the City's regular site, utility, and building inspections. Top issues of concern include tree protection, storm water/erosion control, construction worker parking, work hours, and noise.

Complaint Driven Compliance Requests

Complaints are submitted to the City electronically and in hard copy form, across a wide variety of issues. Mercer Island does not allow anonymous complaints. Complaints are investigated based on the priority of the issue. Staff prioritizes cases as follows:

1. Life safety
2. Environmental
3. City property/Right of way issues
4. Private property issues

The most common code compliance case types are encroachments (especially in the public ROW), nuisance and noise, building issues, trees, and zoning and land use issues.

Process

After complaints are received, the CCO's prioritize and assign the cases. They then begin the process of contacting the property owner and investigating the complaint. This process varies depending on the nature and severity of the complaint. If a violation is present, the CCO will then send a Code Compliance Courtesy Notice to the property owner providing notice of the violation and requesting the necessary changes to achieve compliance within an established timeline. If compliance is not attained at this point, the CCO will send a Notice of Correction, then a Second Notice of Correction and finally a Notice of Violation.

The CCO will work with other city staff, including planning, engineering, and building, as needed to assist a property owner in going through the process of attaining compliance. Property owners will often need to get land use approvals, encroachment agreements, or building permits to attain compliance. Most property owners work with the City in good faith to take the needed steps. However, a portion of property owners do not respond to City notices (~10-20%) or continue to contest the violation (~10-20%). Working with these property owners is often difficult and time consuming; these cases frequently drag on for months or years and take an inordinate amount of staff time to resolve.

The number of code compliance cases has nearly tripled over the last fifteen years, yet City resources allocated for compliance have only recently increased from 0.5 to 1.0 FTEs, and this increase was

coupled with an expanded work scope (construction monitoring). With the huge influx of cases in recent years, it has become more and more difficult to investigate and follow up on every case in an efficient and effective manner.

Based on our research and conversations with peer cities, staff believe that strategic code updates could provide additional tools to assist the CCO's in attaining compliance more quickly in many of the lower priority cases, and would substantially decrease the amount of time spent on "tough" cases with property owners that are resistant to coming into compliance. For example, with the ability to issue civil infractions for code violations, with meaningful fines that escalate with non-compliance, many property owners would be motivated to attain compliance in an efficient manner to avoid fines. Likewise, when fines accumulate into to a large sum, a useful incentive would be the ability to offer a "deal" to a property owner whereby the property owner signs a Voluntary Compliance Agreement admitting fault, agreeing to a schedule for attaining compliance, and waiving their right to appeal in exchange for the City waiving all, or a portion of, the fines.

Code Amendment Process and Scope

Staff work to-date

Over the last several months, staff have reviewed code language from several peer cities, and interviewed staff from two cities with code provisions that may be appropriate for Mercer Island. Staff have also explored the findings from these efforts and potential policy tools with the City Attorneys.

Planning Commission Process

At the March 21, 2018 meeting, staff intends to review the above information with the Planning Commission and seek input into the code amendment process and community engagement strategy. At the April 4, 2018 meeting, staff will discuss lessons learned from other cities and present policy options to the Commission, seeking feedback and direction, before proceeding with preparation of a draft code amendment. In advance of the May 2, 2018 meeting and Public Hearing, staff will provide an initial draft of the proposed amendments for Planning Commission review. A fourth meeting is tentatively planned for June 20, 2018; this meeting will be held in the event the Commission does not finalize its recommendations following the Public Hearing on May 2. 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

Mar	Apr	May	Jun	Jul	Aug	Sep
<p>● Planning Commission: Intro March 21, 2018</p>	<p>● City Council Study Session April 3, 2018</p> <p>● Planning Commission: Review Policy Options April 4, 2018</p>	<p>● Planning Commission: Public Hearing, possible decision May 2, 2018</p>	<p>● Planning Commission: Deliberation and Decision June 20, 2018</p>	<p>● City Council: 1st Reading July 17, 2018</p>	<p>● City Council: 2nd Reading August 7, 2018</p>	

Community Engagement

Staff is planning a streamlined community engagement process related to this effort, including outreach to the community via the website, email and social media to promote the Planning Commission and City Council meetings, with an emphasis on the public hearings. The City is not planning to host additional community events related to this update.

Action

At the March 21, 2018 meeting, staff will seek input from the Planning Commission regarding the code amendment update process, scope, and community engagement plan. Staff would also like suggestions for information or materials the Commission would like in advance of the discussion of policy options on April 4, 2018.

Attachments

Attachment 1: Existing Code Compliance Regulations: MICC 8.24 Nuisance Control Code, MICC 19.10.160 Trees/Enforcement, MICC 19.15.030 Land Development/Enforcement

Chapter 8.24**NUISANCE CONTROL CODE**

Sections:

- 8.24.005 Short title.
- 8.24.010 Definitions.
- 8.24.020 Types of nuisances.
- 8.24.030 Prohibited conduct.
- 8.24.040 Disposal of diseased animal carcass – Violation a misdemeanor.
- 8.24.050 Enforcement notice.
- 8.24.060 Abatement by city.
- 8.24.070 Abatement by owner or other responsible person.
- 8.24.080 Immediate danger – Summary abatement.
- 8.24.090 Violation a misdemeanor.

8.24.005 Short title.

This chapter may be known and cited as the “Mercer Island nuisance control code.” (Ord. 486 § 1, 1979).

8.24.010 Definitions.

The words and phrases used in this chapter, unless the context otherwise indicates, shall have the following meanings:

- A. “Abate” means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the enforcement officer, in his judgment, determines is necessary in the interest of the general health, safety and welfare of the community.
- B. “Building materials” means and includes lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials.
- C. “Enforcement officer” means the city manager or any alternate designated by him.
- D. “Premises” means any building, lot, parcel, real estate or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- E. “Responsible person” means any agent, lessee or other person occupying or having charge or control of any premises, except the owner. (Ord. 486 § 1, 1979).

8.24.020 Types of nuisances.

Each of the following conditions, actions or activities, unless otherwise permitted by law, is declared to constitute a public nuisance, and is subject to criminal enforcement and penalties as provided in this chapter. In addition, or in the alternative, whenever the enforcement officer determines that any of these conditions, actions or activities exist upon any premises or in any lake, river, stream, drainage way or wetlands, the officer may require or provide for the abatement thereof pursuant to this chapter:

- A. The existence of any offensive or dangerous accumulation of weeds, trash, dirt, filth, waste shrubs, lawn or yard trimmings, the carcass of any animal or other offensive matter;
- B. The existence of any dead, diseased, infested or dying tree that may constitute a danger to street trees, streets or portions thereof;
- C. The existence of any tree, shrub or foliage, unless by consent of the city, which is apt to destroy, impair, interfere or restrict:
 - 1. Streets, sidewalks, sewers, utilities or other public improvements,

2. Visibility on, or free use of, or access to such improvements;

D. The existence of any vines or climbing plants growing into or over any street tree, or any public hydrant, pole or electrolier, or the existence of any shrub, vine or plant growing on, around or in front of any hydrant, standpipe, sprinkler system connection or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto;

E. The existence of any accumulation of materials or objects in a location when the same endangers property, safety or constitutes a fire hazard;

F. The existence of a sidewalk or a portion of a sidewalk adjacent to any premises which is out of repair, and in a condition to endanger persons or property, or in a condition to interfere with the public convenience in the use of such sidewalk;

G. The dumping or otherwise unlawful depositing of refuse, sawdust or any other material without a permit;

H. The existence of any obstruction to a street, alley, crossing or sidewalk, and any excavation in or under any street, alley, crossing or sidewalk, which is by ordinance prohibited, or which is made without lawful permission, or which, having been made by lawful permission, is kept and maintained after the purpose thereof has been accomplished, and for an unreasonable length of time;

I. The erecting, maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon any private lot, building, structure or premises, or in or upon any street, alley, sidewalk, park, parkway or other public or private place in the city, any one or more of the following disorderly, disturbing, unsanitary, fly-producing, rat-harboring, disease-causing places, conditions or things:

1. Any putrid, unhealthy or unwholesome bones, meat, hides, skins, the whole or any part of any dead animal, fish or fowl, or waste parts of fish, vegetable or animal matter in any quantity, but nothing in this subsection shall prevent the temporary retention of waste in approved covered receptacles,
2. Any privies, vaults, cesspools, sumps, pits or like places which are not securely protected from flies and rats, or which are foul or malodorous,
3. Any filthy, littered or trash-covered dwellings, cellars, house yards, barnyards, stable yards, factory yards, vacant areas in the rear of stores, vacant lots, houses, buildings or premises,
4. Any animal manure in any quantity which is not securely protected from flies or weather conditions, or which is kept or handled in violation of any ordinance of the city,
5. Any poison oak or poison ivy, Russian thistle or other noxious weeds, whether growing or otherwise, but nothing in this subsection shall prevent the temporary retention of such weeds in approved covered receptacles,
6. Any inherently offensive or dangerous accumulation of bottles, cans, glass, ashes, paper or paper products, small pieces of scrap iron, wire, metal articles, household appliances, bric-a-brac or cement, broken concrete, broken glass, broken plaster and all such trash or abandoned material unless it is kept in approved covered bins or appropriate containers,
7. Any trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding, excelsior, packing hay, straw or other packing materials, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, or anything whatsoever in which flies or rats may breed or multiply or which may be a fire hazard;

J. The depositing, or causing to be deposited in any street, alley, sidewalk, park, parkway or other public place which is open to travel, of any hay, straw, paper, wood, boards, boxes, leaves, manure or other rubbish or material;

K. The storage or keeping on any premises in public view for more than 30 days of any used or unused building materials as defined in MICC 8.24.010, whose retail cost new would exceed \$100 without a special permit from the building official; provided, that nothing in this subsection shall:

1. Prohibit such storage without a permit when done in conjunction with a construction project for which a building permit has been issued and which is being prosecuted diligently to completion,
2. Prohibit such storage without a permit upon the premises of a bona fide lumberyard, dealer in building materials or other commercial enterprise when the same is permitted under the zoning ordinance and other applicable laws,
3. Make lawful any such storage or keeping when it is prohibited by other ordinances or laws;

L. The existence of any fence or other structure or thing or private property abutting or fronting upon any public street, sidewalk or place which is in a sagging, leaning, fallen, decayed or otherwise dilapidated or unsafe condition;

M. The existence or maintenance on any premises of a storage area, junkyard or dumping ground for the wrecking or disassembling of automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind, or for the storing or leaving of worn out, wrecked, inoperative or abandoned automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind or of any major parts thereof;

N. The existence on any premises of any abandoned or unused well, cistern or storage tank without first demolishing or removing from the city such storage tank or securely closing and barring any entrance or trapdoor thereto or without filling any well or cistern or capping the same with sufficient security to prevent access thereto by children;

O. The existence on any premises, in a place accessible to children, of any unattended and/or discarded icebox, refrigerator or other large appliance;

P. The existence of any drainage onto or over any sidewalk or public pedestrianway;

Q. Sounds.

1. Sounds Regulated by This Section.

- a. The intent of this section is to regulate sounds heard beyond the property line of the source;
- b. The following sounds are explicitly regulated by this section:
 - i. Sounds caused by the construction or repair of any building or structure;
 - ii. Sounds caused by construction, maintenance, repair, clearing or landscaping;
 - iii. Sounds created by the installation or repair of utility services; and
 - iv. Sounds created by construction equipment including special construction vehicles.

2. Sounds related to activity authorized by a permit from the city of Mercer Island are limited as follows:

- a. Sounds shall only be allowed between the hours of 7 am to 7 pm on Mondays through Fridays, and between the hours of 9 am and 6 pm on Saturdays.
- b. Sounds shall be prohibited at any time of day on Sunday and legal holidays.

3. Sounds related to activity that does not require a permit from the city of Mercer Island shall only be allowed between the hours of 7 am to 8 pm on Mondays through Fridays, and between the hours of 9 am and 8 pm on Saturdays, Sundays, and legal holidays.

4. The enforcement officer may authorize a variance to this section pursuant to Chapter 173-60 WAC.

R. Production at any time of any of the following sounds or noises, which by reason of their intensity, frequency, duration, volume, pitch or any other reason, disturb the peace, quiet, repose or comfort of any person or persons:

1. The sounding of any horn, siren or other signaling device except as a warning of danger, or as specifically permitted or required by law,
2. Sounds in connection with the starting, operation, repair or rebuilding, or testing of any motor vehicle or internal combustion engine within a residential district,
3. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising for sales or for attracting the attention of the public to any vehicle structure, or property or the contents therein, except as permitted by law, and except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection,
4. The use of a musical instrument, whistle, radio, sound amplifier or other device capable of producing or reproducing sound,
5. Sounds produced by any vehicle which is so loaded, or has any defect or is not equipped with a proper muffler so as to cause loud and unnecessary grating, grinding, rattling or other noise,
6. Any other unreasonably loud, disturbing, continuous, irritating, or unnecessary noise, whether emanating from a human, animal or mechanical source. (Ord. 17C-15 § 1 (Att. A); Ord. 499 § 1, 1980; Ord. 486 § 1, 1979).

8.24.030 Prohibited conduct.

A. It is unlawful for any responsible person or owner to permit, maintain, suffer, carry on or allow, upon any premises or in any lake, stream, drainage way or wetlands, any of the acts or things declared by this chapter to be a public nuisance.

B. It is unlawful for any person to create, maintain, carry on or do any of the acts or things declared by this chapter to be a public nuisance. (Ord. 486 § 1, 1979).

8.24.040 Disposal of diseased animal carcass – Violation a misdemeanor.

Every person owning or having in charge any animal that has died or been killed on account of disease shall immediately bury the carcass thereof at least three feet underground at a place approved by the city health officer, or cause the same to be consumed by fire. No person shall sell or offer to sell or give away the carcass of any animal which died or was killed on account of disease. Every violation of any provision of this section is a misdemeanor. (Ord. 486 § 1, 1979).

8.24.050 Enforcement notice.

An enforcement officer appointed by the city manager, having knowledge of any public nuisance, shall cause any owner or other responsible person to be notified of the existence of a public nuisance on any premises and shall direct the owner or other responsible person to abate the condition within 10 days after notice or other reasonable period. The notice shall be substantially in the following form:

NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION

(Name and address of person notified)

As owner, agent, lessee or other person occupying or having charge or control of the building, lot or premises at _____ you are hereby notified that the undersigned pursuant to Chapter 8.24 of Mercer Island city code has determined that there exists upon or adjoining said premises the following condition contrary to the provisions of subsection ____ of 8.24.020:

You are hereby notified to abate said condition to the satisfaction of the undersigned within 10 days of the date of this notice. If you do not abate such condition within ____ days the city will abate the condition at your expense.

Abatement is to be accomplished in the following manner:

Dated: _____ (Name of enforcement officer)

by _____

(Ord. 486 § 1, 1979).

8.24.060 Abatement by city.

In all cases where the enforcement officer has determined to proceed with abatement, 10 days after giving notice, the city shall acquire jurisdiction to abate the condition at the person's expense as provided in this chapter. Upon the abatement of the condition or any portion thereof by the city, all the expenses thereof shall constitute a civil debt owing to the city jointly and severally by such of the persons who have been given notice as provided in this chapter. The debt shall be collectable in the same manner as any other civil debt owing to the city. (Ord. 486 § 1, 1979).

8.24.070 Abatement by owner or other responsible person.

If and when an owner or other responsible person undertakes to abate any condition described in this chapter, whether by order of the enforcement officer or otherwise, all needful and legal conditions pertinent to the abatement may be imposed by the enforcement officer. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in this chapter shall relieve any owner or other responsible person of the obligation of obtaining any required permit to do any work incidental to the abatement. (Ord. 486 § 1, 1979).

8.24.080 Immediate danger – Summary abatement.

Whenever any condition on, or use of, property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public, or a significant portion thereof, the enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement shall become a civil debt against the owner or other responsible party and be collected as provided in MICC 8.24.060. (Ord. 486 § 1, 1979).

8.24.090 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. (Ord. 486 § 1, 1979).

19.10.160 Enforcement.

A. Violation. It is a violation of this chapter for any person to fail to comply with the requirements of this chapter.

B. Civil Penalty and Remediation.

1. Civil Penalty. The penalty for violating this chapter shall be a fine equal to up to three times the value of the damaged or cut tree or removed vegetative cover, plus the cost of reasonable remediation. Trees and other vegetation shall be appraised according to the method specified by the Council of Landscape and Tree Appraisers, most current edition.

2. Remediation. Remediation for trees removed in violation of this chapter shall include, but is not limited to, the following:

- a. Removal of the remaining plant parts or debris;
- b. Preparation of a replanting plan in a form approved by the code official for replanting the area where trees were removed in violation of this chapter;
- c. Payment of the costs to review, approve, and administer the remediation process;
- d. Installation of the required replantings as reflected on the replanting plan; and
- e. Maintenance of the required replantings for a period of five years.

C. Tree Retention Enforcement. Trees identified for retention through the approval of a development proposal that are subsequently removed, or are damaged to the extent that removal is required, with prior written approval by the city arborist, whether the removal or damage is intentional or unintentional, shall result in a civil penalty pursuant to subsection B of this section, in addition to required replanting and remediation. The code official may waive the civil penalty if the code official determines that appropriate tree protection standards were in place and maintained and natural disaster or events entirely outside the knowledge and control of the property owner resulted in the tree loss. (Ord. 17C-15 § 1 (Att. A)).

19.15.030 Enforcement.**A. Violations.**

1. It is a violation of the development code, MICC Title 19, for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or real property within the city of Mercer Island without first obtaining proper permits or authorizations required for the use by the development code.
2. It is a violation of the development code for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city of Mercer Island in any manner that is not permitted by the terms of any permit or authorization issued pursuant to the development code or previous codes.
3. It is a violation of the development code to misrepresent any material fact in any application, plans or other information submitted to obtain any land use authorization.
4. It is a violation of the development code for anyone to fail to comply with the requirements of the development code, as set out in the specific sections of the code.

B. Duty to Enforce.

1. It shall be the duty of the director of the development services group to enforce the development code. The director may call upon the police, fire, health or other appropriate city departments to assist in enforcement.
2. Upon presentation of proper credentials, the director or duly authorized representative of the director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the development code.
3. The development code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
4. It is the intent of the development code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this code.
5. No provisions or term used in this code is intended to impose any duty upon the city or any of its officers or employees, which would subject them to damages in a civil action.

C. Investigation.

1. The director or his/her designee, shall investigate any structure or use which the director reasonably believes does not comply with the standards and requirements of this development code.
2. If, after investigation, the director determines that the standards or requirements have been violated, the director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated; shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance. The notice shall state that any further violation may result in criminal prosecution and civil penalties.
3. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by publication and mailing to the last known address.

D. Stop Work/Emergency Orders.

1. Stop Work Order. Whenever a continuing violation of the development code will materially impair the director's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this development code.

2. Emergency Order. Whenever any use or activity in violation of this code threatens the health and safety of the occupants of the premises or any member of the public, the director may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this development code.

3. Any condition described in the emergency order which is not corrected within the time specified is hereby declared to be a public nuisance and the director is authorized to abate such nuisance summarily by such means as may be available. If the city declines to bring an abatement action, then such action may be brought by any person who owns or resides on property within 300 feet of the structure or whose use and enjoyment of property is impaired by the structure or use complained of.

E. Extension of Compliance Date.

1. The director may grant a reasonable extension of time for compliance with any notice or order, whether pending or final, upon the director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension. Such extension of time shall not exceed 180 days.

2. An extension of time may be revoked by the director if it is shown that the conditions at the time the extension was granted have changed, the director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date.

F. Civil Penalty.

1. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of the development code, stop work order or emergency order shall be subject to a cumulative monetary penalty. Each separate day of noncompliance shall be a separate and distinct violation of the development code and shall be subject to a separate notice of civil infraction. The penalty shall be:

a. Fifty dollars (\$50) for the first day of noncompliance after the compliance date set in the notice.

b. Seventy-five dollars (\$75) for the second day of noncompliance after the compliance date set in the notice.

c. One hundred dollars (\$100) for the third and each following additional day of noncompliance after the compliance date set in the notice.

2. The penalty imposed by this section shall be collected by notice of civil infraction, as authorized by Chapter 7.80 RCW.

3. The director of development services, and his/her designees, are the authorized enforcement officers for purposes of issuing a notice of infraction for violation of the development code.

4. A notice of infraction issued under this section represents a determination that a civil infraction has been committed, and the determination is final unless contested.

5. The city's notice of infraction shall include the following:

- a. A statement that the notice represents a determination that a civil infraction has been committed by the person named and the determination is final unless contested.
 - b. A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed.
 - c. A statement of the specific violation of the development code for which the notice is issued.
 - d. A statement of the monetary penalty for the violation.
 - e. A statement of the options available for responding to the notice of infraction and the procedures necessary to exercise those options.
 - f. A statement that at the hearing to contest the notice the city has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the person may subpoena witnesses, including the enforcement officer issuing the notice.
 - g. A statement that at any hearing requested to explain mitigating circumstances surrounding the commission of the civil infraction, the person will be deemed to have committed the infraction and may not subpoena witnesses.
 - h. A statement that the person must respond to the notice within 14 days.
 - i. A statement that failure to respond to the notice or to appear at a hearing, if requested, will result in a default judgment in the amount of the penalty and may be referred for criminal prosecution for failure to appear.
 - j. A statement, which the person shall sign, that the person promises to respond to the notice of civil infraction in one of the ways set forth in this section.
6. Any person who receives a notice of infraction for violation of the development code shall respond to the notice as provided in this section within 14 days of the date of the notice.
 - a. If the person does not contest the determination, he/she shall respond by completing the appropriate portion of the notice and sending it, with a check or money order in the amount of the penalty, to the court specified on the notice.
 - b. If the person wishes to contest the civil infraction, the person shall complete the portion of the notice requesting a hearing and submit it to the court specified on the notice. The court shall notify the person of the time and place of the hearing.
 - c. If the person does not contest the violation but wishes to explain mitigating circumstances surrounding the violation, the person shall complete the portion of notice requesting a hearing for that purpose and submit it to the court specified on the notice. The court shall notify the person of the time and place of the hearing.
 - d. The court shall enter a default judgment for the amount of the penalty for the civil infraction if a person fails to respond within 15 days or to appear at the hearing.
7. The violator may show as full or partial mitigation of the infraction:
 - a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
 - b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

8. Failure to respond to a civil citation within 14 days or to appear for a requested hearing is a misdemeanor, punishable by fine or imprisonment in jail.

G. Criminal Penalties. Any person violating or failing to comply with any of the provisions of this development code shall be subject to criminal prosecution and upon conviction shall be fined in a sum not exceeding \$1,000 or be imprisoned in the city jail for a term not exceeding 90 days or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this development code shall constitute a separate offense. However, the aggregate penalty for all days of noncompliance shall not exceed \$5,000 or one year in the city jail.

H. Additional Relief. The director may seek legal or equitable relief to enjoin any actions or practices and abate any condition which constitutes or will constitute a violation of this development code when civil or criminal penalties are inadequate to effect compliance. (Ord. 99C-13 § 1).



DEVELOPMENT SERVICES GROUP

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

TO: Planning Commission

FROM: Robin Proebsting, Senior Planner

DATE: March 15, 2018

RE: ZTR2018-002 Critical Areas Code and Shoreline Master Program Updates:
State Legislative Requirements and Current Code Language

Summary

This memo provides an orientation on the critical areas code and Shoreline Master Program (SMP) update processes, building on the introduction at the Planning Commission's January 17, 2018 meeting. To provide context and foundational information to inform future Planning Commission work on the critical areas and SMP code updates, staff have assembled summary information on the following topics:

- Information on state legislative requirements ("how we got here")
- A summary of the City's current critical areas code ("what we have")
- A list of potential areas identified by staff needing review during the code update process ("where we're going")

Background

[Legislative Requirements \(or, how we got here\)](#)

The impetus for the critical area code update project comes from requirement of the Growth Management Act (GMA) to adopt and periodically update regulations protecting critical areas. "Critical areas", as used in the GMA, means: 1) wetlands, 2) critical aquifer recharge areas, 3) fish and wildlife habitat conservation areas, 4) frequently flooded areas, and 5) geologically hazardous areas. These topics are addressed in the Mercer Island City Code (MICC) in Chapter 19.07. The critical areas code was last updated in 2005, and according to the review timeline set by the GMA, the City is behind schedule. Similarly, the state requires that the shoreline master program (SMP) undergo periodic review, and if necessary update; this periodic review is due by June of 2019.

The critical area update process includes several requirement components. First, in reviewing the critical areas regulations, the City is required by the GMA to include best available science to inform the review process. To do this, the City will work with a consultant to obtain current best available science on critical areas. Second, the City will need to maintain a record showing the sources of scientific

information used during the code update, the nonscientific information that was considered, and—if the adopted code does not follow the best available science—how the risks caused by doing so have been mitigated.

Lastly, state law also requires that cities' development regulations be consistent with their comprehensive plans. The City's Comprehensive Plan describes the desired outcomes (goals) for Mercer Island, as they relate to critical areas and other important issues, and in provides direction for development regulations and programs. Therefore, a component of the code review process will be reviewing draft codes alongside the City's comprehensive plan and evaluating whether the code is consistent or inconsistent with comprehensive plan policies. A list of selected policies pertaining to critical areas is included in Attachment 1.

At the end of the code update process, the City will have a revised critical areas code (Chapter 19.07), with a written record documenting how the updated code standards were informed by public comment, the best available science, along with social, cultural, economic, and Mercer Island specific policies in its development.

Current City Regulations (or, what we have)

The critical areas code (Chapter 19.07) currently sets standards for wetlands, watercourses, geologically hazardous areas, and wildlife habitat conservation areas. These standards describe: 1) what kind of information is required from applicants when development on or near critical areas is proposed; 2) where development may occur in relation to critical areas; and, 3) the steps required to utilize code flexibilities. Below is a summary of the standards for each type of critical area.

Critical Area	Summary of Protection
Wetlands	<ul style="list-style-type: none">• Designates wetland types (Categories I-IV)• Establishes buffers (35-100 feet)• Provisions for buffer averaging and reduction provided (to reduce buffer by 10-50 feet)
Watercourses	<ul style="list-style-type: none">• Designates watercourse types (Types 1-3 and piped)• Establishes buffers (25-75 feet)• Provisions for buffer averaging and reduction provided (to reduce buffer by 10-37 feet)
Geologically Hazardous Areas	<ul style="list-style-type: none">• Establishes requirement for geotechnical review• Requires demonstration that alterations to geologically hazardous areas will not adversely impact other critical areas, the subject property or adjacent properties• Requires that impacts to the geologic hazard area are mitigated to the maximum extent reasonably possible• Requires landscaping of all disturbed areas outside of structures and flatwork
Wildlife Habitat Conservation Areas	<ul style="list-style-type: none">• Designates bald eagle nesting, breeding, feeding areas as wildlife habitat conservation area• Establishes seasonal restrictions

Code excerpts on each of these topics can be found in Attachment 2.

The critical areas code (Chapter 19.07) also contains guidance on how to administer the code, a list of activities allowed in critical areas, and provisions for reasonable use exceptions (i.e. to allow development when application of critical areas codes would prohibit all use of a property.)

Below is a summary of standards and provisions currently addressed in the critical areas code (chapter 19.07), as well as items currently not included:

Currently in Critical Areas Code	Currently not in Critical Areas Code
<ul style="list-style-type: none"> • Basis in best available science from 2005 • Procedural standards: <ul style="list-style-type: none"> ○ Activities and development that can take place in critical areas (Allowed alterations) ○ Provision for development when application of the critical areas code would otherwise not allow it (Reasonable Use Exception) ○ Review process for steep slope, reduction in wetland / watercourse buffers ○ List of content required to be in critical area studies • Development standards: <ul style="list-style-type: none"> ○ Wetland and watercourse buffers ○ Limits on alteration of geologically hazardous areas ○ Limited bald eagle protection • Other/miscellany: <ul style="list-style-type: none"> ○ Optional language (Native Growth Protection Areas, erosion control measures, fees, etc.) ○ Approximate mapping maintained by City ○ Provision to adopt administrative guidelines 	<ul style="list-style-type: none"> • Basis in current (2018) best available science • Procedural standards: <ul style="list-style-type: none"> ○ Exemptions (complete / partial) ○ Clarity on how to administer allowed alterations, document compliance ○ Flexibility tools (in addition to buffer reduction / averaging) for existing development ○ A clear process for review of critical areas • Development standards: <ul style="list-style-type: none"> ○ Protections for critical aquifer recharge areas ○ Avoidance sequencing: first avoid impacts to critical areas and then minimize impacts with mitigation ○ Guidance on extent of reduction / averaging allowed ○ Mitigation design and specified “debit/credit” ratio ○ Mitigation monitoring ○ Tree / vegetation retention and protection ○ Setbacks from buffers ○ Voluntary stewardship programs ○ Standards for new vs. existing / non-conforming development ○ Consideration for anadromous fish ○ Expanded fish / wildlife habitat protection • Other/miscellany: <ul style="list-style-type: none"> ○ Critical area protections through “non-buffer” approach (e.g. fencing, signage, notice on title, etc).

Potential areas for review (or, where we’re going)

The Planning Commission’s primary task in the coming months will be to familiarize itself with current regulations and the challenges and opportunities facing Mercer Island in the context of critical areas protection. Staff will support the commission with continued educational materials and presentations to aid this process.

Based on the summary of topics currently in the critical areas code above, the Planning Commission will have the opportunity to not only review the state required topic areas (i.e. wetland, critical aquifer recharge areas etc.) for consistency with the best available science, but also flexibility options

specifically tailored to conditions on Mercer Island, and standards for how the critical areas code is administered by staff.

Staff also note that the above summary contains topics that are not directly addressed by comprehensive plan policies. The Planning Commission may determine as part of their review of the current code, the current Comprehensive Plan goals and policies, that additional Comprehensive Plan language is necessary.

Next Steps

Staff will give a presentation at the Planning Commission's March 21, 2018 meeting, summarizing the topics covered in this memo. Staff is seeking feedback from the Planning Commission regarding:

1. Any additional Commissioner questions about the existing critical areas code (not addressed on March 21);
2. Any items the Commission would like to "flag" for further discussion as the Planning Commission begins its review of the critical areas code (Chapter 19.07)

Additional meetings to review the current critical areas code may be scheduled if requested by the Commission.

In April / May, the staff intends to seek the Planning Commission's guidance on developing a decision-making framework for use as we move forward with review of possible amendments to the critical areas code and shoreline master program.

Attachments

1. Selected policies pertaining to critical areas
2. Excerpts from critical areas code (MICC Chapter 19.07)
3. Council-adopted scope of work

Attachment 1: Selected policies pertaining to critical areas

Policy Number	Policy text
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	<p>Ensure compatibility between transportation facilities and services and adjacent land uses, evaluating aspects such as:</p> <ul style="list-style-type: none"> •potential impacts of transportation on adjacent land use; •potential impacts of land development and activities on transportation facilities and services; and •need for buffering and/or landscaping alongside transportation facilities.

Attachment 2: Excerpts from MICC 19.07

19.07.060 Geologic hazard areas.

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

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

C. Geotechnical Review.

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

2. The [city](#) may require peer review of the [geotechnical report](#) by a second [qualified professional](#) to verify the adequacy of the information and analysis. The [applicant](#) shall bear the cost of the peer review.

3. The [code official](#) may waive the requirement for a [geotechnical report](#) when the proposed [alteration](#) does not pose a threat to the public health, safety and welfare in the sole opinion of the [code official](#).

D. Site [Development](#).

1. Development Conditions. [Alterations](#) of [geologic hazard areas](#) may occur if the [code official](#) concludes that such alterations:

a. Will not adversely impact other [critical areas](#);

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

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

d. Include the [landscaping](#) of all disturbed areas outside of [building footprints](#) and installation of all [impervious surfaces](#) prior to final inspection.

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

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

b. Construction practices are proposed for the [alteration](#) that would render the [development](#) as safe as if it were not located in a geologic hazard area;

c. The [alteration](#) is so minor as not to pose a threat to the public health, safety and welfare; or

d. An evaluation of site specific subsurface conditions demonstrates that the proposed [development](#) is not located in a geologic hazard area.

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

4. Seasonal Limitations. Land [clearing](#), grading, filling, and foundation work within [geologic hazard areas](#) are not permitted between October 1 and April 1. The [code official](#) may grant a waiver to this seasonal [development](#) limitation if the [applicant](#) provides a [geotechnical report](#) of the site and the proposed construction activities that concludes erosion and sedimentation impacts can be effectively controlled on-site consistent with adopted storm water standards and the proposed [construction work](#) will not subject people or property, including areas off-site, to an increased risk of the hazard. As a condition of the waiver, the [code official](#) may require erosion control measures, [restoration](#) plans, and/or an indemnification/release agreement. Peer review of the [geotechnical report](#) may be required in accordance with subsection C of this section. If site activities result in erosion impacts or threaten water quality standards, the [city](#) may suspend further work on the site and/or require remedial action. (Ord. 05C-12 § 5).

19.07.070 Watercourses.

A. Watercourses – Designation and Typing. [Watercourses](#) shall be designated as Type 1, Type 2, Type 3 and Restored according to the following criteria:

1. Type 1 [Watercourse](#). [Watercourses](#) or reaches of [watercourses](#) used by fish, or are downstream of areas [used by fish](#).
2. Type 2 [Watercourse](#). [Watercourses](#) or reaches of [watercourses](#) with year-round flow, not [used by fish](#).
3. Type 3 [Watercourse](#). [Watercourses](#) or reaches of [watercourses](#) with intermittent or seasonal flow and not [used by fish](#).
4. Restored [Watercourse](#). Any Type 1, 2 or 3 [watercourses](#) created from the opening of previously piped, channelized or culverted [watercourses](#).

B. Watercourse [Buffers](#).

1. Watercourse [Buffer](#) Widths. Standard [buffer](#) widths shall be as follows, measured from the [ordinary high water mark](#) (OHW), or top of bank if the OHW cannot be determined through simple nontechnical observations.

Watercourse Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
Type 1	75	37
Type 2	50	25

Watercourse Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
Type 3	35	25
Restored or Piped	25	Determined by the code official

2. Reduction of [Buffer](#) Widths.

a. The [code official](#) may allow the standard [buffer](#) width to be reduced to not less than the above listed minimum width in accordance with an approved [critical area study](#) when he/she determines that a smaller area is adequate to protect the [watercourse](#), the impacts will be mitigated by using combinations of the below mitigation options, and the proposal will result in [no net loss](#) of [watercourse](#) and [buffer](#) functions. However, in no case shall a reduced [buffer](#) contain a [steep slope](#).

b. The [code official](#) may consider the following mitigation options:

- i. Permanent removal of [impervious surfaces](#) and replacement with [native vegetation](#);
- ii. Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or enhanced [wetlands](#), or ponds supplemental to existing storm drainage and water quality requirements;
- iii. Removal of [noxious weeds](#), replanting with [native vegetation](#) and five-year [monitoring](#);
- iv. Habitat [enhancement](#) within the [watercourse](#) such as log [structure](#) placement, bioengineered bank stabilization, culvert removal, improved [salmonid](#) passage and/or creation of side channel or backwater areas;
- v. Use of [best management practices](#) (e.g., oil/water separators) for storm water quality control exceeding standard requirements;
- vi. Installation of pervious material for [driveway](#) or road construction;
- vii. Use of “green” roofs in accordance with the standards of the LEED Green [Building](#) Rating System;
- viii. Restoration of off-site area if no on-site area is possible;
- ix. Removal of sources of toxic material that predate the [applicant](#)’s ownership; and
- x. Opening of previously channelized and culverted [watercourses](#) on-site or off-site.

3. Averaging of [Buffer](#) Widths. The [code official](#) may allow the standard [buffer](#) width to be averaged if:

- a. The proposal will result in a net improvement of critical area function;
- b. The proposal will include replanting of the averaged [buffer](#) using [native vegetation](#);
- c. The total area contained in the averaged [buffers](#) on the [development proposal site](#) is not decreased below the total area that would be provided if the maximum width were not averaged;
- d. The standard [buffer](#) width is not reduced to a width that is less than the minimum [buffer](#) width at any location; and

e. That portion of the [buffer](#) that has been reduced in width shall not contain a [steep slope](#).

4. Restoring Piped [Watercourses](#).

a. Removal of pipes conveying [watercourses](#) shall only occur when the [code official](#) determines that the proposal will result in a net improvement of [ecological functions](#) and will not significantly increase the threat of erosion, flooding, [slope](#) stability or other hazards.

b. Where the [buffer](#) of the restored [watercourse](#) would extend beyond a required setback the [applicant](#) shall obtain written agreement from the affected neighboring property owner. The [city](#) may deny a request to [restore](#) a [watercourse](#) if it results in [buffers](#) being adjusted and increased onto adjacent properties.

C. Impervious Surfaces. [Impervious surface](#) shall not be permitted within a [watercourse](#) or [watercourse](#) buffer except as specifically provided in this chapter.

D. Development Standards.

1. Type 3 [watercourses](#) may be relocated when such relocation results in equivalent or improved [watercourse](#) functions. Type 1 and 2 [watercourses](#) shall not be relocated except through the [reasonable use](#) exception.

2. Existing [watercourses](#) shall not be placed into culverts except as provided by the allowed [alterations](#) or [reasonable use](#) exception. When culverts are allowed, they shall be designed to mitigate impacts to critical area functions. Oversize and open bottom culverts lined with rock that maintain a semi-natural stream bed are preferred to round culverts. (Ord. 08C-01 § 3; Ord. 05C-12 § 5).

19.07.080 Wetlands.

A. Wetland Designation. All property meeting the definition of a [wetland](#) in the [Wetland Manual](#) is designated as a [wetland](#).

B. Wetland Ratings. [Wetlands](#) shall be rated as Category I, Category II, Category III or Category IV according to the [wetland classification system](#).

C. Wetland [Buffers](#).

1. Standard [Wetland](#) Buffer Widths. The following standard [buffer](#) widths shall be established from the outer edge of [wetland](#) boundaries:

Wetland Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
Category I*	100	50
Category II	75	37

Wetland Type	Standard (Base) Buffer Width (feet)	Minimum Buffer Width with Enhancement (feet)
Category III	50	25
Category IV	35	25

* Note: There are no known Category I wetlands in the city.

2. Reduction of [Wetland](#) Buffer Widths. The [code official](#) may allow the standard [wetland](#) buffer width to be reduced to not less than the minimum [buffer](#) width in accordance with an approved [critical area study](#) when he/she determines that a smaller area is adequate to protect the [wetland](#) functions, the impacts will be mitigated consistent with MICC [19.07.070](#)(B)(2), and the proposal will result in [no net loss](#) of [wetland](#) and [buffer](#) functions.

3. Averaging of [Wetland](#) Buffer Widths. The [code official](#) may allow averaging of the standard [wetland](#) buffer widths in accordance with the criteria of MICC [19.07.070](#)(B)(3).

D. Alterations. Category III and IV [wetlands](#) of less than one acre in size may be altered if the [applicant](#) can demonstrate that the [wetland](#) will be restored, enhanced, and/or replaced with a [wetland](#) area of equivalent or greater function. In cases where the [applicant](#) demonstrates that a suitable on-site solution does not exist to [enhance](#), [restore](#), replace or maintain a [wetland](#) in its existing condition, the [city](#) may permit the [applicant](#) to provide off-site replacement by a [wetland](#) with equal or better functions. The off-site location must be in the same drainage sub-basin as the original [wetland](#). (Ord. 05C-12 § 5).

19.07.090 Wildlife habitat conservation areas.

A. Designation. Bald eagles are the only endangered or threatened non-aquatic wildlife species known to inhabit Mercer Island and the [city](#) designates those areas used by these species for nesting, breeding, feeding and survival as [wildlife habitat conservation areas](#). If other non-aquatic species are later added by the State Washington Fish and Wildlife Department as endangered or threatened as set forth in WAC [232-12-011](#) through [232-12-014](#), as amended, the [city](#) council will consider amending this section to add such species. The provisions of this section do not apply to any habitat areas which come under the jurisdiction of the [city's shoreline master program](#). The [city's watercourse, wetland](#) and shoreline regulations in this chapter provide required protections for aquatic species.

B. Establishment of [Buffers](#). For any [wildlife habitat conservation area](#) located within other [critical areas](#) regulated in this chapter, the [buffers](#) for those [critical areas](#) shall apply except where species exist that have been identified by the State Department of Fish and Wildlife as endangered or threatened. If such species are present, the [applicant](#) shall comply with all state or federal laws in connection with any [alteration](#) of the [wildlife habitat conservation area](#) and the [code official](#) may require a [critical area study](#).

C. Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Activities may be further restricted and [buffers](#) may be increased during the specified season. (Ord. 05C-12 § 5).

Attachment 3

Critical Areas Code Update

Scope of Work

(ZTR18-002)

The Washington State Growth Management Act (GMA)¹ requires that the City periodically update its environmentally critical areas (Critical Areas) code to address any changes in Best Available Science (BAS). In addition, to ensure that the City has a consistent set of critical area regulations citywide, the City will update the Mercer Island Shoreline Master Program to incorporate any eventual amendments to the regulations.

Scope of Work

In developing the draft scope of work for Planning Commission and City Council review, the staff has divided the scope of work into tasks: A) “Mandated” by the GMA; B) “Recommended” by the staff to improve implementation; and intended to ensure C) “Community Engagement and Coordination”.

A. Mandated:

1. Identify and designate critical areas based on terms and definitions in state statute (RCW) and regulations (WAC) and local code.
 - a. Provide special consideration to protection / conservation of anadromous fish
2. Adopt amendments resulting from updated Best Available Science (BAS), changes in statute or case law, and the Mercer Island Comprehensive Plan, including:
 - a. Avoidance sequencing (avoid, minimize, mitigate);
 - b. Buffers, setbacks, mitigation / enhancement requirements;
 - c. Clarify and “clean up” of existing standards;
 - d. Review applicable case law and statutory laws including amendments since 2005.
3. Update Shoreline Master Program (SMP) to incorporate any proposed changes to critical area regulations into the SMP.

B. Recommended:

4. Clarify / simplify procedural requirements.
5. Re-evaluate balance of protection of critical areas and allowances for impacts:
 - a. Flexibility for small home additions;
 - b. Flexibility for new development (e.g. new house, buildings, etc);
 - c. Public projects
6. Review regulations around piped streams (watercourses) vs. stormwater conveyance and control facilities.
7. Update mapping of critical areas.

¹ Pursuant to the Revised Code of Washington (RCW) 36.70A.130.

8. Review for consistency with the Sustainability Plan, Luther Burbank Park, Pioneer Park, or other Master Plan documents.

C. Community Engagement and Coordination:

9. Community outreach (Mercer Island at large, impacted properties, multiple media approach)
10. Engage in panel meetings with the Community (expert and Planning Commission panels)
11. Relationship to urban forestry management plan, hazard mitigation plan(s)
12. GIS / mapping (and updates to GIS / mapping)
13. Coordination with other organizations:
 - a. Citizen groups;
 - b. Tribes; and,
 - c. Regional, State, and Federal Agencies.