



PLANNING COMMISSION REGULAR HYBRID MEETING AGENDA

Wednesday, March 22, 2023 at 6:00 PM

PLANNING COMMISSIONERS

Chair: Daniel Hubbell

Vice Chair: Michael Murphy

Commissioners: Kate Akyuz, Carolyn Boatsman

Michael Curry, Victor Raisys, and Adam Ragheb

LOCATION

Mercer Island City Hall and via Zoom
9611 SE 36th Street | Mercer Island, WA 98040
(206) 275-7706 | www.mercerisland.gov

We strive to create an inclusive and accessible experience. Those requiring accommodation for Planning Commission meetings should notify the Deputy City Clerk's Office 3 days prior to the meeting at (206) 275-7791 or by emailing deborah.estrada@mercerisland.gov.

Registering to Speak: Individuals wishing to speak live during Appearances, must register with the Deputy City Clerk by 4pm on the day of the Planning Commission meeting. Register at (206) 275-7791 or email deborah.estrada@mercerisland.gov. Each speaker will be allowed three (3) minutes to speak.

Please reference "Appearances" on your correspondence and state if you would like to speak in person at City Hall or remotely using Zoom. If providing comments using Zoom, staff will permit temporary video access when it is your turn to speak. Please 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 planning.commission@mercergov.org.

Join by Telephone at 6:00 pm: To listen to the meeting via telephone, please call **253.215.8782** and enter **Webinar ID 830 6040 2272**.

Join by Internet at 6:00 pm: To observe the meeting via your computer, 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 **830 6040 2272**

Join in person at 6:00 pm: Mercer Island City Hall, Council Chambers - 9611 SE 36th Street

CALL TO ORDER & ROLL CALL, 6 PM

PUBLIC APPEARANCES

This is the opportunity for anyone to speak to the Commission about issues of concern.

PUBLIC HEARING

1. ZTR22-001: Zoning Code Amendments: Business Zone Permitted Uses
2. ZTR23-001: Shoreline Master Program Amendment: Public Comment Period

REGULAR BUSINESS

1. Planning Commission Meeting Minutes
2. ZTR22-001: Add Schools as Allowed Use in Business Zone
3. ZTR23-001: Allow SCUP for Review of Marina and Swim Facilities

OTHER BUSINESS

4. Deputy Director's Report
5. Planned Absences for Future Meetings
6. Next Scheduled Meeting – April 26, 2023

ADJOURNMENT



PLANNING COMMISSION HYBRID MEETING MINUTES

Wednesday, February 22, 2023

CALL TO ORDER

The Planning Commission was called to order by Chair Hubbell at 6:04 pm.

PRESENT

Chair Daniel Hubbell, Commissioners Kate Akyuz, Carolyn Boatsman, Victor Raisys, and Adam Ragheb were present in the Council Chambers.

Vice Chair Michael Murphy and Commissioner Michael Curry participated remotely.

STAFF PRESENT

Council Chambers: Alison Van Gorp, Deputy Director
Remote Participation: Molly McGuire, Planner

PUBLIC APPEARANCES

Audrey Covner, Anjali Grant and Matt Goldbach addressed the Commission and shared comments regarding the proposed amendments to the Business Zone.

REGULAR BUSINESS

1. Approve the January 25, 2023, Meeting Minutes

A motion was made by Raisys; seconded by Ragheb to:
Approve the minutes of the January 25, 2023, meeting.
Approved 7-0

2. ZTR22-001 Allowing Schools in the Business Zone

Deputy Director Alison Van Gorp reviewed the proposed amendment to the development regulations for the Business zone with the commissioners and requested feedback. The commission provided initial guidance on the draft code amendment.

3. ZTR23-001 Allowing SCUP for the Review of Marina and Swim Facilities

Planner Molly McGuire reviewed the proposed amendment to the Shoreline Master Program with the commissioners and requested feedback. The commission provided initial guidance on the draft code amendment.

OTHER BUSINESS

Deputy Director's Report

Deputy Director Alison Van Gorp provided a progress report on the periodic update to the Comprehensive Plan.

Planned Absences for Future Meetings

There were no planned absences.

Next Scheduled Meeting

The next scheduled meeting of the Planning Commission is March 22, 2023, at 6:00pm.

Item 3.

ADJOURNED

The meeting adjourned at 8:41 pm

DRAFT

Attachment 2: Draft Code Amendment

19.04.050 Business—B.

- A. *Required conditions.* All uses permitted in this zone shall be subject to the following conditions:
1. All goods produced on the premises shall be sold at retail on the premises, except as provided herein.
 2. Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable by reason of odor, dust, smoke, cinders, gas, fumes, noise, vibration, refuse matter, or water carried waste.
 3. No service station or other establishment where motor fuel or lubricating oils are stored or motor services are rendered, may be located within 300 feet of any property upon which a place of worship, school, hospital, institution, theater, or public assembly seating over 50 persons, is located, and said distances shall be measured on a straight line or air line from the outer boundary or property line in the one instance to the nearest property or boundary line.
 4. *Outdoor storage and merchandise display requirements.*
 - a. The total area allowed for outdoor storage and/or merchandise display shall be less than five percent of the total gross square footage of the subject store; provided, however, that such area may exceed five percent if it is fenced or screened in a manner acceptable to the design commission;
 - b. Stored and/or displayed materials shall not obstruct fire lanes;
 - c. The stored and/or displayed materials shall be attractively and safely displayed, and remain on the area specified for such display;
 - d. Bulk (uncontained) materials shall be stored less than 24 hours;
 - e. Items stored on a site during construction and temporary uses approved by the code official (e.g., Christmas tree sales lots) shall be exempt from the requirements for this section.
 5. On-site hazardous waste treatment and storage facilities as defined in MICC 19.16.010 are permitted as an accessory use to a permitted use in this zone. These facilities must comply with the state siting criteria as adopted in accordance with RCW Chapter 70.105.
- B. *Uses permitted.*
1. Government services, utilities, and museums and art exhibitions.
 2. Day care.
 3. Public and private schools accredited or approved by the state for compulsory school attendance, subject to design review as specified MICC 19.12.010 (D), and the following conditions:
 - a. Setbacks
 - i. a setback of 45 feet is required from property lines that abut single-family zones.
 - ii. a setback of 30 feet is required from public rights of way.
 - iii. a setback of 15 feet is required from public parks.
 - b. Screening. Along property lines abutting rights of way, public parks, and single-family zoning, a landscaped area at least ten feet wide must provide a partial visual barrier to adjacent properties and rights of way. The screening shall be composed of a combination of trees, bushes, and groundcover that produce an eight-foot-tall visual barrier in all seasons within three years of planting. A minimum of one tree for every 20 feet of landscape perimeter length must be provided.

Attachment 2: Draft Code Amendment

c. Playfield. A one-fourth acre or larger playfield, play surface or open space shall be provided in one usable unit abutting or adjacent to the site.

- ~~34~~. Healthcare services.
- ~~45~~. Personal services.
- ~~56~~. Professional, scientific, and technical services; provided, animal hospitals and clinics shall be structurally enclosed.
- ~~67~~. Office uses.
- ~~78~~. Service stations.
- ~~89~~. Repair services.
- ~~910~~. Theaters.
- ~~1011~~. Restaurants, cafeterias, catering.
- ~~1112~~. Retail stores.
- ~~1213~~. Financial and insurance services.
- ~~1314~~. Commercial recreational areas; provided, teen dances and teen dance halls as defined herein are not permitted uses.
- ~~1415~~. Special needs group housing, as provided in MICC 19.06.080.
- ~~1516~~. Social service transitional housing, as provided in MICC 19.06.080.
- ~~1617~~. Wireless communications facilities subject to the conditions set out in MICC 19.06.040.
- ~~1718~~. Accessory uses customarily incidental to a principal use permitted outright in this section.
- ~~1819~~. Hotels/motels and multiple-family dwellings.
- ~~1920~~. Decorating shops.
- ~~2021~~. Employment agencies.
- ~~2122~~. Printing establishments and newspaper printing presses.
- ~~2223~~. Public garages and auto repair shops.
- ~~2324~~. Sales rooms or storerooms for motor vehicles and other articles of merchandise.
- ~~2425~~. Telephone exchanges or telegraph offices.
- ~~2526~~. Preschools, nursery schools and day care centers, subject to the following conditions:
 - a. Such facilities shall meet all applicable safety and licensing laws and requirements.
 - b. All outdoor play areas shall be adequately fenced.
- ~~2627~~. Adult entertainment, subject to the following conditions:
 - a. The point of public entry into the structure housing the business shall be at least 800 feet from the property line of any R or MF zoned property; from the boundary of the area designated as "proposed landscaping" on Figure 6 of the final EIS (Volume I) for I-90; or from the property line of any property containing one or more of the following uses: single- or multiple-family dwelling, retirement home, preschool, nursery school or day care center, publicly owned park or open space, recreational area (commercial, noncommercial or private), public or private primary or

Attachment 2: Draft Code Amendment

secondary school, religious institution, governmental building, or an establishment which caters primarily to minors.

- b. No adult business shall be located closer than 400 feet to another adult business. Such distance shall be measured by following a straight line from the nearest point of public entry into the proposed adult business to the nearest point of entry into another adult business.
 - c. Point of public entry into adult businesses shall not be located along 78th Avenue SE or along primary pedestrian corridors.
 - d. Window or exterior displays of goods or services which depict, simulate, or are intended for use in connection with specified sexual activities as defined by this title are prohibited.
- C. *Structure setback requirements.* All structures shall have a minimum setback from any public right-of-way of ten feet; except, service station pump islands which shall have a setback from the street line of at least 15 feet to provide for safe access or egress to or from such street.
- D. *Building height limit.* Maximum allowable building height shall be the lesser of (1) three stories or (2) 36 feet, calculated using the method described in MICC 19.11.030(A)(3).

(Ord. 19C-21 § 1 (Att. A); Ord. 03C-08 § 7; Ord. 99C-13 § 1)

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Alison Van Gorp, Deputy Director

DATE: March 16, 2023

SUBJECT: ZTR22-001

ATTACHMENTS: 1. Summary of Development Regulations for Schools
2. Draft Code Amendment

SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR22-001. This zoning code amendment was proposed in a Docket Request dated September 30, 2021 (Attachment 1). The docket request proposed amending the Business Zone to allow schools. At the March 22 meeting, a public hearing will be held, and staff seeks further guidance from the commission on the proposed code amendment. The commission may finalize and vote on a recommendation during the meeting, or direct staff to prepare a revised draft for consideration at the April meeting.

BACKGROUND

In September 2021, Anjali Grant, on behalf of Herzl Ner-Tamid (Herzl), submitted a [docket request](#) for an amendment proposing an amendment to [MICC 19.04.050 Business – B](#). The proposed amendment of MICC 19.04.050 would add public and private schools to the list of permitted uses in the Business Zone.

At the February 22 meeting, the Planning Commission provided initial guidance to staff on the proposed amendment. The commission requested a legal opinion on whether the proposed amendment constitutes “spot zoning” and whether development regulations can be proposed for the entirety of the B zone, or just for the schools use. The commission also requested an analysis of the existing development standards for schools in various zones within the current city code. Finally, the commission directed staff to prepare a revised amendment that permits schools in the B zone with additional development standards.

Legal Analysis

The following questions were raised during the February 22 Planning Commission meeting; staff have developed responses in consultation with the City Attorney.

Q: Is amending the B zone to allow schools a spot zone?

No, the proposed amendment would apply to the entire B zone, which is composed of several properties. This is not a spot zone, which refers to rezoning a single property. The proposed amendment would allow a land use in the B zone rather than rezoning the property.

Q: Can the City amend the development regulations to add just one use? Is this a spot zone?

Yes, the City amends development regulations from time to time in response to changing conditions and needs; there is no limit on how much or how little can be changed. Amending development regulations is unrelated to a spot zone, which refers to rezoning a single property.

Q: Could schools be permitted as a conditional use in the B zone?

Yes. A school would then require a Conditional Use Permit (CUP) with approval from the Hearing Examiner to proceed. Further discussion of this option is provided in the Draft Code Amendment section, below.

Q: If the City would like to add schools as a permitted use in the B zone, can we add development regulations that apply broadly to all uses in the zone, or only in relation to the new use (schools)?

While it is possible to amend the development regulations in the B zone more broadly, this is not recommended. The docket item and noticing related to this code amendment have been limited in scope to adding schools as a permitted use in the B Zone, and have not included considerations related to other uses in the zone. Thus, the recommended code amendment should also be limited to regulations related to the school use. Broader changes to the B zone could be docketed in a future year.

Draft Code Amendment

Staff have reviewed code provisions related to public and private schools in the Commercial Office (C-O), Residential (R) and Public Institution (P-I) zones. The most relevant code requirements are summarized in Attachment 1. A draft code amendment has been prepared with additional conditions and performance standards that were informed by this code analysis (see Alternative B, below). In drafting the code amendment, staff sought to include provisions that were both consistent with the regulations in other zones and appropriate for the context of the B zone properties.

It should also be noted that the provisions of [MICC 19.12](#) Design Standards For Zones Outside Town Center apply to all “regulated improvements” located outside the Town Center zone. Regulated improvements include development of any property except property owned by the City, single family dwellings/accessory structures and wireless facilities. Thus, the provisions of MICC 19.12 apply to schools in the C-O, R and P-I zones. This chapter establishes design review requirements, provides building design guidelines as well as standards for landscaping, screening, and lighting, among other things. Relevant code provisions from MICC 19.12 are summarized in Attachment 1 as well. Since MICC 19.12 already includes provisions requiring design review, providing building design guidelines and regulating landscaping and lighting, additional standards related to these items are not included in the draft code amendment.

At the February 22 meeting, the Commission inquired about the feasibility of adding schools as a conditional use in the B zone, subject to a CUP. As mentioned above, this is feasible. However, staff do not recommend permitting schools as a conditional use. The B zone currently permits a variety of commercial uses, including several that are higher intensity uses with impacts to neighboring properties that are likely similar to, if not greater, than those of schools. For example, the B zone currently permits service stations, auto repair shops, museums, theaters, and hotels. These uses can be developed “by right” without requiring an additional land use permit. Making schools a conditional use is not consistent with how other more intense uses are regulated in this zone.

ALTERNATIVES

There are three alternatives the Planning Commission can consider. Based on the feedback provided at the February 22 meeting, staff have prepared a draft code amendment for consideration (Alternative B). The three alternatives are provided below.

Alternative A: Amend the B Zone to allow public and private schools as a permitted use.

This alternative was proposed in the [docket request](#) submitted by Herzl in 2021. The proposal would amend MICC 19.04.050 by adding “Public and private schools” to the list of permitted uses. As a permitted use, schools would be allowed outright, without the need for an additional land use permit. The submitted proposal does not include any special conditions or performance standards for public and private schools. An analysis of this alternative was provided in the [February 15 staff memo](#).

Alternative B: Add additional conditions or performance standards.

This alternative would amend the B zone to allow schools as in Alternative A and would also add conditions and performance standards to mitigate the potential impacts of these facilities. The draft code amendment includes the following conditions, which are applicable to public and private schools:

a. Setbacks

- i. a setback of 45 feet is required from property lines that abut single-family zones.
- ii. a setback of 30 feet is required from public rights of way.
- iii. a setback of 15 feet is required from public parks.

b. Screening. Along property lines abutting rights of way, public parks, and single-family zoning, a landscaped area at least ten feet wide must provide a partial visual barrier to adjacent properties and rights of way. The screening shall be composed of a combination of trees, bushes, and groundcover that produce an eight-foot-tall visual barrier in all seasons within three years of planting. A minimum of one tree for every 20 feet of landscape perimeter length must be provided.

c. Playfield. A one-fourth acre or larger playfield, play surface or open space shall be provided in one usable unit abutting or adjacent to the site.

Alternative B Discussion

Alternative B is more restrictive than Alternative A because it would add additional development standards beyond what is currently required in the B zone. The added development standards are intended to mitigate impacts to neighboring land uses by requiring larger setbacks and screening requirements. In addition, a playfield is required as in other zones that allow private schools. If Alternative B is adopted, an application for a school in the B zone would be reviewed for consistency with the proposed standards during review of the building permit. A separate land use permit would not be required.

Feedback Requested

The Planning Commission should consider whether the proposed standards are appropriate for the B zone. In particular, do the proposed numeric standards provide an appropriate level of separation and screening from surrounding properties? The setback standards are similar to those for public schools located in the P-I zone. The P-I Zone school properties are composed of large parcels and are developed with large school facilities and sports fields. Due to the size of the properties in the B zone, it is possible that smaller setbacks may be more appropriate given the scale of development that is possible.

Alternative C: No Change.

The City is not required to make an amendment. Making no change would maintain the existing zoning and land use controls for the subject property. An analysis of this alternative was provided in the [February 15 staff memo](#).

STAFF RECOMMENDATION

Staff recommends Alternative B to amend MICC 19.04.050 as drafted in Attachment 2. The B zone does not currently allow schools as a permitted use and the proposed amendment would add this use, as well as additional development conditions and performance standards intended to mitigate impacts on surrounding neighborhoods. The B zone already allows land uses with similar or greater intensity such as service stations, auto repair shops, museums, theaters, and hotels. Furthermore, zones intended for less intense development including single-family residential zones, also allow private schools subject to similar conditions. Subjecting schools in the B zone to development standards can help ensure that if properties in the B zone are developed with schools, that land use would be compatible with surrounding land uses. The proposed development standards can offset potential impacts by establishing screening and setbacks to shield single-family neighborhoods from possible noise and lighting. Alternative B would enable an organization like Hertzl Ner-Tamid to develop a private school. Alternative B as presented is consistent with the policies of the Comprehensive Plan and the Mercer Island development code.

Consistency with the Code Amendment Criteria in MICC 19.15.250(D)

Decision criteria for amending the development code are established in MICC 19.15.250(D). The proposed amendments in Alternative B.1 are consistent with those criteria as follows.

MICC 19.15.250(D)(1)

MICC 19.15.250(D)(1) states that a code amendment may only be approved if, “The amendment is consistent with the comprehensive plan”. The comprehensive plan land use designation of [Commercial Office](#) includes both the C-O and B zones and is described as follows.

The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office. Complementary land uses (e.g., healthcare uses, schools, places of worship, etc.) are also generally supported within this land use designation.

The proposed code amendment is consistent with the Commercial Office land Use designation in the Comprehensive Plan because schools are supported in this area as a complimentary use to commercial office.

MICC 19.15.250(D)(2)

The second criterion for approval of a development code amendment is established in MICC 19.15.250(D)(2), which states, “The amendment bears a substantial relation to the public health, safety, or welfare”. The proposed code amendment would relate the public welfare by enabling development of schools in the B zone. The corresponding development regulations would ensure that the development would occur with reduced impacts to neighboring uses and with adequate outdoor play space for students.

MICC 19.15.250(D)(3)

The third and final criterion for approval of a development code amendments is established in MICC 19.15.250(D)(3), which states, “The amendment is in the best interest of the community as a whole.” The

proposed code amendment would serve the community interest by providing additional opportunities for the development of schools, expanding the potential educational services provided on the island. As identified in the Comprehensive Plan, schools are a key element of the community character and providing a range of educational opportunities to the community's varied population is a priority.

NEXT STEPS

At the March 22 meeting, the Planning Commission will hold a public hearing and receive public comment. After hearing public comments on the proposed alternatives, the Planning Commission should indicate which of the three alternatives is preferred. If the Planning Commission prefers Alternative B, they can consider further revisions to the proposed code amendment, if desired, and provide direction to staff. Simple changes can be made by motion during the March 22 meeting. More extensive revisions or wordsmithing will require scheduling a 3rd review for the April 26, 2023 meeting.

When the Planning Commission concludes deliberations, a recommendation to the City Council should be finalized by motion. The commission's recommendation will be transmitted to City Council for review later in the spring.

Attachment 1: Summary of Development Regulations for Schools in the Mercer Island City Code

	B Zone MICC MICC 19.04.050	C-O Zone MICC 19.04.020	R Zones MICC 19.02	P-I Zone MICC 19.15.010
Permitted Uses	<ul style="list-style-type: none"> Schools are not a permitted use 	<ul style="list-style-type: none"> Schools are a permitted use 	<ul style="list-style-type: none"> Schools permitted as conditional uses, subject to CUP 	<ul style="list-style-type: none"> Public schools are a permitted use.
Setbacks	<ul style="list-style-type: none"> 10-foot setback from any public ROW for all structures 15-foot setback from streets for service station pump islands 	<ul style="list-style-type: none"> 50-foot setback from all ROW Rear yard setback of 50-feet, side yard setbacks totaling 75-feet with at least 25 feet per side. 50-foot setback from property line of adjacent residential or multifamily that is developed for this use. No parking or driveways allowed within this setback. 	<ul style="list-style-type: none"> All structures shall be located at least 35 feet from any abutting property and at least 45 feet from any public right-of-way. 	<ul style="list-style-type: none"> Setbacks are established individually for each school site in <u>19.05.010</u> (F), ranging from 15 to 65 feet, with the widest setbacks along property lines that abut single-family zoning. 45-feet is a common setback for property lines that abut single-family 30-feet is common setback from public ROW. 15-feet is a common setback from internal property lines and public parks.
Building Height	<ul style="list-style-type: none"> The lesser of 3 stories or 36 feet, calculated using the method described in MICC <u>19.11.030(A)(3)</u>. 	<ul style="list-style-type: none"> 36 feet in height, calculated using the method described in MICC 19.11.030(A)(3). Outdoor storage facilities shall not exceed 20 feet in height. Additional 10 feet for rooftop appurtenances 	<ul style="list-style-type: none"> 30 feet above the average building elevation to the highest point of the roof in MICC 19.02.020(E)(1).. 	<ul style="list-style-type: none"> Height limits are established individually for each school site in <u>19.05.010</u> (F), ranging from 2 stories/30 feet to 3 stories/53 feet, with the lowest limits along property lines that abut single-family zoning.

Attachment 1: Summary of Development Regulations for Schools in the Mercer Island City Code

Lot Coverage	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Not more than 60 percent of a lot may be covered by buildings, structures, and other impervious surfaces. The building footprint shall occupy no more than 35 percent of the gross lot area. 	<ul style="list-style-type: none"> Lot coverage limited to 20%-40% of the lot, depending on lot slope Maximum 9 percent of the lot may be covered with hardscape per MICC 19.02.020(F)(3)(b)(i). 	<ul style="list-style-type: none"> Maximum allowable coverage with impervious surfaces of 55 percent for elementary and middle schools and 63 percent for the high school mega-block. Additional five percent allowed for synthetic turf fields, non-drivable pervious paving.
Design Review	<ul style="list-style-type: none"> Design Commission review required per <u>MICC 19.12.010 (D)</u> 	<ul style="list-style-type: none"> Design Commission review required per <u>MICC 19.12.010 (D)</u> 	<ul style="list-style-type: none"> Design Commission review required per <u>MICC 19.12.010 (D)</u> 	<ul style="list-style-type: none"> Design Commission review required for major new construction. Administrative design review required for minor exterior modification and portable classrooms.
Landscaping /Screening	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> <u>19.12.060</u> and apply. Minimum of 25 percent of the gross lot area shall be landscaped. 10-foot partial screen required around perimeter 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> <u>19.12.060</u> and apply. Minimum of 40 percent of the gross lot area shall be landscaped. A 20-foot partial screen required around the perimeter 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> <u>19.12.060</u> and apply. Minimum of 25 percent of the gross lot area shall be landscaped 10-foot partial screen required around perimeter 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> and <u>19.11</u> apply. Landscaped surfaces equal to 25% of the development site shall be provided (planting beds, green roofs, green walls all included) Screening of service areas, loading zones, storage areas, garbage collection, mechanical units, etc required 20 foot partial or full perimeter screen required
School Playfields	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> A one-fourth acre or larger playfield, play surface or open space shall be provided in one usable unit abutting or adjacent to the site. 	<ul style="list-style-type: none"> A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site. 	<ul style="list-style-type: none"> n/a

Attachment 1: Summary of Development Regulations for Schools in the Mercer Island City Code

Item 4.

Lighting	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply. 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply. 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply. 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply.
Parking	<ul style="list-style-type: none"> Public and private schools shall provide at a minimum two off-street parking spaces per classroom unless additional parking spaces are deemed necessary through design commission or administrative SEPA review and shall provide adequate off-street loading and unloading facilities as determined by the city engineer. 	<ul style="list-style-type: none"> Public and private schools shall provide at a minimum two off-street parking spaces per classroom unless additional parking spaces are deemed necessary through design commission or administrative SEPA review and shall provide adequate off-street loading and unloading facilities as determined by the city engineer. 	<ul style="list-style-type: none"> Off-street parking shall be established and maintained at a minimum ratio of one parking space per classroom with high schools providing an additional one parking space per ten students. 	<ul style="list-style-type: none"> Public elementary and middle schools shall provide a minimum of two parking spaces per classroom. Public high schools shall provide a minimum of one parking space per classroom plus an additional one parking space per ten students. If the parking spaces that would need to be provided as specified above are in excess of the actual parking demands of the school's staff, students, and visitors, the code official may allow a reduction in minimum parking requirements based on a parking analysis prepared by a qualified professional, with the approval of the city engineer and the design commission, for projects reviewable by the design commission.

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Molly McGuire, Planner

DATE: March 16, 2023

SUBJECT: ZTR23-001

ATTACHMENTS: A. Mercer Island Beach Club (MIBC) Docket Request dated September 29, 2022

PURPOSE

This memo provides the Planning Commission with the staff recommendation for ZTR23-001. This zoning code amendment was proposed in a Docket Request dated September 29, 2022 (Attachment A). The docket request proposed an amendment to the [Shoreline Master Program \(SMP\) Chapter 19.13 Mercer Island City Code \(MICC\)](#). At the March 22 meeting, the Planning Commission will hold a public hearing and make a recommendation to the City Council.

BACKGROUND

Background on the original proposal submitted by the Mercer Island Beach Club (MIBC) and associated docketing procedures can be found in the previous [Staff Memo dated February 15, 2023](#).

During the February 22 meeting, the Planning Commission requested additional information on the Shoreline Conditional Use Permit (SCUP) process and review criteria found in [WAC 173-27-160](#) and asked staff to revise Alternative B, now Alternative B.1, and draft an alternative amendment to [MICC 19.13.040 - Table B Shoreland Uses Waterward of the Ordinary High Water Mark](#) to include a new use that more directly and narrowly aligns with the MIBC's original proposal.

SCUP PROCESS AND REVIEW CRITERIA

During the February 22 meeting, the Planning Commission expressed concerns regarding the requirement for an applicant to demonstrate consistency with shoreland development standards contained in the SMP, as there are no standards that explicitly pertain to the type of facility proposed by the MIBC. Staff would like to address these concerns by proposing the following alternative (further discussed under Alternative B.1 below):

A use not listed in this table is not permitted within shorelands. Other uses which are not classified or set forth in this chapter may be authorized as conditional uses provided the

applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the applicable shoreland development standards contained in this chapter. In the event that there are no applicable shoreland development standards, the conditional use will be reviewed for consistency with Chapter 173-27 WAC.

Shoreline Conditional Use Permits follow the permitting procedures outlined in [MICC 19.15.030](#) for Type IV permits. The Hearing Examiner makes a recommendation to the Washington State Department of Ecology (Ecology). Ecology issues the final decision SCUP. For a SCUP to be approved, the applicant must demonstrate compliance with WAC 173-27-160:

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses 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 master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(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 planned for the area under the comprehensive plan and shoreline master program;

(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.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the 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.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

Staff finds that the above criteria are clear enough to resolve the concerns raised by the MIBC and Planning Commission. Additionally, any proposed development that is undesirable would need to prove that the use is compatible with uses planned for the area under the comprehensive plan and shoreline master program. The Department of Ecology would review the proposal and make the final decision, following the Hearing Examiner's recommendation.

ALTERNATIVES

The alternatives the Planning Commission can consider for ZTR23-001 are listed below. When the Planning Commission provided its initial feedback on the proposed change during the meeting on February 22, they requested an additional alternative to amend MICC 19.13.040 Table B. The Planning Commission requested an alternative that would be more narrowly focused on allowing the type of boating facility proposed by the MIBC rather than allowing any uses that are not listed in the table by SCUP. The originally proposed Alternative B, presented below as Alternative B.1, is a broad approach that would allow any uses that are not listed in Table B by SCUP. The new alternative, presented below as Alternative B.2, reflects the Planning Commission request by narrowly allowing a new use by SCUP and subject to new standards that will be developed consistent with "boating facilities" standards in WAC 173-26-241(3)(c).

Alternative A: Amend MICC 19.13.040 Table B – Shoreland Uses Waterward of the Ordinary High Water Mark as proposed.

Alternative A would revise the footnote for MICC 19.13.040 Table B "A use not listed in this table is not permitted within shorelands" as proposed by the MIBC to allow existing private clubs or residential communities serving more than 10 families to use the SCUP process for redevelopment of moorage facilities, floating platforms, mooring piles, diving boards, diving platform, swim areas and other accessory uses. The proposed footnote amendment would read:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

Benefits: Existing private clubs or residential communities serving more than 10 families would be authorized to redevelop their facilities with the approval of a shoreline conditional use permit.

Drawbacks: Alternative A does not contain language that is consistent with existing state law for processing uses not listed in the SMP. See Alternative B, which would provide a similar outcome for facilities like the MIBC, but also includes the language needed to remain consistent with state law.

Alternative B: Amend MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Footnote and Amend MICC 19.13.010(E) (Staff Recommended).

Staff recommends Alternative B; however, the Planning Commission can decide which policy approach is preferred (broad: Alt. B.1, narrow: Alt. B.2). The two alternatives, B.1 and B.2, both address the problem highlighted in the original docket application. The changes proposed in either alternative would allow the development of a larger dock operated by a nonprofit organization such as the MIBC.

Broad Approach: Alternative B.1 – Amend MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Footnote and Amend MICC 19.13.010(E) to Allow Unlisted Uses by SCUP.

Alternative B.1 would revise the footnote “A use not listed in this table is not permitted within shorelands” as proposed by Staff to language that is consistent with existing state law. WAC 173-27-160(3) states that “other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program”. The proposed staff alternative amendment would read:

A use not listed in this table is not permitted within shorelands. Other uses which are not classified or set forth in this chapter may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the applicable shoreland development standards contained in this chapter. In the event that there are no applicable shoreland development standards, the conditional use will be reviewed for consistency with Chapter 173-27 WAC.

Alternative B.1 and B.2 (below) would also amend MICC 19.13.010(E) to include an adoption by reference to Chapter 173-27 WAC Shoreline Management and Enforcement Procedures to establish the relationship with existing state law and provide clear procedures for processing various shoreline permits. The amendment to MICC 19.13.010(E) would read:

The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. The shoreline management permit and enforcement procedures contained within Chapter 173-27 WAC as presently constituted or hereinafter amended, are adopted by reference. All work waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or Washington Department of Ecology.

Benefits: Amending the Table B Footnote to be consistent with existing state law would result in the same outcome for the applicant and other similar facilities. During the February 22 meeting, the MIBC and Planning Commission raised several concerns over the lack of clarity in shoreline permitting standards and criteria for uses that are not listed in the SMP but would be allowed through the conditional use permit process through this amendment, as the SMP does not contain review criteria for the specific type of development proposed by the MIBC. Those applicants pursuing a SCUP for unnamed uses would be required to participate in a preapplication meeting per MICC 19.15.030 – Table B. During this preapplication meeting, staff would evaluate the proposed use and provide the applicant with information detailing which regulations would apply to that specific use. In most cases, staff would evaluate the proposal and identify the named use with the closest impact and development intensity to determine which conditions would apply to the proposed use (hence, ‘conditional use permit’). This is a standard practice for allowing unnamed uses by conditional use permit.

Drawbacks: See the Staff Memo dated February 15, 2023, for a discussion of the drawbacks associated with Alternative B.1 (previously Alternative B).

Narrow Approach: Alternative B.2 – Amend MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Uses and MICC 19.13.050 - Shoreland Development Standards and Amend MICC 19.13.010(E) to Allow the Proposed Use by SCUP.

Alternative B.2 would add a new use in MICC 19.13.040 Table B and standards in MICC 19.13.050. During the February 22 meeting, the Planning Commission requested that a new use be created and presented as an alternative that would apply specific standards and review criteria for uses similar to what the MIBC proposed. Alternative B.2 would require staff to develop standards for a new use that would allow the MIBC and similar uses to redevelop their facilities, while remaining consistent with state shoreline and environmental standards. If the Planning Commission decides to pursue Alternative B.2, staff will draft specific standards for the Planning Commission to consider. Drafting new development standards for a specific use is a significant enough departure from the original code development proposal to warrant a separate public hearing.

One option would be to adopt “marina” as a new use, and adopt development standards. Development standards for boating facilities, such as marinas, must be consistent with the requirements established in WAC 173-26-241(3)(c):

For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

- (i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.
- (ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.
- (iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.
- (iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).
- (v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).
- (vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.
- (vii) Regulations to protect the rights of navigation.
- (viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

Drafting development standards would require additional staff time to develop this alternative and the Planning Commission would need to hold another public hearing. To prepare a draft of development standards, staff will review requirements in state law, evaluate approaches other jurisdictions take, and consult with state agencies. Should the Planning Commission choose to

move forward with Alternative B.2, staff will prepare a draft of development standards for the Planning Commission to consider at its April meeting. A public hearing on the proposed development standards would likely be scheduled for May.

Benefits: Alternative B.2 would give the City time to develop regulations for larger docks and marinas. Drafting development regulations for larger docks and marinas would result in more specific regulations than Alternatives A and B.1.

Drawbacks: Alternative B.2 would require additional staff time, including noticing and scheduling of another public meeting to discuss the details of the proposed standards. This would add an additional 5-6 weeks of review. Alternative B.2 would not allow for the same level of flexibility in the application of use regulations as Alternative B.1.

Alternative C: Do not amend MICC 19.13.040 Table B Notes or MICC 19.13.010(E).

Making changes to MICC 19.13.040 Table B Notes and MICC 19.13.010(E) is a local choice. Amending this code section is not required by state or local law. The City can elect to make no changes at this time.

Benefits: Alternative C would not allow for unforeseen uses to be authorized subject to a shoreline conditional use permit and would not establish a relationship between the SMP and state law for shoreline permit processing procedures.

Drawbacks: Making no change to MICC 19.13.040 Table B Notes or MICC 19.13.010(E) would not provide consistency with state law or clarity on shoreline permit processing. It would also prevent the MIBC from proceeding with reconfigurations to their docks as currently designed.

STAFF RECOMMENDATION

Staff recommends either Alternative B.1 or B.2 to amend MICC 19.13.040 Table B and 19.13.010(E). The question of whether to take a broad approach like Alternative B.1 or a narrow approach like Alternative B.2 is a local choice the Planning Commission can make a recommendation on. Analysis of Alternative B.1 is provided below. If the Planning Commission selects Alternative B.2, staff will prepare detailed analyses of that code amendment once a draft is prepared.

Alternative B.1 as presented is consistent with the policies of the Comprehensive Plan, the Mercer Island development code, and state requirements. Alternative B.1 would enable an organization like the MIBC to develop a larger dock to serve its members.

MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Footnote does not currently allow for uses not listed to be permitted through any means. The proposed amendment would provide flexibility in the application of use regulations in a manner consistent with state law, including the policies of RCW [90.58.020](#). Further, the amendment would allow for the applicant to demonstrate compliance with only the applicable shoreland development standards in the SMP.

Alternative B.1 would amend MICC 19.13.010(E) to reference Chapter 173-26 WAC. MICC 19.13.010(E) does not currently establish a relationship with shoreline management and enforcement procedures. The purpose of this proposed amendment is to provide clarity for City staff and future applicants for reviewing

shoreline permits such as shoreline conditional use permits and shoreline variances, that do not have local requirements through the City's SMP. Taken together, the amendments proposed in Alternative B would better articulate the relationship between the City's SMP and state law while also allowing the MIBC to redevelop their aquatic facilities in a manner consistent with the City's SMP.

A State Environmental Policy Act (SEPA) determination of nonsignificance (DNS) for the proposed amendments will be published to the SEPA Register on March 20, 2023. The City published a notice of proposed amendment and completed SEPA checklist on February 13, 2023. The notice and SEPA Checklist assigned SEPA Register number 202300664. The comment period on the notice and SEPA checklist was open from February 13 to March 15. No comments on the SEPA checklist were received.

Consistency with the Code Amendment Criteria in MICC 19.15.250(D)

Decision criteria for amending the development code are established in MICC 19.15.250(D). The proposed amendments in Alternative B.1 are consistent with those criteria as follows.

MICC 19.15.250(D)(1)

MICC 19.15.250(D)(1) states that a code amendment may only be approved if, "The amendment is consistent with the comprehensive plan". The City's SMP goals and policies are established in [Comprehensive Plan Element 7 Shoreline Master Program Policies](#). Alternative B.1 would be consistent with the SMP policies in Element 7.

The Shoreline Master Program Element does not have policies that address unnamed or unlisted uses. Under Alternative B.1, any proposed unlisted uses would be required to be consistent with the Shoreline Master Program policies per WAC 173-26-160(1)(a), which requires conditional uses to be consistent with the SMP. Each proposal would be evaluated for whether it meets these policies during permit review. In this way, the amendment would ensure that new development is consistent with the Comprehensive Plan. This would include the Shoreline Master Program element [policies for piers and moorages](#), which state:

- (1) New piers and docks should be allowed only for water-dependent uses or public access. Piers and docks associated with single family residences are considered a water-dependent use.
- (2) New piers and docks should be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions.
- (3) The repair, renovation, and replacement of existing piers and docks should be allowed.
- (4) Property owners who repair, renovate or replace existing piers and docks should be provided information on the best materials and methods for environmental enhancement.

Under Alternative B.1, the proposed use would be required to be consistent with these policies. Applicants would be required to demonstrate how their proposal is consistent with the Comprehensive Plan. This would also include demonstration that the proposal would avoid, minimize, or mitigate the potential impacts to ecological functions, ensuring no net loss.

Alternative B.1 would also require applicants to demonstrate consistency with Comprehensive Plan [policy for boating facilities](#), which states:

New boating facilities should be designed to meet health, safety, and welfare requirements; mitigate aesthetic impacts; minimize impacts to neighboring uses; provide public access; assure no net loss of ecological functions and prevent other significant adverse impacts; and protect the rights of navigation and access to recreational areas.

The SCUP process would require new proposals to be consistent with the Comprehensive Plan.

MICC 19.15.250(D)(2)

The second criterion for approval of a development code amendment is established in MICC 19.15.250(D)(2), which states, "The amendment bears a substantial relation to the public health, safety, or welfare". The proposed amendments in Alternative B.1 would relate the public welfare by enabling orderly shoreline development of water dependent uses. Alternative B.1 would create specific processes by which proposed shoreline development can be permitted. The corresponding regulations would ensure that the development would occur with reduced impacts to neighboring uses and would not result in a net loss of shoreline ecological functions and values.

MICC 19.15.250(D)(3)

The third and final criterion for approval of a development code amendments is established in MICC 19.15.250(D)(3), which states, "The amendment is in the best interest of the community as a whole." The proposed Alternative B.1 would serve the community interest by setting clear processes and standards for permitting development in the shoreline.