



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

**AB 6074  
May 3, 2022  
Regular Business**

**AGENDA BILL INFORMATION**

<b>TITLE:</b>	AB 6074: Development Code Amendment ZTR21-006 Land Use Review Types (Ord. No. 22C-05 First Reading)	<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>	Schedule Ordinance No. 22C-05 for second reading on June 7, 2022.	

<b>DEPARTMENT:</b>	Community Planning and Development
<b>STAFF:</b>	Alison Van Gorp, Deputy Director Adam Zack, Senior Planner
<b>COUNCIL LIAISON:</b>	n/a
<b>EXHIBITS:</b>	<ol style="list-style-type: none"> <li>1. Draft Ordinance No. 22C-05</li> <li>2. Planning Commission Recommendation dated February 16, 2022</li> <li>3. Staff memo to Planning Commission dated December 9, 2021,</li> <li>4. Staff Memo to Planning Commission dated February 11, 2022</li> </ol>
<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**

Zoning Code Amendment ZTR21-006 was added to the Community Planning and Development (CPD) work program through the 2020 annual docket. The docket application proposed changes to the Mercer Island City Code (MICC) 19.15.030 to increase the review process and notification requirements for five land use review actions. The Planning Commission has reviewed the proposal and prepared a recommendation for City Council consideration. Additional summary information includes:

- After holding a public hearing on February 16, 2022, The Planning Commission has recommended the proposed code amendment shown in the draft Ordinance No. 22C-05 (Exhibit 1).
- The proposed amendment will increase the review process for seasonal development limitation waivers and final short plats; amending MICC 19.15.030 Land use review types.
- After considering the proposal at a public hearing, the Planning Commission also recommended programmatic changes to increase the availability of permit information for the public.

## BACKGROUND

The proposed code amendment was brought forward by a resident as a part of the annual docket submittal process in the fall of 2020. The City Council added this proposal to the final docket and the CPD work program with the approval of [Resolution No. 1594](#) on December 1, 2020. The proposal was assigned file number ZTR21-006.

The Planning Commission first discussed and gave initial feedback regarding ZTR21-006 on December 15, 2021. Staff prepared a draft code amendment and programmatic approach based on the initial feedback for the Planning Commission to consider after holding a public hearing. A State Environmental Policy Act (SEPA) determination of non-significance was issued on January 19, 2022, and the project was assigned SEPA register file number 202200262. The SEPA determination comment period was open from January 19 to February 2, 2022; no comments were received. The WA Department of Commerce was notified of the intent to adopt development code amendments on January 19, 2022. Notice of the Planning Commission public hearing was published in the *Mercer Island Reporter* on January 12, 2022, and in the CPD Weekly Permit Bulletin on January 24, 2022. The Planning Commission held a public hearing regarding ZTR21-006 on February 16, 2022.

## ISSUE/DISCUSSION

### MICC 19.15.030 – LAND USE REVIEW TYPES

[MICC 19.15.030](#) establishes four types of land use review, each with its own unique notice requirements. The four types are described as follows:

- “A. Type I. Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
- B. Type II. Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.
- C. Type III. Type III reviews require the exercise of discretion about nontechnical issues.
- D. Type IV. Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.”

The permit types are differentiated largely by the amount of discretion and technical expertise that must be used in making permitting decisions. Type I and II permits are nondiscretionary and require the application of professional expertise on technical issues. Types III and IV permits require more discretion, with Type IV permits also being for larger, more impactful actions that are of broad public interest.

In addition to establishing four permit types, MICC 19.15.030 codifies the notice requirements, decisionmaker, and appeal authority for each land use review action. The permit type definitions and the review process together establish a hierarchy wherein permit reviews requiring more discretion also have higher levels of public notice as well as opportunities for public comment and participation. Public notice is not required for Type I permits. Public notification posted in the weekly CPD Permit Bulletin is required for Type II permits. More public notice is required for Type III and IV permits compared with Type II. The additional notice includes posting on site, mailing to addresses within 300 feet and, in some cases, publication in the *Mercer Island Reporter*. Type III and IV permits also have a 30-day public comment period. Type IV permits require a public hearing.

This hierarchy matches decisions requiring substantial discretion with higher levels of public notice and opportunities for comment. Public notice and comment periods are appropriate because the decisions on these matters are not as objective or technical. Public comments can provide valuable input, and the staff are able to give some consideration to community concerns in making their decisions. On the other hand, decisions that are largely objective and/or technical and allow little discretion, meaning less public notice is required.

## **PLANNING COMMISSION RECOMMENDATION**

Following the public hearing, the Planning Commission made a recommendation to amend MICC 19.15.030 Land use review types (Exhibit 2). The Planning Commission recommends increasing the land use review type for seasonal development limitation waivers and final short plats from Type I to II. This change will require these two land use review actions to be listed in the CPD Weekly Permit Bulletin. The Planning Commission recommended code amendment is discussed further below.

### Seasonal Development Limitation Waivers

The first proposed amendment to MICC 19.15.030 will increase the land use review type required for Seasonal Development Limitation Waivers from Type I to Type II. The MICC restricts some clearing and grading work during the “wet season” from October 1 through April 1 to reduce potential impacts from erosion and landslides during these months. A Seasonal Development Limitation Waiver is a waiver granted by the Code Official for land clearing, grading, filling and foundation work in an erosion hazard area or a landslide hazard area during the wet season. A Seasonal Development Limitation Waiver is required in addition to the other required permits such as a building permit and grading permit for this type of work to proceed in between October 1 and April 1. Issuance of Seasonal Development Limitation Waiver is authorized by [MICC 19.07.160\(F\)\(2\) – Geologically hazardous areas](#), which states:

2. Land clearing, grading, filling, and foundation work within: (a) an erosion hazard area, when 2,000 square feet or more of site disturbance is proposed, and/or (b) a landslide hazard area are not permitted between October 1 and April 1.
  - a. The code official may grant a waiver to this seasonal development limitation if the applicant provides a critical area study for the site concluding that:
    - i. Geotechnical slope stability concerns, erosion and sedimentation impacts can be effectively controlled on site consistent with adopted storm water standards; and
    - ii. The proposed construction work will not subject people or property, including areas off site, to an increased risk of associated impacts.
  - b. As a condition of the waiver, the code official may require erosion control measures, restoration plans, an indemnification, a release agreement and/or performance bond.
  - c. If site activities result in erosion impacts or threaten water quality standards, the city may suspend further work on the site and/or require remedial action.
  - d. Failure to comply with the conditions of an approved waiver shall subject the applicant to code compliance pursuant to chapter 6.10, code compliance, including but not limited to civil penalties and permit suspension.

As a Type I land use review action, public notice is not required for Seasonal Development Limitation Waivers. Public notification will be required if the land use review type were increased to Type II. The standards for public notification are established in MICC 19.15.080. Public notification for Type II actions does not include a public comment period. The notification is posted in the weekly CPD permit bulletin published on the City website at: <https://www.mercerisland.gov/permitbulletin>.

If MICC 19.15.030 is amended as proposed, Seasonal Development Limitation Waivers will be posted to the weekly CPD permit bulletin. For reference, CPD reviewed 85 Seasonal Development Limitation Waivers between 2016 and 2021, an average of 14 a year. Listing a land use review action on the CPD permit bulletin takes roughly fifteen minutes per review.

#### Final Short Plats

The second proposed amendment to MICC 19.15.030 will increase the land use review type for short plats from Type I to Type II. A short plat is a land division that creates four or fewer new parcels from an existing parcel. Final plat requirements are established in [MICC 19.08.050 – Final plats](#). Short plats are granted preliminary approval as a Type III land use review action. Because the preliminary approval is a Type III land use review, the short plat is listed on the CPD permit bulletin when it is initially applied for. Notice is also posted on site and mailed to addresses within 300 feet during the preliminary short plat review.

As with Seasonal Development Limitation Waivers, the proposed amendment would require that final short plat approval be listed on the weekly CPD permit bulletin. Because the land use review action for preliminary approval of short plats is a Type III action, the proposed amendment would result in short plats getting listed on the permit bulletin twice. The first listing would be during the initial review of the application before the preliminary approval and then a second listing would be required when final approval is granted.

For reference, CPD reviewed 24 short plats between 2016 and 2021, an average of four a year. Listing a land use review action on the CPD permit bulletin takes roughly fifteen minutes per review.

#### Programmatic Approach

In addition to amending the code, the Planning Commission also recommends the City take a programmatic approach to increase public access to permit records. The programmatic measures include developing a permit web map showing active permits throughout the City and adding information about searching online permit records to the CPD Weekly Permit Bulletin. The programmatic approach is discussed further below.

#### **ORDINANCE NO. 22C-05 AMEND MICC 19.15.030 – LAND USE REVIEW TYPES**

On February 16, the Planning Commission recommended amending the land use review types for Seasonal Development Limitation Waivers and Final Short Plats from Type I to Type II, as shown in the draft Ordinance 22C-05 (Exhibit 1). Increasing the land use review type from Type I to Type II would require Seasonal Development Limitation Waivers and Final Short Plats to be listed on the CPD Weekly Permit Bulletin. This would add more review time to these land use review actions. Please see the December 9, 2021, staff report for additional discussion of increasing the land use review type for Seasonal Development Limitation Waivers and Final Short Plats (Exhibit 3).

Ordinance 22C-05 would amend MICC 19.15.030 Land use review types, Table A as follows (Exhibit 1).

**MICC 19.15.030 - Land use review types, Table A.**

Table A. Land Use Review Type			
Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> <li>• Home business</li> <li>• <del>Seasonal development limitation waiver</del></li> <li>• Nonmajor single-family dwelling building permits</li> <li>• Tree removal permit</li> <li>• Right-of-way permit</li> <li>• Special needs group housing safety determination</li> <li>• Tenant improvement/change of use</li> <li>• Shoreline exemption <sup>1</sup></li> <li>• Critical area review 1</li> <li>• <del>Final short plat</del></li> <li>• Temporary commerce on public property</li> <li>• Site development permits</li> <li>• Transportation concurrency certificate</li> </ul>	<ul style="list-style-type: none"> <li>• Modified wireless communication facilities (6409 per 47 CFR 1.40001)</li> <li>• Lot line revision</li> <li>• Setback deviations</li> <li>• Final plat <sup>2,3</sup></li> <li>• Code official design review</li> <li>• Accessory dwelling unit</li> <li>• Parking modification <sup>7</sup> (reviewed by city engineer)</li> <li>• Small wireless facility deployment</li> <li>• <u>Seasonal development limitation waiver</u></li> <li>• <u>Final short plat</u></li> </ul>	<ul style="list-style-type: none"> <li>• New and modified wireless (non-6409) eligible facility</li> <li>• SEPA threshold determination</li> <li>• Critical area review 2</li> <li>• Public agency exception</li> <li>• Temporary encampment <sup>4</sup></li> <li>• Short plat alteration and vacations</li> <li>• Preliminary short plat</li> <li>• Development code interpretations</li> <li>• Major single-family dwelling building permit <sup>5</sup></li> <li>• Shoreline substantial development permit <sup>1</sup></li> <li>• Shoreline revision (substantial development) <sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Preliminary long plat approval</li> <li>• Conditional use permit</li> <li>• Variance</li> <li>• Critical areas reasonable use exception</li> <li>• Long plat alteration and vacations</li> <li>• Parking modifications <sup>7</sup> (reviewed by design commission)</li> <li>• Variance from short plat acreage limitation</li> <li>• Wireless communication facility height variance</li> <li>• Planned unit development</li> <li>• Design commission design review</li> <li>• Permanent commerce on public property</li> <li>• Shoreline conditional use permit (SCUP) <sup>6</sup></li> <li>• Shoreline variance <sup>6</sup></li> <li>• Shoreline revision (variance and SCUP)</li> </ul>

<sup>1</sup> Appeal will be heard by the shorelines hearings board.

<sup>2</sup> Decision is made by city council after discussion at a public meeting.

<sup>3</sup> A notice of decision will be issued for a final long plat.

<sup>4</sup> A public meeting is required.

<sup>5</sup> Major single-family dwelling building permits are subject only to the notice of application process. A notice of decision will be provided to parties of record.

<sup>6</sup> Hearing examiner will forward a recommendation to the Washington State Department of Ecology for Ecology's decision.

<sup>7</sup> Parking modifications are issued pursuant to the provisions of MICC 19.11.130.

## **PROGRAMMATIC APPROACH**

In addition to recommending a code amendment, the Planning Commission proposed a programmatic approach to providing additional notice. This approach will add links to online electronic permit records to the CPD Weekly Permit Bulletin. In addition to links, staff proposes adding instructions for searching online building permit records available at [www.mybuildingpermit.com](http://www.mybuildingpermit.com). An example of the CPD Weekly Permit Bulletin with search instructions and placeholders for links is provided in Exhibit 4.

Staff will proceed with implementing the programmatic approach to making permit information more widely available, as described below. The programmatic approach is an effective way to disseminate information about land use review actions without substantially increasing the amount of time committed to the review of routine land use review actions like Seasonal Development Limitation Waivers and Final Short Plats. Combining the permit web map and instructions for searching [mybuildingpermit.com](http://mybuildingpermit.com) to the CPD Weekly Permit Bulletin will accomplish the goal of making permit information more widely available without requiring any changes to the City Code. The web map can be fine-tuned in the future to provide the pertinent information without requiring a legislative action such as amending the City Code. This approach utilizes the existing resource of electronic permit records to address the issue raised in the original docket proposal without committing additional City resources to the CPD Weekly Permit Bulletin.

### Mybuildingpermit.com Search

Electronic permit records are publicly available at <https://permitsearch.mybuildingpermit.com/>. The online records are updated as soon as an application is entered into the CPD electronic permit system. Staff proposes adding instructions for searching permit records to the CPD Weekly Permit Bulletin. An example is shown in Exhibit 4, Attachment B. Through [mybuildingpermit.com](http://mybuildingpermit.com), anyone can see all permits that have been applied for, issued, or finalized within a given date range.

### Permit Web Map

CPD staff has worked with City Information and Geographic Services (IGS) staff to discuss options for creating a web map showing permit applications by type, status, and location. As a result, IGS staff created a prototype web map for searching permit applications. The web map will provide a search interface that is easier to use than [mybuildingpermit.com](http://mybuildingpermit.com) and give the public the option to search by location. Furthermore, the permit data displayed on the web map is pulled from the same electronic permit data source as [mybuildingpermit.com](http://mybuildingpermit.com), meaning the permit information shown is updated as new permits are entered into the system. Staff will finish building web map and make it available online and a link to the web map would be added to the CPD Weekly Permit Bulletin.

Figure 1 shows the initial view of the prototype web map. The colored dots on the map show different land use and building permit applications throughout the City. Each color represents a different type of permit. Clicking on any dot brings up a window with the pertinent permit information (see Figure 3). The search fields on the right allow the user to filter the dots shown on the map by permit type and application date.

Figure 1. Prototype Web Map Initial View.

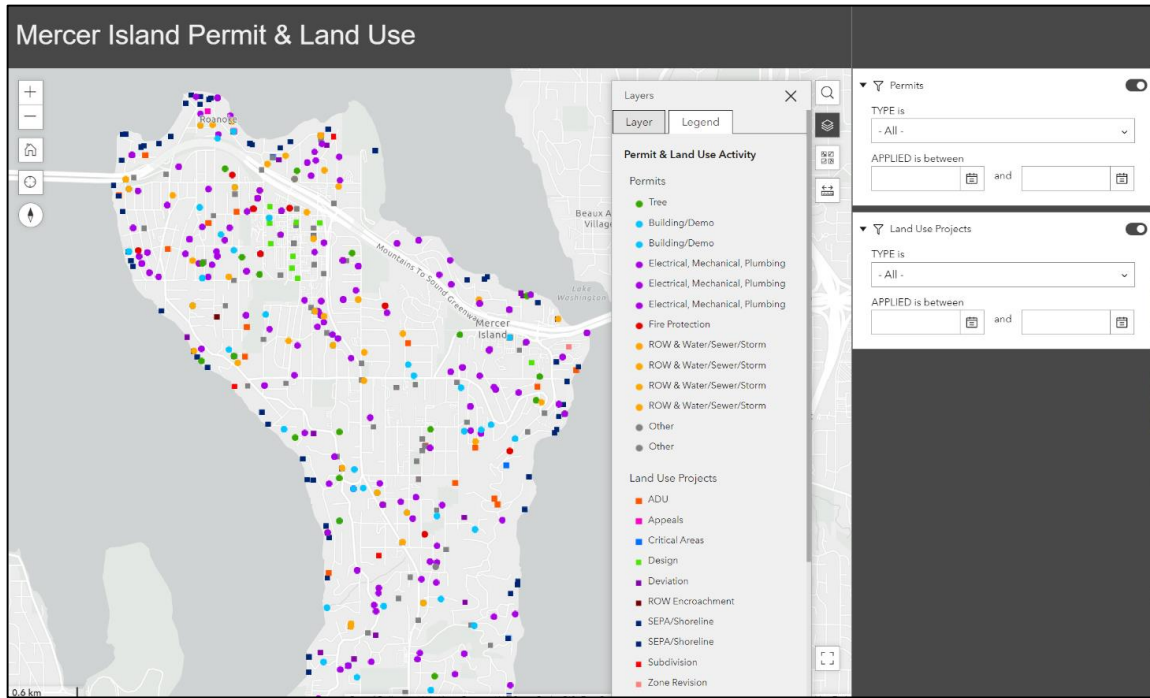


Figure 2 shows a sample tree permit search for an area of east Mercer Island. It illustrates what the map looks like when permits are filtered to show a specific permit type in a given area. The example search is for tree permits submitted between December 1, 2021, and January 31, 2022, in the area south of I-90 and west of E Mercer Way. The green dots on the map are individual tree permits.

Figure 2. Prototype Web Map Search Example.

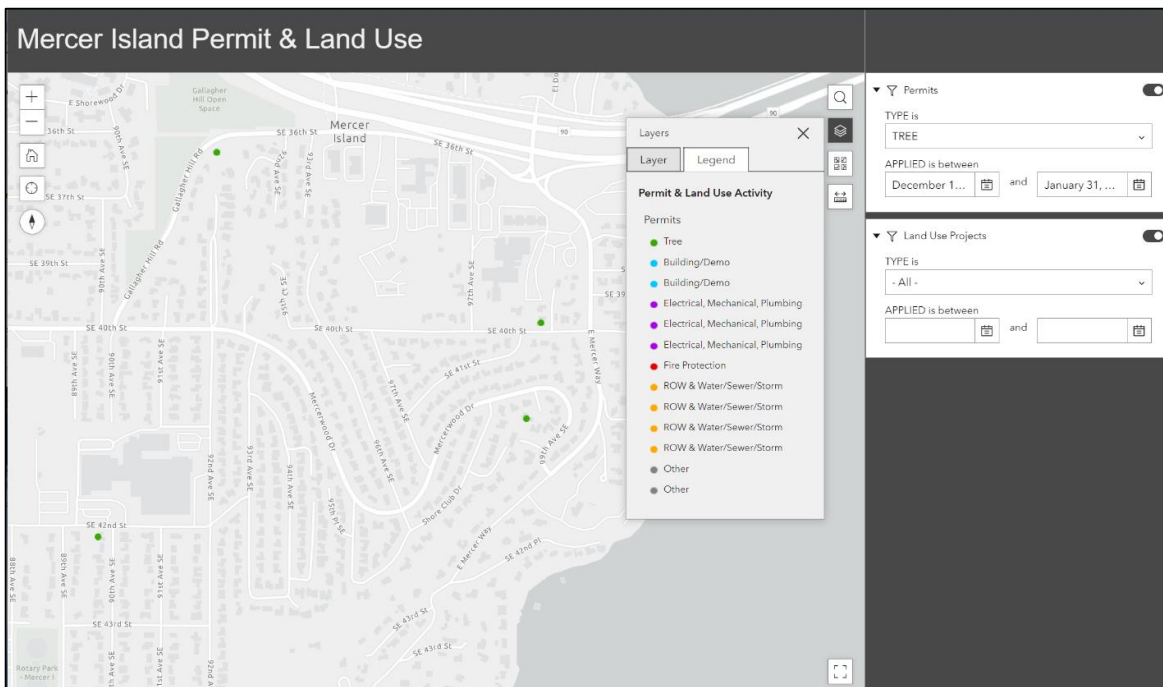


Figure 3 shows the pop up that comes up when a user clicks on a dot on the map. The pop up displays pertinent permit information pulled from the CPD permit records. Note that the example search was completed on January 31, the status for the example permit may be different if searched at a later date.

**Figure 3. Prototype Web Map Permit Pop Up Example.**



Permits: 4215 MERCERWOOD DR	
PERMIT NO	2201-033
STATUS	IN REVIEW
ADDRESS	4215 MERCERWOOD DR
TYPE	TREE
SUBTYPE	TREE PROTECTION
APPLIED	January 5, 2022
DESCRIPTION	Tree Protection City Tree

Zoom to

Staff will finish building the permit web map and create a version for the public to use. One advantage of using a programmatic response is that amending the web map can be done as needed to make it a more useful tool without requiring a legislative action. The programmatic response has the added advantage of being automated moving forward. In other words, once the web map is built it will automatically pull from the City’s electronic permit records without requiring ongoing staff time to keep it up to date.

Combining the permit web map and adding instructions for searching mybuildingpermit.com to the CPD Weekly Permit Bulletin can accomplish the goal of making permit information more widely available without requiring any changes to the City Code.

## NEXT STEPS

If the City Council would like to pursue the proposed code amendment, second reading of Ordinance No. 22C-05 can be scheduled for the June 7, 2022 City Council Meeting. Staff will proceed with making improvements to the permit bulletin and creation a permit web map. This work will proceed over the next few months as IGS staff are able to make time to refine and finalize the prototype map between their other work priorities.

## RECOMMENDED ACTION

Schedule Ordinance No. 22C-05 for second reading on June 7, 2022.