



CITY OF MERCER ISLAND

CITY COUNCIL MEETING - SPECIAL

Tuesday, December 10, 2019 at 7:00 PM

COUNCIL MEMBERS:

Mayor Debbie Bertlin, Deputy Mayor Salim Nice,
Councilmembers: Lisa Anderl, Bruce Bassett,
Wendy Weiker, David Wisenteiner, and Benson Wong

LOCATION & CONTACT:

Mercer Island City Hall - Council Chambers
9611 SE 36th Street | Mercer Island, WA 98040
Phone: 206.275.7793 | www.mercergov.org

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 206.275.7793.

CALL TO ORDER & ROLL CALL, 7:00 PM

AGENDA APPROVAL

CITY MANAGER REPORT

APPEARANCES

CONSENT CALENDAR

1. Approve **Accounts Payable Report for the period ending December 5, 2019** in the amount of \$367,647.31
2. Approve **Certification of Payroll dated December 6, 2019** in the amount of \$838,586.01
3. Approve the **minutes of the November 19, 2019 Regular Meeting**
4. AB 5638: 2019 Minor Code Amendments (Ordinance No. 19C-21, 2nd Reading & Adoption)

Recommended Action: Adopt Ordinance No. 19C-21 amending Title 19 of the Mercer Island City Code to clarify development and administrative standards and to create a procedure to docket and consider suggested amendments to development regulations.

5. AB 5646: 2020 – 2021 AFSCME Collective Bargaining Agreement

Recommended Action: Authorize the Interim City Manager to sign the AFSCME Collective Bargaining Agreement for the period of January 1, 2020 through December 31, 2021, in substantially the form attached hereto as Exhibit 1.

REGULAR BUSINESS

6. AB 5644: Acquisition of ARCO/Tully's Property

Recommended Action: Authorize the Interim City Manager to execute the closing documents to complete the City's acquisition of the real property at 7810 SE 27th Street, Mercer Island, WA for the City's proposed Commuter Parking & Mixed-Used Project.

7. AB 5645: 2020 Comprehensive Plan Amendment Docket

Planning Commission's Recommended Action:

- A. Approve Resolution No. 1569 establishing the 2020 Comprehensive Plan amendment final docket; and
- B. Direct Community Planning and Development staff to delay the "review and report back on the 2017 Residential Development Standards code amendment" until 2021.

8. AB 5643: Code of Ethics Revisions (Third Reading and Adoption)

Recommended Action:

- A. Provide direction on the maximum amount the City will reimburse an official for the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner
- B. Adopt Ordinance No. 19C-20 to amend chapter 2.60 of the Mercer Island City Code revising the Code of Ethics and pass Resolution No. 1572 revising the Code of Ethics Statement.

SPECIAL BUSINESS

Resolutions of Appreciation for Mayor Debbie Bertlin, Councilmember Bruce Bassett and Councilmember Dave Wisenteiner

ADJOURNMENT

CERTIFICATION OF CLAIMS

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Mercer Island, and that I am authorized to authenticate and certify to said claim.



Finance Director

I, the undersigned, do hereby certify that the City Council has reviewed the documentation supporting claims paid and approved all checks or warrants issued in payment of claims.

Mayor

Date

<u>Report</u>	<u>Warrants</u>	<u>Date</u>	<u>Amount</u>
Check Register	201198 -201278	12/05/2019	\$ 367,647.31 \$ 367,647.31

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
Org Key: 001000 - General Fund-Admin Key				
P0102958	00201235	KING CO PROSECUTING ATTORNEY	2019 COURT REMITTANCE KC CRIME	213.67
P0105960	00201258	POWELL, DODD	Returning credit on account	186.00
P0102957	00201234	KC PET LICENSES	2019 KC PET LICENSE FEES COLLE	45.00
Org Key: 345000 - Technology-Admin Key				
	00201228	JAYMARC CUSTOM HOMES LLC	PERMIT REFUND	123.62
	00201230	JAYMARC MANOR LLC	PERMIT REFUND	50.24
	00201229	JAYMARC ESTATES LLC	PERMIT REFUND	11.07
Org Key: 402000 - Water Fund-Admin Key				
P0105923	00201221	H D FOWLER	INVENTORY PURCHASES	4,221.62
P0105912	00201264	SUPPLY SOURCE INC,THE	INVENTORY PURCHASES	1,441.17
	00201261	STARK, JOHN & jONI	OVERPAYMENT REFUND	760.96
	00201277	WILLIAMS, FLOYD	OVERPAYMENT REFUND	493.82
P0105894	00201224	HOME DEPOT CREDIT SERVICE	INVENTORY PURCHASES	525.80
P0105922	00201220	GRAINGER	INVENTORY PURCHASES	226.56
Org Key: 814072 - United Way				
	00201268	UNITED WAY OF KING CO	PAYROLL EARLY WARRANTS	80.00
Org Key: 814074 - Garnishments				
	00201267	UNITED STATES TREASURY	PAYROLL EARLY WARRANTS	780.29
Org Key: 814075 - Mercer Island Emp Association				
	00201245	MI EMPLOYEES ASSOC	PAYROLL EARLY WARRANTS	305.00
Org Key: 814083 - Vol Life Ins - States West Lif				
	00201200	AWC	DECEMBER 2019	430.30
Org Key: 814085 - GET Program Deductions				
	00201218	GET Washington	PAYROLL EARLY WARRANTS	250.00
Org Key: CA1100 - Administration (CA)				
P0105929	00201253	OGDEN MURPHY WALLACE PLLC	Professional Services - Invoic	1,050.00
P0105939	00201270	WA STATE BAR ASSOCIATION	Dues and Subscriptions WSBA 20	488.00
	00201255	PARK, BIO	MILEAGE EXPENSE	14.96
Org Key: CM1100 - Administration (CM)				
P0105969	00201269	VERIZON WIRELESS	CM Phone and Hotspot	98.32
Org Key: CM1200 - City Clerk				
P0105919	00201204	CODE PUBLISHING CO	Website Update: Ord. 19C-13	661.20
Org Key: CR1100 - Human Resources				
P0105938	00201278	ZEE MEDICAL	Safety Supplies - City Hall	156.76
P0105969	00201269	VERIZON WIRELESS	HR Hotspot	40.01
Org Key: DS0000 - Development Services-Revenue				
	00201228	JAYMARC CUSTOM HOMES LLC	PERMIT REFUND	4,120.50
	00201230	JAYMARC MANOR LLC	PERMIT REFUND	1,674.50
	00201229	JAYMARC ESTATES LLC	PERMIT REFUND	369.00
Org Key: FN1100 - Administration (FN)				
P0105946	00201262	STATE AUDITOR'S OFFICE	STATE AUDITOR	9,696.68

Accounts Payable Report by GL Key

Item 1.

PO #	Check #	Vendor:	Transaction Description	Check Amount
P0105957	00201208	DATAQUEST LLC	Pre-employment background chec	26.50
<i>Org Key: FN2100 - Data Processing</i>				
P0102377	00201244	MI CHAMBER OF COMMERCE	MONTHLY BILLING FOR SERVICES	1,200.00
<i>Org Key: FN4501 - Utility Billing (Water)</i>				
P0103098	00201243	METROPRESORT	NOVEMBER 2019 PRINTING AND MAI	68.22
P0103098	00201243	METROPRESORT	NOVEMBER 2019 PRINTING AND MAI	64.59
<i>Org Key: FN4502 - Utility Billing (Sewer)</i>				
P0105961	00201214	FERGUSON ENTERPRISES LLC	HANDHELD CAR CHARGER FOR JEEP	107.10
P0103098	00201243	METROPRESORT	NOVEMBER 2019 PRINTING AND MAI	68.22
P0103098	00201243	METROPRESORT	NOVEMBER 2019 PRINTING AND MAI	64.59
<i>Org Key: FN4503 - Utility Billing (Storm)</i>				
P0103098	00201243	METROPRESORT	NOVEMBER 2019 PRINTING AND MAI	68.23
P0103098	00201243	METROPRESORT	NOVEMBER 2019 PRINTING AND MAI	64.59
<i>Org Key: FR1100 - Administration (FR)</i>				
	00201203	CENTURYLINK	PHONE USE NOV 2019	826.54
<i>Org Key: FR2100 - Fire Operations</i>				
P0105577	00201209	DATEC INC.	New engine MDC	6,043.40
	00201225	HUGHES FIRE EQUIPMENT INC	REPLACE WARRANT 201110	2,029.34
P0105817	00201199	CHIP GEORGE INC	Fire modem/antenna for new app	1,532.60
<i>Org Key: GGM005 - Genera Govt-L1 Retiree Costs</i>				
P0105968	00201271	WALLACE, THOMAS	LEOFF1 Retiree Medical Expense	14,400.00
	00201239	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 POLICE RETIREES	5,690.12
	00201238	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 FIRE RETIREES	2,994.80
P0105967	00201219	GOODMAN, J C	LEOFF1 Retiree Medical Expense	2,722.50
P0105917	00201231	JOHNSON, CURTIS	FRLEOFF1 Retiree Medical Expn	397.16
P0105914	00201210	DEEDS, EDWARD G	LEOFF1 Retiree Medical Expense	205.26
P0105956	00201240	LOISEAU, LERI M	LEOFF1 Retiree Medical Expense	185.42
P0105916	00201202	BOOTH, GLENDON D	LEOFF1 Retiree Medical Expense	150.75
P0105915	00201248	MYERS, JAMES S	LEOFF1 Retiree Medical Expense	114.09
P0105918	00201213	ELSOE, RONALD	LEOFF1 Retiree Medical Expense	13.87
<i>Org Key: GX9996 - Employee Benefits-Police</i>				
	00201239	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 POLICE	53,903.82
	00201239	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 POLICE SUPPORT	5,234.85
<i>Org Key: GX9997 - Employee Benefits-Fire</i>				
	00201238	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 FIRE ACTIVE	61,693.52
	00201239	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 POLICE ADJUST	-3,294.28
	00201238	LEOFF HEALTH & WELFARE TRUST	DECEMBER 2019 BILLING ADJUST	-3,491.73
<i>Org Key: IS2100 - IGS Network Administration</i>				
	00201203	CENTURYLINK	PHONE USE NOV 2019	1,364.84
P0105945	00201226	HYLAND SOFTWARE	Hyland Global Cloud Services	946.00
	00201203	CENTURYLINK	PHONE USE NOV 2019	759.30
P0102376	00201241	MAGNAS LLC	MONTHLY LONG DISTANCE JAN-DEC	209.41
<i>Org Key: MT3100 - Water Distribution</i>				

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P0105924	00201221	H D FOWLER	M & H 929 FIRE HYDRANT 5' BURY	2,558.26
P0105899	00201249	NATIONAL SAFETY INC	4 GAS FOR GAS DETECTORS	121.04
<i>Org Key: MT3200 - Water Pumps</i>				
	00201203	CENTURYLINK	PHONE USE NOV 2019	59.69
<i>Org Key: MT3400 - Sewer Collection</i>				
P0105937	00201242	MARINE VACUUM SERVICE INC	DISPOSAL	420.00
<i>Org Key: MT3500 - Sewer Pumps</i>				
P0105926	00201212	EJ USA INC	COMPOSITE MANHOLE RING & COVER	1,404.99
	00201203	CENTURYLINK	PHONE USE NOV 2019	505.01
P0105899	00201249	NATIONAL SAFETY INC	4 GAS FOR GAS DETECTORS	121.03
<i>Org Key: MT3800 - Storm Drainage</i>				
P0103471	00201201	BEST PARKING LOT CLEANING INC	2019 ON CALL STORMWATER CCTV	6,022.76
P0105909	00201224	HOME DEPOT CREDIT SERVICE	4 X 6 X 8' LUMBER	98.87
<i>Org Key: MT4200 - Building Services</i>				
P0105941	00201254	PACIFIC AIR CONTROL INC	F592 HVAC MAINT	783.48
P0105940	00201254	PACIFIC AIR CONTROL INC	F592 HVAC 2135 FAILURE REPAIR	587.40
P0105882	00201224	HOME DEPOT CREDIT SERVICE	ELECTRICAL FITTINGS & PARTS	275.91
<i>Org Key: MT4300 - Fleet Services</i>				
	00201250	NELSON PETROLEUM	REPLACE WARRANT 201104	3,297.48
P0105935	00201227	INTERSTATE BATTERY SYSTEMS	Battery Inventory	852.28
P0105416	00201251	NELSON TRUCKING CO INC	FL-0435 REPAIR PARTS	638.25
P0105936	00201227	INTERSTATE BATTERY SYSTEMS	FL-0417 BATTERY	111.05
<i>Org Key: MT4501 - Water Administration</i>				
P0105946	00201262	STATE AUDITOR'S OFFICE	STATE AUDITOR	3,232.23
	00201203	CENTURYLINK	PHONE USE NOV 2019	58.60
<i>Org Key: MT4502 - Sewer Administration</i>				
P0105946	00201262	STATE AUDITOR'S OFFICE	STATE AUDITOR	3,232.23
<i>Org Key: MT4503 - Storm Water Administration</i>				
P0105946	00201262	STATE AUDITOR'S OFFICE	STATE AUDITOR	3,232.22
<i>Org Key: PO1100 - Administration (PO)</i>				
P0105963	00201269	VERIZON WIRELESS	Verizon Wireless Fees for Poli	791.47
P0105962	00201274	WASPC	WASPC Fall Conference - Chief	600.00
	00201223	HOLMES, EDWARD J	PER DEIM REIMB	112.50
<i>Org Key: PO2100 - Patrol Division</i>				
P0105734	00201252	OCCUPATIONAL HEALTH DYNAMICS	Annual Calibration of Mask	810.00
P0105943	00201278	ZEE MEDICAL	Medical Supplies	197.73
<i>Org Key: PO2200 - Marine Patrol</i>				
P0105965	00201275	WEST MARINE PRO	Marine Patrol Supplies - Old	230.94
P0105944	00201266	UNDERWATER SPORTS INC.	Dive equipment - zipper stick	7.65
<i>Org Key: PO2201 - Dive Team</i>				
P0105973	00201266	UNDERWATER SPORTS INC.	Dive Team Equipment Repair -	134.75

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PO #	Check #	Vendor:	Transaction Description	Check Amount
<i>Org Key: PR1100 - Administration (PR)</i>				
P0102240	00201259	QUENCH USA INC	Quench system - Parks & Rec po	86.80
<i>Org Key: PR2100 - Recreation Programs</i>				
P0105957	00201208	DATAQUEST LLC	Pre-employment background chec	26.50
<i>Org Key: PR3500 - Senior Services</i>				
P0105959	00201236	KOJIMA, KENTARO	Soap Stone Class instruction f	360.00
<i>Org Key: PR4100 - Community Center</i>				
P0105930	00201273	WASHINGTON FITNESS SERV INC	Repaired treadmill console 11/	487.41
P0105933	00201254	PACIFIC AIR CONTROL INC	MERCER ROOM HVAC DAMPER	398.20
P0105958	00201272	WALTER E NELSON CO	5 packages of soap	272.25
P0102461	00201205	COMCAST	MICEC - High Speed Connection	271.64
P0105931	00201216	FIRE PROTECTION INC	ADD/DELETE USERS SECURITY SYST	148.50
P0105932	00201216	FIRE PROTECTION INC	SECURITY ALARM BATTERY REPLACE	148.50
P0105878	00201207	CORT PARTY RENTAL	Display items for NW Event Sho	88.00
	00201203	CENTURYLINK	PHONE USE NOV 2019	56.19
<i>Org Key: PR6100 - Park Maintenance</i>				
P0105921	00201217	GEMPLER'S INC	LEAF BURRITO TARP	105.59
<i>Org Key: PR6200 - Athletic Field Maintenance</i>				
P0105592	00201257	PIONEER MANUFACTURING COMPANY	Synthetic turf field	2,888.42
	00201203	CENTURYLINK	PHONE USE NOV 2019	92.12
<i>Org Key: PR6500 - Luther Burbank Park Maint.</i>				
P0105942	00201254	PACIFIC AIR CONTROL INC	CINDY G BAD BOARD (T-STAT)	592.90
P0105513	00201198	AABCO BARRICADE COMPANY INC	Pumpkin walk lights 2019	550.00
	00201203	CENTURYLINK	PHONE USE NOV 2019	174.50
P0105894	00201224	HOME DEPOT CREDIT SERVICE	WHEELBARROW	82.48
<i>Org Key: PR6600 - Park Maint-School Related</i>				
P0105592	00201257	PIONEER MANUFACTURING COMPANY	Synthetic turf field	2,888.42
<i>Org Key: PR6900 - Aubrey Davis Park Maintenance</i>				
P0105894	00201224	HOME DEPOT CREDIT SERVICE	TUBE FOR CONCRETE	31.46
P0102466	00201265	T-MOBILE	Monthly services for Boat Laun	20.00
<i>Org Key: PY4619 - Flex Spending Admin 2019</i>				
	00201246	MORRIS, JOSEPH P	FLEX SPEND ACCT REIMB	2,700.00
	00201276	WEST, PAUL D	FLEX SPEND ACCT REIMB	873.28
	00201232	JOKINEN, DAVID R	FLEX SPEND ACCT REIMB	795.36
	00201223	HOLMES, EDWARD J	FLEX SPEND ACCT REIMB	520.00
	00201256	PETERSEN, CHRIS	FLEX SPEND ACCT REIMB	192.31
<i>Org Key: ST0001 - ST Traffic Safety Enhancements</i>				
P0103076	00201237	KPG	W MERCER WAY ELEMENTRY SPEED	10,225.63
<i>Org Key: ST0020 - ST Long Term Parking</i>				
P0105929	00201253	OGDEN MURPHY WALLACE PLLC	Professional Services - Invoic	6,810.00
<i>Org Key: WG110T - Computer Equip Replacements</i>				
P0105913	00201215	FINANCIAL CONSULTANTS INT'L	489 Mount MDC Parts Labor	1,176.12

Accounts Payable Report by GL Key

Item 1.

PO #	Check #	Vendor:	Transaction Description	Check Amount
<i>Org Key: WG141E - MICEC Equipment Replacement</i>				
P0105949	00201260	SEATTLE RESTAURANT STORE	60% down prior to ordering	12,329.63
<i>Org Key: WP122R - Vegetation Management</i>				
P0102409	00201247	MOUNTAINS TO SOUND	2019-2020 Forest Restoration	7,860.00
P0103218	00201222	HABITAT RESTORATION SPEC LLC	MI Open Space Restoration 2019	2,400.00
P0102736	00201211	EARTHCORPS INC	2019-2020 Forest Restoration	1,985.00
<i>Org Key: WS713T - SCADA System Upgrade</i>				
P0105880	00201233	KAASM LLC	SCADA SOFTWARE	92,900.50
<i>Org Key: XR810R - SE 36th and NMW Crosswalk</i>				
P0103076	00201237	KPG	NMW & SE 36TH PED EXING	115.23
<i>Org Key: YF1100 - YFS General Services</i>				
P0102240	00201259	QUENCH USA INC	Quench system at LB - YFS port	86.80
<i>Org Key: YF1200 - Thrift Shop</i>				
P0102249	00201263	STRANGER, THE	Thrift Shop Advertising for 20	1,200.00
P0105934	00201206	CONTRACT HARDWARE	DOOR ALARM REPLACEMENT	267.08
P0102240	00201259	QUENCH USA INC	Quench system at Tshop	64.00
Total				<u>367,647.31</u>

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00201198	12/05/2019	AABCO BARRICADE COMPANY INC Pumpkin walk lights 2019	P0105513	4747	11/12/2019	550.00
00201199	12/05/2019	CHIP GEORGE INC Fire modem/antenna for new app	P0105817	1072	11/14/2019	1,532.60
00201200	12/05/2019	AWC DECEMBER 2019		OH012640	12/02/2019	430.30
00201201	12/05/2019	BEST PARKING LOT CLEANING INC 2019 ON CALL STORMWATER CCTV	P0103471	V185000	10/30/2019	6,022.76
00201202	12/05/2019	BOOTH, GLENDON D LEOFF1 Retiree Medical Expense	P0105916	OH012661	11/25/2019	150.75
00201203	12/05/2019	CENTURYLINK PHONE USE NOV 2019		OH012642	11/20/2019	3,896.79
00201204	12/05/2019	CODE PUBLISHING CO Website Update: Ord. 19C-13	P0105919	65331	11/21/2019	661.20
00201205	12/05/2019	COMCAST MICEC - High Speed Connection	P0102461	OH012662	11/11/2019	271.64
00201206	12/05/2019	CONTRACT HARDWARE DOOR ALARM REPLACEMENT FURNITU	P0105934	SPI050167	11/22/2019	267.08
00201207	12/05/2019	CORT PARTY RENTAL Display items for NW Event Sho	P0105878	1101521	11/15/2019	88.00
00201208	12/05/2019	DATAQUEST LLC Pre-employment background chec	P0105957	10681	11/30/2019	53.00
00201209	12/05/2019	DATEC INC. New engine MDC	P0105577	34383	11/19/2019	6,043.40
00201210	12/05/2019	DEEDS, EDWARD G LEOFF1 Retiree Medical Expense	P0105914	OH012663	11/25/2019	205.26
00201211	12/05/2019	EARTHCORPS INC 2019-2020 Forest Restoration	P0102736	7668	10/31/2019	1,985.00
00201212	12/05/2019	EJ USA INC COMPOSITE MANHOLE RING & COVER	P0105926	110190100195	11/14/2019	1,404.99
00201213	12/05/2019	ELSOE, RONALD LEOFF1 Retiree Medical Expense	P0105918	OH012664	11/25/2019	13.87
00201214	12/05/2019	FERGUSON ENTERPRISES LLC HANDHELD CAR CHARGER FOR JEEP	P0105961	0824887	11/12/2019	107.10
00201215	12/05/2019	FINANCIAL CONSULTANTS INT'L 489 Mount MDC Parts Labor	P0105913	16661	11/25/2019	1,176.12
00201216	12/05/2019	FIRE PROTECTION INC ADD/DELETE USERS SECURITY SYST	P0105932	53523	11/15/2019	297.00
00201217	12/05/2019	GEMPLER'S INC LEAF BURRITO TARP	P0105921	INV0004423205	11/19/2019	105.59
00201218	12/05/2019	GET Washington PAYROLL EARLY WARRANTS		OH012660	12/06/2019	250.00
00201219	12/05/2019	GOODMAN, J C LEOFF1 Retiree Medical Expense	P0105967	OH012672	12/03/2019	2,722.50
00201220	12/05/2019	GRAINGER INVENTORY PURCHASES	P0105922	9365977371	11/22/2019	226.56
00201221	12/05/2019	H D FOWLER INVENTORY PURCHASES	P0105924	I5337603	11/18/2019	6,779.88
00201222	12/05/2019	HABITAT RESTORATION SPEC LLC MI Open Space Restoration 2019	P0103218	71	11/15/2019	2,400.00
00201223	12/05/2019	HOLMES, EDWARD J PER DEIM REIMB		OH012645	11/22/2019	632.50

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Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00201224	12/05/2019	HOME DEPOT CREDIT SERVICE INVENTORY PURCHASES	P0105894	0209579014981	11/20/2019	1,014.52
00201225	12/05/2019	HUGHES FIRE EQUIPMENT INC REPLACE WARRANT 201110		INV543635CORR	12/02/2019	2,029.34
00201226	12/05/2019	HYLAND SOFTWARE Hyland Global Cloud Services	P0105945	LE01127534	11/26/2019	946.00
00201227	12/05/2019	INTERSTATE BATTERY SYSTEMS Battery Inventory	P0105936	61249456	11/19/2019	963.33
00201228	12/05/2019	JAYMARC CUSTOM HOMES LLC PERMIT REFUND		1510140	11/25/2019	4,244.12
00201229	12/05/2019	JAYMARC ESTATES LLC PERMIT REFUND		1411057B	11/25/2019	380.07
00201230	12/05/2019	JAYMARC MANOR LLC PERMIT REFUND		1605082	11/25/2019	1,724.74
00201231	12/05/2019	JOHNSON, CURTIS FRLEOFF1 Retiree Medical Expen	P0105917	OH012665	11/25/2019	397.16
00201232	12/05/2019	JOKINEN, DAVID R FLEX SPEND ACCT REIMB		OH012646	11/22/2019	795.36
00201233	12/05/2019	KAASM LLC SCADA SOFTWARE	P0105880	13544	11/21/2019	92,900.50
00201234	12/05/2019	KC PET LICENSES 2019 KC PET LICENSE FEES COLLE	P0102957	OH012666	10/31/2019	45.00
00201235	12/05/2019	KING CO PROSECUTING ATTORNEY 2019 COURT REMITTANCE KC CRIME	P0102958	OH012667	10/31/2019	213.67
00201236	12/05/2019	KOJIMA, KENTARO Soap Stone Class instruction f	P0105959	008	11/21/2019	360.00
00201237	12/05/2019	KPG W MERCER WAY ELEMENTRY SPEED	P0103076	104419	11/21/2019	10,340.86
00201238	12/05/2019	LEOFF HEALTH & WELFARE TRUST DECEMBER 2019 FIRE RETIREES		OH012651	11/27/2019	61,196.59
00201239	12/05/2019	LEOFF HEALTH & WELFARE TRUST DECEMBER 2019 POLICE RETIREES		OH012652	11/27/2019	61,534.51
00201240	12/05/2019	LOISEAU, LERI M LEOFF1 Retiree Medical Expense	P0105956	OH012668	12/03/2019	185.42
00201241	12/05/2019	MAGNAS LLC MONTHLY LONG DISTANCE JAN-DEC	P0102376	OH012669	11/30/2019	209.41
00201242	12/05/2019	MARINE VACUUM SERVICE INC DISPOSAL	P0105937	68633	11/20/2019	420.00
00201243	12/05/2019	METROPRESORT NOVEMBER 2019 PRINTING AND MAI	P0103098	IN617194	11/21/2019	398.44
00201244	12/05/2019	MI CHAMBER OF COMMERCE MONTHLY BILLING FOR SERVICES	P0102377	OH012671	12/01/2019	1,200.00
00201245	12/05/2019	MI EMPLOYEES ASSOC PAYROLL EARLY WARRANTS		OH012657	12/06/2019	305.00
00201246	12/05/2019	MORRIS, JOSEPH P FLEX SPEND ACCT REIMB		OH012647	11/22/2019	2,700.00
00201247	12/05/2019	MOUNTAINS TO SOUND 2019-2020 Forest Restoration	P0102409	3510	09/30/2019	7,860.00
00201248	12/05/2019	MYERS, JAMES S LEOFF1 Retiree Medical Expense	P0105915	OH012670	11/25/2019	114.09
00201249	12/05/2019	NATIONAL SAFETY INC 4 GAS FOR GAS DETECTORS	P0105899	0561220IN	11/18/2019	242.07

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00201250	12/05/2019	NELSON PETROLEUM REPLACE WARRANT 201104		OH012653	12/02/2019	3,297.48
00201251	12/05/2019	NELSON TRUCKING CO INC FL-0435 REPPAIR PARTS	P0105416	700162	10/25/2019	638.25
00201252	12/05/2019	OCCUPATIONAL HEALTH DYNAMICS Annual Calibration of Mask	P0105734	66633	11/21/2019	810.00
00201253	12/05/2019	OGDEN MURPHY WALLACE PLLC Professional Services - Invoic	P0105929	831540	11/07/2019	7,860.00
00201254	12/05/2019	PACIFIC AIR CONTROL INC F592 HVAC 2135 FAILURE REPAIR	P0105942	25123	11/15/2019	2,361.98
00201255	12/05/2019	PARK, BIO MILEAGE EXPENSE		OH012654	11/26/2019	14.96
00201256	12/05/2019	PETERSEN, CHRIS FLEX SPEND ACCT REIMB		OH012648	11/22/2019	192.31
00201257	12/05/2019	PIONEER MANUFACTURING COMPANY Synthetic turf field	P0105592	INV745134	11/13/2019	5,776.84
00201258	12/05/2019	POWELL, DODD Returning credit on account	P0105960	OH012673	12/03/2019	186.00
00201259	12/05/2019	QUENCH USA INC Quench system - Parks & Rec po	P0102240	INV02164504	12/01/2019	237.60
00201260	12/05/2019	SEATTLE RESTAURANT STORE 60% down prior to ordering	P0105949	OH012674	12/02/2019	12,329.63
00201261	12/05/2019	STARK, JOHN & JONI OVERPAYMENT REFUND		OH012655	11/22/2019	760.96
00201262	12/05/2019	STATE AUDITOR'S OFFICE STATE AUDITOR TRAVEL/ACCOUNTAB	P0105946	L133445	11/13/2019	19,393.36
00201263	12/05/2019	STRANGER, THE Thrift Shop Advertising for 20	P0102249	11199C3CA	11/07/2019	1,200.00
00201264	12/05/2019	SUPPLY SOURCE INC,THE INVENTORY PURCHASES	P0105912	1904787	11/18/2019	1,441.17
00201265	12/05/2019	T-MOBILE Monthly services for Boat Laun	P0102466	OH012676	11/10/2019	20.00
00201266	12/05/2019	UNDERWATER SPORTS INC. Dive equipment - zipper stick	P0105973	2002129	12/02/2019	142.40
00201267	12/05/2019	UNITED STATES TREASURY PAYROLL EARLY WARRANTS		OH012659	12/06/2019	780.29
00201268	12/05/2019	UNITED WAY OF KING CO PAYROLL EARLY WARRANTS		OH012658	12/06/2019	80.00
00201269	12/05/2019	VERIZON WIRELESS CM Phone and Hotspot	P0105963	9842768661	11/23/2019	929.80
00201270	12/05/2019	WA STATE BAR ASSOCIATION Dues and Subscriptions WSBA 20	P0105939	OH012678	11/26/2019	488.00
00201271	12/05/2019	WALLACE, THOMAS LEOFF1 Retiree Medical Expense	P0105968	OH012677	12/03/2019	14,400.00
00201272	12/05/2019	WALTER E NELSON CO 5 packages of soap	P0105958	734384	11/26/2019	272.25
00201273	12/05/2019	WASHINGTON FITNESS SERV INC Repaired treadmill console 11/	P0105930	W17594	11/03/2019	487.41
00201274	12/05/2019	WASPC WASPC Fall Conference - Chief	P0105962	INV029171	11/18/2019	600.00
00201275	12/05/2019	WEST MARINE PRO Marine Patrol Supplies - Old	P0105965	003821/003143	05/14/2019	230.94

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00201276	12/05/2019	WEST, PAUL D FLEX SPEND ACCT REIMB		OH012649	11/22/2019	873.28
00201277	12/05/2019	WILLIAMS, FLOYD OVERPAYMENT REFUND		OH012656	11/27/2019	493.82
00201278	12/05/2019	ZEE MEDICAL Safety Supplies - City Hall	P0105943	68385130/6837898	08/01/2019	354.49
					Total	<u>367,647.31</u>



CITY OF MERCER ISLAND CERTIFICATION OF PAYROLL

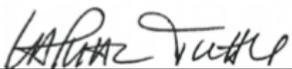
Item 2.

PAYROLL PERIOD ENDING 11.29.2019
PAYROLL DATED 12.6.2019

Net Cash	\$	546,919.54
Net Voids/Manuals	\$	17,937.47
Net Total	\$	564,857.01
Federal Tax Deposit - Key Bank	\$	93,236.09
Social Security and Medicare Taxes	\$	40,869.35
Medicare Taxes Only (Fire Fighter Employees)	\$	2,747.93
State Tax (Massachusetts)	\$	55.97
Public Employees Retirement System 2 (PERS 2)	\$	29,989.24
Public Employees Retirement System 3 (PERS 3)	\$	6,316.64
Public Employees Retirement System (PERSJM)	\$	737.83
Public Safety Employees Retirement System (PSERS)	\$	209.64
Law Enforc. & Fire fighters System 2 (LEOFF 2)	\$	28,607.56
Regence & LEOFF Trust - Medical Insurance	\$	13,347.16
Domestic Partner/Overage Dependant - Insurance	\$	2,159.74
Group Health Medical Insurance	\$	1,106.18
Health Care - Flexible Spending Accounts	\$	2,062.93
Dependent Care - Flexible Spending Accounts	\$	1,531.09
United Way	\$	80.00
ICMA Deferred Compensation	\$	29,850.94
Fire 457 Nationwide	\$	7,159.97
Roth - ICMA	\$	510.00
Roth - Nationwide	\$	745.73
401K Deferred Comp	\$	-
Garnishments (Chapter 13)	\$	-
Tax Levy	\$	780.29
Child Support	\$	599.99
Mercer Island Employee Association	\$	305.00
Cities & Towns/AFSCME Union Dues	\$	-
Police Union Dues	\$	-
Fire Union Dues	\$	2,111.33
Fire Union - Supplemental Dues	\$	160.00
Standard - Supplemental Life Insurance	\$	-
Unum - Long Term Care Insurance	\$	521.90
AFLAC - Supplemental Insurance Plans	\$	596.50
Coffee Fund	\$	148.00
Transportation	\$	62.08
HRA - VEBA	\$	5,541.10
Miscellaneous	\$	(37.84)
Nationwide Extra	\$	1,366.66
GET	\$	250.00
Tax & Benefit Obligations Total	\$	273,729.00

TOTAL GROSS PAYROLL \$ 838,586.01

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Mercer Island, and that I am authorized to authenticate and certify to said claim.



Finance Director

I, the undersigned, do hereby certify that the City Council has reviewed the documentation supporting claims paid and approved all checks or warrants issued in payment of claims.



CITY COUNCIL MINUTES SPECIAL MEETING NOVEMBER 19, 2019

Item 3.

CALL TO ORDER & ROLL CALL

Mayor Debbie Bertlin called the Special Meeting to order at 5:00 pm at City Hall, 9611 SE 36th Street, Mercer Island, Washington.

Mayor Debbie Bertlin and Councilmembers Lisa Anderl, Bruce Bassett, Deputy Mayor Salim Nice, Wendy Weiker (by phone), and Benson Wong were present. Councilmember David Wisenteiner was absent.

EXECUTIVE SESSION

At 5:01 pm, Mayor Bertlin convened an executive session to discuss pending or potential litigation with legal counsel pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes.

At 6:00 pm, Mayor Bertlin adjourned the Executive Session and called the Regular Meeting to order at 6:02 pm. Councilmember.

Weiker left the meeting after the Executive Session ended.

AGENDA APPROVAL

It was moved by Nice; seconded by Wong to:

Approve the agenda as presented.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

STUDY SESSION

AB 5626: Update on ARCH and ARCH 2020 Work Plan and Administrative Budget

Deputy Director of Community Planning and Development Alison Van Gorp outlined for Council ARCH's actions in response to reports indicating that owners of affordable units stewarded under ARCH's Homeownership program were not in compliance with ARCH rules and then outlined key findings of the consultant report. The consultant report identified that staffing levels had not kept pace with program growth and that more staffing was needed to avoid additional compliance violations.

Deputy Director Van Gorp provided a brief report on ARCH's 2020 Administrative Budget, explaining that the proposed budget was a 53% increase over the 2019 budget and that ARCH's 2020 budget would require an increase of \$16,232 to Mercer Island's contribution. Van Gorp further explained that Mercer Island budgeted a \$50,000 contribution to the Housing Trust Fund, noting that HB 1406 would generate approximately \$36,000 in revenue and that some or all could be contributed to the Housing Trust Fund.

Deputy Director Van Gorp also outlined the ARCH Work Plan, which included five core areas:

- Affordable Housing Investment
- Housing Policy and Planning
- Housing Program Implementation
- Education and Outreach
- Administration

Van Gorp explained that if Council approved the ARCH 2020 Administrative budget and work plan, staff would bring back a budget amendment in the first quarter of 2020 to support the ARCH budget. She also reported that an amendment related to appropriation of the HB 1406 revenue would be provided at that same time.

SPECIAL BUSINESS

Mayor Bertlin presented Mr. Tristan Schwiethale, with a City Stewardship Award for his volunteer work at the Farmers Market wherein each week he sorted the trash into the correct bins for compost, recycle, and garbage.

CITY MANAGER REPORT

Interim City Manager Jessi Bon reported on the following:

- Drug Take Back Event
- Thrift Shop Anniversary Sale
- Local Veterans donate to Youth and Family Services
- Mercer Island Police Department \$20,000 Anonymous Donation
- Mercer Island Farmers Market “Harvest Market” – November 24 at Mercerdale Park
- Mercer Island Firefighters Food Pantry Fund Raiser – November 27
- City Facilities closed November 28 and November 29 for Thanksgiving Holiday
- MIYFS Tree Lot open November 30 to December 25
- The Lighting at Mercerdale Park and Firehouse Munch – December 6
- MIPD Officers rescue pup

APPEARANCES

Dwight Schaeffer, Mercer Island, expressed concern for rising property taxes, sales tax, carbon taxes and more. He encouraged City Council to focus on productivity and efficiency rather than increasing taxes without a vote of the citizens.

Peter Struck, Mercer Island, expressed concern for the proposed ARCH operating budget and the cost of clean-up at the BP/ARCO site. He urged Council to consider how they will engage the community regarding the public institution amendment for the Tully’s site.

Gary Robinson, Mercer Island, commended the Council and city staff for redrafting the City Council Code of Ethics. He also requested that Council provide leadership that will work to bring the Island together.

Mark Hirayama, Mercer Island, 1) expressed appreciation to staff for responding to his letter and accurately representing the commuter parking project footprint, 2) expressed concern for settling the Environmental Remediation Agreement prior to the site delineation study’s availability, 3) and referenced his earlier email regarding the public institution code amendment.

Jon Harrington, Mercer Island, spoke to the Council regarding greenhouse gas emissions and encouraged Council to adopt Resolution 1570.

Ira Appleman, Mercer Island, 1) encouraged Council to stay involved in ARCH and fix it, 2) expressed concern for the Code of Ethics. He does not believe there is a money issue but rather the Council’s inability to tell the truth. 3) He encouraged the Council to complete a risk assessment on the ARCO/Tully’s project.

Robin Russell, Mercer Island, expressed support for the changes in the Code of Ethics and asked that the Council include a statement that prohibits Councilmembers from acting as “leads” on NextDoor. She also expressed concern for the Tully’s footprint and its impact. Furthermore, she encouraged Council to help redirect the anti-Semitic label that non-supporters of the Community Facilities Zone received.

CONSENT CALENDAR

Councilmember Anderl asked to remove AB 5627: Approval of ARCH 2020 Work Plan and Budget, from the

Consent Calendar. Mayor Bertlin moved it to the second item of Regular Business.

Accounts Payable Reports:

- A. November 4, 2019 in the amount of \$142,359.13
- B. November 6, 2019 in the amount of \$446,575.91

Recommendation: Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

Certification of Payroll dated November 8, 2019 in the amount of \$840,423.06

Recommendation: Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

Approve minutes of the November 4, 2019 Regular Meeting.

Recommendation: Approve the minutes as written.

AB 5612: Groveland Park Repairs and Shoreline Improvements Project Closeout

Recommended Action: Accept the completed Groveland Park Repair and Shoreline Improvements Project and authorize the close out of the construction contract.

It was moved by Anderl; seconded by Bassett to:

Approve the Consent Calendar and the recommendations contained therein as amended.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

REGULAR BUSINESS

AB 5634: Reimbursement Agreement for Environmental Remediation with Atlantic Richfield Company and Seller of the 7810 SE 27th Street (ARCO) Property for the City's Proposed Commuter Parking & Mixed-Use Project.

It was moved by Nice; seconded by Wong to:

Authorize the Interim City Manager to execute the environmental remediation Reimbursement Agreement with the Atlantic Richfield Company and the Seller of the 7810 SE 27th Street property, in substantially the form attached as Exhibit 1, for the City's proposed Commuter Parking & Mixed-Use Project.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

Public Hearing: 2019-2020 Mid-Biennial Budget Review

AB 5633: Third Quarter 2019 Financial Status Report, NORCOM 2020 Budget Resolution, 2020 Utility Rate Resolutions, 2020 Property Tax Ordinances, and 2019-2020 Budget Adjustments.

Mayor Bertlin opened the public hearing at 8:40 pm.

Interim Finance Director LaJuan Tuttle introduced Mike Bailey, the City's Finance Consultant, explaining that Mr. Bailey would provide the following contract services:

- Perform an assessment of the City's Finance Department
- Provide support and assistance to the Interim Finance Director for long-range forecasting, and mid-biennial budget review,
- Attend 2020 Council Planning Session to support the long-range financial planning discussion
- Assess other finance related functions

Tuttle also reviewed the Third Quarter 2019 Financial Status Report with Council including:

- General Fund revenues and expenditures
- General sales tax
- Utility tax

- Permit and Land Use Revenue
- Utility Funds
- Budget Adjustments
- 2019-2020 Budget amending ordinance
- 2020 NORCOM budget resolution
- 2020 utility rate resolutions for water, sewer, storm water, and EMS.
- 2020 property tax ordinances

Mayor Bertlin asked for public comment. There being no comment, Mayor Bertlin closed the public hearing at 9:01 pm.

It was moved by Nice: seconded by Bassett to:

Pass Resolution No. 1562, which approves NORCOM's 2020 budget allocation to the City of Mercer Island.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Anderl to:

Pass Resolution No. 1563, which establishes classifications of water users and a schedule of charges for water usage, a schedule of rates for fire service, a schedule of special service charges, meter and service installation charges, and connection charges effective January 1, 2020 and thereafter.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Anderl to:

Pass Resolution No. 1564, which establishes rates and connection charges for sewerage disposal services provided by the City of Mercer Island effective January 1, 2020 and thereafter.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Anderl to:

Pass Resolution No. 1565, which establishes the bi-monthly service charge for storm and surface water services provided by the City of Mercer Island effective January 1, 2020 and thereafter.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Anderl to:

Pass Resolution No. 1566, which establishes the bi-monthly utility fee for the emergency medical and ambulance services supplied by the City of Mercer Island effective January 1, 2020 and thereafter.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Bertlin to:

Suspend the City Council Rules of Procedure 6.3, requiring a second reading for an ordinance.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)

ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Bertlin to:

Adopt Ordinance No. 19-14, which establishes the amount of property taxes to be levied for the year 2020.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)
 ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Bertlin to:

Adopt Ordinance No. 19-15, which identifies the dollar amount and percentage increases of the regular property tax levy and the levy lid lifts for the year 2020.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)
 ABSENT: 2 (Weiker and Wisenteiner)

It was moved by Nice: seconded by Bertlin to:

Adopt Ordinance No. 19-17, amending the 2019-2020 Budget

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)
 ABSENT: 2 (Weiker and Wisenteiner)

AB 5627: Approval of ARCH 2020 Work Plan and Budget

Deputy Director of Community Planning and Development Alison Van Gorp reiterated her statement from the Study Session earlier in the evening, explaining that the budget includes a significant increase for an expansion of staff capacity by 2.0 FTEs. Mercer Island's portion of the 2020 budget is \$50,222, a \$16,232 increase over 2019.

The work program includes five priorities for 2020:

- Provide excellent stewardship of affordable housing assets
- Develop measurable goals for production and preservation of affordable housing in the ARCH region
- Advance an initiative with high potential for impact (i.e. Eastside Equitable TOD Plan)
- Continue to support proposals for dedicated revenue sources for affordable housing
- Evaluate options for expanding ARCH's capacity to accomplish its broader mission

It was moved by Wong: seconded by Bassett to:

Approve the ARCH 2020 Work Plan and Budget.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)
 ABSENT: 2 (Weiker and Wisenteiner)

AB 5623: Sustainability Update – K4C Commitments

Sustainability and Communications Manager Ross Freeman reported that due to recent climate-related policy advances made in Olympia, along with the unexpected weakening of some federal emissions programs, and new technical developments, the King County-Cities Climate Collaboration (K4C) decided in early 2019 to refresh the original 2014 commitments. He explained that the updated Joint Commitments document was very similar to the original 2014 commitments, with differences consisting mostly of: clarifications of certain phrases; acknowledgment of new State legislation; and three new sections addressing (a) new technology (e.g. electric vehicles), (b) city operations, and (c) the need for climate change preparedness.

It was moved by Bassett: seconded by Wong to:

Approve Resolution No. 1570 to adopt the refreshed 2019 Joint Climate Commitments presented by the K4C.

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice, and Wong)
 ABSENT: 2 (Weiker and Wisenteiner)

AB 5632: Public Institution Code Amendment (1st Reading)

Community Planning and Development Director Evan Maxim reported that on August 5, 2019, the Growth Management Hearings Board (GMHB) issued a decision on an appeal of Ordinance No. 18-13 and 18C-14

(Case No. 19-3-0003c). One of the appeal issues was related to the Comprehensive plan amendment and rezone of property adjacent to the Tully's Property, known as "Parcel 12 / WSDOT." In particular, the GMHB decision noted that the language in MICC 19.05.010(B) was not consistent with the amendments to the land use map in the Comprehensive Plan and was not consistent with the amended zoning map. The proposed amendment to the Public Institution Code would eliminate the inconsistency between the code, zoning designation, and the Comprehensive Plan's land use map

He further explained that the Planning Commission held a public hearing on October 30, 2019 to consider the proposed code amendment. Following the public hearing and a review of the public comments, the Planning Commission recommended that the City Council adopt the proposed language.

Council discussed the amendment at length and Councilmember Anderl expressed support for maintaining the sculpture park's current zoning rather than changing the zoning designation to Town Center.

It was moved by Nice: seconded by Bassett to:

Set Ordinance No. 19C-19 for second reading and adoption on the December 3, 2019 Consent Calendar

Passed: 4-0

FOR: 4 (Bassett, Bertlin, Nice, and Wong)

ABSTAIN: 1 (Anderl)

ABSENT: 2 (Weiker and Wisenteiner)

AB 5628: Code of Ethics Revisions (1st Reading)

Chief of Administration Ali Spietz and Assistant presented revisions to the code of ethics for public officials to clarify the process for responding to a complaint, removing references to State law, and adding guidance on prohibited conduct. Following Council questions and discussion, staff was directed to further revise the proposed amendment return with revisions at the December 3 meeting.

OTHER BUSINESS

Planning Schedule

- Interim City Manager Bon reminded Council that there were two Council meetings remaining in 2019: December 3 and December 10
- January 7 meeting will be the nomination of Mayor and Deputy Mayor
- January 24 & 25 are the Planning Session

Councilmember Absences & Reports

Councilmembers Weiker and Wisenteiner's absences were excused.

Councilmember Wong:

- YFS Foundation Breakfast on February 12
- Encouraged charitable giving to Mercer Island Community Fund
- SCA 2020 Legislative Agenda

Councilmember Anderl:

- November 12 Utility Board Meeting
- YFS Christmas Tree Lot

Councilmember Bassett reported that the URL on the Mercer Island Community Fund signs need to be corrected.

Mayor Bertlin:

- Update on KC Affordable Housing Task Force
- Upcoming GMPC Meeting

EXECUTIVE SESSION

At 10:41 pm, Mayor Bertlin convened an Executive Session to for planning or adopting the strategy or position to be taken by the City Council during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress pursuant to RCW 42.30.140(4)(b) for approximately 30 minutes.

At 10:50 pm, Mayor Bertlin adjourned the Executive Session; no action was taken.

ADJOURNMENT

There being no additional business to come before City Council, the Regular Meeting adjourned at 10:51 pm.

Debbie Bertlin, Mayor

Attest:

Deborah Estrada, City Clerk



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5646
December 10, 2019
Consent Calendar**

AGENDA BILL INFORMATION

TITLE:	AB 5646: 2020 – 2021 AFSCME Collective Bargaining Agreement	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed:
RECOMMENDED ACTION:	Authorize the Interim City Manager to sign the AFSCME Collective Bargaining Agreement for the period of January 1, 2020 through December 31, 2021.	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Human Resources
STAFF:	Kryss Segle, Human Resources Director
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Proposed AFSCME Collective Bargaining Agreement (January 2020 – December 2021)
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

A City management bargaining team began the negotiation process with members of the American Federation of State, County and Municipal Employees (AFSCME), Local 21-M, bargaining team in July 2019. The Union’s bargaining team is AFSCME Employee Representative Michael Rainey, Park Maintenance Team Member (and Union President) Luke Jacobs, Utilities Inspector Bill Vandewater, Utility Billing Lead Analisa Cartwright, and Public Works Sewer Utility Generalist Dennis Baker. The City’s management bargaining team is Human Resources Director Kryss Segle, Public Works Director Jason Kintner, Community Planning and Development (CPD) Director Evan Maxim, Interim Parks and Recreation Director Ryan Daly, CPD Deputy Director Alison Van Gorp, and Human Resources Specialist Lara Gerheim.

The AFSCME bargaining unit is comprised of 48 bargaining unit members, working in the departments of Public Works, Community Planning & Development, Parks & Recreation, and Finance. In 2019, total salaries and benefits for the 48 union members is approximately \$4,800,735. The current AFSCME collective bargaining agreement (CBA) expires on December 31, 2019.

A tentative agreement was reached by the parties on November 14, 2019.

SUBSTANTIVE TENTATIVE AGREEMENTS

Change Job Title of Generalist to Crew Lead & Update Job Description

In order to clearly define the position of Generalist, as well as align the position better with the comparable market, the parties agreed to change the Generalist job title to Crew Lead. There are seven positions of “Generalist” within the Public Works Department and the Park Maintenance Division of the Parks and Recreation Department. Crew Lead is a classification that is used by some of our comparable cities; and therefore, make benchmarking the salary against the market a clearer task.

Provide a Market Adjustment to the Positions of Accounts Payable Clerk & Permit Technician

As part of the Finance Department’s recent reorganization, management proposed making changes to the position of Accounts Payable Clerk, specifically adding more advanced accounting responsibilities to the position and changing the job title to Accounting Specialist. This change in job responsibilities triggered a market study for the position. The market analysis supports an annual increase to the pay scale in the amount of \$710. Even though this is a modest salary increase for the position, there will be a salary savings of at least \$5,053 in 2020 and an additional salary savings of at least \$2,610 in 2021 due to a new employee starting at the low end of the pay scale in comparison to the retiring employee leaving the position at the top end of the pay scale.

An analysis of the comparable market revealed that the pay scale for the position of Permit Technician was below the midpoint of the market by \$7,266. The primary reason for such a significant pay increase for the position is that the classification has not been used for the past five years; and therefore, the salary has not been reviewed for some time. Instead, the City has employed two Permit Coordinators and did not utilize the classification of Permit Technician. The classification of Permit Technician is a lower classification than Permit Coordinator. Management’s desire to reinstitute the position of Permit Technician triggered the market analysis.

Following the recent resignation of one of the Permit Coordinators, management conducted a work analysis and determined that replacing the vacant Permit Coordinator with a Permit Technician would be most beneficial. Filling the vacated Permit Coordinator position with a Permit Technician allows a natural progression of staff as current employees increase experience and responsibility, which in turn reduces staff turnover and creates an incentive for employees to focus on career growth and commitment to Mercer Island. Although a market adjustment of \$7,266 applies to the position of Permit Technician, the City realizes a salary savings of \$10,356 by replacing the Permit Coordinator with a Permit Technician in 2020 and an additional salary savings of \$7,530 in 2021.

Eliminate ½ Day Holidays on Christmas Eve and New Year’s Eve

Current contract language provides a ½ day paid holiday on Christmas Eve and New Year’s Eve respectively. Because the City remains open for business on these days, this contract provision has been a challenge to administer. Since the City remains open while AFSCME employees are provided the ½ days off on both Christmas Eve and New Year’s Eve, several AFSCME employees are compelled to work on these holidays in return for receiving a paid ½ day(s) off on a future date. As a remedy, the parties agreed to eliminate the two ½ day holidays in exchange for an added floating holiday, which can be taken at any point (with management approval) throughout the year, with a use-it-or-lose-it provision. There is no monetary impact to this proposal and the net effect to time off remains even.

Replace Employee Assistance Program (EAP) with Less Expensive Plan

The management team proposed replacing the existing EAP program with a less expensive alternative EAP program. The Union accepted management’s proposal. The annual savings is approximately \$3,500 per year.

Additional Changes

Tentative agreement was reached on several non-monetary language clarifications and/or updates required by law throughout the CBA, including:

- Contract Term of Two Years (January 1, 2020 through December 31, 2021)
- Article II – New Hire Orientation
- Article VI - Union Security Clause Language
- Article XVII – Military Leave (*updated language matches Federal and Washington State Law*)

2020 BUDGET IMPACTS

- 1.98% COLA effective 1/1/2020 (*CBA includes a COLA provision that provides 90% of the semi-annual CPI-W with a floor of 1.5%. The CPI-W, published in July 2019, was 2.20%.*). This is .8% less than the anticipated budgeted COLA for 2020. Cost: \$69,893 (Budgeted: \$95,309. Actual cost is \$25,416 under budget)
- Market adjustment and salary savings for the position of Accounting Specialist (formerly Accounts Payable Clerk): Cost Savings: (\$4,343)
- Market adjustment and salary savings for the position of Permit Technician: Cost Savings: (\$3,090)
- Move to less expensive EAP provider: Cost Savings: (\$3,500)

The costs outlined above are covered within the approved 2019/2020 Biennial Budget.

2021 BUDGET IMPACTS

- *CBA includes a COLA provision that provides 90% of the semi-annual CPI-W with a floor of 1.5%. This index will be published in July 2020. Cost: Unknown at this time, a 2021 COLA assumption shall be built into the preliminary 2021/2022 Biennial Budget.*
- Market adjustment and salary savings for the position of Accounting Specialist (formerly Accounts Payable Clerk): Cost Savings: (\$1,900)
- Market adjustment and salary savings for the position of Permit Technician: Cost Savings: (\$264)
- Move to less expensive EAP provider: Cost Savings: (\$3,500)

Following the tentative agreement reached by the parties on November 14, 2019, AFSCME bargaining unit employees voted affirmatively to ratify the attached collective bargaining agreement on November 19, 2019.

RECOMMENDATION

Authorize the Interim City Manager to sign the AFSCME Collective Bargaining Agreement for the period of January 1, 2020 through December 31, 2021, in substantially the form attached hereto as Exhibit 1.

AGREEMENT
BY AND BETWEEN
THE CITY OF MERCER ISLAND
AND
WASHINGTON STATE COUNCIL OF COUNTY AND
CITY EMPLOYEES, AFSCME, AFL-CIO, LOCAL #21-M
2020 -2021

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AGREEMENT

BY AND BETWEEN

THE CITY OF MERCER ISLAND

AND

**WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES,
AFSCME, AFL-CIO, LOCAL #21-M**

2020-2021

ARTICLE I - JOINT MISSION

Our joint mission is to prepare the organization, its employees, citizens, and elected and appointed officials for successful competition in the delivery of public services of the future. We must prepare as a premier service delivery, planning and regulatory organization adhering to the principles of a free democratic society. The economic health of the City government, and thus the security and well-being of us all, depends on the success of our joint commitment to prepare for the future. Only when our citizens know they are receiving quality service and competitive rates do we enjoy true employment security.

The principal goal for this partnership is that we learn together to manage beneficially the inevitable issues of change. That is the difference between this partnership and Agreements that have preceded it. With this partnership we are embracing a dynamic relationship. This recognizes the need for continual employee involvement in adapting to change and secures employee participation in the institutions which manage change.

The method we have chosen to pursue these goals is an employee management partnership - a relationship of mutual respect, open communication, shared success, mutual aid and innovative problem solving. Our intent is for each employee to become a more capable, confident, committed and secure person so that they may benefit our organization, themselves and the broader community.

ARTICLE II - MANAGEMENT AND UNION

This Agreement is not intended to alter the functions of the Union and the Management or limit the use of joint labor management panels.

Management and Union - the Union, the management and the employee will all promote improved service to the citizens of Mercer Island, work-life harmony, mutual trust and responsible issue resolution.

- A. Management - Management will define, communicate and implement the objectives and goals of the organization. It will lead and direct the employees. It will provide resources and equipment for safe and efficient work. It will accomplish these things through the exercise of

all the rights and prerogatives associated with management and exercised by it. This section does not abrogate other provisions of this Agreement.

The Union recognizes that the Employer has the obligation of serving the public with the highest quality service, efficiently and economically. The Union further recognizes the Employer's right to operate and manage its operations including but not limited to require standards of performance and to maintain order and efficiency, to direct employees and determine job assignments and working schedules; to determine the materials and equipment procedures; to determine staffing requirements; to determine the kind and location of facilities; to select and hire employees; to promote and transfer employees; to discipline, demote or discharge employees for just cause; to require reasonable overtime work of employees; and to promulgate rules, regulations and personnel policies, including but not limited to such matters as conduct, performance, dress and attendance, provided that such rights shall not be exercised so as to violate any of the specific provisions of this Agreement. The parties recognize that the above statement of management responsibilities is for illustrative purposes only and should not be construed as restrictive or interpreted so as to exclude those prerogatives not mentioned which are inherent to the management function. All matters not covered by the language of this Agreement shall be administered by the Employer on a unilateral basis in accordance with such policies and procedures as it from time to time shall determine.

- B. The Employer hereby recognizes the Union as the sole, exclusive collective bargaining representative for those regular, full-time and part-time employees for the Employer whose job classifications are set forth in Appendix A and who work in the Maintenance Development Services, Finance, and Fire Administration Departments. All temporary and other part-time employees, working, on average, less than twenty (20) hours per week, including those hired through a recognized training program approved by an entity or branch of government for less than eighteen months, supervisors, confidential and professional employees, Planners and Engineers shall be excluded from the bargaining unit.

The Union shall provide the Employer a list of Union Officers and Shop Stewards and maintain such list in a current status.

The City agrees to notify the Union at least ten (10) days in advance whenever an AFSCME represented position is created, eliminated or reconstructed. The City agrees to notify the Union of any new hire in the bargaining unit. At least 2 full working days prior to the orientation of the new employee, the City shall provide an electronic format list with the names of the employees, corresponding job title, and Department. A Union official shall, at no loss of pay, be granted up to thirty minutes to provide each new employee a basic overview of the employees' rights and responsibilities regarding Union membership, dues authorizations, and Union insurance

ARTICLE III - NONDISCRIMINATION

- A. We agree that we will abide by all state and federal laws regarding nondiscrimination against any employee.
- B. Where the masculine or feminine gender has been applied in any job classification or in any provision of this Agreement it is applied solely for the purpose of illustration and shall not in any way be used to designate the sex of the employee eligible for the position or the benefits of any other provisions.

- C. No employee covered by this Agreement shall be discriminated against, by either the Union or the employer, because of membership in the Union or lawful activities on behalf of the Union as long as these activities do not interfere with the normal work processes of the Employer.

ARTICLE IV - UNION MEMBERSHIP AND DUES DEDUCTION

- A. During the term of this Agreement, for current Union members and those who choose to join the Union, the Employer shall deduct once each month all Union dues and fees uniformly levied and shall continue to do so for such time and on conditions set forth in the Authorization for Payroll Deduction regardless of the employee's continued membership in the Union. The Employer shall transfer amounts deducted to the Washington State Council of County and City Employees. Authorizations for Payroll Deduction are valid whether executed in writing or electronically. Upon issuance and transmission of a check to the Union, the Employer's responsibility shall cease with respect to such deduction. The Union hereby undertakes to indemnify and hold the Employer harmless from all claims, demands, suits or other forms of liability that may arise against the Employer from the application of this Article.
- B. The Employer shall provide an electronic copy of the Authorization for Payroll Deduction and Representation via email to C2everett@council2.com within 10 days of the employee executing the document. The Employer shall provide to the Union monthly a complete list of all bargaining unit members that includes: Employee name, work address, home address, work phone, personal phone, work email, personal email, birth date, hire date in current bargaining unit, job classification, department, hours worked and monthly base wage.
- C. The Employer shall honor the terms and conditions of each employee's authorization for payroll deduction. Whether an employee is a union member or not, the Employer shall continue to deduct and remit Union dues and fees to the Union until such time as the Union notifies the Employer that the dues authorization has been properly terminated in compliance with the terms of the payroll deduction authorization executed by the employee.
- D. Newly hired employees shall be considered probationary employees for a period of twelve (12) months following their hire date. Employees promoted to a new position shall be on probation for a period of three (3) months following their promotion. Any employee failing their promotional probationary period shall be returned to the position held prior to their promotion.
 - a. The probationary period can be extended by the City for any time loss during the probationary period, up to the amount of actual time lost. Management may choose to extend a probation period of any employee for a maximum of an additional six (6) months. The probationary employee and the local union president will be notified of

such extension, including the duration of the extension, no later than ten (10) working days prior to the end date of his/her initial twelve (12) month probationary period.

- E. Seasonal, extended seasonal, and temporary employees working less than twelve (12) consecutive months shall not be considered members of the bargaining unit and shall not be required to become members of the Union while they are seasonal, extended seasonal, or temporary employee. Seasonal, extended seasonal, and temporary employees are not entitled to the benefits of Union membership as described in this Agreement. For the purposes of determining whether an employee is required to join the Union under the existing Agreement, the following definitions shall apply:
1. Seasonal - Non-regular City employees who work up to forty (40) hours per week for a period not to exceed six months from the initial hire date. Work hours and schedule may vary depending on work assignment. This position is not eligible for benefits or routine overtime. April 1 through September 30 is the established period for Seasonal employees, except the City may hire up to two (2) seasonal positions for the Parks Maintenance Team and two (2) seasonal positions for the Public Works Department with an established employment period of June 1 through November 30.
 2. Extended Seasonal - Non-regular City employees who work up to 40 hours per week for a period not to exceed nine months from the initial hire date. Work hours and schedule may vary depending on work assignment. This position is not eligible for benefits or routine overtime. February 1 through October 31 is the established period for Extended Seasonal employees. For the four extended seasonal employee positions, the City will remit a work permit fee of \$125.00, payable within thirty (30) calendar days of the hire date, to a fund managed by the Union.
 3. Temporary Employees - Non-regular employees or contracted employees provided by a Temporary Company. These employees are brought in to serve a specific period or job assignment with an identified completion date not to exceed six (6) consecutive months. This position is not eligible for benefits or routine overtime. Use of temporary employees will be limited to use for filling vacancies caused by employees on leave, or for an identified short-term project.
 4. Routine Overtime - All scheduled overtime and any other overtime caused for reasons other than emergency or unforeseen circumstances. Documentation shall be provided to the Union for any Seasonal overtime. Routine overtime shall be posted at least (3) working days in advance, or earlier if possible, on the Union Board and also will be announced through email and voicemail. The posting will include a sign-up sheet, brief description of the work to be done, and the Team Leader supervising the work. The Department Director or designee will determine which employees on the sign-up sheet possess the skills and experience required with preference given to the Team performing the work followed by seniority. Emergency and unforeseen

circumstances resulting in overtime shall be addressed by assigning staff based on seniority among the available employees possessing the required skills and experience to perform the work.

- 5. Notification - Notification to the Union’s President shall be provided by a copy of the payroll action form (or copy of time sheet for Temporary Agency Employees), being delivered to the Union mailbox within ten (10) days of the seasonal hire date.

Temporary full-time employees performing unit work and working twelve (12) consecutive months or more shall be considered members of the bargaining unit and shall be required to become members of the Union while they are a temporary employee. Such employees are entitled to the benefits of Union membership as described in this Agreement.

ARTICLE V - THE BASIC AGREEMENT

- A. The Union and employer will jointly support the mission as defined in Article 1, and attendant objectives and goals.

The Union and Management agree to establish and maintain a joint labor/management committee, consisting of up to five Union representatives appointed by the Union and up to five Management representatives appointed by Management. Meetings of this committee may be conducted at the request of either party and participants shall be known ahead of time. Meetings shall be informal and for the mutual exchange of ideas and problem solving.

The purpose of this committee is to provide a forum for the ongoing discussion of matters of interest to either party. Provided however, the committee is not to be used as a substitute for formal negotiations. The committee will not discuss any concerns which the Union or City assert must be taken through the established channels of authority but will refer these matters first through the proper channels. No decisions in this forum shall supersede any provisions of the contract unless formally ratified by the Union and the City.

- B. There will be no terminations without just cause. There will be no lockouts, strikes, slowdowns, or other interruptions of work. The parties will pursue productive flexibility in the design and staffing of jobs and services.
- C. If the City decides to contract out bargaining unit work not previously contracted out, which would result in the layoff of regular employees in the bargaining unit, then the City will comply with the following procedures. The City shall inform the Union President and Staff Representative of its intention to contract out. The Union President or Staff Representative will give the City notification within ten (10) working days of its desire to negotiate the effects of the said contracting out. Thereafter, the Union and the City shall negotiate in good faith on these issues. If, thirty (30) calendar days after the request from the Union, the City still decides to go ahead with the decision to contract out the work, it may do so. The parties shall continue to negotiate and seek resolution of any effects/issues which have not yet been resolved at that time. If the City decides to contract out the work resulting in a layoff, the

layoff shall be based strictly on seniority within the impacted work group. Layoffs shall be in accordance with Article XII.

- D. Union Business: The City shall afford Union Officers or Stewards a reasonable amount of time while on-duty to consult with appropriate management officials, Union Representatives or Counsel, and/or aggrieved employees, provided that the Union Officers or Stewards and or aggrieved employees contact their immediate supervisors, indicate the general nature of the business to be conducted, and request the necessary time. Such time will not be allowed if the City reasonably determines it will substantially impair City operations. Union Officers and Stewards will not use excessive time in handling such responsibilities. The Union shall give the City as much advance notice as reasonably possible of such time requests. The limitations of this section shall not apply to meetings called at the request of the City or regularly scheduled meetings between the Union and City such as Joint Labor/Management Committee meetings.

ARTICLE VI - EMPLOYEE BILL OF RIGHTS

It is the right of every employee:

- to be treated with respect;
- to expect cooperation in improving safety;
- to be informed of organizational objectives and goals; to be evaluated regularly and constructively;
- to participate in improving work methods;
- to participate in issue resolution procedures; and to share in the gains of the City.

The following code of ethics has been adopted by the employees:

As employees of the City of Mercer Island, we recognize that our first responsibility and obligation is to our employer and the citizens of Mercer Island. We further recognize that decisions and policies are made through proper team structure, so that the public has full confidence in our integrity and as employees. We recognize the need to work with a positive attitude, cooperate both within and outside our respective teams, and perform in a professional manner. We will perform our assigned tasks with both quality and quantity being considered. Punctuality, appearance, and attitude are priorities for us as City of Mercer Island employees.

ARTICLE VIII - TRAINING OPPORTUNITIES

Training is critical to the maintenance of an efficient competitive and quality work force and to employee advancement. Employees will be assigned by skills and experience to a variety of functions and services; they will be able to demonstrate maintenance of these service levels. Employees will be provided training opportunities adapted to local circumstances. We are committed to encouraging and allowing the employees the opportunity to voluntarily gain additional skills.

ARTICLE IX - ISSUE RESOLUTION/GRIEVANCE PROCEDURE

The success of our mutual relations under this Agreement depends on our commitment to address issues in a fair and responsible way. This is a matter of trust and is the method we have chosen to avoid an agreement of rigid and unnecessary detail which hinders both management freedom and employment opportunity. Through mutual pledges to approach concerns in a problem-solving manner, we have established the following procedures for all issues which may arise among us. We recognize that we can mutually agree to extend the time frames. The parties also recognize their responsibility to resolve any matter presented as expeditiously as possible in any step of the issue resolution process. The City and Union agree that issues are best resolved at the lowest level possible.

A grievance shall be defined as any formally submitted dispute involving application or interpretation of the Collective Bargaining Agreement. Failure by the Grievant or Union to timely file or process a grievance shall result in the grievance being waived. Failure by the City to timely process a grievance shall result in the grievance being moved automatically to the next step in the procedure. Time limits may be extended by mutual agreement between the parties. Employees will be paid scheduled rates for work time required for grievance resolution.

- Step 1. A grievance shall be presented in writing by the aggrieved employee and/or his/her Union Representative within ten (10) working days of the alleged violation to the employee's Team Leader. The Team Leader should consult and/or arrange a meeting if necessary, to resolve the grievance. The parties agree to make every effort to settle the grievance at this stage promptly. The Team Leader shall answer the grievance within ten (10) working days after receipt of the grievance.

- Step 2. If not resolved above, the written grievance shall be submitted to the Department Director by the aggrieved employee and/or the Union within ten (10) working days following completion of Step 1. The written grievance shall include a statement of the issue, facts of the case, section(s) of the Agreement violated, and remedy sought. A meeting may be arranged within ten (10) working days with the City and representatives of the Union. Following that meeting, the party responding to the grievance shall give his/her written response within ten (10) working days of the completion of the meeting.

- Step 3. If not resolved above, the grievance shall be submitted to the City Manager in writing within ten (10) working days of the Step 2 response. A meeting shall be arranged within ten (10) working days between the City, grievant and Union. The City Manager or his/her designee shall then submit a decision, in writing, on the grievance within ten (10) working days from the completion of the Step 3 meeting. Copies of the decision shall be provided to the grievant and the Union. If resolved, the basis for resolution shall be reduced to writing and signed by both parties.

- Step 4. In the event the Union is not satisfied with the decision of the City Manager the grievance may, within twenty (20) working days, be submitted by the Union to arbitration. If the parties fail to mutually agree upon an arbitrator, a list of seven (7) names of arbitrators from Washington and Oregon shall be requested from the Federal Mediation and Conciliation Service (FMCS). The parties shall alternately strike names until one (1) name remains, that person shall serve as the arbitrator. The arbitrator's decision shall be final and binding and shall not add or delete from the provisions of this Agreement. The arbitrator shall render a decision within thirty (30) days after the hearing has been

concluded. It is agreed that the expenses and fees of the Arbitrator shall be shared equally. Each party shall be responsible for their individual expenses and costs.

ARTICLE X - HOURS OF WORK

- A. The normal workweek for fulltime Union employees in the Maintenance Department and Parks and Recreation Department shall be five days of eight hours of work within seven consecutive 24-hour periods, exclusive of the meal period. The normal workweek for fulltime Union administrative employees shall be five days of seven and one-half hours of work, with a one-half hour of lunch paid, within seven consecutive 24-hour periods. The Employer does not guarantee either a minimum number of hours or a specific type of schedule. Alternate workweeks such as four (4) ten (10) hour days, or nine (9) workdays totaling eighty (80) hours in a two-week period, or other alternative work schedule are subject to the approval by the Department Director.

- B. Overtime - All time worked in excess of eight hours in any one day (or the scheduled day for an alternative work schedule as described in Article X, Section A) or forty in any one workweek shall be considered overtime and shall be paid for at the overtime rate of one and one-half times the straight-time rate of pay. Overtime shall be based on compensated hours. An employee may receive compensable time off in lieu of overtime pay at the rate of one and one-half for each hour worked. Accrued compensatory time may be used with the approval of the employee's team leader. The maximum accumulation of compensatory time shall be 40 hours. Any accrual over 40 hours shall be paid as overtime. While overtime should generally be approved by the team leader, it is recognized that there are unique circumstances under which it is not practical to obtain such prior approval. The ultimate determination of whether overtime is necessary or should be worked, however, remains with the City. Regular bargaining unit employees shall be offered prescheduled overtime prior to any seasonal or temporary employees being offered prescheduled overtime.

- C. Callback - Employees called back to work by the City shall receive a minimum of three (3) hours pay at time and one-half the employee's straight-time hourly rate for the work for which they are called back to perform. Any time worked in excess of three hours on such callback shall be paid for at one and one-half times the straight hourly rate of pay for actual hours worked. For purposes of this section only, hours worked shall be inclusive of travel time to and from the callback situation. This section applies only when such callback results in hours worked which are not annexed consecutively to the beginning or ending of the employees' workday. If the employee's shift starts less than two (2) hours from the time of the callback, he/she shall be paid at his/her normal rate of overtime and will not be eligible for the minimum callback rate of three (3) hours since the callback occurs within two (2) hours before the start of his/her regularly-scheduled shift.

Responding from Home (Telecommute Response) - Employees who respond electronically and remotely (telecommute response) outside of their normal hours of work to meet unexpected and/or time-sensitive City needs, including but not limited to system malfunctions, shall receive a minimum of one (1) hour of regular overtime pay for calls received and responses made within the same one-hour period. Calls and responses that exceed the one (1) hour minimum shall be compensated at the employee's regular overtime rate for actual time worked.

- D. Callback Use of City Vehicle - The City will provide the option of using a designated City vehicle while an employee is in an "on-call" status. The use of the designated City vehicle for on-call responses will follow the conditions set forth in the City Vehicle Use Policy within the City of Mercer Island Employee Handbook.
- E. Callback Mileage Practice - The Employer will pay callback mileage, for any callback of an employee who is not using the designated on-call vehicle, at not less than the rate paid to the general employees. The mileage rate shall be set at the rate established by the IRS. When the callback is not adjoining an employee's regular shift mileage shall be paid both ways. If the callback is adjoining an employee's regular shift mileage shall be paid one way only.
- F. On-Call Status - Employees who are in an "on-call" status shall be paid \$500 each week. A minimum of eight (8) eligible employees are needed to maintain voluntary participation in the "on-call" program. If the voluntary list falls below the required eight (8) eligible employees at the time of the annual sign up, the City and the Union shall meet to collaborate on addressing the shortage. If the collaboration is not successful in meeting the minimum volunteers, the City reserves the right to require participation in the "on-call" program for all non-probationary eligible employees. If the program remains in "voluntary" participation status for three (3) consecutive years beginning in 2016, employees who participate in the program for three (3) consecutive years will receive a cash award of \$500 in December, provided such employee is still employed by the City at the time of the cash award payout, of each year of consecutive participation. Voluntary participation includes working at least two (2) "on-call" weeks per year.

On-call status begins at the end of the employee's shift on Wednesday and concludes at the beginning of the employee's shift the following Wednesday, unless a different on-call period is agreed to by the Union and City. On-call employees shall carry an assigned pager/phone so as to be reachable after normal work hours to effectively resolve customer or public safety requests. On-call employees shall comply with this and any other procedures and policies as set forth in the most current version of the "Public Works Call Out Book". In the event of conflicting provisions of this agreement and the Public Works Call Out Book, this agreement prevails.

- G. Out of Class Pay - Vacancy - Extra duty pay may be paid to an employee who, for a period lasting more than two weeks, assumes substantial additional responsibilities when assigned to substitute in a vacant position, and the employee will be provided additional compensation for that higher classification. The vacancy may be occasioned by termination, leave of absence, extended illness or other reasons approved by the team leader.
- H. Out of Class Pay - Temporary Assignment - Employees who agree to assume responsibilities, authority and duties of a higher classification shall be compensated at the rate of pay for the higher rank, if required to perform these duties for five (5) or more consecutive workdays.

ARTICLE XI - DISCIPLINE

The City shall not discipline or discharge an employee without just cause. Disciplinary action will be tailored to the nature and severity of the offense. Management maintains the right to take disciplinary action as they deem appropriate. An employee shall not receive simultaneous discipline per incident or offense.

ARTICLE XII - SENIORITY

Seniority shall mean an employee's continuous length of service within the bargaining unit from most recent date of hire. Seniority shall not apply to an employee until the employee has completed the required probation period. Upon satisfactory completion of this probationary period, the employee shall be credited with seniority from the most recent date of hire.

Seniority shall be a determining factor in layoff, promotions and demotions provided such factors as skill and ability, experience, performance and quality of work are considered equal, except as otherwise provided in Article V. The Union President and the employee shall be notified thirty (30) days prior to a layoff. When there is a layoff in a given position classification in a department, and the person selected for layoff has previously performed work in a different classification, the City shall determine (using the same factors stated above) whether bumping should occur.

Employees shall be recalled from layoff in inverse order of layoff, assuming the employee meets the minimum qualifications of the job opening which is available. A person shall be eligible for recall from layoff for two years from the date of layoff.

All bargaining unit vacancies shall be sent via certified mail to employees on the recall list and said employees shall have five (5) working days from receipt to respond. Employees must keep the City informed of their current address. Any employee recalled shall be reinstated with full seniority credit for previous time employed with the City. Benefits not cashed out by the employee shall be reinstated along with accrual rates at the time of layoff. Seniority shall terminate upon resignation, retirement or discharge other than layoff, unless rehired (at the City's discretion) within the bargaining unit within a six (6) month period.

If it is determined to fill a bargaining unit vacancy through an outside posting, any bargaining unit employee who meets the minimum qualifications and applies shall be allowed to compete in the hiring process and shall remain in the pool of applicants through the initial interview.

ARTICLE XIII - WAGES

- A. Effective January 1, 2020, the wage rates set forth in Appendix A will be increased by 1.98 percent.
- B. Effective January 1, 2021, the 2020 wage rates will be increased by 90 percent of the First Half 2020 Seattle/Tacoma/Bellevue CPI - W (this semi-annual index will be released in July 2020), subject to a minimum increase of 1.5 percent and a maximum increase of 6.0 percent.
- C. New employees shall be hired at no higher than Step 2 of the advertised classification plan.
- D. All employees shall receive a step increase attributed to their classification within the pay plan on the annual anniversary date or date of their last promotion upon evidence of satisfactory performance including required certifications and licenses.

- E. The City may award employees exceptional performance pay. Such pay may be awarded for exceptional performance which saves the City money or otherwise furthers the principles established in the City's vision statement. The maximum award shall be an amount up to the equivalent of a step increase for that employee. Nominations may be made either by the team leader or by another employee in the bargaining unit who has knowledge of any employee's exceptional performance. All such nominations shall be submitted directly to the Department Director. Such a nomination shall be supported by appropriate documentation. The City Manager shall ultimately decide whether an award will be made.

ARTICLE XIV - HOLIDAYS

- A. The following holidays shall be recognized and observed in accordance with RCW 1.16.050:

- New Year's Day
- Martin Luther King Day
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day
- Thanksgiving Day
- Thanksgiving Friday
- Christmas Day
- Two (2) Floating Holidays (employee's choice)

When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday, when a holiday falls on a Sunday, the following Monday shall be observed as the holiday. A holiday shall be defined as eight (8) hours.

- B. An employee required to work on a holiday shall be paid time and one-half of his/her regular straight-time rate of pay plus eight hours holiday pay at his/her regular straight time rate of pay.
- C. In order to qualify for pay on such holiday, the employee must have worked a full day on the last day of his/her regularly scheduled workday prior to such holiday and a full day on his/her regularly scheduled workday following such holiday unless absent because of a bona fide illness or injury or on bona fide approved paid leave. The Employer may request a doctor's certificate or other verification of such illness from an employee.
- D. If a holiday falls on an employee's regular day off an extra day shall be granted to that employee. This extra day shall be taken on the scheduled workday nearest to the day of the Holiday.
- E. To be eligible for a floating holiday, an employee must have been employed for at least four (4) continuous months and have submitted a request to his/her immediate supervisor two (2) weeks prior to the date requested. Floating holidays may be taken in no less than four (4) hour increments. The floating holidays must be used during the calendar year (by December 31st of that year) or shall be forfeited.

- F. Employees who would otherwise be entitled to a holiday but are on leave without pay will receive compensation for the holiday provided the employee has been or will be on pay status ten (10) working days during the month (not counting the holidays) and the leave of absence without pay has been granted for no more than four days.

The City will determine which key positions must be filled and the hours for which those positions will be filled. The City will work with employees to try to accommodate all requested scheduling options. However, if an employee’s requested scheduling option will leave a key position unfilled for part of the regularly scheduled workday, the City reserves the right to reject a request and schedule employees in a manner that fills all key positions while attempting to fulfill employees’ scheduling requests. When possible, any scheduling conflicts created by employees’ requests will be resolved by giving the more senior employees’ requests priority.

ARTICLE XV - VACATIONS

- A. Vacations - Vacations with pay shall be provided for all full-time employees in accordance with the following schedule:

UPON COMPLETION OF PAID VACATION DAYS:

6 months	6 working days
1 year - 5 years	12 working days per year
6 years - 10 years	15 working days per year
11 years - 15 years	18 working days per year
16 years - 19 years	21 working days per year
20 years plus	24 working days per year

- B. Vacation Accrual - An employee is eligible to take vacation after completing six months of continuous service. Vacation may be allowed up to the limit of the amount credited retroactive to the date of employment. An employee will earn one full day of credit for the month he/she begins employment if the date of hire is between the 1st and 10th of the month; one-half day if he/she begins between the 11th and 20th; and none after that.
- C. Vacation Carryover - On December 31 of each year, employees are eligible to carry over to the following year up to 240 hours of vacation time. Vacation time in excess of 240 hours each year must be used prior to December 31st, cashed out or carried over.
- D. According to the following procedure for special circumstances. The employee shall be able to request additional vacation above 240 hours to be carried over. The request shall be submitted to the Team Leader and the Team Leader will take the request to the Department Director with a recommendation for approval or disapproval. The Director shall make the final decision on vacation carryover above 240 hours.
- E. Vacation Pay Out - After six (6) months of continuous service, an employee who leaves the employment of the Employer is eligible for a vacation pay out, provided he or she has given at least two weeks' notice in the case of voluntary resignation. Under unusual circumstances, the City Manager may waive the notice requirement. Payment of accrued vacation will be based upon vacation leave not taken to date of separation, not to exceed 240 hours. In case of

death, compensation for accrued unused vacation credits shall be paid, in the same manner, to the beneficiaries.

- F. Vacation Requests - On or before the 1st of April of each year, the Employer shall post a list on which the employees shall designate the dates they wish to apply to their vacation period. The list shall be posted until the 15th of April. In the event there is a conflict in dates requested, seniority shall apply. Notification of approved or rejected vacations shall then be provided within one (1) week. After the dates have been approved, no person can be bumped by a more senior employee unless by mutual agreement.

The Employer retains the right to approve vacation requests in a manner that will least interfere with work demands. After April 15th of each year, requests shall be approved on a case by case basis. Vacation requests shall be responded to as soon as possible, but not longer than two (2) weeks after submission.

- G. Vacation Cash-Out - After five (5) years of service, an employee shall be able to annually cash out up to 40 hours of vacation time at their current rate of pay. After ten (10) years of service, an employee shall be able to annually cash out up to 100 hours of vacation time at their current rate of pay.

ARTICLE XVI - SICK LEAVE

- A. Sick Leave - Full-time employees shall accumulate sick leave credits at the rate of eight hours for each completed month of service to a maximum of 960 hours. An employee will earn one full day of credit for the month he/she begins employment if the date of hire is between the 1st and 10th of the month, one-half day if he/she begins between the 11th and 20th; none thereafter during the initial month of employment.

1. Sick Leave Guidelines:

- a. The purpose of sick leave is to afford all employees financial protection from time lost from work due to an illness or accident. Although sick leave is accrued on a monthly basis similar to vacation time, its intended use is not to provide for discretionary time off, but rather to help ensure the employee has accumulated sufficient sick time to cover time off when a real health problem arises.
- b. Vacation and personal leave time can be taken (for sick leave as defined by this Article) when an employee has exhausted their sick leave bank.
- c. An employee must notify his/her team leader of any absence prior to the commencement of his/her regular work period. This notification requirement may be waived by the Department Director upon showing of good cause. Failure to promptly notify may result in denial of sick leave pay. Authorized uses of sick leave are:

- (1) Bona fide personal illness or physical incapacity resulting from an illness, injury or for the period of disability as a result of pregnancy.

- (2) Illness or injury involving a person immediately related to the employee by blood, marriage or established foster relationship by way of familial connections.
 - d. Abuse of Sick Leave - Abuse of sick leave is defined as wrong or improper use. Abuse of sick leave will be evaluated on a case by case basis between the employee and his/her team leader and may result in disciplinary action. Some examples of sick leave use that could cause supervisors to be concerned of possible problems or abuse are:
 - (1) Pattern of sick leave use adjoining weekends, holidays, and vacation time.
 - (2) Consistently high sick leave use with no doctor's report, major disability, illness, or injury.
 - (3) Inability to provide a medical reason from a doctor if one has been requested by a team leader or Department Director.
- 2. Absence for part of a day for reasons in accordance with sick leave provisions shall be charged against accrued sick leave in one-half hour increments. Holidays and other regular days off shall not be charged against sick leave.
- 3. In any case where an employee shall be entitled to benefits or payments under the Worker's Compensation Act or similar legislation of the State of Washington or any other governmental unit, the Employer shall pay only the difference between the benefits and payments received by such employee and the regular rate of compensation that employee would have received from the Employer if able to work. The foregoing payment or contribution by the Employer shall be limited to the period of time that such employee has accumulated sick leave credits hereinabove specified. However, no accrued sick leave shall be lost during the first month of such industrial disability (see Ordinance #37 1.102.10) or as subsequently amended in codification.
- 4. Wellness Incentive - Employees will receive the following Wellness Incentive:
 - Employees using between 6% - 10% of their non-protected sick leave balance as of the end of the year, receive 8 hours added to their vacation balance on January 1st
 - Employees using between 1% - 5% of their non-protected sick leave balance as of the end of the year, receive 12 hours added to their vacation balance on January 1st
 - Employees using 0% of their non-protected sick leave during the calendar year receive 14 hours added to their vacation balance on January 1st.

Under Washington State Law, protected sick leave amounts to 52 hours annually for full-time employees (1 hour of sick leave earned for every 40 hours worked).

Part-time employees receive the same wellness incentive on a pro-rated basis.

- B. Bereavement Leave - In the event of a death in the immediate family, at the employee's request, three days off with pay shall be granted to attend the funeral. Additional time off may be granted up to a maximum of five days for such leave to be applied to accrued unused sick leave upon approval of the Department Director. Immediate family shall be defined as spouse/domestic partner, children, parents, siblings, grandparents, grandchildren or spouse's/domestic partner's said relations. However, under unusual circumstances, the Department Director may more broadly construe this definition as it applies to this section to other persons living within the employee's household; or others related to the employee by blood or marriage, or to established foster relationships having attributes of familial ties.
- C. Family Leave - The City shall abide by all state and federal law regarding Family Leave. Employees on Family Leave shall be required to use accrued sick leave but shall have the option of using any other paid leaves or unpaid leaves after exhaustion of any sick leave balances. The family medical leave begins once the employee is absent, whether scheduled or unscheduled, for ten (10) working days. Specific information regarding all leaves will be available through the Human Resources Department.

ARTICLE XVII - OTHER LEAVES

- A. Jury Duty - Time off with pay will be granted for jury duty to regular full-time employees. The employee shall be paid their regular salary but must submit the fees received for such service to the Payroll department. The employee must give the Employer prompt notice of the call for jury duty.
- B. Subpoena - Appearance before a court, at a deposition, legislative committee or quasi- judicial body as a witness in response to a subpoena or other directive shall be approved as authorized leave with pay, unless the matter involves the employee as a party or petitioner. The employee shall be paid their regular salary, but must submit the fees received for such service to the Payroll department. This section shall not apply to any proceedings called for under Article IX, except that the Union shall be entitled to subpoena one (1) witness with pay for an issue resolution hearing.
- C. Personal Leave - Each regular full-time employee is given credit for three (3) days (24 hours) of personal leave at the beginning of each calendar year. Personal leave is intended to be used in segments of no less than ½ day (4 hours). The request for personal leave needs no reason or explanation but will be approved by the team leader prior to use. In the event of an unforeseeable occurrence, an employee may request the immediate use of personal leave. Employees may be required to share the reason for the absence with his or her team leader when using personal leave to cover an unforeseeable occurrence. New hired employees hired between January 15th and June 30th shall receive fifty percent (50%) of their personal leave to use after completion of their first six months of their probationary period. New hired employees hired after June 30th shall receive no personal leave days for the first calendar year of employment.

- D. Personal Leave Cash-Out - An employee with more than three (3) years seniority may cash out his/her personal leave days annually.

- E. Military Leave.
The City and the Union acknowledge their mutual responsibility for compliance with the Uniformed Services Employment and Reemployment Act of 1994 (USERRA), and the laws of the State of Washington regarding Veterans as outlined in the Washington State Military Family Leave Act (MFLA), RCW 38.40.060, and any amendments thereto.
 - 1. Every employee who is a member of the Washington National Guard or of the United States Armed Forces or Reserves shall be granted military leave, with compensation, for a period not exceeding twenty-one (21) calendar days during each military year (October 1 through September 30), or as designated by law.
 - 2. Health insurance coverage during military leave will be administered in accordance with USERRA
 - 3. Military leave shall be granted in order that the employee may engage in officially ordered military duty and while going to or returning from such duty. Such military leave is in addition to vacation leave benefits.
 - 4. Additionally, any employee, who is a member of the Washington National Guard and who is ordered to active duty, shall be reinstated thereafter as provided for under applicable law.
 - 5. Leave for military spouses during deployment shall be administered in accordance with MFLA, Family Medical Leave Act (FMLA), and RCW 49.77.030

ARTICLE XVIII - INSURANCE

- A. Health Insurance - The Employer shall pay 100% of the monthly premium after a required employee premium-share payment of \$10.00 for eligible employees and 75% of the monthly premiums for an employee's eligible dependents for the Association of Washington Cities (AWC) - Regence Blue Shield Health First 250 or HDHP Medical Plan or the Kaiser Permanente (Group Health) 200 or HDHP Medical Plan and Washington Dental Service Plan E or Willamette Dental. The employee shall be responsible for an initial premium-share payment of \$10.00 and 25% of dependent premiums.
 - 1. Beginning with the effective date of the change to the AWC Regence Blue Shield Health First 250 Medical plan or the Kaiser Permanente 200 Plan, the Employer shall contribute one hundred (100.00) dollars per month to each employee's VEBA trust account.
 - 2. Beginning with the effective date of the change to the AWC Regence Blue Shield High Deductible Health Plan or the Kaiser Permanente HDHP, the Employer shall contribute three hundred (300.00) dollars per month to each employee's VEBA trust account.
 - 3. Opt-out of medical coverage. Employees who waives the right to obtain medical insurance through the city and who provides proof of credible coverage through his/her spouse or other source shall be entitled to receive 50% of the premiums that

would be paid by the city, contributed to their HRA-VEBA account. (Examples – (1) Employee plus spouse would receive an amount equal to 50% of the premiums for him/her and his/her spouse minus the 25% employee contribution for the dependent. (2) Employee with two children and spouse would receive 50% of the equivalent of those premiums, minus the 25% employee contribution for dependents).

- 4. The Employer shall pay 100% of the monthly premium for vision insurance for an employee and their covered dependents under AWC - Vision Services Plan (VSP) Low Option Plan.
- 5. The City may make certain changes to the health care plan mandated by the healthcare provider. The City may reopen the Agreement for the limited purpose of obtaining changes necessitated by state or federal health care reform.

In recognition of the impacts of possible future rate increases during the time of this Agreement, the Employer commits to work diligently to explore programs and strategies to decrease costs while maintaining benefits levels, where possible. If, as a result of these efforts, positive improvements are implemented for non-represented employees, the Employer commits to extending the same cost benefits to AFSCME employees as well.

- B. Worker's Compensation - The Employer shall provide Worker's Compensation or equivalent for all employees covered by this Agreement.
- C. Life and Long-Term Disability - The Employer shall provide employees of this bargaining unit with the same Long-Term Disability Insurance, Accidental Death and Dismemberment, and Term Life Insurance as is provided to non-represented employees.
- D. Employee Assistance Program (EAP) – The Employer shall provide employees of this bargaining unit with the same EAP services through the Association of Washington Cities that is provided to non-represented employees.

ARTICLE XIX - MISCELLANEOUS PROVISIONS

- A. Retirement - All eligible employees shall be covered under the Public Employees' Retirement System.
- B. Rain Gear - One set of rain gear (jacket, pants and rubber boots) will be furnished to each employee required to work outdoors in inclement weather, every twenty-four (24) months, unless the rain gear is destroyed through work activities. The City reserves the right to determine the brand of rain gear to be provided. When an employee leaves the employ of the City, regardless of reason, the employee must return the rain gear to the City.
- C. Boots & Clothing Allowance - The City will provide a combined annual boot and clothing allowance on a reimbursement basis of up to \$450 for all AFSCME field employees. Administrative AFSCME employees are not eligible for such reimbursement unless their position requires working in the field. Unused amounts up to two hundred dollars (\$200)

may be carried over from 2012 to 2013 (for a maximum of \$650). Beginning in 2014, unused amounts up to one hundred dollars (\$100) may be carried over to a subsequent year (for a maximum of \$550). All purchases from non-City contracted vendors must be consistent with the AFSCME contract and will require submittal of an itemized receipt. Employees must complete a City of Mercer Island AFSCME Uniform Employee Reimbursement Request Form approved by the Employee's Supervisor and Department Director prior to reimbursement.

Employees shall use the "Uniform Menu" approved for their department for ordering clothing pursuant to this allowance. To ensure compliance with City policies, field employees are required to wear at least one item of clothing that has the City's logo visible at all times. Non-field employees that work in positions visible to the public may request and will be provided, at no charge, clothing with a visible City logo as approved by the Department Director. All purchases from non-City contracted vendors must be consistent with the AFSCME contract and will require submittal of an itemized receipt.

- D. Commercial Driver's License - The City will cover the cost for the physical and commercial driver's license (CDL) certifications for those employees the City requires to have a CDL qualified license. The minimum required CDL is Class B with an air brake endorsement. Employees may be required by the City to have a tanker endorsement.
 - 1. The City may select any doctor/clinic of its choice to perform the CDL physical.
 - 2. The physical and CDL testing will be conducted on City time. However, should an employee fail the CDL test, the retake of the test is at the employee's expense and on the employee's time.

- E. Certifications - The City will pay for all certifications required to meet qualification for a specific position held by the employee. Upon approval of the appropriate team leader, the City agrees to pay for additional certifications.

ARTICLE XXI - TERM OF AGREEMENT

This Agreement shall be in effect from 12:01 a.m. January 1, 2020, until 11:59 p.m. December 31, 2021. The parties intend that this Agreement shall replace the existing labor spirit of the Agreement which describes our new relationship and to continue the pay matrix plan beyond the term of this Agreement. We recognize that there will be good faith bargaining on benefits and other issues at the end of the term to which we have agreed.

Any provision of the Agreement invalidated by law or governmental proclamation is severable and negotiable and shall not affect the validity of other provisions of this Agreement. The Agreement continues in effect during good faith bargaining.

The City and Union agree the Employee Handbook shall apply to Union members, to the extent it is not inconsistent with this Agreement. In the event of a conflict, the Agreement shall prevail.

Signed this _____ day of _____, 2019.

FOR THE UNION:

FOR THE CITY:

Luke Jacobs
Local #21-M President

Jessi Bon
Interim City Manager

ATTEST:

Michael Rainey
WSCCCE Staff Representative

Deb Estrada
City Clerk

APPROVED AS TO FORM:

Bio Park
Interim City Attorney

2020 AFSCME PAY SCALE - Appendix A

Work 40 hours per week; 2088/year
2020 COLA = 1.98%

	2020	2020	2020	2020	2020
Public Works & Parks Maintenance Employees	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
	Entry Level	12 mos	24 mos	36 mos	48 mos
Team Member I (ROW, Utilities & PM Teams) Water Service Specialist	\$ 30.49	\$ 32.01	\$ 33.27	\$ 34.61	\$ 35.99
CRT Technician	\$ 31.68	\$ 33.27	\$ 34.60	\$ 35.99	\$ 37.43
Fleet Mechanic	\$ 33.26	\$ 34.94	\$ 36.34	\$ 37.79	\$ 39.30
Team Generalist	\$ 34.95	\$ 36.69	\$ 38.16	\$ 39.69	\$ 41.27
Foreman	\$ 37.74	\$ 39.62	\$ 41.21	\$ 42.86	\$ 44.57
<u>AFSCME Administrative Employees</u>					
<i>Admin Employees</i>					
Front Counter / Admin Support Assistant (Contract Position)	\$ 23.71	\$ 24.66	\$ 25.65	\$ 26.16	\$ 26.68
Customer Service Rep	\$ 26.66	\$ 27.71	\$ 28.84	\$ 29.39	\$ 29.99
Administrative Assistant / Accounting Specialist	\$ 29.03	\$ 30.20	\$ 31.40	\$ 32.03	\$ 32.67
Utility Billing Lead	\$ 34.95	\$ 36.69	\$ 38.16	\$ 39.69	\$ 41.27
<i>Technicians</i>					
Building Inspector	\$ 36.51	\$ 37.98	\$ 39.49	\$ 40.27	\$ 41.09
Code Enforcement Officer	\$ 35.49	\$ 36.92	\$ 38.40	\$ 39.16	\$ 39.95
Electrical/Building Inspector	\$ 38.97	\$ 40.53	\$ 42.15	\$ 42.98	\$ 43.84
MICEC Custodian	\$ 22.71	\$ 23.66	\$ 24.65	\$ 25.14	\$ 25.66
Permit Technician	\$ 29.02	\$ 30.20	\$ 31.40	\$ 32.03	\$ 32.67
Permit Coordinator	\$ 31.34	\$ 32.58	\$ 33.89	\$ 34.58	\$ 35.26
Senior Electrical/Building Inspector	\$ 42.47	\$ 44.19	\$ 45.95	\$ 46.86	\$ 47.80
Utilities Inspector / Water Quality Technician	\$ 38.22	\$ 39.74	\$ 41.33	\$ 42.17	\$ 42.99
<i>Employees move through the pay scale every 12 months by "meeting" performance expectations.</i>					



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5638
December 10, 2019
Consent Calendar**

AGENDA BILL INFORMATION

TITLE: RECOMMENDED ACTION:	AB 5638: 2019 Minor Code Amendments (Ordinance No. 19C-21, 2 nd Reading & Adoption) Adopt Ordinance No. 19C-21 amending Title 19 to clarify development and administrative standards and to create a procedure to docket and consider suggested amendments to development regulations.	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
---	--	---

DEPARTMENT: STAFF: COUNCIL LIAISON: EXHIBITS: CITY COUNCIL PRIORITY:	Community Planning and Development Evan Maxim, Director n/a 1. Ordinance No. 19C-21 with Attachment A 3. Support the Leadership Team's Work Plan
---	--

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

On December 3, 2019, the City Council reviewed AB 5630 and the attached Ordinance No. 19C-21, which addresses minor code amendments related to the following subjects:

1. Clarification of side yard terminology;
2. Clarification of roof pitch when allowing eaves into non-conforming setbacks;
3. An allowance for a driveway that exceeds 30 inches in height in a yard where necessary to provide vehicle access to the house;
4. Establishing a height limit in the MF-2L zone and a methodology for calculating the height limit in the MF-2, MF-3, PBZ, and CO zones;
5. Correcting a grammatical error that indicated that all development should be avoided;
6. Revising the term used to describe the City's determination of the amount of required parking from "variance" to "modification";
7. Allowing the City to issue a decision on a project or permit review when requests for a correction are repeatedly not addressed;
8. Correcting a cross reference in design review;
9. Creating a definition of irregular lot;
10. Amending the definition of lot coverage to include eaves and roof overhangs; and,

11. Creating a process whereby any person may propose the docketing of a code amendment for review by the City Council.

Following review, the City Council provided additional direction regarding the proposed amendments, which have been incorporated into Attachment A to Exhibit 1.

RECOMMENDATION

Adopt Ordinance No. 19C-21 amending Title 19 of the Mercer Island City Code to clarify development and administrative standards and to create a procedure to docket and consider suggested amendments to development regulations.

**ORDINANCE NO. 19C-21
CITY OF MERCER ISLAND**

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, AMENDING TITLE 19 MERCER ISLAND CITY CODE TO CLARIFY DEVELOPMENT AND ADMINISTRATIVE STANDARDS AND TO CREATE A PROCEDURE TO DOCKET AND CONSIDER SUGGESTED AMENDMENTS TO DEVELOPMENT REGULATIONS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Mercer Island City Code (MICC) establishes development regulations that are intended to result in the implementation of the Mercer Island Comprehensive Plan pursuant to RCW 36.70A.040; and,

WHEREAS, the Mercer Island City Council determined that amendments to the development regulations were necessary to ensure that residential development was occurring consistently with the provisions of the Mercer Island Comprehensive Plan; and,

WHEREAS, the Mercer Island City Council directed the Planning Commission to periodically review Title 19 MICC and recommend amendments to clarify the regulations to the City Council; and,

WHEREAS, the Growth Management Act requires the City to adopt procedures to docket and consider suggested development regulation amendments; and

WHEREAS, the Mercer Island Planning Commission held a public hearing on September 18, 2019, and considered public comment received prior to the close of the public hearing; and

WHEREAS, the Mercer Island Comprehensive Plan Land Use Element establish numerous goals and policies that are implemented through the adoption of revised development standards; and,

WHEREAS, a SEPA Determination of Non-Significance was issued by the City on August 12, 2019; and,

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the development regulations on September 26, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. **Adoption of amendments to Title 19 of the Mercer Island City Code.** The amendments to Title 19 of the Mercer Island City Code as set forth in Attachment “A” to this ordinance are hereby adopted.

Section 2. **Codification of the regulations.** The City Council authorizes the Community Planning and Development Director and the City Clerk to correct errors in Attachment A, codify the regulatory provisions of the amendment into Title 19 of the Mercer Island City Code, and publish the amended code.

Section 3. Interpretation. The City Council authorizes the Community Planning and Development Director to adopt administrative rules, interpret, and administer the amended code as necessary to implement the legislative intent of the City Council.

Section 4. Severability. If any section, sentence, clause, or phrase of this ordinance or any city code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or the amended code section.

Section 6. Publication and Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect and be in full force five days after the date of publication.

PASSED by the City Council of the City of Mercer Island, Washington at a special meeting on the 10th day of December 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio Park, Interim City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

Attachment A

Minor Code Amendments

- 1 RESIDENTIAL
- 2 19.02.020 Development standards
- 3
- 4 MULTIPLE-FAMILY
- 5 19.03.010 Multiple-family
- 6
- 7 COMMERCIAL
- 8 19.04.010 Planned business zone - PBZ
- 9 19.04.020 Commercial offices
- 10 19.04.050 Business - B
- 11
- 12 PROPERTY DEVELOPMENT
- 13 19.09.100 Preferred practices
- 14
- 15 ADMINISTRATION
- 16 19.15.030 Land use review types
- 17 19.15.110 Response to comments and extensions
- 18 19.15.220 Design review and the design commission
- 19 19.15.230 Comprehensive plan amendments
- 20 19.15.250 Code amendment
- 21 19.15.260 Review procedures for comprehensive plan amendments, reclassification of property,
- 22 and code amendments
- 23 DEFINITIONS
- 24 19.16.010(L) "L" definitions
- 25
- 26 "Normal Text" is existing code language
- 27 "~~Strikethrough Text~~" is existing code language that will be deleted
- 28 "Underline Text" is new code language that will be added
- 29 "... " indicates that existing code language is omitted and will not be amended
- 30
- 31 **MICC 19.02.020 Development standards**
- 32 ...
- 33 C. Yard Requirements.
- 34 1. Minimum. Except as otherwise provided in this section, each lot shall have front, rear, and side
- 35 yards not less than the depths or widths following:
- 36 a. Front yard depth: 20 feet or more.
- 37 b. Rear yard depth: 25 feet or more.
- 38 c. Side yards shall be provided as follows:
- 39 i. ~~Total DepthWidth.~~
- 40 (a) For lots with a lot width of 90 feet or less, the sum of the side yards' ~~depth~~ width
- 41 shall be at least 15 feet.
- 42 (b) For lots with a lot width of more than 90 feet, the sum of the side yards' ~~depth~~
- 43 width shall be a width that is equal to at least 17 percent of the lot width.
- 44 ii. ~~Minimum Side Yard DepthWidth.~~
- 45 (a) ~~The minimum side yard depth-width abutting an interior lot line is five feet or 33~~
- 46 percent of the aggregate side yard total ~~depth~~ width, whichever is greater.

Attachment A

Minor Code Amendments

(a) ~~The minimum side yard depth abutting a street is five feet.~~

3. Intrusions into Required Yards.

a. Minor Building Elements.

- i. Except as provided in subsection (C)(3)(a)(ii) of this section, porches, chimney(s) and fireplace extensions, window wells, and unroofed, unenclosed outside stairways and decks shall not project more than three feet into any required yard. Eaves shall not protrude more than 18 inches into any required yard.
- ii. No penetration shall be allowed into the minimum side yard setback abutting an interior lot line except where an existing flat-roofed house has been built to within 18 inches of the interior side yard setback line and the roof is changed to a pitched roof with a minimum pitch of 2:12 or steeper~~4:12~~, the eaves may penetrate up to 18 inches into the side yard setback.

b. Hardscape and Driveways.

- i. Hardscape and driveways not more than 30 inches above existing grade or finished grade, whichever is lower, may be located in any required yard, provided that driveways may exceed the 30-inch limit when a permit applicant demonstrates the proposed height is the minimum feasible to meet the standards in MICC 19.09.040.

MICC 19.03.010

E. *Building Height Limit.*

- ~~1. MF-2L: No building shall exceed 24 feet or two stories in height (excluding daylight basements), whichever is less, except appurtenances may extend to a maximum of five feet above the height allowed for the main structure.~~
- ~~2.1. MF-2, MF-3: No building shall exceed 36 feet or three stories in height, whichever is less, except appurtenances may extend to a maximum of five feet above the height allowed for the main structure.~~
2. Building height for buildings within the MF-2 and MF-3 zone shall be calculated using the method described in MICC 19.11.030(A)(3).
3. Buildings within the MF-2L shall meet the following standards:
 - a. No building shall exceed 24 feet in height above the average building elevation to the highest point of the roof; and
 - b. The maximum building facade height on the downhill side of a sloping lot shall not exceed 24 feet in height. The building facade height shall be measured from the existing grade or finished grade, whichever is lower, at the furthest downhill extent of the proposed building, to the top of the exterior wall facade supporting the roof framing, rafters, trusses, etc.

MICC 19.04.010

Attachment A
Minor Code Amendments

- 1 E. *Development Standards – Nonresidential.*
- 2 1. *Building Height Limit.* No nonresidential structure shall exceed 36 feet in height, calculated using
- 3 the method described in MICC 19.11.030(A)(3).
- 4
- 5 2. *Minimum Parcel Area Requirements.* There shall be no minimum parcel size for nonresidential
- 6 uses.
- 7 3. *Parking Requirements.* All nonresidential uses permitted in this zone shall comply with the
- 8 parking requirements set out in MICC 19.04.040.

9
10 ...

- 11
- 12 F. *Development Standards – Residential.*
- 13 1. *Criteria for Residential Units.* The intent for residential development in the PBZ is for a variety of
- 14 housing units smaller in size than the surrounding neighborhood, developed in a planned and
- 15 coordinated manner. Except as otherwise provided in this section, no residential units shall be
- 16 located under or over another unit or within a commercial structure.
- 17 2. *Building Height Limit.* No residential building shall exceed 30 feet in height, calculated using the
- 18 method described in MICC 19.11.030(A)(3). Antennas, lightning rods, plumbing stacks, flagpoles,
- 19 electrical service leads, chimneys and fireplaces and other similar appurtenances may extend to a
- 20 maximum of five feet above the height allowed for the main structure.

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22
23 **MICC 19.04.020**

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- 25 C. *Building Height Limit.*
- 26 1. Structures shall not exceed 36 feet in height, calculated using the method described in MICC
- 27 19.11.030(A)(3).

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31 **MICC 19.04.050**

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- 33 D. *Building Height Limit.* Maximum allowable building height shall be the lesser of 1) three stories or 2)
- 34 36 feet, - calculated using the method described in MICC 19.11.030(A)(3), whichever is less.

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38 **MICC 19.09.100**

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- 40 B. Development, including roads, walkways and parking areas, in critical areas, should be avoided, or if
- 41 not avoided, adverse impacts to critical areas will be mitigated to the greatest extent reasonably
- 42 feasible.

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Attachment A

Minor Code Amendments

1 **MICC 19.15.030 Table A**

Type I	Type II	Type III	Type IV
Table A. Land Use Review Type			
<ul style="list-style-type: none"> • Home business • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption¹ • Critical areas determination (steep slope alteration) • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate 	<ul style="list-style-type: none"> • Modified wireless communication facilities (6409 per 47CFR 1.40001) • Lot line revision • Setback deviations • Final plat^{2,3} • Code official design review • Accessory dwelling unit • Parking variances⁷ <u>modification</u>⁷ (reviewed by city engineer) 	<ul style="list-style-type: none"> • New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical areas determination (wetland/watercourse buffer averaging/reduction) • Temporary encampment⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit⁵ • Shoreline substantial development permit¹ • Shoreline revision (substantial development)¹ 	<ul style="list-style-type: none"> • Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking variances⁷ <u>modifications</u>⁷ (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP)⁶ • Shoreline variance⁶ • Shoreline revision (variance and SCUP)

2 ¹Appeal will be heard by the Shorelines Hearings Board.
 3 ²Decision is made by city council after discussion at a public meeting.
 4 ³A notice of decision will be issued for a final long plat.
 5 ⁴A public meeting is required.
 6 ⁵Major single-family dwelling building permits are subject only to the notice of application process. A notice of decision will be provided to parties of record.
 7 ⁶Hearing examiner will forward a recommendation to the Washington State Department of Ecology for Ecology's decision.
 8 ⁷Parking modifications are issued pursuant to the provisions of MICC 19.11.130.

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Attachment A
Minor Code Amendments

1 **MICC 19.15.110**

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5 C. *Deadline Extension.* Applicants may request an extension to provide requested materials. Extension
6 requests shall be in writing, shall include a basis for the extension and shall be submitted in writing
7 prior to expiration of the time limit. The code official is authorized to extend the time limit in
8 writing. There is no limit to the number of extensions an applicant may be granted, however, the
9 total time limit for a response shall not exceed 180 days unless there is an extenuating
10 circumstance. An extenuating circumstance must be unexpected and beyond the control of the
11 applicant.

12 ~~C.D.~~ *Limit on Number of Review Cycles.* The code official may issue a decision when three (3) or more
13 requests for the same information have remained unaddressed by materials submitted by the
14 applicant. The official or entity shall provide written notification to the applicant, informing them
15 that a decision will be issued and providing the opportunity for one set of information to be
16 submitted before the decision is issued. The intent of this provision is to allow the code official to
17 issue a decision when the content of submittal materials demonstrates an inability or unwillingness
18 to meet applicable code requirements after repeated requests by the City. It is not the intent of this
19 section to limit good faith efforts to meet code requirements by submitting new information in
20 pursuit of approval.

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24 **MICC 19.15.220**

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28 C. *Design Review Procedure.*

29 1. *General.*

30 a. *Intent.* The intent of the design review process is to ensure that regulated development in
31 all land use zones complies with design objectives and standards established in Chapters
32 19.11 and 19.12 MICC.

33 b. *Scope.* No building permit or other required permit shall be issued by the city for
34 development of any regulated improvement without prior approval of the design
35 commission or code official as authorized pursuant to this chapter. Deviations from a plan
36 approved by the design commission or code official shall be permitted only upon the filing
37 and approval of an amended plan. In no instance shall the design commission's or code
38 official's action conflict with the city's development code or other applicable city ordinances
39 or with state or federal requirements. Certain development and activities that do not
40 require a permit are subject to design review as provided in subsection (C)(1)(c) of this
41 section.

42 c. *Review Authority.*

43 i. The following development proposals shall require design commission review:

- 44 (a) New buildings;
- 45 (b) Any additions of gross floor area to an existing building(s);

Attachment A

Minor Code Amendments

- (c) Any alterations to an existing building that will result in a change of 50 percent, or more, of the exterior surface area;
 - (d) Any alterations to a site, where the alteration will result in a change to the site design that affects more than 50 percent of the development proposal site; and
 - (e) Any alterations to existing facades, where the building is identified by the city as an historic structure.
- ii. All other development proposals requiring design review and not requiring design commission review under ~~MICC 19.15.220(C)(1)(c)(i)subsection A~~ of this subsection shall be reviewed by the code official. The code official shall have the authority to determine that an application normally reviewed by code official shall require design commission review and approval, based on factors such as the scope, location, context, and visibility of the proposed change or modification; and

15 **19.15.230 Comprehensive plan amendments and docketing procedures.**

18
19 D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and
20 maintaining a list of suggested changes to the comprehensive plan or code -in a manner that will ensure
21 such suggested changes will be considered by the city and will be available for review on the City's
22 website by the public. The following process will be used to create the docket:

- 23 1. Preliminary Docket Review. By September 1, the city will issue notice of the annual
24 comprehensive plan and code amendment cycle for the following calendar year. The
25 amendment request deadline is October 1. Proposed amendment requests received after
26 October 1 will not be considered for the following year's comprehensive plan and code
27 amendment process but will be held for the next eligible comprehensive plan and code
28 amendment process.
 - 29 a. The code official shall compile and ~~maintain post~~ for public review a list of suggested
30 amendments and identified deficiencies as received throughout the year.
 - 31 b. The code official shall review all complete and timely filed applications and
32 suggestions proposing amendments to the comprehensive plan or code -and place these
33 applications and suggestions on the preliminary docket along with other city-initiated
34 amendments to the comprehensive plan or code.
 - 35 c. The planning commission shall review the preliminary docket at a public meeting and
36 make a recommendation on the preliminary docket to the city council each year.
 - 37 d. The city council shall review the preliminary docket at a public meeting. By
38 December 31, the city council shall establish the final docket based on the criteria in
39 subsection E of this section. Once approved, the final docket defines the work plan and
40 resource needs for the following year's comprehensive plan amendments.
- 41 2. Final Docket Review.
 - 42 a. Placement on the final docket does not mean a proposed amendment will be
43 approved. The purpose of the final docket is to allow for further analysis and
44 consideration by the city.
 - 45 b. All items on the final docket shall be considered concurrently so that the cumulative
46 effect of the various proposals can be ascertained. Proposed amendments may be

Attachment A
Minor Code Amendments

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considered at separate meetings or hearings, so long as the final action taken considers the cumulative effect of all proposed amendments to the comprehensive plan.

c. The code official shall review and assess the items placed on the final docket and prepare recommendations for each proposed amendment. The code official shall be responsible for developing an environmental review of the combined impacts of all proposed amendments on the final docket, except that applicants seeking a site-specific amendment shall be responsible for submittal of a SEPA environmental checklist and supporting information. The applicant will need to submit SEPA and any other accompanying legislative actions such as a rezone or a code amendment at this time. The code official may require an applicant to pay for peer review and/or additional resources needed to review the proposal. The code official shall set a date for consideration of the final docket by the planning commission and timely transmit the staff recommendation prior to the scheduled date.

d. The planning commission shall review the proposed amendments contained in the final docket based on the criteria set forth in subsection (F)(1) of this section. The planning commission shall hold at least one public hearing on the proposed amendments. The planning commission shall make a recommendation on the proposed amendments and transmit the recommendation to the city council.

e. After issuance of the planning commission’s recommendation, the code official shall set a date for consideration of the final docket by the city council. The city council shall review the proposed amendments taking into consideration the recommendations of the planning commission and code official. The city council may deny, approve, or modify the planning commission’s recommendations consistent with the criteria set forth in subsection (F)(1) of this section. The city council’s establishment of a final docket of proposed amendments is not appealable.

f. The planning commission and the city council may hold additional public hearings, meetings, or workshops as warranted by the proposed amendments.

E. Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

- 1. The request has been filed in a timely manner, and either:
 - a. State law requires, or a decision of a court or administrative agency has directed, such a change; or
 - b. All of the following criteria are met:
 - i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan or the code;
 - ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;
 - iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;
 - iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city’s vision; and
 - v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may

Attachment A

Minor Code Amendments

be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

F. Decision Criteria. Decisions to amend the comprehensive plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria.

...

19.15.250 Code amendment.

A. Purpose. The purpose of this section is to establish the process and criteria for amendment of this code.

B. Process. ~~Zoning~~ Code amendments shall be considered as provided in MICC 19.15.260.

C. Initiation of ~~Zoning~~ Code Amendment Request.

1. ~~A zoning~~ code amendment request may be initiated at any time by the city council, planning commission, or code official.

2. A code amendment request may be initiated by any interested person as follows:

a) Suggestion. A code amendment may be suggested by any interested person.

b) Application. An application for a code amendment may be submitted by any interested person. An application for a code amendment shall be accompanied by the filing fee established by resolution.

c) Suggested code amendments and applications for code amendments shall be docketed pursuant to MICC 19.15.230(D) and considered on at least an annual basis.

d) Whether initiated by suggestion or application, a proposed code amendment by an interested party shall be accompanied by an application form and shall require a detailed description of the proposed amendment in nontechnical terms.

3. Multiple code amendment requests may be consolidated for review and action at the city's discretion.

D. Criteria. The city may approve or approve with modifications a proposal to amend ~~the text of this code~~ only if:

1. The amendment is consistent with the comprehensive plan; and

2. The amendment bears a substantial relation to the public health, safety, or welfare; and

3. The amendment is in the best interest of the community as a whole.

E. Codification. Following approval of an amendment, the city shall amend this code to reflect the amendment.

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Attachment A
Minor Code Amendments

19.15.260 Review procedures for comprehensive plan amendments, reclassification of property, and code amendments.

- A. The city shall issue a notice for comprehensive plan amendments, reclassifications of property, and zoning code text amendments as described in MICC 19.15.230, 19.15.240, and 19.15.250. Notice shall be provided in the weekly CPD bulletin, a newspaper of general circulation, made available to the general public upon request, and, if the proposed amendment will affect a specific property or defined area of the city, mailed to all property owners within 300 feet of the affected property or defined area, and posted on the site in a location that is visible to the public right-of-way.
 - 1. The notice shall include the following information:
 - a. The name of the party proposing the proposed amendment or change;
 - b. The location and description of the project, if applicable;
 - c. The requested actions and/or required studies;
 - d. The date, time, and place of the open record hearing;
 - e. Identification of environmental documents, if any;
 - f. A statement of the public comment period which shall not be less than 30 days. The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights;
 - g. The city staff contact and contact information;
 - h. The identification of other reviews or permits that are associated with the review of the proposed comprehensive plan, zoning text, or zoning map amendment, to the extent known by the city;
 - i. A description of those development regulations used in determining consistency of the review with the city's comprehensive plan;
 - j. A link to a website where additional information about the project can be found; and
 - k. Any other information that the city determines appropriate.
 - 2. Timing of Notice. The city shall provide the notice at least 30 days prior to the hearing.
 - 3. The city shall accept public comments at any time prior to the closing of the record of an open record public hearing.

MICC 19.16.010(L)

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Lot, Irregular: A legally established lot that 1) is not rectangular and 2) does not meet minimum width, depth, and area standards required by the zone in which the lot is located

...

Lot Coverage Maximum: The maximum area of a residentially zoned lot that may be covered by a combination of buildings, including eaves and roof overhangs, and vehicular driving surfaces.



Minor Code Amendments

City Council
Second Reading

December 11, 2019

Observation

- No code amendment docketing period in 2019
- Desire to manage legislative work items
- Allow for a transition period – consistent with past practice
- Compliance is due by February 18, 2020



Recommended Motion

- Revised Motion:
Adopt Ordinance No. 19C-21 amending Title 19 of the Mercer Island City Code to clarify development and administrative standards and to create a procedure to docket and consider suggested amendments to development regulations with an effective date for the amendments no earlier than February 18, 2020.





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5644
December 10, 2019
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5644: Acquisition of ARCO/Tully’s Property	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Authorize the Interim City Manager to execute closing documents to complete the City’s acquisition of the real property at 7810 SE 27 th Street, Mercer Island, Washington.	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	City Attorney
STAFF:	Bio Park, Interim City Attorney
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Map 2. Resolution No. 1544 and Exhibit A (PSA) 3. Second Amendment to Purchase and Sale Agreement (PSA)
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ 2,000,000
AMOUNT BUDGETED	\$ 2,000,000
APPROPRIATION REQUIRED	\$ 0

SUMMARY

The purpose of this agenda bill is to direct the Interim City Manager to execute closing documents to complete the City’s acquisition of the real property at 7810 SE 27th Street, Mercer Island, WA 98040, commonly known as the ARCO / Tully’s property (“Property”) (see map at Exhibit 1) for the City’s proposed Commuter Parking & Mixed-Used Project.

BACKGROUND

The City Council approved Resolution No. 1544 (see Exhibit 2), authorizing the City Manager to execute the Purchase and Sale Agreement between the City of Mercer Island and the Parkway Management Group (“Seller”) on June 5, 2018 (see [AB 5434](#)). Since then, the City has been actively engaged in environmental due diligence. The Seller has extended the due diligence period several times to allow time for the City’s environmental consultant, Aspect Consulting, LLC, to conduct Phase I and Phase II environmental assessment work. On November 19, 2019, the City Council approved the environmental remediation Reimbursement Agreement with a known polluter of the Property, Atlantic Richfield Company, and the Seller of the 7810 SE 27th Street property (see [AB 5634](#)). Based on the successful negotiation and execution of the Reimbursement Agreement, the City waived inspection contingencies and the due diligence period ended on November 22,

2019. The City is preparing all necessary steps, including wire transfers of the purchase price in the amount of two million dollars from the Town Center Parking Facilities Fund (funds transferred in 2018 from surplus REET 1 funds to Town Center Parking Facilities Fund) into an escrow account, to complete the acquisition of the Property pursuant to the PSA with the Seller. As per the Second Amendment to the PSA (see Exhibit 3), \$42,866.68 (fifty percent (50%) of the base rent of \$4,000 per month) will be reimbursed from the Seller within 5 days of closing.

NEXT STEP

The City anticipates closing on the Property acquisition prior to the end of this year.

RECOMMENDATION

Authorize the Interim City Manager to execute the closing documents to complete the City’s acquisition of the real property at 7810 SE 27th Street, Mercer Island, WA for the City’s proposed Commuter Parking & Mixed-Used Project.

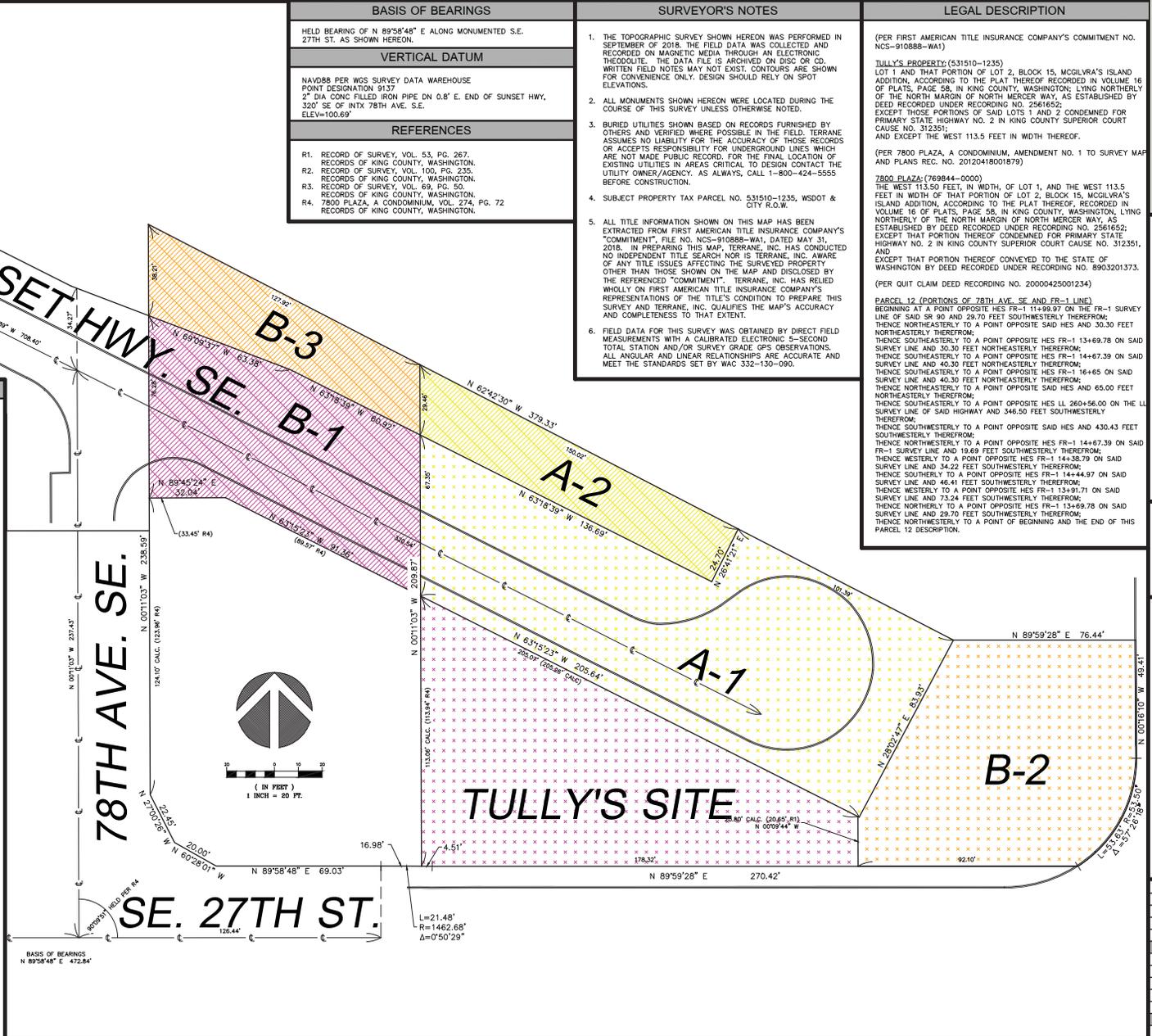
TOPOGRAPHIC & BOUNDARY SURVEY

BASIS OF BEARINGS
HELD BEARING OF N 89°58'48" E ALONG MONUMENTED S.E. 27TH ST. AS SHOWN HEREON.
VERTICAL DATUM
NAVD88 PER WGS SURVEY DATA WAREHOUSE POINT DESIGNATION 9137 2" DIA CONG FILLED IRON PIPE ON 0.8' E. END OF SUNSET HWY. 320' SE OF INTX 78TH AVE. S.E. ELEV=100.69'
REFERENCES
R1. RECORD OF SURVEY, VOL. 53, PG. 267, RECORDS OF KING COUNTY, WASHINGTON. R2. RECORD OF SURVEY, VOL. 100, PG. 235, RECORDS OF KING COUNTY, WASHINGTON. R3. RECORD OF SURVEY, VOL. 69, PG. 50, RECORDS OF KING COUNTY, WASHINGTON. R4. 7800 PLAZA, A CONDOMINIUM, VOL. 274, PG. 72 RECORDS OF KING COUNTY, WASHINGTON.

SURVEYOR'S NOTES
1. THE TOPOGRAPHIC SURVEY SHOWN HEREON WAS PERFORMED IN SEPTEMBER OF 2018. THE FIELD DATA WAS COLLECTED AND RECORDED ON MAGNETIC MEDIA THROUGH AN ELECTRONIC THEODOLITE. THE DATA FILE IS ARCHIVED ON DISC OR CD. WRITTEN FIELD NOTES MAY NOT EXIST. SHOULDERS ARE SHOWN FOR CONVENIENCE ONLY. DESIGN CONTROLS RELY ON SPOT ELEVATIONS.
2. ALL MONUMENTS SHOWN HEREON WERE LOCATED DURING THE COURSE OF THIS SURVEY UNLESS OTHERWISE NOTED.
3. BURIED UTILITIES SHOWN BASED ON RECORDS FURNISHED BY OTHERS AND VERIFIED WHERE POSSIBLE IN THE FIELD. TERRANE ASSUMES NO LIABILITY FOR THE ACCURACY OF THESE RECORDS OR ACCEPTS RESPONSIBILITY FOR UNDERGROUND LINES WHICH ARE NOT MADE PUBLIC RECORD. FOR THE FINAL LOCATION OF EXISTING UTILITIES IN AREAS CRITICAL TO DESIGN CONTACT THE UTILITY OWNER/AGENCY, AS ALWAYS, CALL 1-800-424-5555 BEFORE CONSTRUCTION.
4. SUBJECT PROPERTY TAX PARCEL NO. 531510-1235, WSDOT & CITY R.O.W.
5. ALL TITLE INFORMATION SHOWN ON THIS MAP HAS BEEN EXTRACTED FROM FIRST AMERICAN TITLE INSURANCE COMPANY'S "COMMITMENT", FILE NO. NCS-910888-WA1, DATED MAY 31, 2018. IN PREPARING THIS MAP, TERRANE, INC. HAS CONDUCTED NO INDEPENDENT TITLE SEARCH NOR IS TERRANE, INC. AWARE OF ANY TITLE ISSUES AFFECTING THE SURVEYED PROPERTY OTHER THAN THOSE SHOWN ON THE MAP AND DISCLOSED BY THE REFERENCED "COMMITMENT". TERRANE, INC. HAS RELIED WHOLLY ON FIRST AMERICAN TITLE INSURANCE COMPANY'S REPRESENTATIONS OF THE TITLE'S CONDITION TO PREPARE THIS SURVEY AND TERRANE, INC. QUALIFIES THE MAP'S ACCURACY AND COMPLETENESS TO THAT EXTENT.
6. FIELD DATA FOR THIS SURVEY WAS OBTAINED BY DIRECT FIELD MEASUREMENTS WITH A CALIBRATED ELECTRONIC 5-SECOND TOTAL STATION AND/OR SURVEY GRADE GPS OBSERVATIONS. ALL ANGULAR AND LINEAR RELATIONSHIPS ARE ACCURATE AND MEET THE STANDARDS SET BY WAC 332-130-090.

LEGAL DESCRIPTION
(PER FIRST AMERICAN TITLE INSURANCE COMPANY'S COMMITMENT NO. NCS-910888-WA1) TULLY'S PROPERTY: (531510-1235) LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NO. 2561652; EXCEPT THOSE PORTIONS OF SAID LOTS 1 AND 2 CONDEMNATED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351; AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF. (PER 7800 PLAZA, A CONDOMINIUM, AMENDMENT NO. 1 TO SURVEY MAP AND PLANS REC. NO. 20120418001879) 7800 PLAZA (769844-0000) THE WEST 113.50 FEET, IN WIDTH, OF LOT 1, AND THE WEST 113.5 FEET IN WIDTH OF THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NO. 2561652; EXCEPT THAT PORTION THEREOF CONDEMNATED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351; AND EXCEPT THAT PORTION THEREOF CONDEMNATED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 8903201373. (PER QUIT CLAIM DEED RECORDING NO. 20000425001234) PARCEL 12 (PORTIONS OF 78TH AVE. SE AND FR-1 LINE) BEGINNING AT A POINT OPPOSITE HES FR-1 11+89.97 ON THE FR-1 SURVEY LINE OF SAID SR 90 AND 29.70 FEET SOUTHWESTERLY THEREFROM; THENCE NORTHEASTERLY TO A POINT OPPOSITE SAID HES AND 30.30 FEET NORTHEASTERLY THEREFROM; THENCE SOUTHWESTERLY TO A POINT OPPOSITE HES FR-1 14+67.39 ON SAID SURVEY LINE AND 30.30 FEET NORTHEASTERLY THEREFROM; THENCE SOUTHEASTERLY TO A POINT OPPOSITE HES FR-1 14+47.39 ON SAID SURVEY LINE AND 40.30 FEET NORTHEASTERLY THEREFROM; THENCE SOUTHWESTERLY TO A POINT OPPOSITE HES FR-1 14+65 ON SAID SURVEY LINE AND 40.30 FEET NORTHEASTERLY THEREFROM; THENCE NORTHEASTERLY TO A POINT OPPOSITE SAID HES AND 65.00 FEET NORTHEASTERLY THEREFROM; THENCE SOUTHWESTERLY TO A POINT OPPOSITE HES LL 260+56.00 ON THE LL SURVEY LINE OF SAID HIGHWAY AND 348.50 FEET SOUTHWESTERLY THEREFROM; THENCE SOUTHWESTERLY TO A POINT OPPOSITE SAID HES AND 430.43 FEET SOUTHWESTERLY THEREFROM; THENCE NORTHEASTERLY TO A POINT OPPOSITE HES FR-1 14+67.39 ON SAID FR-1 SURVEY LINE AND 19.69 FEET SOUTHWESTERLY THEREFROM; THENCE WESTERLY TO A POINT OPPOSITE HES FR-1 14+38.79 ON SAID SURVEY LINE AND 34.22 FEET SOUTHWESTERLY THEREFROM; THENCE SOUTHWESTERLY TO A POINT OPPOSITE HES FR-1 14+44.97 ON SAID SURVEY LINE AND 46.41 FEET SOUTHWESTERLY THEREFROM; THENCE WESTERLY TO A POINT OPPOSITE HES FR-1 13+91.71 ON SAID SURVEY LINE AND 73.24 FEET SOUTHWESTERLY THEREFROM; THENCE NORTHERLY TO A POINT OPPOSITE HES FR-1 13+69.78 ON SAID SURVEY LINE AND 29.70 FEET SOUTHWESTERLY THEREFROM; THENCE WESTERLY TO A POINT OF BEGINNING AND THE END OF THIS PARCEL 12 DESCRIPTION.

NEW LEGALS
A-1: THAT PORTION OF PARCEL 12, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON, LYING EAST OF A LINE 113.50 FEET EAST, AS MEASURED AT RIGHT ANGLE FROM AND PARALLEL TO THE EAST MARGIN OF 78TH AVE. SE. AREA CONTAINS 15,776± SQ. FT.
A-2: THAT PORTION OF MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY WASHINGTON; COMMENCING AT THE INTERSECTION OF 78TH AVE. SE. AND SE. 27TH ST.; THENCE N 00°11'03" W, ALONG THE CENTERLINE OF SAID 78TH AVE. SE, A DISTANCE OF 271.69 FEET TO A POINT ON THE NORTH LINE OF PARCEL 12, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON; THENCE S 69°09'37" E, ALONG SAID NORTH LINE TO A POINT ON THE NORTHERLY PRODUCED EAST RIGHT OF WAY MARGIN OF 78TH AVE. SE, A DISTANCE OF 32.14 FEET; THENCE N 00°11'03" W, ALONG SAID NORTHERLY PRODUCED E. MARGIN 38.21 FEET; THENCE S 62°42'30" E, A DISTANCE OF 127.92 FEET AND THE POINT OF BEGINNING OF PARCEL A-2; THENCE CONTINUING S 62°42'30" E 150.02 FEET; THENCE S 26°41'21" W 24.70 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL 12; THENCE N 63°18'39" W 136.69 FEET ALONG SAID NORTH LINE; THENCE N 00°11'03" W 29.46 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 3,649± SQ. FT.
B-1: THE WEST 113.50 FEET OF PARCEL 12, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON, LYING EASTERLY OF THE EAST RIGHT OF WAY MARGIN OF 78TH AVE. SE, AS MEASURED AT RIGHT ANGLE THERE TO AS PRODUCED NORTHERLY FROM SE. 27TH ST. AREA CONTAINS 7,883± SQ. FT.
B-2: THAT PORTION OF MERCER PARK, RECORDED IN VOLUME 8 OF PLATS, PAGE 58, IN KING COUNTY WASHINGTON; COMMENCING AT THE INTERSECTION OF 78TH AVE. SE. AND SE. 27TH ST.; THENCE N 00°11'03" W, ALONG THE CENTERLINE OF SAID 78TH AVE. SE, A DISTANCE OF 271.69 FEET TO A POINT ON THE NORTH LINE OF PARCEL 12, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON; THENCE S 69°09'37" E, ALONG SAID NORTH LINE TO A POINT ON THE NORTHERLY PRODUCED EAST RIGHT OF WAY MARGIN OF 78TH AVE. SE, A DISTANCE OF 32.14 FEET; THENCE N 00°11'03" W, ALONG SAID NORTHERLY PRODUCED E. MARGIN 38.21 FEET; THENCE S 62°42'30" E, A DISTANCE OF 379.33 FEET AND THE POINT OF BEGINNING OF PARCEL B-2; THENCE N 89°59'28" E 76.44 FEET; THENCE S 00°16'10" E 49.41 FEET TO A 53.50 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 57°28'18" A DISTANCE OF 53.63 FEET; THENCE S 89°59'28" W 92.10 FEET TO THE EAST LINE OF SAID LOT 2, MCGILVRA'S ADDITION; THENCE N 00°09'44" W, A CALCULATED DISTANCE OF 20.80 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL 12; THENCE N 63°15'23" E, ALONG SAID SOUTH LINE 0.57 FEET; THENCE N 28°02'47" S 83.93 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 9,206±
B-3: THAT PORTION OF MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY WASHINGTON; COMMENCING AT THE INTERSECTION OF 78TH AVE. SE. AND SE. 27TH ST.; THENCE N 00°11'03" W, ALONG THE CENTERLINE OF SAID 78TH AVE. SE, A DISTANCE OF 271.69 FEET TO A POINT ON THE NORTH LINE OF PARCEL 12, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON; THENCE S 69°09'37" E, ALONG SAID NORTH LINE TO A POINT ON THE NORTHERLY PRODUCED EAST RIGHT OF WAY MARGIN OF 78TH AVE. SE, A DISTANCE OF 32.14 FEET AND THE POINT OF BEGINNING OF PARCEL B-3; THENCE N 00°11'03" W, ALONG SAID NORTHERLY PRODUCED E RIGHT OF WAY MARGIN, 38.21 FEET; THENCE S 62°42'30" E 127.92 FEET; THENCE S 00°11'03" E 29.46 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL 12; THENCE N 63°18'39" W 60.92 FEET ALONG SAID NORTH LINE; THENCE N 69°09'37" W ALONG SAID NORTH LINE, 63.38 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 3,643± SQ. FT.



measure success

TOPOGRAPHIC & BOUNDARY SURVEY
NW 1/4 OF NE 1/4 SEC. 12, TWP. 24 N., RGE. 16 E., E. W. W.
TAX PARCEL NO. 531510-1235, WSDOT & CITY R.O.W.

CITY, WSDOT & TULLY'S SITE
VICINITY OF
7810 SE. 27TH ST.
MERCER ISLAND, WA. 98004

Terrane
10801 Main Street, Suite 102, Bellevue, WA 98004
phone 425-458-4488 support@terrane.net
www.terrane.net

JOB NUMBER:	181671
DATE:	12/18/18
DRAWN BY:	LCH
CHECKED BY:	EJG/TMM
SCALE:	1"=20'
REVISION HISTORY	
SHEET NUMBER	2 OF 2

AB 5644 | Exhibit 1 | Page 3

**CITY OF MERCER ISLAND
RESOLUTION NO. 1544**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCER ISLAND
AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND
SALE AGREEMENT WITH PARKWAY MANAGEMENT GROUP ET AL. TO
PURCHASE THE REAL PROPERTY AT 7810 SE 27TH STREET, MERCER
ISLAND, WASHINGTON**

WHEREAS, Parkway Management Group and various tenants in common (collectively, the Owners) own the real property located at 7810 SE 27th Street, Mercer Island, Washington (the Property), commonly known as the Tully’s site; and

WHEREAS, the City is evaluating the Property as a potential site for long-term, transit commuter parking; and

WHEREAS, the City has offered to buy the Property from the Owners for appraised fair market value; and

WHEREAS; the Property is in close proximity to the future East Link light rail station at Mercer Island; and

WHEREAS, to purchase the Property, the City plans on utilizing the funds provided by Sound Transit in accordance with the Settlement Agreement approved by the City Council on October 17, 2017 (AB 5346), which allows reimbursement of up to \$4.41 million towards the development of long-term, transit commuter parking; and

WHEREAS, the proposed purchase and sale agreement is exempt from the State Environmental Policy Act pursuant to WAC 197-11-800(5)(a);

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AS FOLLOWS:

The City Manager is hereby authorized to execute the Purchase and Sale Agreement between the buyer, City of Mercer Island, and seller, Parkway Management Group and the Tenant in Common Owners of the real property at 7810 SE 27th Street, Mercer Island, Washington (commonly known as the “Tully’s site”), in substantially the form attached hereto as Exhibit 1.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS REGULAR MEETING ON THE 5TH DAY OF JUNE 2018.

CITY OF MERCER ISLAND


Debbie Bertlin, Mayor

ATTEST:


Deborah Estrada, City Clerk

PURCHASE AND SALE AGREEMENT

**by and
between**

**CITY OF MERCER ISLAND,
a Washington municipal corporation,**

as “Buyer”

and

Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust,

the foregoing as Tenants in Common as to 100% ownership, collectively as “Seller”

Dated: June 7, 2018

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- Exhibit A Legal Description of Property
- Exhibit B Form of Earnest Money Note
- Exhibit C Form of Deed
- Exhibit D List of Reports Delivered to Buyer
- Exhibit E Form of Access Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is by and among the CITY OF MERCER ISLAND, a Washington municipal corporation (the “Buyer”), and Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (as defined below), (collectively, the “Seller”) (hereinafter individually a “Party” or collectively the “Parties”). The Parties agree that the “Effective Date” of this Agreement shall be defined in Section 30. This Agreement is made with reference to the following recitals:

Recitals

- A. Seller owns the Property (as defined below), which is commonly known as the Tully’s site located at 7810 SE 27th Street, Mercer Island, Washington 98040.
- B. Buyer desires to purchase the Property to primarily develop it for transit commuter parking and other complementary uses determined by the Buyer (the “Project”).
- C. The Parties have deemed it beneficial to enter into a negotiated sale transaction whereby Buyer will acquire and develop the Property.

Agreement

NOW, THEREFORE, in consideration of the foregoing promises, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

Section 1. Purchase and Sale.

1.1 The Property. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price (as defined in Section 2.1) and on the terms and conditions set forth in this Agreement and the exhibits hereto, the following:

1.1.1 That certain real property more particularly described in Exhibit A attached hereto (the “Land”).

1.1.2 All rights, covenants, interests, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on the Land, all development rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the “Appurtenances”).

1.1.3 Any improvements and fixtures located on the Land, including, without limitation, the retail building and any utility systems and environmental

investigation and remediation equipment on the Land (collectively, the “Improvements”).

1.1.4 No tangible personal property is included in the sale and Seller may remove all such Property before the Closing Date (as defined in Section 3.2); provided that, any tangible personal property remaining on the Property after Closing (as defined in Section 3.2) shall be considered abandoned by the Seller and may be removed by Buyer.

Section 2. Purchase Price.

2.1 Purchase Price. The purchase price for the Property is Two Million Dollars and No/100 (\$2,000,000.00) as hereinafter provided (the “Purchase Price”), payable in cash at Closing. Not later than 10:00 a.m., Pacific Time, on the Closing Date, Buyer shall deposit with the Escrow Holder (as defined in Section 2.2), via wire transfer, the Purchase Price, less the Deposit, Due Diligence Premium and the application of rent equivalent, if any, described in Section 4.1.2, together with Buyer’s share of closing costs and prorations.

2.2 Earnest Money.

2.2.1 Upon execution of this Agreement, Buyer shall execute a Promissory Note in the amount of One Hundred Fifty Thousand Dollars and No/100 (\$150,000.00) in the form attached hereto as Exhibit B (the “Earnest Money Note”). The Earnest Money Note shall be held by *First American Title Insurance Company, 818 Stewart Street, Suite 800, Seattle, Washington 98101*, as the Escrow Holder hereunder (“Escrow Holder” or the “Title Company”). Within three (3) Business Days after satisfaction of Buyer’s Inspection Condition set forth in Section 4.1.1 below, Buyer shall replace the Earnest Money Note with cash in the amount of One Hundred Fifty Thousand Dollars and No/100 (\$150,000.00) to be held as the earnest money deposit hereunder (the “Deposit”).

2.2.2 The Deposit shall be applicable to the Purchase Price. The Deposit shall be nonrefundable, except that the Deposit shall be refunded to Buyer in the event that (i) one of Buyer’s Conditions Precedent (as defined in Section 5 below) is not satisfied within the time period applicable to such condition, or (ii) the transaction fails to close due to a default on the part of Seller and through no fault of the Buyer. The Deposit shall be held in an interest-bearing account, with interest being included with the Deposit and going to the benefit of the Party entitled to the Deposit at Closing or other termination of this Agreement.

Section 3. Escrow; Closing.

3.1 Escrow. Buyer and Seller hereby appoint the Escrow Holder to hold the escrow and conduct the Closing under this Agreement. Buyer and Seller shall execute and deliver to Escrow Holder such instructions as may be necessary or convenient to implement the terms of this Agreement and close the transaction contemplated by

this Agreement, provided that they are not inconsistent with the terms of this Agreement.

- 3.2 Closing; Closing Date. The consummation of the purchase and sale of the Property (the “Closing”) shall take place sixty (60) days following the expiration of the Due Diligence Period (as defined in Section 4.1.1) (the “Closing Date”).

At the Seller’s option, in order to provide adequate time for the Seller to find an appropriate property to execute a Section 1031 Exchange, the Seller may extend the Closing Date up to one hundred eighty (180) days by giving Buyer notice of the Seller’s exercise of this option at least thirty (30) days prior to the Closing Date described in the immediately preceding paragraph. If Seller exercises its option to extend the Closing Date, one hundred percent (100%) of any rent equivalent paid by Buyer pursuant to Section 4.1.2 below, after what would have been the Closing Date except for the Seller exercising its option to extend the Closing Date, shall apply to the Purchase Price. Regardless of the Closing Date, the Seller shall provide the Buyer with a 30-day notice of intent to close.

- 3.3 Buyer’s Deliveries. At or before Closing, Buyer shall deliver into Escrow the following:

3.3.1 funds transmitted by wire transfer in the amount of the Purchase Price (less the amount of the Deposit, Due Diligence Premium and the amount of rent applied to the Purchase Price, if any, as described in Section 2.2), together with Buyer’s share of closing costs and proration pursuant to Section 10;

3.3.2 a real estate excise tax affidavit, executed by Buyer; and

3.3.3 two executed counterparts of the Easements, if any, as defined and provided in Section 5.3.

- 3.4 Seller’s Deliveries. At or before Closing, Seller shall deliver into Escrow the following:

3.4.1 a bargain and sale deed (the “Deed”) to the Property in the form attached hereto as Exhibit C, subject only to the Permitted Exceptions (as defined in Section 5.1), properly executed and acknowledged on behalf of Seller;

3.4.2 a real estate excise tax affidavit executed by Seller;

3.4.3 duplicate originals of an executed affidavit by Seller to the effect that Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;

3.4.4 two executed counterparts of the Easements, if any, as provided for in Section 5.3; and

3.4.5 the certificate described in Section 6.1.

- 3.5 Proof of Authority. Buyer and Seller each shall deliver such proof of authority and authorization to enter into this Agreement and consummate the transaction contemplated by this Agreement, and such proof of power and authority of the individual(s) executing and delivering any instruments, documents or certificates to act for and bind such Party, as reasonably may be required by the Title Company.
- 3.6 Other Documents. Buyer and Seller shall deliver such other documents or instruments as are reasonably required to consummate this transaction in accordance with this Agreement, including without limitation instructions from the Escrow Holder and each Party's respective closing statement.
- 3.7 Possession. Seller shall deliver possession of the Property to Buyer at Closing.
- 3.8 Disbursement and Other Actions. At the Closing, Escrow Holder promptly shall undertake all of the following in the manner indicated:
- 3.8.1 disburse all funds deposited with Escrow Holder by Buyer as follows:
- (a) disburse the Purchase Price to Seller, net the total amount chargeable to Seller, if any, as the result of prorations and credits pursuant to Section 10;
- (b) disburse the remaining balance of the funds, if any, to Buyer promptly following the Closing;
- 3.8.2 cause the Deed, the Easements (if any) and any other documents that the Parties may mutually direct to be recorded in the Official Records of King County, Washington, and obtain conformed copies thereof for distribution to Buyer and Seller;
- 3.8.3 direct the Title Company to issue the Title Policy to Buyer pursuant to Section 5.2 hereof; and
- 3.8.4 disburse to each Party the counterpart documents per the instructions of the Parties.

Section 4. Conditions Precedent to Closing.

- 4.1 Buyer's Conditions. For Buyer's benefit (and waivable by Buyer, and only Buyer, at any time), the following are conditions precedent to Buyer's obligation to consummate this transaction described in this Agreement ("Buyer's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

4.1.1 Due Diligence.

(a) Due Diligence Period. From the Effective Date through and including [_____, _____][**the date that is 120 days following the Effective Date**] (such period of time, the “Due Diligence Period”), as such period may be extended by: (1) the mutual agreement of the Parties; and/or (2) for a period of up to sixty (60) days by Buyer, provided, however, Buyer gives Seller written notice of its election to extend the Due Diligence Period prior to the expiration of the 120-day Due Diligence Period and pays Seller a daily fee as defined in Section 4.1.3 (“Due Diligence Premium”). Buyer in its sole discretion and at its sole expense, shall have the opportunity to inspect and approve the physical condition and use of the Property, the economic feasibility of the Project and any other matters relating to the Property as Buyer elects to undertake (collectively, the “Inspections”), including without limitation, the availability of financing, access, utility services, zoning, engineering, soils and environmental conditions, ability to develop upon the adjacent property known as Parcel 12, status of neighboring projects and a survey (the “Inspection Condition”). The plan for any invasive testing of the Property (including Phase II environmental sampling) shall be subject to Seller’s prior review and approval, not to be unreasonably withheld, conditioned, or delayed. The Inspection Condition must be satisfied or waived by the end of the Due Diligence Period.

If for any reason whatsoever Buyer determines that the Property is unsuitable for its purposes in its sole and absolute discretion and notifies Seller of such decision before the end of the Due Diligence Period, then this Agreement shall terminate. If Buyer does not provide written notice to Seller of its approval of this condition by the end of the Due Diligence Period, the Inspection Condition shall not be satisfied, and this Agreement shall terminate. In the event of either such termination, Escrow Holder shall promptly return the Earnest Money Note to Buyer after Seller’s receipt of copies of environmental due diligence materials developed by Buyer. If this Agreement does not terminate at the end of the Due Diligence Period, the Inspection Condition shall be considered to have been satisfied, and the Deposit shall not be refundable to Buyer by reason of the Inspection Condition.

(b) Access to Property. Further, until the Closing Date or earlier termination of this Agreement, Buyer and its authorized contractors, engineers, surveyor, appraiser, consultants, employees, lenders and agents shall have the right to enter onto the Property for purposes of undertaking the Inspections. Such entry shall be pursuant to a Site Access Agreement between the Seller and Buyer (the “Access Agreement”) in the form attached hereto as Exhibit E (which agreement may have been executed by the Parties before execution of this Agreement). Buyer agrees to indemnify Seller and to hold Seller, Seller’s agents and employees harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic’s and material men’s liens and attorneys’ fees, to the extent caused by Buyer’s entry upon the Property, including the conduct of the Inspections, by Buyer or its contractors, consultants, employees

or agents under this Section 4.1.1. This indemnity shall survive Closing or termination of this Agreement.

(c) Reports and Disclosure Statement. Seller has previously delivered to Buyer copies of all reports about the physical condition of the Property that have been prepared at the request of Seller or that are in Seller's possession or under its control, including environmental and soils reports, which reports are listed on Exhibit D hereto (the "Reports"). Seller disclaims any responsibility for the accuracy of any information contained in the Reports, and Buyer acknowledges that it uses the Reports at its own risk. If for any reason whatsoever Buyer determines that the environmental contamination on the Property is unsuitable for its purposes before the end of the Due Diligence Period, then Buyer shall be entitled to exercise its rights to terminate this Agreement under Section 4.1.1(a). If this Agreement terminates or the purchase and sale fails to close, Buyer promptly shall return the Reports (and all copies thereof) to Seller.

Seller shall provide a real property transfer disclosure statement as provided for in chapter 64.06 RCW (the "Seller Disclosure Statement") to Buyer within 5 days after the Execution Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by Seller, nor does it create any rights or obligations in the Parties except as set forth in chapter 64.06 RCW, as amended. Buyer is advised to use due diligence to inspect the Property to Buyer's satisfaction, subject to the terms of this Agreement, and Seller may not have knowledge of defects that careful inspection might reveal.

(d) Negotiation with Past Owners/Operators; Assignment of Claims. During the Due Diligence Period, and as further set forth in Section 9, Buyer shall have reached (a) a settlement and/or remediation agreement with BP/ARCO in a form mutually acceptable to Seller and Buyer which includes but is not limited to an indemnification as to Seller, Buyer and future owners and; (b) a mutually acceptable assignment of Seller's entire interest and/or rights in claims against past owners, operators and/or insurance to Buyer.

4.1.2 Rent. In consideration to the Seller for not renting or re-renting the Property during the time Parties spent negotiating this Agreement (the "Purchase and Sale Negotiation Period" (defined below), the Due Diligence Period and the time between the expiration of the Due Diligence Period and Closing (the "Closing Period"), the Buyer agrees to pay the Seller \$4,000 rent equivalent per month for each month and/or partial month during the Purchase and Sale Negotiation Period, Due Diligence Period and Closing Period starting the beginning of the month the Letter of Intent (dated March 19, 2018) between the Parties (the "LOI") was executed. In the event of Closing as contemplated in Section 3.2 and without an extension for purposes of a Section 1031 Exchange, then fifty percent (50%) of these rent payments shall be applicable to the Purchase Price at Closing. If the Seller requests an extension for purposes of a Section 1031 Exchange as contemplated in Section 3.2, then one hundred percent (100%) of these rent

payments after the 60-day period and the Due Diligence Period shall be applicable to the Purchase Price at Closing.

4.1.3 Due Diligence Premium. If the Buyer wishes to extend the Due Diligence Period, as provided in Section 4.1.1(a), the Buyer shall pay the Seller an additional \$100 per day for each day beyond the agreed 120-day Due Diligence Period. These payments shall be made to the Seller by the first of each month. These funds shall be nonrefundable to the Buyer.

4.1.4 Title Policy. On the Closing Date, the Title Company shall be prepared to issue the Title Policy to Buyer as of the Closing Date in accordance with Section 5 of this Agreement.

4.1.5 Representations and Warranties. On the Closing Date, Seller's representations and warranties contained in Section 6.1 are true and correct, as if made as of the Closing Date, except as provided in Section 6.3.

4.1.6 Seller's Performance. Seller has duly and timely performed each and every other material obligation to be performed by Seller under this Agreement before Closing.

4.2 Seller's Conditions. For Seller's benefit (and waivable by Seller, and only Seller, at any time), the following are conditions precedent to Seller's obligation to consummate this transaction ("Seller's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

4.2.1 Buyer's Performance. Buyer has duly and timely performed each and every material obligation to be performed by Buyer under this Agreement prior to Closing.

4.2.2 Buyer's Representations and Warranties. Buyer's representations and warranties set forth in Section 6.2 are true and correct as if made as of the Closing Date, except as provided in Section 6.3.

4.2.3 BP/ARCO Settlement and Assignment of Claims. During the Due Diligence Period (a) a settlement and/or remediation agreement with BP/ARCO in a form acceptable to Seller which includes but is not limited to an indemnification as to Seller, Buyer and future owners and; (b) an acceptable assignment of Seller's entire interest and/or rights in claims against past owners, operators and/or insurance to Buyer.

Section 5. Evidence of Title.

5.1 Commitment. Within five (5) days following the Effective Date, Seller shall cause delivery to Buyer of a preliminary title commitment for a standard ALTA owner's policy of title insurance ("Commitment"), together with the underlying documents forming the basis of the exceptions, issued by the Title Company. Buyer may also obtain an ALTA/ACSM survey of the Property (the "Survey") during the Due

Diligence Period. Buyer shall have until fifteen (15) days after the Effective Date to object to any matter disclosed in the Commitment or the Survey by giving written notice (the “Title Defect Notice”) of the objection to Seller. If, after the initial issuance of the Commitment and giving of the initial Title Defect Notice, the Title Company amends the Commitment by adding a new exception thereto, or the Survey reveals any new matters affecting title, Buyer shall be entitled to give a Title Defect Notice to such exception within ten (10) Business Days after receipt of the amendment. Any matters not referenced in a timely Title Defect Notice shall be deemed approved by Buyer and are referred to herein as “Permitted Exceptions.” Within ten (10) Business Days after receiving a Title Defect Notice, Seller shall notify Buyer in writing of any disapproved exception(s) that Seller declines to cure. Thereafter Buyer shall have five (5) Business Days to either waive the exception Seller has declined to cure (which thereafter shall constitute a Permitted Exception) or to terminate this Agreement. In the event of such termination, Escrow Holder shall promptly return the Earnest Money Note to Buyer.

Anything to the contrary in this Agreement notwithstanding, Seller shall have no affirmative obligation to expend any funds or incur any liabilities to cause any title exceptions to be removed from the Commitment (or any update thereto) or insured over, except that Seller shall pay or discharge any lien or encumbrance voluntarily created, permitted or assumed by Seller (except current taxes and assessments) and not created by or resulting from the acts of Buyer or other parties not related to Seller.

- 5.2 Issuance of Policy. At Closing, the Title Company shall be prepared to issue an extended 2006 ALTA owner’s title insurance policy (“Title Policy”) in the amount of the Purchase Price insuring Buyer and subject only to (a) a lien for real property taxes, not then delinquent; (b) Permitted Exceptions approved or deemed approved by Buyer; (c) matters affecting the condition of title to the Property resulting from the actions or activities of Buyer or created by or with the written consent of Buyer.
- 5.3 Utility Easements. To the extent that there are existing utilities that cross the Property for which Seller requires an easement to serve other property or that crosses other property owned by Seller adjacent to the Property (excluding adjacent streets) for which Buyer requires an easement to serve the Property, Buyer and Seller will enter into utility easements therefor at Closing (the “Easements”). Each Party will notify the other of the need, if any, for such utility easements within 45 days after the Effective Date and Buyer shall provide a copy of the survey it obtains during the Due Diligence Period promptly upon receipt to facilitate this review. If such utility easements are needed, Seller shall provide its form of utility easement for Buyer’s review. If the Parties cannot agree on the forms of such utility easements before the end of the Due Diligence Period, then Buyer shall be entitled to exercise its rights to terminate this Agreement under Section 4.1.1(a).

Section 6. Representations and Warranties.

- 6.1 Seller. Except as known or disclosed to Buyer prior to Closing, Seller represents and warrants that as of the Effective Date of this Agreement:

6.1.1 Seller has the legal power, right and authority to enter into this Agreement and all documents required to be executed by Seller under this Agreement and to consummate the transaction contemplated by this Agreement.

6.1.2 To Seller's actual knowledge, except for a potential unlawful detainer action which may be filed against Global Baristas (dba Tully's Coffee), there are no pending or threatened (in writing) actions, suits, arbitrations, claims or proceedings, at law or in equity, adversely affecting the Property or to which Seller is a party by reason of Seller's ownership of the Property, including any eminent domain proceeding; further, Seller has not received any notices from any governmental authority with respect to any violation of any statute, ordinance or regulation applicable (or alleged to be applicable) to the Property.

6.1.3 Except for any matters shown on the Commitment, Seller has not entered into any oral or written leases, subleases, rental agreements licenses, service or maintenance agreements or other contracts or agreements (written or oral) with respect to the ownership, operation, maintenance, use or occupancy with respect to the Property or any portion thereof that would encumber the Property or bind Buyer after Closing.

6.1.4 Seller disclosed and the Buyer acknowledged that the Property is a commercial property, has been operated as a gasoline station, and that Hazardous Substances (as defined in Section 9) are present in the soils and groundwater at and/or emanating from the Property. Seller provided the Buyer with all copies of the environmental reports that are in Seller's possession or under its control relative to the Property.

6.1.5 The Reports listed on Exhibit D are all of the reports in Seller's possession or under its control regarding the physical condition of the Property.

Seller shall promptly notify Buyer of any new event or circumstance of which Seller has actual knowledge that occurs or arises after the date hereof and that makes any representation or warranty of Seller under this Agreement untrue in any respect that would materially affect Buyer's development of the Property. The foregoing representations and warranties shall be deemed made as of Closing except to the extent modified by a certificate delivered by Seller at Closing, notifying Buyer of any changes arising prior to Closing.

6.2 Buyer. Buyer represents and warrants that as of the date it executes this Agreement and as of Closing:

6.2.1 Buyer has the legal power, right and authority to enter into this Agreement and the documents required to be executed by Buyer under this Agreement, and to consummate the transactions contemplated by this Agreement.

6.2.2 All requisite action (City Council approval) has been taken by Buyer in connection with entering into this Agreement and the documents required hereby to be executed by Buyer and the consummation of the transactions contemplated hereby.

6.3 Changes in Representations and Warranties. The foregoing representations and warranties are to be made by the Parties as of the Effective Date of this Agreement and as of the Closing Date. If after the Effective Date and before the Closing Date, a Party making a representation and warranty (the “Representing Party”) becomes aware of facts that would cause such representation and warranty to be untrue or incomplete, the Representing Party shall notify the other Party (the “Nonrepresenting Party”) in writing within five (5) Business Days after discovery of the new facts, and include copies of documents or materials, if any, related to such new facts (the “Change Notice”). If a representation and warranty can no longer be accurately made by the Representing Party and this is (i) due to a state of facts first arising after the Effective Date, (ii) not intentionally caused by the Representing Party, (iii) such new state of facts materially and adversely affects a right, remedy or obligation of the Nonrepresenting Party under this Agreement, prevents a Party from performing as required herein, or, in the case of Buyer, the materially increases the costs associated with Buyer’s intended use of the Property or materially decreases value of the Property, then the Nonrepresenting Party may by written notice to the Representing Party elect to terminate this Agreement. In such event, Escrow Holder shall promptly return the Earnest Money Note or Deposit, whichever is applicable, to Buyer and neither Party shall have any further obligations hereunder (except as provided in Section 4.1.1). Such election must be exercised within five (5) Business Days after the Nonrepresenting Party receives a Change Notice. During such five (5) day period, however, the Parties shall negotiate in good faith about possible solutions to address the change in facts (e.g., proposals for courses of actions to cure the issue or price adjustments).

Section 7. As Is.

Buyer acknowledges and agrees that Buyer knows and is aware that: the Property is a commercial property that was operated as a gasoline station; Hazardous Substances (as defined in Section 9) are located in the soils and groundwater in, on, at and emanating from the Property; and, Buyer is purchasing the Property “as is where is” in its present condition. Except for the warranty of title set forth in the deed or in any other document executed by Seller at Closing, Seller makes no representations or warranties, express or implied, with respect to, and shall have no liability for: (a) the condition of the Property or any buildings, structures or improvements thereon or the suitability of the Property for Buyer’s intended use; (b) any applicable building, zoning or fire laws or regulations or with respect to compliance therewith or with respect to the existence of or compliance with any required permits, if any, of any governmental agency; (c) the availability or existence of any water, sewer or utilities, any rights thereto, or any water, sewer or utility districts; (d) access to any public or private sanitary sewer or drainage system; or (e) the past, present or future presence of any Hazardous Substances (as defined in Section 9) in, on, at or emanating from or to the Property or in any improvements on the Property. Without limiting the generality of the foregoing, except as expressly set forth in the deed, or in any other document executed by Seller at closing, Seller shall have no liability with respect to the condition of the Property under common law, or any federal, state, or local law or regulation including, without limitation, environmental laws, or for the presence of any hazardous materials or substances. Buyer acknowledges that Buyer is given the opportunity under this Agreement to fully access

PURCHASE AND SALE AGREEMENT - 10

and inspect the Property and documentation in Seller's possession, and Buyer assumes the responsibility and risks of all defects and conditions, including, without limitation, such defects and conditions, if any, that cannot be observed by casual inspection. This section shall survive Closing. Buyer is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the property, and Buyer has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of and in reliance upon such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller (other than as expressly provided in this Agreement, the deed or in any other document executed by Seller at Closing).

Section 8. Environmental Release.

Following the Closing, Buyer waives and releases Seller and Seller's officers, trustees, members, managers, agents, heirs, successors, assigns, executors, or personal representatives, and forever releases and discharges Seller and Seller's officers, trustees, members, managers, heirs, successors, assigns, executors, or personal representatives, from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses or rights of contribution whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, that may arise on account of or in any way connected with the physical condition of the Property or any property owned by Buyer and affected or impacted in any way by Hazardous Substances (as defined in Section 9) originating at the Property including, without limitation, the presence of hazardous materials or substances in, on, at under, or emanating from or to the Property, or noncompliance with any law or regulation applicable thereto, under common law, or any federal, state, or local law or regulation, including but not limited to environmental laws. Buyer acknowledges that the presence of Hazardous Substances may increase Buyer's cost of ownership, liability and development and that this release applies to any incremental development costs. The deed shall include this release which shall run with the land and be binding on all subsequent owners. This section shall survive Closing.

Seller 

Buyer 

Section 9. Environmental Indemnification, Assignments, and Claims.

9.1 Indemnification and Hold Harmless. Buyer hereby agrees to indemnify, defend and hold Seller and Seller's members, trustees, officers, members, managers, agents, heirs, successors, assigns, executors, or personal representatives (collectively, the "Indemnified Parties") harmless from and against any and all claims, actions, suits, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees (collectively, "Damages"), suffered or incurred by any of the Indemnified Parties as a result of Hazardous Substances on, in, under, at or emanating to or from the Property whether before or after Closing including any claims brought by third parties or government agencies.

Buyer's liability under this Section 9.1 includes the following:

and inspect the Property and documentation in Seller’s possession, and Buyer assumes the responsibility and risks of all defects and conditions, including, without limitation, such defects and conditions, if any, that cannot be observed by casual inspection. This section shall survive Closing. Buyer is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the property, and Buyer has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of and in reliance upon such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller (other than as expressly provided in this Agreement, the deed or in any other document executed by Seller at Closing).

Section 8. Environmental Release.

Following the Closing, Buyer waives and releases Seller and Seller’s officers, trustees, members, managers, agents, heirs, successors, assigns, executors, or personal representatives, and forever releases and discharges Seller and Seller’s officers, trustees, members, managers, heirs, successors, assigns, executors, or personal representatives, from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses or rights of contribution whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, that may arise on account of or in any way connected with the physical condition of the Property or any property owned by Buyer and affected or impacted in any way by Hazardous Substances (as defined in Section 9) originating at the Property including, without limitation, the presence of hazardous materials or substances in, on, at under, or emanating from or to the Property, or noncompliance with any law or regulation applicable thereto, under common law, or any federal, state, or local law or regulation, including but not limited to environmental laws. Buyer acknowledges that the presence of Hazardous Substances may increase Buyer’s cost of ownership, liability and development and that this release applies to any incremental development costs. The deed shall include this release which shall run with the land and be binding on all subsequent owners. This section shall survive Closing.

Seller VCU Dee

Buyer JM

Section 9. Environmental Indemnification, Assignments, and Claims.

9.1 Indemnification and Hold Harmless. Buyer hereby agrees to indemnify, defend and hold Seller and Seller’s members, trustees, officers, members, managers, agents, heirs, successors, assigns, executors, or personal representatives (collectively, the “Indemnified Parties”) harmless from and against any and all claims, actions, suits, damages, liabilities, losses, costs and expenses, including reasonable attorneys’ fees (collectively, “Damages”), suffered or incurred by any of the Indemnified Parties as a result of Hazardous Substances on, in, under, at or emanating to or from the Property whether before or after Closing including any claims brought by third parties or government agencies.

Buyer’s liability under this Section 9.1 includes the following:

and inspect the Property and documentation in Seller’s possession, and Buyer assumes the responsibility and risks of all defects and conditions, including, without limitation, such defects and conditions, if any, that cannot be observed by casual inspection. This section shall survive Closing. Buyer is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the property, and Buyer has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of and in reliance upon such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller (other than as expressly provided in this Agreement, the deed or in any other document executed by Seller at Closing).

Section 8. Environmental Release.

Following the Closing, Buyer waives and releases Seller and Seller’s officers, trustees, members, managers, agents, heirs, successors, assigns, executors, or personal representatives, and forever releases and discharges Seller and Seller’s officers, trustees, members, managers, heirs, successors, assigns, executors, or personal representatives, from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses or rights of contribution whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, that may arise on account of or in any way connected with the physical condition of the Property or any property owned by Buyer and affected or impacted in any way by Hazardous Substances (as defined in Section 9) originating at the Property including, without limitation, the presence of hazardous materials or substances in, on, at under, or emanating from or to the Property, or noncompliance with any law or regulation applicable thereto, under common law, or any federal, state, or local law or regulation, including but not limited to environmental laws. Buyer acknowledges that the presence of Hazardous Substances may increase Buyer’s cost of ownership, liability and development and that this release applies to any incremental development costs. The deed shall include this release which shall run with the land and be binding on all subsequent owners. This section shall survive Closing.

Seller SB

Buyer QU

Section 9. Environmental Indemnification, Assignments, and Claims.

9.1 Indemnification and Hold Harmless. Buyer hereby agrees to indemnify, defend and hold Seller and Seller’s members, trustees, officers, members, managers, agents, heirs, successors, assigns, executors, or personal representatives (collectively, the “Indemnified Parties”) harmless from and against any and all claims, actions, suits, damages, liabilities, losses, costs and expenses, including reasonable attorneys’ fees (collectively, “Damages”), suffered or incurred by any of the Indemnified Parties as a result of Hazardous Substances on, in, under, at or emanating to or from the Property whether before or after Closing including any claims brought by third parties or government agencies.

Buyer’s liability under this Section 9.1 includes the following:

(a) Any costs of, or liability for, investigation, cleanup, removal, treatment, remediation or monitoring of any Hazardous Substance;

(b) Any damages resulting from the diminution in value or unmarketability of the Property or any other real or personal property; and

(c) Any fines, penalties, assessments, judgments or other liabilities resulting from any claim, judgment or finding concerning the violation of any Environmental Law.

Buyer's liability under this Section 9.1 expressly excludes:

(d) Damages to the extent caused by the Indemnified Parties' willful misconduct;

(e) Any consequential or punitive Damages suffered or incurred by any Indemnified Parties.

9.2 Buyer's Defense and Indemnity. Buyer's defense and indemnity under Section 9.1 is expressly conditioned on the Indemnified Parties' agreement to:

(a) Reasonably and timely tender all claims for defense and/or indemnity to Buyer;

(b) Not settle or compromise defenses to any claims for defense and/or indemnity, or take any action prejudicial to Buyer;

(c) Mutual selection of legal counsel regarding any claims for defense and/or indemnity.

9.3 Pursuit of Potentially Responsible Parties. Seller shall work cooperatively with Buyer to obtain from past owners and operators a fully executed settlement and/or remediation agreement for Seller's and Buyer's respective benefit, the form of which is acceptable to Buyer and Seller and which may expressly include an indemnification as to Seller, Buyer, and future owners.

9.4 Environmental Remediation Claims. Except as addressed under Section 9.3, Seller agrees to assign to Buyer the Seller's entire interest and/or rights in environmental remediation claims against past owners and/or insurance. Buyer does not waive, and expressly reserves, all claims Buyer may have against any and all third parties (i.e. persons or entities other than Seller and/or Indemnified Parties) relating to the presence of Hazardous Substances at, on, under, or migrating from the Property, provided that to the extent Buyer pursues claims against such third parties, and such third parties consequently pursue claims against any Seller Parties, Buyer shall defend, indemnify, and hold harmless such Seller Parties from any such claim.

9.4.1 Seller agrees to seek recovery against applicable insurance, when allowed by law, for liability associated with any property damage on the Property. Buyer is hereby irrevocably appointed and constituted the Seller's agent and attorney-in-fact to make demand and commence legal action, arbitration or administrative proceedings, as Buyer deems fit, to tender, pursue and collect any all such money, proceeds or insurance claims or other third-party claims in the name of Seller and to receive any such money or proceeds in the name of the Seller of otherwise; and

9.4.2 To the extent allowable by law, Seller assigns and transfers to the Buyer any all claims and causes of action now existing and in the future arising under, against or relating to any and all insurance policies issued to, insuring and/or covering Seller in connection with current and future liabilities associated with the Property. This assignment includes all claims for defense, indemnity and bad faith including (without limitation) those relating to the liability.

9.4.3 In the situations identified in Sections 9.4.1 and 9.4.2 above,

(a) Buyer shall pay all fees and costs in pursuing insurance and third parties.

(b) Buyer has the exclusive right to appoint attorneys and consultants to pursue this insurance and any other third parties.

(c) Buyer shall have the exclusive right to decide and determine whether such legal action, arbitration or administrative proceedings shall be made, or commenced, settled, compromised, tried, appealed or withdrawn and to execute in the name of the Buyer or the Seller any documents that may be appropriate thereto.

(d) Buyer shall have the exclusive right to decide and determine whether any claim, demand, liability or suit made by the Buyer shall or shall not be settled, compromised, defended, tried or appealed, and the Buyer's decision thereon, if made in good faith, shall be conclusive and binding.

(e) Seller shall fully cooperate with Buyer in the pursuit of these claims at no cost to Seller.

9.4.4 Definitions. For purposes of this Section 9.4, the following definitions shall apply:

(a) "causes of action" means choses in action, causes of action, claims, privileges, rights, title and interest.

(b) "policies" means all insurance policies, known and unknown, issued to or insuring Seller as an "insured," "assured," "named insured" or "additional named insured" (collectively referred to as the "policies").

9.5 Definitions.

9.5.1 “Hazardous Substance” as used herein, shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment (“Environmental Law”). The term “Hazardous Substance” specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

9.5.2 “Environmental Law” as used herein, shall mean all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes, and any judicial or administrative interpretation thereof or requirement thereunder, relating to the regulation or protection of human health, safety, the environment and natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. §§ 5101 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Emergency Planning and Community Right-To-Know Act (42 U.S.C. §§ 11001 et seq.), and any similar or comparable state or local laws, including without limitation, the Model Toxics Control Act (Chapter 70.105D RCW) (“MTCA”) and the Hazardous Waste Management Act (Chapter 70.105 RCW.)

9.6 Reservation of Rights. Buyer does not waive, and expressly reserves, all claims Buyer may have against Seller to enforce Section 9.

9.7 Successors and Assignment. The provisions of Section 9 shall extend to, bind and inure to the benefit of the Parties hereto and their respective successors and assigns. Buyer may assign its rights hereunder in whole or part to any party that accepts the Buyer’s responsibility under Section 9. Seller may not assign or transfer its rights or obligations under Section 9 without Buyer’s prior written consent, which may not be unreasonably withheld.

Section 10. Costs and Expenses.

Seller shall pay (a) the premium for the standard portion of the Title Policy, (b) one-half (1/2) of all escrow fees and costs, and (c) Seller’s share of prorations. Buyer shall pay for (d) the premiums for the extended coverage portion or additional title insurance coverage or endorsements, (e) the costs of the Survey, (f) all recording charges, (g) one-half (1/2) of all escrow fees and costs, and (h) Buyer’s share of prorations. Because Buyer is a public entity, no excise tax will be due on the Sale. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants. All property taxes and assessments arising from and after Closing shall be the sole responsibility of Buyer. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in the City of Mercer Island, County of King,

and State of Washington. If the transaction is terminated by either Party on account of default by the other, the defaulting Party shall pay all escrow and title costs billed by the Escrow Holder.

Section 11. Condemnation.

If before the Closing Date any condemnation or eminent domain proceedings are initiated that might result in the taking of all of the Property, then this Agreement shall terminate. If such proceeding proposes to take less than all of the Property, and the portion of the Property to be taken (i) has a value in excess of \$200,000, (ii) would take any right of access to the Property, or (iii) is necessary for the development of the Project and the Project cannot be reasonably and economically reconfigured (each, a "Material Taking"), Buyer may:

- (a) terminate this Agreement by written notice to Seller whereupon the Parties shall proceed in accordance with Section 14 for a termination that is not the fault of either party; or
- (b) proceed with the Closing, in which event Seller shall assign to Buyer in writing at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings.

Seller shall immediately notify Buyer in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. If such proceedings would result in a Material Taking of any of the Property, Buyer shall then notify Seller, within ten (10) days of Buyer's receipt of Seller's notice, whether Buyer elects to exercise its rights under clause (a) or clause (b) of this Section 11. Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date or (ii) five (5) Business Days after the expiration of the 10-day period. If Buyer fails to timely elect to proceed under this Section 11, then Buyer will be deemed to have elected clause (b) above. If a taking is not a Material Taking, the Parties shall proceed in accordance with clause (b) above. This Section 11 shall not apply to any condemnation initiated by Buyer.

Section 12. Lease & Property Management Matters.

The Seller shall continue to have full responsibility for property management until the Buyer waives its Inspection Contingency and the Deposit becomes nonrefundable, at which time the Buyer shall assume said responsibilities and have access to the Property. Seller shall not approve any new leases, extensions or renewals during the Due Diligence Period, unless otherwise approved by the Buyer.

The Property would be conveyed at Closing free and clear of any and all leases and all contracts for the furnishing of goods, labor, construction or other services to the Property, unless otherwise approved by Buyer.

Section 13. Legal and Equitable Enforcement of this Agreement.

- 13.1 Default by Seller. This Agreement pertains to the conveyance of the Property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller refuses or fails without legal excuse to convey the Property to Buyer as

required by this Agreement, or otherwise defaults in its obligations hereunder, and provided that Buyer is not default in its obligations hereunder, Buyer shall have the right to elect one of the following remedies: (a) specific performance of this Agreement; or, alternatively, (b) to terminate this Agreement upon written notice to Seller and receive a return of the Deposit, in which case neither Party shall have any further obligations to the other hereunder, except for those duties and obligations stated in the Agreement that expressly survive hereunder and Section 29 concerning attorney's fees. In no event shall Seller be liable to Buyer for any damages to Buyer, other than the return of the Deposit if Buyer elects to proceed under *clause (b)* above.

- 13.2 Default by Buyer. If Buyer fails without legal excuse to complete the purchase of the Property, the Deposit shall be forfeited to Seller as liquidated damages and payment by Buyer of any attorney's fees and enforcement costs due under Section 29 below, is the sole and exclusive remedy against Buyer available to Seller for Buyer's failure to complete the purchase of the Property as required under this Agreement. In no event shall Seller be entitled to specific performance against Buyer for such failure. If the Closing fails to occur by reason of Buyer's default, the Parties agree that the damages that Seller would suffer thereby are difficult or impossible to determine. Accordingly, the Parties agree that the Deposit is a reasonable estimate of such damages and shall be and constitute valid liquidated damages, and not a penalty, considering all circumstances that exist on the date of this Agreement, including: (1) the relationship of the foregoing sum to the range of harm to Seller that could reasonably be anticipated; and (2) the anticipation that proof of actual damages would be impracticable or extremely difficult to determine. This provision is not intended to apply to obligations that survive a termination of this Agreement, including but not limited to the provisions of Section 4.1.1 or the Access Agreement (Exhibit E), and Seller shall be entitled to receive amounts due thereunder in addition to the Deposit.

Section 14. Termination for Failure of Condition.

If any of the conditions set forth herein are not satisfied or waived by the date provided in such condition, the Party entitled to benefit of such condition shall have the right to terminate this Agreement and the escrow provided for herein by giving written notice of such termination to the other Party and to Escrow Holder. In the event of such termination, all escrow and title charges shall be divided equally between the Parties and this Agreement will be of no further force and effect and the Parties shall have no further liability except as expressly set forth in this Agreement for matters expressly stated to survive termination of this Agreement and in the Access Agreement (Exhibit E). All documents delivered to Escrow Holder shall be returned to the depositing party, the Deposit shall be returned to Buyer and Buyer shall return to Seller all due diligence items delivered by Seller to Buyer (and all copies thereof) that are in the Buyer's possession or under its control within five (5) business days after such termination.

Section 15. Notice.

All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

If to Buyer: City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040-3732
Attention: Julie Thuy Underwood, City Manager
E-mail: julie.underwood@mercergov.org
Phone: 206-275-7600

With a copy to: City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040-3732
Attention: Kari Sand, City Attorney
E-mail: kari.sand@mercergov.org
Phone: (206) 275-7650

If to Seller: Frank M. Buty, Partner
Parkway Center Management Group
1150 Alki Ave SW, Apt. 4
Seattle, WA 98116
E-mail: fmbuty@gmail.com
Phone: (206) 719-0601

AND

Shelley Burton, Partner
Parkway Center Management Group
3820 NE 155th Place. #101
Lake Forest Park, WA 98155
E-mail: slb2012@q.com
Phone: 206-367-3221

With a copy to: John Houlihan
Houlihan Law, P.C.
100 N 35th Street
Seattle, WA 98103
E-mail: john@houlihan-law.com
Phone: (206) 547-5052

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) sent by electronic mail to the party and its counsel, return receipt required, in which case notice shall be deemed

delivered on the next Business Day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery. Any notice given by counsel to a party shall have the same effect as if given by such party. The above addresses and phone numbers may be changed by written notice to be provided the other party in accordance with this Section 15; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

Section 16. Time of Essence.

Time is of the essence of this Agreement.

Section 17. Governing Law; Jurisdiction.

The construction, validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Washington without regard to its conflict of law principles. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree to be subject to the jurisdiction in the King County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

Section 18. Counterparts; Transmissions.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that executed counterparts may be transmitted by facsimile or as a digital document by electronic mail and such transmitted, executed counterparts shall be treated as an executed original counterpart.

Section 19. Captions.

The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

Section 20. Assignability.

Buyer shall not assign its rights under this Agreement without Seller's prior written consent, which may be withheld for any reason within the Seller's sole discretion. Any assignment of this Agreement shall not release the assigning party of its obligations under Sections 7, 8, and 9.

Section 21. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns.

Section 22. Modifications; Waiver.

No waiver, modification amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

Section 23. Entire Agreement.

This Agreement contains the entire agreement, including all of the exhibits attached hereto, between the Parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written including, but not limited to the LOI, are superseded hereby.

Section 24. Fair Construction; Severability.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable to most nearly retain the intent of the Parties, and if such modification is not possible, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the Parties have been materially altered or abridged by such invalidation or unenforceability.

Section 25. Survival.

The representations and warranties in this Agreement shall survive the Closing of this transaction for a period of ninety (90) days following Closing, and written notice of any claim by a Party for a breach thereof must be delivered to the other Party within such time period. In addition, the indemnities and agreements contained in Section 4.1.1(b) (Access to Property), Section 7 (As Is), Section 8 (Environmental Release), Section 9 (Environmental Indemnification, Assignments, and Claims), Section 27 (Brokers) and Section 29 (Attorneys' Fees) shall survive the termination or expiration of this Agreement and shall survive the Closing. Except for the foregoing provisions, all other agreements of the Parties contained in this Agreement shall terminate upon Closing.

Section 26. No Third-Party Rights.

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or

by reason of this Agreement. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein. Nothing in this Section 26 is intended to modify the restrictions on assignment contained in Section 20 hereof.

Section 27. Brokers.

Seller and Buyer represent each to the other that each has had no dealings with any broker, finder or other party concerning Buyer’s purchase of the Property. Seller agrees to indemnify and hold Buyer harmless from all loss, cost, damage or expense (including reasonable attorney’s fees) incurred by Buyer as a result of any claim arising out of the acts of Seller for a commission, finder’s fee or similar compensation made by any broker, finder or any party who claims to have dealt with Seller. Buyer agrees to indemnify and hold Seller harmless from all loss, cost, damage or expense (including reasonable attorney’s fees) incurred by Seller as a result of any claim arising out of the acts of Buyer for a commission, finder’s fee or similar compensation or made by any broker, finder or any party who claims to have dealt with Buyer. The indemnities contained in this Section 27 shall survive the Closing or the termination of this Agreement.

Section 28. Business Days; Computation of Time.

The term “Business Day” as used herein means any day on which banks in Mercer Island, Washington are required to be open for business, excluding Saturdays and Sundays. In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day.

Section 29. Attorneys’ Fees.

If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute, default or misrepresentation in connection with any of the provisions of this Agreement, the substantially prevailing party shall be entitled to recover the reasonable attorneys’ fees (including those in any bankruptcy or insolvency proceeding), accountants’ and other experts’ fees and all other fees, expenses and costs incurred in connection with that action or proceeding, in addition to any other relief to which it may be entitled.

Section 30. Effective Date.

The Effective Date of this Agreement shall be the day and year last written by the signatures below. Until this Agreement has been signed by all Parties, it shall not be legally binding.

//

//

BUYER:

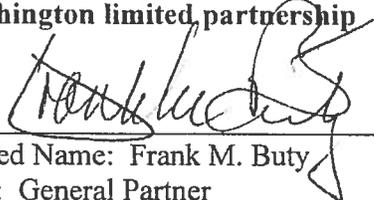
**CITY OF MERCER ISLAND, a
municipal corporation**

By: 
Name: Julie Thuy Underwood
Its: City Manager

Date: 6/7/18

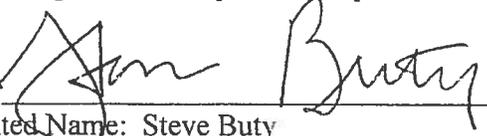
SELLERS:

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: 
Printed Name: Frank M. Buty
Title: General Partner

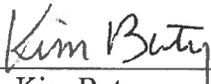
Date: May 19, 2018

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: 
Printed Name: Steve Buty
Title: General Partner

Date: 5-19-2018

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: 
Printed Name: Kim Buty
Title: General Partner

Date: 5/19/18

SHELLEY LYNN BURTON TRUST

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

By: _____
Printed Name: Shelley Burton
Title: Successor Trustee

Date: _____

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

BUYER:

**CITY OF MERCER ISLAND, a
municipal corporation**

By: _____

Name: Julie Thuy Underwood
Its: City Manager

Date: _____

SELLERS:

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____

Printed Name: Frank M. Buty
Title: General Partner

By: _____

Printed Name: Steve Buty
Title: General Partner

Date: _____

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

SHELLEY LYNN BURTON TRUST

By: _____

Printed Name: Kim Buty
Title: General Partner

By: Shelley L. Burton

Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

Date: May 18, 2018

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: Shelley L. Burton

Printed Name: Shelley Burton
Title: Successor Trustee

By: Shelley L. Burton

Printed Name: Shelley L. Burton
Title: Trustee

Date: May 18, 2018

Date: May 18, 2018

**SHELLEY LYNN BURTON, as her
separate estate**

MELISSA MARY BURTON TRUST

By: Shelley L. Burton
Printed Name: Shelley L. Burton

By: _____
Printed Name: Kristina C. Udall
Title: Trustee

Date: May 18, 2018

Date: _____

**SHELLEY LYNN BURTON, as her
separate estate**

MELISSA MARY BURTON TRUST

By: _____
Printed Name: Shelley L. Burton

By: Kristina C. Udall, Jr
Printed Name: Kristina C. Udall
Title: Trustee

Date: _____

Date: 5-19-2018

EXHIBIT A

**Legal Description of Property
King County Parcel No. 531510-1235**

LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NUMBER 2561652;

EXCEPT PORTIONS OF SAID LOTS 1 AND 2 CONDEMNED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351;

AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF.

EXHIBIT B

Form of Earnest Money Note

PROMISSORY NOTE

\$150,000.00

Dated: June 7, 2018

FOR VALUE RECEIVED, CITY OF MERCER ISLAND, a Washington municipal corporation (“Maker”), promises to pay to the order of *FIRST AMERICAN TITLE INSURANCE COMPANY* (“Holder”), 818 Stewart Street, Suite 800, Seattle, WA 98101, the principal sum of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$150,000.00), as the Earnest Money Note in accordance with Section 2.2 of that certain Purchase and Sale Agreement between Maker, as Buyer, and Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (collectively, as “Seller”), dated **June 7, 2018** (the “Agreement”). This Note shall be payable within three (3) Business Days after satisfaction of Buyer’s Inspection Condition under Section 4.1.1 the Agreement.

Maker’s failure to pay the Earnest Money if required by the terms of the Agreement shall constitute a default by Maker under both the Agreement and this Note.

Maker promises to pay all costs, expenses and attorneys’ fees incurred by Holder in the exercise of any remedy (with or without litigation) under this Note in any proceeding for the collection of the debt evidenced by this Note, or in any litigation or controversy arising from or connected with this Note.

Delay in exercising any of the Holder’s rights or options hereunder shall not constitute a waiver thereof, and waiver of any right or option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

The provisions of this Note shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto. This Note shall be construed according to the laws of the State of Washington and pursuant to the terms and conditions of the Agreement. Time is of the essence of this Note and each and every term and provision hereof.

MAKER:

CITY OF MERCER ISLAND,
a Washington municipal corporation

By: 
Name: Julie Thuy Underwood
Title: City Manager

EXHIBIT C

Form of Deed

After Recording Return To:

City of Mercer Island
Attention: City Attorney's Office
9611 SE 36th Street
Mercer Island, Washington 98040

BARGAIN AND SALE DEED

GRANTORS:

GRANTEE: City of Mercer Island, a Washington municipal corporation

Legal Description:

Abbreviated Form:

Additional legal on Page ____

Assessor's Tax Parcel ID#:

THE GRANTORS, _____, for and in consideration of ten dollars (\$10) in hand paid, bargains, sells and conveys to the Grantee, City of Mercer Island, a Washington municipal corporation, the following described real estate, situated in the County of King, State of Washington.

See Exhibit A attached hereto.

Subject to and excepting those matters listed in Exhibit B attached hereto and incorporated herein by this reference.

Dated _____, 2018.

GRANTORS

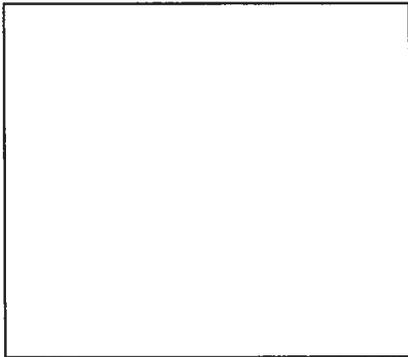
[Do Not Sign – Exhibit Only]

By: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she as authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A TO DEED

Legal Description

EXHIBIT B TO DEED

Exceptions

(to be added)

EXHIBIT D

List of Reports Delivered to Buyer

[to come]

EXHIBIT E

SITE ACCESS AGREEMENT

This SITE ACCESS AGREEMENT (the “Agreement”) dated as of June 7, 2018, is by and between Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (collectively, as “Seller”) and City of Mercer Island, a Washington municipal corporation (“Buyer”) with reference to the following:

RECITALS

A. Buyer is under contract to purchase certain property (the “Property”) described on Exhibit A attached hereto from the Seller pursuant to a Purchase and Sale Agreement dated June 7, 2018 (the “Purchase Agreement”).

B. Under the Purchase Agreement, Buyer has the right to enter onto the Property and conduct its due diligence investigations to determine whether the Project is feasible and to engage in planning for the Project.

C. Buyer or its consultants and their respective employees, contractors and agents (collectively the “Consultants”) desires to perform the investigations and Project planning, including a surveyor, environmental consultant and geotechnical consultant on the Property. As provided in the Purchase Agreement, Seller wishes to cooperate in this investigation by granting to Buyer and Consultants a license to conduct such an investigation subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Seller grants to Buyer and Consultants a temporary non-exclusive license, subject to terms hereof, to enter upon the Property for the purpose of conducting activities on the Property to investigate the condition thereof and the feasibility of the Project as well as planning for the Project (the “Investigation Activities”). Buyer and Consultant may enter onto the Property pursuant to this License. In no event shall any drilling, penetrations or other invasive testing or inspections be done without the written approval of Seller, whose approval shall not be unreasonably withheld, conditioned or delayed.

The License granted herein shall continue in force from the date hereof and terminate upon the earlier to occur of (i) the closing of Buyer’s acquisition of the Property under the Purchase Agreement, or (ii) the earlier termination of the Purchase Agreement for any reason (the “Term”).

2. Buyer shall or shall cause its Consultants to remove all equipment, materials and debris used in or resulting from the Investigation Activities before the end of the Term unless Buyer purchases the Property pursuant to the Purchase Agreement. If Seller approves of any invasive testing, all samples and investigation residuals derived from the Investigation Activities

when removed from the Property shall be transported and disposed of by Buyer or Consultants in accordance with applicable law.

3. All persons who enter the Property pursuant to this Agreement assume the risk of doing so. Buyer waives any claims against Seller and releases Seller from any liability for any loss, damage or injury to Buyer, its Consultants or their property arising from the Investigation Activities, excluding those claims to the extent arising out of the negligence or willful misconduct of Seller, its employees, agents and contractors. Seller shall not be responsible for the safety of Buyer or its Consultants in their conduct of the Investigation Activities. Except as expressly provided in the Purchase Agreement, Seller has no responsibility or liability whatsoever for the condition of the Property. Buyer will repair and restore the Property to at least as good condition as existed before Buyer's or its Consultant's entry onto the Property (normal wear and tear excepted). Buyer and its Consultants shall be responsible for any damage done to the Property by Buyer or its Consultants. While on the Property pursuant to this Agreement, Buyer will comply and will cause all Consultants to comply with all applicable government laws and regulations concerning the Investigation Activities on the Property. Buyer will not suffer or permit to be enforced against the Property any mechanics, materialmen's or contractor's liens or any claim for damage arising from the work of any survey, tests, investigation, repair, restoration, replacement or improvement performed by Buyer or its Consultants as part of the Investigation Activities, and Buyer shall pay or cause to be paid all claims or demands with respect to the same before any action is brought to enforce the same against the Property.

Buyer will indemnify, protect, defend and hold Seller, its officers, and employees harmless from any loss, damage, injury, accident, fire or other casualty, liability, claim, lien, cost or expense (including attorneys' fees) of any kind or character to the extent arising from or caused by (a) entry on the Property by Buyer or its Consultants pursuant to this Agreement, (b) any act or omission of Buyer or any of its Consultants in the conduct of the Investigation Activities, (c) a violation or alleged violation by Buyer or its Consultants of any law or regulation in their conduct of the Investigation Activities, or (d) violation of this Agreement by Buyer or any of its Consultants. Seller's right of indemnity under this section shall not limit or waive any other legal claim or defense Seller may have outside of this Agreement.

IN CONNECTION WITH THIS INDEMNITY, BUYER WAIVES ANY IMMUNITY IT MAY HAVE UNDER INDUSTRIAL INSURANCE LAW, RCW TITLE 51. THIS WAIVER WAS MUTUALLY NEGOTIATED.

4. Buyer shall, during the term of this Agreement, maintain commercial general liability insurance, with the coverage of not less than \$1,000,000 for each occurrence and a \$2,000,000 general aggregate limit, on an occurrence basis from a reputable insurer licensed to do business in Washington, and shall, upon request, furnish to Seller certificates of insurance evidencing such coverage. Seller will be named as an additional insured under the policy.

5. All of the covenants of Buyer and indemnities permitted by Buyer hereunder shall survive termination of the license granted hereunder.

6. All Investigation Activities shall be performed solely at Buyer's expense, and neither Buyer nor Consultants shall look to Seller for reimbursement of or contribution for all or any part of those expenses.

7. All notices hereunder shall be delivered by a recognized overnight courier service or by certified mail, return receipt requested, to the addresses set forth below or to such other addresses of a party as are set forth in a notice by that party to the other parties:

If to Buyer: City of Mercer Island
9611 SE 36th Street
Mercer Island, Washington 98040-3732
Attention: Julie Thuy Underwood, City Manager
E-mail: julie.underwood@mercergov.org
Phone: 206-275-7600

If to Seller: Frank M. Buty, Partner
Parkway Center Management Group
1150 Alki Ave SW, Apt. 4
Seattle, WA 98116
E-mail: fmbuty@gmail.com
Phone: (206) 719-0601

AND

Shelley Burton, Partner
Parkway Center Management Group
3820 NE 155th Place. #101
Lake Forest Park, WA 98155
E-mail: slb2012@q.com
Phone: 206-367-3221

With a copy to: John Houlihan
Houlihan Law
100 N 35th Street
Seattle, WA 98103
E-mail: john@houlihan-law.com
Phone: (206) 547-5052

8. This Agreement may be executed in one or more counterparts, but all of which together shall constitute one and the same instrument. The Parties agree that executed counterparts may be transmitted by facsimile or as a digital document by electronic mail and such transmitted executed counterparts shall be treated as an executed original counterpart.

9. The Parties agree that this Agreement shall be governed by the laws of the State of Washington without regard to its conflict of law principles.

10. All defined terms used in this Agreement shall have the same meaning that they have in the Purchase and Sale Agreement unless expressly stated otherwise.

IN WITNESS HEREOF, the Parties have duly executed this Agreement as of the date first set forth above.

BUYER:

CITY OF MERCER ISLAND, a Washington municipal corporation

By: 

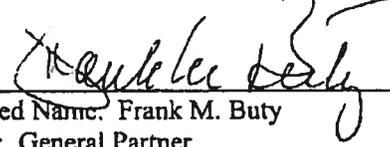
Name: Julie Thuy Underwood

Title: City Manager

Date: 6/12/18

SELLERS:

BUTY LIMITED PARTNERSHIP, a Washington limited partnership

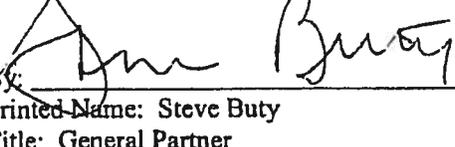
By: 

Printed Name: Frank M. Buty

Title: General Partner

Date: May 22, 2018

BUTY LIMITED PARTNERSHIP, a Washington limited partnership

By: 

Printed Name: Steve Buty

Title: General Partner

Date: 5-22-2018

BUTY LIMITED PARTNERSHIP, a Washington limited partnership

By: 

Printed Name: Kim Buty

Title: General Partner

Date: 5-22-18

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: Shelley L. Burton
Printed Name: Shelley Burton
Title: Successor Trustee

By: Shelley L. Burton
Printed Name: Shelley L. Burton
Title: Trustee

Date: May 18, 2018

Date: May 18, 2018

SHELLEY LYNN BURTON TRUST

MELISSA MARY BURTON TRUST

By: Shelley L. Burton
Printed Name: Shelley L. Burton
Title: Trustee

By: _____
Printed Name: Kristina C. Udall
Title: Trustee

Date: May 18, 2018

Date: _____

**SHELLEY LYNN BURTON, as her
separate estate**

By: Shelley L. Burton
Printed Name: Shelley L. Burton

Date: May 18, 2018

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: _____
Printed Name: Shelley Burton
Title: Successor Trustee

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

Date: _____

SHELLEY LYNN BURTON TRUST

MELISSA MARY BURTON TRUST

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

By: Kristina C. Udall, See
Printed Name: Kristina C. Udall
Title: Trustee

Date: _____

Date: 5-19-2018

**SHELLEY LYNN BURTON, as her
separate estate**

By: _____
Printed Name: Shelley L. Burton

Date: _____

EXHIBIT A to Site Access Agreement

Legal Description of Property

LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NUMBER 2561652;

EXCEPT PORTIONS OF SAID LOTS 1 AND 2 CONDEMNED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351;

AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF.

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This Second Amendment to Purchase and Sale Agreement (“**Second Amendment**”) is made and entered into as of **December 18, 2018** by and between **CITY OF MERCER ISLAND, a Washington municipal corporation** (“Buyer”) and **Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (as defined below)**, (collectively, “Seller”) (referred to together as the “Parties”), with respect to that certain Purchase and Sale Agreement dated June 7, 2018 between Buyer and Seller, with an Effective Date of June 7, 2018 (as amended, the “PSA”) regarding the sale of property commonly known as the “Tully’s site” and located at 7810 SE 27th Street, Mercer Island, Washington 98040 (the “Property”). Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the PSA.

The Parties agree as follows:

1. Section 4.1.1(a) is amended to provide that: The Due Diligence Period shall be extended to Tuesday, April 30, 2019; and Buyer shall have one option to extend the Due Diligence Period to Monday, July 1, 2019 conditioned upon: (a) written notice delivered to Seller by Friday, March 29, 2019; and (b) Seller’s written approval of such extension shall not be unreasonably withheld, conditioned or delayed.

The remainder of Section 4.1.1(a) shall remain unchanged.

2. Section 4.1.2 is amended to delete the second and third sentences and replace them in their entirety as follows:

In the event of Closing as contemplated in Section 3.2 and without an extension for purposes of a Section 1031 Exchange, then fifty percent (50%) of these rent payments shall be refunded to Buyer by Seller’s deposit to escrow within 5 days of Closing. If the Seller requests an extension for purposes of a Section 1031 Exchange as contemplated in Section 3.2, then one hundred percent (100%) of these rent payments after the 60-day period and the Due Diligence Period shall be refunded to Buyer by Seller’s deposit to escrow within 5 days before Closing.

3. Section 4.1.1(b) shall be amended to add the following:

In addition to access to conduct the Inspections, Buyer shall have access to and control of the drive aisles, parking lot and landscaped areas on the Property (collectively, the “Parking Area”). Buyer shall be solely responsible for the management of the Parking Area. The provisions of the Site Access Agreement shall be applicable to the Property use granted in this Section including without limitation claims, losses, damages, injuries, casualty, liability, lien, cost or expense (including attorney fees) made by or

to the extent arising from Buyer's invitees including without limitation persons accessing the Property. The Parking Area use shall be conditioned upon Seller's insurance carrier's continuation of insurance coverage for the Property during the Parking Area use. Buyer shall reimburse Seller on a monthly basis for any increase in Seller's insurance premiums, and any deductibles paid, subsequent to December 18, 2018 as a result of Buyer's Property use. Buyer's use of the Property under this Section shall terminate upon cancellation, termination or default of the PSA.

Buyer shall not have access to or control of the building on the Property unless for investigative purposes outlined in Section this 4.1.1(b) of the PSA.

4. If any provision of the PSA conflicts with this Second Amendment, this Second Amendment shall control.

All other terms and conditions of the Agreement remain unchanged.

[SIGNATURES BEGIN ON FOLLOWING PAGES]

BUYER:

**CITY OF MERCER ISLAND, a
municipal corporation**

By: 

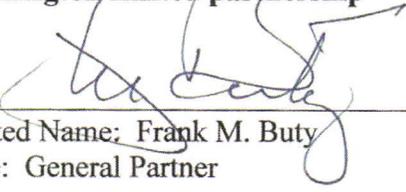
Name: Julie Thuy Underwood

Its: City Manager

Date: 12/20/18

SELLERS:

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: 
Printed Name: Frank M. Buty
Title: General Partner

Date: Dec 18, 2018

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Steve Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Kim Buty
Title: General Partner

Date: _____

SHELLEY LYNN BURTON TRUST

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

By: _____
Printed Name: Shelley Burton
Title: Successor Trustee

Date: _____

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**SHELLEY LYNN BURTON, as her
separate estate**

By: _____
Printed Name: Shelley L. Burton

Date: _____

MELISSA MARY BURTON TRUST

By: _____
Printed Name: Kristina C. Udall
Title: Trustee

Date: _____

SELLERS:

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Frank M. Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Steve Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Kim Buty
Title: General Partner

Date: _____

SHELLEY LYNN BURTON TRUST

By: Shelley L. Burton
Printed Name: Shelley L. Burton
Title: Trustee

Date: December 18, 2018

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

By: Shelley Burton
Printed Name: Shelley Burton
Title: Successor Trustee

Date: December 18, 2018

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: Shelley L. Burton
Printed Name: Shelley L. Burton
Title: Trustee

Date: December 18, 2018

**SHELLEY LYNN BURTON, as her
separate estate**

By: Shelley Burton
Printed Name: Shelley L. Burton

Date: December 18, 2018

MELISSA MARY BURTON TRUST

By: _____
Printed Name: Kristina C. Udall
Title: Trustee

Date: _____

SELLERS:

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Frank M. Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Steve Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Kim Buty
Title: General Partner

Date: _____

SHELLEY LYNN BURTON TRUST

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

By: _____
Printed Name: Shelley Burton
Title: Successor Trustee

Date: _____

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**SHELLEY LYNN BURTON, as her
separate estate**

By: _____
Printed Name: Shelley L. Burton

Date: _____

MELISSA MARY BURTON TRUST

By: Kristina C. Udall, Jr.
Printed Name: Kristina C. Udall
Title: Trustee

Date: 12-18-18

The seal of the City of Mercer Island, Washington, is a large, light blue circular emblem in the background. It features the text "CITY OF MERCER ISLAND" at the top and "WASHINGTON" at the bottom. In the center, there are three stylized evergreen trees above a wavy line representing water.

AB 5644

**Authorization to
Complete the Acquisition
of the Tully's Property**

Background

- The City entered into a purchase and sale agreement (PSA) on or about June 5, 2018 to acquire the Tully's property for \$2,000,000, as the development site of the City's proposed commuter parking & mix use project.
- The original due diligence period was extended multiple times to allow time for the City to negotiate and enter into an environmental clean-up cost reimbursement agreement with BP/ARCO.
- City waived all due diligence inspection contingencies on November 22, 2019 and agreed to proceed with the acquisition of the property.



Closing

- Under the amended PSA, closing must be completed by December 31, 2019.
- Purchase price remains \$2,000,000.
- Funds from REET 1 have already been appropriated, and earnest money of \$150,000 has already been deposited into escrow.
- Closing date is currently scheduled for December 27, 2019.



Authorization

Staff is seeking explicit authorization from the City Council for the City Manager to sign all necessary closing documents on behalf of the City.

Motion

Authorize the Interim City Manager, or the Interim City Manager's designee if she is unavailable, to execute the closing documents to complete the City's acquisition of the real property at 7810 SE 27th Street, Mercer Island, WA.



Thank You

Bio.Park@mercergov.org

www.mercergov.org





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5645
December 10, 2019
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5645: 2020 Comprehensive Plan Amendment Docket	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution
RECOMMENDED ACTION:	Receive Planning Commission’s recommended 2020 Comprehensive Plan Docket and approve Resolution No. 1569 establishing the 2020 Comprehensive Plan amendment final docket.	

DEPARTMENT OF:	Community Planning and Development	Evan Maxim, Director
COUNCIL LIAISON:	n/a	
EXHIBITS:	1. Resolution No. 1569	
CITY COUNCIL PRIORITY:	n/a	

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

BACKGROUND

Mercer Island City Code (“MICC”) Section 19.15.230(D) establishes a docketing process for the development of a Comprehensive Plan amendment “work program” for the following year. The docketing process requires that the Planning Commission review the preliminary docket of proposed Comprehensive Plan amendments and make a recommendation to the City Council as to which proposed amendments should be further analyzed and acted upon in 2020.

2020 DOCKETING PROCESS

Public notice was provided on August 21, 2019 and August 28, 2019 in the MI Reporter and the Weekly Bulletin. The City did not receive any proposed comprehensive plan amendments from the public. Comprehensive plan amendments should only be placed on the docket if the amendment will meet the following criteria:

- “E. *Docketing Criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:*
 1. *The request has been filed in a timely manner, and either:*
 - a. *State law requires, or a decision of a court or administrative agency has directed, such a change; or*

- b. *All of the following criteria are met:*
 - i. *The proposed amendment presents a matter appropriately addressed through the comprehensive plan;*
 - ii. *The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;*
 - iii. *The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;*
 - iv. *The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city’s vision; and*
 - v. *The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.”*

STAFF RECOMMENDATION TO THE PLANNING COMMISSION

CPD staff recommended to the Planning Commission to forgo amendments to the Comprehensive Plan in 2020 based on criterion “ii” of the docketing criteria. The current 2020 work plan for Community Planning and Development (CPD) and the Planning Commission is robust, with the following scheduled items:

- Community Facility code amendments;
- Sign code amendments;
- Small cell code amendments;
- Transportation Impact Fee code amendments;
- Ongoing regional growth strategy and growth target review;
- Review / report on the 2017 Residential Development Standards code amendments; and,
- Regular minor code amendment review.

In addition, there is non-Planning Commission-related work planned for 2020, that will require a significant amount of staff time, such as the departmental organizational assessment and upcoming commercial development projects. Following a review of the current 2020 work plan, CPD staff concluded that there is insufficient staff resources to accommodate review of the Planning Commission’s proposed comprehensive plan amendments.

PLANNING COMMISSION REVIEW & RECOMMENDATION

On October 16, 2019, the Planning Commission reviewed the staff recommendation to forgo amendments in 2020 and discussed Planning Commission-identified amendments to the Comprehensive Plan. After deliberation, the Planning Commission made the following recommendations:

1. The City Council delay the “review and report back on the 2017 Residential Development Standards code amendments” until 2021.
2. Place two subjects on the Comprehensive Plan amendment docket: 1) economic development, and 2) authorizing the planting of trees in the public right-of-way and pass Resolution No. 1569 (see Exhibit 1), establishing a final docket of Comprehensive Plan amendments for 2020.

CITY COUNCIL ACTION

The City Council’s role in the docketing process is described as follows:

“The city council shall review the preliminary docket at a public meeting. By December 31, the city council shall establish the final docket based on the criteria in subsection E of this section. Once approved, the final docket defines the work plan and resource needs for the following year’s comprehensive plan amendments. (MICC 19.15.230(D)(1)(d)).”

The threshold question for the City Council is whether the items on the preliminary docket should be further analyzed and considered by the Planning Commission, City Council, and community in 2020. The City Council is under no obligation to approve a proposed amendment just because it is on the final docket.

The decision to amend the Comprehensive Plan will come later in 2020 after SEPA environmental review, consideration of each item by the Planning Commission and City Council, and public hearing(s).

RECOMMENDATION

The Planning Commission recommends that the City Council:

1. Approve Resolution No. 1569 establishing the 2020 Comprehensive Plan amendment final docket; and
2. Direct Community Planning and Development staff to delay the “review and report back on the 2017 Residential Development Standards code amendment” until 2021.

**CITY OF MERCER ISLAND
RESOLUTION NO. 1569**

**A RESOLUTION OF THE CITY OF MERCER ISLAND, WASHINGTON,
ESTABLISHING THE CITY'S 2020 COMPREHENSIVE PLAN AMENDMENT
DOCKET**

WHEREAS, the City of Mercer Island is required to plan under the Growth Management Act of 1990, as amended, including adopting and regularly updating and amending its Comprehensive Plan; and

WHEREAS, the Growth Management Act allows the City to amend the Comprehensive Plan on an annual basis; and

WHEREAS, public notice of the opportunity to apply for Comprehensive Plan amendments for 2020 was provided on August 21, 2019 and August 28, 2019; and

WHEREAS, on October 16, 2019, the City of Mercer Island Planning Commission held a public meeting and made a recommendation to the Mercer Island City Council on a preliminary docket of Comprehensive Plan amendments to be considered in 2020; and

WHEREAS, on November 4, 2019, the Mercer Island City Council held a public meeting to consider the Planning Commission's recommended final docket of amendments to be considered in 2020;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AS FOLLOWS:

The City Council directs the Planning Commission to analyze, study, and make recommendations to the City Council on the proposed Comprehensive Plan amendments listed on the final docket attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND,
WASHINGTON, AT ITS REGULAR MEETING ON THE 10th DAY OF DECEMBER 2019.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

ATTEST:

Deborah A. Estrada, City Clerk

**RESOLUTION NO. 1569
EXHIBIT A**

2020 Preliminary Comprehensive Plan Docket

Item No.	Proposed By	Potentially Affected Section, Goal or Policy	Summary of Proposal
1	Planning Commission	Land Use Element	Establish economic development policies and goals that establish a policy direction around the development of an economic development plan and related priorities, values, and strategies.
2	Planning Commission	Land Use Element	Establish goals and policies supporting the planting of trees in the public right-of-way for the purposes of carbon sequestration, shade to reduce urban heat-island effect, and wildlife habitat.

2020 Comprehensive Plan Amendments: Final Docket

City Council
Public Meeting
December 10, 2019

Tonight

- Overview of Process
- Planning Commission recommended Preliminary Docket



Overview

- August 21 & 28, 2019 – Public Notice (MI Reporter, Weekly Bulletin)
- October 1, 2019 – Deadline for public to submit requested amendments
- October 16, 2019 – Planning Commission recommendation to Council



Staff Recommendation

- Forgo docketing amendments to the Comprehensive Plan for 2020
- The current 2020 work plan for legislative work (Planning Commission / City Council) is robust
- Other necessary work for the department



Planning Commission: Recommendation

Item No.	Proposed By	Potentially Affected Section, Goal or Policy	Summary of Proposal
1	Planning Commission	Land Use Element	Establish economic development policies and goals that establish a policy direction around the development of an economic development plan and related priorities, values, and strategies.
2	Planning Commission	Land Use Element	Establish goals and policies supporting the planting of trees in the public right-of-way for the purposes of carbon sequestration, shade to reduce urban heat-island effect, and wildlife habitat.

- Direct Community Planning and Development staff to delay the “review and report back on the 2017 Residential Development Standards code amendment” until 2021.



City Council Options

- Deadline of December 31 to adopt a “final” docket of amendments
- Options:
 - Adopt the Planning Commission’s recommended docket; or
 - Adopt the Planning Commission’s recommended docket with changes; or
 - Decline to adopt a final docket of Comprehensive Plan amendments



Planning Commission Recommended Motion

- Adopt Resolution No. 1569 establishing the 2020 Comprehensive Plan amendment final docket; and
- Direct Community Planning and Development staff to delay the “review and report back on the 2017 Residential Development Standards code amendment” until 2021.





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5643
December 10, 2019
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5643: Code of Ethics Revisions (Third Reading and Adoption)	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed:
RECOMMENDED ACTION:	Adopt Ordinance No. 19C-20 and Resolution No. 1572 revising the Code of Ethics and Code of Ethics Statement	<input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution

DEPARTMENT:	City Manager
STAFF:	Ali Spietz, Chief of Administration
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ordinance No. 19C-20 2. Resolution No. 1572
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

At the November 19 (AB 5628) and December 3 (AB 5639) City Council meetings, staff presented revisions to the code of ethics for public officials to clarify the process for responding to a complaint and adding guidance on prohibited conduct. Following Council questions and discussion, staff was directed to further revise the proposed amendments.

Staff has incorporated the Council’s changes from the matrix presented at the December 3 Study Session. Of note are the following (highlighted in yellow in Exhibit 1):

- 2.60.030(A): “the official’s spouse” and “employee” must be listed in the City code for financial interest per state law.
- 2.60.030(A): under the minimum standards neither vote nor participation is allowed if an official has a conflict of interest, as such, Councilmember Bassett’s suggested language has been deleted.
- 2.60.080(G): this section has been amended to include reimbursement parameters. **Staff is seeking Council direction on the maximum amount the City will reimburse an official for the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner.**

- 2.60.090: this section has been amended to clarify that complaints can only be brought against current members and if that official resigns or their term ends, no further action will be taken with the complaint.

Attached as Exhibit 2 is Resolution No. 1572 adopting a revised Code of Ethics Statement for officials to sign when they take office or are appointed.

RECOMMENDATION

Provide direction on the maximum amount the City will reimburse an official for the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner

MOVE TO: Adopt Ordinance No. 19C-20 to amend chapter 2.60 of the Mercer Island City Code revising the Code of Ethics and pass Resolution No. 1572 revising the Code of Ethics Statement.

**CITY OF MERCER ISLAND
ORDINANCE NO. 19C-20**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON
AMENDING CHAPTER 2.60 OF THE MERCER ISLAND CITY CODE TO
REVISE THE CODE OF ETHICS FOR OFFICIALS; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the residents and businesses of Mercer Island are entitled to have fair, ethical and accountable local government that has earned the public’s full confidence for integrity; and

WHEREAS, a Code of Ethics strengthens the quality of government through ethical principles that shall govern the conduct of the City’s elected and appointed officials; and

WHEREAS, a Code of Ethics for members of the City Council, the City’s boards and commissions, Council-appointed task groups or committees, and the City Manager was adopted in 2018 to promote public confidence in the integrity of local government and its fair operation; and

WHEREAS, the proposed amendments to the Code of Ethics detail prohibited conduct regarding conflicts of interest, appearance of conflict, misuse of public position or resources, representation of third parties, gifts and favors, and confidential information; and

WHEREAS, the proposed amendments also establish an Ethics Officer provide for annual review of the code of ethics, review of training materials provided for education regarding the code of ethics, and advisory opinions concerning the code of ethics; and

WHEREAS, the proposed amendments provide a better process for complaints, investigations, hearings and enforcement related to violations of the Code of Ethics.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. **Chapter 2.60 MICC, Code of Ethics, Amended.** Chapter 2.60 MICC, Code of Ethics, is hereby amended as follows:

**CHAPTER 2.60
CODE OF ETHICS**

SECTION:

- 2.60.010 Policy
- 2.60.020 ~~Definitions~~ ~~Compliance with Laws~~
- 2.60.030 ~~Prohibited Conduct~~ ~~Code of Ethics Statement~~
- 2.60.040 ~~Code of Ethics Statement~~ ~~Complaints~~
- 2.60.050 Ethics Officer

2.60.060 Advisory Opinions

2.60.070 Complaints, Investigations, Hearings and Enforcement

2.60.080 Limitation Period

2.60.010 Policy

A. Purpose. The purpose of the city of Mercer Island code of ethics is to strengthen the quality of government through ethical principles which shall govern the conduct of members of the city council, the city’s boards and commissions, and council-appointed task groups or committees.

B. Intent. The residents and businesses of Mercer Island are entitled to have fair, ethical and accountable local government that has earned the public’s full confidence. In keeping with the city of Mercer Island’s commitment to excellence, the effective functioning of democratic government therefore requires that:

- 1. Officials comply with the laws and policies affecting the operations of government;
- 2. Officials be independent, impartial and fair in their judgment and actions;
- 3. Public office be used for the public good, not for personal gain; and
- 4. Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

C. 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. “Official” as used in this chapter means all members of the city council, the city’s boards and commissions, other council-appointed task groups or committees, and the city manager.~~

2.60.020 Definitions

For the purpose of this Chapter:

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.

~~2.60.020 Compliance with laws.~~

~~Officials shall comply with federal, state and city laws in the performance of their public duties. These laws include but are not limited to: the United States and Washington State Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and city ordinances and policies, including those listed below, as now enacted or hereafter amended:~~

~~Ch. 9A.72 RCW Perjury and interference with official proceedings~~

~~RCW 35A.13.020 Election of councilmembers — Eligibility — Terms — Vacancies —
Forfeiture of office — Council chair~~

~~RCW 35A.13.050 City manager — Qualifications~~

~~Ch. 40.14 RCW Preservation and destruction of public records~~

~~RCW 42.17A.555 Use of public office or agency facilities in campaigns — Prohibition —
Exceptions~~

~~RCW 42.17A.565 Solicitation of contributions by public officials or employees~~

~~Ch. 42.23 RCW Code of ethics for municipal officers — Contract interests~~

~~Ch. 42.36 RCW Appearance of fairness doctrine — Limitations~~

~~Ch. 42.56 RCW Public Records Act~~

2.60.030 Prohibited conduct

In addition to the code of ethics set forth in chapter 42.23 RCW, 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 on behalf of the common good, officials shall not participate in government decisions where they have a conflict of interest. A conflict of interest exists when any of the following has a financial interest that relates 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 subsection is an individual who owns 1% or more of the entity. Officials shall abstain from participating in deliberations and decision-making where conflicts of interest exist. Financial interests broadly held by Mercer Island residents shall not be deemed to be conflicts. A financial interest shall be deemed to exist when the individual or entity stands to incur material financial gain or loss as a result of a decision under consideration by the City

B. 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.

C. 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.

D. 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. They shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by subsection (2).

2. 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 a city 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 city 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 state or a foreign country which are intended to be personal in nature; and
 - 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.
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.

E. Confidential Information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a city purpose. "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.

2.60.040030 Code of ethics statement.

A. The city council shall adopt a code of ethics statement regarding conduct for officials. The statement shall be set by resolution by the city council, from time to time, and shall be on file with the city clerk.

B. All officials, upon taking office or being appointed, shall sign the code of ethics statement acknowledging having read and understood the contents thereof.

2.60.040 Complaints.

~~A. Complaints regarding:~~

~~1. Any official, except for the mayor or the city manager, shall be brought to the mayor, city manager and city attorney.~~

~~2. The mayor shall be brought to the deputy mayor, city manager, and city attorney.~~

~~3. The city manager shall be brought to the mayor, deputy mayor, and city attorney.~~

~~B. The mayor or deputy mayor, city manager and the city attorney shall cause the complaint to be investigated and shall make a recommendation to the city council as to the appropriate resolution of the complaint based on the findings and conclusions of the investigation.~~

~~C. If a complaint is filed against the mayor, deputy mayor, or city manager, that individual will not direct activities of the investigation.~~

2.60.050 Ethics Officer.

A. The city council creates the position of ethics officer. The city manager will 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 necessary.

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.

2.60.070 Advisory opinions.

An official may request an informal opinion from the city attorney concerning the applicability of MICC 2.60.030, including chapter 42.23 RCW, to hypothetical circumstances and/or situations solely related to the official making the request. The city attorney may, instead of providing an informal opinion, refer the official to the ethics officer for an advisory opinion as follows:

A. The ethics officer shall render written advisory opinions concerning the applicability of MICC 2.60.030, including chapter 42.23 RCW, to hypothetical circumstances and/or

situations solely related to the official making the request. The ethics officer will 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, etc.

B. The ethics officer will endeavor to respond to requests for advisory opinions within forty-five days of submission of the request, or 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.

2.60.080 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. It must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with Chapter 9A.72 RCW.

2. Finding of Sufficiency. Based on the contents of the written complaint, the ethics officer shall make a determination of sufficiency within thirty days of receipt of the complaint. A complaint shall be sufficient if the allegations, if established, would violate MICC 2.60.030, including chapter 42.23 RCW. The ethics officer's determination is final, and no reconsideration or appeal is available through the ethics officer or the City.

3. Dismissal. The complaint shall be dismissed if the ethics officer determines that (1) the complaint is was not sufficient, (2) the complaint provided too little detail for the ethics officer to reach a determination, or (3) a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

4. 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. A finding of insufficiency or dismissal of a complaint by the ethics officer is final, and no reconsideration or appeal 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. A finding of sufficiency of a complaint by the ethics officer is final, and no reconsideration or appeal is available through the ethics officer or the City. Following the initial notice, the city clerk shall schedule and give notice of the hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing. The official complained against shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

5. 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.

1. 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 hearing examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the hearing examiner shall issue subpoenas and subpoenas duces tecum. 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.

2. Within thirty days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, issue a final decision with findings of fact, conclusions of law, and recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the person who made the complaint and

to the official complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the ethics officer and city council.

C. City Council Action. Final city council action to decide upon the recommended stipulation from the ethics officer or findings, conclusions, and recommendations from the hearing examiner shall be by majority vote in a public meeting. However, deliberations by the city 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 will not attend or participate in any executive session and shall not vote on any matter involving themselves.

D. Disposition. The city council may take any of the following actions in disposition of the complaint based on the recommended stipulation from the ethics officer or findings, conclusions, and recommendations from the hearing examiner, as appropriate. The action of the city council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided below in subsection (E).

1. Dismissal. Dismissal of the complaint without 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 twenty 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 task group or committee, appointed by the city council, 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.

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 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 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 one thousand dollars. Any monetary penalty assessed civilly shall be placed in the city’s general fund.

E. Review of Civil Penalty Amount. If the city council orders an official to pay a civil penalty, the official may seek a reconsideration from the city council of the amount accessed within thirty days of the city council’s order.

F. Protection Against Retaliation. Neither the city nor any official may take or threaten to take, directly or indirectly, official or personal action, including but not limited to personal attack, harassment, or intimidation, against any person because that person files a complaint with the ethics officer.

G. 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: City will reimburse reasonable legal fees incurred by the official, up to \$ _____, relating to or arising out of the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner.

2.60.090 Limitations

Complaints based on this code of ethics may only be brought against current officials and must be submitted within three years from the date of 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.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction,

such invalidity or unconstitutionality does not affect the validity of any other section, sentence, clause or phrase of this ordinance.

Section 3. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Effective Date. This ordinance shall take effect and be in force 5 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 10th day of December 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

Bio Park, Interim City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

**CITY OF MERCER ISLAND
RESOLUTION NO. 1572**

**A RESOLUTION OF THE CITY OF MERCER ISLAND, WASHINGTON TO
REVISE THE CODE OF ETHICS STATEMENT FOR MEMBERS OF THE CITY
COUNCIL, THE CITY’S BOARDS AND COMMISSIONS AND THE CITY
MANAGER**

WHEREAS, the residents and businesses of Mercer Island are entitled to have fair, ethical and accountable local government that has earned the public’s full confidence for integrity; and

WHEREAS, a Code of Ethics for members of the City Council, the City’s boards and commissions, Council-appointed task groups or committees, and the City Manager promotes public confidence in the integrity of local government and fair operation; and

WHEREAS, the Code of Ethics adopted by the City Council is codified in chapter 2.60 MICC; and

WHEREAS, MICC 2.60.030 requires the adoption by resolution of a Code of Ethics Statement, which all officials, as the term is defined in MICC 2.60.010(C), shall comply with and sign to acknowledge having read and understood its contents; and

WHEREAS, the Code of Ethics Statement requires revisions pursuant to amendments to chapter 2.60 MICC as adopted in Ordinance No. 19C-20;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AS FOLLOWS:

The City Council hereby adopts a revised Code of Ethics Statement in substantially the form as the attached Exhibit A, which all officials, as defined in MICC 2.60.010(C), shall comply with and sign to acknowledge having read and understood its contents upon taking office pursuant to MICC 2.60.030.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AT ITS REGULAR MEETING ON THE 10TH DAY OF DECEMBER 2019.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

ATTEST:

Deborah A. Estrada, City Clerk



Code of Ethics

The purpose of the City of Mercer Island Code of Ethics is to strengthen the quality of government through ethical principles which shall govern the conduct of members of the City Council, the City's boards and commissions, Council-appointed task groups and committees, and the City Manager ("officials") who shall:

Be dedicated to the concepts of effective and democratic local government.

***Democratic Leadership:** Officials shall honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws, rules and regulations.*

Affirm the dignity and worth of the services rendered by government and maintain a deep sense of social responsibility as a trusted public servant.

Be dedicated to the highest ideals of honor and integrity in all public and personal relationships.

***Public Confidence:** Officials shall conduct themselves to maintain public confidence in city government and in the performance of the public trust.*

***Impression of Influence:** Officials shall conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.*

Recognize that the chief function of local government always is to serve the best interests of all the people.

***Public Interest:** Officials shall treat their position or office as a public trust, only using the power and resources of public office to advance public interests, and not to attain personal benefit or pursue any other private interest incompatible with the public good.*

Keep the community informed on municipal affairs; encourage communication between the citizens and all municipal officers; emphasize respectful and courteous service to the public; and seek to improve the quality and image of public service.

***Accountability:** Officials shall ensure that government is conducted openly, efficiently, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold city Officials accountable.*

Respectability: *Officials shall safeguard public confidence in the integrity of city government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety.*

Seek no favor; believe that personal benefit or profit secured by confidential information or by misuse of public time is dishonest.

Conflicts of Interest: *Officials shall abstain from participating in deliberations and decision-making where conflicts exist.*

Misuse of Public Position or Resources: *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.*

Gifts and Favors: *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.*

Confidential Information: *Officials shall not disclose or use any confidential information gained by reason of their official position for other than a city purpose.*

Conduct business of the City in a manner which is not only fair in fact, but also in appearance.

Not knowingly violate any Washington statutes, City ordinance, or regulation while performing their duties.

<name>
<title>

Code of Ethics Revisions

(3rd Reading & Adoption)

AB 5643 | December 10, 2019



Code of Ethics Revisions

Changes from 2nd Reading to 3rd Reading:

- Removed definition of RELATIVE
- Clarified "Conflicts of Interest" section [2.60.030(A)]
 - Added "the official's spouse"
 - Retained "employee"
- Added section to address Councilmembers appointments to boards and commissions and committees [2.60.080(D)(7)]



Code of Ethics Revisions

Changes from 2nd Reading to 3rd Reading:

- Added stand-alone section for Mayor and Deputy Mayor appointments removal [2.60.080(D)(8)]
- Revised "Protection Against Retaliation" section [2.60.080(F)]
- Added that the City will reimburse reasonable legal fees by the official if the complaint is dismissed [2.60.080(G)]



Code of Ethics Revisions

Changes from 2nd Reading to 3rd Reading:

- Added that complaints may only be brought against sitting/current officials (2.60.090)
- Added the if the official leaves office before complaint is resolved, no further action will be taken (2.60.090)
- City Manager references were removed from Resolution No. 1572 and the Code of Ethics Statement



Code of Ethics Revisions

Council Direction Needed:

- **Section 2.60.080 Complaints, investigations, hearings and enforcement.**
G. 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: City will reimburse reasonable legal fees incurred by the official, up to \$_____, relating to or arising out of the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner.



City Council Action

Adopt Ordinance No. 19C-20 to amend chapter 2.60 of the Mercer Island City Code revising the Code of Ethics and pass Resolution No. 1572 revising the Code of Ethics Statement.

