



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

**AB 6700
June 3, 2025
Regular Business**

AGENDA BILL INFORMATION

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| TITLE: | AB 6700: New Dwellings in Existing Buildings (HB 1042) in Title 19 MICC (First Reading Ordinance No. 25C-12) | <input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution |
| RECOMMENDED ACTION: | Complete the first reading of Ordinance No. 25C-12 and schedule a second reading for June 17, 2025 | |

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| DEPARTMENT: | Community Planning and Development |
| STAFF: | Jeff Thomas, CPD Director Adam Zack, Principal Planner |
| COUNCIL LIAISON: | n/a |
| EXHIBITS: | 1. Planning Commission Findings and Recommendation Dated May 2, 2025 2. Ordinance No. 25C-12 |
| CITY COUNCIL PRIORITY: | n/a |

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

EXECUTIVE SUMMARY

The purpose of this agenda item is to provide the City Council with the Planning Commission’s recommendation on proposed development code amendments to comply with recent changes in the state law pertaining to allowing new dwelling units to be constructed in existing buildings ([RCW 35A.21.440](#)).

- In 2023, the Washington State Legislature enacted Engrossed Substitute House Bill (HB) 1042;
- HB 1042 established [RCW 35A.21.440](#), which sets requirements for how code cities can regulate the development of new housing in existing buildings;
- [RCW 35A.21.440](#) requires that all code cities, including Mercer Island, allow subject to conditions the development of new housing in existing buildings in all zones where commercial and mixed uses are allowed;
- The development regulations in Title 19 of the Mercer Island City Code (MICC) must be amended to comply with [RCW 35A.21.440](#);
- The City Council included a project to comply with recent statewide legislation, including HB 1042, on the 2024 Annual Docket;
- The Planning Commission held a public hearing and made a recommendation for the proposed amendments on April 23, 2025 (Exhibit 1);

- Ordinance No. 25C-12 would amend the MICC by adding a new section to Chapter 19.06 MICC as recommended by the Planning Commission (Exhibit 2). This new section would comply with RCW 35A.21.440.

BACKGROUND

In 2023, the WA State Legislature enacted House Bill 1042 (HB 1042). This bill enacted [RCW 35A.21.440 – New housing in existing buildings—Prohibitions on local regulation](#). This state law requires code cities in Washington to allow new dwelling units to be added to existing buildings subject to specific conditions. Mercer Island must update its development code to comply with these changes by June 30, 2025 (RCW 35A.21.440(1)(a)). If the City does not comply with HB 1042, the state law supersedes local regulations (RCW 35A.21.440(1)(b)).

RCW 35A.21.440 – NEW HOUSING IN EXISTING BUILDINGS – PROHIBITIONS ON LOCAL REGULATION

The requirements for regulation of new housing in existing buildings in code cities established by HB 1042 are codified in [RCW 35A.21.440 – New housing in existing buildings – Prohibitions on local regulation](#). RCW 35A.21.440 states:

- (1)(a) Code cities must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of subsection (2) of this section for buildings that are zoned for commercial or mixed use no later than six months after its next periodic comprehensive plan update required under RCW 36.70A.130.
- (b) The requirements of subsection (2) of this section apply and take effect in any code city that has not adopted or amended ordinances, regulations, or other official controls as required under this section by the timeline in (a) of this subsection and supersede, preempt, and invalidate any conflicting local development regulations.
- (2) Through ordinances, development regulations, zoning regulations, or other official controls as required under subsection (1) of this section, code cities may not:
 - (a) Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards and fire and life safety standards, can be met within the building;
 - (b) Impose parking requirements on the addition of dwelling units or living units added within an existing building, however, cities may require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added;

- (c) With the exception of emergency housing and transitional housing uses, impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;
 - (d) Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;
 - (e) Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building or to preserve character-defining streetscapes, unless the building is a designated landmark or is within a historic district established through a local preservation ordinance;
 - (f) Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city, unless the addition of the units would violate applicable building codes or health and safety standards;
 - (g) Require unchanged portions of an existing building used for residential purposes to meet the current energy code solely because of the addition of new dwelling units within the building, however, if any portion of an existing building is converted to new dwelling units, each of those new units must meet the requirements of the current energy code;
 - (h) Deny a building permit application for the addition of housing units within an existing building due to nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the code city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area; or
 - (i) Require a transportation concurrency study under RCW 36.70A.070 or an environmental study under chapter 43.21C RCW based on the addition of residential units within an existing building.
- (3) Nothing in this section requires a code city to approve a building permit application for the addition of housing units constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing in cases in which the building cannot satisfy life safety standards.
- (4) For the purpose of this section, "existing building" means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.

ISSUE/DISCUSSION

Ordinance No. 25C-12 would adopt a new section of Chapter 19.06 MICC to comply with RCW 35A.21.440 (Exhibit 2). The Planning Commission held a public hearing and made a recommendation regarding the proposed amendment on April 23, 2025 (Exhibit 1).

Planning Commission Amendments to the Staff Draft

The staff prepared a draft of development code amendments to comply with RCW 35A.21.440. The proposed amendments were provided to the Planning Commission with PCB 25-07. After holding a public hearing, the Planning Commission voted to make two amendments to the draft:

- **Amendment 1** – change subsection C to allow some building envelope changes for developments that would take advantage of the density bonus, and
- **Amendment 2** – change subsection D to specify that existing parking must be retained.

Amendment 1

Amendment 1 would allow development of new dwellings to include some modification of the existing building envelope and still qualify for the density bonus required by state law. This allowance is over and above the state-mandated minimum established in RCW 35A.21.440(2)(a). The state minimum is that code cities must allow the maximum density in a given zone to be exceeded by up to 50 percent provided the development takes place entirely within the existing building envelope. This Planning Commission amendment adds some flexibility for developers to make external modifications to accommodate the new dwelling units.

Proposed New Section of Chapter 19.06 MICC

The proposed draft code section is provided below. This section includes:

- A citation of the RCW in brackets following each provision to help connect the proposed development code section with the requirement from the state law. The bracketed citations are for reference only and will not be included in the adopted development code; and
- Changes from the initial staff proposed draft are shown in strikeout/underline format to illustrate where the Planning Commission made changes from the staff recommendation.

MICC 19.06.XXX – New Dwelling Units in Existing Buildings

- Applicability.* This section applies to any development of new dwelling units in an existing building in a zone where commercial and mixed land uses are allowed. For the purposes of this section, “existing building” means a building that received a certificate of occupancy at least three (3) years prior to the submittal of a permit application to add housing units. [RCW 35A.21.440(1)(a) and (4)]
- Permitted Use.* Development of new dwelling units in an existing building is a residential land use permitted in the TC, PBZ, C-O, B, and MF-2 zones. [RCW 35A.21.440(1)(a)]
- Maximum density.* A maximum residential density established for the underlying zone may be exceeded by up to fifty (50) percent than what is permitted within the underlying zone provided that

the development is constructed entirely within the existing building envelope in a building within a zone which permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards, and fire and life safety standards, can be met within the building. [RCW 35A.21.440(2)(a)] The building envelope and site may be modified as follows not to exceed the requirements of the underlying zone:

1. Exterior features may be added to comply with ADA or required fire and life safety;
2. Landscape and hardscape alterations to accommodate features for residences such as patios;
3. Alterations in exterior fenestration to accommodate access and ventilation;
4. Awnings at fenestration to provide weather protection and/or solar shading;
5. Exterior features to accommodate necessary mechanical and utilities may be added provided the gross floor area of the building would not be increased by more than five percent; and
6. Unenclosed roof top features such as decks and railings may be added provided that they do not increase the existing height by the lesser of the maximum allowed in the subject zone or by six feet and elevator or stair access may be added provided they do not increase the existing building height by the lesser of the maximum allowed in the subject zone or 20 feet.

- D. *Parking.* New parking spaces are not required for dwelling units added to an existing building. ~~The code official may condition approval to require the retention of e~~Existing quantity of parking spaces must be retained provided the total number of spaces to be retained is less than or equal to the number of spaces that would be required for multifamily uses in the subject zone. [RCW 35A.21.440(2)(b)]
- E. *Permit Required.* Development of new dwelling units in an existing building is permitted outright in any zone allowing commercial or mixed land uses unless the subject zone requires a land use permit for residential uses, in which case the permit requirement in the subject zone controls. [RCW 35A.21.440(2)(c)]
- F. *Development Standards.* Development of new dwelling units in an existing building is subject to the development standards, including building height, setbacks, lot coverage, and floor area ratio requirements, applicable to residential development within the subject zone. [RCW 35A.21.440(2)(d) & (e)]
- G. *Design Standards.* New dwelling units in existing buildings are exempt from the design standards in Chapters 19.11 and 19.12 MICC, with the following exceptions:
1. The street standards established in MICC 19.11.120. [RCW 35A.21.440(2)(E)]

2. Required ground floor street frontage uses established in MICC 19.11.020. [RCW 35A.21.440(2)(F)]

H. *Transportation Concurrency and Environmental Review.* Development of new residential units in existing buildings is not subject to the transportation concurrency requirements in Chapter 19.20 MICC and environmental review required in Chapter 19.21 MICC. [RCW 35A.21.440(2)(i)]

RECOMMENDED ACTION

Schedule a second reading of Ordinance No. 25C-12 for June 17, 2025