

**CITY OF MERCER ISLAND
ORDINANCE NO. 25C-12**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING TITLE 19 OF THE MERCER ISLAND CITY CODE TO ADOPT
REGULATIONS RELATED TO NEW DWELLING UNITS IN EXISTING
BUILDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN
EFFECTIVE DATE.**

WHEREAS, on April 14, 2023, the Washing State Legislature enacted Engrossed Substitute House Bill (HB) 1042 an act relating to the creation of additional housing units in existing buildings, amending RCW 43.21C.450; adding a new section to Chapter 35A.21 RCW; adding a new section to Chapter 35.21 RCW; and adding a new section to Chapter 19.27A RCW; and

WHEREAS, HB 1042 established RCW 35A.21.440, which sets requirements for how code cities can regulate the development of new housing in existing buildings; and

WHEREAS, the City of Mercer Island is a code city and must comply with the new requirements of RCW 35A.21.440 by June 30, 2025; and

WHEREAS, the City has established development standards in Title 19 Mercer Island City Code (MICC), the Unified Land Development Code; and

WHEREAS, the Title 19 MICC establishes development regulations for new housing in existing buildings, but does not include use-specific provisions; and

WHEREAS, adopting a new subsection of use-specific development regulations in Chapter 19.06 MICC would ensure that the development code is consistent with RCW 35A.21.440; and

WHEREAS, on April 7, 2025, the City issued a State Environmental Policy Act (SEPA) determination of nonsignificance (DNS). The SEPA determination was posted in the Community Planning and Development Bulletin and posted to the statewide SEPA register under file number 202501361. The SEPA determination was issued consistent with the procedures established in Chapter 19.21 MICC; and

WHEREAS, On April 7, 2025, the City notified the WA Department of Commerce (Commerce) of the intent to adopt development code amendments. The notice was assigned submittal ID 2025-S-8254. The Commerce 60-day review period concluded on Juen 6, 2025; and

WHEREAS, on April 21, 2025, the comment period on the SEPA determination closed and no comments on the DNS were received; and

WHEREAS, on April 23, 2025, the Planning Commission held a public hearing on new regulations to comply with RCW 35A.21.440 and made a recommendation to the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Whereas Clauses Adopted. The “Whereas Clauses” set forth in the recital of this Ordinance are hereby adopted as the preliminary findings and conclusions of the City Council for passing this ordinance.

Section 2. Amendment of MICC and Establishment of New Code Section 19.06.140. A new section of Chapter 19.06 MICC is adopted as follows:

19.06.140 – New Dwelling Units in Existing Buildings

- A. *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.
- B. *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.
- C. *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. 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. 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.

- 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.

- 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.

- 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.
 - 2. Required ground floor street frontage uses established in MICC 19.11.020.

- 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.

Section 5. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property, or circumstance.

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 ITS MEETING ON JUNE 17, 2025.

CITY OF MERCER ISLAND

Salim Nice, Mayor

Approved as to Form:

ATTEST:

Bio Park, City Attorney

Andrea Larson, City Clerk

Date of Publication: