PLANNING COMMISSION
VIDEO MEETING AGENDA

Wednesday, November 03, 2021

Zoom Virtual Platform
9611 SE 36th Street | Mercer Island, WA 98040
Phone: 206.275.7706 | www.mercerisland.gov

PLANNING COMMISSIONERS:
Chair: Daniel Hubbell
Vice Chair: Ted Weinberg
Commissioners: Carolyn Boatsman, Jordan Friedman, Tiffin Goodman, Michael Murphy, Victor Raisys

In compliance with the Americans with Disabilities Act, those requiring accommodation for meetings should notify the Staff Liaison at least 24 hours prior to the meeting.

The Planning Commission meeting will be held virtually using video conferencing technology provided by Zoom, and the public will have the opportunity to provide comment during Appearances by either calling in or logging onto the meeting as a Zoom attendee.

Registering to Speak: Individuals wishing to speak during live Appearances will need to register their request with the City Clerk at 206.275.7793 or email at andrea.larson@mercerisland.gov and leave a message before 4pm on the day of the Planning Commission meeting. Please reference "Appearances". Each speaker will be allowed three (3) minutes to speak.

Public Comment by Video: Notify the City Clerk in advance that you wish to speak on camera and staff will be prepared to permit temporary video access when you enter the live Planning Commission meeting. Please remember to activate the video option on your phone or computer, ensure your room is well lit, and kindly ensure that your background is appropriate for all audience ages. Screen sharing will not be permitted, but documents may be emailed to the Planning Commission.

To attend the meeting, please use the following Zoom information:

Join by Telephone at 6:00 pm: To listen to the hearing via telephone, please call 253.215.8782 and enter Webinar ID **825 3587 2277** and Passcode **157694** when prompted.

Join by Internet at 6:00 pm: To watch the hearing over the internet via your computer microphone/ speakers follow these steps:
1. Click this Link
2. If the Zoom app is not installed on your computer, you will be prompted to download it.
3. If prompted for Meeting ID, enter **825 3587 2277**; Enter Passcode **157694**

CALL TO ORDER & ROLL CALL, 6 PM

PUBLIC 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 3 minutes.

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

PUBLIC HEARING

1. ZTR21-004 Town Center Commercial Requirements

   Public Hearing for the proposed Town Center Commercial Requirements.

REGULAR BUSINESS

2. ZTR21-004 Town Center Commercial Requirements

   Deliberation and decision for the proposed Town Center Commercial Requirements.

OTHER BUSINESS

3. Deputy Director's Report
4. Planned Absences for Future Meetings
5. Announcements & Communications
6. Next Scheduled Meeting: November 17, 2021

ADJOURNMENT

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercerisland.gov

PLANNING COMMISSION

To: Planning Commission

From: Jeff Thomas, Interim Director

Sarah Bluvas, Economic Development Coordinator

Date: November 3, 2021

RE: ZTR21-004 Town Center Commercial Requirements

Exhibits: 1. MICC 19.11.020(B) Proposed Code Amendments v(3) – CLEAN version

2. ZTR21-004 Town Center Commercial Requirements – 11.03.21 Presentation

3. Matrix of Planning Commission Comments – As of 10.29.21

SUMMARY

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

On September 21, 2021, the City Council provided direction for staff to draft and present to the Planning Commission the proposed necessary code amendments to institute (1) changes to where ground floor street frontage commercial space adjacent to streets in the Town Center are required; (2) a commercial floor area ratio ("commercial FAR") provision for certain parcels in the Town Center; and (3) a no net loss of commercial space for those parcels redeveloped during or after 2005.

At the September 22, 2021, Planning Commission meeting, staff provided an overview of the work conducted with the City Council to-date, presented the proposed mechanisms for preserving commercial space, and sought feedback from the Planning Commission to inform the proposed necessary code amendments to achieve the City Council direction.

This evening, the Planning Commission will conduct a public hearing on the proposed amendments to MICC 19.11.020(B) and then deliberate and vote on a recommendation to send to the City Council.

BACKGROUND

The current Town Center development regulations were established in June 2016. Per the current code, major new development located north of SE 29th Street in the Town Center must provide ground floor street frontage commercial space for use by retail, restaurant, or personal services (e.g. barber shop, nail salon, fitness center, etc.). Between 40 and 60 percent of the ground floor street frontage north of SE 29th Street must be designed for retail, restaurant, or personal services; 40 percent is required for those major new developments that provide public parking, while 60 percent is required for those developments that

do not provide public parking. Commercial space is allowed, but not required, south of SE 29th Street in the Town Center zoning designation (“TC zone”).
In June 2020, the City Council enacted a moratorium on major new construction generally in the southeast quadrant of the TC zone. This moratorium was intended to temporarily prevent submittal of development applications while the City considers potential updates and/or amendments to development regulations within the Town Center, including requirements for ground-floor retail use and for preserving existing commercial square footage in the TC zone. The City Council cited the goal of protecting and expanding Mercer Island’s retail sector to maintain and improve the community’s quality of life and emergency preparedness as the primary driver for enacting the moratorium.

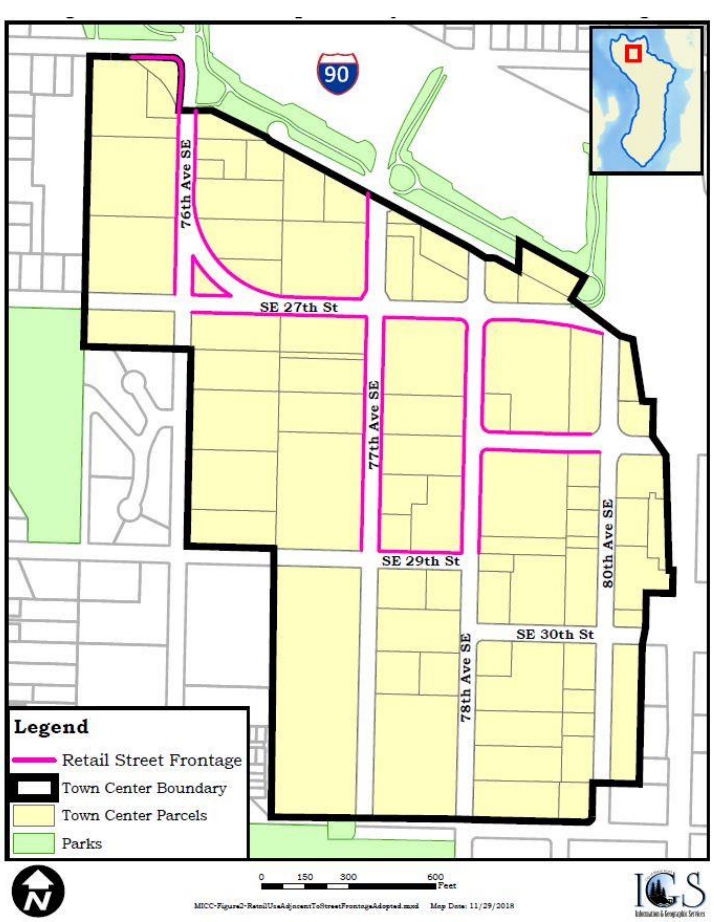
The City contracted with the firm Community Attributes, Inc. (“CAI”) to analyze the demand for additional ground floor commercial uses and the feasibility of requiring such uses in new buildings. Staff and the consultant presented the analysis to the City Council on April 6 and 20, 2021, at which time the City Council directed staff to complete additional analysis and research legislative options in addition to a “no net loss” option for preserving existing retail square footage.

On July 6, 2021, staff presented several legislative options that were evaluated for their potential to preserve existing quantities of commercial retail space and provide for projected future demand as identified in CAI’s analysis. After reviewing the options, the City Council directed staff to review and propose:

A. Updates to MICC 19.11.020(B) Retail Use Required Adjacent to Street Frontages;
B. A new Town Center Commercial Floor Area Ratio (FAR) requirement; and
C. The applicability of a new Town Center “no net loss” requirement.

On September 21, 2021, the City Council provided direction for staff to draft and present to the Planning Commission the proposed necessary code amendments to institute (1) changes to where ground floor street frontage commercial space adjacent to streets in the Town Center are required; (2) a commercial space FAR provision for certain parcels in the Town Center; and (3) a no net loss of commercial space for those parcels redeveloped on or after 2005.

Updates to MICC 19.11.020(B) Retail Use Required Adjacent to Street Frontages
MICC 19.11.020(B)(4) stipulates that retail, restaurant, or personal service uses are required along retail street frontages as shown in the map below.



This map (also referred to as the "pink lines map") was added to the Town Center code during the 2016 update with the intent of centralizing retail activity in the northern end of Town Center. During the July 6 City Council discussion of legislative options for resolving the moratorium, staff proposed three options for updating this map and received direction to move forward with the option of proposing surgical additions/deletions to the current map that meet the City Council's goals of preserving existing commercial retail space and providing for future demand. The updated map to replace the above map in MICC 19.11.020(B) is included in Exhibit 1, Figure 2.

Town Center Commercial Floor Area Ratio (FAR)

In conjunction with amending the retail street frontage map, the City Council also directed staff to explore creating a Commercial Floor Area Ratio (FAR) requirement for future Town Center development. A FAR is a calculation often used in building regulations and is typically calculated as the ratio of a building's total floor area to the size of the piece of land upon which it is built. Staff proposed adapting this concept to determine how much commercial retail space to require in new Town Center developments.

The commercial FAR would identify a current inventory of commercial retail space (and future demand if desired) and corresponding total land area to calculate a commercial FAR requirement for new development. The commercial FAR requirement would be the same for all parcels subject to this requirement. A simple example of this calculation follows:

Sample Commercial Floor Area Calculation		
A	Total Commercial Retail Space of Subject Parcels	50,000 square feet
B	Total Size of Subject Parcels	200,000 square feet
C	Commercial Floor Area Ratio (A/B)	0.25

Therefore, in applying this sample calculation, for every 1 acre (43,560 square feet) of Town Center redevelopment, 10,890 square feet (43,560 x 0.25) of commercial retail space would be required. Using a commercial FAR would result in some parcels experiencing a net gain of commercial retail space while others would experience a net loss, with the result being the achievement of the total commercial retail space desired over the long term. This option would make progress on the objectives of preserving existing commercial retail space and on adding such space to meet identified future demand.

The City Council directed staff to conduct additional analysis to develop a true commercial FAR for Town Center to account existing commercial space as well as future demand through the duration of the upcoming growth targets. As presented at the September 22 meeting of the Planning Commission, the proposed commercial FAR requirement to be included in MICC 19.11.020(B) is 0.2623. The parcels for which this commercial FAR would be applicable are identified in Exhibit 1, Figure 3.

"No Net Loss" Requirement

Finally, the City Council also directed staff to explore a "no net loss" provision and return with a recommendation for incorporating this provision into the City code. This option would make progress on the objective of preserving existing commercial retail space but would not make progress on adding space to meet identified future demand. Additionally, as a stand-alone requirement, a "no net loss" provision could place more burden on some parcels than others. Considering this potential inequity, staff considered this requirement as being used in tandem with updates to the retail street frontage requirements and the development of a commercial FAR requirement.

The commercial FAR calculation accounts for recent redevelopment activities in the Town Center, and these parcels are not expected to redevelop through the next growth target period. Given this, recent redevelopments (2005-on) only need to maintain their current commercial space levels to maintain the overall identified total of commercial space. Therefore, these select parcels are assigned a no net loss of commercial space requirement and are identified in Exhibit 1, Figure 4.

Eligible Commercial Uses

To date, discussion regarding eligible commercial uses has been framed in three categories: restaurant, retail, and personal service uses. At the October 20 Planning Commission meeting, staff suggested that, if additional clarification is needed on which business categories qualify as eligible uses, the Planning Commission may choose to discuss whether to expand the definition of "personal services" to include additional business types or to take a different approach for defining eligible uses.

NEXT STEPS

The Planning Commission will conduct a Public Hearing on the proposed amendments to MICC 19.11.020(B) tonight and then deliberate and vote on a recommendation to send to the City Council. Staff presented the following options for a recommendation on October 20:

1. Recommend approval of the proposed amendments to MICC 19.11.020(B) as presented;

2. Recommend approval of the proposed amendments to MICC 19.11.020(B) as presented and amended by the Planning Commission;
3. Recommend denial of the proposed amendments to MICC 19.11.020 (B); or
4. Recommend no action on the proposed amendments to MICC 19.11.020(B) and remand back to staff for further work as specified.

Given the discussion at the October 20 meeting, the Planning Commission may choose to deliberate and vote on each component of the proposed code amendments separately, resulting in three recommendations to the City Council.

The City Council is scheduled to receive and consider the recommendation(s) of the Planning Commission on the proposed amendments to MICC 19.11.020(B) at its regular meeting on November 16, 2021.

EXHIBITS

1. MICC 19.11.020(B) Proposed Code Amendments v(3) – CLEAN version

2. ZTR21-004 Town Center Commercial Requirements – 11.03.21 Presentation

3. Matrix of Planning Commission Comments – As of 10.29.21

LEGISLATIVE HISTORY

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

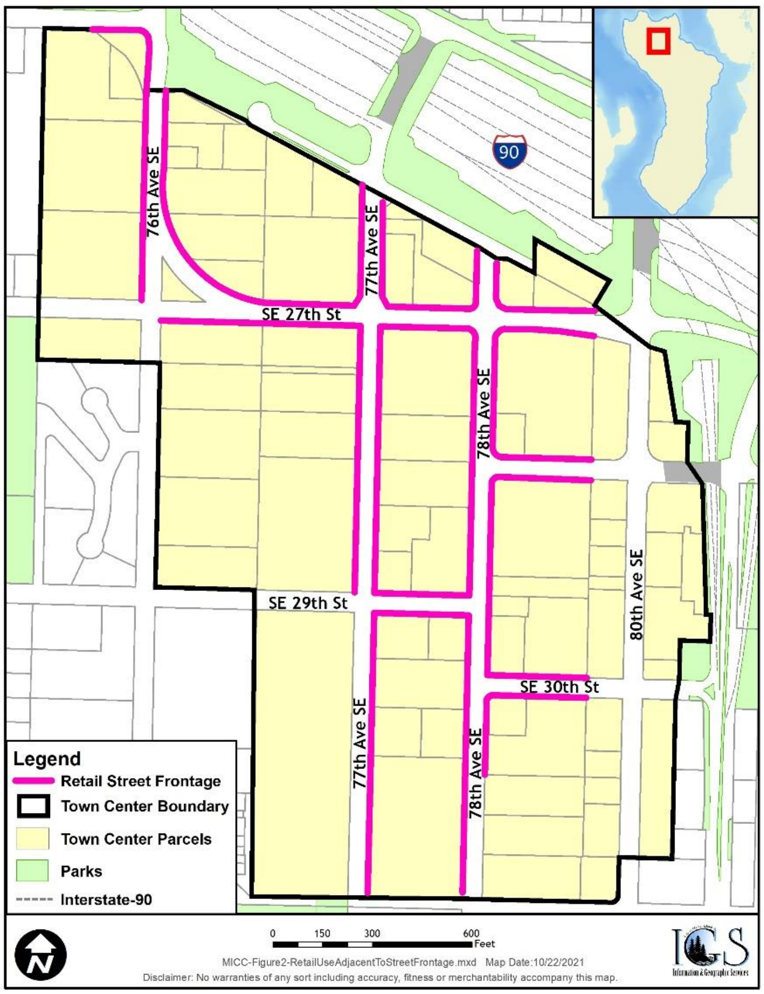
- May 4, 2021: The City Council passed Ordinance No. 21-09, renewing the moratorium for six more months, effective June 1, 2021. The Council also completed the required Public Hearing.
- July 6, 2021: Staff presented several legislative solutions to achieve the goals of preserving existing commercial retail space and adding space to meet future demand to the City Council. The Council directed staff to develop proposals for: Updates to MICC 19.11.020(B) Retail Use Required Adjacent to Street Frontages; a new Town Center Commercial Floor Area Ratio (FAR) requirement; and the applicability of a new Town Center "no net loss" requirement.
- September 21, 2021: The City Council provided direction for staff to draft and present to the Planning Commission the proposed necessary code amendments to institute (1) changes to where ground floor street frontage commercial space adjacent to streets in the Town Center are required; (2) a commercial space FAR provision for certain parcels in the Town Center; and (3) a no net loss of commercial space for those parcels redeveloped on or after 2005.
- September 22, 2021: The Planning Commission completed a work session to review moratorium and receive the direction provided by City Council.

MICC 19.11.020(B) is repealed in its entirety and replaced* as follows:

B. *Required Street Frontage Commercial Uses.*

1. Retail, restaurant or personal service commercial uses are required adjacent to street frontages as shown on Figure 2.

Figure 2 – Commercial Uses Required Adjacent to Street Frontages



a. No commercial use shall occupy a continuous linear street frontage exceeding 60 feet in length. The design commission may approve up to an additional six feet in length if the use incorporates a feature to promote pedestrian activity,

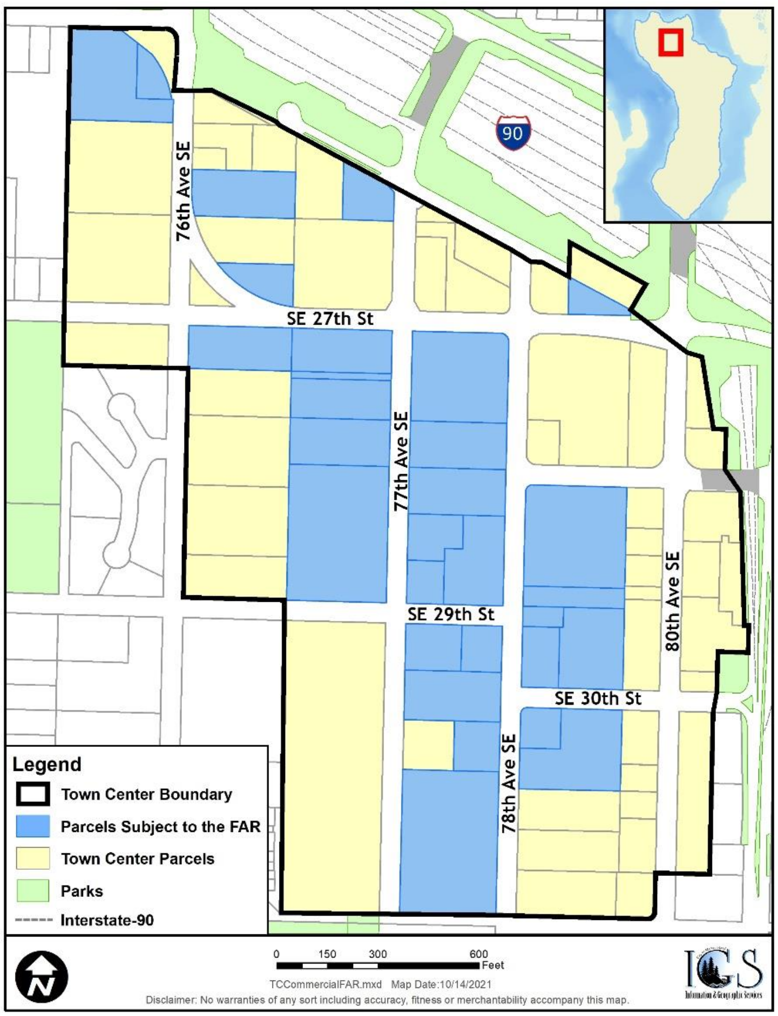
* **Please Note: The new language and maps below may be updated through the issuance of the October 20, 2021 regular meeting packet for the Planning Commission.**

including but not limited to: an additional pedestrian entrance onto a sidewalk or through-block connection, or additional 10 percent transparency beyond the requirement of MICC 19.11.100(B)(1)(b).

b. The minimum required depth of commercial uses along street frontages is 16 feet.

2. The identified parcels as shown on Figure 3 are required to provide a minimum Floor Area Ratio (FAR) equivalent to 0.2623 of the gross lot area as provided by King County for retail, restaurant or personal service commercial uses adjacent to street frontages upon redevelopment equal to or greater than 50% of the current total assessed value as determined by King County.

Figure 3 – Parcels Subject to FAR Requirement for Commercial Uses



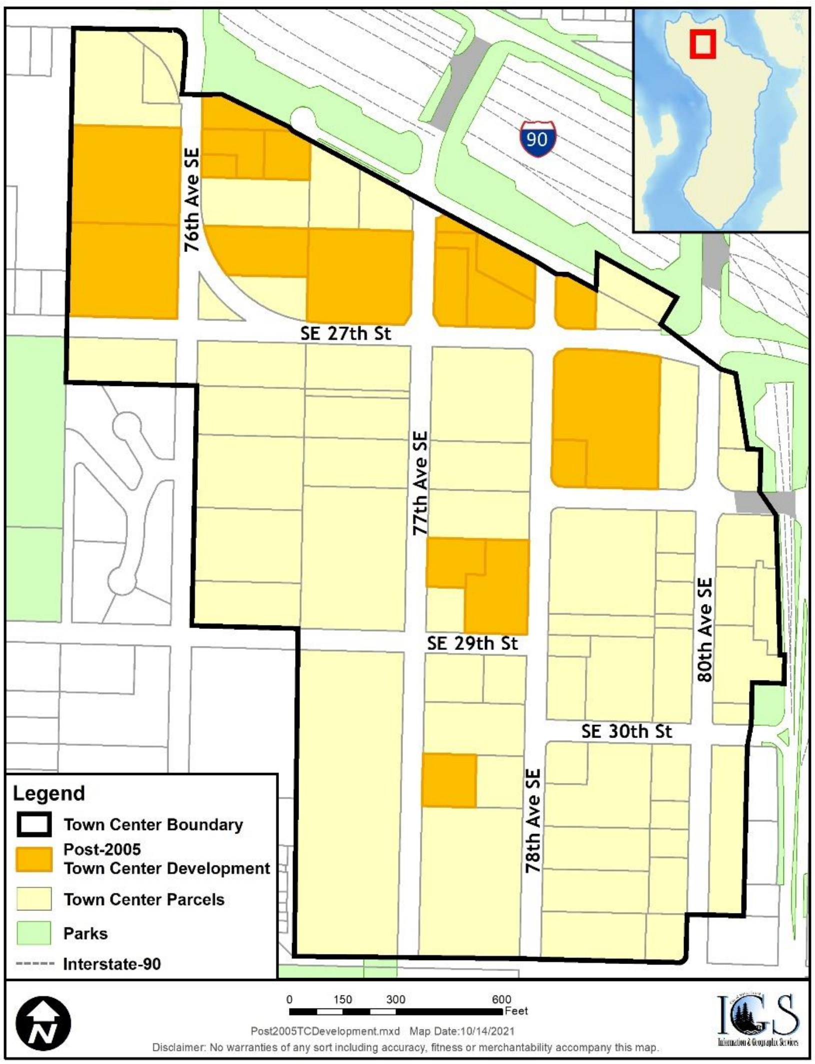
* **Please Note: The new language and maps below may be updated through the issuance of the October 20, 2021 regular meeting packet for the Planning Commission.**

a. When a FAR calculation results in a fraction, the fraction shall be rounded to the nearest whole number as follows:

   i. Fractions of 0.50 or above shall be rounded up to the closest whole number; and
   ii. Fractions below 0.50 shall be rounded down to the closest whole number.

3. The identified parcels as shown on Figure 4 are required to provide a no net loss of existing floor area for retail, restaurant or personal service commercial uses adjacent to street frontages upon redevelopment equal to or greater than 50% of the current total assessed value as determined by King County.

Figure 4 – Parcels Subject to No Net Loss for Commercial Uses



* **Please Note: The new language and maps below may be updated through the issuance of the October 20, 2021 regular meeting packet for the Planning Commission.**

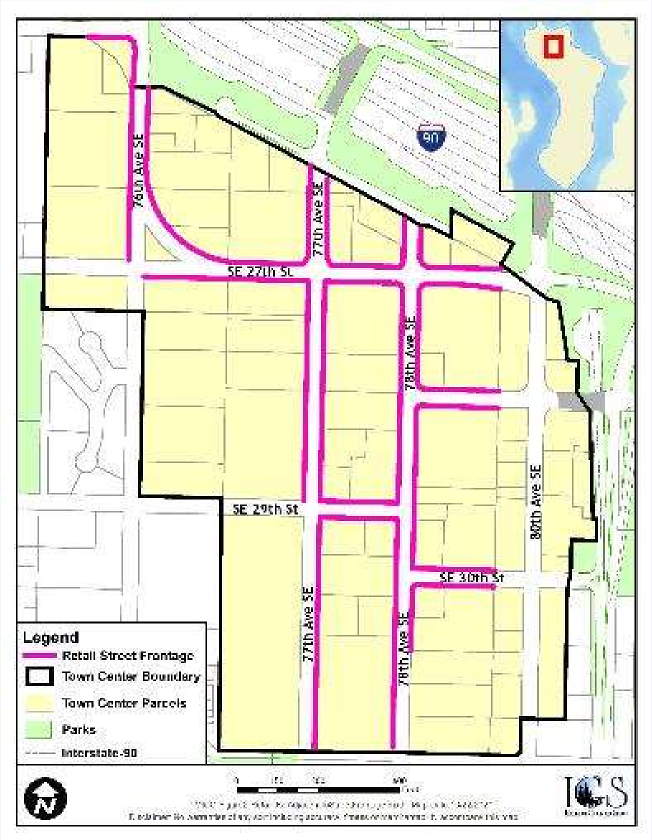
ZTR21-004

Town Center Retail Requirements Public Hearing

Planning Commission
November 3, 2021

Proposed Amendments to MICC 19.11.020(B) Figure 2

- Proposed amendment replaces Figure 2: Retail Use Required Adjacent to Street Frontages with the updated "pink lines map" to the right
- Reflects corridor concentration on SE 27th Street and 78th Avenue SE for existing and future development
- Does not include public / utility-owned properties on 78th Avenue SE



Item 1.

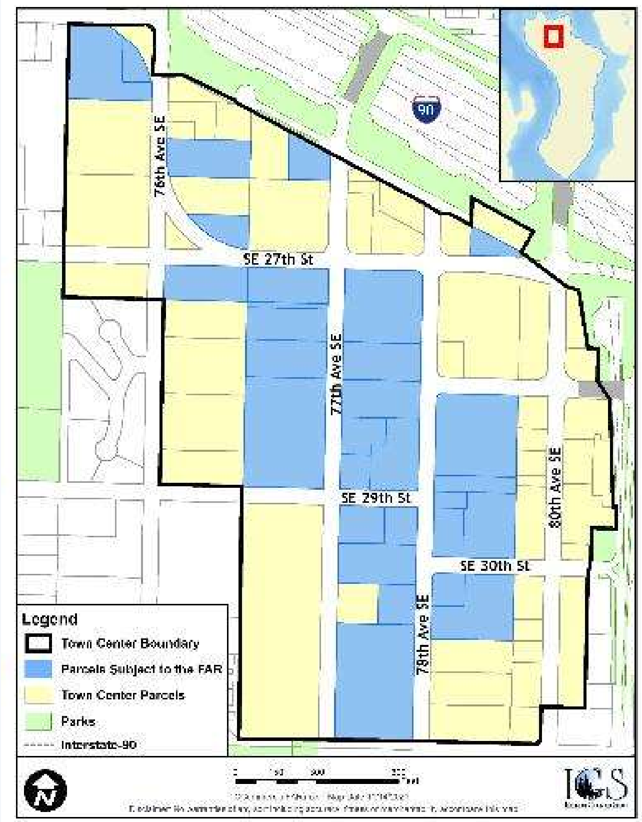
Inclusion of Town Center Commercial Floor Area Ratio (FAR)

- Propose inserting Commercial FAR provision as new MICC 19.020(B)(2):

The identified parcels as shown on Figure 3 are required to provide a minimum Floor Area Ratio (FAR) equivalent to 0.2623 of the gross lot area as provided by King County for retail, restaurant or personal service commercial uses adjacent to street frontages upon redevelopment equal to or greater than 50% of the current total assessed value as determined by King County.

- Map to the right would be inserted as Figure 3

- Section also includes guidance for rounding when FAR calculation results in a fraction

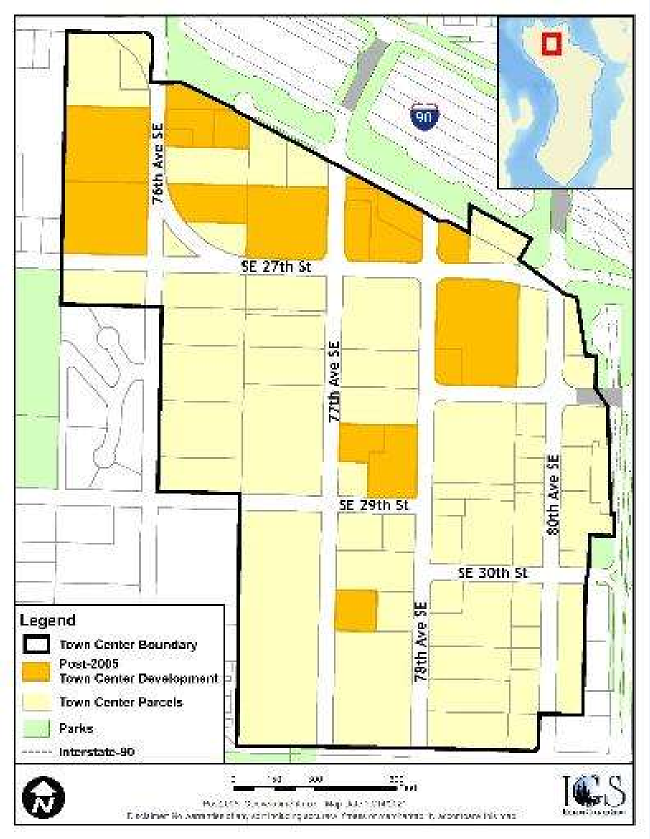


Inclusion of No Net Loss Provision

- Propose inserting No Net Loss provision as new MICC 19.020(B)(3):

The identified parcels as shown on Figure 4 are required to provide a no net loss of existing floor area for retail, restaurant or personal service commercial uses adjacent to street frontages upon redevelopment equal to or greater than 50% of the current total assessed value as determined by King County.

- Map to the right would be inserted as Figure 4



Log#	Question/Comment	Staff Response(s)	Follow-up?
001	What NAICS codes does the pro forma model use to project future demand? Does this model take into account online sales tax revenue vs. brick & mortar or geographical differences (TC vs. South End, etc.)?	The pro forma model used to estimate supportable retail growth was revised following the April 20 City Council presentation. The revised estimate uses only taxable retail sales receipts from NAICS 44-45 (Retail Trade) and NAICS 71-72 (Arts, Entertainment and Recreation; Accommodation and Food Services). This subset of NAICS sectors better represents the types of commercial uses that are the subject of this study. According to the Finance department, the City only receives tax revenue data from DOR based on NAICS codes. The codes convey the business sector and category for tax revenues, but they do not provide the level of detail necessary to distinguish between brick & mortar and online sales. At this time, we cannot determine to what extent the sales from a given category are strictly online or further determine the vendor of those online sales (i.e. cannot distinguish Amazon sales tax revenue vs. on-premise retail sales revenue in Town Center, etc.). However, those NAICS codes that could include online sales (e.g. NAICS 44 and 45) are the fastest growing categories in terms of overall dollar growth compared to 2020 numbers. Finally, the estimated supportable retail growth reflects Island-wide conditions and is not segemented by geography (Town Center, South End, etc.). However, you can reasonably assume that any major retail growth will take place in the Town Center as the designated retail core.	Staff followed up with Finance and will share any additional information at the Planning Commission meeting on 11.03.21.
002	What do we mean by "commercial"? Does this imply only retail and restaurant, or other commercial uses such as commercial office space? We need to clarify the terminology.	To date, discussion regarding eligible commercial uses has been framed in three categories as restaurant, retail, and personal service uses. These categories are defined in MICC 19.16 - Definitions as follows: <u>Restaurant</u>: An establishment where food and drink are prepared and consumed. Such establishment may also provide catering services. <u>Retail</u>: An establishment engaged in selling goods or merchandise and rendering services incidental to the sale of such goods. <u>Personal Services</u>: A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons. Throughout this process, questions have arisen about whether some businesses, such as banks, car washes and medical providers, would be eligibile commercial uses under the Commercial FAR requirement. To provide the City Council guidance, it is recommended the Planning Commission discuss whether amendments to the definition of personal services are appropriate. Options may include adding another specific category to the definition such as "personal affairs" or making the definition more generic by removing references to personal grooming and health.	Staff further reviewed the land use table in MICC 19.11.020(A) and definitions in MICC 19.16.010. "Personal Services" falls under the land use type "Services," which is defined in the code as: *An establishment primarily engaged in providing assistance as opposed to products. Examples include but are not limited to personal services, business, financial and insurance services, mortuary services, tailors, healthcare services, educational services, repair services, amusement services, membership organizations, and other professional, scientific, and technical services.* MICC 19.16.010 also includes the following definition for "Service Stations," which is relevant to the Commission's discussion of gas stations on 10.19.21: *Establishments retailing automotive fuels (e.g., gasoline, diesel fuel, gasohol) and automotive oils. These establishments may also provide repair and maintenance services for automotive vehicles and/or convenience store retailing.*
003	What is the the net loss or net gain of retail space per parcel when we apply the commercial FAR? Please provide those comparisions at the next meeting.	Using King County Assessor data only, staff reviewed the proposed parcels subject to the proposed commercial FAR requirement and found results similar to those suggested by at least two members of the Planning Commission: upon redevelopment, some parcels (20) would experience a net increase in total commercial space while other parcels (8) would experience a net decrease. The Walgreens parcel produced the largest net decrease. The sum produced a net increase and was generally consistent with the analysis completed by CAI.	Refer to Attachment A of this Exhibit.

004	Per the current code requirements, what is the minimum of retail space required in the Town Center zone?	MICC 19.11.020(B) stipulates the following for retail space requirements: Retail, restaurant or personal service uses are required along retail street frontages as shown on Figure 2. 1.If public parking is provided pursuant to MICC 19.11.130(B)(5), then the following applies: a.A minimum of 40 percent of the ground floor street frontage shall be occupied by one or more of the following permitted uses: retail, restaurant, and/or personal service use. b.A maximum of 60 percent of each ground floor street frontage can be occupied by the following uses: hotel/motel, personal service, public facility, or office. c.Driveways, service and truck loading areas, parking garage entrances and lobbies shall not be included in calculating the required percentages of ground floor use. 2.If public parking is not provided pursuant to MICC 19.11.130(B)(5), then the following applies: a.A minimum of 60 percent of the ground floor street frontage shall be occupied by one or more of the following permitted uses: retail, restaurant, and/or personal service use. b.A maximum of 40 percent of each ground floor street frontage can be occupied by the following uses: hotel/motel, personal service, public facility, or office. c.Driveways, service and truck loading areas, parking garage entrances and lobbies shall not be included in calculating the required percentages of ground floor use. Additionally, the minimum required depth of storefronts along retail street frontages is 16 feet. The Planning Commission can request that staff apply these code requirements on a parcel-by-parcel basis and compare to current conditions and commercial FAR conditions if desired.	None
005	Does the comprehensive plan include applicable policies or references that need to be updated?	Staff reviewed the 2015 Comprehensive Plan and did not find specific goals or policies requiring immediate updates. However, MICC 19.11.020(B) Figure 2 is duplicated in the plan and will need to be removed regardless of the outcome of these proposed code amendments. This will be completed as part of the next periodic update to the Comprehensive Plan, scheduled to commence in 2022 and required to be completed by 2024.	None
006	Did staff consider a variable FAR?	No. For a balanced effect, a consistent commercial FAR is proposed to be applied to the parcels identified for such.	None
007	Do the pink lines only identify which properties have to have retail or do they also identify on which side of the property the retail has to be located?	Yes, retail space must be provided along the street frontages indicated by the pink lines, per the requirements in MICC 19.11.020(B).	None
008	Is it correct that, in addition to adding retail space, one goal of the proposed changes will be to concentrate the retail in certain areas for the benefits related to consumer enthusiasm for the patronizing clustered retail businesses.	An original intent (in 2016) of the “pink lines map” was to concentrate retail within a portion of the Town Center. The changes proposed to this map are intended to adjust the area where retail is required. While the retail requirement is proposed to be removed from a few parcels, in general the proposed changes will substantially expand the area where retail is required, reflecting the Council’s expressed desire to maintain and expand the current amount of retail space in the Town Center.	None
009	Memorandum re: Proposed Town Center Code Revisions Submitted by Commissioner Mike Murphy, 10.18.21	N/A	Refer to Attachment B of this Exhibit.
010	Could we apply the commercial FAR across all properties instead of instituting the No Net Loss provision on post-2005 developments?	If the commercial FAR were identified across post-2005 developments, you could end up with more commercial retail space than CAI projected demand for in the analysis. However, the Planning Commission could choose to amend the proposed code amendments to remove the limited "no net loss" provision and instead apply the commercial FAR across post-2005 developments as well.	
011	Will there be a process for exceptions/exemptions?	The legislative intent to provide relief from the proposed retail requirements has not been discussed to-date.	
012	Say an owner has a property with two or three sides facing blue line. The amount of retail is no different than if they faced one pink line. The minimum of 0.26 percent of the parcel size could result in really teeny retail efforts on multiple sides if they have to have on all sides. It might be better to keep the 60% of ground floor frontage in addition to the 0.26 FAR.	The Planning Commission may choose to deliberate this and amend the code proposal as they see fit.	
013	If we want a lot of retail space, why are we limiting to 60’ if frontage?	The 60' frontage limitation in the current code applies to a single business frontage, not total retail street frontage for a development.	
014	What does the term “transparency” mean in the draft code?	This refers to MICC 19.11.100(B)(1)(a), which says the following about Fenestration development and design standards: *Transparent facades: Articulated, transparent facades should be created along pedestrian rights-of-way. Highly tinted or mirrored glass windows shall not be allowed. Shades, blinds or screens that prevent pedestrian view into building spaces shall not be allowed, except where required or desired for privacy in dwelling units, hotel rooms and similar residential uses.*	

EXHIBIT 3, ATTACHMENT A

PROPERTY ID	PROPERTY SQ FT*	GROSS FAR SQ FT	COMMERCIAL SQ FT*	NET FAR SQ FT
Is Corp	61570	16150	0	16150
Haps	11700	3069	1032	2037
White	42245	11081	0	11081
Star	19257	5051	1875	3176
Chevron	19886	5216	2180	3036
Tully's	12230	3208	1168	2040
D&E Invest	39134	10265	15081	-4816
Tabit	37858	9930	6644	3286
Vacant	6148	1613	0	1613
Key Bank	34660	9091	0	9091
Windermere	40795	10700	0	10700
Met Market	119354	31307	37076	-5769
Walgreens	75794	19881	37488	-17607
US Bank	39311	10311	0	10311
McDonald's	39302	10309	4644	5665
Church	12775	3351	0	3351
Qwest	22769	5972	0	5972
Shell	16480	4323	2285	2038
Wells Fargo	42175	11062	6128	4935
Newell Court	20000	5246	0	5246
Rite Aid	121712	31925	41572	-9647
QFC	88672	23259	30530	-7271
Avellino	17744	4654	0	4654
Baskin Robbins	7200	1889	952	937
Banner	19800	5194	0	5194
Merrill	43946	11527	0	11527
Corry's	14314	3755	3776	-21
Islandia	55916	14667	23700	-9033

* King County Assessor Data

Memorandum

To: Staff & Planning Commission Members
From: Mike Murphy
Date: October 18, 2021
Re: Proposed Town Center Code Revisions

Introduction

The City Council (CC) has asked the Planning Commission (PC) to review several proposed changes to the existing Town Center (TC) development regulations, which are codified at MICC Chap. 19.11. The key elements of the proposed changes would (1) create a new requirement (a Floor Area Ratio, or "FAR") for the minimum square footage of commercial space (retail, restaurant and certain services) applicable to new development in the bulk of the TC, and (2) expand the area that would be subject to the new FAR requirement and frontage retail. Passage of new TC code provisions would allow the city to end the moratorium that currently applies to the SE portion of the TC. The PC is being presented with 4 choices:

1. Recommend approval of the proposed revisions
2. Recommend approval with changes
3. Recommend no action, i.e., rejection of the proposed revisions
4. Recommend no action and remand to the staff with suggested direction

The purpose of this memo is to (1) discuss certain concerns regarding the proposed TC code changes and (2) to identify an alternative approach, which is based on a mix of the alternatives previously considered by the CC.

A. Existing TC Code

The existing TC development code is found at MICC Chap. 19.11. This was first adopted n 2016 by Ord. 16C-06, and has undergone a few refinements since then.

B. Concerns with Proposed TC Code Changes as Presented

The centerpiece of the proposed changes is the application of a .2623 FAR for commercial space to all new development in most of the TC. Essentially this means that the building foot print must have a number of square feet of commercial space equal to .2623 x the gross square feet of the parcel. The FAR approach was a creative adaptation of an existing tool to try and craft a solution to the problem of preserving commercial space as the TC redevelops. Unfortunately, there do not appear to be any other jurisdictions that have used a Floor Area Ratio to preserve a certain amount of retail space. Accordingly, we have no examples to look at to see if this approach has been successful or what an appropriate commercial FAR is.

The .2623 FAR is the ratio of existing commercial plus 37,200 of "Additional Supportable Retail" less the post 2005 redevelopment commercial space divided by total SF of parcels in the designated FAR area (most of the TC not already redeveloped). This formula is relatively simple, and gives the appearance of symmetry and a rational basis, but this symmetry and apparent mathematical precision is an illusion. While data should inform the policy, trying to mathematically balance commercial space is not practical. This particular application is problematic for several reasons.

1. The FAR approach takes most of the relatively concentrated TC commercial space and spreads that commercial space out in smaller pieces over a much more expansive and thus much less walkable area. Here is what would happen to our most retail-intensive parcels under the FAR approach:

QFC:
- 30,530 SF Building
- 88,672 Lot Size
- .26[1] x 88,672 = 23,055
- Net loss of 7,475 SF (24.4% loss)

Met Market
- 37,076 SF Building
- 119,354 Lot Size
- .26 x 119,354 = 31,032
- Net loss of 6,044 SF (16.3% loss)

Walgreens
- 37,488 SF Building
- 75,794 Lot Size
- .26 x 75,794 = 19,706
- Net loss of 17,782 SF (47.5% loss)

Sano/Barrels Strip Center
- 15,081 SF Building
- 39,134 Lot Size
- .26 x 39,134 = 10,175
- Net loss of 4,906 SF (32.5% loss)

Tabit Square
- 6,664 SF Building
- 37,858 Lot Size
- .26 x 37,858 = 9,843
- Net gain of 3,179 SF (47.7% gain)

Islandia Shopping Center (Island Books)
- 23,700 SF Building
- 55,916 Lot Size

[1] I rounded the .2623 to .26 for simplicity. The additional .0023 is not material to this analysis.

- .26 x 55,916 = 14,538
- Net loss of 9,162 SF (61.3% loss)

Rite Aid

- 41,572 SF Building (partial 2 stories)
- 121,712 Lot Size
- .26 x 121,712 =31,645
- Net loss of 9,927 SF (23.9% loss)

In theory, the above losses could be made up over time by redevelopment of the other TC parcels that currently have little or no retail, but the time horizon of that development is extremely long, uncertain at best, and the recovery rate of losses in the core retail area would be very slow because of the parcel sizes. This is concerning because, based on the above analysis, the FAR approach may actually incentivize existing more concentrated commercial parcels to redevelop and shed retail space in large chunks in exchange for more profitable residential space.

2. To meet future new demand, 37,200 SF of commercial space was added to the numerator in the FAR equation, thus boosting the FAR. While the idea of having “room to grow” seems desirable, this approach does not appear supportable. There is no basis for equating additional retail sales based on population growth Island-wide with a direct increase in "supportable" retail square feet in the TC. The analysis includes no consideration of how much of the additional spending would go to the existing south end retail, the existing TC retail, or off-island.

3. There does not appear to be a component related for encouraging readily accessible parking. Lack of available parking is a recurring complaint from many parties.

4. Similarly, there does not appear to be a component encouraging public spaces.

There are a number of other unintended consequences that are contrary to the desired outcomes:

1. The FAR percentage requirement of .26 is based on the parcel square footage and not the building footprint. As a result, this requirement is likely to discourage creation of publicly accessible open space because having public open space would make the required percentage of the building ground floor devoted to commercial use even higher, regardless of its utility.

2. Parking for the retail/restaurants in the newer buildings is often on the floor level behind the retail/restaurants. Since the proposal mandates 2.5 times more SF of commercial space on the ground floor compared to the average for newer buildings (.11), the proposed code changes is likely to substantially reduce the readily available parking for the activity we are trying to promote.

3. The CAI Consultant Reports indicate 2 over 1 is marginal economically now; with a .26 FAR for commercial space, developers will need to have more below ground parking. That will result in a significant cost increase making the redevelopment needed to make up for commercial space lost elsewhere (see above) less likely. This is counterproductive.

4. The depth and configuration of viable/optimal retail and restaurant space is driven by factors other than a percentage of the parcel footprint. Whether the .26 FAR creates space that is practical to lease and won't create substantial unusable space is unclear and has not been examined for the various parcels. Wrong sized retail/restaurant spaces (designed to meet a certain ratio rather than viable configurations) may adversely affect the ability of an owner to actually lease the very types of spaces we want to promote.

C. An Alternative Approach that Borrows From the Work Already Done

At the July 6, 2021 CC meeting, staff identified several non-exclusive options, plus the potential for mixing and matching the alternatives. Those options were:

1. Do nothing.
2. Amend the TC Sub Area Plan and Zoning Map to remove the moratorium area from the TC and rezone to an exclusive commercial zone such as "General Commercial," "Community Business," or "Neighborhood Business."
3. (A) Amend MICC 19.11.020 Figure 2 to require blanket "retail street frontage" throughout the TC or only blanket throughout the moratorium boundary.
   (B) Amend MICC 19.11.020 Figure 2 to complete surgical additions / deletions to the current map.
   (C) Repeal MICC 19.11.020 (B) and Figure 2 that require "retail street frontage" in the TC and replace with the regulations existing prior to the adoption of Ordinance No. 16C-06.
4. Amend MICC 19.11.020 to add a "no net loss" commercial retail square footage requirement throughout the TC administered on a parcel-by-parcel basis.
5. Amend MICC 19.11.020 to add a "commercial floor area ratio" requirement for properties subject to the requirement in Figure 2.

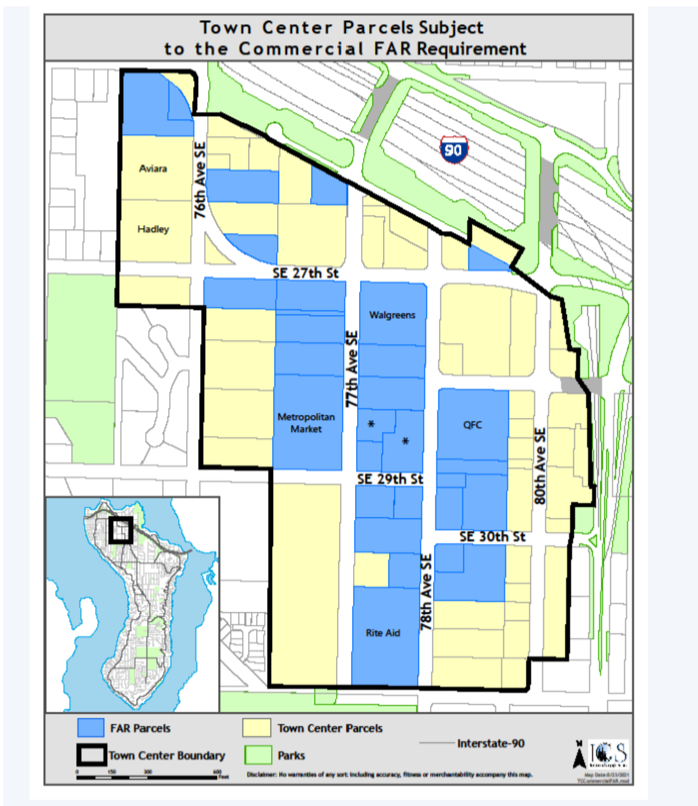
Significantly, there was support for consideration of a "no net loss" component in tandem with other elements. The "no net loss" component, however, was, in the end, only included for the post 2005 developments, which have an average commercial FAR of only .11. As such, its inclusion in that form contributes nothing to the goal of preserving commercial space. "No net loss" was not included for the remainder of TC, or any part of it. As the above analysis indicates, replacement of a "no net loss" element with a FAR requirement is not an effective substitute and creates a number of unintended adverse consequences. Accordingly, I propose the following alternative approach:

Step 1: A Moratorium for entire TC

- Focusing on the existing moratorium area ignores the bigger picture.

Step 2: Draft code amendments that combine a *modified* no net loss provision with some of the other elements favored by the CC.

- Goals: preserve as much existing retail areas as feasible (variation on no net loss); expand areas of potential retail (pink line map adjustments); make sure that the new retail requirements are properly incentivized and rationally related to what is leasable.
- Key elements of alternative approach:
    a. Create new subarea "Town Center – Commercial" (TC-C) overlay to encompass existing areas dominated by retail or within the area of desired retail
        i. TC-C map would be similar to Blue Parcel map, but not necessarily identical.



    b. TC-C overlay elements:
        i. No net loss of commercial space required as measured by a date certain.
        ii. Include a provision allowing for up to a 10% reduction of commercial SF otherwise required by the no net loss provision based on design considerations and subject to Design Commission approval.
        iii. Include a provision that allows a 1:1 SF credit for amenities such as public space up to a certain amount. The goal is not to just try to have a number of commercial SF, but to have viable and attractive commercial spaces.

iv. For Parcels in TC-C overlay area without existing retail, require future redevelopment to have an amount of commercial space expressed in FAR of building footprint on the ground floor(s). The FAR should be based on viability, not trying to add up to a number of total SF for the TC. Consider a sliding scale FAR based on parcel size (SF) and LF of frontage. The FAR needs to be based on realistic utility of space and other considerations (parking, etc.). Consult with architects to help formulate these standards.

v. Revisit minimum depth of commercial spaces (currently 16'), to ensure viability.

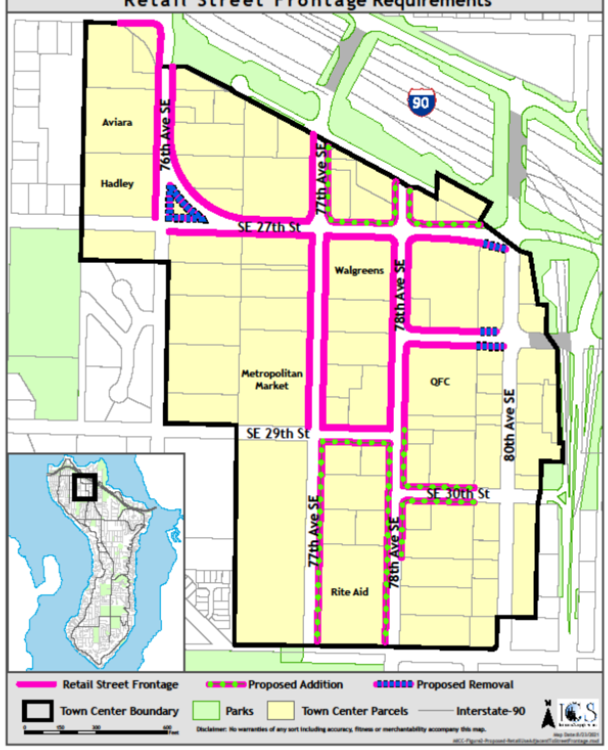
vi. Consider transferability of commercial SF among parcels.

vii. Consider allowing additional stories for significantly affected parcels (eg., greater than XX% of existing parcel).

c. Pink Line Map adjustments:

i. To expand areas of potential commercial, include existing TC commercial frontage requirements for 78th, 29th and 30th as proposed by CC, but do not include 77th

Figure 2: Proposed Updates to Retail Street Frontage Requirements



D. Legal Considerations Regarding "No Net Loss".

A "no net loss" approach, as compared to some of the other approaches, may present a somewhat higher risk of a legal challenge because it could be characterized as disproportionately affecting some TC parcels based on their existing uses. I understand that we will discuss this issue in an executive session on the 20th.

For purposes of the meeting, it might be helpful for the Planning Commission members to have some general background, as opposed to specific advice, on the law relating to "regulatory takings," the main legal theory under which land use regulations can be challenged. First, this area of the law is well developed. Since the *Village of Euclid* decision by the U.S. Supreme Court in 1926, routine zoning laws have been considered constitutional, even though by their very nature they disproportionately burden some property owners to benefit the public. Regulations, however, can be struck down if they "go too far," but such cases are rare. Second, as the United States Supreme Court has repeatedly stated, a party pursuing a "regulatory takings" claim "faces an uphill battle." A review of "regulatory takings" cases confirms that; they rarely succeed because the applicable standards are difficult to meet. Third, I am not aware of any cases that suggest that a modified "no net loss" zoning element would constitute a taking. Laws that disproportionately burden some properties are routinely upheld as long as the law does not "arbitrarily" single out a particular parcel for different, less favorable treatment than the neighboring ones, i.e., a spot zone. The leading case in this area is the 1978 U.S. Supreme Court decision in *Penn Cent. Transp. Co. v. City of New York*. This case established the standards under which regulatory takings claims are judged. In that case, the U.S. Supreme Court upheld the New York's landmark preservation law and denied the developer the right to develop the airspace above Grand Central Station. The Supreme Court held that: (1) owners could not establish a "taking" merely by showing that they had been denied the right to exploit the airspace; (2) landmark laws which embody a comprehensive plan to preserve structures of historic or aesthetic interest are not discriminatory, like "reverse spot" zoning; (3) that the law affected some owners more severely than others did not itself result in a "taking;" and (4) the law did not interfere with owners' present use or prevent it from realizing a reasonable rate of return on its investment.