

**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.

Section2: **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: _____

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Planning Commission Recommendation

1 RESIDENTIAL

2 19.02.020 Development standards

4 MULTIPLE-FAMILY

5 19.03.010 Multiple-family

7 COMMERCIAL

8 19.04.010 Planned business zone - PBZ

9 19.04.020 Commercial offices

10 19.04.050 Business - B

12 PROPERTY DEVELOPMENT

13 19.09.100 Preferred practices

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

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 ~~Depth~~Width.*

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 ~~Depth~~Width.*

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- 1 ~~(a)~~ The minimum side yard depth ~~abutting an interior lot line~~ is five feet or 33
2 percent of the aggregate side yard total ~~depth~~width, whichever is greater.
3 ~~(a) The minimum side yard depth abutting a street is five feet.~~

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7 3. Intrusions into Required Yards.

8 a. Minor Building Elements.

- 9 i. Except as provided in subsection (C)(3)(a)(ii) of this section, porches, chimney(s) and
10 fireplace extensions, window wells, and unroofed, unenclosed outside stairways and
11 decks shall not project more than three feet into any required yard. Eaves shall not
12 protrude more than 18 inches into any required yard.
13 ii. No penetration shall be allowed into the minimum side yard setback abutting an interior
14 lot line except where an existing flat-roofed house has been built to within 18 inches of
15 the interior side yard setback line and the roof is changed to a pitched roof with a
16 ~~minimum~~ pitch of ~~- 2:12 or steeper~~4:12, the eaves up to 18 inches may penetrate ~~up to~~
17 ~~18 inches~~ into the side yard setback.

18 b. Hardscape and Driveways.

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

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24 MICC 19.03.010

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28 E. *Building Height Limit.*

29 ~~1. MF-2L: No building shall exceed 24 feet or two stories in height (excluding daylight basements),~~
30 ~~whichever is less, except appurtenances may extend to a maximum of five feet above the height~~
31 ~~allowed for the main structure.~~

32 ~~2.1.~~ MF-2, MF-3: No building shall exceed 36 feet or three stories in height, whichever is less, except
33 appurtenances may extend to a maximum of five feet above the height allowed for the main
34 structure.

35 2. Building height for buildings within the MF-2 and MF-3 zone shall be calculated using the method
36 described in MICC 19.11.030(A)(3).

37 3. Buildings within the MF-2L shall meet the following standards:

38 a. No building shall exceed 24 feet in height above the average building elevation to the
39 highest point of the roof; and

40 b. The maximum building facade height on the downhill side of a sloping lot shall not
41 exceed 24 feet in height. The building facade height shall be measured from the existing
42 grade or finished grade, whichever is lower, at the furthest downhill extent of the
43 proposed building, to the top of the exterior wall facade supporting the roof framing,
44 rafters, trusses, etc.
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1 **MICC 19.04.010**

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3 E. *Development Standards – Nonresidential.*

4 1. *Building Height Limit.* No nonresidential structure shall exceed 36 feet in height, [calculated using](#)
5 [the method described in MICC 19.11.030\(A\)\(3\).](#)

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7 2. *Minimum Parcel Area Requirements.* There shall be no minimum parcel size for nonresidential
8 uses.

9 3. *Parking Requirements.* All nonresidential uses permitted in this zone shall comply with the
10 parking requirements set out in MICC 19.04.040.

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14 F. *Development Standards – Residential.*

15 1. *Criteria for Residential Units.* The intent for residential development in the PBZ is for a variety of
16 housing units smaller in size than the surrounding neighborhood, developed in a planned and
17 coordinated manner. Except as otherwise provided in this section, no residential units shall be
18 located under or over another unit or within a commercial structure.

19 2. *Building Height Limit.* No residential building shall exceed 30 feet in height, [calculated using the](#)
20 [method described in MICC 19.11.030\(A\)\(3\).](#) Antennas, lightning rods, plumbing stacks, flagpoles,
21 electrical service leads, chimneys and fireplaces and other similar appurtenances may extend to a
22 maximum of five feet above the height allowed for the main structure.

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25 **MICC 19.04.020**

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27 C. *Building Height Limit.*

28 1. Structures shall not exceed 36 feet in height, [calculated using the method described in MICC](#)
29 [19.11.030\(A\)\(3\).](#)

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33 **MICC 19.04.050**

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

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40 **MICC 19.09.100**

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

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 3 MICC 19.15.030 Table A
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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 variances modification (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 variances modifications (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)

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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 multiple
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);

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- (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

19.15.230 **Comprehensive plan amendments [and docketing procedures](#).**

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

1. Preliminary Docket Review. By September 1, the city will issue notice of the annual comprehensive plan [and code](#) amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan [and code](#) amendment process but will be held for the next eligible comprehensive plan [and code](#) amendment process.
 - a. The code official shall compile and ~~maintain~~ [post](#) for public review a list of suggested amendments and identified deficiencies as received throughout the year.
 - b. The code official shall review all complete and timely filed applications [and suggestions](#) proposing amendments to the comprehensive plan [or code](#) -and place these applications on the preliminary docket along with other city-initiated amendments to the comprehensive plan.
 - c. The planning commission shall review the preliminary docket at a public meeting and make a recommendation on the preliminary docket to the city council each year.
 - d. 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.
2. Final Docket Review.
 - a. Placement on the final docket does not mean a proposed amendment will be approved. The purpose of the final docket is to allow for further analysis and consideration by the city.

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1 b. All items on the final docket shall be considered concurrently so that the cumulative
2 effect of the various proposals can be ascertained. Proposed amendments may be
3 considered at separate meetings or hearings, so long as the final action taken considers
4 the cumulative effect of all proposed amendments to the comprehensive plan.

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

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

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

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

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

32 1. The request has been filed in a timely manner, and either:

33 a. State law requires, or a decision of a court or administrative agency has directed,
34 such a change; or

35 b. All of the following criteria are met:

36 i. The proposed amendment presents a matter appropriately addressed
37 through the comprehensive plan [or the code](#);

38 ii. The city can provide the resources, including staff and budget, necessary to
39 review the proposal, or resources can be provided by an applicant for an
40 amendment;

41 iii. The proposal does not raise policy or land use issues that are more
42 appropriately addressed by an ongoing work program item approved by the city
43 council;

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- 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.

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 c~~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. The suggested amendments shall be docketed pursuant to MICC 19.15.230(D) and considered on at least an annual basis.
 - 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) All proposed code amendments, whether initiated by suggestion or application, shall be accompanied by an application form and shall require a detailed description of the proposed amendment in nontechnical terms.
 - 3. Applications for a code amendment shall not be subject to the docketing procedures of MICC 19.15.230(D).
 - 4. Multiple code amendments 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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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](#)

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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.