



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

**AB 6411  
February 20, 2024  
Regular Business**

**AGENDA BILL INFORMATION**

<b>TITLE:</b>	AB 6411: Readoption of 2021 Construction Code Updates (Ordinance No. 24C-02, First Reading & Adoption)	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
<b>RECOMMENDED ACTION:</b>	Adopt Ordinance No. 24C-02 amending MICC Chapter 17 with the updated editions of the Construction Codes to be effective on March 15, 2024, as mandated by the State of Washington.	

<b>DEPARTMENT:</b>	Community Planning and Development
<b>STAFF:</b>	Jeff Thomas, Community Planning and Development Director Don Cole, Building Official Jeromy Hicks, Fire Marshall
<b>COUNCIL LIAISON:</b>	n/a
<b>EXHIBITS:</b>	1. Ordinance No. 24C-02 2. Summary of Significant Code Changes
<b>CITY COUNCIL PRIORITY:</b>	n/a

<b>AMOUNT OF EXPENDITURE</b>	\$ n/a
<b>AMOUNT BUDGETED</b>	\$ n/a
<b>APPROPRIATION REQUIRED</b>	\$ n/a

**EXECUTIVE SUMMARY**

The purpose of this agenda bill is to re-adopt state-mandated updates to the City’s construction codes to improve public safety and welfare by staying current with new code requirements. Typically, the model codes are updated on a three-year cycle and the state then mandates adoption by local jurisdictions.

- In early May 2023, City Council adopted Ordinance No. 23C-04 ([AB 6262](#)), with the updated editions of the construction codes to be effective on July 1, 2023, as mandated by the State of Washington.
- In late May 2023, the Washington State Building Code Council (SBCC) delayed the adoption of the updated construction codes for 120 days to October 29, 2023, to consider modifications to the energy codes.
- In June 2023, City Council adopted Ordinance No. 23C-07, repealing Ordinance No. 23C-04 ([AB 6284](#)), maintaining the current construction codes in MICC Title 17.
- In October, the SBCC delayed implementation a second time to March 15, 2024.
- Mercer Island must adopt the state-mandated construction codes no later than March 15, 2024.
- Additional construction code amendments are also recommended to align with regional model codes.

Since City Council’s original adoption of these updates in the spring of 2023, there were additional changes made to the Energy Code as well as the Wildland Urban Interface Code. Both codes remain controversial, and opponents may still petition the Governor, the Joint Administrative Rules Review Committee, or a Court to take different action. Meanwhile, current state law mandates local adoption of state-mandated construction codes by March 15, 2024. Given this required effective date, and the Mercer Island Reporter’s publishing deadlines, staff recommends that Ordinance No. 24C-02 be adopted at first reading pursuant to [City Council Rule of Procedure](#) 6.3(C)(3), thereby ensuring it is published and takes effect by the mandated deadline.

## BACKGROUND

### 2021 Construction Code Adoption

As mandated by the State of Washington, City staff prepared the 2021 updated construction codes for City Council review and adoption in Q2 2023. On May 2, 2023, the City Council approved [Ordinance No. 23C-04](#) adopting the 2021 construction codes with an effective date of July 1, 2023 ([AB 6262](#)).

However, on May 24, 2023, the SBCC voted to delay the implementation of the 2021 Washington State Building Codes under emergency rule for 120 days, starting on June 30, 2023. The SBCC also voted to enter rulemaking to revise portions of the 2021 Washington State Energy Code (residential and commercial) that would mitigate legal risks for Washington State based on new legal precedent from a recent decision of the Ninth Circuit Court (see more information below).

### Reason for Delay and Subsequent Actions Taken by the Washington State Building Code Council

These actions were taken during a Special Meeting of the SBCC that was called to address legal uncertainty stemming from the decision in [California Restaurant Association v. City of Berkeley](#) issued April 18, 2023, by the Ninth Circuit Court of Appeals. The ruling states that the City of Berkeley cannot enforce a ban on natural gas piping installation in new buildings, finding that the U.S. Energy Policy and Policy Conservation Act (EPCA) preempts the city’s regulation. A more thorough legal analysis of the Ninth Circuit decision and its potential implications is available [here](#).

At the May 24 Special Meeting, the SBCC directed its staff to convene Technical Advisory Groups to consider stakeholder proposals to modify sections in the commercial and residential energy codes to mitigate legal risks. After which, on November 28, 2023, the SBCC adopted rulemaking stating the following purpose, “to modify sections in the commercial and residential energy codes to address the legal uncertainty stemming from the decision in *California Restaurant Association v. City of Berkeley* recently issued by the Ninth Circuit Court of Appeals. While the requirements in the 2021 Washington State Energy Code are not exactly analogous to the Berkeley prohibition on gas infrastructure, the Council moved forward to address the ruling expanding the scope of the Energy Policy and Conservation Act of 1975 (EPCA) preemption provisions. The Council sought public input on areas where the code may be impacted by a preemption issue and developed a proposed rule addressing those areas while retaining the efficiency gains made towards the goal of RCW 19.27A.160”.

The foremost change provides for a fossil fuel compliance pathway to allow fossil fuel appliances with modified requirements including higher energy efficiencies, additional energy credits, and providing for electrification readiness.

## ISSUE/DISCUSSION

### 2021 STATE CONSTRUCTION CODE MANDATE

Effective March 15, 2024, Washington statutes require all jurisdictions in the state to adopt and enforce the following updated Construction Code editions as adopted and amended by the State of Washington:

- 2021 International Building Code (IBC)
- 2021 International Residential Code (IRC)
- 2021 International Mechanical Code (IMC)
- 2021 International Fuel Gas Code (IFGC)
- 2021 Uniform Plumbing Code (UPC)
- 2021 International Fire Code (IFC)
- 2021 International Existing Building Code
- 2021 International Swimming Pool and Spa Code
- 2021 International Wildland-Urban Interface Code (WUIC)
- Washington State Energy Code (WSEC)
- Washington Cities Electrical Code (WCEC)

Proposed Ordinance No. 24C-02 (Exhibit 1) updates Mercer Island City Code Title 17 to re-adopt the updated State Construction Codes. Except for items presented in the section titled “Optional Changes,” the proposed changes to the existing construction codes are limited to code changes deemed necessary to provide conformity with mandated updates or for clarification purposes.

### MANDATED CHANGES

The mandated code updates include hundreds of changes with various levels of impact on safety, energy efficiency, construction costs, and more. For example, the updates include fire-resistive construction changes to improve fire and life safety and more stringent energy code requirements to improve energy efficiency. Both updates will result in small increases in construction costs. The analysis of such cost relationships was part of the state code adoption process.

Impactful and higher profile changes include:

- Increased regulation on fossil fuel appliances; stipulating higher energy efficiencies, additional energy credits and providing for electrification readiness,
- New requirements for heat pump space heaters and service water heaters,
- Provisions for electric vehicle (EV) charging infrastructure,
- Accessibility changes to accommodate larger wheelchairs, and
- Enforcement of the Wildland-Urban Interface Code.

A more detailed listing of significant code changes is provided in Exhibit 2.

### OPTIONAL CHANGES

In addition to the mandated changes, the following optional changes were initially approved by Ordinance No. 23C-04 ([AB 6262](#)) and are again proposed to be adopted with the mandated changes in the construction codes update to align City requirements with those of other regional jurisdictions:

1. **Update the Administrative Provisions to remain consistent with the Regional Model Code (MyBuildingPermit.com).**

This proposed update includes minor alterations to the administrative provisions within the existing MICC Title 17, Construction Codes, enabling the Mercer Island Administrative Code to remain consistent with the regional model administrative code for cities participating within [MyBuildingPermit.com](http://MyBuildingPermit.com). Examples include designating the authority for interpretations and enforcement, setting expiration criteria for permit applications and permits, and similar administrative provisions.

- 2. Update the Fire Code as recommended by Zone 1 Fire Marshals.** Updates to the Fire Code are aimed at providing clarity to the adopted code as related to jurisdictional specific requirements. Furthermore, the recommended changes were modified to closely align with the City's regional partners to provide consistency for residents, business owners, and contractors.

Participation in the regional model codes for code administration and fire code requirements helps provide the following:

- Permit applicants will have consistent administration and enforcement when working in the region (MyBuildingPermit.com and Zone 1 Fire Marshal jurisdictions).
- A single reference to one administrative provision for all construction codes rather than eleven different codes created by multiple organizations.
- Resolves conflicts between administrative provisions within various adopted codes – IBC, UPC, NFPA, NEC, etc.
- Resolves conflicts, aligns, and provides administrative provisions consistent with other MICC provisions (fees, violations, appeals, etc.)
- Simplifies the addition of administrative provisions that are not addressed within the differing construction codes (such as fees, violations, penalties, appeals, etc.).
- Creates less work when adopting and amending administrative provisions. Specifically, only one code is amended instead of eleven codes.

There are no other changes proposed to the construction codes beyond the state mandated changes and the two aforementioned items. It should be noted that local jurisdictions have little authority to adopt construction codes that differ from the state mandated codes. State law ([WAC 51-04-030](http://WAC 51-04-030)) requires review and approval of local amendments to certain construction codes by the Washington State Building Code Council (SBCC). Locally adopted construction codes shall not become effective without approval from the SBCC.

## **OUTREACH AND TRAINING FOR STAFF AND BUILDING PROFESSIONALS**

Extensive public outreach and training has occurred at various levels, statewide through the Washington Association of Building Officials (WABO) and regionally by MyBuildingPermit.com, both of which the City of Mercer Island is a member. Last year, MyBuildingPermit.com had training at its "I-Code Update Week" and WABO offered code update training at its "2023 WABO Annual Education Institute." This year, WABO will offer code update training in late March.

Locally, City staff are providing information regarding the significant code updates on the City's website, sending email communications to customers and answering specific questions regarding the updates. Staff participates in the development of low-cost 2021 Code update training seminars targeted at contractors and design professionals, along with providing informational handouts and website information.

## **NEXT STEPS**

Adopting the ordinance on February 20, 2024, will provide for the updated Construction Codes to take effect on March 15, 2024, as mandated by the State of Washington.

## **RECOMMENDED ACTION**

Adopt Ordinance No. 24C-02 amending MICC Chapter 17 with the updated editions of the Construction Codes to be effective on March 15, 2024, as mandated by the State of Washington.