



PLANNING COMMISSION VIDEO MEETING AGENDA

Wednesday, October 20, 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 **861 2795 4927** and Passcode **792144** 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 **861 2795 4927**; Enter Passcode **792144**

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 allotted. Total time for appearances: 15 minutes.

REGULAR BUSINESS

1. September 22, 2021 Minutes

2. Code of Ethics Training

Recommended Action: Receive Code of Ethics training.

3. ZTR21-004 Town Center Commercial Requirements

Review of proposed code amendments

OTHER BUSINESS

4. Deputy Director's Report

5. Planned Absences for Future Meetings

6. Announcements & Communications

7. Next Scheduled Meeting: Special Meeting October 27, 2021

ADJOURNMENT



CITY OF MERCER ISLAND PLANNING COMMISSION REGULAR VIDEO MEETING MINUTES

Wednesday, September, 2021

CALL TO ORDER

The Planning Commission was called to order by Chair Hubbell at 6:03pm from a remote location.

PRESENT

Chair Daniel Hubbell
Commissioner Carolyn Boatsman
Commissioner Jordan Friedman
Commissioner Tiffin Goodman
Commissioner Victor Raisys
Vice Chair Ted Weinberg
All Commissioners participated in the meeting remotely.

ABSENT

Commissioner Michael Murphy

STAFF PRESENT

Jeff Thomas, Interim CPD Director, Alison Van Gorp, Deputy CPD Director, Andrea Larson, Sr. Administrative Assistant, and Sarah Bluvas, Economic Development Coordinator participated in the meeting remotely.

PUBLIC APPEARANCES

There were no public appearances

REGULAR BUSINESS

Agenda Item #2: Minutes

Moved by Raisys; Seconded by Weinberg to:

Approve the July 28, 2021 minutes.

Passed 6-0

Agenda Item #3: ZTR21-004 – Town Center Retail Requirements

Jeff Thomas, Interim Deputy Director, and Sarah Bluvas, Economic Development Coordinator, gave a presentation to the Commission on ZTR21-004 – Town Center Retail Requirements.

The Commission discussed the scope of the proposed amendments and provided feedback for staff to start drafting the draft code for the proposed amendments.

OTHER BUSINESS

Deputy Director's Report

Alison Van Gorp, CPD Deputy Director, gave a brief update on the Commission on the work plan for the rest of the year and spoke to the Commission about the possibility of adding a special meeting on October 27. She also updated the Commission on the 2022 Docket process.

Planned Absences

Commissioner Goodman may be absent on November 3

Commissioner Raisys may be absent on November 3

Announcements & Communications

Andrea Larson, Sr. Admin, gave a brief update to the Commission the third round of recruitment for Boards & Commissions.

Chair Hubble reminded the Commission that if they have received an email from the City Clerk about OPMA training and reminded them to do the training if they have not.

Next Scheduled Meeting: October 20, 2021

ADJOURN

The meeting adjourned at 8:39 pm

2.60.010 - Purpose and intent.

A. *Preamble.* The city of Mercer Island's residents and businesses are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. To that end, the city encourages all city officials to:

1. Honor and respect the principles and spirit of representative government and comply with all laws and policies affecting the operations of government;
2. Conduct their official and personal affairs in such a manner as to maintain public confidence in city government and give the clear impression that they cannot be improperly influenced in the performance of their official duties;
3. Be independent, impartial, and fair in their judgment and actions;
4. Use the power and resources of public office to advance the best interests of the city of Mercer Island and its residents, not for personal gain;
5. Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility; and
6. Be honest, fair, and respectful and avoid conduct creating an appearance of impropriety.

In recognition of these goals, the city of Mercer Island has adopted this code of ethics to strengthen the quality of government through ethical principles that shall govern the conduct of all officials.

B. *Liberal construction.* This code of ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.

C. *Supplemental to existing law.* This chapter is intended to supplement Washington State Law, including but not limited to RCW Chapter 42.23, the United States and Washington State Constitutions, laws pertaining to conflicts of interests and elections campaigns, and city ordinances.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.020 - Definitions.

For the purpose of this chapter:

Beneficial interest means any direct or indirect monetary or material benefit accruing to an official as a result of contracts or transactions which are or may be the subject of an official act or action by or with the city, except contracts or transactions which confer similar benefits to all other persons and/or property similarly situated.

Confidential information means (1) specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and (2) information made confidential by law. Information obtained during properly convened executive sessions and information subject to the attorney-client and/or work product privilege is deemed confidential.

Conflict of interest exists when any of the following stands to incur financial gain or loss related to a government decision: (1) the official, (2) the official's spouse, (3) an individual with whom the official resides, or (4) an entity that the official serves as an employee, officer, director, trustee, partner or owner. An "owner" for purposes of this definition is

an individual who owns one percent or more of the entity.

Contract includes any contract, sale, lease, or purchase.

Contracting party includes any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with the city.

Financial gain or loss means any material financial gain or loss that an individual or entity stands to incur as a result of a decision under consideration by the city. "Financial gain or loss" does not include (1) payment of generally applicable taxes or fees or (2) financial interests shared with more than ten percent of the city's population.

Official means all members of the city council, the city's boards and commissions, and other council-appointed task groups or committees of the city of Mercer Island who are currently serving their positions.

Remote interest means: (1) that of a non-salaried officer of a nonprofit corporation; (2) that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; (3) that of a landlord or tenant of a contracting party; or (4) that of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.030 - Prohibited conduct.

In addition to the requirements applicable under RCW Chapter 42.23, which establishes the minimum standards for officials, officials shall be subject to the following:

- A. *Conflicts of interest.* In order to ensure their independence and impartiality, officials shall recuse themselves from participation in government deliberations or decisions where they have a conflict of interest.
- B. *Appearance of conflict.* If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the official's judgment could be impaired because of either (1) a personal or business relationship not covered under the foregoing subsection, or (2) a transaction or activity engaged in by the official, the official shall make a public, written disclosure of the facts giving rise to the appearance of a conflict before participating in the matter.
- C. *Interest in contracts.* Officials shall not be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such person, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity, or reward in connection with such contract from any other person beneficially interested therein. The foregoing shall not apply to the exemptions specified in RCW 42.23.030 which are incorporated herein as if fully set forth. An official may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the official must be disclosed and noted in the city's official minutes or similar records before the formation of the contract. RCW 42.23.040 shall apply to conflicts or potential conflicts with respect to remote interests in city decisions involving the awarding of a contract.
- D. *Misuse of public position or resources.* Except for infrequent use at little or no cost to the city, officials shall not use public resources that are not available to the public in general, such as city staff time,

equipment, supplies or facilities, for other than a city purpose.

E. *Representation of third parties.* Except in the course of official duties, officials shall not appear on behalf of the financial interests of third parties before the bodies on which the officials serve or in interaction with assigned staff. Furthermore, the members of the city council shall not appear on behalf of the financial interest of third parties before the council or any board, commission or proceeding of the city, or in interaction with staff.

F. *Gifts and favors.*

1. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in their official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. Officials shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by subsection (2).
2. For the purposes of this code of ethics, the following items are presumed not to influence the vote, action, or judgment of the official, or be considered as part of a reward for action or inaction, and may be accepted:
 - a. Unsolicited flowers, plants, and floral arrangements;
 - b. Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
 - c. Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
 - d. Unsolicited items received by an official for the purpose of evaluation or review, if the official has no personal beneficial interest in the eventual use or acquisition of the item;
 - e. Informational material, publications, or subscriptions related to the recipient's performance of official duties;
 - f. Food and beverages consumed at hosted receptions where attendance is related to the official's official duties;
 - g. Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
 - h. Unsolicited gifts from dignitaries from another city, state or a foreign country which are intended to be personal in nature;
 - i. Food and beverages on infrequent occasions in the ordinary course of meals where attendance by the official is related to the performance of official duties; and
 - j. Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the city or with the recipient in connection with city matters.
3. The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

G. *Confidential information.* Officials shall not disclose or use any confidential information gained by reason

of their official position for other than a city purpose.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.040 - Signed acknowledgment.

All officials, upon taking office or being appointed, shall sign a statement acknowledging they have received, read, and agree to be bound by this code of ethics and RCW Chapter 42.23. This requirement shall also apply to currently-serving officials at the time of adoption of this code of ethics and any time there are material changes thereto.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.050 - Ethics officer.

- A. The position of ethics officer is hereby created. The city manager shall contract with one or more agencies to fill this position. The ethics officer shall be responsible for the prompt and fair enforcement of this code of ethics when called upon to do so.
- B. The ethics officer, in addition to other duties, may recommend changes or additions to this code of ethics to the city council. The ethics officer shall provide input into and review the training materials and program developed for this code of ethics if requested by the city manager or city council.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.060 - Advisory opinions.

- A. Officials subject to this code of ethics may request, and the ethics officer may render at the city's expense, written advisory opinions concerning the applicability of MICC 2.60.030 to hypothetical circumstances and/or situations solely related to the official making the request. The ethics officer shall not render opinions on matters that are the purview of other government agencies or officials, e.g., the public disclosure commission, the city's public records officer, et al. The ethics officer retains sole discretion to determine in which cases an advisory opinion will be issued. Factors the ethics officer may consider when determining in which cases an advisory opinion will be issued include, but are not limited to, whether the issue presented has been recently addressed by the ethics officer, whether the issue presented is likely to be the subject of controversy or dispute, and the extent to which the requesting official has made prior requests for advisory opinions. The advisory opinion process is not intended to serve as a substitute for an official's own understanding of, and exercise of reasonable judgment with respect to, the prohibitions addressed in MICC 2.60.030.
- B. The ethics officer shall endeavor, except for good cause shown, to respond to requests for advisory opinions within 45 days of submission of the request, and may respond more rapidly if the requester expresses urgency in the request.
- C. An official's conduct based in reasonable reliance on an advisory opinion rendered by the ethics officer to said official shall not be found to violate this code of ethics to the extent that this code is enforced by the city as a civil matter, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, the ethics officer issues an advisory opinion that the described conduct would not violate the code of ethics, and the official's conduct is consistent with the advisory opinion. The ethics officer reserves the right to reconsider the questions and issues raised in an advisory opinion and,

where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that should portions of the opinion be found to be unenforceable or not within the ethics officer's authority, the remainder of the opinion shall remain intact.

Item 2.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.070 - Complaints, investigations, hearings and enforcement.

A. *Complaint process.*

1. *Complaint requirements—Service.* Any person may submit a written complaint to the ethics officer alleging one or more violations of this code of ethics by an official, by filing it with the city clerk. The complaint must set forth specific facts with enough precision and detail for the ethics officer to make a determination of sufficiency and must set forth the specific subsection(s) of MICC 2.60.030 that the complaining party believes have been violated. The complaint must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with RCW Chapter 9A.72.
2. *Finding of sufficiency.* Based on the contents of the written complaint, the ethics officer shall make a determination of sufficiency within 30 days of receipt of the complaint. A complaint shall be sufficient if it precisely alleges and reasonably describes acts that constitute a prima facie showing of a violation of MICC 2.60.030, including RCW Chapter 42.23. In rendering sufficiency determinations under this subsection, the ethics officer shall consider the purpose and intent section contained in MICC 2.60.010 and the declaration of purpose in RCW 42.23.010.
3. *Confidentiality.* Except as otherwise provided by law, and subject to MICC 2.60.070(H), the city will maintain as confidential the fact that a complaint has been filed, the contents of the complaint, the identity of the person making the complaint, and the identity of the official complained against during the open and active investigation conducted by the ethics officer until such time as the ethics officer has made a determination of sufficiency.
4. *Dismissal.* The complaint shall be dismissed if the ethics officer determines that (1) the complaint is not sufficient, (2) the complaint provided too little detail for the ethics officer to reach a determination, or (3) a violation has or may have occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct. In the event of dismissal, the official who was the subject of the complaint shall receive the protections under the Public Records Act afforded to a "not sustained" determination of alleged misconduct. A complaint dismissed by the ethics officer under this subsection shall be deemed to be dismissed with prejudice and will not be reconsidered if resubmitted by the complainant unless factual allegations not present in the original complaint are presented.
5. *Notice.* Notice of action by the ethics officer shall be provided as follows:
 - a. Within seven days of the ethics officer rendering a finding of insufficiency or dismissal of a complaint, the city clerk shall send notice to the person who made the complaint and the official complained against of the ethics officer's determination. No reconsideration or appeal of a finding of insufficiency or dismissal of a complaint is available through the ethics officer or the city.
 - b. Within seven days of the ethics officer rendering a finding of sufficiency, the city clerk shall send notice to the person who made the complaint and the official complained against of the ethics officer's determination. No reconsideration or appeal of a finding of sufficiency of a complaint is

available through the ethics officer or the city. Following the initial notice, the city clerk shall schedule the hearing and give notice of the hearing which will be held to determine if a violation has occurred. Notice shall be provided at least 30 days prior to the date set for the hearing. Item 2.

6. *Stipulations.* Prior to, and in-lieu-of the hearing, the ethics officer and the official complained against may upon agreement jointly submit a recommended stipulation to the city council. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the ethics officer thinks a stipulation is appropriate, an admission of the violation by the official complained against, a promise by the official complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the person who made the complaint and forwarded to the city council for action.
- B. *Conduct of hearings.* All hearings on complaints found to be sufficient by the ethics officer shall be conducted by the hearing examiner. The hearing shall be informal, meaning that the hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The official complained against shall have the right to file a written answer to the charge. Each party may appear at the hearing in person or through legal counsel. Each party may present and cross examine witnesses on any matter relevant to the issues raised in the complaint and give relevant evidence before the hearing examiner. The hearing examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence. To that end, upon a showing of reasonable necessity, the hearing examiner may issue subpoenas and subpoenas duces tecum at the request of the complaining party, the official complained against, or on his or her own initiative. All testimony shall be under oath administered by the hearing examiner. The hearing examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The hearing examiner shall prepare an official record of the hearing, including all testimony, which shall be recorded by electronic device, and exhibits; provided, that the hearing examiner shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.
- C. *Final decision and recommendations.* Within 30 days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, issue a final decision in writing, including findings of fact, conclusions of law, and a determination of whether any violation of MICC 2.60.030, including RCW Chapter 42.23, has been established. The final written decision shall be signed and dated by the hearing examiner. In rendering a final decision, the hearing examiner shall consider the purpose and intent section contained in MICC 2.60.010 and the declaration of purpose in RCW 42.23.010. If the hearing examiner determines that the alleged code of ethics violation(s) have not been proven, the hearing examiner shall dismiss the complaint with prejudice and no further action shall be taken. If the hearing examiner determines that one or more code of ethics violation(s) are proven, the final decision shall also contain any recommendations of the hearing examiner to the city council for any remedial action or sanction that the council may find appropriate and lawful. The hearing examiner may recommend any one or more of the following remedial actions or sanctions as further described below in subsection (E): No sanctions or penalties, referral, admonition, reprimand, censure, removal, and/or civil penalties. Within fifteen days of the hearing examiner's final decision, the city clerk shall deliver copies of the final decision to the person who made the complaint, the official complained against, the ethics officer, and the city council.
- D. *City council action.* The city council in consultation with the city attorney shall, within 30 days of receipt of the hearing examiner's final decision or at the next regularly scheduled city council meeting following that 30-day

period, determine what, if any, of the hearing examiner's recommended remedial actions or sanctions adopt. Final city council action to decide upon the ethics officer's recommended stipulation or the hearing examiner's recommended remedial actions or sanctions shall be by majority vote in a public meeting. However, if the proceeding involves a member of the city council, deliberations by the council may be in executive session pursuant to RCW 42.30.110(1)(f). The member of the city council against whom the complaint was made shall not attend or participate in any executive session and shall not vote in open session on any matter involving themselves.

- E. *Disposition*. The city council may take one or more of the following actions in disposition of the complaint. The city council's action must afford deference to the ethics officer's recommended stipulation or, in the event a violation is found by the hearing examiner, the hearing examiner's recommended remedial actions or sanctions.
1. *No sanctions or penalties*. The city council may dispose of the complaint without imposing sanctions or penalties.
 2. *Referral*. A complaint may be referred to another agency with jurisdiction over the violation, such as the public disclosure commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.
 3. *Admonition*. An admonition shall be an oral non-public statement made by the mayor, or his/her designee, or if the complaint is against the mayor, the deputy mayor or his/her designee, to the official.
 4. *Reprimand*. A reprimand shall be administered to the official by a letter of reprimand by the city council. The letter shall be prepared by the city council and shall be signed by the mayor or, if the complaint is against the mayor, the deputy mayor.
 5. *Censure*. A letter of censure shall be a letter read to the official in public. The letter shall be prepared by the city council and shall be signed by the mayor, or if the complaint is against the mayor, the deputy mayor. The official shall appear at a city council meeting at a time and place directed by the city council to receive the letter of censure. Notice shall be given at least 20 calendar days before the scheduled appearance at which time a copy of the proposed letter of censure shall be provided to the official. The letter of censure shall be read publicly, and the official shall not, at the time of reading, make any statement in support of, or in opposition thereto, or in mitigation thereof. The letter of censure shall be read at the time it is scheduled whether or not the official appears as required.
 6. *Removal—Member of board or commission or other appointed task group or committee*. If the official against whom the complaint was made is currently a member of a city board or commission or other city task group or committee, the city council may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Mercer Island City Code, by a majority vote remove the official from such board or commission effective immediately. Nothing in this subsection limits the city council's removal authority under title 3 of the MICC.
 7. *Removal—Councilmember appointments*. In addition to taking any actions above, if the official against whom the complaint was made is a member of the city council who serves on any city board or commission, other city task group or committee, regional or multijurisdictional body as a representative of the city, whether appointed by the mayor, mayor and deputy mayor, council, or regional body, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Mercer Island City Code, by a majority vote the city council may remove the official from such body effective immediately.

- 8. *Removal—Mayor or deputy mayor appointment.* In addition to taking any actions above, if the official against whom the complaint was made serves as mayor or deputy mayor, the city council may remove said appointment.
- 9. *Civil penalties.* In addition to taking any actions above, the city council may also assess a civil penalty of up to \$1,000.00. Any monetary penalty assessed civilly shall be placed in the city's general fund.
- F. *Appeal.* Either the complaining party or the official complained against may, within 30 days of the city council's action on (1) the ethics officer's recommended stipulation or (2) the hearing examiner's final decision, appeal to the King County superior court by writ of certiorari pursuant to RCW Chapter 7.16.
- G. *Protection against retaliation.* Neither the city nor any official may take or threaten to take, directly or indirectly, any action that constitutes personal attack, harassment, or intimidation, against any person because that person files a complaint with the ethics officer.
- H. *Public records.* Records filed with the ethics officer and/or hearing examiner, and written decisions or recommendations of the ethics officer and/or hearing examiner, become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. If the city receives a request under the Public Records Act, RCW Chapter 42.56, to inspect or copy such information and reasonably determines that such information may be exempt from disclosure, including upon the grounds stated in MICC 2.60.070(A)(4), it will notify the complaining party and the official complained against of the request and of the date that such information will be released to the requester unless any party obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. The city will provide such notice at least ten days prior to the date that the information will be released. If no party timely obtains a court order enjoining disclosure, the city may release the requested information on the date specified.
- I. *Recovery of fees or costs.* No attorney's fees or other costs related to matters covered by this chapter incurred by any official or complainant shall be recoverable from the city, except as follows: The city shall reimburse reasonable legal fees incurred by the official relating to or arising out of the defense of an ethics complaint that results in a dismissal of the complaint by the hearing examiner. The hearing examiner shall determine the amount of the reasonable fee award.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.080 - Limitations.

Complaints based on this code of ethics may only be brought against current officials and must be submitted within two years from the date of the alleged violation. If the official against whom the complaint was brought resigns or their term ends before the disposition of the complaint, no further action pursuant to MICC 2.60.080 shall be taken. This section shall only apply for purposes of enforcement of this code of ethics pursuant to MICC 2.60.080.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

Chapter Listing

Chapter 42.23 RCW

CODE OF ETHICS FOR MUNICIPAL OFFICERS—CONTRACT INTERESTS

Sections

- 42.23.010** Declaration of purpose.
- 42.23.020** Definitions.
- 42.23.030** Interest in contracts prohibited—Exceptions.
- 42.23.040** Remote interests.
- 42.23.050** Prohibited contracts void—Penalties for violation of chapter.
- 42.23.060** Local charter controls chapter.
- 42.23.070** Prohibited acts.
- 42.23.900** Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

NOTES:

Cities, free passes, services prohibited: RCW 35.17.150.

County officers, general provisions: Chapter 36.16 RCW.

Ethics in public service act: Chapter 42.52 RCW.

Public employment, civil service: Title 41 RCW.

State officers, general provisions: Chapter 43.01 RCW.

RCW 42.23.010

Declaration of purpose.

It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in chapter 268, Laws of 1961, in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve.

[1961 c 268 § 2.]

RCW 42.23.020**Definitions.**

For the purpose of chapter 268, Laws of 1961:

- (1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;
- (2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;
- (3) "Contract" shall include any contract, sale, lease or purchase;
- (4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.

[1961 c 268 § 3.]

RCW 42.23.030**Interest in contracts prohibited—Exceptions.**

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

- (1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;
- (2) The designation of public depositaries for municipal funds;
- (3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;
- (4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;
- (5) The employment of any person by a municipality for unskilled day labor at wages not exceeding one thousand dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first-class school district;
- (6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.
 - (b) However, in the case of a particular officer of a second-class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.
 - (c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to:

(i) A sale or lease by the municipality as the seller or lessor;

(ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or

(iii) Contracts for legal services, except for reimbursement of expenditures.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection

(6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second-class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second-class school district that has three hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW **28A.330.240**, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW **28A.330.240**, that there is a shortage of substitute teachers in the school district;

(11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second-class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW **28A.150.203**, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official

minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

[2020 c 69 § 1; 2007 c 298 § 1; 2006 c 121 § 1; 2005 c 114 § 1; 1999 c 261 § 2; 1997 c 98 § 1; 1996 c 246 § 1. Prior: 1994 c 81 § 77; 1994 c 20 § 1; 1993 c 308 § 1; 1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1; prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

NOTES:

Findings—Intent—1999 c 261: "The legislature finds that:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest." [1999 c 261 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 263: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 263 § 3.]

Severability—1980 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 39 § 3.]

RCW 42.23.040

Remote interests.

A municipal officer is not interested in a contract, within the meaning of RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official minutes or

similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:

- (1) That of a nonsalaried officer of a nonprofit corporation;
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- (3) That of a landlord or tenant of a contracting party;
- (4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.

[1999 c 261 § 3; 1961 c 268 § 5.]

NOTES:

Findings—Intent—1999 c 261: See note following RCW 42.23.030.

RCW 42.23.050

Prohibited contracts void—Penalties for violation of chapter.

Any contract made in violation of the provisions of this chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.

[1999 c 261 § 4; 1961 c 268 § 6.]

NOTES:

Findings—Intent—1999 c 261: See note following RCW 42.23.030.

RCW 42.23.060

Local charter controls chapter.

If any provision of this chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the charter shall control if it contains stricter requirements than this

chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

[1999 c 261 § 5; 1961 c 268 § 16.]

NOTES:

Findings—Intent—1999 c 261: See note following RCW [42.23.030](#).

RCW [42.23.070](#)

Prohibited acts.

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

[1994 c 154 § 121.]

NOTES:

Effective date—1994 c 154: See RCW [42.52.904](#).

RCW [42.23.900](#)

Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

To: Planning Commission
From: Jeff Thomas, Interim Director
 Sarah Bluvas, Economic Development Coordinator
Date: October 20, 2021
RE: ZTR21-004 Town Center Commercial Requirements

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, staff will present a draft of the proposed necessary code amendments to achieve the direction provided by City Council as well as the general options for a Planning Commission recommendation on such. The proposed necessary code amendments would repeal and replace Mercer Island City Code (MICC) 19.11.020(B).

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.

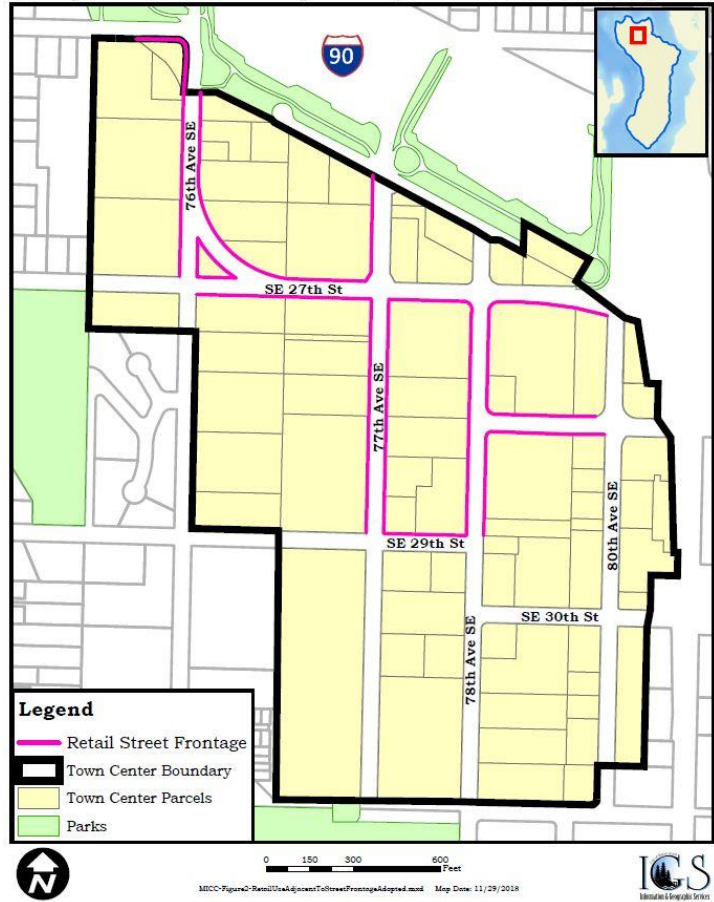
On July 6, 2021, staff presented several legislative options that were evaluated for their potential to preserve existing quantities of commercial retail space and provide for projected future demand as identified in CAI's analysis. After reviewing the options, the City Council directed staff to review 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 Attachment 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 for the amount of 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 Attachment 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 Attachment 1, Figure 4.

Eligible Commercial Uses

A question related to identifying eligible commercial uses in the code arose at the September 22 Planning Commission meeting. To date, discussion regarding eligible commercial uses has been framed in three categories as restaurant, retail, and personal service uses. The Planning Commission may choose to discuss further to specifically identify uses in each of these categories to be included as examples in MICC 19.11.020(B).

NEXT STEPS

The Planning Commission is scheduled to conduct a Public Hearing on the proposed amendments to MICC 19.11.020(B) on November 3, 2021, after which it will deliberate a recommendation to send to the City Council. Planning Commission options for a recommendation on such include:

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.

Since the September meeting of the Planning Commission, there have been inquiries to staff in various forms about altering the methodologies for calculating the commercial FAR and/or applying a no net loss provision. Should this be the desire of a majority of the Planning Commission members, please note this would fall under option (4.) above.

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

ATTACHMENTS

1. Proposed Amendments to MICC 19.11.020(B)

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 ground floor uses.* 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:

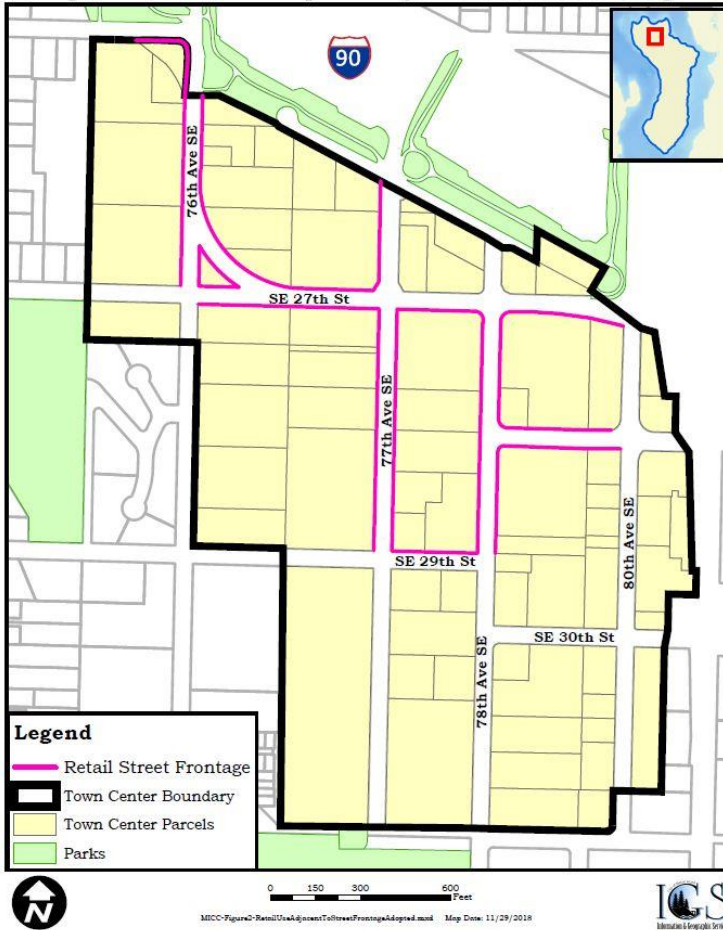
 - ~~a. A minimum of 40 percent of the ground floor street frontage shall be occupied by one or more of the following permitted uses: retail, restaurant, and/or personal service use.~~
 - ~~b. A maximum of 60 percent of each ground floor street frontage can be occupied by the following uses: hotel/motel, 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.~~~~
- ~~3. No 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, including but not limited to: an additional pedestrian entrance onto a sidewalk or through-block connection, or additional ten percent transparency beyond the requirement of MICC [19.11.100](#)(B)(1)(b).~~

* 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.

4. The minimum required depth of storefronts along retail street frontages is 16 feet.

Figure 2 Retail Use Required Adjacent To Street Frontages

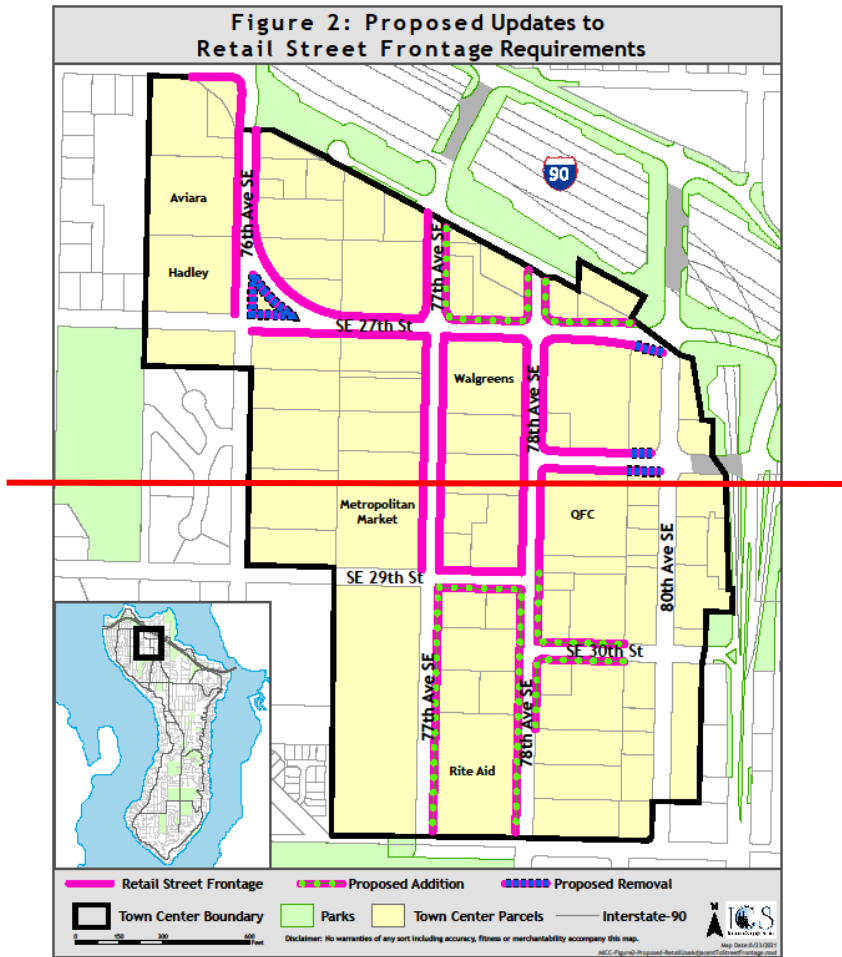


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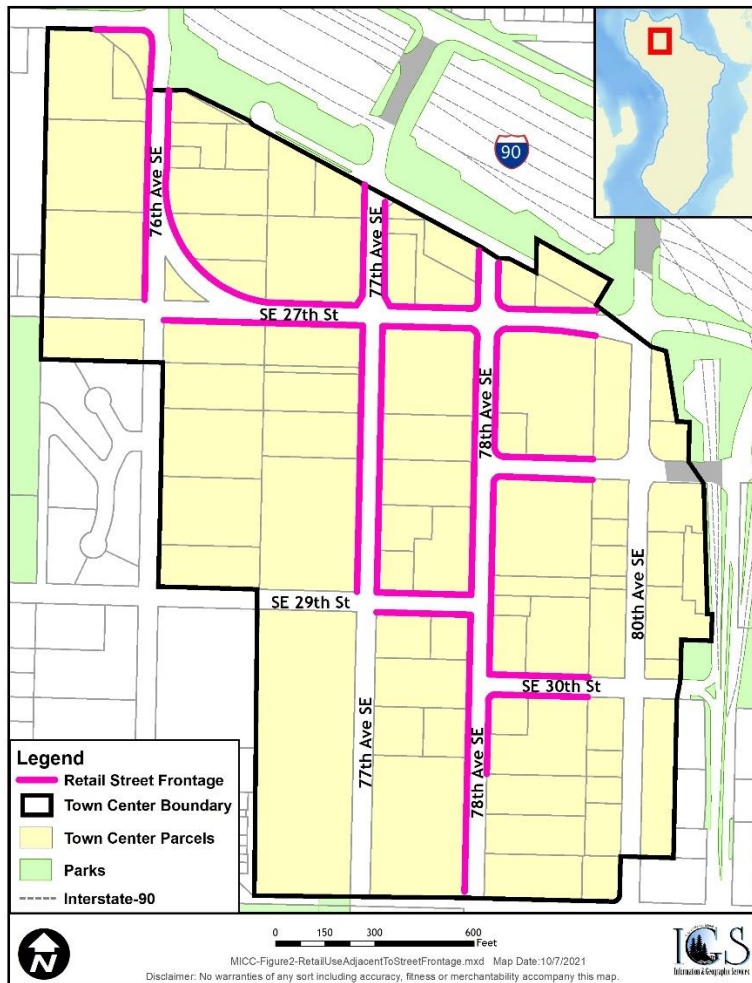
B. Required Street Frontage Commercial Uses.

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



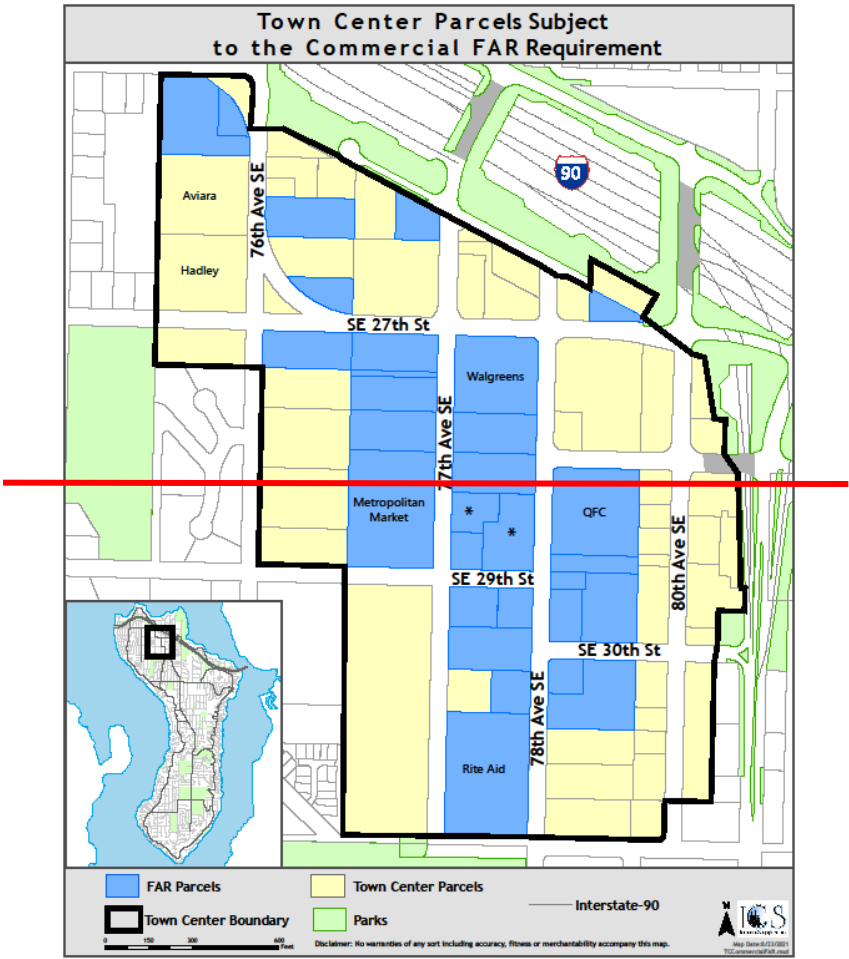
* Please Note: The new language and maps below may be updated through the issuance of the October 20, 2021 regular meeting packet for the Planning Commission.



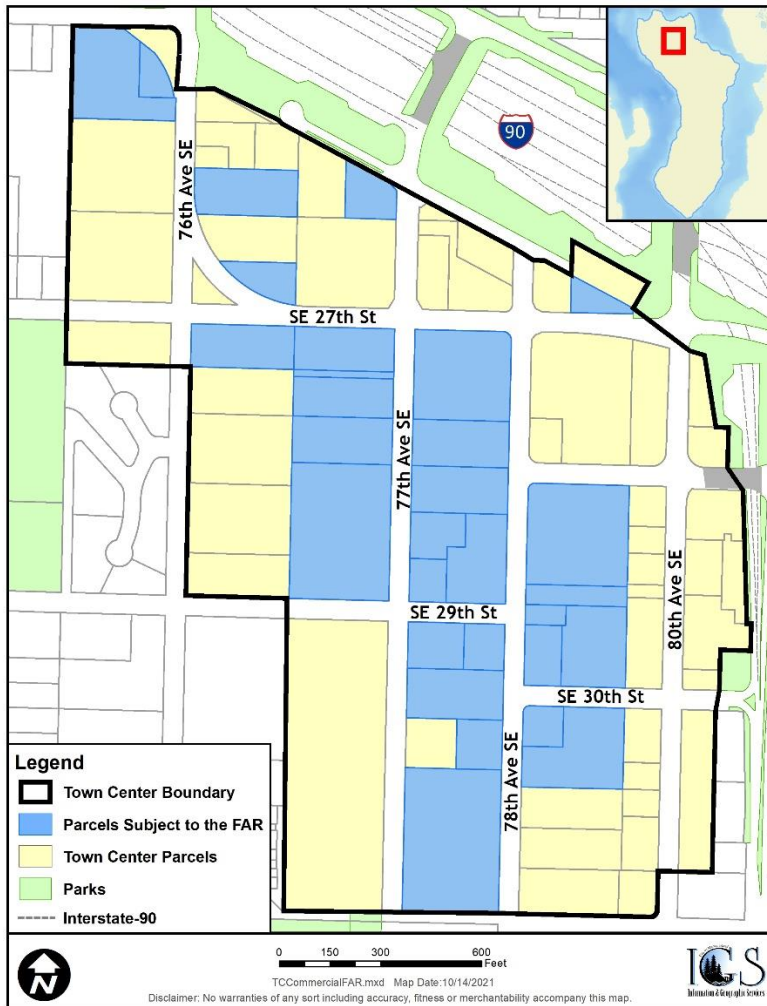
- a. No commercial use shall occupy a continuous linear street frontage exceeding 60 feet in length. The design commission may approve up to an additional six feet in length if the use incorporates a feature to promote pedestrian activity, including but not limited to: an additional pedestrian entrance 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.

* **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.

Figure 3 - Parcels Subject to FAR Requirement for Commercial Uses



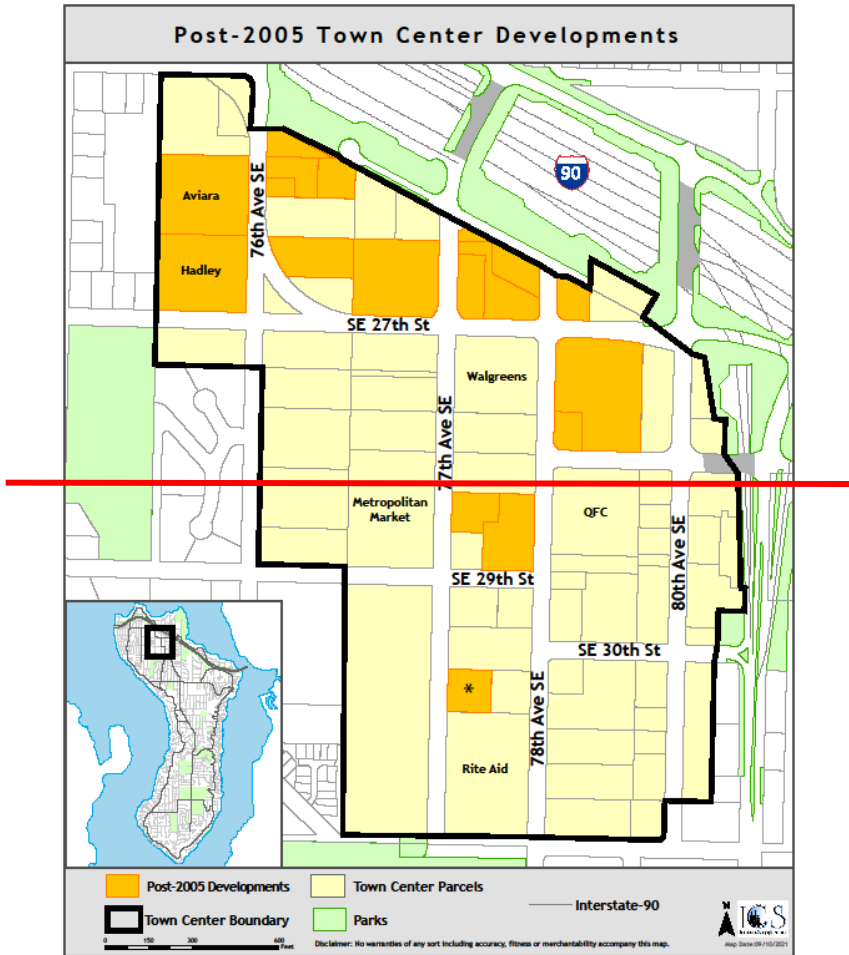
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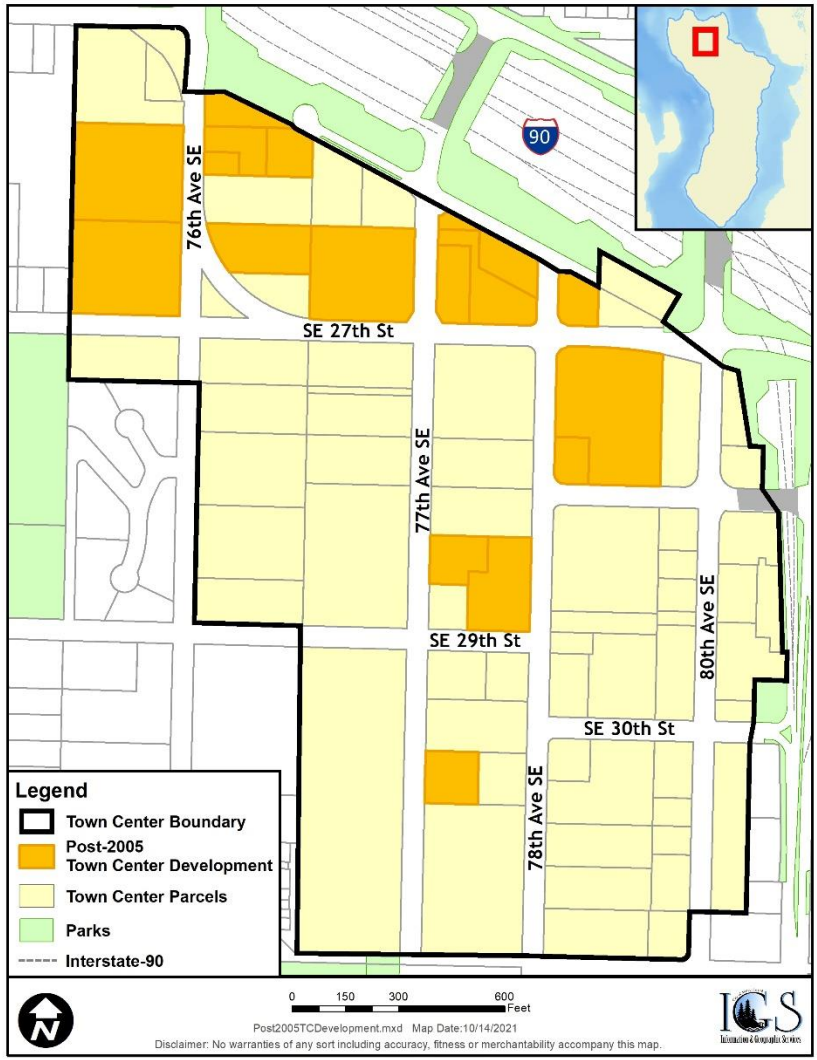
- a. When a FAR calculation results in a fraction, the fraction shall be rounded to the nearest whole number as follows:
 - i. Fractions of 0.50 or above shall be rounded up to the closest whole number; and
 - ii. Fractions below 0.50 shall be rounded down to the closest whole number.
- 3. The identified 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.

* **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.

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.



* 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
Draft Code Amendments**

Planning Commission
October 20, 2021

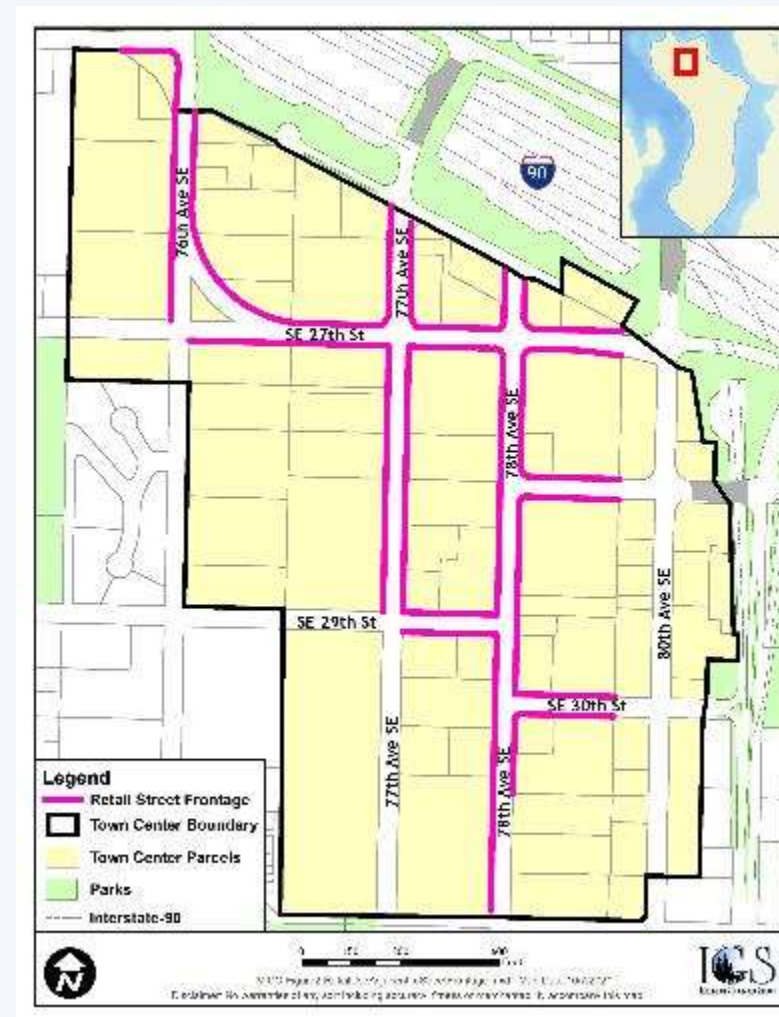
Agenda

1. Present Draft Code Amendments to MICC 19.11.020
2. Discussion



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



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

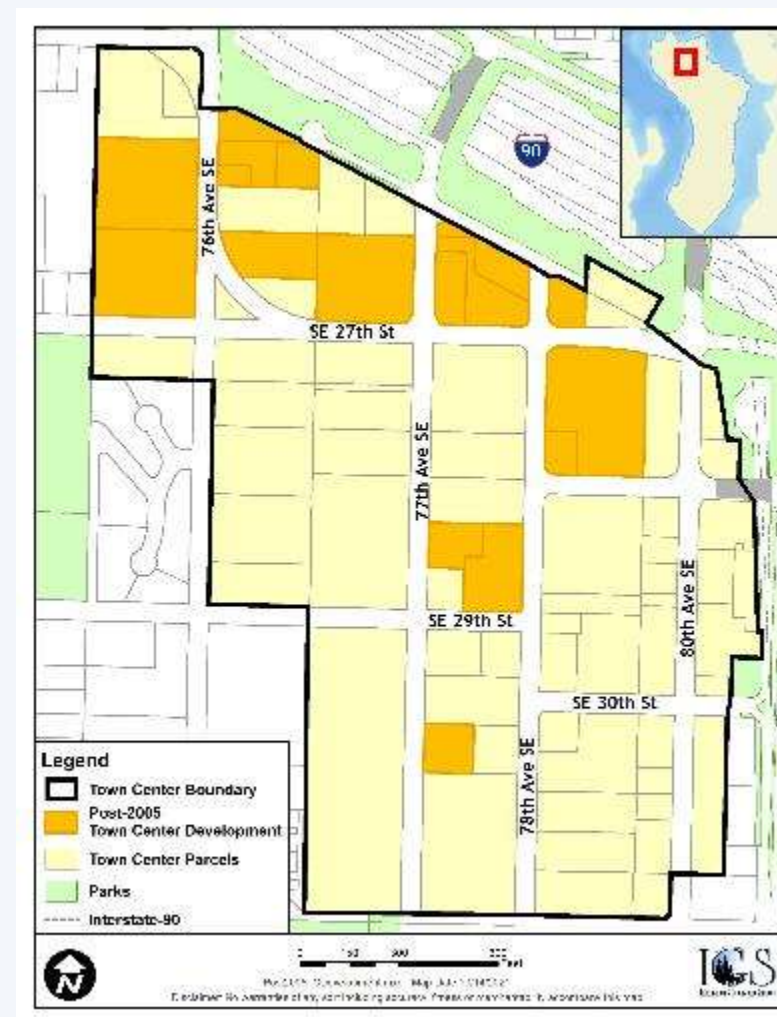


Inclusion of No Net Loss Provision

- 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



Eligible Commercial Uses

To date, eligible uses have been framed in three categories, which are defined in MICC 19.16 – Definitions as follows:

- **Restaurant:** An establishment where food and drink are prepared and consumed. Such establishment may also provide catering services.
- **Retail:** An establishment engaged in selling goods or merchandise and rendering services incidental to the sale of such goods.
- **Personal services:** A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons.



Next Steps: Public Hearing and Recommendation

- Public Hearing is scheduled for November 3.
- Following the Public Hearing, Commissioners will deliberate a recommendation to send to City Council on November 16.
- Recommendation:
 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.

