PLANNING COMMISSION
REGULAR MEETING AGENDA

Wednesday, April 4, 2018
Mercer Island City Hall

CALL TO ORDER & ROLL CALL **6:00 PM**

MINUTES

March 21, 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: CPA17-002 – SJCC / FASPS / Herzl-Ner Tamid

Introduction to the proposed comprehensive plan and code amendment.

Agenda Item #2: ZTR18-004 - Code Compliance Ordinance

Second meeting to review policy options for the proposed Code Compliance Ordinance.

Agenda Item #3: ZTR18-001 – Procedural Code Amendment

Second meeting for high level overview of proposed code amendments to the procedural regulations.

OTHER BUSINESS

Planning Manager report
Planned Absences for Future Meetings
Next Regularly Scheduled Meeting: April 18, 2018 at 6:00PM

ADJOURN

PHONE: 206-275-7729
WEB: www.mercergov.org

PLANNING COMMISSION
MEETING MINUTES
MARCH 21, 2018

CALL TO ORDER:
The Planning Commission was called to order by Chair Daniel Hubbell at 6:03 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, Jennifer Mechem, and Carolyn Boatsman were present. Commissioner Bryan Cairns was absent.

City staff was represented by Evan Maxim, Planning Manager, Andrea Larson, Administrative Assistant, Bio Park, Assistant City Attorney, Alison Van Gorp, Administrative Services Manager, Jimmi Serfling, Code Compliance Officer, and Robin Proebsting, Senior Planner.

Commissioner Boatsman moved approve the February 21, 2018 minutes, Vice Chair Goodman seconded the motion. The minutes were approved 6-0-0.

APPEARANCES:
Dan Thompson, 7265 North Mercer Way. Mr. Thompson spoke regarding Comprehensive Plan amendment Nos. 11, 12, 13, and 14. Mr. Thompson indicated that he does not support these Comprehensive Plan amendments and encouraged the Planning Commission to deny these amendments.

REGULAR BUSINESS:
Agenda Item #1: Code Compliance Ordinance
Alison Van Gorp gave a staff presentation and introduction to the Code Compliance Ordinance. Alison Van Gorp described the current problems with the regulations, and the desire by the community to update these regulations. Jimmi Serfling and Alison Van Gorp answered questions from the commission on the purposed ordinance.
There was consensus from the Commission that the longer schedule was more appropriate. The Commission discussed the substance of the Code Compliance Ordinance. The Commission identified a key question as "how tough should we be?" in terms of requiring code compliance.

Commissioner Pirzio-Biroli indicated that ordinance should also regulate Commercial, Multi use, and City uses; Alison Van Gorp confirmed that these uses were subject to the proposed Code Compliance Ordinance.

Commissioner Boatsman suggested reducing the procedural process before a notice of violation can be issued. Commissioner Boatsman also requested that staff consider allowing anonymous complaints and to clarify how requiring a complainant name affected the process.

The Commission briefly discussed placing a lien on non-compliant properties if civil penalties were unpaid. The Assistant City Attorney, Bio Park, indicated that a lien based upon civil penalties would not be legal; however, it is possible to send civil penalties out for collection.

Commissioner Pirzio-Biroli indicated that if the code compliance provisions are consolidated into a single chapter, there should be appropriate cross references within the code.

Agenda Item #2: ZTR2018-002 Critical Areas

Robin Proebsting gave an expanded presentation of the Critical Areas update intended to provide the Commission with additional background. The commission discussed the Critical Areas update. Robin Proebsting and Evan Maxim answered questions regarding the ordinance.

Commissioner Boatsman indicated that the City should be looking into critical aquafer recharge area protections. Commissioner Boatsman also indicated that Fish and Wildlife Habitat protection is narrowly focused on eagles. Commissioner Boatsman suggested that other wildlife protection should be considered; for example, the Douglas squirrel.

Commissioner Pirzio-Biroli suggested that the City use the STAR rating system during their review of the Critical Areas Code. Commissioner Weinberg requested that the City identify the goal of the update, rather than articulate “don’ts and do’s”.

Commissioner Pirzio-Biroli recommended that the City supplement its protections with language that would encourage critical area protection and enhancement. Vice Chair Goodman suggested identifying alternative standards that would achieve the same goals as prescriptive standards; for example, “are there alternative mitigations that achieve the same protection, or add additional protections?”

Vice Chair Goodman recommended that the Planning Commission review the Critical Areas purpose statement.

Chair Hubbell recommended graphics and illustrations in the code to illustrate the intent of the code standards.

OTHER BUSINESS:

Evan Maxim described the user group process that had been discussed with the commission earlier. A user group meeting will be scheduled in mid to late April. For the community, the builders, and arborists to bring ideas for code amendments, which will be brought back to the Planning Commission.

Evan Maxim provided a quick summary of the council approval of the STAR rating system at the City Council meeting on March 20, 2018. Council direction was to initiate the STAR process.

Commissioner Boatsman questioned if there is a way to get updates on what Council decisions were made regarding comprehensive plan or code amendments. Chair Dan Hubbell requested a standing item on the agenda for Staff Updates.

PLANNED ABSENCES

None

NEXT MEETING:

The next regularly scheduled Planning Commission meeting will be April 4, 2018 at 6:00PM at Mercer Island City Hall.

ADJOURNMENT:

Chair Daniel Hubbell adjourned the meeting at 8:07pm

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

TO: Planning Commission

FROM: Nicole Gaudette, Senior Planner

DATE: April 4, 2018

RE: CPA17-002 Proposed Comprehensive Plan Amendment

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

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

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

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

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

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

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

Concept

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

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

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

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

Next Steps

At the April 4th meeting, staff anticipates that the Planning Commission will:

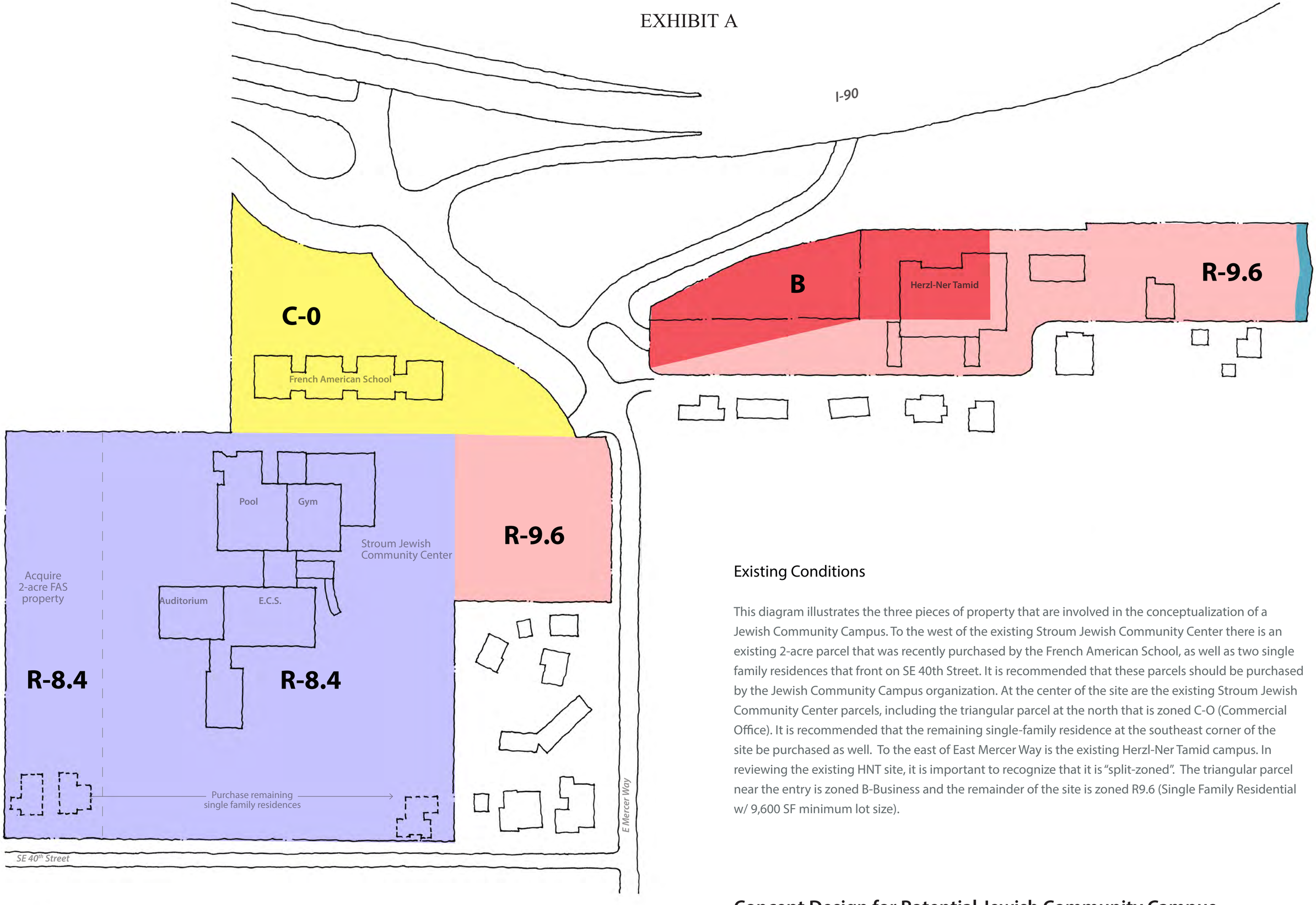
1. Discuss the proposed comprehensive plan amendment taking into consideration the presentation by staff, the Applicant, and any comments from the public.
2. Identify information or aspects of the proposed comprehensive plan amendment that will be necessary to continue forward with the process.
3. Identify any possible changes or items that will need to be addressed prior to adoption of the

comprehensive plan amendments.

Exhibits:

A. Initial Concept Plans
B. Initial Narrative

EXHIBIT A



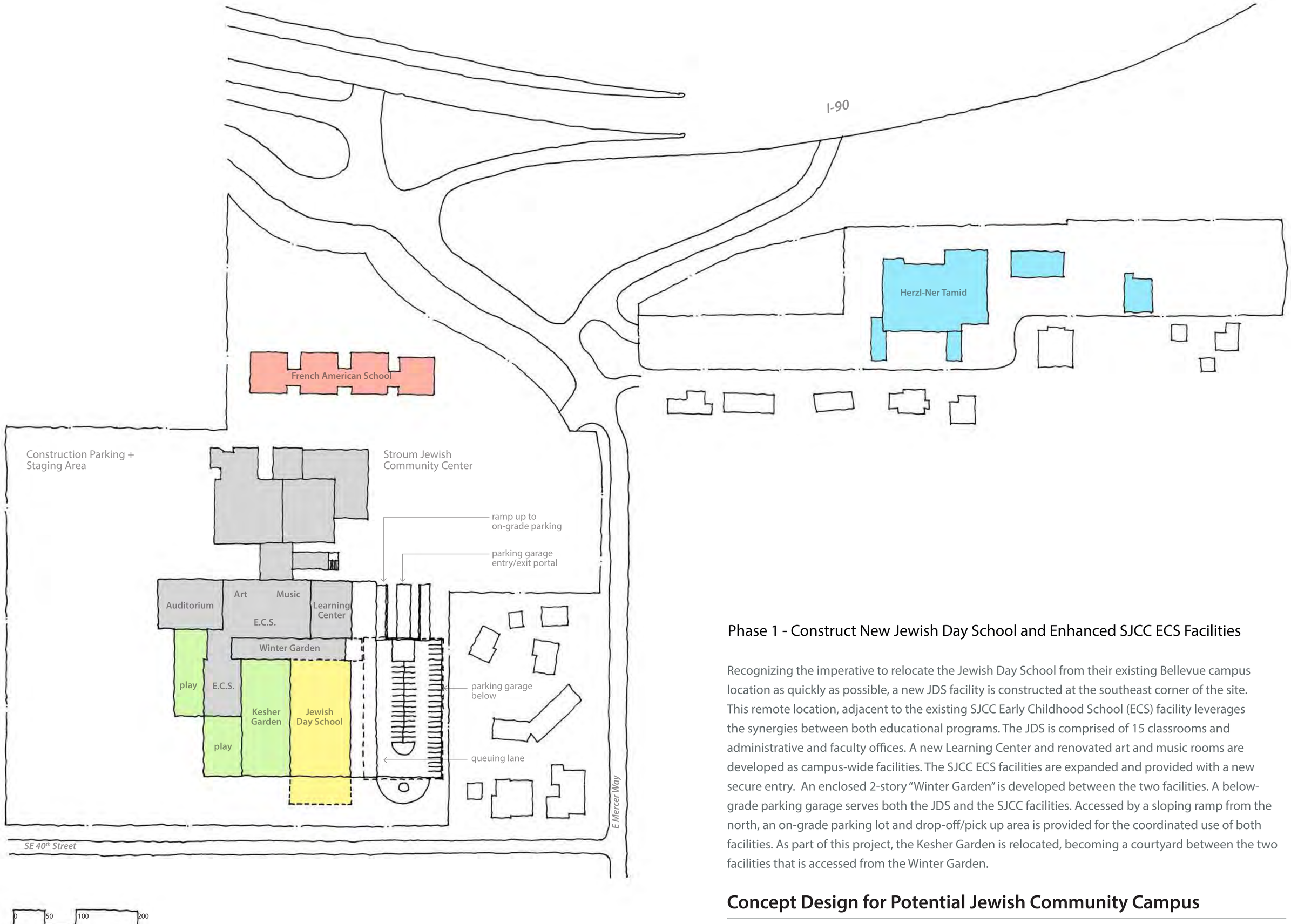
Existing Conditions

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

WEINSTEIN A+U
ARCHITECTS + URBAN DESIGNERS



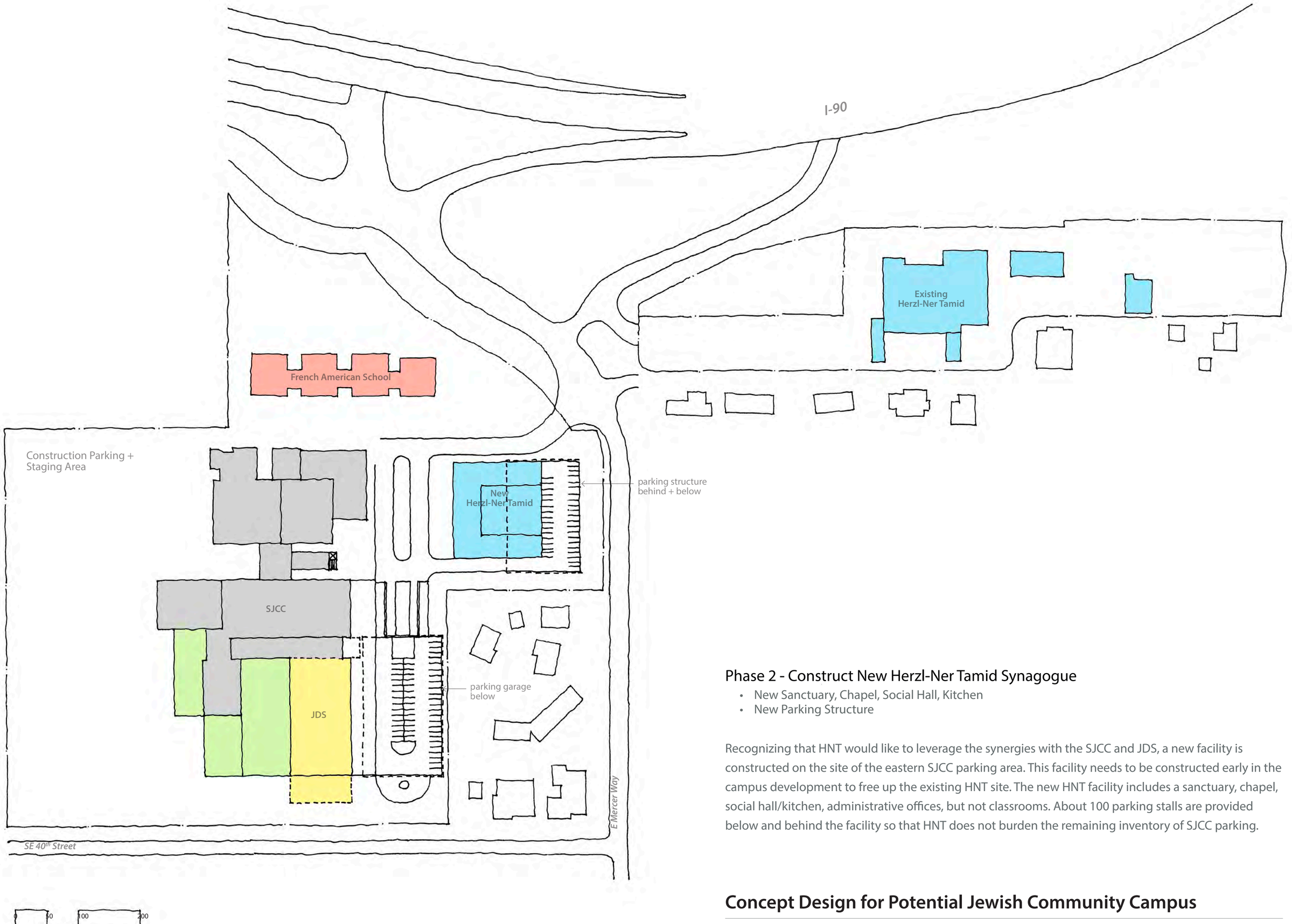
Phase 1 - Construct New Jewish Day School and Enhanced SJCC ECS Facilities

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

WEINSTEIN A+U
ARCHITECTS + URBAN DESIGNERS



Phase 2 - Construct New Herzl-Ner Tamid Synagogue

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

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

WEINSTEIN A+U
ARCHITECTS + URBAN DESIGNERS

Phase 3 - Demolish Existing Herzl-Ner Tamid Synagogue

- Prepare site for new construction

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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Phase 4 - Construct new FAS Facility on HNT Property

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

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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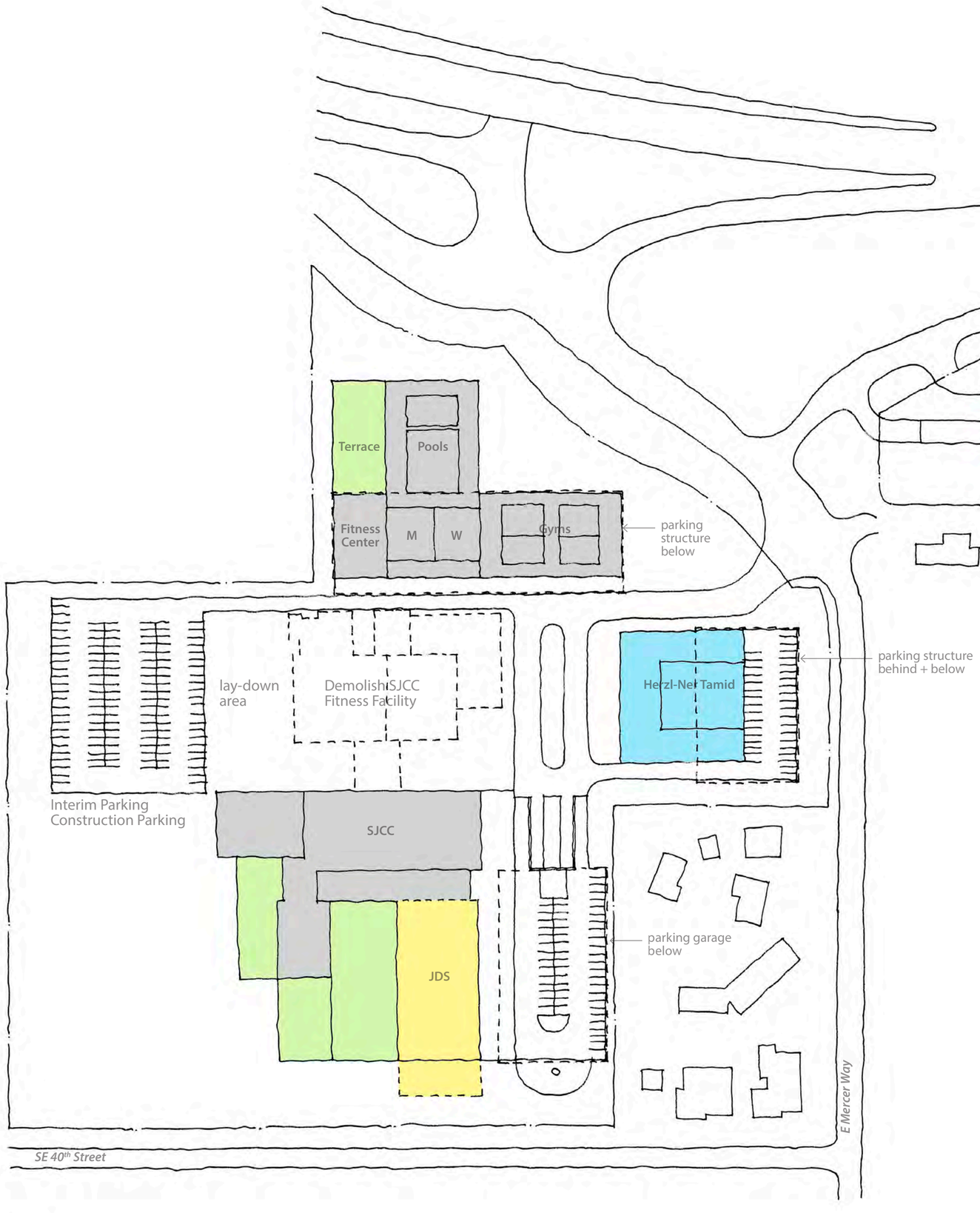

Phase 5 - Construct new SJCC Health & Fitness Facilities

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

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

WEINSTEIN A+U
Architects + Urban Designers

Phase 6 - Construct new SJCC Cultural Facilities

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

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

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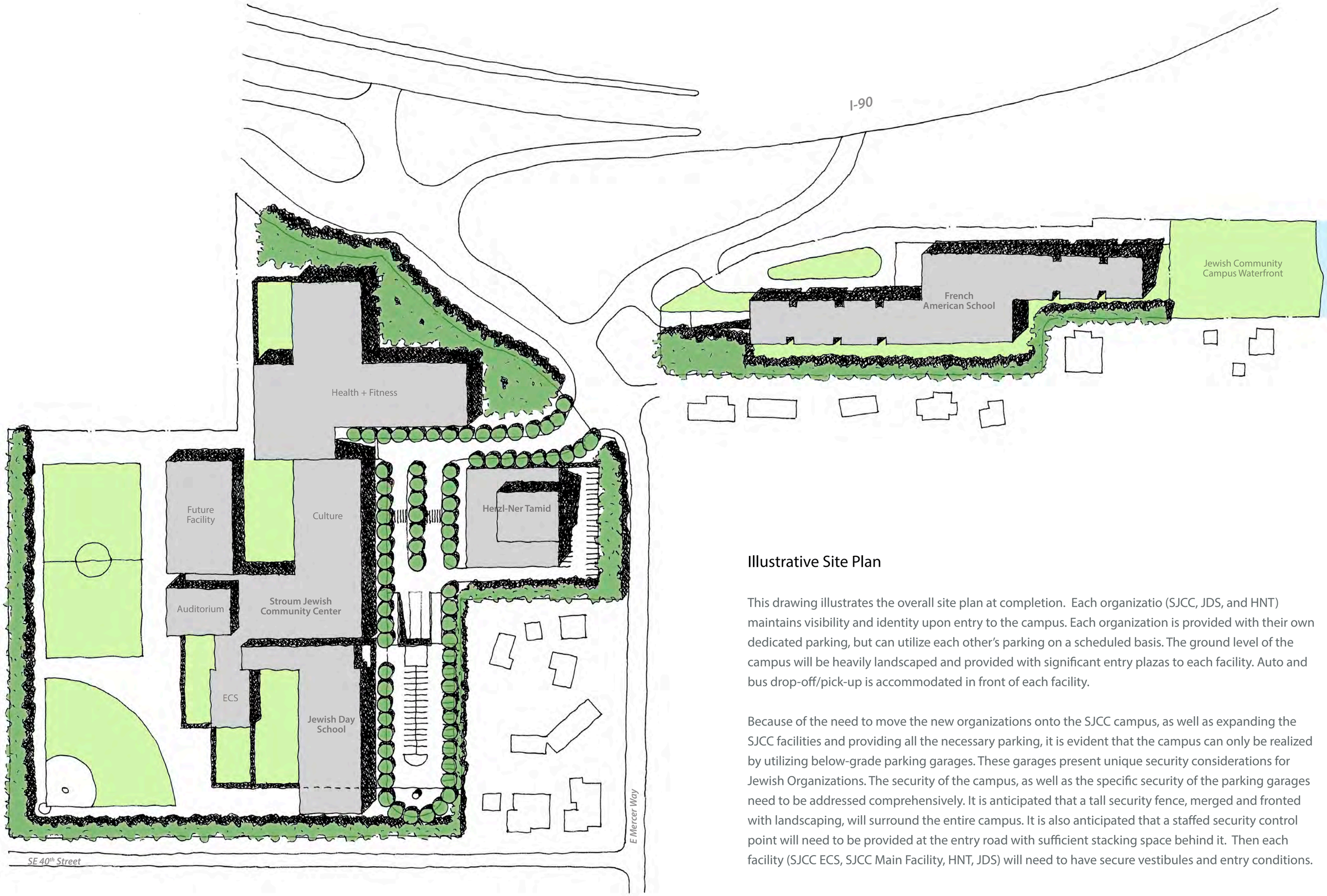

Illustrative Site Plan

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

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

Concept Design for Potential Jewish Community Campus

June 13, 2017 / March 22, 2018

WEINSTEIN A+U
ARCHITECTS + URBAN DESIGNERS

EXHIBIT B

APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT

Proposed Application and Clear Description of Proposal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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: April 4, 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 cooperatively with property owners. It is rare that the City will levy fines or penalties, except in extreme cases. With the adoption of the recent update to the Residential Development Standards, the City has heard from the community that there is a desire to increase the effectiveness and timely resolution of code compliance cases. This code amendment proposes to consolidate, clarify and simplify the code, and create the regulatory tools necessary achieve compliance efficiently and effectively.

Intent

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

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

Scope

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.

General Approach

Consolidate in one code section

The enforcement-related provisions for the nuisance, building and development codes will be consolidated into a new code chapter (Title 6). The existing enforcement-related code sections in MICC 8.24, 19.10.160 and 19.15.030, and elsewhere in the code, would be repealed. The new Title 6 will

include code sections relating to: purpose, definitions, right of entry, code compliance process, regulatory tools (violations, infractions, stop work orders, voluntary correction, abatement, etc.), civil penalties, and appeal processes.

Improve clarity

The new code chapter will describe a clear sequential process to notify responsible parties of violations and work towards compliance. The process will include several paths to attaining compliance (related to the different regulatory tools and incentives, described below) that can be pursued at the discretion of the DSG Director based on the type and severity of the violation.

Simplify language, define terms

The new code chapter will be written in simple, easy to understand language. A new section defining common terms will be added. Staff recommends including definitions for terms like: repeat violations, chronic violators, excessive complaints, and de minimus violations. Defining terms like repeat violation or chronic violators can tie into the civil penalty structure (discussed in further detail, below). Defining terms like excessive complaints and de minimus violations will help staff to clarify administrative procedures and better prioritize the code compliance work load.

Policy Options

The discussion at the April 4 meeting will be focused around the fourth item in the list of intended outcomes for the code amendment: adding regulatory tools to aid in achieving compliance effectively and efficiently. Staff will present options for additional regulatory tools and an incentive to encourage compliance. The goal with adding regulatory tools is to provide a spectrum of consequences that will enable an incremental approach to code compliance as well as the flexibility to match consequences to the severity and magnitude of a violation.

Regulatory Tools and Incentives

The existing code already authorizes several tools, including stop work orders, abatement, civil penalties, infractions and misdemeanors. However, due to the substantial inconsistencies between code sections, the use of these tools is very constrained. For example, nuisance violations can only be given misdemeanor charges, while development code violations can be given infractions, or in the case of tree violations, civil penalties. Staff recommend broadly authorizing a full suite of tools that can be applied at the discretion of the DSG Director.

1. Broaden authorization for civil infractions

Most cities in our region authorize infractions as an enforcement tool. Infractions are a citation, similar to a traffic ticket, and are not considered a criminal offense. Authorizing the use of infractions would enable staff to issue a citation when a property owner does not comply with a correction notice. This tool could be particularly helpful for simple nuisance issues that are not being resolved in a timely manner. For example, if a property owner is regularly running machinery, like a generator, that violates the noise ordinance, or if they have ongoing maintenance issues, such as junk in their yard, an infraction could be issued if the problem is not dealt with during the timeline established in the Notice of Correction.

2. Broaden use of civil penalties

Civil penalties are a fine that can be issued when a property owner does not comply with the requirements of a Notice of Violation and are typically used to address larger violations; for example, work along the shoreline or in Lake Washington, may be subject to civil penalties. Thought should be put into the penalty structure and size. The penalties need to be large enough to encourage prompt action from property owners that are in violation.

3. Add penalties specific to certain types of violations

Some cities in our area specify penalties for certain types of violations. For example, the triple damages penalty currently proscribed in the tree code could be maintained. In addition, staff recommends adding similar large penalties for critical areas violations, environmental/ecological damage, storm water violations, ADA violations, and any other issues that are a very high priority for compliance. For violations like sign violations and property maintenance or nuisance issues, more modest penalties could be used.

4. Add escalation of penalties for repeat violations or noncompliance

Along with specifying penalties for some violations, penalties could be assessed for non-compliance under certain circumstances, or penalties could escalate for repeat or ongoing violations. Sammamish issues noncompliance penalties that accrue daily for failure to comply with the conditions of a voluntary compliance agreement (VCA, described below) or a stop work order. Other cities escalate penalties substantially for repeat violations of certain code sections. For example, in Issaquah, violations of the storm water code receive a penalty of $250 for a first offense, $1000 for a second offense and $10,000 for a third offense, within a three-year period.

5. Authorize other compliance tools

When the above tools fail to achieve compliance, other tools can be helpful for gaining compliance longer term. For example, a hold could be placed on future permits so that no land use or building permits can be issued until the code violation is resolved. Another option is placing a notice on title so that when a property is listed for sale, a title search would alert potential buyers to the open code violation.

6. Voluntary compliance agreements

Many cities in this region use Voluntary Compliance Agreements (VCA) as an incentive for gaining compliance. A VCA is a written contract between the person responsible for the violation and the City, where the person agrees to abate the violation within a specified time frame. The corrective actions are spelled out and the person responsible authorizes right of entry, waives their right to appeal and agrees to penalties that will be assessed by the City if the terms of the VCA are not met. As the name implies, VCAs are a voluntary, optional tool – the City can choose when and how to offer a VCA and the property owner has the option to enter a VCA or not. VCAs are final binding agreements and are not subject to appeal.

Staff contacted code compliance staff in Sammamish, Burien and Covington to better understand the effectiveness of this tool in practice. All three cities noted significant limitations to the effectiveness of this tool, specifically that it can only work with responsible parties that are engaging in the process. When property owners are non-responsive to City notices and penalties, the option of a VCA is not

usually enough to get them to engage. Sammamish and Burien staff offered useful suggestions on how to structure code language to make VCAs a more effective tool. These recommendations include:

- Offer VCAs as an option at Notice of Violation – the City can waive the civil penalty if the responsible person agrees to enter a VCA
- VCAs must be coupled with significant consequences; if a potential penalty is high enough, the VCA will be an enticing option
- Only offer VCAs when the corrective actions have a clear timeline and limited term, with clear consequences for relapse or a new violation. Don't use VCAs for issues that require long term monitoring (e.g. 5 year vegetation maintenance period) as it can be very challenging to track compliance and impose penalties if VCA terms are not met.
- Careful documentation of times lines, extensions and date changes is necessary.

Action

At the April 4, 2018 meeting, staff will seek guidance from the Planning Commission regarding the policy options covered in this memo. Input is needed on how far the City should shift the needle on the spectrum from a more collaborative, voluntary compliance approach, to a more punitive, penalty-based approach. How far should the City go with adding penalties and fines? How big should those fines be? Should repeat violations or chronic violators be subject to more punitive measures? Should certain types of violations (such as life safety or environmental issues) receive harsher consequences?

Next Steps

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. At the May 2 meeting, staff would like feedback and direction from the commission regarding the draft code. The draft code will be revised based on the Commission's feedback 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

Attachments

Attachment 1: Example code language from other cities (Sammamish, Issaquah, Burien)

Chapter 1.15
CODE ENFORCEMENT

Sections:

1.15.010 Purpose.
1.15.020 Definitions.
1.15.030 Conflicting code provisions.
1.15.040 Joint and several responsibility and liability.
1.15.050 Computation of time.
1.15.060 Interference with code enforcement unlawful.
1.15.070 Service of documents.
1.15.080 Violations.
1.15.090 Infractions.
1.15.100 Voluntary correction.
1.15.110 Stop work order.
1.15.120 Notice of civil violation.
1.15.130 Response to notice of civil violation.
1.15.140 Scheduling of hearing to contest or mitigate – Correction prior to hearing.
1.15.150 Contested hearing – Procedure.
1.15.160 Mitigation hearing – Procedure.
1.15.170 Decision of hearing examiner.
1.15.180 Failure to appear – Default order.
1.15.190 Judicial review.
1.15.200 Recovery of penalties and costs.
1.15.210 Abatement.
1.15.220 Right of entry.

1.15.010 Purpose.

The purpose of this chapter is to establish an efficient system of enforcing city regulations that will enable violations to be promptly resolved whenever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. It is the express and specific purpose and intent of this chapter to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. It is also the express and specific purpose and intent of this chapter that no provision or term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers or employees. Nothing contained in this chapter is intended or shall be construed to create or form the basis of any liability on the part of the city, its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the city, its officers, employees or agents. [Ord. 561 § 1, 2012]

1.15.020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or they are more specifically defined in a subchapter or section. Terms not defined shall be given their usual meaning.

“Abate” means to act to stop an activity and/or to repair, replace, remove, or otherwise remedy a condition, when such activity or condition constitutes a violation of this code or a city regulation, by such means and in such a manner and to such an extent as the applicable department director, enforcement officer, or other authorized

official determines is necessary in the interest of the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

“Act” means doing or performing something.

“City” means the city of Burien, Washington.

“Civil penalty” or “monetary penalty,” as used in any code, ordinance or regulation of the city, shall be deemed to have the same meanings as used in this chapter.

“Code” means the Burien Municipal Code.

“Code enforcement officer” or “enforcement officer” means the city’s code enforcement officer(s); the building official; building inspectors; construction inspectors; the fire marshal or his or her designee; fire inspectors; the chief of the Burien police department or his or her designee; the director of the community development department or his or her designee; the director of the public works department or his or her designee; or any other person or persons assigned or directed by the city manager or his or her designee to enforce the regulations subject to the enforcement and penalty provisions of this chapter.

“Correction notice” means a written statement issued by a code enforcement officer, notifying a person that property or work under his or her control is in violation of one or more regulations and informing such person that a notice of civil violation may be issued and/or an infraction or criminal charges filed if the violations are not abated.

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

“Day” or “days” means one or more calendar days, unless expressly stated otherwise in a given section or subsection. In addition, any portion of a 24-hour day shall constitute a full calendar day.

“Hearing examiner” means the Burien hearing examiner and the office thereof, as established pursuant to Chapter 2.15 BMC.

“Knowledge” means being aware of a fact or circumstance or having information which would lead a reasonable person in the same situation to believe a fact or circumstance exists. A person acts knowingly or with knowledge when that person either is aware of one or more facts, circumstances, or results, which are described by an ordinance defining an offense, or has information which would lead a reasonable person in the same situation to believe that facts, circumstances, or results exist which are described by an ordinance defining an offense.

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

“Notice of violation” or “notice of civil violation” means a written statement, issued by a code enforcement officer, which contains the information required under BMC 1.15.120 and which notifies a person that he or she is responsible for one or more civil violations of the Burien Municipal Code.

“Omission” means a failure to act.

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

“Person” means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because “person” shall include both human beings and organizational entities, any of the following pronouns may be used to describe a person: he, she, or it.

“Person responsible for the violation” or “violator” means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; a mortgagee that has filed an action in foreclosure on the property that is subject to the regulation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the regulation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least 90 days; or any person who created, caused, participated in, or has allowed a violation to occur.

“Regulation” means and includes any of the following, as now enacted or hereafter amended:

(a) All Burien Municipal Code provisions;

(b) All standards, regulations, and procedures adopted by the city pursuant to a city ordinance;

(c) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement entered into with the city, pursuant to code provisions; and

(d) A written order of the hearing examiner that has been served as provided in this chapter.

“Repeat violation” means, as evidenced by the prior issuance of a correction notice or a notice of violation, a subsequent violation that has occurred on the same property or that has been committed by a person responsible for the prior violation elsewhere within the city of Burien. To constitute a repeat violation, the violation need not be the same violation as the prior violation. The violation of a written order of the hearing examiner that has been served as provided in this chapter shall constitute a repeat violation.

“Right-of-way” means land owned, dedicated or conveyed to the public or a unit of government, used primarily for the movement of vehicles or pedestrians and providing for access to adjacent parcels, with the secondary purpose of providing space for utility lines and appurtenances and other devices and facilities benefiting the public. “Right-of-way” includes, but is not limited to, any street, easement, sidewalk, or portion thereof under the jurisdiction of the city.

“Violation” or “civil violation” or “civil infraction” means an act or omission contrary to a regulation as defined in this section. A violation continues to exist until abated to the satisfaction of the city, with each day or portion thereof in which the violation continues constituting a separate violation. [Ord. 561 § 1, 2012]

1.15.030 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the Burien Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation. In the event of a conflict between this chapter and any other provision of this code or city ordinance providing for a civil penalty, the more specific provision shall control. [Ord. 561 § 1, 2012]

1.15.040 Joint and several responsibility and liability .

Responsibility for violations of the codes enforced under this chapter is joint and several, both as to duty to correct and to payment of monetary penalties and costs, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation. [Ord. 561 § 1, 2012]

1.15.050 Computation of time.

In computing any period of time prescribed or allowed by this code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. [Ord. 561 § 1, 2012]

1.15.060 Interference with code enforcement unlawful.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve a notice of violation, stop work order, or emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation shall be guilty of a gross misdemeanor. [Ord. 561 § 1, 2012]

1.15.070 Service of documents.

(1) Methods of Service. For purposes of this chapter, service of documents related to code enforcement, such as correction notices, notices of civil violation, stop work orders, etc. (hereinafter “document”), shall be accomplished by one of the following methods; provided, that civil infractions shall be served as provided in Chapter 7.80 RCW and criminal misdemeanors and gross misdemeanors shall be served as provided by applicable law:

(a) “Personal service” is accomplished by handing the document to the person subject to the document or leaving it at his or her last known dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or leaving it at his or her office or place of employment with a person in charge thereof. Personal service may also be accomplished by the hearing examiner or his or her assistant handing any order, ruling, decision, or other document to a person prior to, during, or after a hearing.

(b) “Service by mail” is accomplished by sending the document by regular first class mail to the last known address of the person subject to the document. The last known address shall be an address provided to the city by the person to whom the document is directed. If an address has not been provided to the city, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, as reflected on the most recent equalized tax assessment roll of the county assessor or the taxpayer address appearing for the property on the official property tax information website for King County; the address appearing in any database used for the payment of utilities for the property at which the violations are occurring; or the address of the person to whom the documents are being sent that appears in the Washington State Department of Licensing database.

(c) “Service by posting” is accomplished by affixing a copy of the document in a conspicuous place on the subject property or structure, or as near to the affected property or structure as feasible, with at least one copy of such document placed at an entryway to the property or structure if an entryway exists.

(d) “Service by publication” is accomplished by publishing the document as set forth in RCW 4.28.100 and 4.28.110, as currently enacted or hereafter amended.

(2) Service – When Complete. If service is accomplished by personal service, service shall be deemed complete immediately. If service is accomplished by mail, service shall be deemed complete upon the third day following which the document is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in

which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day. If service is accomplished by posting, service shall be deemed complete upon the fourteenth day following the day upon which the document is posted. If service is accomplished by publication, service shall be deemed complete upon the final publication of the document as set forth in RCW 4.28.110.

(3) Proof of Service – Due Diligence. Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service and the manner by which service was made. If service was made solely by posting or publication, the proof of service shall include a statement as to what steps were used in attempting to serve personally and by mail the person at whom service of the document is directed. If service was made by posting, a photograph of the posting may be taken and retained by the city as documentation.

(4) Additional Proof of Service Not Necessary. No additional proof of service beyond the requirements in this chapter shall be required by the hearing examiner or other entity. Any failure of the person to whom a document is directed to observe a document served by posting or publication shall not invalidate service made in compliance with this section, nor shall it invalidate the document. [Ord. 561 § 1, 2012]

1.15.080 Violations.

(1) The violation of any regulation shall be unlawful. Violations may be enforced by issuing notices of violation and, if necessary, by filing civil infractions. In addition, any violation of this code shall constitute a misdemeanor, unless otherwise designated as a gross misdemeanor, and the city shall have discretionary authority to enforce a violation as either a civil infraction or civil violation pursuant to this chapter or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than 90 days or by a fine in an amount fixed by the court of not more than $1,000 or by both such imprisonment and fine. A gross misdemeanor is punishable by a fine of not more than $5,000 or by imprisonment for not more than 12 months or by both such fine and imprisonment.

(2) Each day during any portion of which a violation of this code occurs or continues is a separate offense.

(3) Civil enforcement of the provisions of this code or the terms and conditions of any permit or approval issued pursuant to this code shall be governed by this chapter unless other more specific provisions apply.

(4) Code enforcement officers are authorized to enforce the code using the provisions and procedures of this chapter; provided, however, that enforcement under this chapter is in addition to, and does not preclude or limit, any other forms of enforcement available to the city including, but not limited to, criminal proceedings or sanctions, nuisance and injunction actions, rights to file and enforce liens, or other civil or equitable actions to abate, discontinue, correct, or discourage unlawful acts in violation of this code.

(5) Nothing in this chapter or in other chapters of the Burien Municipal Code shall prevent code enforcement officers or any other officers of the city of Burien or other governmental unit from taking any other action, summary or otherwise, necessary to eliminate or minimize an imminent danger to the health or safety of any person or property. The city's costs of abating any such nuisance or endangerment summarily or otherwise abated shall be recoverable under this chapter as well as in the same manner and to the same extent as costs of abating nuisances or endangerment under any other provisions of this code, in addition to or as an alternative to any other rights or remedies the city may possess. [Ord. 561 § 1, 2012]

1.15.090 Infractions.

(1) When the city determines that it is appropriate to enforce violations of this code as civil infractions rather than civil or criminal violations as otherwise provided in this chapter, or if the city is unable to obtain payment of civil fines pursuant to a notice of civil violation, enforcement officers shall file such infractions in King County district

court and shall follow the provisions of Chapter 7.80 RCW. First offenses shall be class 2 civil infractions, for which the maximum penalty and the default amount shall be $125.00, and second or subsequent violations shall be class 1 civil infractions, for which the maximum penalty and the default amount shall be $250.00, not including fees, costs, and assessments.

(2) Chapter 7.80 RCW is hereby adopted by reference to the extent that it is not inconsistent with explicit provisions of the Burien Municipal Code, including this section. [Ord. 561 § 1, 2012]

1.15.100 Voluntary correction.

(1) General. When the city determines that a violation has occurred, a code enforcement officer may attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction. This may be done orally and/or in writing. The city may also enter into a written voluntary correction agreement with any person causing, allowing, or participating in the violation, including the property owner. A voluntary correction agreement may be instead of, in lieu of, or in conjunction with a notice of violation. Voluntary correction efforts need not be made where the nature of the violation creates a risk of imminent harm to public health or safety or where it is a repeat violation.

(2) Contents of Written Voluntary Correction Agreement. A voluntary correction agreement is a contract between the city and the person responsible for the violation, in which the responsible person agrees to abate the violation within a specified time and according to specified conditions. A voluntary correction agreement will generally contain the following information:

(a) The name and address of a person responsible for the violation;

(b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

(c) A description of the violation and a reference to the code provisions that have been violated;

(d) A statement indicating what corrective actions are required and a correction deadline stating the date by which the corrective actions must be completed to the satisfaction of the code enforcement officer in order for the violator to avoid the issuance of a notice of violation;

(e) An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;

(f) An agreement by the person responsible for the violation and/or the owner(s) of property on which the violation has occurred or is occurring that, if the terms of the voluntary correction agreement are not met, the city may enter the property, abate the violation, and recover its costs and expenses as provided in this chapter;

(g) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the hearing examiner under this chapter regarding the violation, any penalty, and/or required corrective action; and

(h) A statement indicating that, pursuant to BMC 1.15.120, a notice of civil violation may be issued with each violation constituting a separate offense subject to civil penalties, or, alternatively, civil infraction or criminal charges may be filed.

(3) Extension of Voluntary Correction Period or Modification of Required Actions. An extension of the deadline for voluntary correction, or a modification of any required corrective action, may be granted by the code enforcement officer if the person responsible for the violation has, in the opinion of the code enforcement officer, shown due

diligence or made substantial progress in correcting the violation but unforeseen circumstances have rendered correction unattainable within the original deadline.

(4) Revocation of Deadline for Compliance. The original deadline for compliance, or any extension for compliance previously granted by the code enforcement officer, may be revoked and immediate compliance required where, in the opinion of the code enforcement officer, circumstances make immediate correction necessary to avoid an imminent risk of injury to persons or property.

(5) Failure to Comply with Voluntary Correction Agreement.

(a) Abatement by the City. In addition to any other remedy provided for in this chapter, the city may abate the violation in accordance with BMC 1.15.210, if the terms of the voluntary correction agreement are not met.

(b) Penalties and Costs. If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be issued a notice of civil violation and assessed a monetary penalty in accordance with BMC 1.15.120, plus all costs and expenses of abatement. Alternatively, the city may file a civil infraction or criminal charges. [Ord. 561 § 1, 2012]

1.15.110 Stop work order .

(1) Issuance. Whenever a code enforcement officer determines that any work, use, activity, or conduct is a violation under the Burien Municipal Code and creates an imminent threat of injury to the health, safety, or welfare of any member of the public or will damage or injure, or exacerbate damage or injury already caused to, any property, the code enforcement officer may issue a stop work order directing any person causing, allowing, or participating in the offending conduct to cease such use, activity or conduct immediately.

(2) Service of Order. Service of the stop work order shall generally be accomplished as set forth in BMC 1.15.070(1)(c).

(3) The stop work order shall state the reasons for the order and may be appended to, or incorporate by reference, a notice of violation. The stop work order shall take effect immediately upon service and may be appealed under the procedures set forth in this chapter. During any such appeal, the stop work order shall remain in effect.

(4) Effect of a Stop Work Order. When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful for any person to whom the order is directed or any person with actual or constructive knowledge of the order to conduct the activity or perform the work covered by the order, even if the order has been appealed, until the code enforcement officer has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed. In addition, a monetary penalty shall accrue for each day or portion thereof that a violation of a stop work order occurs, in the same amounts as under BMC 1.15.120. In addition to such criminal or monetary penalties, the city may enforce a stop work order pursuant to any other provision of this chapter and enforce it in superior court.

(5) Removal of a Stop Work Order. When a stop work order has been posted in conformity with the requirements of this chapter, removal of such order without the authorization of the city, or the hearing examiner if the matter has been heard by the hearing examiner, is unlawful and a violation. [Ord. 561 § 1, 2012]

1.15.120 Notice of civil violation.

(1) Issuance of Notice of Violation. When the city determines that a violation has occurred or is occurring, the code enforcement officer may issue a notice of civil violation to any person responsible for the violation.

(2) Monetary Penalty. A monetary penalty shall accrue for each day or portion thereof that each violation continues beyond the date set in a notice of civil violation or any hearing examiner's decision. Unless a different penalty amount for a given violation is expressly authorized or required by a more specific city code provision, the maximum penalty and the default amount shall be $125.00 for the first violation and $250.00 for a second or subsequent violation of the same nature or a continuing violation past a deadline set by a notice of violation, not including fees, costs, and assessments. The city may waive the monetary penalty, if corrective action is completed by the date specified in the notice of civil violation or a voluntary correction agreement. The city shall have the discretion to impose penalties in an amount lower than those shown above.

(3) Contents of Notice. The notice of civil violation shall include the following:

(a) The name and address of a person responsible for the violation;

(b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

(c) A description of the violation and a reference to the provision violated and a description of what must be done to correct the violation;

(d) A statement indicating that the violator must respond to the notice of civil violation within 14 days of the date of issuance, or within such other time period as specified in the notice of civil violation, by doing one of the following:

(i) Paying any fine and correcting the violation;

(ii) Entering into and complying with a voluntary correction agreement with the city;

(iii) Requesting a mitigation hearing and correcting the violation; or

(iv) Requesting a hearing to contest the violation;

(e) A statement indicating that failure to respond to the notice of violation, or failure to attend any hearing, shall result in the violation being deemed committed without requiring further action by the city, and that the monetary penalty specified in the notice shall be due to the city by the violator and further accrue as provided; and

(f) A statement indicating that payment of a monetary penalty does not relieve the person or entity named in the notice of civil violation of the duty to abate the violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal charges, with additional civil and/or criminal penalties, including the payment of costs for any abatement action taken by the city.

(4) Extension. Upon written request received prior to the correction date or time, the code enforcement officer may extend the date set for correction for good cause or in order to accommodate a violation correction agreement. The code enforcement officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as a good cause.

(5) Transfer of Ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a notice of civil violation to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of civil violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of civil violation issued by the code enforcement officer and shall furnish to the code enforcement officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of civil violation and fully accepting the responsibility without condition for making

the corrections or repairs required by such compliance order or notice of violation. This provision shall not apply to the following types of transfers of real property: a gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor; a transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership; a transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and a tax deferred exchange to an intermediary or facilitator. [Ord. 561 § 1, 2012]

1.15.130 Response to notice of civil violation.

(1) Generally. A person who has been served with a notice of civil violation must respond to the notice within 14 days of the date the notice is served or within such other time period as specified in the notice of civil violation. A person may respond to the notice of civil violation by:

(a) Paying the amount of the monetary penalty as set forth in the notice of violation. Partial payment or payment using a check that is rejected for insufficient funds shall not be deemed payment under this subsection. Payment of the fine shall not relieve the person or entity responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

(b) Entering into a voluntary correction agreement with the city.

(c) Contesting the notice of civil violation by requesting a contested hearing in writing and sending the request to the city as described in subsection (2) of this section.

(d) Seeking to mitigate the monetary penalty by requesting a mitigation hearing to explain the circumstances surrounding the violation. The request to mitigate must be made in writing and sent to the city with a $100.00 filing fee as described in subsection (2) of this section. Requesting to mitigate the penalty shall not relieve the person responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

(2) Method of Response. The person or entity to whom a notice of civil violation has been issued may respond by mailing or hand-delivering the response to the city clerk. Mailed responses must be received no later than the fourteenth day from the date of service of the notice of violation or such other day as specified in the notice of violation. Hand-delivered responses must be brought to the city clerk no later than 4:30 p.m. on the fourteenth day after service or such other day as specified in the notice of violation; provided, that where the fourteenth or other specified day falls on a weekend or holiday, the deadline shall be extended to the next regular business day. Telephone, facsimile, or email responses shall not satisfy the requirements of this section. The response deadline may be stayed for a time certain by the code enforcement officer, if the responsible person or entity is engaged in active discussions with the code enforcement officer and the code enforcement officer determines there is a reasonable probability that such discussions may result in compliance.

(3) If the person to whom the notice of civil violation is issued fails to respond as required in the notice of civil violation and this chapter, the violation(s) shall be deemed committed without requiring further action by the city or the city's hearing examiner, and the person to whom the notice of civil violation was issued shall owe the monetary penalty indicated. [Ord. 561 § 1, 2012]

1.15.140 Scheduling of hearing to contest or mitigate – Correct ion prior to hearing.

(1) Notice and Scheduling of Hearing. Upon the timely filing of a request for a hearing to contest a violation or to mitigate the penalty, the matter shall be scheduled to be heard at the next available appearance by the hearing examiner that is a minimum of 14 but no later than 60 calendar days after the date the request was received by the city. Notice of the hearing date and time shall be served by regular first class mail to the address of the party

who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or the hearing examiner.

(2) Correction of Violation Prior to Hearing. The hearing may be cancelled and the party requesting the hearing need not appear if, at least two business days prior to the scheduled hearing, the code enforcement officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. Where the scheduled hearing involves a repeat violation as defined in this chapter, the hearing shall not be cancelled unless the new violation has been corrected or abated to the satisfaction of the code enforcement officer and the monetary penalty and costs for the new violation(s) and any monetary penalty and costs owing for the previous violation(s) have been paid in full. [Ord. 561 § 1, 2012]

1.15.150 Contested hearing – Procedure.

The hearing examiner shall conduct a contested violation hearing when such hearing is properly and timely requested. The city and the person or entity to whom the notice of civil violation was issued may participate in the hearing, and each party or its legal representative may call witnesses and present evidence and rebuttal, subject to the following:

(1) Where not in conflict with a more specific provision of this chapter, hearings shall be conducted in accordance with Chapter 2.15 BMC.

(2) The city shall have the burden of proving by a preponderance of the evidence that a violation has occurred.

(3) The parties are responsible for securing the appearance of any witnesses they may wish to call. Neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s) or seeking to mitigate the penalties.

(4) Formal rules of evidence shall not apply to any such hearing, and the hearing examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; provided, that the hearing examiner shall determine the weight to be assigned to any evidence presented.

(5) Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; provided, that the parties are free to argue the weight that should be assigned by the hearing examiner to any evidence submitted. [Ord. 561 § 1, 2012]

1.15.160 Mitigation hearing – Procedure.

The hearing examiner shall conduct a hearing to mitigate the penalty on a violation when such hearing is properly and timely requested; provided, that in the event a person has requested a hearing to contest a violation and prior to the start of the hearing indicates to the hearing examiner a desire to mitigate rather than contest, the examiner shall permit the person to seek mitigation of the monetary penalty. The mitigation hearing shall be conducted according to the following general procedures:

(1) The person responsible for the violation shall be given the opportunity to explain or provide evidence regarding the nature of the violation, why the violation exists, why the violation has not been abated or corrected, and any other information the hearing examiner determines is relevant.

(2) The city shall be given the opportunity, at its discretion, to provide evidence of the nature of the violation, evidence to rebut assertions made by any party, and any other information or evidence the hearing examiner deems to be relevant. [Ord. 561 § 1, 2012]

1.15.170 Decision of hearing examiner .

(1) Contents of Order. Upon the conclusion of a hearing, the hearing examiner may issue an oral decision pending issuance of the written decision. If necessary, the hearing examiner may delay issuing the written order for up to 10 business days following the hearing. In either event, the oral decision and written order shall contain findings and conclusions based on the record, which to the extent applicable includes the following information:

(a) In mitigation hearings a statement indicating that each alleged violation has been found committed, and in contested hearings, for each alleged violation of the city code, a statement indicating whether the violation has been found committed or not committed;

(b) For violations found committed, the monetary penalties and costs being assessed pursuant to this chapter; provided, that where the person has requested to mitigate the monetary penalty, the hearing examiner may reduce the monetary penalty for each violation, but in no case shall the penalty be reduced to an amount less than $100.00 for each violation found committed;

(c) For violations found committed, any required corrective actions and compliance dates;

(d) For violations found committed, a finding that abatement of the violations by the city is authorized, at the expense of the person responsible for the violations; and

(e) A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated as required by the hearing examiner's order.

(2) Notice of Decision. The hearing examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the hearing examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the hearing examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address no later than 10 business days following the hearing. [Ord. 561 § 1, 2012]

1.15.180 Failure to appear – Default order .

If the person who requests a hearing to contest a violation or mitigate the penalty then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this chapter, the hearing examiner shall immediately issue a default order, which finds committed all the violations set forth in the notice of civil violation and which assesses a monetary penalty in the full amount indicated in the notice of violation. In addition, at the request of the city, the hearing examiner shall also impose upon the nonappearing party any costs to the city related to preparation for the hearing. The hearing examiner shall cause a copy of the decision to be served upon the nonappearing party by mailing a copy to the last known address of the nonappearing party within 10 business days of the hearing. Upon the motion of a party, the hearing examiner may rescind a default judgment only upon a showing of good cause to do so and only if such motion has been brought within 30 calendar days of the date of the hearing at which the default judgment was ordered. [Ord. 561 § 1, 2012]

1.15.190 Judicial review .

Judicial review of a decision by the hearing examiner relating to any ordinance regulating the improvement, development, modification, maintenance, or use of real property may be sought by any person aggrieved or adversely affected by the decision, pursuant to the provisions of the Land Use Petition Act, Chapter 36.70C RCW, if applicable, or other applicable authority, if any, if the petition or complaint seeking review is filed and served on all parties within 21 days of the date of the decision. For purposes of this section, "aggrieved or adversely affected" shall have the meaning set forth in RCW 36.70C.060(2). Judicial review of all other decisions may only occur subject to the procedures of Chapter 7.16 RCW. [Ord. 561 § 1, 2012]

1.15.200 Recovery of penalties and costs.

(1) Payment of Monetary Penalties and Costs. 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. The city may incorporate any outstanding penalty or cost into an assessment lien, if the city incurs costs of abating the violation. Any monetary penalty assessed must be paid in full to the city within 30 days from the date of service of an uncontested notice of civil violation or any order of the hearing examiner that assesses monetary penalties.

(2) Recovery of Costs. The city shall bill its costs, including incidental expenses, of pursuing code compliance and/or of abating a violation to the person responsible for the violation and/or against the subject property. Such costs shall become due and payable 30 days after the date of the bill. The term “incidental expenses” shall include, but not be limited to, personnel costs, both direct and indirect, including attorneys’ fees incurred by the city; costs incurred in documenting the violation; the actual expenses and costs to the city in the preparation of notices, specifications and contracts, and in inspecting the work; hauling, storage and disposal expenses; the cost of any required printing and mailing; and interest. The city manager or designee, or the hearing examiner, may in his or her 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 responsible party. Any challenge to the amount of the abatement costs must be made within 14 days of issuance of the bill and shall be heard by the city manager in an informal hearing. The city manager shall make a written determination as to whether or not the city’s costs were accurate and necessary for accomplishing the abatement.

(3) 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. No debt may be assigned to a collection agency until at least 30 calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid. Notice of potential assignment to collections shall be made by regular first class mail to the last known address of the person responsible for the violation; provided, that inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

(4) Assessment Lien. If penalties or costs assessed against a property are not paid within 30 days, the city clerk shall certify to the county treasurer the confirmed amount for assessment on the tax rolls. The county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates as provided in RCW 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the city. The lien shall be of equal rank with the state, county and municipal taxes. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 15 calendar days after the assessment is placed upon the assessment roll. The city attorney may also file a lien for such costs against the real property.

(5) 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. [Ord. 561 § 1, 2012]

1.15.210 Abatement.

(1) Abatement by City. The city may perform the abatement required upon noncompliance with the terms of an unappealed notice of violation, a voluntary correction agreement, or a final order of the hearing examiner. The city may utilize city employees or a private contractor under city direction to accomplish the abatement. The city, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes. Nothing in this chapter shall prohibit the city from pursuing abatement of a violation pursuant to any other laws of the state of Washington or the city.

(2) Summary Abatement. Whenever any violation causes a condition the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs incurred for summary abatement, prior to the time that notice thereof is served on the person responsible for the violation as set forth in BMC 1.15.070.

(3) Obstruction with Work Prohibited. No person shall obstruct, impede or interfere with the city, its employees or agents, or any person who owns or holds any interest or estate in any property in the performance of any necessary act preliminary or incidental to carrying out the requirements of a notice of violation, voluntary correction agreement, or order of the hearing examiner issued pursuant to this chapter. [Ord. 561 § 1, 2012]

1.15.220 Right of entry .

(1) When it is necessary to enforce the provisions of the Burien Municipal Code, or when a code enforcement officer has reasonable cause to believe that there exists in a building or upon a premises a condition that is contrary to or in violation of this code, the code enforcement officer may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code; provided, that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the code enforcement officer shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the code enforcement officer shall have recourse to the remedies provided by law to secure entry.

(2) Posted Property. Where private property is posted with a “No Trespassing” sign and has a gate or chain on private property, or where private property is enclosed by a secured gate or chain (other than by a simple latching or closure device) a city employee shall not make entry beyond areas open to the public without the express permission of the property owner/resident or a court order. No employee shall be required to enter a posted or gated piece of property if the employee feels threatened, intimidated, or otherwise in fear of his or her personal safety.

(3) Employee Identification. City employees shall carry identification cards while on duty. Any employee, when legitimately requested by the public, shall show the requesting party his/her identification card.

(4) Intimidation of Employees. Threats, intimidation, or other violations of public peace directed against an employee engaged in lawful action upon private property are unlawful and may subject that person and the owner of the property, as applicable, to legal action. [Ord. 561 § 1, 2012]

The Burien Municipal Code is current through Ordinance 682, passed February 26, 2018.

Disclaimer: The City Clerk's Office has the official version of the Burien Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Chapter 1.36
CODE ENFORCEMENT

Sections:

1.36.010 Code Enforcement Officer position created – Authority.
1.36.020 Notice of infraction.
1.36.030 Enforcement.
1.36.040 Applicability.
1.36.050 Inspections.

1.36.010 Code Enforcement Officer position created – Authority .

The position of Code Enforcement Officer is established. The Code Enforcement Officer shall be appointed by the Building Official, who shall define the duties of the Code Enforcement Officer. The Code Enforcement Officer shall be authorized to investigate compliance with the City regulations enumerated in IMC 1.36.040 and to take reasonable action to bring about compliance with such regulations, including but not limited to the issuance of notices of infraction in appropriate cases as provided in this chapter. The Code Enforcement Officer shall operate in compliance with a procedure manual which shall elaborate upon but not conflict with the terms of this chapter. (Ord. 2560 § 7 (Exh. A6), 2009; Ord. 1849 § 1, 1990).

1.36.020 Notice of infraction.

A. The Code Enforcement Officer has authority to issue a notice of infraction:

1. When a violation of the City regulations enumerated in IMC 1.36.040 is observed by the Code Enforcement Officer; and

2. When the Code Enforcement Officer has reasonable cause to believe that a violation of City regulations as enumerated in IMC 1.36.040 has occurred.

B. A notice of infraction may be issued by the Code Enforcement Officer to any responsible person, firm, corporation or agent. The notice of infraction shall contain the information required by RCW 7.80.070 as it now exists or may hereafter be amended; provided, the notice of infraction shall also include the following information:

1. A statement indicating which steps are necessary to correct the violation;

2. A statement indicating the time in which the violation is to be corrected; and

3. A statement indicating that failure to comply with the notice may subject the owner or person causing the violation to further civil and criminal penalties.

Provided further, the provisions of this chapter shall supersede and control any conflicting provisions of Chapter 7.80 RCW.

C. A notice of infraction shall be served upon the person to whom it is directed in person, or by mailing a copy of the notice to such person at his/her last known address, or by posting a copy of the notice in a conspicuous place on the affected property or structure, if any. Proof of service shall be made by a written declaration under penalty of perjury by the person serving the notice, declaring the date and time of service and the manner by which service was made. The notice of infraction, along with the declaration, shall be filed with the Clerk of the Issaquah Municipal Court.

D. Upon written request prior to the date upon which the violation is to be corrected, as indicated in subsection (B)(2) of this section, the Code Enforcement Officer may extend the date for compliance for good cause. Good

cause may include substantial completion of the necessary correction(s) or unforeseeable circumstances which render compliance impossible by the date established.

E. The date required for compliance shall be set at the sole discretion of the Code Enforcement Officer. Each day or portion thereof after which compliance is required during which any violation of the provisions set forth in this chapter is committed or permitted shall constitute a separate offense. (Ord. 2560 § 7 (Exh. A6), 2009; Ord. 1849 § 1, 1990).

1.36.030 Enforcement.

A. Civil Infraction. Any person who shall commit any violation of the provisions as set forth in this chapter shall have committed a civil infraction and, upon finding by the Issaquah Municipal Court that such infraction has been committed, shall pay all billable costs, and pay a monetary penalty to the City of Issaquah up to the amounts as set forth on the schedule below:

Title 5 Business Taxes, Licenses and Regulations		
5.02.020	Business license required – Waiver.	$500.00
5.02.080	Ineligible activities.	$500.00
5.14.020(A)	Permit required – Exemptions.	$250.00
Title 8 Health and Safety		
8.04.020(A)	Containers – Required – Specifications (Approved dumpster.)	$250.00
8.04.020(C)	Containers – Required – Specifications (Garbage secured.)	$100.00
8.04.030	Disposing of garbage on public or private property prohibited.	$250.00
8.05.040	Retail carryout bags.	$250.00
8.06.040	Litter in general.	$250.00
8.06.140	Depositing handbills on vacant or uninhabited property.	$75.00
8.16.010	Barring entry after mine operation.	$250.00
8.20.020	Prohibited sex offender residence.	$250.00 per day
Title 9 Criminal Code		
9.25.030	Parks and playfields – Leaving refuse.	$250.00
9.40.050	Nuisance.	
	RCW 9.66.010 Public nuisance.	$250.00

	RCW 9.66.030	Maintaining or permitting nuisance.	$250.00
	RCW 9.66.050	Deposit unwholesome substance.	$500.00
9.80.010	Conduct prohibited.		
	RCW 9.03.010	Abandoning, discarding refrigeration equipment.	$250.00
	RCW 9.03.020	Permitting equipment to remain.	$250.00
	RCW 9.03.040	Keeping or storing equipment for sale.	$250.00
9.80.020	Pollution and smoking.		
	RCW 70.54.010	Polluting water supply.	$500.00
Title 12 Streets, Sidewalks and Public Places			
12.04.030	Permit required/revocation.		$150.00
12.08.030	Maintenance – Responsibility.		$100.00
12.12.020	Permit required – Emergency exception.		$250.00
12.12.045	Conditions of permit.		$250.00
Title 13 Public Services			
13.13.030	Unlawful cross-connection.		$500.00
13.28.025(A)	1. Prohibited discharges (stormwater) – with no previous violations of IMC 13.28.025(A) within prior three years.		$250.00
13.28.025(A)	2. Prohibited discharges (stormwater) – With 1 previous violation of IMC 13.28.025(A) within prior 3 years.		$1,000
13.28.025(A)	3. Prohibited discharges (stormwater) – With 2 or more previous violations of IMC 13.28.025(A) within prior 3 years, or for egregious and willful violations.		$10,000

13.28.090(B)	1. Failure to maintain or repair drainage facility – with no previous violations of IMC 13.28.090(B) within prior 3 years.	$100.00
13.28.090(B)	2. Failure to maintain or repair drainage facility – with 1 or more previous violations of IMC 13.28.090(B) within prior 3 years.	$250.00
13.36.020	Prohibited discharges (sewer). (Subsections (A) through (T).)	$500.00
Title 15 Signs		
15.08.010	Permit – Required.	$100.00
15.10.010	Sale of lots; Subdivision houses or units in a PUD.	$50.00
15.10.030(A)	Wall signs (Percentage.)	$50.00
15.10.050	Ground mount and pole signs.	$50.00
15.10.060	Gasoline price signs.	$50.00
15.10.080	Grand opening events.	$50.00
15.14.010	Area and height limit.	$50.00
15.14.020	Political candidates or issues.	$50.00
15.14.025	Temporary signs for nonprofit organizations.	$50.00
15.14.030	Real estate signs.	$50.00
15.14.040	Location.	$50.00
15.14.050	Time limit generally.	$50.00
15.14.060(A)	Outdoor commercial signs. (Temp. outdoor sign – permit.)	$100.00
15.14.060(B)	Outdoor commercial signs. (Temp. outdoor sign – wall sign.)	$50.00
15.14.060(C)	Outdoor commercial signs. (Temp. outdoor sign – location.)	$50.00
15.14.060(D)	Outdoor commercial signs. (Temp. outdoor sign – number.)	$50.00
15.14.060(E)	Outdoor commercial signs. (Temp. outdoor sign – sign allowance.)	$50.00

15.14.060(F)	Outdoor commercial signs. (Temp. outdoor sign – display period.)	$50.00
15.14.060(G)	Outdoor commercial signs. (Temp. outdoor sign – allowed percentage.)	$50.00
15.14.070(B)	Indoor commercial signs. (Temp. indoor sign – location – principal frontage street.)	$50.00
15.14.070(C)	Indoor commercial signs. (Temp. indoor sign – window percentage.)	$50.00
15.14.070(D)	Indoor commercial signs. (Temp. indoor sign – location consolidation.)	$50.00
15.16.030	No sign on public rights-of-way.	$50.00
15.18.010(A)	Prohibited signs and devices. (Blinking lights.)	$50.00
15.18.010(B)	Prohibited signs and devices. (Direction of beam – limitations.)	$50.00
15.18.010(C)	Prohibited signs and devices. (Projecting.)	$50.00
15.18.010(D)	Prohibited signs and devices. (Roof sign.)	$50.00
15.18.010(E)	Prohibited signs and devices. (Strings of pennants, balloons, banners, posters, ribbons.)	$50.00
15.18.010(F)	Prohibited signs and devices. (Imitate traffic control device.)	$100.00
15.18.010(G)	Prohibited signs and devices. (Detract from traffic control device.)	$100.00
15.18.010(H)	Prohibited signs and devices. (Obscurement of vision.)	$100.00
15.18.010(I)	Prohibited signs and devices. (On property other than business property.)	$50.00
15.18.010(J)	Prohibited signs and devices. (Attached to poles, trees, rocks or other natural features.)	$100.00

15.18.010(K)	Prohibited signs and devices. (Rotating signs.)	$50.00
15.18.010(L)	Prohibited signs and devices. (Franchise signs.)	$50.00
15.18.010(M)	Prohibited signs and devices. (Signs on stationary motor vehicles – augment advertising.)	$50.00
15.18.010(N)	Prohibited signs and devices. (Billboards.)	$100.00
15.18.010(O)	Prohibited signs and devices. (Height of ground mounted pole signs.)	$100.00
15.20.020(A)	Signs prohibited outright. (Blinking lights.)	$50.00
15.20.020(B)	Signs prohibited outright. (Noncompliance with Washington D.O.T.)	$50.00
15.20.020(C)	Signs prohibited outright. (Direction of beam – limitations.)	$50.00
15.20.020(D)	Signs prohibited outright. (Strings of pennants, balloons, banners, posters, ribbons.)	$50.00
15.20.020(E)	Signs prohibited outright. (Imitate traffic control device.)	$100.00
15.20.020(F)	Signs prohibited outright. (Detract from traffic control device.)	$100.00
15.20.020(G)	Signs prohibited outright. (On property other than business property.)	$50.00
15.20.020(H)	Signs prohibited outright. (Attached to poles, trees, rocks or other natural features.)	$100.00
15.20.020(I)	Signs prohibited outright. (Rotating signs.)	$50.00
15.20.020(J)	Signs prohibited outright. (Signs on stationary motor vehicles – augment advertising.)	$50.00
15.20.020(K)	Signs prohibited outright. (Billboards.)	$100.00

15.20.030(B)(1)	Signs permitted temporarily. (Compliance – Ordinance 1169, May 16, 1993.)	$100.00
15.20.030(B)(2)	Signs permitted temporarily. (Compliance – Ordinance 1647, May 16, 1998.)	$100.00
15.20.030(B)(3)	Signs permitted temporarily. (Compliance – Subsequent Ordinance – plus 10 years.)	$100.00
15.20.040(A)(1)	Loss of nonconforming status. (Alteration 20% or more.)	$50.00
15.20.040(A)(2)	Loss of nonconforming status. (Damage – excess of 50%.)	$50.00
15.20.040(A)(3)	Loss of nonconforming status. (Sign relocated.)	$50.00
15.20.040(A)(4)	Loss of nonconforming status. (Sign replaced.)	$50.00
15.26.040	Maintenance.	$50.00
15.26.060	Removal.	$75.00
Title 16 Buildings and Construction		
Any violation of Chapter 16.04 IMC		$250.00
16.20.010(A)	Requirements – Generally. (Removal of remnants.)	$250.00
16.20.010(B)	Requirements – Generally. (Footings, etc., removed.)	$250.00
16.20.010(C)	Requirements – Generally. (Basement excavations filled.)	$250.00
16.20.010(D)	Requirements – Generally. (Driveways removed, etc.)	$250.00
16.20.010(E)	Requirements – Generally. (Restore to natural grade.)	$250.00
16.20.010(F)	Requirements – Generally. (Leave perimeter sidewalks and curbs undisturbed.)	$250.00
16.20.010(G)	Requirements – Generally. (Retaining walls not removed.)	$250.00

Chapter 16.26	1. Failure to comply with any provision of Chapter 16.26 IMC – with no previous violations of Chapter 16.26 IMC under current permit.	$500.00
Chapter 16.26	2. Failure to comply with any provision of Chapter 16.26 IMC – with 1 or more previous violations of Chapter 16.26 IMC under current permit.	$1,000
Chapter 16.26	Violation of stop work order. (Clearing and grading.)	$500.00
16.26.040	Permit required.	$1,000
16.26.050(C)(4)(b)	Exceedance of 100 NTU turbidity limits (cumulative with other penalties for violating Chapter 16.26 penalties)	$100.00
	• >100 < 250 NTUs	$200.00
	• > 250 NTUs	
	o 1st offense	$1,000
	o 2nd offense	$5,000 (mandatory stop work order for 1 week)
	o 3rd offense	$10,000 (mandatory stop work order for 1 month and only allowed to work during dry season, May 1st through September 30th)
16.36.090	Permit required.	$250.00
16.36.150	Hazardous materials.	$250.00

16.38.070(A)	1A. Failure to submit records, or inspection hindrance, or maintain on-site records after one warning.	$100.00
16.38.070(A)	1B. Failure to submit records, or inspection hindrance, or maintain on-site records, second offense.	$200.00
16.38.070(A)	1C. Failure to submit records, or inspection hindrance, or maintain on-site records, third or subsequent offense, or any falsification of records.	$1,000
16.38.070(A)	2A. Violation of fats, oils and grease concentrations or failure to maintain grease interceptor after one warning.	$500.00
16.38.070(A)	2B. Violation of fats, oils and grease concentrations or failure to maintain grease interceptor, second or subsequent offense.	$1,000
16.38.070(A)	3A. Source of sewer blockage or source of sanitary sewer overflow.	$1,000 to $10,000
Issaquah Land Use Code		
Chapter 4: Site Development Permit		
Section 4(B)	Site Development Permit.	
(1)	(Compliance with all regulations of SDP.)	$250.00
(2)	Site Development Permit. (Compliance with reviews of SDP.)	$250.00
(3)	Requirements for Site Development Permit. (Certification of SDP required.)	$250.00
(4)	Requirements for Site Development Permit. (Violation of conditions.)	$250.00
Chapter 7: Home Occupations		
Section 4(E)	Business license	
(1)		$50.00

(2)	Exterior signs, displays and activities. (Signage.)	$50.00
(3)	Exterior signs, displays and activities. (No exterior displays or alterations.)	$100.00
(4)	Exterior signs, displays and activities. (No outside storage.)	$50.00
(5)	Exterior signs, displays and activities. (No outside activities connected with home occupation.)	$50.00
(6)	Equipment, noise, hazards and vehicles. (Excessive use of mechanical or electrical equipment.)	$75.00
(7)	Equipment, noise, hazards and vehicles. (Excessive noise, dust, odors.)	$100.00
(8)	Equipment, noise, hazards and vehicles. (Excessive vehicles.)	$50.00
(9)	Equipment, noise, hazards and vehicles. (No commercial vehicles.)	$50.00
(10)	Equipment, noise, hazards and vehicles. (No servicing of vehicles.)	$50.00
(11)	Equipment, noise, hazards and vehicles. (Use of hazardous materials.)	$150.00
(12)	Child care.	$50.00
(13)	Employees.	$50.00
(14)	Gross floor space used.	$50.00
(15)	Animals.	$50.00
(16)	Parking and storing of vehicles in residential areas. (Intrusion into improved ROW or obstruct vision.)	$50.00
Chapter 7: Parking Standards and Related Requirements		
Section 9(1)	Parking and storing of vehicles in residential areas. (Disabled vehicle.)	$75.00

(2)	Parking and storing of vehicles in residential areas. (Use of recreational vehicle as residence.)	$50.00
(3)	Parking and storing of vehicles in residential areas. (Clean and neat recreational vehicles and no distraction.)	$75.00
(4)	Parking and storing of vehicles in residential areas. (No commercial vehicles.)	$50.00

Subsections above have been paraphrased as an aid in determining the penalty only and are not intended for any other purpose.

Provided, any violation for which a penalty is not set forth above shall contain a monetary penalty not to exceed $250.00. Penalties may be reduced based upon 1 or more of the following mitigating factors:

1. The person responded to City attempts to contact the person and cooperated with efforts to correct the violation;

2. The person showed due diligence and/or substantial progress in correcting the violation; or

3. An unknown person contributed to the cause of the violation.

Such penalty shall be set by the Code Enforcement Officer on a case-by-case basis. A time payment plan for payment of the monetary penalty may be set up through the Issaquah Municipal Court.

B. Criminal Citation. Any person who violates or fails to comply with the provisions as set forth in this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $5,000 or imprisonment for a period not to exceed 1 year or by both such fine and imprisonment.

C. Filing Discretion. A violation of the provisions as set forth in this chapter may be filed as a civil infraction or as a criminal misdemeanor. The Code Enforcement Officer shall have complete discretion to file a violation of the provisions as set forth in this chapter as a civil infraction. The City Prosecuting Attorney, upon recommendation of the Code Enforcement Office, shall have the complete discretion to file a violation of the provisions as set forth in this chapter as a criminal misdemeanor. The filing decision shall be made upon a case-by-case basis; provided, any person who violates or fails to comply with the provisions as set forth in this chapter, where such person has previously been issued a civil infraction for a previous violation of the same provision, shall be charged with a criminal misdemeanor as set forth in subsection B of this section.

D. Additional Remedies. In addition to any other remedy provided by this chapter, the City may initiate injunction or abatement proceedings or any other appropriate action in the courts against any person who violates or fails to comply with any provision as set forth in this chapter to prevent, enjoin, abate or terminate violations of the provisions as set forth in this chapter or to restore a condition which existed prior to the violation. The violator shall pay the costs of such action including reasonable attorney fees.

E. Authority Retained. Nothing in this chapter shall be construed to abridge the authority of other agents or officers of the City, including the City Police Department, to enforce the provisions of this code under authority

otherwise granted such agents or officers. (Ord. 2783 § 1 (Exh. A1), 2016; Ord. 2770 § 2 (Exh. C2), 2016; Ord. 2716 § 3 (Exh. A2), 2014; Ord. 2652 § 2, 2012; Ord. 2633 § 4, 2011; Ord. 2612 § 3 (Exh. A2), 2011; Ord. 2560 § 7 (Exh. A6), 2009; Ord. 2428 § 2, 2005; Ord. 2031 § 1, 1994; Ord. 1849 § 1, 1990).

1.36.040 Applicability .

A. The enforcement authority of this chapter shall apply to the following ordinances and regulations of the City:

1. IMC Title 5, Business Taxes, Licenses and Regulations.
2. IMC Title 8, Health and Safety.
3. IMC Title 9, Criminal Code.
4. IMC Title 12, Streets, Sidewalks and Public Places.
5. IMC Title 13, Public Services.
6. IMC Title 14, Water Safety Code.
7. IMC Title 15, Signs.[1]
8. IMC Title 16, Buildings and Construction.
9. IMC Title 18, Land Use Code.

B. The procedures for notification and enforcement set forth in this chapter are intended to apply in addition to any procedures or courses of action provided by law and elsewhere in the Municipal Code. The use of procedures set forth herein shall not require or preclude use of any other procedures allowed by the Municipal Code or State law. (Ord. 2560 § 7 (Exh. A6), 2009; Ord. 2031 § 2, 1994; Ord. 1849 § 1, 1990).

1.36.050 Inspections.

The Code Enforcement Officer or his designee shall inspect properties as necessary to determine whether permittees have complied with conditions of the respective permits and, whenever there is reasonable cause to believe that a permittee is in violation of the provisions as set forth in this chapter, may enter upon such premises at all reasonable times to inspect the same or to perform any other duty allowed the Code Enforcement Officer by this code. The Code Enforcement Officer or his designee shall present proper credentials to the owner or other person in charge of the premises before demanding entry. If such premises are unoccupied, a reasonable effort shall be made to locate the owner or tenant and demand entry. If such entry is refused or if the owner or tenant or person in charge of the premises cannot be located, the Code Enforcement Officer or his designee shall have recourse to every remedy provided by law to secure entry, including, but not limited to, application for a search warrant. In making such application, the Code Enforcement Officer or his designee shall be assisted by the Police Department. (Ord. 2560 § 7 (Exh. A6), 2009; Ord. 1849 § 1, 1990).

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[1] Code reviser's note: The former provisions of IMC Title 15, Signs, are now codified in Chapter 18.11 IMC, Signs.

The Issaquah Municipal Code is current through Ordinance 2828, passed March 5, 2018.

Title 23

CIVIL CODE COMPLIANCE

Chapters:

23.10 Purpose and Scope
23.20 Response Categories
23.30 Declaration of Public Nuisance
23.40 Right of Entry
23.50 Voluntary Compliance Agreements
23.60 Notice and Orders
23.70 Stop Work Orders
23.80 Infractions
23.90 Service of Written Notice
23.100 Civil Penalties
23.110 Appeal to Hearing Examiner
23.120 Abatement by the City
23.130 Unfit Dwellings, Buildings and Structures
23.140 General Provisions
23.150 Definitions

Chapter 23.10

PURPOSE AND SCOPE

Sections:
23.10.010 Purpose.
23.10.020 Scope.

23.10.010 Purpose.

The purpose of this title is to establish an effective and efficient system to ensure compliance with the City's adopted building, land development, land use, and related codes. These regulations establish procedures and mechanisms to resolve violations, establish penalties for violations, provide an opportunity for a prompt hearing, decision and appeal as to alleged code violations, provide for abatement when necessary, and provide a mechanism to recover the City's costs. (Ord. O2011-302 § 2 (Att. A))

23.10.020 Scope.

This chapter shall be applied for the purposes of enforcing Sammamish Municipal Code (SMC) Titles 13, 14, 14A, 15, 16, 21A, 25 and other codes, ordinances, resolutions, or public rules that promote or protect the public health, safety, or welfare and the environment. The provisions of this title are not exclusive and may be used in addition to other applicable provisions of the Sammamish Municipal Code or other applicable law or regulation. (Ord. O2011-302 § 2 (Att. A))

Chapter 23.20

RESPONSE CATEGORIES

Sections:
23.20.010 Categories of response.
23.20.020 Incremental approach.

23.20.010 Categories of response.

Responses to complaints or evidence of a civil code violation shall be prioritized based on significance and severity. The categories set forth in this section are not jurisdictional and failure to meet them in any particular case shall not affect the City's authority to enforce City code provisions with regard to that case. The following categories serve as guidelines for administering this title:

(1) High risk situations need an urgent response. These include an imminent likelihood of/or actual bodily harm or detrimental public health exposure, damage to public resources or facilities, damage to real or personal property, or significant environmental damage or contamination.

(2) Moderate risk situations need a prompt response. These include a risk of bodily harm, damage to public resources or facilities, damage to real or personal property, environmental damage or contamination.

(3) Low risk situations need response as time permits. These are nonemergent, do not fit within the high risk or moderate risk categories and have only minor public impacts. (Ord. O2011-302 §2 (Att. A))

23.20.020 Incremental approach.

The director should follow an incremental approach to securing compliance with City codes. This means starting by contacting the person responsible, explaining the violation and requesting voluntary correction. As needed, the director should secure compliance by proceeding incrementally to higher penalty levels by using the techniques and options in this title. The director may also determine no violation exists and take no further action, or for low risk, "de minimus" violations, decide not to take further action. (Ord. O2011-302 §2 (Att. A))

Chapter 23.30

DECLARATION OF PUBLIC NUISANCE

Sections:

23.30.010 Declaration of public nuisance.

23.30.010 Declaration of public nuisance.

All code violations are determined to be detrimental to the public health, safety, welfare and environment, and are declared to be public nuisances. All conditions determined to be code violations shall be subject to and enforced pursuant to the provisions of this title, except where specifically excluded by law or regulation. (Ord. O2011-302 §2 (Att. A))

Chapter 23.40

RIGHT OF ENTRY

Sections:

23.40.010 Right of entry.

23.40.010 Right of entry.

The director is authorized to enter upon any property or premises at any reasonable time to determine whether a civil violation has occurred or is occurring, or to enforce any provision of the Sammamish Municipal Code or any City regulation, violation of which is a civil violation under this title. The director may make examinations, surveys, and studies as may be necessary in the performance of his or her duties. These may include the taking of photographs, digital images, videotapes, video images, audio recordings, samples, or other physical evidence. If the premises is occupied, the director shall first present credentials and request entry. If an owner, occupant, or agent refuses entry, the City may apply to a court of competent jurisdiction for a search warrant authorizing access. (Ord. O2011-302 §2 (Att. A))

Chapter 23.50

VOLUNTARY COMPLIANCE AGREEMENTS

Sections:
23.50.010 Timing.
23.50.020 Contents.
23.50.030 Waiver of appeal.
23.50.040 Amendment.

23.50.010 Timing.

A voluntary compliance agreement (VCA) is a preferred mechanism to resolve most code compliance cases, and may be entered into at any time before an administrative appeal is decided. (Ord. O2011-302 §2 (Att. A))

23.50.020 Contents.

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

(1) The name and address of the person responsible;

(2) The street address or other description sufficient for identification of the building, structure, premises, or land upon which the violation has occurred or is occurring;

(3) A description of the violation(s) and a reference to the code(s) which has been violated;

(4) The necessary corrective action to be taken, and the date by which the correction must be completed;

(5) An agreement by the person responsible that the City may inspect the premises as may be necessary to determine compliance with the VCA;

(6) The amount of the civil penalty that will be imposed pursuant to this title if the person responsible does not meet his or her obligations under the VCA;

(7) A statement that the person responsible waives the right to an administrative or judicial hearing for appeal purposes; and

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

(a) Assessment of civil penalties as established by resolution or otherwise identified in the VCA;

(b) Abatement of the violation;

(c) Assessment of all costs and expenses incurred by the City to pursue code enforcement and to abate the violation, including legal and incidental expenses; and

(d) Suspension, revocation, or limitation of a permit. (Ord. O2011-302 §2 (Att. A))

23.50.030 Waiver of appeal.

In consideration of the City's agreement to enter into a VCA, the person responsible shall completely surrender and have no right to an administrative or judicial hearing, under this title or otherwise, regarding the matter of the violation and/or the required corrective action. The VCA is a final, binding agreement, it is not a settlement agreement, and its contents are not subject to appeal. (Ord. O2011-302 §2 (Att. A))

23.50.040 Amendment.

The director may grant an extension of the time limit for compliance, or a modification of the required corrective action may be granted, if the person responsible has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances or circumstances beyond the control of the person responsible, render full and timely compliance under the original conditions unattainable. Such request shall be made in writing by the person responsible and clearly establish the need for such an extension. (Ord. O2011-302 §2 (Att. A))

Chapter 23.60

NOTICE AND ORDERS

Sections:
23.60.010 Authority.
23.60.020 Contents.
23.60.030 Supplementation, revocation or modification.
23.60.040 Recording.
23.60.050 Time limits.

23.60.010 Authority.

Whenever the director has reason to determine that a civil code violation occurred or is occurring, or that the civil code violations cited in an infraction have not been corrected, or that the terms of a VCA have not been met, or the person responsible has decided not to enter into a VCA, the director is authorized to issue a notice and order to any person responsible for the code violation. Subsequent violations shall be treated as new violations for purposes of this section. (Ord. O2011-302 §2 (Att. A))

23.60.020 Contents.

A notice and order shall be completed in a form approved by the director and the City attorney, and shall be served consistent with Chapter 23.90 SMC and shall, at minimum, include the following:

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

(2) A statement of each ordinance, regulation, code provision or permit requirement violated;

(3) The name of the City official issuing the notice and order;

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

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

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

(7) A statement advising that, if any of the work is not commenced or completed within the time specified for compliance, the City may proceed to abate the violation, cause work to be done, and assess the costs and expenses of abatement incurred by the City against the person responsible, and that the City may take any other legal action. (Ord. O2011-302 §2 (Att. A))

23.60.030 Supplementation, revocation or modification.

(1) Whenever there is new information or a change in circumstances, a director may add to, rescind in whole or in part or otherwise modify a notice and order by issuing a supplemental notice and order. The supplemental notice and order shall be governed by the same procedures applicable to all notice and orders contained in this title.

(2) The director may revoke or modify a notice and order issued under this title if the original notice and order was issued in error or if a party to an order was incorrectly named. The revocation or modification shall identify the reason and underlying facts for revocation and may be recorded with the King County recorder’s office, or its successor agency, if the underlying notice and order was recorded. (Ord. O2011-302 §2 (Att. A))

23.60.040 Recording.

(1) Whenever a notice and order is served on a person responsible for the code violation, the City may record a copy of the notice and order with the King County recorder’s office, or its successor agency.

(2) When all violations specified in the notice and order have been corrected or abated, the director shall record a release of notice and order with the King County recorder's office, or its successor agency, if the underlying notice and order was recorded. The release shall include a legal description of the property where the violation occurred and shall state, if applicable, that any unpaid civil penalties for which liens have been recorded are still outstanding and continue as liens on the property. (Ord. O2011-302 §2 (Att. A))

23.60.050 Time limits.

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

(2) Unless an appeal is filed with the director for a hearing before the hearing examiner in accordance with this title and Chapter 20.10 SMC, the notice and order shall become the final administrative order of the director, and the civil penalties assessed shall be immediately due and subject to collection. (Ord. O2011-302 §2 (Att. A))

Chapter 23.70

STOP WORK ORDERS

Sections:
23.70.010 Stop work orders.

23.70.010 Stop work orders.

(1) Authorization. Whenever a violation of this title threatens the health or safety of the public or materially impairs the director's ability to secure compliance with the Sammamish Municipal Code, the director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A stop work order shall be served consistent with Chapter 23.90 SMC. Issuance of a notice and order is not a condition precedent to the issuance of a stop work order.

(2) Effect. Work or activity may not resume unless specifically authorized in advance by the director. Any violation of a stop work order is hereby declared to be a nuisance and the director is authorized to enjoin or abate such nuisance by any legal or equitable means available. The costs, specifically including reasonable attorney and expert witness fees, for the injunction or abatement, shall be recovered by the City from the person responsible for the code violation in the manner provided by law. Failure to comply with the terms of a stop work order subjects the person responsible for the code violation to civil penalties and costs as set forth in this title.

(3) Appeal. A stop work order may be appealed according to the procedures prescribed by this title and Chapter 20.10 SMC. Failure to appeal the stop work order within the applicable time limits renders the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease. (Ord. O2011-302 §2 (Att. A))

Chapter 23.80

INFRACTIONS

Sections:
23.80.010 Infractions.

23.80.010 Infractions.

Whenever the director has reason to determine that a civil code violation occurred or is occurring, the director is authorized to issue an infraction in accordance with Chapter 7.80 RCW, which is incorporated herein by this reference, upon the person responsible for the condition. Issuance of an infraction constitutes a civil infraction. The district court shall have jurisdiction over all infractions issued under this title. (Ord. O2011-302 §2 (Att. A))

Chapter 23.90

SERVICE OF WRITTEN NOTICE

Sections:
23.90.010 Service of written notice.

23.90.010 Service of written notice.

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

(a) By personal service to the person responsible for the code violation or by leaving a copy of the written notice at such person's place of residence with a person of suitable age and discretion who resides there.

(b) By posting the written notice in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for in this subsection.

(c) By mailing two copies of the written notice, postage prepaid, one by ordinary first class mail and the other by certified mail, to the person responsible for the code violation at his, her or its last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of the county shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the official written notice of violation was placed in the mail.

(d) For notice and orders only, when the address of the person responsible for the code violation cannot reasonably be determined, service may be made by publication once in the City's official newspaper.

(2) The failure of the director to make or attempt service of written notice shall not invalidate any proceedings as to any other person duly served. (Ord. O2011-302 §2 (Att. A))

Chapter 23.100

CIVIL PENALTIES

Sections:

23.100.010 Assessment schedule.
23.100.015 Mitigation for unlawful tree removal.
23.100.020 Waivers.

23.100.010 Assessment schedule.

Code Enforcement Penalties:	
Infraction	up to $500
Stop Work Order	up to $500
Noncompliance:	
1 – 15 days	$100 up to $250 per day
16 – 31 days	$250 up to $500 per day
31+ days	$500 up to $1,000 per day (up to $50,000 maximum)
Environmental Damage/Critical Areas Violations:	
Up to $25,000 plus the cost of restoration	
Unlawful Tree Removal or Damage:	
$1,500 per inch of diameter at breast height of tree removed or damaged	
$25 fee per sign illegally placed on public property or in the City's right-of-way.	

(1) Civil fines and civil penalties for civil code violations shall be imposed for remedial purposes and shall be assessed for each type of violation identified in a notice and order, VCA, stop work order, or infraction pursuant to this chapter.

(2) The penalties assessed pursuant to this chapter for failure to comply with the terms of a VCA are based on the number of days of noncompliance, dating back to the date of the initial violation.

(3) Penalties based on violation of a stop work order shall be assessed, according to this chapter, for each day the director determines that work or activity was done in violation of the stop work order.

(4) Infractions shall be subject to a one-time civil penalty as set forth in this chapter.

(5) Payment of a monetary penalty does not relieve the person responsible to whom the notice was issued of the duty to correct the violation.

(6) In addition to the other penalties provided for in this chapter, any person responsible for a violation of Chapter 21A.50 SMC may be jointly and severally liable for site restoration for the redress of ecological, recreation, and economic values lost or damaged and shall pay a civil penalty up to $25,000 plus restoration, based upon the severity of the violation as documented in the City's file.

For the purposes of this subsection, a violation of the critical areas ordinance means: the violation of any provision of Chapter 21A.50 SMC; or the failure to obtain a permit required for work in a critical area; or the failure to comply with the conditions of any permit, approval, terms, and conditions of any critical area tract or setback area, easement

or other covenant, plat restriction, or binding assurance or any notice and order, stop work order, mitigation plan, contract or other agreement.

(7) Any person responsible for damage to or removal of a tree in violation of Chapter 21A.37 SMC shall be jointly and severally liable for mitigation as described in SMC 23.100.015 and shall pay a civil penalty of $1,500 per inch of diameter at breast height of tree removed or damaged.

(8) The civil penalties in this chapter are in addition to, and not in lieu of, any other penalties, sanctions, restitution, or fines provided for in any other provisions of law. (Ord. O2017-436 (Att. A); Ord. O2016-408 § 1 (Att. A); Ord. O2015-395 § 4 (Att. B); Ord. O2011-302 §2 (Att. A))

23.100.015 Mitigation for unlawful tree removal.

(1) In addition to the monetary penalty outlined in SMC 23.100.010, any tree damaged or removed in violation of Chapter 21A.37 SMC shall be subject to replacement. For the purpose of code enforcement, if a tree has been removed and only the stump remains, the size of the tree shall be the diameter of the top of the stump. Mitigation measures must comply with the standards specified in SMC 21A.37.280, Tree replacement standards, except that the number of replacement trees for significant trees removed or damaged shall be as follows:

(a) Removed or damaged coniferous trees with a DBH equal to or greater than eight inches up to 12 inches shall be replaced by four trees;

(b) Removed or damaged trees with a DBH equal to or greater than 12 inches up to 16 inches shall be replaced by six trees; and

(c) Removed or damaged trees with a DBH of 16 inches or more shall be replaced by eight trees. (Ord. O2015-395 § 4 (Att. B))

23.100.020 Waivers.

(1) Civil fines and civil penalties, in whole or in part, may be waived or reimbursed to the payer by the director, with the concurrence of the finance director, under the following circumstances:

(a) The notice and order, stop work order, or infraction was issued in error;

(b) The civil fines or civil penalties were assessed in error;

(c) Notice failed to reach the person responsible due to unusual circumstances;

(d) The code violations have been corrected under a VCA;

(e) The code violations which formed the basis for the civil penalties have been corrected, and the director finds that compelling reasons justify waiver of all or part of the outstanding civil penalties; or

(f) Other extraordinary information warranting waiver has been presented to the director since the notice and order, stop work order or infraction was issued.

(2) The director shall document the circumstances under which a decision was made to waive penalties. (Ord. O2015-395 § 4 (Att. B); Ord. O2011-302 §2 (Att. A))

Chapter 23.110

APPEAL TO HEARING EXAMINER

Sections:
23.110.010 Appeals.

23.110.010 Appeals.

(1) Any person found in violation pursuant to this title may file an appeal within 10 calendar days after receiving or otherwise being served with a written notice of a violation. When the last day of the period so computed is a Saturday, Sunday, or a federal or City holiday, the period shall run until 4:30 p.m. on the next business day. The request shall be in writing clearly explaining the basis for the appeal and shall include the applicable appeal fee as established in a fee schedule adopted by the Sammamish City council.

(2) Upon receipt of the appeal, the City shall schedule an appeal hearing before the hearing examiner. The hearing shall be conducted in accordance with the procedures set forth in Chapter 20.10 SMC and the rules of procedure of the hearing examiner.

(3) At the conclusion of the appeal hearing, 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;

(d) The civil penalties assessed based on the provisions of this title and the fee resolution; and

(e) The date after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

(4) Judicial Review. The decision of the hearing examiner shall be final unless appealed. To appeal the decision of the hearing examiner, a person with standing to appeal must file a land use petition, as provided in Chapter 36.70C RCW, Land Use Petition Act, within 21 calendar days of issuance of the hearing examiner's decision. The cost for transcription of all records ordered certified by the superior court for such review shall be borne by the appellant and is nonrefundable.

(5) Effect of Decision. If judicial review is not obtained, 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 subsection, the City may pursue collection and abatement as provided in this title. (Ord. O2011-302 §2 (Att. A))

Chapter 23.120

ABATEMENT BY THE CITY

Sections:
23.120.010 Abatement.

23.120.010 Abatement.

(1) Upon prior approval by the City manager, the City may abate a condition which was caused by or continues to be a civil violation or civil infraction when:

(a) The terms of the VCA pursuant to this title have not been met; or

(b) A notice and order or stop work order has been issued, the period for filing an appeal with the hearing examiner has expired, and the required correction has not been completed; or

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

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

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

(3) Authorized Action by the City. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to abatement. The City may seek judicial process as it deems necessary to effect the removal or correction of such condition.

(4) No Cause of Action against City. No cause of action shall lie against the City or its agents, officers, or employees for actions reasonably taken, or not taken, to prevent or cure any immediate threats.

(5) Recovery of Expenses. All expenses incurred by the City in correcting the violation shall be billed to the person responsible for the violation and shall become due and payable to the City within 10 calendar days. 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

(vi) The City shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter, and all other related costs including attorney and expert witness fees, against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall be on parity. (Ord. O2011-302 §2 (Att. A))

Chapter 23.130

UNFIT DWELLINGS, BUILDINGS AND STRUCTURES

Sections:

23.130.005 Intention.
23.130.010 Additional enforcement mechanism.
23.130.020 Chapter 35.80 RCW adopted.
23.130.030 Improvement officer and appeals commission designated.
23.130.040 Improvement officer authority – Issuance of complaint.
23.130.050 Service of complaint.
23.130.060 Complaint hearing.
23.130.070 Determination, findings of fact and order.
23.130.080 Appeal to appeals commission.
23.130.090 Appeal to superior court.
23.130.100 Remediation/penalties.
23.130.110 Tax lien.
23.130.120 Salvage.

23.130.005 Intention.
This chapter is intended to comply with state law requirements in order to place a lien on private property with unfit dwellings, buildings and structures. (Ord. O2011-302 §2 (Att. A))

23.130.010 Additional enforcement mechanism.
In addition to, and in combination with, the enforcement methods set forth in this title and elsewhere in the Sammamish Municipal Code, violations of the Sammamish Municipal Code may be enforced under the provisions set forth in this chapter. (Ord. O2011-302 §2 (Att. A))

23.130.020 Chapter 35.80 RCW adopted.
Chapter 35.80 RCW, Unfit Dwellings, Buildings and Structures, as it currently exists or is hereinafter amended, is hereby adopted. (Ord. O2011-302 §2 (Att. A))

23.130.030 Improvement officer and appeals commission designated.
The director is designated as the City's "improvement officer," and shall have the full scope of authority granted to that official under Chapter 35.80 RCW. The City of Sammamish hearing examiner is designated as the City's "appeals commission," and shall have the full scope of authority granted to that commission under Chapter 35.80 RCW. (Ord. O2011-302 §2 (Att. A))

23.130.040 Improvement officer authority – Issuance of complaint.
If, after a preliminary investigation of any dwelling, building, structure or premises, the improvement officer finds that it is unfit for human habitation or other use, the improvement officer may issue a complaint conforming to the provisions of RCW 35.80.030, stating in what respects such dwelling, building, structure or premises is unfit for human habitation or other use. In determining whether a dwelling, building, structure or premises should be repaired or demolished, the improvement officer shall be guided by Chapter 16.25 SMC and such other codes adopted pursuant to the Sammamish Municipal Code as the improvement officer deems applicable. (Ord. O2011-302 §2 (Att. A))

23.130.050 Service of complaint.
A complaint issued under this chapter shall be served on the parties and posted on the subject property pursuant to RCW 35.80.030, and shall also be filed with the King County auditor. All complaints or other documents posted on the subject property shall remain in place until the complaint has been resolved. For purposes of service, such complaints or other documents are deemed effective on the day of posting. (Ord. O2011-302 §2 (Att. A))

23.130.060 Complaint hearing.
Not less than 10 days nor more than 30 days after serving a complaint, the improvement officer shall hold a hearing conforming to the provisions of RCW 35.80.030, at which all parties in interest shall be given the right to appear in

person, to bring witnesses, and to give testimony regarding the complaint. At any time prior to or at the time of the hearing, any party may file an answer to the complaint. The procedural rules adopted by the City's hearing examiner, codified in Chapter 20.10 SMC, shall govern the procedure of such hearing. (Ord. O2011-302 §2 (Att. A))

23.130.070 Determination, findings of fact and order.
Within 10 days of the complaint hearing, the improvement officer shall issue a determination, findings of fact and order stating the improvement officer's determination as to whether the subject dwelling, building, structure or premises is unfit for human habitation or other use; the findings of fact supporting the determination; and an order specifying the actions necessary to address any unfitness, and a deadline for completing the actions. The determination, findings of fact and order shall be served and posted as set forth in SMC 23.130.050, and if no appeal is filed within the deadline specified in SMC 23.130.080, a copy of the determination, findings of fact, and order shall be filed with the King County auditor. (Ord. O2011-302 §2 (Att. A))

23.130.080 Appeal to appeals commission.
Within 10 days of service of a determination, findings of fact and order, any party may file an appeal to the appeals commission. Such an appeal shall be governed by the City of Sammamish hearing examiner's procedural rules, except that the appeals commission shall conduct a hearing on the appeal and issue a ruling within 60 days from the date the appeal is filed; and if the appeals commission issues any oral findings of fact, the ruling shall contain a transcript of such findings in addition to any findings issued at the time of the ruling. The ruling shall be served and posted as set forth in SMC 23.130.050, and if no appeal is filed within the deadline specified in SMC 23.130.090, a copy of the ruling shall be filed with the King County auditor. (Ord. O2011-302 §2 (Att. A))

23.130.090 Appeal to superior court.
Any person affected by a determination, findings of fact and order issued by the improvement officer, who has brought an appeal before the appeals commission pursuant to SMC 23.130.080 may, within 30 days after the appeals commission's ruling has been served and posted pursuant to SMC 23.130.050, petition the King County superior court for an injunction restraining the improvement officer from carrying out the provisions of the determination, findings of fact and order. In all such proceedings, the court is authorized to affirm, reverse or modify the order, and such trial shall be heard de novo. (Ord. O2011-302 §2 (Att. A))

23.130.100 Remediation/penalties.
If a party, following exhaustion of the party's rights to appeal, fails to comply with the determination, findings of fact and order, the improvement officer may direct or cause the subject dwelling, building, structure or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished pursuant to Chapter 35.80 RCW. (Ord. O2011-302 §2 (Att. A))

23.130.110 Tax lien.
The cost of any action taken by the improvement officer under SMC 23.130.100 shall be assessed against the subject property pursuant to Chapter 35.80 RCW. Upon certification by the City of Sammamish finance director that the assessment amount is due and owing, the King County treasurer shall enter the amount of such assessment upon the tax rolls against the subject property pursuant to the provisions of RCW 35.80.030. (Ord. O2011-302 §2 (Att. A))

23.130.120 Salvage.
Materials from any dwelling, building, structure or premises removed or demolished by the improvement officer shall, if possible, be salvaged and sold as if the materials were surplus property of the City of Sammamish, and the funds received from the sale shall be credited against the cost of the removal or demolitions; and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the improvement officer, after deducting the costs incident thereto. (Ord. O2011-302 §2 (Att. A))

Chapter 23.140

GENERAL PROVISIONS

Sections:
23.140.010 General provisions.

23.140.010 General provisions.

(1) The director shall have the authority to administer this title and is authorized to adopt procedures, rules or guidelines for that purpose. The director may seek assistance from City departments, other public agencies or private contractors to resolve code violations.

(2) No provision or any term used in this title is intended to impose any duty upon the City, nor any of its officers, employees or agents, which would subject them to damages in a civil action.

(3) The provisions of this title detailing administration of code compliance procedures are not to be construed as creating a substantive basis for appeal or a defense of any kind to an alleged violation.

(4) The provisions of this title authorizing the enforcement of noncodified ordinances are intended to assure compliance with conditions of approval on plats, conditional use or special use permits, zone reclassifications and other similar permits or approvals which may have been granted by ordinances which have not been codified, and to enforce new regulatory ordinances which are not yet codified.

(5) The director may modify or revoke any action under this title taken by the City if the City action was incomplete or issued in error, or in response to new information or a change in circumstances.

(6) In the event of a conflict between a provision of this title and any other provision of the SMC or City ordinance, the more restrictive provision shall apply as determined by the director. (Ord. O2011-302 §2 (Att. A))

Chapter 23.150

DEFINITIONS

Sections:
23.150.010 Definitions.

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

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

"Civil code violation" or "code violation" means and includes one or more of the following:

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

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

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

"Director" means the director of the community development department, or his or her designee.

"Found in violation" means that:

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

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

"Hearing examiner" means the City of Sammamish hearing examiner, as provided in Chapters 20.10 and 23.110 SMC.

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

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

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

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

(3) Potential vermin habitat or fire hazard; or

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

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

“Person responsible” means the owner, occupier, tenant, manager, agent or other person who caused or is causing the civil code violation under this title or other public law.

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

“Resolution” means any resolution adopted by the Sammamish City council.

“Stop work order” means a written order specifying code violations and prohibiting any work or other activity at a particular site.

“Voluntary compliance agreement” or “VCA” means a written contract between the person responsible for the violation and the City, under which such person agrees to abate the violation within a specified time and according to specified conditions. (Ord. O2011-302 §2 (Att. A))

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

TO: Planning Commission

FROM: Nicole Gaudette, Senior Planner

DATE: April 4, 2018

RE: ZTR18-001 Proposed Procedural Code Amendment

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

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

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

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

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

council. Discussion is limited to the items discussed at the hearing. There is little to no value added by a closed record discussion by the city council.

New code sections were created. These sections include:

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

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

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

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

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

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

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

Process
A code amendment is a legislative action. The final proposal will be brought to the Planning Commission for a public hearing, scheduled April 18, 2018, to obtain comments. Staff anticipates that the Planning Commission may wish to continue this hearing to early May. Following the close of the hearing, the Planning Commission will deliberate and vote on a recommendation to the City Council who will make the final decision on the proposed amendments.

Proposed Text Amendments
This code update affects 9 chapters including Chapters 19.02, 19.06, 19.07, 19.08, 19.09, 19.11, 19.12, 19.15 and 19.16. Please see the attached exhibits. Please note there are two exhibits for Chapter 19.15. Due to the large amount of text that was either deleted, added, or moved, it is difficult to review the document that shows all of the changes. The deleted text is removed from the document called "Crossouts Removed", making it much easier to read.

Recommended Action
Discuss the proposed text amendments taking into consideration the presentation by staff and comments from the public. Provide a recommendation to staff to continue forward with the process to adopt the proposed text amendments with or without recommended changes.

19.02.030 Accessory dwelling units.

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

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

1. Owner Occupancy. Either the principal dwelling unit or the accessory dwelling unit must be occupied by an owner of the property or an immediate family member of the property owner. Owner occupancy is defined as a property owner, as reflected in title records, who makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means, and actually resides at the site more than six months out of any given year.

2. Number of Occupants. The total number of occupants in both the principal dwelling unit and accessory dwelling unit combined shall not exceed the maximum number established for a family as defined in MICC 19.16.010 plus any live-in household employees of such family.

3. Subdivision. Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit.

4. Size and Scale. The square footage of the accessory dwelling unit shall be a minimum of 220 square feet and a maximum of 900 square feet, excluding any garage area; provided, the square footage of the accessory dwelling unit shall not exceed 80 percent of the total square footage of the primary dwelling unit, excluding the garage area, as it exists or as it may be modified.

5. Location. The accessory dwelling unit may be added to or included within the principal unit, or located in a detached structure.

6. Entrances. The single-family dwelling containing the accessory dwelling unit shall have only one entrance on each front or street side of the residence except where more than one entrance existed on or before January 17, 1995.

7. Additions. Additions to an existing structure or newly constructed detached structures created for the purpose of developing an accessory dwelling unit shall be designed consistent with the existing roof pitch, siding, and windows of the principal dwelling unit.

8. Detached Structures. Accessory dwelling units shall be permitted in a detached structure.

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

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

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

~~1. Application. The property owner shall apply for an accessory dwelling unit permit with the development services group. The application shall include an affidavit signed by the property owner affirming that the owner or an immediate family member will occupy the principal dwelling unit or accessory dwelling unit for more than six months per year. The application will be processed as a Major Single-Family Building Permit.Type III Permit.~~

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

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

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

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

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

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

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

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

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

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Chapter 19.06
GENERAL REGULATIONS

Sections:

19.06.010 Prohibited uses.

19.06.020 Temporary signs.

19.06.030 Antennas.

19.06.040 Wireless communications.

19.06.050 Commerce on public property.

19.06.060 Encroachment into public right-of-way.

19.06.070 *Repealed.*

19.06.080 Siting of group housing.

19.06.090 Temporary encampment permit.

19.06.100 Essential public facilities.

19.06.110 Conditional use permits, variances and setback deviations.

19.06.120 Design review

19.06.040 Wireless communications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Island Crest Way Corridor.

1. WCFs are permitted within the right-of-way boundary along Island Crest Way from SE 40th Street to SE 53rd Place and from SE 63rd to SE 68th Street. WCFs must be attached directly to and incline with existing utility poles, with minimal overhang. WCF antennas shall not exceed 96 inches in length, 12

inches in width, and 12 inches in depth. The WCF must not project over the height of the pole, but a pole with a height of up to 70 feet may replace an existing pole or a pole with a height of up to 110 feet may replace an existing pole if the WCF is being collocated with another WCF consistent with subsection F of this section. All WCFs shall be set back from adjacent residential structures by a minimum of 40 feet.

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

D. Residential Districts.

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

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

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

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

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

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

ii. Maximum height: 110 feet; and

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

i. Maximum number of support structures: One stealth support structure with up to three WCFs on such support structure located within the rights-of-way at the intersection of Island Crest Way, 84th Avenue SE and SE 39th Street, in a location at such intersection abutting trees and having the least visual impact while ensuring the maximum protection of mature trees.

ii. Maximum number and location of equipment cabinets: Three equipment cabinets associated with such support structure located in that portion of the SE 39th Street or 84th Avenue SE rights-of-way adjacent to

Clise Park, except that if such location does not permit the proper functioning of the WCF as determined by the code official, then the equipment cabinet shall be located in the Island Crest Way right-of-way adjacent to Clise Park.

iii. Maximum height: 110 feet.

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

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

E. Performance Standards.

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

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

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

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

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

a. Public properties described in subsections B and D of this section;

b. Town Center, commercial/office and planned business zones described in subsection A of this section; and

c. Island Crest Way corridor described in subsection C of this section.

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

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

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

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

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

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

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

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

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

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

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

A. Conditional Use Permits

1. Purpose. A use may be authorized by a conditional use permit for those uses listed in MICC 19.02.010(C). The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards established in this title. The review shall determine if the development proposal should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.

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

a. The permit is consistent with the regulations applicable to the zone in which the lot is located;

b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;

c. The use is consistent with policies and provisions of the comprehensive plan; and

d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

3. Criteria for ~~projects~~conditional use permits ~~requiring~~that also require design review and are located in T~~t~~own ~~c~~Center. An applicant must demonstrate how the development proposal meets the following criteria.

a. General Criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Change After Conditional Use Permit Granted.

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

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

B. Variances.

1. Purpose. An applicant or property owner may request a variance from any numeric standard, except for the standards contained within Chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(3(a) through (h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to

subsection (G)(4)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (G)(4)(a) through (i) of this section:

2. Criteria.

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

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

c. No use variance shall be allowed;

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

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

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

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

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

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

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

ii. All storm water discharged shall be mitigated consistent with the most recent Washington State Department of Ecology Stormwater Management Manual for

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

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

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

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

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

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

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

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

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

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

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

C. Setback Deviations

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

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

a. No use deviation shall be allowed;

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

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

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

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

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

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

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

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

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

19.06.120 Design Review.

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

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

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

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

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

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

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

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

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

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

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

19.07.110 Shoreline master program.

...

F. Shoreline Permits.

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

a. Administering shoreline permits.

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

c. Determining compliance with the State Environmental Policy Act.

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

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

3. Shoreline Exemption.

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

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

(B) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. “Normal maintenance” includes those usual acts established to prevent a decline, lapse, or cessation from a lawfully established condition. “Normal repair” means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, including complete replacement of legally existing

structures. Normal maintenance of single-family dwellings is categorically exempt as stated above; or

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

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

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

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

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

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

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

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

4. Substantial Development Permit Application Decision Criteria. A substantial development permit (SDP) is required for any development within shorelands ~~not qualifying~~ that does not qualify as ~~being subject to a categorical exemption or~~ shoreline exempt~~ion permit~~.

~~i. SDP Application Decision Criteria.~~ All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a shoreline substantial development permit.

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

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

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

(B) That the proposed use will not detrimentally interfere with the normal public use of shorelands within the "urban park environment" shoreline environment designation;

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

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

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

(F) In applying the above criteria when reviewing shoreline conditional use applications, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the shoreline conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 19.08
SUBDIVISIONS

Sections:

19.08.010 General provisions for long subdivisions and short subdivisions.

19.08.020 Application procedures and requirements.

19.08.030 Design standards.

19.08.040 Plat improvements.

19.08.050 Final plats.

19.08.060 Condominium conversions.

19.08.070 Lot line revisions

19.08.010 General provisions.

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

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

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

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

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

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

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

19.08.020 Application procedures and requirements.

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

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

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

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

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

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

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

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

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

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

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

a. Proposed restrictive covenants.

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

c. Proposed easements.

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

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

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

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

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

a. Width of pavement;

b. Location and width of sidewalks, trails, bike lanes, ditches, swales, etc.; and

c. Location of any utility mains.

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

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

E. Preliminary Application Procedure.

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

a. The project does or does not make appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

b. The public use and interest will or will not be served by approval of the project; and

c. The project does or does not conform to applicable zoning and land use regulations.

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

3. Long Subdivisions.

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

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

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

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

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

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

…

19.08.050 Final plats.

A. Required Signatures.

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

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

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

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

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

B. Recording of the Final Plat.

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

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

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

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

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

1. Identification and Description.

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

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

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

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

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

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

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

2. Delineation.

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

b. Exact location, width, and name of all streets within and adjoining the plat, and the exact location and widths of all roadways, driveways, and trail easements. The name of a street shall not duplicate that of any existing street in the city, unless the platted street be a new section or continuation of the existing street.

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

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

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

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

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

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

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

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

k. Critical areas as identified under Chapter 19.07 MICC.

l. Corner pins made of rebar with caps.

m. Designated building pads pursuant to MICC 19.09.090.

3. Other Marginal Data on Final Plat.

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

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

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

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

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

f. Approval by the county department of records.

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

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

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

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

…

19.08.0710 Lot line revisions.

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

B. Requirements for a complete application.

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

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

3. A completed application form.

4. Any other information required pursuant to Chapter 19.15 MICC.

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

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

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

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

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

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

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

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

~~E~~D. Requirements for Recording Documents.

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

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

3. Lot line revision documents that will be recorded shall be in a form prescribed by the code official and be reviewed and approved by the code official prior to recording with the King County Recorder's office. Lot line revision approvals shall expire if the lot line revision documents and real estate conveyance documents transferring ownership of the adjusted land area are not recorded and a copy submitted to the City within one year from the date of approval.

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

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

a. The King County department of assessments;

b. The City of Mercer Island City Engineer; and

c. The City of Mercer Island Code Official.

Chapter 19.09
PROPERTY DEVELOPMENT

19.09.010 Preapplication and intake screening meetings.

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

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

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

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

Chapter 19.11

TOWN CENTER DEVELOPMENT AND DESIGN STANDARDS

19.11.150 Administration.

A. Design Review.

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

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

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

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

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

~~B. Conditional Use Permit Review.~~

~~1. General.~~

~~a. Intent. The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards established in this chapter. The review shall determine if the proposal should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.~~

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

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

d. Process.

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

ii. Notice.

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

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

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

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

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

2. Review Process.

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

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

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

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

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

ii. Change in Use and Minor Exterior Modifications. If the conditional use permit application proposes a change in use but is not part of a major new construction project, or is part of a minor exterior modification, then design review shall proceed administratively in accordance with the provisions in MICC 19.15.040(F), and the hearing examiner shall review the conditional use permit application at an

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

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

i. General Criteria.

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

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

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

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

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

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

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

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

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

owned park or open space, commercial or noncommercial or private recreation facility; religious institutions; public institutions; or uses which cater primarily to minors.

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

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

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

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

g. Change After Conditional Use Permit Granted.

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

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

Chapter 19.12
DESIGN STANDARDS FOR ZONES OUTSIDE TOWN CENTER

19.12.010 General.

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

B. Design Vision.

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

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

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

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

D. Design Review Process. Design review shall be conducted by the city's design commission or code official consistent with the process provided in MICC 19.15.040 (F). The design commission or code

official shall review each regulated improvement and determine each project's conformance with the applicable objectives and standards of this chapter.

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

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

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

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

c. MICC 19.12.050 pertaining to vehicular and pedestrian circulation;

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

e. MICC 19.12.070 pertaining to lighting;

f. MICC 19.12.080 pertaining to signs;

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

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

E. Shall/Should. When a standard uses the word "shall," the standard is mandatory. When a standard uses the word "should," the standard is mandatory unless the applicant can demonstrate, to the

satisfaction of the design commission or code official, an equal or better means of satisfying the standard and objective.

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

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

Chapter 19.15
ADMINISTRATION

Sections:

19.15.010 Purpose, intent and roles.

19.15.020 Land use review types.

19.15.030 Legislative actions

19.15.040 Summary of approval and authorities

19.15.050 Permit review procedures

19.15.060 Preapplication

19.15.070 Application

19.15.080 Determination of completeness

19.15.090 Notice of application

19.15.100 Public hearing notice

19.15.110 Response to Comments and Extensions

19.15.120 Notice of decision

19.15.130 Appeals

19.15.140 Open record public hearing

19.15.150 Expiration of approvals

19.15.160 Code interpretations

19.15.170 Vesting

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

19.15.190 Permit review for 6049 eligible facilities

19.15.200 Revisions

19.15.210 Compliance required

19.15.220 Open record public hearing

19.15.230 Enforcement *(Not part of this review*)

19.15.240 Design review and the design commission

19.15.250 Comprehensive plan amendments.

19.15.260 Reclassification of property (rezones).

19.15.270 Zoning code text amendments.

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

19.15.010 ~~General procedures~~Purpose, intent and roles.

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

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

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

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

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

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

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

a. The code official is responsible for administration, interpretation and enforcement of the development code.

b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.

c. The city engineer is responsible for the administration and interpretation of engineering standards.

d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.

e. The fire code official is responsible for administration and interpretation of the International Fire Code.

5. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

~~D~~19.15.020. Land Use Review Types.

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

1. ~~Ministerial Actions~~Type I. ~~Ministerial~~ Type I ~~actions~~ reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

2. ~~Administrative Actions~~Type II. ~~Administrative~~ Type II ~~actions are based on objective and subjective standards that require the exercise of discretion about nontechnical issues.~~ reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that a Notice of Decision shall be issued for Type II decisions

3. ~~Discretionary Actions~~Type III. ~~Discretionary~~ Type III ~~actions are based on standards that require substantial discretion and may be actions of broad public interest. Discretionary actions are only taken after an open record hearing.~~ reviews ~~are based on objective and subjective standards that~~ require the exercise of discretion about nontechnical issues.

4. ~~Legislative Actions~~Type IV. ~~Legislative~~ Type IV ~~actions~~ reviews ~~are based on standards that~~ require ~~substantial~~ discretion and may be actions of broad public interest. Decisions on ~~Discretionary~~ Type IV reviews are only taken after an open record hearing.

5. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.

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

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

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

19.15.030. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to geographic areas and implement adopted City policy, promote the community interest, and are normally of interest to many property owners and citizens. Legislative actions are only adopted after an open record public hearing. Review procedures for legislative actions are located in subsection 19.15.280 of this chapter.

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

~~ACTION~~	~~DECISION AUTHORITY~~	~~CRITERIA~~	~~APPEAL AUTHORITY~~
~~Ministerial Actions~~			
~~Tree Removal Permit~~	~~Code official~~	~~Chapter 19.10 MICC~~	~~Hearing examiner1~~
~~Right-of-Way Permit~~	~~City engineer~~	~~Chapter 19.09 MICC~~	~~Hearing examiner~~
~~Home Business Permit~~	~~Code official~~	~~MICC 19.02.010~~	~~Hearing examiner~~
~~Special Needs Group Housing Safety Determination~~	~~Police chief~~	~~MICC 19.06.080(A)~~	~~Hearing examiner~~
~~Lot Line Revision~~	~~Code official~~	~~Chapter 19.08 MICC~~	~~Hearing examiner~~
~~Design Review – Minor Exterior Modification Outside Town Center~~	~~Code official~~	~~MICC 19.15.040, Chapters 19.11 and 19.12 MICC~~	~~Design commission~~
~~Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) Less Than $100,000~~	~~Code official~~	~~Chapters 19.11 and 19.12 MICC, MICC 19.15.040~~	~~Design commission~~

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) $100,000 or Greater	Design commission	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Superior court
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.110, 19.07.060(D)(4)	Hearing examiner
Shoreline Exemption	Code official	MICC 19.07.110 and 19.15.020(G)(6)(c)(i)	Hearing examiner2
Major Single-Family Dwelling Building Permit	Code official	Chapter 19.02 MICC but not MICC Title 15 or 17	Hearing examiner
Administrative Actions			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Hearing examiner
Deviation	Code official	MICC 19.15.020(G)	Hearing examiner
Critical Areas Determination	Code official	Chapter 19.07 MICC	Hearing examiner
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110 and 19.15.020(G)(6)	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Hearing examiner
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Long Plat Alteration and Vacations	City council via hearing examiner	MICC 19.08.010(F)	Superior court
Temporary Encampment	Code official	MICC 19.06.090	Superior court
Wireless Communications Facility	Code official	MICC 19.06.040	Hearing examiner
Wireless Communications Facility Height Variance	Code official	MICC 19.06.040(H) and 19.15.020(G)	Hearing examiner
Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones	Code official via design commission and city engineer	MICC 19.03.020(B)(4), 19.04.040(B)(9), 19.05.020(B)(9) and 19.15.020(G)	Hearing examiner
Development Code Interpretations	Code official	MICC 19.15.020(L)	Hearing examiner5
Discretionary Actions			
Conditional Use Permit	Hearing examiner	MICC 19.11.150(B), 19.15.020(G)	Superior court
Reclassification (Rezone)	City council via planning commission3	MICC 19.15.020(G)	Superior court
Formal Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via hearing examiner3	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G)	Superior court

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Variance from Short Plat Acreage Limitation	Code official	MICC 19.08.020	Hearing examiner
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission3	MICC 19.09.070	Superior court
Shoreline Conditional Use Permit	Code official and Department of Ecology4	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Shoreline Variance	Code official and Department of Ecology3	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.050	Superior court
Legislative Actions			
Code Amendment	City council via planning commission3	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission2	MICC 19.15.020(G)	Growth management hearings board

1Tree removal associated with a development proposal and authorized through the issuance of a tree removal permit shall not commence until the later of the end of the appeal period associated with the tree removal permit, or a decision is issued on an administrative appeal of the tree removal permit.

2Final rulings granting or denying an exemption under MICC 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60).

3The original action is by the planning commission or hearing examiner which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
4Must be approved by the city of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10).			
5The development code interpretation may be appealed as applied to a project review as part of an appeal of the land use action.			

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

TABLE A

LAND USE REVIEW TYPE

Type I	Type II	Type III	Type IV
Home business, seasonal development limitation waiver, non-major single-family dwelling building permits, tree removal permit, right of way permit, special needs group housing safety determination, tenant improvement/change of use, shoreline exemption, critical areas determination (steep slope alteration), final short plat, temporary commerce on public property, site development permits.	Modified wireless communication facilities (6409 per 47.CFR.1.40001), lot line revision, setback deviations, final plat, code official design review, accessory dwelling unit, parking variances (reviewed by city engineer).	New and modified wireless (non-6409) communication facility, SEPA threshold determination, critical areas determination (wetland/watercourse buffer averaging/reduction, temporary encampment. Short plat alteration and vacations, preliminary short plat, development code interpretations, major single-family dwelling building permit, shoreline substantial development permit, shoreline revision (substantial development).	Conditional use permit, variance, critical areas reasonable use exception, long plat alteration and vacations, parking variance (reviewed b design commission0, variance from short plat acreage limitation, wireless communication facility height variance, planned unit development, design commission design review, permanent commerce on public property, shoreline conditional use permit (SCUP), shoreline variance, shoreline revision (variance and SCUP).

TABLE B

REVIEW PROCESSING PROCEDURES

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

	Type I	Type II	Type III	Type IV
Appeal Authority	Hearing examiner or Superior court (TBD)	Hearing examiner	Hearing examiner	Superior court or Shoreline Hearings Board (Shoreline permits)

19.15.0~~2~~50 ~~Permit~~ review procedures.

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

~~A~~19.15.060. Preapplication. ~~Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.~~

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

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

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

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

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

~~B~~19.15.070. Application.

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

1. All applications for permits or land use reviews by the city shall be submitted on forms provided by the City;

2. A site plan, prepared in a form prescribed by the code official;

3, A completed SEPA environmental checklist, if required;

4. Any studies or reports required for the processing of the application;

5. A list of any permits or land use review types necessary for approval of the development proposal that have been obtained prior to filing the application or that are pending before the City or any other governmental entity;

6. Drainage plans and documentation required by the Stormwater Management Manual for Western Washington as adopted by MICC Chapter 15.09;

7. Legal description of the site;

8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (1)(l) of this section shall satisfy the requirements of this subsection (1)(j); and

9. For Type II, III, and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.

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

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

~~3~~C~~2~~. All applications for permits or ~~actions~~ land use review by the city shall be accompanied by a filing fee in an amount established by city ordinance.

~~C~~19.15.080. Determination of Completeness.

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

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

~~3~~C. Response to Letter of In-Completion. Within 14 days after an applicant has submitted all additional information identified as being necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary.

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

~~4~~5E. If the applicant fails to provide the required information within 90 days of the ~~determination~~ Letter of ~~incompleteness~~In-Completion, the application shall lapse. ~~The applicant may request a refund of the application fee minus the city's cost of determining the completeness of the application.~~

~~D~~19.15.090. Notice of Application.

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

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

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

3~~2~~. Content. The notice of application shall include the following information:

a. The dates of the application, the determination of completeness, and the notice of application;

b. The name of the applicant;

c. The location and description of the project;

d. The requested actions and/or required studies;

e. The date, time, and place of the open record hearing, if one has been scheduled;

f. Identification of environmental documents, if any;

g. A statement of the public comment period, which shall be not less than 30 days following the date of notice of application; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights. ~~The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or if no open record predecision hearing is provided, prior to the decision on the project permit;~~

h. The city staff contact and contact information;

i. The identification of other permits not included in the application to the extent known by the city;

j. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan;

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

l. Any other information that the city determines appropriate.

D~~3~~. Open Record Hearing. If an open record hearing is required on the land use ~~permit~~approval, the city shall~~:~~

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

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

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

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

6. Except for a determination of significance, the city shall not issue a threshold determination under MICC 19.07.1~~1~~20 or issue a decision on an application until the expiration of the public comment period on the notice of application.

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

~~a. Building permit other than a major single-family dwelling building permit;~~

~~b. Lot line revision;~~

~~c. Right-of-way permit;~~

~~d. Storm drainage permit;~~

~~e. Home occupation permit;~~

~~f. Design review – minor new construction;~~

~~g. Final plat approval;~~

~~h. Shoreline exemption permit;~~

~~i. Seasonal development limitation waiver; and~~

~~k. Tree removal permit.~~

~~E~~19.15.100. Public ~~Notice and Information Availability~~Hearing Notice.

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

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

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

~~a~~1. A general description of the proposed project and the action to be taken by the city;

~~b~~2. A ~~nonlegal description~~address or parcel number of the property and a~~,~~ vicinity map or sketch;

~~c~~3. The time, date and location of ~~any required~~ the open record public hearing;

~~d~~4. A contact name and number where additional information may be obtained;

~~e~~5. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal;

~~f. A description of the deadline for submitting public comments;~~

~~g~~6. A link to a website where additional information about the project can be found.

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

~~a~~1. ~~Administrative and Discretionary Actions and Major Single-Family Dwelling Building Permits.~~ Notice shall be mailed to parties of record, all property owners within 300 feet of the property, published in the weekly DSG bulletin, and posted on the site in a location that is visible to the public right-of-way.

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

(~~a~~1) ~~Public n~~Notice of ~~an application~~ public hearing ~~for a long subdivision~~ shall also be published ~~at least 30 days prior to the open record hearing on the application~~ in a newspaper of general circulation within the city.

(~~b~~2) If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that contiguous land shall be treated as part of the long subdivision for notice purposes, and the Public Hearing Notice ~~notice of the application~~ shall be given to all owners of lots located within 300 feet of the proposed long subdivision and the applicant's contiguous land.

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

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

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

~~F. Open Record Public Hearing.~~

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

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

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

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

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

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

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

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

~~a. Approve;~~

~~b. Conditionally approve;~~

~~c. Continue the hearing; or~~

~~d. Deny the application.~~

19.15.110. Request for Information.

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

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

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

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

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

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

19.15.120. Notice of Decision.

The city will make an effort to process permits and land use reviews in a reasonable time subject to constraints related to staff workload and resources. The city shall provide notice in a timely manner of its final decision or recommendation on development proposals requiring Type II, III and IV land use decisions, including the SEPA threshold determination, if any, the dates for any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to the applicant, parties of record, agencies with jurisdiction. Notice of decision shall also be provided to the public as provided in MICC 19.15.090. The notice of decision may be provided by email or a hard copy may be mailed.

19.15.130. ~~Administrative~~ Appeals.

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

~~2~~B~~1~~. Administrative Appeals. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision, if a notice of decision is required, or after the effective date of the decision subject to appeal if no notice of decision is required.

~~3~~C~~2~~. Appeals shall include the following information:

1. The decision(s) being appealed;

2. The development code interpretation, if any, associated with the proposed appeal;

3. The name and address of the appellant and his/her interest in the matter;

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

5. The desired outcome or changes to the decision; and

6. Payment of ~~T~~the appeals fee, if any.

D. Authority for appeals is specified in MICC 19.15.040(E).

E. ~~Public n~~Notice of an open record public hearing for an appeal shall be provided ~~in the manner specified in subsection E of this section~~consistent with the notice of public hearing provisions of MICC 19.15.100.

F. The rules of procedure for appeal hearings shall be as follows:

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

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

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

a. Reverse the decision.

b. Modify the decision and approve it as modified.

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

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

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

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

G. When an applicant has opted for consolidated permit processing pursuant to subsection I of this section, administrative appeals of ministerial, administrative or discretionary actions listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner.

19.15.140. Open Record Public Hearing.

A. Only one open record public hearing shall be required prior to action on all Type IV actions.

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

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

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

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

4. Rebuttal, response or clarifying statements by the applicant and/or the staff and/or the public.

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

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

1. Approve;

2. Conditionally approve;

3. Continue the hearing;

4. Remand the application to staff; or

5. Deny the application.

19.15.150. Expiration of Approvals.

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

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

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

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

~~a~~1. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

~~b~~2. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

E. Design Review. If the applicant has not submitted a complete application for a building permit within ~~two~~ three years from the date of the notice of the final design review decision, or within ~~two~~ three years from the decision on appeal from the final design review decision, design review approval shall expire. ~~The design commission or code official may grant an extension for no longer than 12 months, for good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.~~

F~~5~~. Responsibility for knowledge of the expiration date shall be with the applicant.

19.15.160. Code Interpretations.

A. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:

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

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

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

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

5. Relevant judicial decisions;

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

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

8. Previous implementation of the regulatory requirements governing the situation.

2. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner.

19.15.170. Vesting

A. Purpose. The purpose of this section is to identify certain points in the land use approval process at which an applicant's rights become "vested." Vested rights is defined as the guarantee that an application will be reviewed and a development proposal can be developed (if a permit is issued) under regulations and procedures existing at one moment in time and regardless of changes that may have been made later and prior to final completion of a project or use.

B. Vesting for Land Use Reviews. Complete applications for land use review of Type 1 land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department's issuance of a Letter of Completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

C. Scope of Vested Rights.

1. Land use reviews that are subject to the provisions of this section shall be considered under the zoning and land use control ordinances (Titles 15 and 19 MICC) in effect on the date of complete application. Supplemental information and revisions to a development proposal design required by the City after vesting of a complete application shall not affect the validity of the vesting for such application.

2. An applicant must specifically identify a proposed land use or uses in the land use review application as the intended use of the development proposal site in order to vest the right to engage in a specific land use against an ordinance implementing a change in permitted land uses.

3. An application for a land use review may be denied or approved with conditions under the authority of the City to protect and enhance the public safety, health and welfare, and under the State Environmental Policy Act (SEPA) and the City of Mercer Island's SEPA regulations and policies as of the date of vesting, notwithstanding the fact that the applicant has attained a vested right against enforcement of an ordinance implementing changes in regulations, codes or procedures affecting that land use review application.

D. Termination of Vested Rights.

1. Termination of vested rights associated with a land use review for a development proposal shall occur at the time of expiration of land use review approval, as established in MICC 19.15.140.

2. Applicant-generated modifications or requests for revision(s) to building permits, short subdivision, or long subdivisions which are not made in response to staff review, public process, appeal, or conditions of approval, and which result in substantial changes to a development proposal design, which includes but is not limited to include the creation of additional lots, substantial change in access, substantial changes in project design, or additional impacts to critical areas shall be treated as new applications for purposes of vesting.

3. Applicant-generated proposals to create additional lots, substantially change access, increase critical area impacts, or change conditions of approval on an approved preliminary short subdivision or long subdivision shall also be treated as a new application for purposes of vesting.

~~G. Decision Criteria. Decisions shall be based on the criteria specified in the Mercer Island City Code for the specific action. An applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. A reference to the code sections that set out the criteria and standards for decisions appears in MICC 19.15.010(E). For those actions that do not otherwise have criteria specified in other sections of the code, the following are the required criteria for decision:~~

~~1. Comprehensive Plan Amendment.~~

~~a. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies; and:~~

~~i. There exists obvious technical error in the information contained in the comprehensive plan; or~~

~~ii. The amendment addresses changing circumstances of the city as a whole.~~

~~b. If the amendment is directed at a specific property, the following additional findings shall be determined:~~

~~i. The amendment is compatible with the adjacent land use and development pattern;~~

~~ii. The property is suitable for development in conformance with the standards under the potential zoning; and~~

~~iii. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.~~

~~2. Reclassification of Property (Rezones).~~

~~a. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;~~

~~b. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;~~

~~c. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;~~

d. The proposed reclassification does not constitute a "spot" zone;

e. The proposed reclassification is compatible with surrounding zones and land uses; and

f. The proposed reclassification does not adversely affect public health, safety and welfare.

3. Conditional Use Permit.

a. The permit is consistent with the regulations applicable to the zone in which the lot is located;

b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;

c. The use is consistent with policies and provisions of the comprehensive plan; and

d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

4. Variances. An applicant or property owner may request a variance from any numeric standard, except for the standards contained within Chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (G)(4)(a) through (h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (G)(4)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (G)(4)(a) through (i) of this section:

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

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

c. No use variance shall be allowed;

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

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

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

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

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

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

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

~~ii. All storm water discharged shall be mitigated consistent with the most recent Washington State Department of Ecology Stormwater Management Manual for Western Washington, including attenuation of flow and duration. Mitigation will be required for any and all new and replaced impervious surfaces. In designing such mitigation, the use of a continuous simulation hydrologic model such as KCRTS or WWHM shall be required; event based models will not be allowed. In addition, mitigation designs shall utilize flow control best management practices (BMPs) and low impact development (LID) techniques to infiltrate, disperse and retain stormwater on site to mitigate the increased volume, flow and pollutant loading to the maximum extent feasible;~~

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

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

~~5. Setback Deviation. A setback deviation shall be granted by the city only if the applicant demonstrates all of the following:~~

~~a. Setback Deviation Criteria. Setback deviations shall be subject to the following criteria:~~

~~i. No use deviation shall be allowed;~~

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

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

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

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

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

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

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

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

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

19.15.180. Additional ~~Shoreline Permits~~ Procedures for Shoreline Review.

~~a. a. Administrative Responsibility. Except as otherwise stated in this section, the code official is responsible for:~~

~~i. Administering shoreline permits.~~

~~ii. Approving, approving with conditions or denying shoreline exemption permits, substantial development permits, shoreline conditional use permits, shoreline variances and permit revisions in accordance with applicable provisions.~~

~~iii. Determining compliance with the State Environmental Policy Act.~~

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

~~b. Shoreline Categorical Exemption Decision Criteria and Process. Any development that qualifies as being a shoreline categorical exemption, as specified in MICC 19.07.110, shall not require a shoreline permit, but must still meet all requirements of the Mercer Island Unified Land Development Code.~~

~~c. Shoreline Exemption Permit Decision Criteria and Process.~~

~~i. Shoreline Exemption Permit Application Criteria. A shoreline exemption permit may be granted to the following development as long as such development is in compliance with all applicable requirements of the Mercer Island Unified Land Development Code and any of the following:~~

~~(A) Any development of which the total cost or fair market value, whichever is higher, does not exceed $6,416 or as periodically revised by the Washington State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state; or~~

~~(B) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts established to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or~~

~~partial destruction, including complete replacement of legally existing structures. Normal maintenance of single-family dwellings is categorically exempt as stated above; or~~

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

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

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

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

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

~~(H) Projects for the restoration of ecological functions.~~

~~ii. Shoreline Exemption Permit Application Process. The city shall issue or deny the shoreline exemption permit within 10 calendar days of receiving a complete application, or 10 days after issuance of a DNS, MDNS or EIS if SEPA review is required. The city shall send the shoreline permit decisions to the applicant and all applicable local, state, or federal agencies as required by state or federal law.~~

~~d. Substantial Development Permit Application Decision Criteria and Process. A substantial development permit (SDP) is required for any development within shorelands not qualifying as being subject to a categorical exemption or shoreline exemption permit. Requirements and procedures for securing a substantial development permit are established below.~~

~~i. SDP Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a shoreline development permit.~~

~~ii~~1. ~~Substantial Development Permit (SDP) Application Process. The applicant shall attend a preapplication meeting prior to submittal of a substantial development permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.~~

~~(A)~~a. ~~Once a complete application has been submitted, public notice of an application for a substantial development permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for administrative actions; provided, such notice shall be given at least 30 days before the date of final action by the city. The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or request a copy of the decision(s) to the city within 30 days from the last date the notice is published. If a hearing is to be held on an application, notices of such hearing shall~~

~~include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)~~b. ~~Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.~~

A. Open record public hearing. An open record hearing before the code official~~, as set out in subsection F of this section,~~ shall be conducted on the shoreline substantial development permits, shoreline conditional use permits, and shoreline variances when the following factors exist:

~~(1)~~1. The proposed development has broad public significance; or

~~(2)~~2. Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or

~~(3)~~3. At the discretion of the code official.

~~e~~B. Ecology filing. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

~~(C)~~c. ~~The technical review of shoreline substantial development permits must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code.~~

C~~d~~. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with conditions, or denying any substantial development permit or shoreline exemption is final unless an appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

~~(E)~~e. ~~The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

~~e~~2. ~~Shoreline Conditional Use Permit Application Decision Criteria and Process. The purpose of a shoreline conditional use permit is to provide a system which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the city of Mercer Island or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the applicable city regulations.~~

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

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

~~(B) That the proposed use will not detrimentally interfere with the normal public use of shorelands within the "urban park environment" shoreline environment designation;~~

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

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

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

~~(F) In applying the above criteria when reviewing shoreline conditional use applications, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the shoreline conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.~~

~~iia. Shoreline Conditional Use Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a shoreline conditional use permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.~~

~~(A)i. Once a complete application has been submitted, public notice of an application for a shoreline conditional use permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for discretionary actions; provided, such notice shall be given at least 30 days before the date of decision by the city.~~

~~The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.~~

~~If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)ii. Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.~~

~~(C)iii. The technical review of shoreline conditional use permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in~~

~~subsection F of this section, shall be conducted on the shoreline conditional use permits when the following factors exist:~~

~~(1A) The proposed development has broad public significance; or~~

~~(2B) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or~~

~~(3C) At the discretion of the code official.~~

~~(D)~~D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit or shoreline variance is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal laws. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

~~(E)~~v. ~~The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

~~f~~3. ~~Shoreline Variance Permit Decision Criteria and Application~~Process.

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

~~(A) In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.~~

~~(B) Shoreline variance permits for development that will be located landward of the ordinary high water mark, and/or landward of any associated wetland, may be authorized; provided, the applicant can demonstrate all of the following:~~

~~(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes or significantly interferes with reasonable use of the property not otherwise prohibited;~~

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

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

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

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

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

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

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

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

iia. Shoreline Variance Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a shoreline variance. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.

(A)i. Once a complete application has been submitted, public notice of an application for a shoreline variance shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for discretionary actions; provided, such notice shall be given at least 30 days before the date of decision by the city.

The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(B)ii. Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.

(C)iii. The technical review of shoreline variance permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in

subsection F of this section, shall be conducted on the shoreline variance permits when the following factors exist:

(1A) The proposed development has broad public significance; or

(2B) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or

(3C) At the discretion of the code official.

(D)iv. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal agencies. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

(E)v. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

iiib. The reasonable use exemption provided in MICC 19.07.030(B) does not apply in the shorelands. The provision of reasonable use in the shorelands shall be accomplished through a shoreline variance.

g4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development permits, shoreline conditional use permits and shoreline variance permits:

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

iiib. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

h5. Appeals. Appeals to any shoreline permit decision, except shoreline exemption permits, shall be in accordance with RCW 90.58.180. Appeals to shoreline exemptions permits shall be filed in accordance with subsection JI of this section.

~~j. Revisions. When an applicant seeks to revise a substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met.~~

~~H. Notice of Decision.~~

~~1. Unless the city and applicant have mutually agreed in writing to an extension of time, project review shall be completed within 120 days from the date the application is determined to be complete. Time required for the submittal of additional information, preparation of environmental impact statement, and hearing of appeals shall be excluded from this 120-day period.~~

~~2. Written notice of the decision shall be provided to the applicant and all parties of record. Notice of decision shall also be provided in the biweekly DSG bulletin.~~

~~I. Optional Consolidated Permit Processing.~~

~~1. An application that involves two or more permits may be processed concurrently and the decision consolidated at the request of the project applicant. If an applicant elects the consolidated permit processing, the code official shall determine the appropriate application and review procedures for the project.~~

~~2. If a project requires action from more than one hearing body, the decision authority in the consolidated permit review shall be by the decision body with the broadest discretionary powers.~~

~~J. Administrative Appeals.~~

~~1. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision, if a notice of decision is required, or after the effective date of the decision subject to appeal if no notice of decision is required. The term "party of record," for the purposes of this chapter, shall mean any of the following:~~

~~a. The applicant and/or property owner;~~

~~b. Any person who testified at the open record public hearing on the application;~~

~~c. Any person who individually submits written comments concerning the application for the open record public hearing, or to the code official prior to a decision on the project permit if there is no open record public hearing. Persons who have only signed petitions are not parties of record;~~

~~d. The city of Mercer Island.~~

~~2. Appeals shall include the following information:~~

~~a. The decision being appealed;~~

~~b. The development code interpretation, if any, associated with the proposed appeal;~~

~~c. The name and address of the appellant and his/her interest in the matter;~~

~~d. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially~~

~~affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;~~

~~e. The desired outcome or changes to the decision; and~~

~~f. The appeals fee, if required.~~

~~3. Authority for appeals is specified in MICC 19.15.010(E).~~

~~4. Public notice of an appeal shall be provided in the manner specified in subsection E of this section.~~

~~5. The rules of procedure for appeal hearings shall be as follows:~~

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

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

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

~~i. Reverse the decision.~~

~~ii. Modify the decision and approve it as modified.~~

~~iii. Remand the decision back to the decision maker for further consideration.~~

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

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

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

~~6. When an applicant has opted for consolidated permit processing pursuant to subsection I of this section, administrative appeals of ministerial, administrative or discretionary actions listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner.~~

~~K. Expiration of Approvals.~~

~~1. General. Except for long and short subdivisions, building permits or as otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised.~~

~~2. Long and Short Subdivision.~~

~~a. Once the preliminary plat for a long subdivision has been approved by the city, the applicant has five years to submit a final plat meeting all requirements of this chapter to the city council for approval.~~

~~b. Once the preliminary plat for a short subdivision has been approved by the city, the applicant has one year to submit a final plat meeting all requirements of this chapter. A plat that has not been recorded within one year after its preliminary approval shall expire, becoming null and void. The city may grant a single one-year extension, if the applicant submits the request in writing before the expiration of the preliminary approval.~~

~~c. In order to renew an expired preliminary plat, a new application must be submitted.~~

~~3. Responsibility for knowledge of the expiration date shall be with the applicant.~~

~~L. Code Interpretations.~~

~~1. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:~~

~~a. The plain language of the code section in question;~~

~~b. Purpose and intent statement of the chapters in question;~~

~~c. Legislative intent of the city council provided with the adoption of the code sections in question;~~

~~d. Policy direction provided by the Mercer Island comprehensive plan;~~

~~e. Relevant judicial decisions;~~

~~f. Consistency with other regulatory requirements governing the same or similar situation;~~

~~g. The expected result or effect of the interpretation; and~~

~~h. Previous implementation of the regulatory requirements governing the situation.~~

~~2. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner. (Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 10; Ord. 16C-13 § 1; amended during 3/15 supplement; Ord. 13C-12 § 6; Ord. 10C-06 § 6; Ord. 08C-01 § 8; Ord. 02C-04 § 7; Ord. 02C-01 § 6; Ord. 99C-13 § 1).~~

19.15.190. Permit review for 6409 eligible wireless communications facilities

A. Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the city shall approve the application unless it determines that the application is not covered by 47 CFR 1.40001.

B. Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the city determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (I)(1) of this section.

2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

3. Following a supplemental submission, the city will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (I)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

C. Failure to act. In the event the city fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

19.15.200. Revisions. Revisions of approved permits are as follows. A complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards except for building permits which shall be reviewed in accordance with Title 17.

A. Revisions for approved Type IV land use permits, except shoreline permits, are as follows:

1. Revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. For the purposes of this section, substantial change includes the creation of additional lots, the elimination of open space, substantial changes in access, or changes to conditions of approval.

2. Approval of the following modifications by the code official shall not be considered revisions:

a. Engineering design, unless the proposed design alters or eliminates features required as a condition of preliminary approval.

b. Changes in lot or tract dimensions that are consistent with MICC 19.02.

c. A decrease in the number of lots to be created.

d. Typographical errors and minor omissions

3. The code official shall have the authority to administratively review and approved modifications described in subsection (2) of this section through review procedures established by the department.

B. When an applicant seeks to revise an approved shoreline substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met. If these requirements are met, the decision will be processed per the following.

1. Revision of substantial development permit:

a. A decision will be provided to the applicant and parties of record and posted in DSG's weekly permit bulletin.

b. The city shall send the revised permit to all applicable local, state or federal agencies including the Attorney General, as required by state or federal law within eight days of issuing he decision.

c. Appeals shall be in accordance with RCW 90.58.180.

2. Revision of a shoreline CUP or shoreline variance:

a. The application for a revision shall be submitted to the Washington State Department of Ecology. Within 15 days of receipt, Ecology will issue a decision of approval, approval with conditions, or denial of the revision.

19.15.210. Compliance required.

A. It is the intent of this section to require that non-conforming sites, structures, lots, and uses, which were created without prior City approval, comply with the applicable provisions of Title 19 MICC.

B. If development inconsistent with the purposes and requirements of this Title 19 has occurred on a development proposal site without prior City approval, the City shall not issue any land use review approvals for the development proposal site unless the land use review approval requires the restoration of the site to a state that complies with the purposes and requirements of Title 19 MICC are addressed.

C. Suspension of Land Use Approvals. The city may suspend any land use review approval, including shoreline permits, when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a code violation. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.230, Enforcement.

19.15.230 Enforcement *(Not part of this review)*

19.15.~~040~~240 Design Review and the Design commission.

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

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

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

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

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

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

~~B. Creation of Design Commission. A design commission is established as provided for in Chapter 3.34 MICC.~~

~~C~~A. Rules and Records.

1. The design commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the city council.

2. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the design commission shall be by majority vote of the members constituting the quorum. A tie vote on a motion to approve shall constitute a failure of the motion and a denial of the application.

3. The code official shall serve as executive secretary of the design commission and shall be responsible for all records. All meetings of the design commission shall be open to the public. The design commission shall keep minutes of its proceedings and such minutes and a copy of its rules shall be kept on file in the office of the city clerk and open to inspection by the public.

~~D~~B. Powers of the Design Commission and Additional Functions.

1. No building permit or other required permit shall be issued by the city for any major new construction or minor exterior modification of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E).

2. The design commission or code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to secure the installation and maintenance of landscaping, screens, and other similar site improvements.

3. When the city council deems it necessary to retain consultants for a proposed capital improvement, the council shall seek recommendations from the design commission as to the selection of consultants to provide design services.

4. Consultants or city officials charged with the design responsibility for a major capital improvement shall hold preliminary discussions on the proposed project with the design commission to obtain its preliminary recommendations as to aesthetic, environmental and design principles and objectives. In

addition, the design commission shall review major capital improvements at the completion of the design development phase. A capital improvement approved by the city council after review and recommendations by the design commission may be implemented on a phasing basis without further review so long as the improvement is developed in substantial conformity with the reviewed plan. Significant deviations from an approved plan shall be submitted to the design commission for its further review and recommendations.

5. The design commission or code official shall complete its review and make its decision and/or recommendations pursuant to the process set forth in subsection F of this section, and the review an decision and/or recommendations shall be based upon the design objectives and standards set forth in subsection G of this section, with such amendments as may be made from time to time.

6~~E~~. Additional Functions. The Design Commission may undertake the following additional functions as needed:

~~1~~a. The design commission may assist any person, group, or agency who requests design advice on matters not requiring formal commission action.

~~2~~b. The design commission shall consult and cooperate with the planning commission and other governmental bodies on matters affecting the appearance of the Island. The design commission may offer recommendations to the appropriate city agencies and officials on legislation to promote aesthetic and environmental values.

~~3~~c. The design commission shall act as the appeal authority for design review decisions made by the code official ~~for minor exterior modifications~~.

~~F~~B. Design Review Procedure.

1. General.

a. Intent. The intent of the design review process is to ensure that regulated development in all land use zones complies with design objectives and standards established in Chapters 19.11 and 19.12 MICC.

b. Scope. No building permit or other required permit shall be issued by the city for any ~~major new construction or minor exterior modification~~ development of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E). Deviations from a plan approved by the design commission or code official shall be permitted only upon the filing and approval of an amended plan. In no instance shall the design commission's or code official's action conflict with the city's development code or other applicable city ordinances or with state or federal requirements.

c. Review Authority.

i. ~~Major New Construction~~Design Commission Review. The design commission shall conduct the design review and make compliance determinations regarding ~~major new construction:~~.

(A) New structures

(B) New additions, New additions, remodels (exterior only), and roof and façade changes exceeding 15 percent of the structure's current appraised value as of the time the initial application for the work is

submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference,

(C) Signs where a master sign plan has been approved for the site;

(D) Site plan layout resulting from an additional structure or parking lot or enlargement of a structure or parking lot;~~,~~

(E) Landscaping modifications that diminish an existing perimeter landscape screen; and

(F) Other improvements such as paving and landscaping when they are made in conjunction with changes to a structure.

ii. ~~Minor Exterior Modifications~~Code Official Review. The ~~design commission or the~~ code official shall conduct the design review and make compliance determinations regarding:

(A) New additions, remodels (exterior only), and roof and façade changes not exceeding 15 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference;

(B) Signs where an approved master sign plan has not been approved for the site;

(C) Relocating, modifying or adding mechanical equipment;

iii. The code official shall have the authority to determine if an application does not require design commission review, based on factors such as the scope, location, context and visibility of the change or modification; and

iv. The tenant and property owner are responsible for ensuring that all development and activities such as painting and landscaping comply with Chapters 19.11 and 19.12. If a development or activity does not require a permit and therefore does not require design review, the tenant and/or property owner should contact the code official to ensure that the development or activity complies with Chapter 19.11 and 19.12.

d. Process.

i. Time Frame and Procedure. Design review shall be conducted in accordance with the timelines and procedures set forth in MICC 19.15.040, Permit review procedures. Design review is not subject to the one open record hearing requirement or consolidated permit review processing.

ii. Written Recommendations. All decisions of the design commission and code official shall be reduced to writing and shall include findings of fact and conclusions that support the decisions.

~~iii. Expiration of Approvals. If the applicant has not submitted a complete application for a building permit within two years from the date of the notice of the final design review decision, or within two years from the decision on appeal from the final design review decision, design review approval shall expire. The design commission or code official may grant an extension for no longer than 12 months, for~~

~~good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.~~

2. Review Process ~~for Major New Construction~~.

~~a. Scope of Review. Design review of major new construction shall include new structures, new additions, remodeled structures, and site plan layout, and other improvements such as paving and landscaping when they are made in conjunction with changes to a structure.~~

~~b. Presubmittal Concept Review~~.

~~i. Required: Predesign~~ Preapplication ~~Meeting. A predesign~~ preapplication ~~meeting must be scheduled with staff from the development services group (DSG) prior to formal project development and application. The applicant may present schematic sketches and a general outline of the proposed project. This meeting will allow city staff to acquaint the applicant with the design standards, submittal requirements, and the application procedures and provide early input on the proposed project.~~

~~ii. A complete application on forms provided by the development services group (DSG) and all materials pertaining to the project shall be submitted at a formal preapplication meeting with DSG staff. A preapplication meeting shall not be required if the applicant is only seeking an exemption from Design Commission review pursuant to MICC 19.15.040(F)(3)(a).~~

~~iii. Acceptance. DSG staff shall determine if the required materials have been provided for preliminary design review. If so, the application will be accepted and the process for determination of completeness and review set forth in MICC 19.15.020 shall commence.~~

a. ~~Optional:~~ Study Session. In addition to the ~~predesign~~ preapplication meeting, an applicant for a project that will reuire design review an dapproval by the design commission ~~may~~shall meet with the design commission ~~or code official~~ in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.

~~c. Preliminary Design Review Submittal.~~

~~i. Preapplication Meeting. A complete application on forms provided by the development services group (DSG) and all materials pertaining to the project shall be submitted at a formal preapplication meeting with DSG staff. A preapplication meeting shall not be required if the applicant is only seeking an exemption from formal design review pursuant to MICC 19.15.040(F)(3)(a).~~

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

iii. Acceptance. DSG staff shall determine if the required materials have been provided for preliminary design review. If so, the application will be accepted and the process for determination of completeness and review set forth in MICC 19.15.020 shall commence.

dc. SEPA Determination. The city environmental official will review the SEPA environmental checklist (if one is required), the project proposal and other information required for a complete application to assess the project's probable environmental impacts and issue a determination pursuant to MICC 19.07.120. Any SEPA appeal shall be pursuant to MICC 19.07.120. The design commission's decision on the preliminary plans shall represent an action on the proposal for SEPA appeal purposes.

e. Preliminary Design Commission Review.

i. Public Meeting. The design commission shall hold a public meeting to consider the completed preliminary design review application. The design commission may approve, approve with conditions or deny an application or continue the meeting. The commission may identify additional submittal items required for the final design review.

ii. Additional Requirements. If additional submittal items are required, or the preliminary design application is approved with conditions, the conditions must be addressed and any additional items must be submitted at least 21 days prior to the final design commission review.

fb. Final Design Commission ReviewPlan Submittal.

i. Submittal of Final Plan. All materials pertaining to the final plan shall be submitted a minimum of 37 0 days prior to the design commission final review hearing dateany meeting dates including study sessions, public meetings, and public hearings. The final plans shall be in substantial conformity with approved preliminary plans.

ii. Open Record Hearing. The design commission shall hold an open record hearing to consider the final proposal, at the conclusion of which it may approve, approve with conditions, deny the proposed final plans, or continue the hearing.

g. Appeal. Only the final design commission review decision may be appealed, in a closed record appeal to the hearing examiner, pursuant to MICC 19.15.020(J).

3. Review Process for Minor Exterior Modification.

a. Scope of Review.

i. Design review of minor exterior modifications shall include review of exterior modifications to any existing structures including paint, material, minor roof or facade changes, new additions, landscaping changes, and site plan modifications that do not qualify as major new construction or are undertaken independently from modification of an existing structure, and new or modified signs.

ii. The code official shall have the authority to determine if a is not significant, and therefore does not require formal design review, based on factors such as the scope, location, context and visibility of the change or modification. The may determine that is not required for including, but not limited to: repainting structures to similar colors; relocating, modifying or adding mechanical equipment; reorganization of portions of parking lots involving less than five spaces; modifications to existing signs pertaining to sign locations or minor changes to color or text; modifications to locations of existing

lighting; or minor changes to existing, approved landscaping. iii. There shall be a rebuttable presumption of nonsignificance, and therefore no requirement of a formal design review, if all of the following conditions are met: (1) the cost of the work does not exceed 15 percent of the structure's current King County assessed value as of the time the initial application for the work is submitted (2) there is no additional structure or parking lot, or any enlargement of or addition to an existing structure or parking lot, (3) the work does not cause the landscape area to fall below or further below the minimum landscape area requirements in MICC 19.12.040(B)(4), (4) the work does not remove or diminish an existing perimeter landscape screen, (5) the work does not include new or additional service or mechanical areas referred to in MICC 19.12.060, and (6) the work does not include additional exterior lighting or a new or enlarged exterior sign. If there is no current King County assessed value for a structure, a current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference.

b. Application Submittal. A development application, accompanied by supporting materials, shall be submitted to the city, on a form provided by the development services group (DSG), for any proposed minor exterior modification. DSG staff shall meet with the applicant A preapplication meeting with DSG staff prior to submission of the application is optional to determine, depending on the scope of the project, what supporting materials are required. Such materials may include site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; lighting plan, sign master plan, parking plan; color and material samples; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards set forth in subsection G of this section. No applicant shall be required to provide materials unless they are both necessary for design review and reflect a change in, or consequence of a change in, the existing development. For the purpose of making a determination of nonsignificance under MICC 19.15.040(F)(3)(a) under circumstances where the project is presumed to be nonsignificant as therein provided, the code official shall only require the submittal of materials demonstrating the entitlement to the presumption and the absence of other material impacts.

c. Review. The designated DSG staff shall determine administratively if the proposal is in compliance with the requirements of this chapter and may approve, approve with conditions, or deny the application. Staff has the discretion to send any minor exterior modification proposal to the design commission for review and decision at an open record hearinga public meeting.

d. Appeal. The code official's decision on an application for minor exterior modification is final unless appealed to the design commission pursuant to MICC 19.15.020(J). The design commission's decision on an application (not an appeal) for minor exterior modification is final unless appealed to the hearing examiner pursuant to MICC 19.15.020(J).

4. Criteria for Design Review Decisions. Following the applicable review process above, the design commission or code official shall deny an application if it finds that all the following criteria have not been met, or approve an application, or approve it with conditions, based on finding that all the following criteria have been met:

a. The proposal conforms with the applicable design objectives and standards of the design requirements for the zone in which the improvement is located, as set forth in subsection G of this section:

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

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

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

~~b. The proposal is consistent with the comprehensive plan.~~

~~c. The proposal does not increase the project's degree of nonconformity.~~

~~G. Design Objectives and Standards.~~

~~1. Town Center. Design objectives and standards for regulated improvements within the Town Center are set forth in Chapter 19.11 MICC.~~

~~2. Zones Outside Town Center. Design objectives and standards for regulated improvements in all zones outside the Town Center are set forth in Chapter 19.12 MICC.~~

~~H. Appeals. Appeals shall be consistent with the appeal procedures specified in MICC 19.15.020(J). (Ord. 17C-12 § 10; amended during 3/15 supplement; Ord. 11C-04 § 3; Ord. 04C-08 § 4; Ord. 03C-10 § 6; Ord. 03C-06 § 4; Ord. 02C-04 § 4; Ord. 99C-13 § 1).~~

19.15.~~050~~250 Comprehensive plan amendments.

A. Purpose. The Growth Management Act (GMA), Chapter 36.70A RCW, requires that the city include within its development regulations a procedure for any interested person to suggest plan amendments. The suggested amendments will be docketed for consideration. The purpose of this section is to establish a procedure for amending the city's comprehensive plan text and maps. Amendments to the comprehensive plan are the means by which the city may modify its 20-year plan for land use, development or growth policies in response to changing city needs or circumstances. All plan amendments will be reviewed in accordance with the GMA and other applicable state laws, the countywide planning policies, the adopted city of Mercer Island comprehensive plan, and applicable capital facilities plans.

B. Application Requirements. Proposed amendment requests may be submitted by the public, city manager, city department directors or by majority vote of the city council, planning commission or other city board or commission. Proposed amendments submitted by the public shall be accompanied by application forms required by this title and by the code official and the filing fees established by resolution. All application forms for amendments to the comprehensive plan shall include a detailed description of the proposed amendment in nontechnical terms.

C. Frequency of Amendments.

1. Periodic Review. The comprehensive plan shall be subject to continuing review and evaluation by the city ("periodic review"). The city shall take legislative action to review and, if needed, revise its comprehensive plan to ensure the plan complies with the requirements of the GMA according to the deadlines established in RCW 36.70A.130.

2. Annual Amendment Cycle. Updates, proposed amendments, or revisions to the comprehensive plan may be considered by the city council no more frequently than once every calendar year as established in this section (the "annual amendment cycle"). During a year when periodic review of the comprehensive plan is required under RCW 36.70A.130, the annual amendment cycle and the periodic review shall be combined.

3. More frequent amendments may be allowed under the circumstances set forth within RCW 36.70A.130(2). Amendments processed outside of the annual amendment cycle under RCW 36.70A.130(2) may be initiated by action of the city council. The city council shall specify the scope of the amendment, identify the projected completion date, and identify and, if necessary, fund resources necessary to accomplish the work. Amendments allowed to be processed outside of the annual amendment cycle are not subject to the docketing process outlined within subsection D of this section.

D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan in a manner that will ensure such suggested changes will be considered by the city and will be available for review by the public. The following process will be used to create the docket:

1. Preliminary Docket Review. By September 1, the city will issue notice of the annual comprehensive plan amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan amendment process but will be held for the next eligible comprehensive plan amendment process.

a. The code official shall compile and maintain for public review a list of suggested amendments and identified deficiencies as received throughout the year.

b. The code official shall review all complete and timely filed applications proposing amendments to the comprehensive plan and place these applications on the preliminary docket along with other city-initiated amendments to the comprehensive plan.

c. The planning commission shall review the preliminary docket at a public meeting and make a recommendation on the preliminary docket to the city council each year.

d. The city council shall review the preliminary docket at a public meeting. By December 31, the city council shall establish the final docket based on the criteria in subsection E of this section. Once approved, the final docket defines the work plan and resource needs for the following year's comprehensive plan amendments.

2. Final Docket Review.

a. Placement on the final docket does not mean a proposed amendment will be approved. The purpose of the final docket is to allow for further analysis and consideration by the city.

b. All items on the final docket shall be considered concurrently so that the cumulative effect of the various proposals can be ascertained. Proposed amendments may be considered at separate meetings or hearings, so long as the final action taken considers the cumulative effect of all proposed amendments to the comprehensive plan.

c. The code official shall review and assess the items placed on the final docket and prepare ~~a staff report~~ including recommendations for each proposed amendment. The code official shall be responsible for developing an environmental review of the combined impacts of all proposed amendments on the final docket, except that applicants seeking a site-specific amendment shall be responsible for submittal of a SEPA environmental checklist and supporting information. The applicant will need to submit SEPA and any other accompanying permits such as a rezone or a zoning code text amendment at this time. The code official may require an applicant to pay for peer review and/or additional resources needed to review the proposal. The code official shall set a date for consideration of the final docket by the planning commission and timely transmit the staff ~~report(s)~~ recommendation prior to the scheduled date.

d. The planning commission shall review the proposed amendments contained in the final docket based on the criteria set forth in MICC 19.15.~~02~~2400(~~G~~F)(1). The planning commission shall hold at least one public hearing on the proposed amendments. The planning commission shall make a recommendation on the proposed amendments and transmit the recommendation to the city council.

e. After issuance of the planning commission's recommendation, the code official shall set a date for consideration of the final docket by the city council. The city council shall review the proposed amendments taking into consideration the recommendations of the planning commission and code official. The city council may deny, approve, or modify the planning commission's recommendations consistent with the criteria set forth in MICC 19.15.~~020~~240(~~G~~F)(1). The city council's establishment of a final docket of proposed amendments is not appealable.

f. The planning commission and the city council may hold additional public hearings, meetings, or workshops as warranted by the proposed amendments.

E. Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

1. The request has been filed in a timely manner, and either:

a. State law requires, or a decision of a court or administrative agency has directed, such a change; or

b. All of the following criteria are met:

i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan;

ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;

iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;

iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city's vision; and

v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

F. Decision Criteria. Decisions to amend the Comprehensive Plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria

1. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies; and:

a. There exists obvious technical error in the information contained in the comprehensive plan; or

b~~i~~. The amendment addresses changing circumstances of the city as a whole.

2. If the amendment is directed at a specific property, the following additional findings shall be determined:

a. The amendment is compatible with the adjacent land use and development pattern;

b. The property is suitable for development in conformance with the standards under the potential zoning; and

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

G. Combined Comprehensive Plan Amendment and Rezone. In cases where both a comprehensive plan amendment and a rezone are required, both shall be considered together, and all public notice must reflect the dual nature of the request.

~~G~~H. Expansion of Land Use Map Amendment. The city may propose to expand the geographic scope of an amendment to the comprehensive plan land use map to allow for consideration of adjacent property, similarly situated property, or area-wide impacts. The following criteria shall be used in determining whether to expand the geographic scope of a proposed land use map amendment:

1. The effect of the proposed amendment on the surrounding area or city;

2. The effect of the proposed amendment on the land use and circulation pattern of the surrounding area or city; and

3. The effect of the proposed amendment on the future development of the surrounding area or city. (Ord. 16C-13 § 2).

19.15.260. Reclassification of Property (Rezones).

A. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property from one zoning designation to another.

B. Process. A rezone shall be considered as provided in MICC 19.15.280.

C. Criteria. The city council may approve a rezone only if all of the following criteria are met:

1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;

2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;

3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;

4. The proposed reclassification does not constitute a "spot" zone;

5. The proposed reclassification is compatible with surrounding zones and land uses; and

6. The proposed reclassification does not adversely affect public health, safety and welfare.

7. If a Comprehensive Plan amendment is required in order to satisfy MICC 19.15.060(C)(1), approval of the Comprehensive Plan amendment is required prior to or concurrent with the granting of an approval of the rezone.

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

19.15.270. Zoning Code Text Amendment

A. Purpose. The purpose of this section is to establish the process and criteria for amendment of this Code.

B. Process. Zoning Code amendments shall be considered as provided in MICC 19.15.080.

C. Initiation of zoning code amendment request. A zoning code amendment request may be initiated by the City Council, Planning Commission, or Code Official.

D. Criteria. The City may approve or approve with modifications a proposal to amend the text of this Code if:

1. The amendment is consistent with the Comprehensive Plan; and

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

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

E. Code change. Following approval of an amendment, the City shall amend this Code to reflect the change.

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

A. The city shall issue a notice for comprehensive plan amendments, reclassifications of property, and zoning code text amendments as described in MICC 19.15.250, 19.15.260, and 19.15.270. Notice shall be provided in the weekly DSG bulletin, made available to the general public upon request, and, if the proposed amendment will affect a specific property or defined area of the City, mailed to all property owners within 300 feet of the ~~property~~affected property or defined area, and posted on the site in a location that is visible to the public right-of-way.

1. The notice shall include the following information:

i. The name of the party proposing the proposed amendment or change;

ii. The location and description of the project, if applicable;

iii. The requested actions and/or required studies;

iv. The date, time, and place of the open record hearing;

v. Identification of environmental documents, if any;

vi. A statement of the public comment period which shall not be less than 30 days. The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights.;

vii. The city staff contact and contact information;

viii. The identification of other reviews or permits that are associated with the review of the proposed Comprehensive Plan, zoning text, or zoning map amendment, to the extent known by the city;

ix. A description of those development regulations used in determining consistency of the review with the city's comprehensive plan;

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

xi. Any other information that the city determines appropriate.

2. Timing of notice. The city shall provide the notice at least 30 days prior to the hearing.

3 The city shall accept public comments at any time prior to the closing of the record of an open record public hearing.

D. Review at Public Hearing

1. At an open record public hearing the planning commission shall consider the proposed review for conformance with the criteria as listed in the applicable section, the comprehensive plan and other applicable development standards.

2. The planning commission shall make a written recommendation on the review to the city council.

3.The city council shall consider the planning commission's recommendation at a public meeting where it may adopt or reject the planning commission's recommendations or remand the review back to the planning commission.

CROSSOUTS REMOVED

Chapter 19.15
ADMINISTRATION

Sections:

19.15.010 Purpose, intent and roles.

19.15.020 Land use review types.

19.15.030 Legislative actions

19.15.040 Summary of approval and authorities

19.15.050 Permit review procedures

19.15.060 Preapplication

19.15.070 Application

19.15.080 Determination of completeness

19.15.090 Notice of application

19.15.100 Public hearing notice

19.15.110 Response to Comments and Extensions

19.15.120 Notice of decision

19.15.130 Appeals

19.15.140 Open record public hearing

19.14.150 Expiration of approvals

19.15.160 Code interpretations

19.15.170 Vesting

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

19.15.190 Permit review for 6049 eligible facilities

19.15.200 Revisions

19.15.210 Compliance required

19.15.220 Open record public hearing

19.15.230 Enforcement *(Not part of this review)*

19.15.240 Design review and the design commission

19.15.250 Comprehensive plan amendments.

19.15.260 Reclassification of property (rezones).

19.15.270 Zoning code text amendments.

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

19.15.010 Purpose, intent and roles.

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

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

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

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

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

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

4. Development Services Group.

a. The code official is responsible for administration, interpretation and enforcement of the development code.

b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.

c. The city engineer is responsible for the administration and interpretation of engineering standards.

d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.

e. The fire code official is responsible for administration and interpretation of the International Fire Code.

5. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

19.15.020. Land Use Review Types.

There are four categories of land use review that occur under the provisions of the development code.

1. Type I. Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

2. Type II. Type II- reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that a Notice of Decision shall be issued for Type II decisions

3. Type III. Type III reviews require the exercise of discretion about nontechnical issues.

4. Type IV. Type IV reviews require discretion and may be actions of broad public interest. ~~Discretionary~~ Type IV reviews are only taken after an open record hearing.

5. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.

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

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

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

19.15.030. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions generally apply to geographic areas and implement adopted City policy, promote the community interest, and are normally of interest to many property owners and citizens. Legislative actions are only ~~taken~~adopted after an open record public hearing. Review procedures for legislative actions are located in subsection 19.15.280 of this chapter.

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

TABLE A

LAND USE REVIEW TYPE

Type I	Type II	Type III	Type IV
Home business, seasonal development limitation waiver, non-major single-family dwelling building permits, tree removal permit, right of way permit, special needs group housing safety determination, tenant improvement/change	Modified wireless communication facilities (6409 per 47.CFR.1.40001), lot line revision, setback deviations, final plat, code official design review, accessory dwelling unit, parking variances (reviewed by city engineer).	New and modified wireless (non-6409) communication facility, SEPA threshold determination, critical areas determination (wetland/watercourse buffer averaging/reduction, temporary encampment. Short	Conditional use permit, variance, critical areas reasonable use exception, long plat alteration and vacations, parking variance (reviewed by design commission), variance from short plat acreage limitation, wireless

of use, shoreline exemption, critical areas determination (steep slope alteration), final short plat, temporary commerce on public property, site development permits.		plat alteration and vacations, preliminary short plat, development code interpretations, major single-family dwelling building permit, shoreline substantial development permit, shoreline revision (substantial development).	communication facility height variance, planned unit development, design commission design review, permanent commerce on public property, shoreline conditional use permit (SCUP), shoreline variance, shoreline revision (variance and SCUP).

TABLE B

REVIEW PROCESSING PROCEDURES

	Type I	**Type II**	**Type III**	**Type IV**
	No Notice of Application No Notice of Decision	No Notice of Application Notice of Decision	Notice of Application Notice of Decision	Notice of Application Public Hearing Notice of Decision
Pre-application meeting required	No	No	Yes	Yes
Letter of Completion (within 28 days)	No	No	Yes	Yes

	Type I	Type II	Type III	Type IV
Notice of Application (mailing & posting)	No	No	Yes	Yes
Public Comment Period	None	None	30 days	30 days
Public Hearing (Open Record pre-decision)	No	No	No	Yes
Decision	Code official	Code official (Except final long plats which go to City Council at a public meeting)	Code official	Hearing examiner or Design Commission (Hearing examiner recommendation to Ecology for decision on Shoreline CUP / Variances)
Notice of Decision	No	Yes	Yes	Yes
Appeal Authority	Hearing Examiner or Superior Court (TBD)	Hearing Examiner	Hearing Examiner	Superior Court or Shoreline Hearings Board (Shoreline Permits)

19.15.050 Review procedures.

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

19.15.060. Preapplication.

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

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

C. Required Pre-application meetings. Pre-application meetings are required for Type III and Type IV ~~actions~~land use reviews. Pre-application meetings may be held for any other development proposal at the request of the applicant.

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

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

19.15.070. Application.

A. The department will begin review of any application for a development proposal after the applicant has submitted the materials and fees specified for complete applications. An application shall contain all information deemed necessary by the code official to determine if the proposed development proposal will comply with the requirements of the applicable development regulations. The applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. All applications for a development proposal ~~applications~~ shall include the following:

1. All applications for permits or ~~actions~~land use reviews by the city shall be submitted on forms provided by the City~~.~~;

2. A site plan and documentation supporting the development proposal, prepared in a form prescribed by the code official;

3. A completed SEPA environmental checklist, if required;

4. Any studies or reports required for the processing of the application;

5. A list of any permits or land use review types necessary for approval of ~~to~~ the development proposal that have been obtained prior to filing the application or that are pending before the City or any other governmental entity;

6. Drainage plans and documentation required by the Stormwater Management Manual for Western Washington as adopted by MICC Chapter 15.09;

7. Legal description of the site;

8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (1)(I) of this section shall satisfy the requirements of this subsection (1)(j); and

9. For Type II, III, and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.

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

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

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

19.15.080. Determination of Completeness and Letter of Completion.

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

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

C. Response to Letter of In-Completion. Within 14 days after an applicant has submitted all additional information identified as being necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary.

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

E. If the applicant fails to provide the required information within 90 days of the Letter of In-Completion, the application shall lapse.

19.15.090. Notice of Application.

A~~1~~. Timing. Within 14 days of the determination of completeness, the city shall issue a notice of application for all Type III and Type IV permits listed in MICC 19.15.010(E).

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

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

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

1. The dates of the application, the determination of completeness, and the notice of application;

2. The name of the applicant;

3. The location and description of the project;

4. The requested actions and/or required studies;

5. The date, time, and place of the open record public hearing, if one has been scheduled;

6. Identification of environmental documents, if any;

7. A statement of the public comment period, which shall be not less than 30 days following the date of notice of application; and a statement of the rights of individuals to comment on the

application, receive notice and participate in any public hearings, request a copy of the decision once made and any appeal rights.

8. The city staff contact and contact information;

9. The identification of other permits not included in the application to the extent known by the city;

10. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan;

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

12. Any other information that the city determines appropriate.

D. Open Record Public Hearing. If an open record hearing is required on the land use review, the city shall provide the notice of application at least 30 days prior to the public hearing.

E. Public Comment. The city shall accept public comments at any time prior to the closing of the record of an open record predecision public hearing, if any, or if no open record predecision public hearing is provided, prior to the decision on the project land use review.

F. Except for a determination of significance, the city shall not issue a threshold determination under MICC 19.07.120 or issue a decision on an application until the expiration of the public comment period on the notice of application.

19.15.100. Public Hearing Notice.

A. A public hearing notice is required for land use reviews requiring a public hearing. A Public Hearing Notice may be combined with a Notice of Application.

B. Public hearing notice shall be provided at least 30 days prior to any required open record public hearing

C. The public hearing notice shall include the following:

1. A general description of the proposed project and the action to be taken by the city;

2. A address or parcel number of the property and a vicinity map or sketch;

3. The time, date and location of the open record public hearing;

4. A contact name and number where additional information may be obtained;

5. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal;

6. A link to a website where additional information about the project can be found.

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

1. Notice shall be mailed to parties of record, all property owners within 300 feet of the property, published in the weekly DSG bulletin, and posted on the site in a location that is visible to the public right-of-way.

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

(1) Notice of public hearing shall also be published in a newspaper of general circulation within the city.

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

E. Every complete application for which notice is to be provided under subsection (D)(1) of this section together with all information provided by the applicant for consideration by the decision authority shall be posted by the city to a website accessible without charge to the public. Information shall be posted at the time the city issues the notice of application under subsection (D)(1) of this section and shall be updated within seven days after additional information is received from the applicant.

19.15.110. Request for Information.

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

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

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

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

B. Deadline for response. The official or entity requesting information shall establish a time limit for the applicant to respond. The time limit for an applicant to response to a request for information shall not be less than 30 days, provided an extension to applicant's time limit to respond may be authorized

pursuant to section 3., below. If responses are not received within the established time limit and no extension has been authorized, the code official may cancel the land use review for inactivity.

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

19.15.120. Notice of Decision. The city will make an effort to process permits and land use reviews in a reasonable time subject to constraints related to staff workload and resources. The city shall provide notice in a timely manner of its final decision or recommendation on development proposals requiring Type II, III and IV land use decisions, including the SEPA threshold determination, if any, the dates for any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to the applicant, parties of record, agencies with jurisdiction. Notice of decision shall also be provided to the public as provided in MICC 19.15.090. ~~Written~~The notice of decision may be provided by email or a hard copy may be mailed.

19.15.130. Appeals.

A. Appeals to Shoreline Hearings Board. Appeals to any shoreline substantial development permit, shoreline conditional use permit, or shoreline variance decision, shall be in accordance with RCW 90.58. Appeals to shoreline exemptions permits shall be filed in accordance with subsection 2 of this section.

B. Administrative Appeals. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision, if a notice of decision is required, or after the effective date of the decision subject to appeal if ~~no~~a notice of decision is not required.

C. Appeals shall include the following information:

1. The decision(s) being appealed;

2. The development code interpretation, if any, associated with the proposed appeal;

3. The name and address of the appellant and his/her interest in the matter;

4. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by

evidence in the record, or that the decision is in conflict with the standards for review of the particular action;

5. The desired outcome or changes to the decision; and

6. Payment of the appeals fee, if any.

D. Authority for appeals is specified in MICC 19.15.040(E).

E. Notice of an open record public hearing for an appeal shall be provided consistent with the notice of public hearing provisions of MICC 19.15.100.

F. The rules of procedure for appeal hearings shall be as follows:

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

a. Reverse the decision.

b. Modify the decision and approve it as modified.

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

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

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

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

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

19.15.140. Open Record Public Hearing.

A. Only one open record public hearing shall be required prior to action on all Type IV actions.

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

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

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

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

4. Rebuttal, response or clarifying statements by the applicant and/or the staff and/or the public.

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

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

1. Approve;

2. Conditionally approve;

3. Continue the public hearing;

4. Remand the application to staff; or

5. Deny the application.

19.15.150. Expiration of Approvals.

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

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

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

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

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

2. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

4E. Design Review. If the applicant has not submitted a complete application for a building permit within three years from the date of the notice of the final design review decision, or within two three from the decision on appeal from the final design review decision, design review approval shall expire.

F5. Responsibility for knowledge of the expiration date shall be with the applicant.

19.15.160. Code Interpretations.

A. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:

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

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

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

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

5. Relevant judicial decisions;

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

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

8. Previous implementation of the regulatory requirements governing the situation.

B. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner.

19.15.170. Vesting

A. Purpose. The purpose of this section is to identify certain points in the land use approval process at which an applicant's rights become "vested." Vested rights is defined as the guarantee that an application will be reviewed and a development proposal can be developed (if a permit is issued) under regulations and procedures existing at one moment in time and regardless of changes that may have been made later and prior to final completion of a project or use.

B. Vesting for Land Use Reviews. Complete applications for land use review of Type 1 land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department's issuance of a Letter of Completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

C. Scope of Vested Rights.

1. Land use reviews that are subject to the provisions of this section shall be considered under the zoning and land use control ordinances (Titles 15 and 19 MICC) in effect on the date of complete application. Supplemental information and revisions to a development proposal design required by the City after vesting of a complete application shall not affect the validity of the vesting for such application.

2. An applicant must specifically identify a proposed land use or uses in the land use review application as the intended use of the development proposal site in order to vest the right to engage in a specific land use against an ordinance implementing a change in permitted land uses.

3. An application for a land use review may be denied or approved with conditions under the authority of the City to protect and enhance the public safety, health and welfare, and under the State Environmental Policy Act (SEPA) and the City of Mercer Island's SEPA regulations and policies as of the date of vesting, notwithstanding the fact that the applicant has attained a vested right against enforcement of an ordinance implementing changes in regulations, codes or procedures affecting that land use review application.

D. Termination of Vested Rights.

1. Termination of vested rights associated with a land use review for a development proposal shall occur at the time of expiration of land use review approval, as established in MICC 19.15.140.

2. Applicant-generated modifications or requests for revision(s) to building permits, short subdivision, or long subdivisions which are not made in response to staff review, public process, ~~or~~ appeal, or conditions of approval, and which result in substantial changes to a development proposal design, which includes but is not limited to include the creation of additional lots, substantial change in access, substantial changes in project design, or additional impacts to critical areas shall be treated as new applications for purposes of vesting.

3~~5~~. Applicant-generated proposals to create additional lots, substantially change access, increase critical area impacts, or change conditions of approval on an approved preliminary short subdivision or long subdivision shall also be treated as a new application for purposes of vesting.

19.15.180. Additional Procedures for Shoreline Review.

A. Open record public hearing. An open record public hearing before the code official shall be conducted on the shoreline substantial development permits, shoreline conditional use permits, and shoreline variances when the following factors exist:

1. The proposed development has broad public significance; or

2. Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or

3. At the discretion of the code official.

B. Ecology filing. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

C. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with conditions, or denying any substantial development permit or shoreline exemption is final unless an appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit or shoreline variance is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal laws. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state,

or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

19.15.190. Permit review for 6409 eligible wireless communications facilities

A. Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the city shall approve the application unless it determines that the application is not covered by 47 CFR 1.40001.

B. Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the city determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (I)(1) of this section.

2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

3~~c~~. Following a supplemental submission, the city will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (I)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

C. Failure to act. In the event the city fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

19.15.200. Revisions. Revisions of approved permits are as follows. A complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards except for building permits which shall be reviewed in accordance with Title 17.

A. Revisions for approved Type IV land use permits, except shoreline permits, are as follows:

1. Revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. For the purposes of this section, substantial change

includes the creation of additional lots, the elimination of open space, substantial changes in access, or changes to conditions of approval.

2. Approval of the following modifications by the code official shall not be considered revisions:

a. Engineering design, unless the proposed design alters or eliminates features required as a condition of preliminary approval.

b. Changes in lot or tract dimensions that are consistent with MICC 19.02.

c. A decrease in the number of lots to be created.

d. Typographical errors and minor omissions

3. The code official shall have the authority to administratively review and approved modifications described in subsection (2) of this section through review procedures established by the department.

B. When an applicant seeks to revise an approved shoreline substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met. If these requirements are met, the decision will be processed per the following.

1. Revision of substantial development permit:

a. A decision will be provided to the applicant and parties of record and posted in DSG's weekly permit bulletin.

b. The city shall send the revised permit to all applicable local, state or federal agencies including the Attorney General, as required by state or federal law within eight days of issuing he decision.

c. Appeals shall be in accordance with RCW 90.58.180.

2. Revision of a shoreline CUP or shoreline variance:

a. The application for a revision shall be submitted to the Washington State Department of Ecology. Within 15 days of receipt, Ecology will issue a decision of approval, approval with conditions, or denial of the revision.

19.15.210. Compliance required.

A. It is the intent of this section to require that non-conforming sites, structures, lots, and uses, which were created without prior City approval, comply with the applicable provisions of Title 19 MICC.

B. If development inconsistent with the purposes and requirements of this Title 19 has occurred on a development proposal site without prior City approval, the City shall not issue any land use review approvals for the development proposal site unless the land use review approval requires the restoration of the site to a state that complies with the purposes and requirements of Title 19 MICC are addressed.

C. Suspension of Land Use Approvals. The city may suspend any land use review approval, including shoreline permits, when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a code violation. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.230, Enforcement.

19.15.230 Enforcement *(Not part of this review)*

…

19.15.240 Design Review and the Design commission. SHARE

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

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

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

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

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

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

A. Rules and Records.

1. The design commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the city council.

2. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the design commission shall be by majority vote of the members constituting the quorum. A tie vote on a motion to approve shall constitute a failure of the motion and a denial of the application.

3. The code official shall serve as executive secretary of the design commission and shall be responsible for all records. All meetings of the design commission shall be open to the public. The design commission shall keep minutes of its proceedings and such minutes and a copy of its rules shall be kept on file in the office of the city clerk and open to inspection by the public.

B. Powers of the Design Commission and Additional Functions.

1. No building permit or other required permit shall be issued by the city for any major new construction or minor exterior modification of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E).

2. The design commission or code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to secure the installation and maintenance of landscaping, screens, and other similar site improvements.

3. When the city council deems it necessary to retain consultants for a proposed capital improvement, the council shall seek recommendations from the design commission as to the selection of consultants to provide design services.

4. Consultants or city officials charged with the design responsibility for a major capital improvement shall hold preliminary discussions on the proposed project with the design commission to obtain its preliminary recommendations as to aesthetic, environmental and design principles and objectives. In addition, the design commission shall review major capital improvements at the completion of the design development phase. A capital improvement approved by the city council after review and recommendations by the design commission may be implemented on a phasing basis without further review so long as the improvement is developed in substantial conformity with the reviewed plan. Significant deviations from an approved plan shall be submitted to the design commission for its further review and recommendations.

5. The design commission or code official shall complete its review and make its decision and/or recommendations pursuant to the process set forth in subsection F of this section, and the review an decision and/or recommendations shall be based upon the design objectives and standards set forth in subsection G of this section, with such amendments as may be made from time to time.

6. Additional Functions. The Design Commission may undertake the following additional functions as needed:

a. The design commission may assist any person, group, or agency who requests design advice on matters not requiring formal commission action.

b. The design commission shall consult and cooperate with the planning commission and other governmental bodies on matters affecting the appearance of the Island. The design commission may offer recommendations to the appropriate city agencies and officials on legislation to promote aesthetic and environmental values.

c. The design commission shall act as the appeal authority for design review decisions made by the code official.

C. Design Review Procedure.

1. General.

a. Intent. The intent of the design review process is to ensure that regulated development in all land use zones complies with design objectives and standards established in Chapters 19.11 and 19.12 MICC.

b. Scope. No building permit or other required permit shall be issued by the city for any development of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E). Deviations from a plan approved by the design commission or code official shall be permitted only upon the filing and approval of an amended plan. In no instance shall the design commission's or code official's action conflict with the city's development code or other applicable city ordinances or with state or federal requirements.

c. Review Authority.

i. Design Commission Review. The design commission shall conduct the design review and make compliance determinations regarding:

(A) New structures

(B) New additions, remodels (exterior only), and roof and façade changes exceeding 15 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference,

(C) Signs where a master sign plan has not been approved for the site;

(D) Site plan layout resulting from an additional structure or parking lot, or the enlargement of a structure or parking lot;~~,~~

(E) Landscaping modifications that diminish an existing perimeter landscape screen; and

(F) Other improvements such as paving and landscaping when they are made in conjunction with changes to a structure.

ii. Code Official Review. The code official shall conduct the design review and make compliance determinations regarding:

(A) New additions, remodels (exterior only), and roof and façade changes not exceeding 15 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference;

(B) Signs where an approved master sign plan has not been approved for the site;

(C) Relocating, modifying or adding mechanical equipment;

iii. The code official shall have the authority to determine if an application does not require design commission review, based on factors such as the scope, location, context and visibility of the change or modification; and

iv. The tenant and property owner are responsible for ensuring that all development and activities such as painting and landscaping comply with Chapters 19.11 and 19.12. If a development or activity does not require a permit and therefore does not require design review, the tenant and/or property owner should contact the code official to ensure that the development or activity complies with Chapter 19.11 and 19.12.

d. Process.

i. Time Frame and Procedure. Design review shall be conducted in accordance with the timelines and procedures set forth in MICC 19.15.040, Permit review procedures. Design review is not subject to the one open record hearing requirement or consolidated permit review processing.

ii. Written Recommendations. All decisions of the design commission and code official shall be reduced to writing and shall include findings of fact and conclusions that support the decisions.

2. Review Process.

a. Study Session. In addition to the preapplication meeting, an applicant for a project that will require design review and approval by the design commission shall meet with the design commission in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.

b. Plan Submittal. All materials shall be submitted a minimum of 30 days prior to any meeting dates including study sessions, public meetings, and public hearings. The final plans shall be in substantial conformity with approved preliminary plans.

19.15.250 Comprehensive plan amendments.

A. Purpose. The Growth Management Act (GMA), Chapter 36.70A RCW, requires that the city include within its development regulations a procedure for any interested person to suggest plan amendments. The suggested amendments will be docketed for consideration. The purpose of this section is to establish a procedure for amending the city's comprehensive plan text and maps. Amendments to the comprehensive plan are the means by which the city may modify its 20-year plan for land use, development or growth policies in response to changing city needs or circumstances. All plan amendments will be reviewed in accordance with the GMA and other applicable state laws, the countywide planning policies, the adopted city of Mercer Island comprehensive plan, and applicable capital facilities plans.

B. Application Requirements. Proposed amendment requests may be submitted by the public, city manager, city department directors or by majority vote of the city council, planning commission or other city board or commission. Proposed amendments submitted by the public shall be accompanied by application forms required by this title and by the code official and the filing fees established by resolution. All application forms for amendments to the comprehensive plan shall include a detailed description of the proposed amendment in nontechnical terms.

C. Frequency of Amendments.

1. Periodic Review. The comprehensive plan shall be subject to continuing review and evaluation by the city ("periodic review"). The city shall take legislative action to review and, if needed, revise its comprehensive plan to ensure the plan complies with the requirements of the GMA according to the deadlines established in RCW 36.70A.130.

2. Annual Amendment Cycle. Updates, proposed amendments, or revisions to the comprehensive plan may be considered by the city council no more frequently than once every calendar year as established in this section (the "annual amendment cycle"). During a year when periodic review of the comprehensive plan is required under RCW 36.70A.130, the annual amendment cycle and the periodic review shall be combined.

3. More frequent amendments may be allowed under the circumstances set forth within RCW 36.70A.130(2). Amendments processed outside of the annual amendment cycle under RCW 36.70A.130(2) may be initiated by action of the city council. The city council shall specify the scope of the amendment, identify the projected completion date, and identify and, if necessary, fund resources necessary to accomplish the work. Amendments allowed to be processed outside of the annual amendment cycle are not subject to the docketing process outlined within subsection D of this section.

D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan in a manner that will ensure such suggested changes will be considered by the city and will be available for review by the public. The following process will be used to create the docket:

1. Preliminary Docket Review. By September 1, the city will issue notice of the annual comprehensive plan amendment cycle for the following calendar year. The amendment request

deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan amendment process but will be held for the next eligible comprehensive plan amendment process.

a. The code official shall compile and maintain for public review a list of suggested amendments and identified deficiencies as received throughout the year.

b. The code official shall review all complete and timely filed applications proposing amendments to the comprehensive plan and place these applications on the preliminary docket along with other city-initiated amendments to the comprehensive plan.

c. The planning commission shall review the preliminary docket at a public meeting and make a recommendation on the preliminary docket to the city council each year.

d. The city council shall review the preliminary docket at a public meeting. By December 31, the city council shall establish the final docket based on the criteria in subsection E of this section. Once approved, the final docket defines the work plan and resource needs for the following year's comprehensive plan amendments.

2. Final Docket Review.

a. Placement on the final docket does not mean a proposed amendment will be approved. The purpose of the final docket is to allow for further analysis and consideration by the city.

b. All items on the final docket shall be considered concurrently so that the cumulative effect of the various proposals can be ascertained. Proposed amendments may be considered at separate meetings or hearings, so long as the final action taken considers the cumulative effect of all proposed amendments to the comprehensive plan.

c. The code official shall review and assess the items placed on the final docket and prepare ~~a staff report including~~ recommendations for each proposed amendment. The code official shall be responsible for developing an environmental review of the combined impacts of all proposed amendments on the final docket, except that applicants seeking a site-specific amendment shall be responsible for submittal of a SEPA environmental checklist and supporting information. The applicant will need to submit SEPA and any other accompanying permits such as a rezone or a zoning code text amendment at this time. The code official may require an applicant to pay for peer review and/or additional resources needed to review the proposal. The code official shall set a date for consideration of the final docket by the planning commission and timely transmit the staff ~~report(s)~~recommendation prior to the scheduled date.

d. The planning commission shall review the proposed amendments contained in the final docket based on the criteria set forth in MICC 19.15.240(F)(1). The planning commission shall hold at least one public hearing on the proposed amendments. The planning commission shall make a recommendation on the proposed amendments and transmit the recommendation to the city council.

e. After issuance of the planning commission's recommendation, the code official shall set a date for consideration of the final docket by the city council. The city council shall review the proposed amendments taking into consideration the recommendations of the planning commission and code official. The city council may deny, approve, or modify the planning commission's recommendations consistent with the criteria set forth in MICC 19.15.240(F)(1). The city council's establishment of a final docket of proposed amendments is not appealable.

f. The planning commission and the city council may hold additional public hearings, meetings, or workshops as warranted by the proposed amendments.

E. Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

1. The request has been filed in a timely manner, and either:

a. State law requires, or a decision of a court or administrative agency has directed, such a change; or

b. All of the following criteria are met:

i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan;

ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;

iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;

iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city's vision; and

v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

F. Decision Criteria. Decisions to amend the Comprehensive Plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment -proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria

1. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies; and:

a. There exists obvious technical error in the information contained in the comprehensive plan; or

b~~i~~. The amendment addresses changing circumstances of the city as a whole.

2. If the amendment is directed at a specific property, the following additional findings shall be determined:

a. The amendment is compatible with the adjacent land use and development pattern;

b. The property is suitable for development in conformance with the standards under the potential zoning; and

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

G. Combined Comprehensive Plan Amendment and Rezone. In cases where both a comprehensive plan amendment and a rezone are required, both shall be considered together, and all public notice must reflect the dual nature of the request.

~~G~~H. Expansion of Land Use Map Amendment. The city may propose to expand the geographic scope of an amendment to the comprehensive plan land use map to allow for consideration of adjacent property, similarly situated property, or area-wide impacts. The following criteria shall be used in determining whether to expand the geographic scope of a proposed land use map amendment:

1. The effect of the proposed amendment on the surrounding area or city;

2. The effect of the proposed amendment on the land use and circulation pattern of the surrounding area or city; and

3. The effect of the proposed amendment on the future development of the surrounding area or city. (Ord. 16C-13 § 2).

19.15.260. Reclassification of Property (Rezones).

A. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property from one zoning designation to another.

B. Process. A rezone shall be considered as provided in MICC 19.15.280.

C. Criteria. The city council may approve a rezone only if all of the following criteria are met:

1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;

2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;

3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;

4. The proposed reclassification does not constitute a "spot" zone;

5. The proposed reclassification is compatible with surrounding zones and land uses; and

6. The proposed reclassification does not adversely affect public health, safety and welfare.

7. If a Comprehensive Plan amendment is required in order to satisfy MICC 19.15.060(C)(1), approval of the Comprehensive Plan amendment is required prior to or concurrent with the granting of an approval of the rezone.

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

19.15.270. Zoning Code Text Amendment

A. Purpose. The purpose of this section is to establish the process and criteria for amendment of this Code.

B. Process. Zoning Code amendments shall be considered as provided in MICC 19.15.2080.

C. Initiation of zoning code amendment request. A zoning code amendment request may be initiated by the City Council, Planning Commission, or Code Official.

D. Criteria. The City may approve or approve with modifications a proposal to amend the text of this Code if:

1. The amendment is consistent with the Comprehensive Plan; and

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

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

E. Code change. Following approval of an amendment, the City shall amend this Code to reflect the change.

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

A. The city shall issue a notice of application and a notice of public hearing for comprehensive plan amendments, reclassifications of property , and zoning code text amendments as described in MICC 19.15.250, 19.15.260, and 19.15.270. The notice of application and notice of public hearing may be combined as provided in MICC 19.15.100. Notice shall be provided in the weekly DSG bulletin, published in the local newspaper of general circulation within the city, made available to the general public upon request, and, if the proposed amendment will affect a specific property or defined area of the City, mailed to all property owners within 300 feet of the ~~property~~affected property or defined area, and ~~-~~posted on the site in a location that is visible to the public right-of-way.

1. The notice shall include the following information:

i. The name of the party proposing the proposed amendment or change;

ii. The location and description of the project, if applicable;

iii. The requested actions and/or required studies;

iv. The date, time, and place of the open record public hearing;

v. Identification of environmental documents, if any;

vi. A statement of the public comment period, which shall not be less than 30 days. The city shall accept public comments at any time prior to the closing of the record of an open record predecision public hearing; and a statement of the rights of individuals to comment on the application, receive notice and participate in any public hearings, request a copy of the decision once made and any appeal rights.;

vii. The city staff contact and contact information;

viii. The identification of other reviews or permits that are associated with the review of the proposed Comprehensive Plan, zoning text, or zoning map amendment, to the extent known by the city;

ix. A description of those development regulations used in determining consistency of the review with the city's comprehensive plan;

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

xi. Any other information that the city determines appropriate.

2. Timing of notice. The city shall provide the notice at least 30 days prior to the public hearing.

3 The city shall accept public comments at any time prior to the closing of the record of an open record public hearing.

D. Review at Public Hearing

1. At an open record public hearing the planning commission shall consider the proposed review for conformance with the criteria as listed in the applicable section, the comprehensive plan and other applicable development standards.

2. The planning commission shall make a written recommendation on the review to the city council.

3.The city council shall consider the planning commission's recommendation at a public meeting where it may adopt or reject the planning commission's recommendations or remand the review back to the planning commission.

19.16.010 Definitions.

Words used in the singular include the plural and the plural the singular.

Definitions prefaced with (SMP) are applicable only to the shoreline master program, MICC 19.07.110.

B

Base station: A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

3. The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

4. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

C

Change of Use: When a change in the specified land use of a property, building, or portion of a building occurs.

Collocation: The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

E

Eligible facilities request (6409 Wireless Communication Facility): Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Collocation of new transmission equipment;

2. Removal of transmission equipment; or

3. Replacement of transmission equipment.

Existing Wireless Communication Facility: A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

P

Party of record, appeals: The term party of record shall mean any of the following:

1. The applicant and/or property owner;

2. Any person who testified at the open record public hearing on the application;

3. Any person who individually submits written comments concerning the application for the open record public hearing, or to the code official prior to a decision on the project permit if there is no open record public hearing. Persons who have only signed petitions are not parties of record;

4. The city of Mercer Island.

S

Substantial change, Wireless Communication Facility: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

a. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site;

5. It would defeat the concealment elements of the eligible support structure; or

6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

T

Tenant Improvement: Changes made to the interior of a commercial or industrial property by its owner to accommodate the needs of a tenant such as floor and wall coverings, ceilings, partitions, air conditioning, fire protection, and security. A tenant improvement is not a change of use of the building or tenant space; however, it often occurs when a new tenant occupies a building.

Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas,

coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

W

Wireless Communication Facility Site: For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Wireless Communication Facility Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.