



BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA

AB 3841
February 17, 2004
Public Hearing

STARBUCKS COFFEE COMPANY
DEVELOPMENT AGREEMENT FOR
COFFEE SHOP IN TOWN CENTER

Proposed Council Action:

Adopt Ordinance No. 04-05 approving Starbucks
Coffee Development Agreement

DEPARTMENT OF

City Attorney, (Londi K. Lindell)

COUNCIL LIAISON

n/a

EXHIBITS

- 1. Starbucks Development Agreement
2. Ordinance No. 04-05 Approving the Starbucks Development
Agreement
3. Landscape Plan dated March 19, 2003, prepared by R.W.
Thorpe & Associates, Inc.
4. MICC 19.11.010(C)(4) authorizing Development Agreements to
modify Town Center development standards

APPROVED BY CITY MANAGER [Signature] for Rich Conrad 2/12/04

Table with 3 columns: Amount of Expenditure, Amount Budgeted, Appropriation Required. All values are \$ N/A.

SUMMARY

I. Background

Starbucks Coffee Company filed an application to construct a coffee shop and drive-through located at 7620 S.E. 27th Street in the Town Center ("Project"). The Project was issued a mitigated determination of nonsignificance by the City staff under the State Environmental Policy Act. The Project received both preliminary and final design approval from the City's Design Commission (collectively the "City Decisions").

An adjacent property owner, Dollar Development, appealed the above described City Decisions to the City's Planning Commission and Hearing Examiner. The MDNS and the Design approvals were affirmed by the Planning Commission and Hearing Examiner, respectively. Dollar Development then appealed the City Decisions to King County Superior Court arguing the Project does not comply with the Town Center parking location requirements, under which parking areas are to be located "behind structures/buildings" ("Parking Location Requirements"). The Superior Court affirmed the City Decisions and found the Project parking in compliance with the City's Parking Location Requirements. Dollar Development has now appealed the Superior Court decision to the Washington State Court of Appeals.

The Project site is approximately 19,527 square feet in area and is an irregular curved lot. The Project is adjacent to the Gateway Commons, Dollar Development's future development comprised of 215,972 square feet of residential, office, and commercial space in three buildings, each of which will be five stories in

height. The southwesterly boundary of the Project site, curved its entire length, adjoins SE 27th Street to the south and 76th Avenue SE to the west.

City staff, the Design Commission, and City Hearing Examiner have all concluded that the Parking Location Requirements are met based upon the proposed parking configuration shown on Exhibit 3 of this Agenda Bill.

Following a public hearing, Mercer Island City Code (MICC) 19.11.010(C)(4) authorizes the City Council to approve development agreements modifying any design or development standard set forth in Chapter 19.11 MICC, in form and content acceptable to the City Attorney. A copy of MICC 19.11.010(C)(4) is attached to this Agenda Bill as Exhibit 4.

Under both state law and the MICC, the decision making authority surrounding the location of the parking in the Project has been delegated to staff, the Design Commission and the City's Hearing Examiner. Because the City Council is neither the decision making body nor the appellate body for these prior City Decisions, the City Council is not being requested to review the prior City Decisions or engage in any other type of de novo review. The City Council is being asked to consider whether or not to approve the negotiated Development Agreement set forth in Exhibit 1 to this Agenda Bill based upon the staff recommendation.

II. Development Agreement

Following consultation with the Development Services Group (DSG), the City Attorney negotiated a Development Agreement attached as Exhibit 1 to this Agenda Bill (Agreement) which contains the following significant provisions:

- Staff has Properly Interpreted the MICC. The Agreement recites the procedural history and confirms staff's code interpretation that the current site configuration is in compliance with the Parking Location Requirements.
- Development Standards. The Agreement incorporates by reference existing MICC development standards.
- Parking "Behind" Structures/Buildings. The Agreement specifies that for the Project, parking "behind a structure" means on the opposite side of any structure within the site from any one point of view along any one adjoining street and "behind a building" means on the opposite side of any building within the site from any one point of view along any one adjoining street.
- Waiver of Parking Requirements Re: Location. The Agreement provides that if any court of competent jurisdiction holds that the City's approval of the parking area location in the City Decisions is inconsistent with the Parking Location Requirements, then the Parking Location Requirements shall be modified for the Project as follows:

"The Parking Location Requirements shall be waived, and the main coffee shop building and parking area for the Project shall be located generally as shown on the site plan identified as 'Landscape Plan' dated March 19, 2003, prepared by R.W. Thorpe & Associates, Inc."
- Term. The Agreement vests the Development Standards for a period of five (5) years from the effective date of the Agreement. Staff is recommending five (5) years in order to allow Starbucks to proceed with the Project. Town Center approvals vest in the design standards (Chapter 19.11 MICC) for two (2) years and an applicant may request a one (1) year extension at the end of this initial 2 year period. Building permits can be issued at any time during this 3 year Town Center approval time period. A completed building permit application is vested for one (1) year as to all other MICC codes and regulations and such building permit may be extended thereafter as long as reasonable progress is being made on construction. Thus, staff believes the outside time period to allow completion of the Project is five (5) years. Starbucks requested a ten (10) year term.
- Release/Indemnification. The Agreement provides that Starbucks will indemnify and hold the City harmless from and against any and all claims that may arise as a result of the City entering into this Agreement, including defending the City if we are named in any further lawsuits.

- No Precedent. The Agreement provides that it has been negotiated based upon unique circumstances applicable to the Property and the Agreement shall not establish a precedent for any other permit approvals or development agreements relating to any other properties located within the City.

DSG has advised the City Attorney that the Agreement applies the Parking Location Requirements to the Project in the same manner in which DSG has and will apply the Parking Location Requirements to other projects on corner, curved and/or irregular lots. DSG further advised the City Attorney that the Agreement and the City Decisions are consistent with all applicable City plans, regulations, standards, goals, policies, and objectives, including without limitation the Parking Location Requirements.

III. Ordinance

If Council elects to approve the Agreement, state law (RCW 36.70B) and the MICC requires that the City Council approve the Agreement by ordinance following a public hearing. Ordinance No. 04-05 is attached as Exhibit 2 to this Agenda Bill. The Ordinance approves the Agreement and directs the City Manager to execute the same.

IV. Conclusion

In order to (i) affirm the City Decisions made by staff, the Design Commission, the Planning Commission and the City Hearing Examiner; (ii) encourage the timely and orderly development of Town Center property consistent with the MICC, and (iii) avoid additional litigation costs to Mercer Island taxpayers surrounding staff's interpretation of the MICC, staff is recommending the City Council adopt Ordinance No. 04-05 approving the Agreement.

RECOMMENDATION

City Attorney

MOVE TO: Adopt Ordinance No. 04-05 approving the Starbucks Coffee Development Agreement and direct the City Manager to enter into such Development Agreement.

Alternative: Direct the City Attorney to amend the Development Agreement and/or Ordinance No. 04-05 and present Ordinance No. 04-05 with such amendments at a subsequent City Council meeting.

WHEN RECORDED, RETURN TO:

Londi K. Lindell
City Attorney
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

STARBUCKS COFFEE COMPANY DEVELOPMENT AGREEMENT

Grantor: Starbucks Corporation, a Washington corporation

Grantee: City of Mercer Island, Washington, a Washington municipal corporation

Abbreviated Legal Description:

Portion of Lots 6 and 5, Block 18, McGilvra's Island Addition, according to the Plat thereof, recorded in Volume 16 of Plats, page 58, in King County, Washington

Complete legal description is at Exhibit A (page 9) hereto.

Assessor's Property Tax Parcel Account Numbers:

531510-1495

Reference to Related Document:

No documents are assigned or released herein.

STARBUCKS COFFEE COMPANY DEVELOPMENT AGREEMENT

THIS STARBUCKS COFFEE COMPANY DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the effective date described below by STARBUCKS CORPORATION, a Washington corporation, d/b/a Starbucks Coffee Company ("Starbucks"), and the CITY OF MERCER ISLAND, a Washington municipal corporation (the "City"), to establish development standards for certain real property subject to development and purchase by Starbucks as provided herein.

RECITALS

A. Starbucks is the contract purchaser and developer of certain real property legally described on Exhibit A attached hereto (the "Property") located generally at 7620 S.E. 27th Street within the City of Mercer Island, King County, Washington; and

B. Starbucks desires to construct and install upon and within the Property a coffee shop with a drive-through window, Project No. APL03-001/SEP02-040 (the "Project"); and

C. The design and environmental review of the Project were approved by the City of Mercer Island in the following decisions (collectively, the "City Decisions"): (1) a mitigated determination of nonsignificance ("MDNS") threshold determination made by the City's Responsible Official under the State Environmental Policy Act, RCW Chapter 43.21C ("SEPA"), on January 15, 2003, (2) preliminary design approval granted by the City's Design Commission on March 12, 2003, (3) final design approval granted by City's Design Commission on April 9, 2003, (4), affirmation of the MDNS by the City's Planning Commission on May 13, 2003 following an appeal by Dollar Development, and (5) affirmation of Design Approval by the City's Hearing Examiner on July 17, 2003 following an appeal by Dollar Development; and

D. Dollar Development appealed the City Decisions to the Superior Court of the State of Washington for King County (Consolidated Case Nos. 03-2-27313-9 SEA and 03-2-32899-5 SEA) under the Land Use Petition Act, RCW Chapter 36.70C ("LUPA"), claiming among other things that the Coffee Shop does not comply with the City's Town Center parking location requirements, MICC 19.11.010(2)(A)(5), MICC 19.11.110(2)(A)(7)(a), MICC 19.11.110(1), and otherwise (collectively, the "Parking Location Requirements"), under which parking areas are to be located either underground or "behind structures" and "behind buildings"; and

E. On November 14, 2003, the Superior Court held a hearing on the appeal of Dollar Development and, by a written decision dated November 18, 2003 (the "Superior Court Decision"), denied the appeal and affirmed the City Decisions; and

F. Dollar Development has appealed the City Decisions and Superior Court Decision to the Court of Appeals (Division I) of the State of Washington (Case No. 53556-1), by a Notice of Appeal dated December 18, 2003; and

G. The Property is an irregular curved lot, with one side abutting both S.E. 27th Street to the south and 76th Avenue S.E. to the west, along a long curve, and the other two sides forming an interior right angle, on which the location of the area “behind structures” and “behind buildings” is subject to interpretation; and

H. In the application and interpretation of the Parking Location Requirements for this Project, staff concluded the intended meaning of “behind structures” is “on the opposite side of any structure within the site from any one point of view along any one adjoining street,” and the intended meaning of “behind buildings” is “on the opposite side of any building within the site from any one point of view along any one adjoining street;” and

I. The City applied the Parking Location Requirements to the Project and the Property in the same manner in which it has applied the Parking Location Requirements to other projects on corner lots and irregular lots; and

J. The City believes that the City Decisions are consistent with the applicable City plans, regulations, standards, goals, policies, and objectives, including without limitation the Parking Location Requirements; and

K. The City believes that it properly interpreted and applied the Parking Location Requirements in the City Decisions; and

L. The Project’s proposed parking area is located behind the proposed main coffee shop building and behind certain lattice, trellis, and other proposed structures, as described in the City Decisions; and

M. The parties to a Development Agreement may approve the site plan for the Project, in which the locations of the main coffee shop building, parking area, and other structures and areas are determined; and

N. Under MICC 19.11.010(C)(4), a Development Agreement may modify any design or development standard set forth in Chapter 19.11 MICC, including the Parking Location Requirements; and

O. This Agreement was reviewed in light of the requirements of SEPA, and the City found that the environmental impacts of the Project and this Agreement have been adequately evaluated in existing environmental documents relating to the Project, as provided under WAC 197-11-600(2), including without limitation the SEPA environmental checklists as amended or supplemented and the MDNS; and

P. The City desires to encourage the timely and orderly development of the Property and avoid additional litigation costs to taxpayers surrounding staff’s interpretation of the MICC; and

Q. The City and Starbucks desire to preserve the significant investments of the City and Starbucks in Project design, design review, environmental review, public hearings, legal representation, and the City Decisions; and

R. The parties desire to establish the development standards for the Property for a determined period of time through this Agreement, to ensure that for a reasonable period of time the Property may be developed in a manner that is consistent with a single set of standards; and

S. The parties desire to make a development agreement under the authority granted by the Mercer Island City Code and Laws of the State of Washington, including MICC 19.11.010(C)(4) and RCW 36.70B.170, as amended, regarding the development and use of the Property, in order to facilitate the timely and orderly completion of the Project; and

T. The City Council voted on February 17, 2004, to approve Ordinance No. 04-05, directing the City Manager to execute this Agreement; and

U. The City and Starbucks desire to make this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Establishment of Development Standards. The following development standards shall govern the development and use of the Project and Property:

- a. The development and design regulations set forth in Chapter 19.11 MICC, "Town Center Development and Design Standards" as of December 20, 2002 (Project application date);
- b. The development regulations set forth in all other provisions of the MICC as of the date a completed building permit application is submitted to the City; and
- c. The City Decisions

(collectively, "Development Standards").

2. Required Elements.

- a. All project elements, including without limitation permitted uses, nonresidential densities and intensities, and building sizes, are governed by the Development Standards.
- b. Landscaping, buffers, parks, recreation areas, open space, and similar features are governed by the Development Standards.
- c. The Project is not required to provide affordable housing.

d. All required mitigation measures, development conditions, and other requirements of Project approval are governed by the Development Standards.

e. All required financial agreements, including any required impact fees, in-lieu fees, inspection fees, dedications, financial contributions, and reimbursement provisions are governed by the Development Standards.

f. Design and Development Standards.

(i) Design and development standards to be applied to the Project, including maximum heights, setbacks, landscaping, drainage, utilities, parking, signage, critical area buffers, and any others, are governed by the Development Standards.

(ii) Generally, during the Development Period (as defined herein below), in the application and interpretation of the Parking Location Requirements to and for the Project, the term “behind structures” shall mean “on the opposite side of any structure within the site from any one point of view along any one adjoining street,” and the term “behind buildings” shall mean “on the opposite side of any building within the site from any one point of view along any one adjoining street.”

(iii) Unless and until any court of competent jurisdiction holds that the City’s approval of the parking area location in the City Decisions is inconsistent with the Parking Location Requirements, the main coffee shop building and parking area for the Project shall be located as approved in the City Decisions.

(iv) If any court of competent jurisdiction holds that the City’s approval of the parking area location in the City Decisions is inconsistent with the Parking Location Requirements, then the Parking Location Requirements shall be modified for the Project as follows: the Parking Location Requirements shall be waived, and the main coffee shop building and parking area for the Project shall be located generally as shown on the site plan identified as “Landscape Plan” dated March 19, 2003, prepared by R.W. Thorpe & Associates, Inc., for the Project, copies of which are located in the Project files of the City Director of Development Services (Project No. APL03-001/SEP02-040) and in the Project court files of the Clerk of King County Superior Court (Consolidated Case Nos. 03-2-27313-9 SEA and 03-2-32899-5 SEA).

(v) If during the Development Period the City amends the Parking Location Requirements, then Starbucks shall have the option but not the obligation to subject the Project to the amended Parking Location Requirements by written notice to the City Director of Development Services.

g. Review procedures and standards for implementing Project decisions shall be governed by the Development Standards.

3. Development Period. The Development Standards shall remain unchanged and apply in full force and effect for development of the Property for a period of five (5) years commencing on the effective date of this Agreement and terminating five (5) years thereafter ("Development Period"). During the Development Period, Starbucks shall have the right to obtain approvals and permits and develop the Property in accordance with the Development Standards. The City Decisions shall remain in full force and effect during the Development Period. This extended Development Period is specifically intended in part to extend for the duration of the Development Period (a) the time periods otherwise applicable to the City Decisions and other approvals and permits obtained by Starbucks, (b) deadlines for filing all land use, construction, and other applications and designs, and (c) deadlines for commencing and completing the development of the Project. Notwithstanding the foregoing, the City reserves the right during the Development Period to modify the Development Standards to the extent required by a serious threat to public health and safety.

4. Termination. This Agreement will automatically terminate at the end of the Development Period or Starbucks may terminate this Agreement by thirty (30) days notice to the City.

5. Successors in Interest. This Agreement shall be recorded in the real property records of King County, Washington. The agreements and covenants herein shall attach to and run with the Property and be binding upon and inure to the benefit to the parties and their heirs, successors, and assigns. Upon the transfer of ownership of the Project, the transferee shall be entitled to all interests and rights and be subject to all obligations of Starbucks under this Agreement, and Starbucks shall be released from liability as to claims, costs, and liabilities that have not yet accrued.

6. Amendment. This Agreement may be amended by the written agreement of Starbucks and approval of the Mercer Island City Council by ordinance.

7. No Precedent. The conditions contained in this Agreement are based upon the unique circumstances applicable to the Property, and this Agreement is not intended to establish a precedent for permit or other approvals and/or development agreements relating to other properties in the City.

8. Indemnification. Starbucks shall protect, indemnify and save harmless the City, its officers, elected officials, agents, volunteers and employees from any and all costs, claims, judgments or awards of damages (including costs and all attorney fees), arising out of or in any way resulting from the City entering into or performing under this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

9. Enforcement. Either party may institute and prosecute a proceeding for specific performance of this Agreement or for any other remedy provided by law.

10. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

11. **Effective Date and Term.** This Agreement shall take effect on the date on which this Agreement is fully executed and recorded. The term of this Agreement shall continue for a period of five (5) years following its effective date.

DATED effective the _____ day of _____, 2004.

STARBUCKS:

STARBUCKS CORPORATION, a Washington corporation, d/b/a Starbucks Coffee Company

By _____
Its _____

Date: _____

CITY:

CITY OF MERCER ISLAND, a political subdivision of the State of Washington

Richard M. Conrad
City Manager

Date: _____

DEPARTMENTAL APPROVAL:
Department of Development Services

Richard Hart
Director

ATTEST:

Allison Spietz, Acting City Clerk

APPROVED AS TO FORM:

Londi K. Lindell, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of STARBUCKS COFFEE COMPANY, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____
Print Name _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard M. Conrad to me known to be the City Manager of the City of Mercer Island, Washington, the city that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said city, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____
Print Name _____

EXHIBITS:

A - Description of the Property

L:\STARBUCKS\Final Development_Agreement__v5_.DOC

SEA 1462513v2 24663-2332 v.12.04

EXHIBIT A

Description of the Property

A portion of Lots 6 and 5, Block 18, McGilvra's Island Addition, according to the Plat thereof, recorded in Volume 16 of Plats, page 58, in King County, Washington, which lies Northeasterly of County Road right of way which was conveyed to King County by deed recorded in Volume 1449 of Deeds, page 270, under Auditor's File No. 2567018, more fully described as follows:

Beginning at a point where the Easterly line of said Lot 6 intersects the Northerly margin of said County road right of way connecting 76th Avenue Southeast and Southeast 27th Street;

Thence North 0°16'23" West on the Easterly line of Lots 6 and 5, a distance of 127.33 feet;

Thence West parallel with the North line of said Lot 6, a distance of 228.90 feet to the intersection with Northeasterly margin of said County road right of way;

Thence along said Northeasterly margin on a curve to the left having a radius of 352.04 feet, the center of which bears North 50°54'33" East, an arc distance of 268.96 feet to the point of beginning.

**CITY OF MERCER ISLAND
ORDINANCE NO. 04-05**

**AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT OF
STARBUCKS CORPORATION (D/B/A STARBUCKS COFFEE COMPANY)
FOR A TOWN CENTER COFFEE SHOP AND DRIVE-THROUGH
PROJECT PURSUANT TO RCW 36.70B.170 AND MICC 19.11.010(C)(4)**

RECITALS

- A.** The design and environmental review of the Starbucks Coffee Company coffee shop and drive-through located at 7620 S.E. 27th Street (Project No. APL03-001/SEP02-040, the "Project") were approved by the City of Mercer Island in the following decisions (collectively, the "City Decisions"): (1) a mitigated determination of nonsignificance ("MDNS") threshold determination made by the City's Responsible Official under the State Environmental Policy Act, RCW Chapter 43.21C ("SEPA"), on January 15, 2003, (2) preliminary design approval granted by the City's Design Commission on March 12, 2003, (3) final design approval ("Design Approval") granted by City's Design Commission on April 9, 2003, (4), affirmation of the MDNS by the City's Planning Commission on May 13, 2003 following appeal by Dollar Development, and (5) affirmation of Design Approval by the City's Hearing Examiner on July 17, 2003 following appeal by Dollar Development; and
- B.** Dollar Development appealed the City Decisions to the Superior Court of the State of Washington for King County (Consolidated Case Nos. 03-2-27313-9 SEA and 03-2-32899-5 SEA) under the Land Use Petition Act, RCW Chapter 36.70C ("LUPA"), claiming among other things that the Coffee Shop does not comply with the City's Town Center parking location requirements, MICC 19.11.010(2)(A)(5), MICC 19.11.110(2)(A)(7)(a), MICC 19.11.110(1), and otherwise (collectively, the "Parking Location Requirements"), under which parking areas are to be located either underground or "behind structures" and "behind buildings"; and
- C.** On November 14, 2003, the Superior Court held a hearing on the appeal of Dollar Development and, by a written decision dated November 18, 2003 (the "Superior Court Decision"), denied the appeal and affirmed the City Decisions; and
- D.** Dollar Development has appealed the City Decisions and Superior Court Decision to the Court of Appeals (Division I) of the State of Washington (Case No. 53556-1), by a Notice of Appeal dated December 18, 2003; and
- E.** The parcel on which the Project is to be located is an irregular, curved three-sided lot, with one side abutting both S.E. 27th Street to the south and 76th Avenue S.E. to the west, along a long curve, and the other two sides forming an interior right angle, on which the location of the area "behind structures" and "behind buildings" is subject to interpretation; and

- F.** It is the intent of the City Council that the Parking Location Requirements be applied and interpreted by the Development Services Department, Design Commission, Hearing Examiner, and other departments of the City in a manner that is fair, logical, reasonable, and consistent with the aesthetic and pedestrian orientation purposes of such requirements; and
- G.** In the application and interpretation of the Parking Location Requirements for the Project, the intended meaning of “behind structures” is “on the opposite side of any structure within the site from any one point of view along any one adjoining street,” and the intended meaning of “behind buildings” is “on the opposite side of any building within the site from any one point of view along any one adjoining street;” and
- H.** The City believes that the City Decisions are consistent with the applicable City plans, regulations, standards, goals, policies, and objectives, including without limitation the Parking Location Requirements; and
- I.** In the City Decisions, the City believes that it properly interpreted and applied the Parking Location Requirements; and
- J.** The Project’s proposed parking area is located behind the proposed main coffee shop building and behind certain lattice, trellis, and other proposed structures, as described in the City Decisions; and
- K.** The parties to a development agreement may approve the site plan for the Project, in which the locations of the main coffee shop building, parking area, and other structures and areas are determined; and
- L.** Under MICC 19.11.010(C)(4), a development agreement may modify any design or development standard set forth in MICC Chapter 19.11, including the Parking Location Requirements; and
- M.** The proposed Development Agreement in the form attached hereto as Exhibit A (“Development Agreement”) meets all of the applicable criteria set forth in RCW 36.70B.170 and MICC 19.11.010(C)(4); and
- N.** The Development Agreement meets the intent and incorporates all of the provisions and conditions of the City Decisions; and
- O.** The Development Agreement was reviewed in light of the requirements of SEPA, and the City found that the environmental impacts of the Project and this Agreement have been adequately evaluated in existing environmental documents relating to the Project, as provided under WAC 197-11-600(2), including without limitation the SEPA environmental checklists as amended or supplemented and the MDNS; and

- P. The City Council held a public meeting regarding the Development Agreement on February 17, 2004, after considering the staff report and the public comments received; and
- Q. The Development Agreement complies with all applicable City plans, regulations, standards, goals, policies, and objectives.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF MERCER ISLAND DOES ORDAIN AS FOLLOWS:

Section 1. Approval of Development Agreement.

The Development Agreement attached hereto as Exhibit A is hereby approved and the City Manager is authorized and directed to execute the Development Agreement on behalf of the City.

Section 2. Recitals.

The foregoing recitals are hereby incorporated and adopted by reference as the Council's legislative findings authorizing the approval of the Development Agreement.

Section 3. Severability/Validity.

The provisions of this ordinance are declared separate and severable. If any section, paragraph, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that they would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses or phrases may subsequently be found by competent authority to be unconstitutional or invalid.

Section 4. Ratification.

Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Effective Date.

This ordinance shall take effect and be in force thirty (30) days following passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 17th day of February, 2004, and signed in authentication of its passage.

CITY OF MERCER ISLAND

Alan R. Merkle, Mayor

ATTEST:

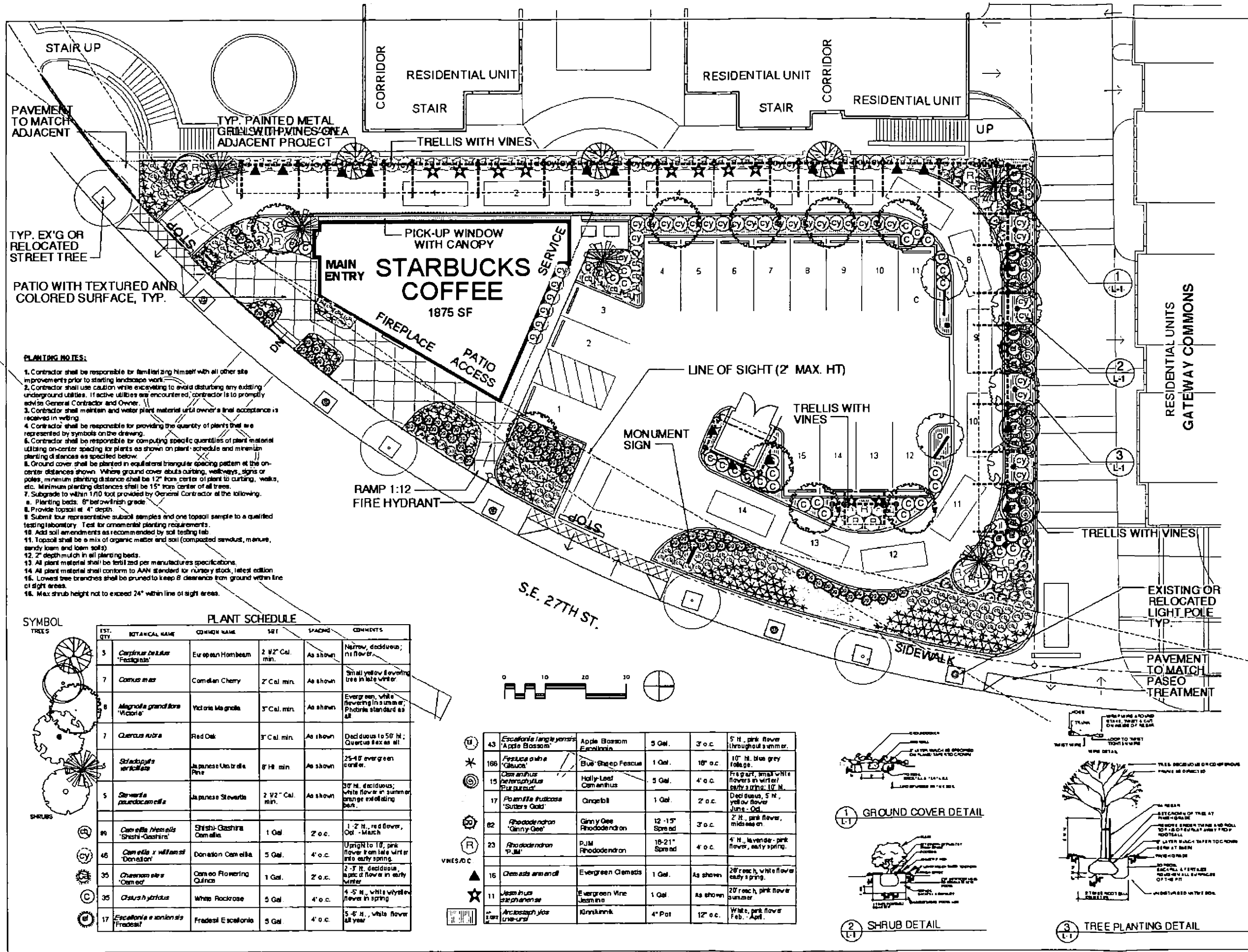
Allison Spietz, Acting City Clerk

APPROVED AS TO FORM:

Londi K. Lindell, City Attorney

Published: _____

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PAVEMENT TO MATCH ADJACENT

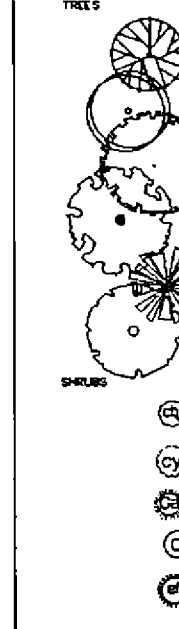
TYP. EX'G OR RELOCATED STREET TREE

PATIO WITH TEXTURED AND COLORED SURFACE, TYP.

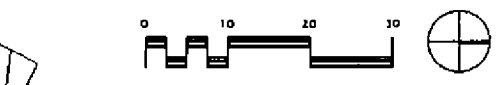
PLANTING NOTES:

- Contractor shall be responsible for familiarizing himself with all other site improvements prior to starting landscape work.
- Contractor shall use caution while excavating to avoid disturbing any existing underground utilities. If active utilities are encountered, contractor is to promptly advise General Contractor and Owner.
- Contractor shall maintain and water plant material until owner's final acceptance is received in writing.
- Contractor shall be responsible for providing the quantity of plants that are represented by symbols on the drawing.
- Contractor shall be responsible for computing specific quantities of plant material utilizing on-center spacing for plants as shown on plant schedule and minimum planting distances as specified below.
- Ground cover shall be planted in equilateral triangular spacing pattern at the on-center distances shown. Where ground cover abuts curbing, walkways, signs or poles, minimum planting distance shall be 12" from center of plant to curbing, walk, etc. Minimum planting distance shall be 15" from center of all trees.
- Subgrade to within 1710 foot provided by General Contractor at the following:
 - Planting beds: 6" below finish grade
 - Provide topsoil at 4" depth
 - Submit four representative subsoil samples and one topsoil sample to a qualified testing laboratory. Test for ornamental planting requirements.
 - Add soil amendments as recommended by soil testing lab
 - Topsoil shall be a mix of organic matter and soil (composted sawdust, manure, sandy loam and loam soils)
 - 2" depth mulch in all planting beds.
 - All plant material shall be fertilized per manufacturer's specifications.
 - All plant material shall conform to AAN standard for nursery stock, latest edition.
 - Lowest tree branches shall be pruned to keep 8' clearance from ground within line of sight areas.
 - Max shrub height not to exceed 24" within line of sight areas.

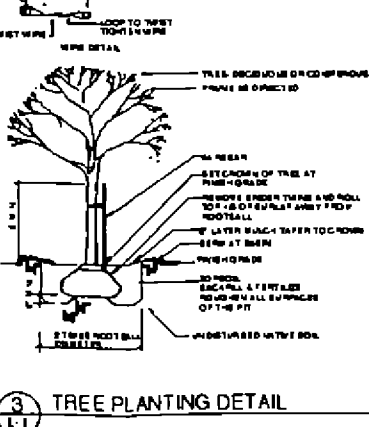
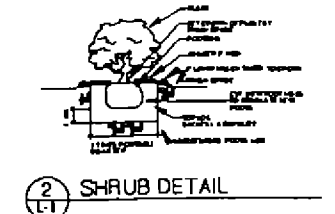
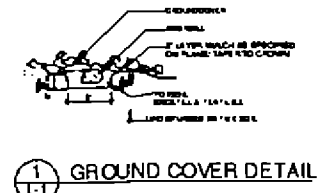
SYMBOL



EST. QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	COMMENTS
5	<i>Carpinus betulus</i> 'Fastigiata'	European Hornbeam	2 1/2" Cal. min.	As shown	Narrow, deciduous, no flower.
7	<i>Cornus mas</i>	Comelian Cherry	2" Cal. min.	As shown	Small yellow flowering tree in late winter.
8	<i>Magnolia grandiflora</i> 'Victoria'	Victoria Magnolia	3" Cal. min.	As shown	Evergreen, white flowering in summer. Photinia standard as all.
7	<i>Quercus rubra</i>	Red Oak	3" Cal. min.	As shown	Deciduous to 50' ht. Quercus 8x as all.
5	<i>Stydasys verticillata</i>	Japanese Umbrella Pine	8' Ht. min.	As shown	25-40' evergreen conifer.
5	<i>Stewartia pseudacmea</i>	Japanese Stewartia	2 1/2" Cal. min.	As shown	30' ht. deciduous, white flower in summer orange exfoliating bark.
96	<i>Camellia japonica</i> 'Shishi-Gashira'	Shishi-Gashira Camellia	1 Gal.	2' o.c.	1-2' ht., red flower, Oct - March
46	<i>Camellia x williamsii</i> 'Donation'	Donation Camellia	5 Gal.	4' o.c.	Upright to 10', pink flower from late winter into early spring.
35	<i>Chaenactis</i> 'Oamoo'	Oamoo Flowering Quince	1 Gal.	2' o.c.	2-3' ht. deciduous, spec. of flower in early winter.
35	<i>Oslea hirtellus</i>	White Rockrose	5 Gal.	4' o.c.	4-5' ht., white waxy flower in spring.
17	<i>Escallonia aconitifolia</i> 'Fredast'	Fredast Escallonia	5 Gal.	4' o.c.	5-6' ht., white flower all year.



SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	COMMENTS
U	43	<i>Escallonia argentea</i> 'Apple Blossom'	Apple Blossom Escallonia	5 Gal.	3' o.c.	5' ht., pink flower throughout summer.
*	160	<i>Festuca ovina</i> 'Glaucus'	Blue Sheep Fescue	1 Gal.	16" o.c.	10" ht. blue grey foliage.
⊙	15	<i>Cornus alternifolia</i> 'Sutters Gold'	Holly-Leaf Cornus	5 Gal.	4' o.c.	Fragrant, small white flowers in winter early spring. 10' ht.
⊙	17	<i>Potentilla fruticosa</i> 'Sutters Gold'	Orangebill	1 Gal.	2' o.c.	Deciduous, 5' ht., yellow flower June - Oct.
⊙	82	<i>Rhododendron</i> 'Ginny Gee'	Ginny Gee Rhododendron	12-15" Spread	3' o.c.	2' ht., pink flower, mid spring.
⊙	23	<i>Rhododendron</i> 'PJM'	PJM Rhododendron	16-21" Spread	4' o.c.	4' ht., lavender-pink flower, early spring.
▲	16	<i>Clematis arvensis</i>	Evergreen Clematis	1 Gal.	As shown	20' reach, white flower early spring.
★	11	<i>Jasminum</i> 'Jasminum'	Evergreen Vine Jasminum	1 Gal.	As shown	20' reach, pink flower summer.
▲	1	<i>Ancistrachne</i> 'Live-urs'	Kirrkuniki	4" Pot	12" o.c.	White, pink flower Feb. - April.



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REG. JOB NO. 3340103

ISSUED
No. Description Rev. Date
1 Landscape Plan 08 SS SS 3/19/03

REV. DATE J. DESCRIPTION

PROJECT: STARBUCKS COFFEE
7620 SE 27th STREET
MERCER ISLAND, WA
COUNTY: KING

PROJECT NO. _____
CONCEPT _____
ISSUE DATE _____
PREPARED BY _____
CHECKED BY C. PL. CHKD.
SCALE: 1"=10'-0"
(DO NOT SCALE DRAWINGS)

SHEET TITLE
LANDSCAPE PLAN
L-1

be coordinated and consistent with the downtown street plan.

c. **Pedestrian Orientation.** Pedestrian-oriented and customer intensive retail businesses and offices are encouraged to locate on the ground floor level in the gateway, mixed use, and mid-rise office focus areas to promote active use of sidewalks by pedestrians, thus increasing the activity level and economic viability of the Town Center. New development should also enhance and support a range of transportation choices and be designed to maximize opportunities for alternative modes of transportation and maintain individual mobility. Even with a healthy variety of development in the Town Center, each individual development or redevelopment project shall favor the pedestrian over the automobile in terms of site design, building placement and parking locations.

d. **Opportunity Sites.** The city has identified several opportunity sites that would accommodate major public improvements such as civic plazas, underground public parking and pedestrian mid-block connections. One such opportunity site is the development of a public space on 78th Avenue SE between 27th Avenue SE and Sunset Highway. Envisioned in this area is a public-private partnership project with street improvements to create a viable civic gathering area that encourages public space amenities on adjacent private property with special pedestrian-oriented features that may accommodate vehicular traffic but could be closed off for community events. It is hoped that this space, combined with the art park, can become the key downtown plaza within the Town Center.

e. **Design and Development Standards.** The design and development standards that follow are intended to enhance the Town Center for the pedestrian and develop a sense of place. To accomplish this vision, new development is encouraged to orient buildings toward the public right-of way with buildings brought forward to the sidewalk edge; place parking behind buildings and in less visible areas or underground; design structures with varied mass and scale, modulation of heights and wall planes; and develop new or enhanced

pedestrian mid-block connections that will break up very large or long blocks for improved pedestrian and vehicular circulation from one side of the block through to the other side.

2. **Scale.** The design of all structures shall consider how the structure and site development will be viewed from the street and adjacent properties. Scale is not simply the size of the buildings, it is the proportion of buildings in relationship to each other, to the street and to the pedestrian environment.

3. **Form.** Building forms shall not present visual mass or bulk impacts that are out of proportion to the adjoining structures, or that appear from the street or sidewalk as having unmodulated visual mass or bulk. Building additions should complement the original structure in design.

4. **Style.** The objectives and standards do not set a particular style of architecture or design theme. The style and site design shall be pedestrian in scale and address design features such as sloped roof lines; view protection; distinctive building shapes; integration of art; textures; patterns; treatment of pedestrian and public spaces; interface with the public right-of-way; landscaping; signage and facade treatments.

C. Design Review Requirements.

1. **Authority.** Design review shall be conducted by the city's design commission or code official consistent with the process provided in MICC 19.11.130, Town Center administration. The design commission shall review the applicability of the development and design standards and determine the project's conformance with this chapter. The degree of conformance with all of the development and design standards will vary on a project by project basis. The commission shall review each project on the project's degree of overall conformity with the objectives, standards and the comprehensive plan. The design commission has the authority to approve, approve with conditions, or deny projects based on the criteria set forth in MICC 19.11.130, Town Center administration.

2. **Applicant's Responsibility.** It is the responsibility of the applicant to design a

project in compliance with the objectives and development and design standards of this chapter.

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

4. Development Agreements. An applicant may request modifications to any design and development standards set forth in this chapter by requesting a development agreement consistent with RCW 36.70B.170 through 36.70B.210. All development agreements shall be in form and content acceptable to the city attorney and will be reviewed and either approved or rejected by the city council after a public hearing pursuant to RCW 36.70B.200. (Ord. 02C-05 § 1; Ord. 02C-04 § 3).

19.11.020 Town Center development – General.

A. Focus Areas. The following specific focus areas have been established in the Town Center to meet the land use objectives of the comprehensive plan (see location map, Exhibit I).

1. Gateway Focus Area. The purpose of the gateway focus area is to create a focused commercial core, oriented toward pedestrian connections and regional transit access. The

broadest mix of land uses is allowed, including retail, office, residential, service, restaurant, entertainment, lodging and community facilities. Buildings are to be oriented toward the street and public spaces.

2. Mixed Use Focus Area. The purpose of the mixed use focus area is to provide mixed retail, office, and residential uses at a level of intensity sufficient to support transit service.

3. Mid-Rise Office Focus Area. The purpose of the mid-rise office focus area is to provide an area for office use with ground floor retail in close proximity to transit and the Interstate 90 corridor.

4. Residential Focus Areas. The purpose of the residential focus areas is to encourage low-rise, high-density housing around the commercial core. A mix of housing types is anticipated including townhouses, condominiums and apartments. Office and retail uses are also allowed. Ground floor retail and restaurant uses are encouraged along 77th and 78th Avenues SE. Three residential focus areas (Northwest, Central and South) are established with varied height restrictions for transition to the single-family uses to the south.

5. Auto-Oriented Focus Area. The purpose of the auto-oriented focus area is to provide a location for commercial uses that are dependent on automobile intensive uses.

B. Permitted Uses.

1. By Focus Area. Permitted uses for each focus area are as follows:

Permitted Use	Gateway	Mixed Use	Mid-Rise Office	Residential			Auto-Oriented
				NW	Central	South	
Adult entertainment	C	N	C	N	N	N	N
Bar	P	P	P	P	P	C	P
Care services	N	P	P	P	P	P	P
Hotel/motel	P	P	P	P	P	C	P
Manufacturing	N	C	C	N	N	N	P
Office	Permitted in all focus areas						
Parking	C	C	P	C	C	C	P
Public facility	Permitted in all focus areas						