



PLANNING COMMISSION REGULAR MEETING AGENDA

Wednesday, April 18, 2018
Mercer Island City Hall

CALL TO ORDER & ROLL CALL

6:00 PM

MINUTES

April 4, 2018

APPEARANCES

This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:

- Speak audibly into the podium microphone
- State your name and address for the record
- Limit your comments to three minutes

*The Commission may limit the number of speakers and modify the time allotted.
Total time for appearances: 15 minutes*

PUBLIC HEARING

Agenda Item #1: ZTR18-001 – Procedural Code Amendment

Public hearing to consider proposed code amendments to the procedural regulations. The public hearing will be continued to May 16, 2018.

Agenda Item #2: ZTR18-003 – Code Cleanup Code Amendment

Public hearing to consider proposed code amendments to clarify existing development standards. The public hearing will be continued to May 16, 2018.

REGULAR BUSINESS

Agenda Item #3: ZTR18-002 – Critical Areas Code Amendment

Study session with the Planning Commission to review foundational concepts and terms, and to begin discussion of a decision-making framework.

Agenda Item #4: CPA18-001 – 2018 Comprehensive Plan Amendment

Review of draft comprehensive plan amendments supporting the accessibility and universal design and allowing flexibility for housing types that provide public benefit.

OTHER BUSINESS

Planning Manager report
Planned Absences for Future Meetings
Next Regularly Scheduled Meeting: May 2, 2018 at 6:00PM

ADJOURN

PLANNING COMMISSIONERS

Carolyn Boatsman

Bryan Cairns

Tiffin Goodman, Vice-Chair

Daniel Hubbell, Chair

Jennifer Mechem

Lucia Pirzio-Biroli

Ted Weinberg

PHONE: 206-275-7729
WEB: www.mercergov.org

AGENDA TIMES ARE APPROXIMATE

CITY COUNCIL CHAMBERS - MERCER ISLAND CITY HALL
9611 SE 36TH STREET; MERCER ISLAND, WA 98040



PLANNING COMMISSION MEETING MINUTES APRIL 4, 2018

CALL TO ORDER:

The Planning Commission was called to order by Chair Daniel Hubbell at 6:01 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:

Chair Daniel Hubbell, Vice Chair Tiffin Goodman, Commissioners Ted Weinberg, Lucia Pirzio-Biroli, Bryan Cairns, and Carolyn Boatsman were present. Commissioner Jennifer Mechem arrived at 6:16pm

City staff was represented by Evan Maxim, Planning Manager, Andrea Larson, Administrative Assistant, Bio Park, Assistant City Attorney, Alison Van Gorp, Administrative Services Manager, Nicole Gaudette, Senior Planner, Jimmi Serfling, Code Compliance Officer, and Dana Zlateff, Code Compliance Officer.

Commissioner Weinberg moved to approve the March 21, 2018 minutes, Commissioner Boatsman seconded the motion. The minutes were approved 6-0-0.

APPEARANCES:

Laurel Dunphy, 6065 78th Ave SE. Mrs. Dunphy spoke regarding the proposed small cell that will be installed in her neighborhood. Mrs. Dunphy specifically indicated that she is opposed to the small cell being installed. Mrs. Dunphy indicated that she is concerned about the impacts to her neighborhood and wildlife, in particular bald eagles.

REGULAR BUSINESS:

Agenda Item #1: CPA17-002 SJCC / FASPS / Herzl-Ner Tamid

Nicole Gaudette gave a staff presentation on an introduction to the proposed comprehensive plan, re-zone, and code amendment for the SJCC / FASPS / Herzl-Ner Tamid project.

Rich Hill, Land Use council for the applicants gave a brief presentation of the proposed comprehensive plan, zoning, and code amendment.

Ed Weinstein, Weinstein AU, Architect for SJCC & Herzl-Ner Tamid gave a brief presentation on the proposed architectural design and phases of construction for the SJCC, Herzl-Ner Tamid, and the FASPS.

David Cutler for the French American School (FASPS) indicated that FASPS wanted to secure a permanent home on Mercer Island in partnership with the SJCC. FASPS would phase their development of the school to support the proposed master plan.

Nicole Gaudette answered questions on the purposed comprehensive plan, re-zone, and code amendments.

The Commission discussed the proposed amendments.

Commissioner Pirzio-Biroli identified a question as “are there other properties that could be included in this rezone?”. Commissioner Pirzio-Biroli would like to see a master plan required for a zone of

this size. The Commission indicated that housing should be allowed in this type of zoning.

The Commission indicated that staff should start with the proposal for the comprehensive plan amendment and come back to the Commission so that the commission can give more feedback on what the goals and statements for the comprehensive plan should be.

Commissioner Weinberg stated that the Commission should consider what other properties this zoning could be applied to. Commissioner Weinberg indicated that a private public facilities zone may not be a permanent answer as the applicants may continue to acquire surrounding properties.

Commissioner Cairns indicated that the City needs to be careful to not create something that could create a potential issue in the future.

Commissioner Boatsman indicated that the land use designation for these properties should not threaten the residential designation of surrounding properties.

The Commission recessed at 7:05pm
The Commission reconvened at 7:09pm

Agenda Item #2: ZTR18-004 Code Compliance Ordinance

Alison Van Gorp gave a staff presentation on the second meeting regarding the Code Compliance Ordinance. Alison Van Gorp described the current problems with the regulations, and the desire by the community to update these regulations. Alison Van Gorp answered questions from the commission on the proposed ordinance.

Commissioner Boatsman stated that if the violators are given a civil infraction, the Code Compliance Officers should then be able to give a notice of infraction if compliance still is not met.

Bio Park provided clarification on the difference between civil infractions, violation notices, and an order to correct with civil penalties.

The Commission reached consensus that fees should escalate.

Chair Hubbell suggested that the City needs to keep the aspect of compliance but be able to have more actions that can be taken when compliance is not met.

Commissioner Mechem stated that there should be a distinction between the different types of violations and what penalties can be applied. Commissioner Mechem indicated that that the City should consider a way to put either a lien or notice on title on the property if the violations are not fixed.

Commissioner Pirzio-Biroli warned against going too fast to not shock the community with penalties being enforced.

Commissioner Boatsman indicated that the compliance process should be efficient for the staff, should provide discretion for staff to make the correct decision, and should escalate fines for major violations.

Chair Hubbell stated that the burden of proof to notify city of compliance once violation has been issued should be on the violator.

Commissioner Cairns stated that there should be a procedure to ensure collection of fines that are issued.

The Commission agreed that permits should not be issued for properties that are not in compliance. The Commission Stated that placing a notice on title is a good last resort tool that should be available.

The Commission stated that the reduction of cost per case is optimal. The Commission agreed that a Voluntary Compliance Agreement would be a great way to get quickly to a solution for each case.

The Commission recessed at 8:22pm

The Commission reconvened at 8:27pm

Agenda Item #3: ZTR18-001 Procedural Code Amendment

Nicole Gaudette gave a staff presentation on the second meeting for high level overview of proposed code amendments to the procedural regulations.

Nicole Gaudette answered questions from the commission on the purposed code amendment.

The Commission discussed the code amendment. Commissioner Goodman asked for clarification on how to tell what has been deleted out of the draft code versus what has just been moved to another section.

OTHER BUSINESS:

Commissioner Mechem let the commission know about an event tomorrow evening regarding age friendly living.

The Commission discussed the meeting schedule.

PLANNED ABSENCES

None

NEXT MEETING:

The next regularly scheduled Planning Commission meeting will be April 18, 2018 at 6:00PM at Mercer Island City Hall.

ADJOURNMENT:

Chair Daniel Hubbell adjourned the meeting at 9:16pm



**CITY OF MERCER ISLAND
PLANNING COMMISSION**

AGENDA ITEM NO. 1

DATE: April 18, 2018

| | |
|----------------|---|
| File No.: | ZTR18-001 |
| Description: | This proposal to amend the procedural requirements for the processing of land use applications. This proposal amends portions of several chapters of the MICC including Chapters 19.02, 19.06, 19.07, 19.08, 19.09, 19.11, 19.12, 19.15, and 19.16. |
| Sponsor: | City of Mercer Island, Development Services Group |
| Attachments: | <ol style="list-style-type: none">1. Proposed Code Amendments (Attachments 1.a through 1.i)2. Proposed Code Amendments Specific to Design Review (Attachments 2.a through 2.c)3. Draft Ordinance4. Notice of Application published May 16, 20185. Notice of Public Hearing published March 14, 2018 |
| Staff Contact: | Nicole Gaudette, Senior Planner |

I. SUMMARY

The proposal is to amend sections of Title 19, the city's zoning code, to update procedural requirements for land use applications. The amendments will affect how applications are processed but will not affect criteria or standards of the code.

The proposed amendments to the procedural requirements for land use applications are intended to:

- A. Clarify the review process and language;
- B. Re-organize and consolidate the procedural requirements and approval criteria;
- C. Ensure compliance with applicable state regulations (e.g. RCW 36.70B) and recent case law (e.g. Potala Village Kirkland, LLC v City of Kirkland); and,
- D. Simplify the regulations for readability, ease of use, and to eliminate unintended consequences.

The majority of the changes consisted of relocating existing code sections into centralized locations and simplifying and reconciling unclear language. Code sections related to the processing of reviews were moved into Chapter 19.15. Code sections related to review criteria were moved to the appropriate sections throughout Title 19. Also, code sections within Chapter 19.15 were rearranged so the code layout was more linear.

A new permit review typing system was created to better encompass the types of reviews that are conducted by DSG. The types of reviews in the current regulations were reduced in number and consolidated into four types. For instance, there used to be six types of reviews for design review. Now there are four. Legislative type items were separated from the reviews that result in permits and have a distinct process, similar to the one currently used. The legislative items include code updates, comprehensive plan updates, and rezones.

A notable process change recommended by staff, is for preliminary long plats to be only reviewed by the hearing examiner rather than both the hearing examiner and city council, and for the hearing examiner to issue the decision for preliminary approval or denial after facilitating the public hearing. Currently, preliminary long plats are reviewed by the hearing examiner at a public hearing. The hearing examiners' recommendation is forwarded to the city council for a decision. Because state law restricts long plats to one public hearing, no new information can be entered into the record during the discussion with city council. Discussion is limited to the items discussed at the hearing. There is little to no value added by a closed record discussion by the city council.

New code sections were created. These sections include:

- 19.08.070 Lot line revisions;
- 19.15.170 Vesting;
- 19.15.190 Permit review for 6049 eligible facilities;
- 19.15.200 Revisions;
- 19.15.210 Compliance required;
- 19.15.260 Reclassification of property (rezones);
- 19.15.270 Zoning code text amendments Zoning code text amendments; and
- 19.15.280 Review procedures for comprehensive plan amendments, reclassification of property, and zoning code amendments

The purpose for creating some of these new sections is to fill in gaps of missing information, such as processing procedures, within our code (19.15.200, 19.15.260, 19.15.270, and 19.15.280).

The criteria for lot line revisions were moved from 19.08.010 through 19.08.050 to new section 19.08.070. Lot line revisions have completely different criteria and a different process than short and long plats, yet they were lumped together with short plats and long plats in 19.08.

The purpose of other new sections is to provide language that is completely missing in our code (19.15.170, 19.15.190, and 19.15.210).

The new section 19.15.170 clarifies what permit types vest, and what they vest to, when regulations change.

19.15.190 is a new section that was added in accordance with federal law. A "6409 eligible facility" request is a request to modify an existing wireless telecommunication facility that does not substantially change the physical dimensions of a tower or base station including collocation of new transmission

equipment, removal of transmission equipment, or replacement of transmission equipment. The process for reviewing these facility requests is mandated by federal law (47 CFR 1.40001). Staff has been using federal code to process these applications since the federal regulations were approved. This code addition simply incorporates the federal regulations we are required to follow, into our city code. A notable change proposed in connection to the 6409 process is eliminating the public comment period. By law, we have 60 days of review time to approve or deny these projects. The 30-day comment period uses 1/2 of the allotted time for review. By eliminating the comment period, staff would have more time to provide review comments and ensure compliance with city code. Also, there is an expectation by the public that when they comment on a project that their comment could advocate for a modified outcome. These projects are only for repair and maintenance, replacement, removal, or collocation and have no substantial impact on neighboring properties. Public comment has little impact on the outcome of the project.

New section 19.15.210 is a statement that all structures, sites, lots and uses must comply with city code and with all conditions of approval.

Two proposals for determining which design review applications are reviewed by staff and which are reviewed by the design commission are being proposed. The two proposals are provided in Attachment 2.

The current code sections that determine who reviews design review projects are provided in Attachment 2.a for your reference. This information demonstrates how confusing the current process is. Direction is provided throughout many subsections and is sometimes in conflict. Proposed code version 1 is a simplification of and borrows wording from our current code. It is provided as Attachment 2.b. Proposed code version 2 provides new language and is a straightforward way of determining if the design commission or staff reviews design review projects. It uses the size and scale of the proposed development to make the determination. It is provided as Attachment 2.c

II. PROCEDURAL REQUIREMENTS

The City issued a Notice of Application, which was published in the City's permit bulletin and posted at City Hall on April 16, 2018. If any comment letters are received during the comment period which runs from April 16, 2018 through May 16, 2018, they will be provided to the Planning Commission at the May 16, 2018 meeting. The proposed code amendment is exempt from SEPA review pursuant to WAC 197-11-800(19)(a) which states that procedural actions relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment are exempt. A Notice of Open Record Hearing was published in the Mercer Island Reporter on March 14, 2018.

A Development Code amendment is a legislative action set forth in MICC 19.15.010(E). Applicable procedural requirements for a legislative action are contained within MICC 19.15.020, including the provision that the Planning Commission conduct an open record public hearing for all legislative actions. On April 14, 2018, the Planning Commission is scheduled to hold an open record public hearing on this matter to obtain

comments from the public and deliberate on this proposed amendment. The Planning Commission will subsequently forward a recommendation for action to the City Council. As the final decision-making authority for legislative actions, the City Council will then consider the matter in an open public meeting prior to taking final action. The City Council's first reading of the code amendment is tentatively scheduled for June 2018. Final action on the proposal by the City Council is anticipated on July 2018, when the Council is scheduled to hold a second reading and render a decision on the proposed code amendments.

III. CRITERIA FOR REVIEW

There are no specific criteria listed in the Mercer Island City Code for a code amendment. However, the proposed amendments cannot be inconsistent with the goals and policies set forth in the City's Comprehensive Plan. Staff conducted a review of the Comprehensive Plan in light of the proposed amendments and has identified no areas of conflict or inconsistency.

IV. FINDINGS & ANALYSIS

The proposed amendment to Title 19 is contained within Attachment 1 and Attachment 2.c. The proposed language is underlined in Attachment 1. All language in Attachment 2.c is proposed.

This amendment would:

1. Clarify the review process and language;
2. Re-organize and consolidate the procedural requirements and approval criteria;
3. Ensure compliance with applicable state regulations (e.g. RCW 36.70B) and recent case law (e.g. Potala Village Kirkland, LLC v City of Kirkland); and,
4. Simplify the regulations for readability, ease of use, and to eliminate unintended consequences.

V. STAFF RECOMMENDATION

Based on the analysis and findings included herein, staff recommends to the Planning Commission the following:

Recommended Motion: Move to recommend that the City Council approve the proposed amendments to Title 19, relating to permit processing and procedures, as presented in Attachment 1, except for 19.15.240(C)(c), and including design review procedures as provided in Attachment 2.c.

Alternative Motion: Move to recommend that the City Council approve the proposed amendments to Title 19, relating to permit processing and procedures, except for 19.15.240(C)(c), and including design review procedures as provided in Attachment 2.c, provided that Attachment 1 and Attachment 2.c shall be modified as follows: *[describe modifications]*.

19.02.030 Accessory dwelling units.

A. Purpose. It is the purpose of this legislation to implement the policy provisions of the housing element of the city’s comprehensive plan by eliminating barriers to accessory dwelling units in single-family residential neighborhoods and provide for affordable housing. Also, to provide homeowners with a means of obtaining rental income, companionship, security and services through tenants in either the accessory dwelling unit or principal unit of the single-family dwelling.

B. Requirements for Accessory Dwelling Units. One accessory dwelling unit is permitted as subordinate to an existing single-family dwelling; provided, the following requirements are met:

1. Owner Occupancy. Either the principal dwelling unit or the accessory dwelling unit must be occupied by an owner of the property or an immediate family member of the property owner. Owner occupancy is defined as a property owner, as reflected in title records, who makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means, and actually resides at the site more than six months out of any given year.
2. Number of Occupants. The total number of occupants in both the principal dwelling unit and accessory dwelling unit combined shall not exceed the maximum number established for a family as defined in MICC 19.16.010 plus any live-in household employees of such family.
3. Subdivision. Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit.
4. Size and Scale. The square footage of the accessory dwelling unit shall be a minimum of 220 square feet and a maximum of 900 square feet, excluding any garage area; provided, the square footage of the accessory dwelling unit shall not exceed 80 percent of the total square footage of the primary dwelling unit, excluding the garage area, as it exists or as it may be modified.
5. Location. The accessory dwelling unit may be added to or included within the principal unit, or located in a detached structure.
6. Entrances. The single-family dwelling containing the accessory dwelling unit shall have only one entrance on each front or street side of the residence except where more than one entrance existed on or before January 17, 1995.
7. Additions. Additions to an existing structure or newly constructed detached structures created for the purpose of developing an accessory dwelling unit shall be designed consistent with the existing roof pitch, siding, and windows of the principal dwelling unit.
8. Detached Structures. Accessory dwelling units shall be permitted in a detached structure.

1 9. Parking. All single-family dwellings with an accessory dwelling unit shall meet the parking
2 requirements pursuant to MICC 19.02.020(G) applicable to the dwelling if it did not have such an
3 accessory dwelling unit.

4 C. Exceptions – Ceiling Height. All existing accessory dwelling units that are located within a single-family
5 dwelling, which was legally constructed but does not now comply with current ceiling height
6 requirements of the construction codes set forth in MICC Title 17, shall be allowed to continue in their
7 present form.

8 ~~D. Permitting and Enforcement~~Notice on title.

9 ~~1. Application. The property owner shall apply for an accessory dwelling unit permit with the~~
10 ~~development services group. The application shall include an affidavit signed by the property owner~~
11 ~~affirming that the owner or an immediate family member will occupy the principal dwelling unit or~~
12 ~~accessory dwelling unit for more than six months per year.~~

13 ~~2. Notice. The city shall provide notice of the intent to issue a permit for an accessory dwelling unit~~
14 ~~as required by MICC 19.15.020(D) and (E).~~

15 ~~3. Applicable Codes. The accessory dwelling unit shall comply with all construction codes set forth in~~
16 ~~MICC Title 17 and any other applicable codes, except as provided in this chapter. The ADU shall~~
17 ~~comply with all development code provisions for single family dwellings including height and~~
18 ~~setbacks, and the ADU shall be included as part of the impervious surface and floor area limitations~~
19 ~~for a building site.~~

20 ~~4. Inspection. After receipt of a complete application and prior to approval of an accessory dwelling~~
21 ~~unit, the city shall inspect the property to confirm that all applicable requirements of this code and~~
22 ~~other codes are met.~~

23 ~~5. Recording Requirements—Permits.~~ Approval of the accessory dwelling unit shall be subject to the
24 applicant recording a document with the King County department of records and elections which
25 runs with the land and identifies the address of the property, states that the owner(s) resides in
26 either the principal dwelling unit or the accessory dwelling unit, includes a statement that the
27 owner(s) will notify any prospective purchasers of the limitations of this section, and provides for
28 the removal of the accessory dwelling unit if any of the requirements of this chapter are violated.

29 ~~6. Permit. Upon compliance with the provisions of this section, a permit for an accessory dwelling~~
30 ~~unit will be issued.~~

31 ~~7. Enforcement. The city retains the right with reasonable notice to inspect the ADU for compliance~~
32 ~~with the provisions of this section.~~

33 E. Elimination/Expiration. Elimination of an accessory dwelling unit may be accomplished by the owner
34 recording a certificate with the King County department of records and elections and development
35 services stating that the accessory dwelling unit no longer exists on the property.

1 F. Variance. ~~Variances to this chapter shall require variance approval as outlined in MICC~~
2 ~~19.15.020(G)(4).~~

3 G. Violations. ~~Any violation of any provision hereof is a criminal violation under MICC 19.15.030.~~

4

Chapter 19.06
GENERAL REGULATIONS

Sections:

- 19.06.010 Prohibited uses.
- 19.06.020 Temporary signs.
- 19.06.030 Antennas.
- 19.06.040 Wireless communications.
- 19.06.050 Commerce on public property.
- 19.06.060 Encroachment into public right-of-way.
- 19.06.070 *Repealed.*
- 19.06.080 Siting of group housing.
- 19.06.090 Temporary encampment permit.
- 19.06.100 Essential public facilities.
- 19.06.110 Conditional use permits, variances and setback deviations.
- 19.06.120 Design review

19.06.040 Wireless communications.

A. Town Center, Commercial/Office, Business and Planned Business Zones.

1. Permitted Use. Attached WCFs are permitted in the Town Center, commercial/office, business and planned business zones. WCFs with support structures are permitted in the commercial/office and planned business zone districts, and are not permitted in the Town Center district.

a. Town Center Zone (TC). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 15 feet. Wireless support structures are not allowed in the TC zone.

b. Commercial/Office Zone (C-O). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 10 feet. Structures shall not be located within front yard setbacks. Structures in the side and rear yards must be set back from adjacent property a distance equal to the height of the pole. New WCFs may be located on a monopole and shall not exceed 60 feet in height.

c. Planned Business Zone (PBZ) and Business Zone (B). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 10 feet. Structures shall not be located within the setbacks. New WCFs may be located on a monopole and shall not exceed 60 feet in height.

~~2. Approval Process/Review Performance Standards. Wireless communications facilities are subject to review by the code official as outlined shall comply with the standards in subsection E of this section and MICC 19.15.010(E). When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~

B. Public Institution Zone (I-90 Corridor).

1. Permitted Use. Wireless communications facilities, including antenna support structures and equipment cabinets, are permitted. Facilities must meet all of the following criteria:

a. Antennas shall not project more than two feet in height over the nearest I-90 retaining wall, unless they are located on an existing structure, and must be screened as much as possible from public views;

b. Equipment cabinet dimensions shall not exceed 480 cubic feet, should be placed underground if feasible and shall be completely screened from pedestrian and park activities with landscaping;

c. Facilities shall be within 15 feet of the pedestrian side of the I-90 retaining wall, unless they are located on an existing structure. Facilities may be located between the retaining walls in the traffic corridor;

d. Facilities shall be at least 300 feet from any single-family dwelling, unless located between and below the top of the retaining walls in the traffic corridor;

e. Applicants shall demonstrate that they have attempted to collocate on existing structures such as other wireless support structures, rooftops, light poles, utility poles, walls, etc.

~~2. Approval Process/Review Location. -~~

~~a. Wireless communications facilities are subject to review by the code official as outlined in subsection E of this section and MICC 19.15.010(E). When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~

~~b. No wireless communications facilities are allowed along the Mercer Island Artway Greta Hackett Outdoor Sculpture Gallery, defined as the south side of I-90 between 76th Avenue SE and 80th Avenue SE.~~

C. Island Crest Way Corridor.

1. WCFs are permitted within the right-of-way boundary along Island Crest Way from SE 40th Street to SE 53rd Place and from SE 63rd to SE 68th Street. WCFs must be attached directly to and incline with existing utility poles, with minimal overhang. WCF antennas shall not exceed 96 inches in length, 12 inches in width, and 12 inches in depth. The WCF must not project over the height of the pole, but a pole with a height of up to 70 feet may replace an existing pole or a pole with a height of up to 110 feet may replace an existing pole if the WCF is being collocated with another WCF consistent with subsection F of this section. All WCFs shall be set back from adjacent residential structures by a minimum of 40 feet.

2. ~~Approval Process/Review. WCFs in the Island Crest right-of-way must be reviewed and approved by the code official in accordance with subsection E of this section and MICC 19.15.010(E) and be approved by the city engineer. When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~ Proponents ~~must~~ shall provide an agreement with the utility pole owner granting access to the pole.

D. Residential Districts.

1. Permitted Use. WCFs are prohibited in single-family and multifamily residential zones; provided, WCFs are permitted as stated below on the following public and utility properties:

a. South Mercer Island Fire Station, 8473 SE 68th Street. Maximum height: 60 feet;

b. Puget Sound Energy Power Substation, 8477 SE 68th Street. Maximum height: 60 feet;

c. Mercer Island Water Reservoir, 4300 88th Avenue SE. Maximum height: 60 feet;

d. Island Crest Park, if the WCF is either (i) attached to an existing ballfield light standard, or (ii) attached to a new stealth designed replacement ballfield light standard located along the eastern border of Island Crest Park.

i. Maximum number of support structures: A maximum of two support structures (existing or replacement ballfield light standards) with up to three WCFs on each such support structure;

ii. Maximum height: 110 feet; and

e. Certain rights-of-way adjacent to Clise Park.

i. Maximum number of support structures: One stealth support structure with up to three WCFs on such support structure located within the rights-of-way at the intersection of Island Crest Way, 84th Avenue SE

and SE 39th Street, in a location at such intersection abutting trees and having the least visual impact while ensuring the maximum protection of mature trees.

ii. Maximum number and location of equipment cabinets: Three equipment cabinets associated with such support structure located in that portion of the SE 39th Street or 84th Avenue SE rights-of-way adjacent to Clise Park, except that if such location does not permit the proper functioning of the WCF as determined by the code official, then the equipment cabinet shall be located in the Island Crest Way right-of-way adjacent to Clise Park.

iii. Maximum height: 110 feet.

WCFs on the above properties may be attached or have a monopole structure. Except as to the Puget Sound Energy Substation referred to above, equipment cabinets shall be placed underground if physically feasible. In Island Crest Park, 84th Avenue SE or SE 39th Street right-of-way, the equipment cabinets may be placed aboveground if the parks director determines there is a significant benefit to the parks by either the retention of trees and/or vegetation or the improvement of park uses. Any aboveground equipment cabinet must be properly screened consistent with subsection (E)(3) of this section. The setback of the support structure from any adjacent residential property line shall be equal to the height of the support structure except in Island Crest Park or those rights-of-way described in subsection (D)(1)(e) of this section, where the setback of the support structure shall be 40 feet from any residential structure.

~~2. Approval Process/Review. Wireless communications facilities are subject to review by the code official as outlined in subsection E of this section and MICC 19.15.010(E). When there are more than six antennas at one site, the code official may deem that site full and deny additional antennas.~~

E. Performance Standards.

1. Attached WCFs. Attached WCFs which are visible to the traveling public and/or neighboring residences shall be designed to blend in with the existing structure and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use compatible or neutral colors. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened.

2. WCFs with Support Structures. WCFs with support structures shall be designed to blend into the existing site and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use compatible or neutral colors. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened with landscaping and/or fencing.

3. Equipment Cabinets. Equipment cabinets that are visible to the traveling public and/or neighboring residences shall be designed to blend in with existing surroundings, be placed underground if feasible, or placed in a location as unobtrusive as possible consistent with proper functioning of the WCF, and use compatible or neutral colors. Screening may be required using landscaping or fencing.

4. Engineer Review. The city shall require any WCF applicant to present engineering data showing the coverage of its existing WCFs and establish that the proposed WCF is required in order to prevent a significant gap in service coverage. The city may hire an independent engineer or other telecommunications consultant to review the applicant's data. If such review is required by the city, the applicant shall pay all costs associated with the city hiring an independent engineer or consultant.

5. Priority Locations. WCFs shall be located only in the zones and properties described in this chapter and a WCF applicant shall locate any WCF in the following siting priority consistent with proper functioning of the WCF:

- a. Public properties described in subsections B and D of this section;
- b. Town Center, commercial/office and planned business zones described in subsection A of this section; and
- c. Island Crest Way corridor described in subsection C of this section.

F. Shared Facilities and Collocation. The applicant shall collocate the WCF with an existing WCF site unless the applicant can demonstrate to the city's satisfaction that such collocation is not feasible due to radio interference, usable signal, other engineering reason, property owner's refusal to lease property, or zoning restriction. The city also encourages WCF applicants to construct and site facilities with a view toward sharing sites and structures with other utilities and accommodating the future collocation of other future WCFs.

G. Electromagnetic Radiofrequency Emissions. The city recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of radio-frequency (RF) emissions and WCFs which meet FCC standards shall not be conditioned or denied on the basis of RF impacts. In order to provide information to its citizens, the city shall maintain file copies of ongoing FCC information concerning WCFs and radiofrequency standards. Applicants for WCFs shall be required to provide the city information on the projected power density of the facility and compliance with the FCC requirements.

~~H. Height Variance. If strict application of these provisions would preclude an antenna from receiving or transmitting a usable signal, or, if the property owner believes that an alternative exists which is less burdensome to adjacent property owners, an application for a variance may be filed under the provisions of MICC 19.15.020. The code official may grant a height variance upon finding that the criteria in MICC 19.15.020(G)(4) are met, and that one of the following criteria are also met:~~

~~1. Compliance with the above provisions would prevent the antenna from receiving or transmitting a usable signal; and the alternative proposed constitutes the minimum necessary to permit acquisition or transmission of a usable signal; or~~

~~2. The alternative proposed has less impact on adjacent property owners than strict application of the above provisions; or~~

~~3. In Island Crest Park if the parks director supports the variance because there will be a significant benefit to the park by either the retention of trees and/or vegetation or improvement of park uses.~~

~~IH. When there are more than six antennas at one site, the code official shall deem that site full and deny additional antennas.~~

~~I. 6409 Eligible Facilities. 6409 eligible wireless facilities shall be reviewed in accordance with 47 CFR § 1.40001 Wireless Facility Modifications or as hereafter amended.~~

~~J. Removal of WCFs. If a WCF becomes obsolete or unused, it must be removed within six months of cessation of operation at the site.~~

~~JK. Administration and Appeals. Applications to construct WCFs shall follow the permit review procedures in MICC 19.15.020. Appeals shall follow the appeal process outlined in MICC 19.15.020(J). (Ord. 11C-11 § 1; Ord. 11C-05 § 1; Ord. 08C-01 § 2; Ord. 04C-02 §§ 1, 3; Ord. 02C-10 §§ 1, 2, 3, 5; Ord. 99C-13 § 1).~~

19.06.110 Conditional Use Permits, Variances, and Setback Deviations.

A. Conditional Use Permits

1. Purpose. A use may be authorized by a conditional use permit for those uses listed in MICC 19.02.010(C). The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards established

in this title. The review shall determine if the development proposal should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.

2. Criteria for conditional use permits that are not located in Town Center. An applicant must demonstrate how the development proposal meets the following criteria.

- a. The permit is consistent with the regulations applicable to the zone in which the lot is located;
- b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

3. Criteria for conditional use permits that also require design review and are located in Town Center. An applicant must demonstrate how the development proposal meets the following criteria.

a. General Criteria.

- (i) The proposed use complies with all the applicable development and design provisions of this chapter.
- (ii) The proposed use is consistent with the comprehensive plan.
- (iii) The proposed use is harmonious and appropriate in design, character, and appearance with the existing or intended uses within the surrounding area.
- (iv) The proposed use will not generate excessive fumes, odor, dust, light, radiation, or refuse that would be injurious to surrounding uses.
- (v) The proposed use will not generate levels of noise that adversely impact the health, safety, or general welfare of surrounding uses.
- (vi) The proposed use will be served by adequate public services, including streets, fire and public safety protection, water, sewer, and storm water control, and will not adversely impact the level of service standards for such facilities.

(vii) The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

b. Additional Criteria for Approval of a Conditional Use for Adult Entertainment in Town Center.

(i) The point of entry into the structure housing the adult entertainment use shall be located at least 100 feet, measured in a straight line, from the property line of: (1) any R-zoned property; (2) any public institution zoned property; (3) any property containing one or more of the following uses: residential uses including single- or multiple-family dwellings, or residential care facilities; schools including public, private, primary or secondary, preschool, nursery school, day care; recreational uses including publicly owned park or open space, commercial or noncommercial or private recreation facility; religious institutions; public institutions; or uses which cater primarily to minors.

(ii) No adult entertainment use shall be located closer than 400 feet to another adult entertainment use. Such distance shall be measured by following a straight line from the nearest point of entry into the proposed adult entertainment to the nearest point of entry into another adult entertainment use.

(iii) The point of entry into adult entertainment use shall not be located along 78th Avenue SE.

(iv) Signing shall be limited to words and letters only. Window or exterior displays of goods or services that depict, simulate, or are intended for use in connection with specified sexual activities as defined by Chapter 5.30 MICC are prohibited.

4. No building permit, business license, or other permits related to the use of the land shall be issued until final approval of the conditional use permit.

5. Change After Conditional Use Permit Granted.

a. Change of Ownership. Conditional use permits granted shall continue to be valid upon change of ownership of the site.

b. Change of Use. Modifications to the use shall require an amendment to the conditional use permit and shall be subject to the above review process.

B. Variances.

1. Purpose. An applicant or property owner may request a variance from any numeric standard, except for the standards contained within Chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(3(a) through (h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (G)(4)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (G)(4)(a) through (i) of this section:

2. Criteria.

a. The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-12, and R-15 zoning designations, an “unnecessary hardship” is limited to those circumstances where the adopted standards of this title prevent the construction of a single-family dwelling on a legally created, residentially zoned lot;

b. The variance is the minimum necessary to grant relief to the property owner;

c. No use variance shall be allowed;

d. There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;

e. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

f. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

g. The variance is consistent with the policies and provisions of the comprehensive plan and the development code;

h. The basis for requesting the variance is not the direct result of a past action by the current or prior property owner; and

i. Public and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent may request a variance to increase the impervious surface to a maximum 60 percent impervious surface and such variance application will be granted if the hearing examiner determines that the applicant has demonstrated that the following criteria are satisfied:

i. There will be no net loss of permeable surface from the existing permeable surface. No net loss will be determined by the code official and may be achieved

by off-site mitigation and/or by reconstructing existing parking areas to allow stormwater penetration. This replacement will be an exception to subsection (D)(2)(b) of this section prohibiting parking areas from being considered as permeable surfaces;

ii. All storm water discharged shall be mitigated consistent with the most recent Washington State Department of Ecology Stormwater Management Manual for Western Washington, including attenuation of flow and duration. Mitigation will be required for any and all new and replaced impervious surfaces. In designing such mitigation, the use of a continuous simulation hydrologic model such as KCRTS or WWHM shall be required; event based models will not be allowed. In addition, mitigation designs shall utilize flow control best management practices (BMPs) and low impact development (LID) techniques to infiltrate, disperse and retain stormwater on site to mitigate the increased volume, flow and pollutant loading to the maximum extent feasible;

iii. The director must approve a storm drainage report submitted by the applicant and prepared by a licensed civil engineer assuring the city that city infrastructure, in concert with the project design, is adequate to accommodate storm drainage from the project site, or identifying appropriate improvements to public and/or private infrastructure to assure this condition is met, at the applicant's expense; and

iv. The variance may not be used with other provisions to exceed this maximum 60 percent impervious surface coverage.

3. Height Variance for a Wireless Communication Facility. If strict application of the provisions of MICC 19.06.040 would preclude an antenna from receiving or transmitting a usable signal, or, if the property owner believes that an alternative exists which is less burdensome to adjacent property owners, an application for a variance may be filed under the provisions of MICC 19.15.020. The code official may grant a height variance upon finding that the criteria in MICC 19.15.020(G)(4) are met, and that one of the following criteria are also met:

a. Compliance with the above provisions would prevent the antenna from receiving or transmitting a usable signal; and the alternative proposed constitutes the minimum necessary to permit acquisition or transmission of a usable signal; or

b. The alternative proposed has less impact on adjacent property owners than strict application of the above provisions; or

c. In Island Crest Park if the parks director supports the variance because there will be a significant benefit to the park by either the retention of trees and/or vegetation or improvement of park uses.

4. The code official may grant a variance, with restrictions if deemed necessary, from the four-acre limitation for purpose of permitting short subdivision of property containing more than four acres into four or less lots when all of the following circumstances shall be found to apply:

- a. That there are special circumstances applicable to the particular lot, such as type of ownership, restrictive covenants, physiographic conditions, location or surroundings, or other factors;
- b. That the granting of the variance will not result in future uncoordinated development nor alter the character of the neighborhood; and
- c. That granting the variance will not conflict with the general purposes and objectives of the comprehensive plan or the development code.

C. Setback Deviations

1. Purpose. The purpose of a setback deviation is to increase protection of a critical area or critical area buffer. A setback deviation provides flexibility in design a development proposal to allow for increased protection of critical areas or critical area buffer.

2. Criteria. A setback deviation shall be granted by the city only if the applicant demonstrates all of the following:

- a. No use deviation shall be allowed;
- b. The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;
- c. The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;
- d. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code;
- e. The basis for requesting the deviation is not the direct result of a past action by the current or prior property owner;
- f. The setback deviation is associated with the approval of development of a single lot or subdivision that is constrained by critical areas or critical area buffers;
- g. The building pad resulting from the proposed deviation will result in less impact to critical areas or critical area buffers; and
- h. Yard setbacks shall not be reduced below the following minimums:
 - (i) Front and rear setbacks may not be reduced to less than 10 feet each;

(ii) Side setbacks may not be reduced to less than five feet.

19.06.120 Design Review.

A. Intent and Purpose. These regulations are intended to implement and further the comprehensive plan of the city and are adopted for the following purposes:

1. To promote the public health, safety and general welfare of the citizens of the city.
2. To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government.
3. To protect, preserve and enhance the social, cultural, economic, environmental, aesthetic, and natural values that have established the desirable quality and unique character of Mercer Island.
4. To promote and enhance construction and maintenance practices that will tend to promote visual quality throughout Mercer Island.

5. To recognize environmental and aesthetic design as an integral part of the planning process

B. Criteria for Design Review Decisions. Design objectives and standards for regulated improvements within the Town Center are set forth in Chapter 19.11 MICC. Design objectives and standards for regulated improvements in all zones outside the Town Center are set forth in Chapter 19.12 MICC. Following the applicable review process above, the design commission or code official shall deny an application if it finds that all the following criteria have not been met, or approve an application, or approve it with conditions, based on finding that all the following criteria have been met:

a. The proposal conforms with the applicable design objectives and standards of the design requirements for the zone in which the improvement is located

i. In the Town Center, particular attention shall be given to whether:

(A) The proposal meets the requirements for additional building height, if the proposal is for a building greater than two stories; and

(B) The proposal adheres to the required parking standards and a parking plan has been provided that demonstrates that the proposal meets the objectives of MICC 19.11.130.

1
2
3 **19.07.040 Review and construction requirements.**

4 A. Development Standards. The applicant will comply with the general development standards set forth in
5 Chapter 19.09 MICC.

6 B. Native Growth Protection Areas.

7 1. Native growth protection areas may be used in development proposals for subdivisions and lot line
8 revisions to delineate and protect contiguous critical areas.

9 2. Native growth protection areas shall be designated on the face of the plat or recorded drawing in a
10 format approved by the city. The designation shall include an assurance that native vegetation will be
11 preserved and grant the city the right to enforce the terms of the restriction.

12 C. Setback Deviation. An applicant may seek a deviation from required front, side, and back yard
13 setbacks pursuant to MICC 19.15.020050.

14 D. Variances. Variances are not available to reduce any numeric requirement of this chapter. However,
15 the allowed alterations and the reasonable use exception allowed pursuant to MICC 19.07.030 may result
16 in city approvals with reduced numeric requirements.

17 E. Appeals. Appeals of decisions made under the provisions of this chapter shall follow the procedures
18 described in MICC 19.15.020050 (J).

19 F. Fees.

20 a. Fees shall be set forth in a schedule adopted by city council resolution. The fee should be based on a
21 submittal fee and the time required to review development applications for alterations within critical areas
22 and buffers.

23 b. The city may require peer review of any report or study by a second qualified professional to verify the
24 adequacy of the information and analysis. The applicant shall bear the cost of the peer review.

25 G. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees,
26 Performance Bonds, Insurance. An applicant for a permit within a critical area will comply with the
27 requirements of MICC 19.01.060, if required by the code official.

28 H. Erosion Control Measures.

1 1. A temporary erosion and sediment control plan shall be required for alterations on sites that contain
2 critical areas.

3 2. Erosion control measures shall be in place, including along the outer edge of critical areas prior to
4 clearing and grading. Monitoring surface water discharge from the site during construction may be
5 required at the discretion of the code official.

6 I. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection and
7 occupancy of a project. Upon a showing of good cause, the code official may extend the completion
8 period.

9 J. Maintenance and Monitoring.

10 1. Landscape maintenance and monitoring may be required for up to five years from the date of project
11 completion if the code official determines such condition is necessary to ensure mitigation success and
12 critical area protection.

13 2. Where monitoring reveals a significant variance from predicted impacts or a failure of protection
14 measures, the applicant shall be responsible for appropriate corrective action, which may be subject to
15 further monitoring.

16 K. Suspension of Work. If the alteration does not meet city standards established by permit condition or
17 applicable codes, including controls for water quality, erosion and sedimentation, the city may suspend
18 further work on the site until such standards are met.

19

20 **19.07.060 Geologic hazard areas.**

21 A. Designation. All property meeting the definition of a geologic hazard area is designated as a geologic
22 hazard area.

23 B. Buffers. There are no buffers for geologic hazard areas, but a geotechnical report is required prior to
24 making alterations in geologic hazard areas. This provision shall not change development limitations
25 imposed by the creation of building pads under MICC 19.09.090.

26 C. Geotechnical Review.

27 1. The applicant must submit a geotechnical report concluding that the proposal can effectively mitigate
28 risks of the hazard. Consistent with MICC 19.07.050, the report shall suggest appropriate design and
29 development measures to mitigate such hazards.

1 ~~2. The city may require peer review of the geotechnical report by a second qualified professional to verify~~
2 ~~the adequacy of the information and analysis. The applicant shall bear the cost of the peer review.~~

3 ~~32.~~ The code official may waive the requirement for a geotechnical report when the proposed alteration
4 does not pose a threat to the public health, safety and welfare in the sole opinion of the code official.

5 D. Site Development.

6 1. Development Conditions. Alterations of geologic hazard areas may occur if the code official concludes
7 that such alterations:

8 a. Will not adversely impact other critical areas;

9 b. Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the
10 subject property or adjacent properties;

11 c. Will mitigate impacts to the geologic hazard area consistent with best available science to the
12 maximum extent reasonably possible such that the site is determined to be safe; and

13 d. Include the landscaping of all disturbed areas outside of building footprints and installation of all
14 impervious surfaces prior to final inspection.

15 2. Statement of Risk. Alteration within geologic hazard areas may occur if the development conditions
16 listed above are satisfied and the geotechnical professional provides a statement of risk with supporting
17 documentation indicating that one of the following conditions can be met:

18 a. The geologic hazard area will be modified, or the development has been designed so that the risk to
19 the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe;

20 b. Construction practices are proposed for the alteration that would render the development as safe as if it
21 were not located in a geologic hazard area;

22 c. The alteration is so minor as not to pose a threat to the public health, safety and welfare; or

23 d. An evaluation of site specific subsurface conditions demonstrates that the proposed development is not
24 located in a geologic hazard area.

25 3. Development Limitations. Within a landslide hazard area, the code official may restrict alterations to the
26 minimum extent necessary for the construction and maintenance of structures and related access where
27 such action is deemed necessary to mitigate the hazard associated with development.

1 4. Seasonal Limitations. Land clearing, grading, filling, and foundation work within geologic hazard areas
2 are not permitted between October 1 and April 1. The code official may grant a waiver to this seasonal
3 development limitation if the applicant provides a geotechnical report of the site and the proposed
4 construction activities that concludes erosion and sedimentation impacts can be effectively controlled on-
5 site consistent with adopted storm water standards and the proposed construction work will not subject
6 people or property, including areas off-site, to an increased risk of the hazard. As a condition of the
7 waiver, the code official may require erosion control measures, restoration plans, and/or an
8 indemnification/release agreement. Peer review of the geotechnical report may be required in accordance
9 with subsection C of this section. If site activities result in erosion impacts or threaten water quality
10 standards, the city may suspend further work on the site and/or require remedial action.

11
12
13 19.07.110 Shoreline master program.

14 ...

15 F. Shoreline Permits.

16 1. Administrative Responsibility. Except as otherwise stated in this section, the code official is
17 responsible for:

18 a. Administering shoreline permits.

19 b. Approving, approving with conditions or denying shoreline exemption permits,
20 substantial development permits, shoreline conditional use permits, shoreline variances
21 and permit revisions in accordance with applicable provisions.

22 c. Determining compliance with the State Environmental Policy Act.

23 d. No development shall be undertaken within the shorelands without first obtaining a
24 shoreline exemption permit, substantial development permit, conditional use permit,
25 and/or a variance permit in accordance with all applicable procedures unless it qualifies
26 under a categorical exemption. In addition, such permit shall be in compliance with
27 permit requirements of all other agencies having jurisdiction within the shorelands.
28 Compliance with all applicable federal and state regulations is also required.

29 2. Shoreline Categorical Exemption. Any development that qualifies as being a shoreline
30 categorical exemption, as specified in MICC 19.07.110, shall not require a shoreline permit, but
31 must still meet all requirements of the Mercer Island Unified Land Development Code.

32 3. Shoreline Exemption.

1 a. Shoreline Exemption Criteria. A shoreline exemption may shall be granted to the
2 following development as long as such development proposal is in compliance with all
3 applicable requirements of the Mercer Island Unified Land Development Code-Title 19
4 of the Mercer Island City Code and any of the following:

5 (A) Any development of which the total cost or fair market value, whichever is
6 higher, does not exceed \$7,047 or as periodically revised by the Washington
7 State Office of Financial Management, if such development does not materially
8 interfere with the normal public use of the water or shorelines of the state; or

9 (B) Normal maintenance or repair of existing structures or developments,
10 including damage by accident, fire or elements. "Normal maintenance" includes
11 those usual acts established to prevent a decline, lapse, or cessation from a
12 lawfully established condition. "Normal repair" means to restore a development
13 to a state comparable to its original condition within a reasonable period after
14 decay or partial destruction, including complete replacement of legally existing
15 structures. Normal maintenance of single-family dwellings is categorically
16 exempt as stated above; or

17 (C) Construction of the normal protective bulkhead common to single-family
18 dwellings. A "normal protective" bulkhead is constructed at or near the ordinary
19 high water mark to protect a single-family dwelling and is for protecting land
20 from erosion, not for the purpose of creating land. Where an existing bulkhead
21 is being replaced, it shall be constructed no further waterward of the existing
22 bulkhead than is necessary for construction of new footings; or

23 (D) Emergency construction necessary to protect property from damage by the
24 elements. An "emergency" is an unanticipated and imminent threat to public
25 health, safety, or the environment which requires immediate action within a
26 time too short to allow full compliance with this section; or

27 (E) Construction or modification of navigational aids such as channel markers
28 and anchor buoys; or

29 (F) Construction of a dock, designed for pleasure craft only, for the private
30 noncommercial use of the owners, lessee, or contract purchaser of a single-
31 family dwelling, for which the cost or fair market value, whichever is higher,
32 does not exceed \$10,000; or

33 (G) Any project with a certification from the governor pursuant to Chapter 80.50
34 RCW; or

35 (H) Projects for the restoration of ecological functions; or

36 (I) Any development proposal that meets the shoreline substantial development
37 exemptions identified in WAC 173-27-040 or RCW 90.58, as amended.

1 b. Shoreline Exemption Process. The city shall send the shoreline letter of exemption
2 decisions to the applicant and all applicable local, state, or federal agencies as required
3 by state or federal law.

4 4. Substantial Development Permit Application Decision Criteria. A substantial development
5 permit (SDP) is required for any development within shorelands ~~not qualifying that does not~~
6 qualify as ~~being subject to a categorical exemption or shoreline exemption permit.~~

7 ~~i. SDP Application Decision Criteria.~~ All requirements of the Mercer Island Unified Land
8 Development Code shall apply to the approval of a shoreline substantial development permit.

9
10
11 5. Shoreline Conditional Use Permit. The purpose of a shoreline conditional use permit is to
12 provide a system which allows flexibility in the application of use regulations in a manner
13 consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special
14 conditions may be attached to the permit by the city of Mercer Island or the Department of
15 Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the
16 project with the Shoreline Management Act and the applicable city regulations.

17 a. Shoreline Conditional Use Permit Application Decision Criteria. All requirements of
18 the Mercer Island Unified Land Development Code shall apply to the approval of a
19 shoreline conditional use permit. Uses that require a shoreline conditional use permit
20 may be authorized; provided, that the applicant demonstrates all of the following:

21 (A) That the proposed use is consistent with the policies of RCW 90.58.020 and
22 the Mercer Island Uniform Land Development Code;

23 (B) That the proposed use will not detrimentally interfere with the normal public
24 use of shorelands within the “urban park environment” shoreline environment
25 designation;

26 (C) That the proposed use of the site and design of the project is compatible
27 with other authorized uses within the area and with uses allowed for the area
28 by the Mercer Island Uniform Land Development Code;

29 (D) That the proposed use will cause no significant adverse effects to the
30 shoreline environment in which it is to be located; and

31 (E) That the public interest suffers no substantial detrimental effect.

32 (F) In applying the above criteria when reviewing shoreline conditional use
33 applications, consideration shall be given to the cumulative impact of additional
34 requests for like actions in the area. For example, if shoreline conditional use
35 permits were granted for other developments in the area where similar

1 circumstances exist, the total of the shoreline conditional uses shall also remain
2 consistent with the policies of RCW 90.58.020 and shall not produce substantial
3 adverse effects to the shoreline environment.

4
5 6. Shoreline Variance Criteria. Shoreline variances are strictly limited to granting relief from
6 specific bulk, dimensional or performance standards set forth in the applicable regulations
7 where there are extraordinary circumstances relating to the physical character or configuration
8 of property such that the strict implementation of the regulations will impose unnecessary
9 hardships on the applicant or thwarting of the policy enumerated in RCW 90.58.020. Shoreline
10 variances for use regulations are prohibited. In addition, in all instances the applicant for a
11 shoreline variance shall demonstrate strict compliance with all variance criteria set out in
12 subsection (G)(4) of this section and the following additional criteria:

13
14 -a. In the granting of all shoreline variance permits, consideration shall be given to the
15 cumulative impact of additional requests for like actions in the area. For example, if
16 shoreline variances were granted to other developments in the area where similar
17 circumstances exist, the total of the shoreline variances shall also remain consistent
18 with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to
19 the shoreline environment.

20 b. Shoreline variance permits for development that will be located landward of the
21 ordinary high water mark, and/or landward of any associated wetland, may be
22 authorized; provided, the applicant can demonstrate all of the following:

23 (A) That the strict application of the bulk, dimensional or performance standards
24 set forth in the applicable regulations precludes or significantly interferes with
25 reasonable use of the property not otherwise prohibited;

26 (B) That the hardship in this subsection (G)(6)(f)(i) is specifically related to the
27 property, and is the result of unique conditions such as irregular lot shape, size,
28 or natural features and the application of the applicable regulations, and not,
29 for example, from deed restrictions or the applicant's own actions;

30 (C) That the design of the project is compatible with other authorized uses in
31 the area and will not cause adverse effects to adjacent properties or the
32 shoreline environment;

33 (D) That the requested shoreline variance does not constitute a grant of special
34 privilege not enjoyed by the other properties in the area, and is the minimum
35 necessary to afford relief; and

36 (E) That the public interest will suffer no substantial detrimental effect.

1 c. Shoreline variance permits for development that will be located waterward of the
2 ordinary high water mark or within any associated wetland may be authorized;
3 provided, the applicant can demonstrate all of the following:

4 (A) That the strict application of the bulk, dimensional or performance standards
5 set forth in the applicable regulations precludes reasonable use of the property;

6 (B) That the proposal is consistent with the criteria established under
7 subsections (G)(6)(f)(i)(B)(1) through (5) of this section; and

8 (C) That the public rights of navigation and use of the shorelines will not be
9 adversely affected.

10
11 7. Revisions. When an applicant seeks to revise a substantial development permit, shoreline
12 conditional use permit and/or shoreline variance permit, the requirements of WAC 173-27-100,
13 as amended, shall be met.

Chapter 19.08
SUBDIVISIONS

Sections:

19.08.010 General provisions for long subdivisions and short subdivisions.

19.08.020 Application procedures and requirements.

19.08.030 Design standards.

19.08.040 Plat improvements.

19.08.050 Final plats.

19.08.060 Condominium conversions.

19.08.070 Lot line revisions

19.08.010 General provisions.

A. No person shall subdivide land, either through a long subdivision or a short subdivision, ~~or make a lot line revision,~~ without first obtaining official approval as herein provided.

B. All applications for long subdivisions, or short subdivisions, ~~or lot line revisions~~ are governed by the permit review procedures set out in MICC 19.15.020 except where superseded by language contained in this chapter.

C. Land contained in a prior short subdivision may not be further divided in any manner for a period of five years after the recording of the final plat with King County without the filing of a long subdivision plat; however when a short subdivision consists of less than four lots, an alteration to the short subdivision is permitted so long as no more than four lots are created through the total short subdivision process.

D. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public safety, health, and general welfare. This chapter is not intended to interfere with or abrogate or annul any easements, covenants, conditions, or restrictions created or imposed by plats or deeds or record or by agreements between parties, except where the provisions of this chapter are more restrictive, in which event the provisions of this chapter shall govern.

1 E. Preliminary long subdivision, ~~and~~ short subdivision, ~~and lot line revision~~ applications shall be
2 processed simultaneously with all applications for rezones, variances, planned unit developments, and
3 site plan approvals to the extent the procedural requirements of those actions allow simultaneous
4 action.

5 F. Vacations of long subdivisions shall be governed by RCW 58.17.212. Alterations to long subdivisions
6 shall be governed by RCW 58.17.215. All public hearings for both vacations and alterations of long
7 subdivisions shall be before the hearing examiner, which shall make recommendations as to the
8 vacation or alteration to the city council.

9 G. Vacations and alterations of short subdivisions shall be reviewed by the code official, and shall comply
10 with the requirements of this chapter for the creation of short subdivisions, unless those requirements
11 are waived by the code official. Vacations and alterations of short subdivisions that involve a public
12 dedication shall be governed by subsection F of this section. (Ord. 17C-12 § 7; Ord. 08C-01 § 4; Ord. 99C-
13 13 § 1).

14
15 19.08.020 Application procedures and requirements.

16 A. Applications for short subdivisions or alterations or vacation thereof ~~and lot line revisions~~ shall be
17 reviewed by the code official. Applications for long subdivisions or alteration or vacation thereof shall be
18 reviewed by the hearing examiner, who shall make recommendations to the city council.

19 ~~B. The code official may grant a variance, with restrictions if deemed necessary, from the four-acre~~
20 ~~limitation for purpose of permitting short subdivision of property containing more than four acres into~~
21 ~~four or less lots when all of the following circumstances shall be found to apply:~~

22 ~~1. That there are special circumstances applicable to the particular lot, such as type of ownership,~~
23 ~~restrictive covenants, physiographic conditions, location or surroundings, or other factors;~~

24 ~~2. That the granting of the variance will not result in future uncoordinated development nor alter the~~
25 ~~character of the neighborhood; and~~

26 ~~3. That granting the variance will not conflict with the general purposes and objectives of the~~
27 ~~comprehensive plan or the development code.~~

28 ~~C. Applicants shall prepare a concept sketch of the proposal for the preapplication meeting required~~
29 ~~under MICC 19.09.010(A).~~

30 ~~B~~. Preliminary Application Contents. In addition to any documents, information, or studies required
31 under Chapter 19.07 MICC, Environment, Chapter 19.10 MICC, Trees, or any other chapter of this title,
32 an application for a long subdivision, ~~or~~ short subdivision, ~~or a lot line revision~~ shall include the
33 documents set forth below and any other document or information deemed necessary by the code
34 official upon notice to the applicant. All documents shall be in the form specified by the code official and
35 shall contain such information as deemed necessary by the code official. The applicant shall submit the
36 number of copies of each document specified by the code official.

1 1. Development Application Cover Form. The development application cover form shall be
2 signed by all current property owners listed on the plat certificate, and shall list the legal parcel
3 numbers of all property involved in the project.

4 2. Long Subdivision, ~~and~~ Short Subdivision, ~~or Lot Line Revision Plans~~. The applicant shall
5 provide copies of fully dimensioned plans of the project prepared by a Washington registered
6 civil engineer or land surveyor, meeting the requirements of Chapter 19.07 MICC, Environment,
7 and containing any other information deemed necessary by the code official. The city engineer
8 may waive the requirement that an engineer or surveyor prepare the plans for a short
9 subdivision ~~or lot line revision~~. The submitted plans shall identify the proposed building pad
10 location for each proposed lot pursuant to MICC 19.09.090.

11 3. Plat Certificate. Applicant shall provide a plat certificate issued by a qualified title insurance
12 company not more than 30 days before filing of the application showing the ownership and title
13 of all parties interested in the plat. If the plat certificate references any recorded documents
14 (i.e., easements, dedications, covenants, etc.) copies of those documents shall also be provided.

15 4. Legal Documents. Applicants shall provide copies of each of the following documents (if
16 applicable):

17 a. Proposed restrictive covenants.

18 b. Draft deeds to the city for any land to be dedicated.

19 c. Proposed easements.

20 5. Project Narrative. Applicants shall provide a clear and concise written description and
21 summary of the proposed project.

22 6. Neighborhood Detail Map. Applicants shall provide copies of a map drawn at a scale specified
23 by the code official showing the location of the subject site relative to the property boundaries
24 of the surrounding parcels within approximately 1,000 feet, or approximately 2,500 feet for
25 properties over four acres. The map shall identify the subject site with a darker perimeter line
26 than that of the surrounding properties.

27 7. Topography Map. The applicant shall provide copies of a topographical map showing the
28 existing land contours using vertical intervals of not more than two feet, completed and signed
29 by a Washington licensed surveyor. For any existing buildings, the map shall show the finished
30 floor elevations of each floor of the building. Critical slopes exceeding 30 percent must be
31 labeled and delineated by a clearly visible hatching.

32 8. Detailed Grading Plan. If the grade differential on the site of the proposed project will exceed
33 24 inches and/or if the amount of earth to be disturbed exceeds 50 cubic yards, the applicant
34 shall provide copies of a detailed grading plan drawn by a Washington licensed engineer.

35 9. Street Profiles. The applicant shall provide copies of a street profile showing the profiles and
36 grades of each street, together with typical cross sections indicating:

- 1 a. Width of pavement;
- 2 b. Location and width of sidewalks, trails, bike lanes, ditches, swales, etc.; and
- 3 c. Location of any utility mains.

4 10. Geotechnical Report. The applicant shall provide a geotechnical report meeting the
5 requirements of Chapter 19.07 MICC, Critical Lands. This requirement may be waived by the city
6 engineer under the criteria set out in MICC 19.07.010.

7 11. Utility Plan. Conceptual plan showing the locations of existing and proposed utilities.

8 E. Preliminary Application Procedure.

9 1. Findings of Fact. All preliminary approvals or denials of long subdivisions or short subdivisions
10 shall be accompanied by written findings of fact demonstrating that:

- 11 a. The project does or does not make appropriate provisions for the public health,
12 safety, and general welfare and for such open spaces, drainage ways, streets or roads,
13 alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks
14 and recreation, playgrounds, schools and schoolgrounds and all other relevant facts,
15 including sidewalks and other planning features that assure safe walking conditions for
16 students who only walk to and from school;
- 17 b. The public use and interest will or will not be served by approval of the project; and
- 18 c. The project does or does not conform to applicable zoning and land use regulations.

19 2. Short Subdivisions and Lot Line Revisions. The code official shall grant preliminary approval
20 for a short subdivision or lot line revision if the application is in proper form and the project
21 complies with the design standards set out in MICC 19.08.030, the comprehensive plan, and
22 other applicable development standards.

23 3. Long Subdivisions.

24 a. At an open record hearing the hearing examiner shall review the proposed long
25 subdivision for its conformance with the requirements of MICC 19.08.030, the
26 comprehensive plan, and other applicable development standards.

27 b. The hearing examiner shall make a written recommendation on the long subdivision,
28 containing findings of fact and conclusions, to the city council not later than 14 days
29 following action by the hearing examiner.

30 c. Upon receipt of the hearing examiner's recommendation, the city council shall at its next
31 public meeting set the date for the public hearing where it may adopt or reject the hearing
32 examiner's recommendations.

1 ~~d. Preliminary approval of long subdivision applications shall be governed by the time limits and~~
2 ~~conditions set out in MICC 19.15.020(E); except the deadline for preliminary plat approval is 90~~
3 ~~days, unless the applicant consents to an extension of the time period.~~

4 4. Conditions for Preliminary Approval. As a condition of preliminary approval of a project, the
5 ~~city council hearing examiner~~ in the case of a long subdivision, or the code official in the case of
6 a short subdivision, may require the installation of plat improvements as provided in MICC
7 19.08.040, which shall be conditions precedent to final approval of the subdivision.

8 5. No Construction before Application Approval. No construction of structures, utilities, storm
9 drainage, grading, excavation, filling, or land clearing on any land within ~~the a~~ proposed long
10 subdivision, ~~or short subdivision, or lot line revision~~ shall be allowed prior to ~~preliminary final~~
11 ~~plat approval of the application~~ and until the applicant has secured the permits required under
12 the Mercer Island City Code. (Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 7; Ord. 10C-07 § 2; Ord.
13 08C-01 § 4; Ord. 99C-13 § 1).

14 ...

15 19.08.050 Final plats.

16 A. Required Signatures.

17 1. Before the original or extended deadline for recording the final plat as set forth in MICC
18 19.15.020(K), the applicant may file with the city the final plat of the proposed long subdivision,
19 ~~or short subdivision, or lot line revision~~ in the form prescribed by subsection C of this section.

20 2. The city engineer shall check the final plat and shall sign it when satisfied that it meets the
21 requirements of subsection C of this section, adequately addresses sewage disposal and water
22 supply, and complies with all conditions placed on the preliminary plat approval.

23 3. After the final plat has been signed by the city engineer, it shall go to the code official for final
24 signature.

25 4. Each long subdivision plat submitted for final signature shall be accompanied by the
26 recommendation for approval or disapproval of the city engineer as to the requirements of
27 subsection (A)(2) of this section. The city engineer's signature on the final plat shall constitute
28 such recommendation.

29 5. Final plats shall be approved, disapproved, or returned to the applicant within 30 days from
30 the date of filing, unless the applicant consents to an extension of such time period.

31 B. Recording of the Final Plat.

32 1. The applicant shall deliver the ~~mylar signed plat~~ to King County for recording.

1 2. The recording of the final plat with the county department of records shall constitute the
2 official approval of the subdivision, and lots may not be legally sold until the plat has received its
3 recording number.

4 3. After the final plat has been recorded, the original plat shall be returned to the city engineer
5 and filed as the property of the city.

6 C. Contents of the Final Plat. All final plats submitted to the city shall meet the requirements set out in
7 Chapter 58.09 RCW, Chapter 332-130 WAC, and those requirements set out below.

8 Final plat documents submitted to the city shall contain the information set out below. The final plat
9 documents shall be drawn on an 18-inch by 24-inch sheet size, allowing one-half inch for borders. The
10 index sheet must show the entire subdivision, with street and highway names and block numbers.

11 1. Identification and Description.

12 a. Name of the long subdivision, short subdivision ~~or lot line revision~~.

13 b. A statement that the long subdivision or short subdivision has been made with the
14 free consent and in accordance with the desires of the owner or owners.

15 c. Location by section, township and range, or by other legal description.

16 d. The name and seal of the registered engineer or the registered land surveyor.

17 e. Scale shown graphically, ~~date datum~~ and north point. The scale of the final plat shall
18 be such that all distances and bearings can be clearly and legibly shown thereon in their
19 proper proportions. Where there is a difference between the legal and actual field
20 distances and bearings, both distances and bearings shall be shown with the field
21 distances and bearings shown in brackets.

22 f. A description of property platted which shall be the same as that recorded in
23 preceding transfer of said property or that portion of said transfer covered by plat.
24 Should this description be cumbersome and not technically correct, a true and exact
25 description shall be shown upon the plat, together with original description. The correct
26 description shall follow the words: "The intent of the above description is to embrace all
27 the following described property."

28 g. A vicinity map showing the location of the plat relative to the surrounding area.

29 2. Delineation.

30 a. Boundary plat, based on an accurate traverse, with angular and lineal dimensions.

31 b. Exact location, width, and name of all streets within and adjoining the plat, and the
32 exact location and widths of all roadways, driveways, and trail easements. The name of

1 a street shall not duplicate that of any existing street in the city, unless the platted
2 street be a new section or continuation of the existing street.

3 c. True courses and distances to the nearest established street lines or official
4 monuments which shall accurately describe the location of the plat.

5 d. Municipal, township, county or section lines accurately tied to the lines of the
6 subdivision by courses and distances.

7 e. Radii, internal angles, points of curvature, tangent bearings and lengths of all arcs.

8 f. All easements for rights-of-way provided for public services or utilities. Utility
9 easements shall be designated as public or private.

10 g. All lot and block numbers and lines, with accurate dimensions in feet and hundredths.
11 Blocks in numbered additions to subdivisions bearing the same name may be numbered
12 or lettered consecutively through the several additions. The square footage for each lot
13 less vehicular easements shall be shown.

14 h. Accurate location of all monuments, which shall be concrete commercial monuments
15 four inches by four inches at top, six inches by six inches at bottom, and 16 inches long.
16 One such monument shall be placed at each street intersection and at locations to
17 complete a continuous line of sight and at such other locations as are required by the
18 engineer.

19 i. All plat meander lines or reference lines along bodies of water shall be established
20 above the ordinary high water line of such water.

21 j. Accurate outlines and legal description of any areas to be dedicated or reserved for
22 public use, with the purpose indicated thereon and in the dedication; and of any area to
23 be reserved by deed covenant for common uses of all property owners.

24 k. Critical areas as identified under Chapter 19.07 MICC.

25 l. Corner pins made of rebar with caps.

26 m. Designated building pads pursuant to MICC 19.09.090.

27 3. Other Marginal Data on Final Plat.

28 a. If the plat is subject to dedications to the city or any other party, the dedications shall
29 be shown and shall be duly acknowledged. The plat shall also contain a waiver of all
30 claims for damages against the city which may be occasioned to the adjacent land by
31 the established construction, drainage and maintenance of any streets dedicated to the
32 city.

33 b. A copy of the protective covenants, if any.

1 c. Certification by a Washington-registered civil engineer or land surveyor to the effect
2 that the plat represents a survey made by that person and that the monuments shown
3 thereon exist as located and that all dimensional and geodetic details are correct.

4 d. Proper forms for the approvals of the city engineer and the mayor, on behalf of the
5 city council, in the case of a long subdivision; or the city engineer and the code official in
6 the case of short subdivisions ~~or lot line revisions~~, with space for signatures.

7 e. Certificates by the county assessor showing that the taxes and assessments on the
8 land to be submitted have been paid in accordance with law, including a deposit for the
9 taxes for the following year.

10 f. Approval by the county department of records.

11 g. Conditions of approval created at preliminary subdivision approval that affect
12 individual lots or tracts.

13 4. Other Documents. When filed with the city, the final plat shall be accompanied by the
14 following additional documents.

15 a. "As Built" Drawings. A plan, profile and section drawing, prepared by a Washington
16 licensed engineer showing all streets and other access ways, water, sewer, storm water
17 detention facilities, retaining walls, and rockeries within the subdivision at a scale of one
18 inch equal to 40 feet or less on a standard sheet 24 inches wide and 36 inches long.

19 b. Plat Certificate. A plat certificate issued by a qualified title insurance company not
20 more than 30 days before filing of the final plat showing the ownership and title of all
21 parties interested in the plat. If the plat certificate references any recorded documents
22 (i.e., easements, dedications, covenants, etc.) copies of those documents shall also be
23 provided. (Ord. 17C-15 § 1 (Att. A); Ord. 10C-07 § 3; Ord. 10C-06 § 2; Ord. 08C-01 § 4;
24 Ord. 99C-13 § 1).

25 ...

26
27 19.08.07~~10~~ Lot line revisions.

28 A. Purpose. The purpose of this section is to provide procedures and criteria for the review and approval
29 of revisions to lot lines of legal lots or tracts.

30
31 B. Requirements for a complete application.

32 1. A map at a scale of not less than one inch equal to 100 feet which depicts the existing and
33 proposed property configuration, including all lot line dimensions.

1 2. Legal descriptions of the existing and proposed property configurations, prepared by a
2 licensed professional land surveyor.

3 3. A completed application form.

4 4. Any other information required pursuant to Chapter 19.15 MICC.

5
6 C. Approval criteria. The code official shall approve an application for a lot line revision if it is determined
7 that:

8 1. No additional lot, tract, parcel, site or division will be created by the proposed revision;

9 2. No lot is created or modified which contains insufficient area and dimensions to meet the
10 minimum requirements of the zone in which the affected lots are situated;

11 3. No lot is created or modified which does not have adequate drainage, water supply and
12 sanitary sewage disposal, and access for vehicles, utilities and fire protection, and no existing
13 easement in favor of the public is rendered impractical to serve its purpose;

14 4. No lot line revision shall reduce the overall area in a plat or short plat devoted to open space;

15 5. No lot line shall result in the creation of a lot or structure that is non-conforming with the
16 provisions of Title 19 MICC;

17 6. The lot line revision shall be consistent with any restrictions or conditions of approval for a
18 recorded plat or short plat; and

19 7. The lot line revision and the lots resulting from the lot line revision ~~is~~are consistent with the
20 applicable provisions of Title 19 MICC.

21 ED. Requirements for Recording Documents.

22 1. A title insurance certificate updated not more than 30 days prior to recording of the revision,
23 which includes all parcels within the revision, must be submitted to the Code Official with the
24 final recording documents.

25 2. All persons having an ownership interest within the lot line revision shall sign the lot line
26 revision documents that will be recorded in the presence of a notary public.

27 3. Lot line revision documents that will be recorded shall be in a form prescribed by the code
28 official and be reviewed and approved by the code official prior to recording with the King
29 County Recorder's office. Lot line revision approvals shall expire if the lot line revision
30 documents and real estate conveyance documents transferring ownership of the adjusted land
31 area are not recorded and a copy submitted to the City within one year from the date of
32 approval.

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4. Lot line revision documents, including a record-of-survey document, must be prepared by a land surveyor in accordance with Chapter 332-130 WAC and Chapter 58.09 RCW. The document must contain a land surveyor’s certificate and a recording certificate.

5. The lot line revision documents shall contain the following approval blocks:

- a. The King County department of assessments;
- b. The City of Mercer Island City Engineer; and
- c. The City of Mercer Island Code Official.

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Chapter 19.09
PROPERTY DEVELOPMENT

19.09.010 Preapplication and intake screening meetings.

~~A. Preapplication meetings between the applicant, members of the applicant’s project team, and city staff are required for all subdivisions or lot line revisions, shoreline substantial development permits, shoreline deviations, variances, temporary encampments, and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030 (A)(1) through (5), (8) and (12). Preapplication meetings may be held for any other development proposal at the request of the applicant.~~

~~B. The preapplication meeting will include a preliminary examination of the proposed project and a review of codes as described in MICC 19.15.020(A). The purpose of a preapplication meeting is to provide the applicant with information that will assist in preparing a formal development application meeting city development standards and permit processing requirements.~~

~~C. City staff are not authorized to approve any plan or design offered by the applicant at a preapplication or intake meeting.~~

BD. Intake screenings between the applicant and city staff are required for all building permits involving the following: expansion of a building footprint by 500 square feet or more; an increase in impervious surface of 500 square feet or more; or any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under MICC 19.07.030(A)(1) through (5), (8) and (12). Applicants are encouraged to bring their project team. The purpose of an intake screening is to resolve issues that may cause delay in processing a permit prior to formal acceptance of a permit application. The intake screening will include a preliminary examination of the proposed project and a review of any applicable codes. City staff are not authorized to approve any plan or design offered by the applicant at an intake screening. (Ord. 10C-01 § 4; Ord. 08C-01 § 5; Ord. 05C-12 § 8).

Chapter 19.11

TOWN CENTER DEVELOPMENT AND DESIGN STANDARDS

19.11.150 Administration.

A. Design Review.

1. Authority. Design review shall be conducted by the city’s design commission or code official consistent with the procedure set forth in MICC 19.15.040 (F). The design commission or the code official shall review the applicability of the development and design standards and determine the project’s conformance with this chapter. The degree of conformance with all of the development and design standards will vary on a project by project basis. The design commission shall review each project on the project’s degree of overall conformity with the objectives, standards and the comprehensive plan. The design commission or the code official has the authority to approve, approve with conditions, or deny projects based on the criteria set forth in MICC 19.15.040(F).

2. Applicant’s Responsibility. It is the responsibility of the applicant to design a project in compliance with the objectives and development and design standards of this chapter.

3. Shall/Should. When a standard uses the word “shall,” the standard is mandatory. When a standard uses the word “should,” the standard is mandatory unless the applicant can demonstrate, to the satisfaction of the design commission, an equal or better means of satisfying the standard and objective.

4. Development Agreements. An applicant may request modifications to any development and design standards set forth in this chapter by requesting a development agreement consistent with RCW 36.70B.170 through 36.70B.210. All development agreements shall be in form and content acceptable to the city attorney and shall be reviewed and either approved or rejected by the city council after a public hearing pursuant to RCW 36.70B.200.

5. Changes of Use and Tenant Improvements. It is the property owners’ and tenants’ responsibility to ensure compliance with applicable development regulations when a change of use and/or a tenant improvement occurs.

~~B. Conditional Use Permit Review.~~

~~1. General.~~

~~a. Intent. The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards~~

1 established in this chapter. The review shall determine if the proposal should be permitted after
2 weighing the public benefit and the need for the use with the potential impacts that the use may cause.

3 ~~b. Scope. The conditional use permit review process shall apply to all uses identified as requiring a
4 conditional use permit in the chart of permitted uses set forth in MICC 19.11.020(A). No building permit,
5 business license or other permits related to the use of the land shall be issued until final approval of the
6 conditional use permit.~~

7 ~~c. Review Authority. The hearing examiner shall conduct the conditional use permit review process and
8 determine whether the proposed conditional use shall be allowed.~~

9 ~~d. Process.~~

10 ~~i. Time Frame and Procedure. Conditional use permit review shall be conducted in accordance with the
11 timelines and procedures set forth in MICC 19.15.020, Permit review procedures, except as the notice
12 provisions are modified below.~~

13 ~~ii. Notice.~~

14 ~~(a) Public notice of any proposal in the Town Center which involves a conditional use shall be posted on
15 the project site and mailed to all property owners within 500 feet of the proposed project site.~~

16 ~~(b) Legal notice shall be published in the official city newspaper (Chapter 2.10 MICC).~~

17 ~~(c) The notice shall identify the general project proposal and the date, time and location of the hearing
18 examiner open record hearing, and shall be provided a minimum of 30 days prior to the hearing.~~

19 ~~iii. Written Decisions. All decisions of the hearing examiner shall be reduced to writing and shall include
20 findings of fact and conclusions that support the decisions.~~

21 ~~iv. Expiration of Approval. If the activity approved by the conditional use permit has not been exercised
22 within two years from the date of the notice of decision setting forth the conditional use decision, or if a
23 complete application for a building permit has not been submitted within two years from the date of the
24 notice of the conditional use decision, or within two years from the decision on appeal from the
25 conditional use decision, conditional use approval shall expire. The design commission or code official
26 may grant an extension for no longer than 12 months, for good cause shown, if a written request is
27 submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the
28 expiration date.~~

1 ~~2. Review Process.~~

2 ~~a. Application Submittal. A complete conditional use permit application, on forms provided by the city~~
3 ~~development services group (DSG), shall be submitted at the same time as the application and materials~~
4 ~~for design review. The applicant shall provide a written narrative of the proposed conditional use and~~
5 ~~explain how the proposed use complies with the criteria for conditional use permit approval in~~
6 ~~subsection (B)(2)(e) of this section. Depending on the type of conditional use proposed, the code official~~
7 ~~may require additional information.~~

8 ~~b. SEPA Determination. If the project is not categorically exempt pursuant to WAC 197-11-800, the city~~
9 ~~environmental official will review the SEPA environmental checklist, the proposal and other information~~
10 ~~required for a complete application to assess the project's probable environmental impacts and issue a~~
11 ~~determination pursuant to MICC 19.07.120.~~

12 ~~c. Acceptance. DSG staff shall determine if the required materials have been provided for review of the~~
13 ~~conditional use permit, in conjunction with the applicable design review process. If so, the application~~
14 ~~will be accepted and the process for determination of completeness and review set forth in MICC~~
15 ~~19.15.020 shall commence.~~

16 ~~d. Review. The hearing examiner shall conduct an open record hearing to consider a conditional use~~
17 ~~permit application. The hearing examiner may approve the application, or approve it with conditions,~~
18 ~~only if all of the applicable criteria set forth below are met. The hearing examiner shall deny the~~
19 ~~application if it finds that the applicable criteria set forth below have not been met. Conditions may be~~
20 ~~attached to assure that the use is compatible with other existing and potential uses within the same~~
21 ~~general area and that the use shall not constitute a nuisance. Conditional use permit application review~~
22 ~~shall be coordinated with design review as follows:~~

23 ~~i. Major New Construction. If the conditional use permit application is part of a major new construction~~
24 ~~project, design review shall commence in accordance with the time frames and procedures set forth in~~
25 ~~MICC 19.15.040(F), except as follows: The hearing examiner shall review the conditional use permit~~
26 ~~application at an open record hearing after the design commission's preliminary design review at a~~
27 ~~public meeting. If the hearing examiner approves the conditional use permit (without or with~~
28 ~~conditions), then the hearing examiner will forward the project to the design commission for the final~~
29 ~~design review.~~

30 ~~ii. Change in Use and Minor Exterior Modifications. If the conditional use permit application proposes a~~
31 ~~change in use but is not part of a major new construction project, or is part of a minor exterior~~
32 ~~modification, then design review shall proceed administratively in accordance with the provisions in~~

1 MICC ~~19.15.040(F)~~, and the hearing examiner shall review the conditional use permit application at an
2 open record hearing. If the staff determines that the minor exterior modification should be reviewed by
3 the design commission as provided for in MICC ~~19.15.040(F)~~, then the design commission's review and
4 decision shall be conducted at an open record hearing separate from the hearing examiner's open
5 record hearing on the conditional use permit application.

6 e. Criteria for Approval of a Conditional Use Permit. Consistent with the applicable review process
7 above, the hearing examiner shall approve, approve with conditions or deny a conditional use permit
8 application based on finding that all of the following criteria have been met:

9 i. General Criteria.

10 (a) The proposed use complies with all the applicable development and design provisions of this
11 chapter.

12 (b) The proposed use is consistent with the comprehensive plan.

13 (c) The proposed use is harmonious and appropriate in design, character, and appearance with the
14 existing or intended uses within the surrounding area.

15 (d) The proposed use will not generate excessive fumes, odor, dust, light, radiation, or refuse that would
16 be injurious to surrounding uses.

17 (e) The proposed use will not generate levels of noise that adversely impact the health, safety, or
18 general welfare of surrounding uses.

19 (f) The proposed use will be served by adequate public services, including streets, fire and public safety
20 protection, water, sewer, and storm water control, and will not adversely impact the level of service
21 standards for such facilities.

22 (g) The proposed location, size, design, and operating characteristics of the proposed use will not be
23 detrimental to the public interest, health, safety, convenience, or welfare of the city.

24 ii. Additional Criteria for Approval of a Conditional Use for Adult Entertainment.

25 (a) The point of entry into the structure housing the adult entertainment use shall be located at least
26 100 feet, measured in a straight line, from the property line of: (1) any R-zoned property; (2) any public
27 institution zoned property; (3) any property containing one or more of the following uses: residential
28 uses including single- or multiple-family dwellings, or residential care facilities; schools including public,

1 private, primary or secondary, preschool, nursery school, day care; recreational uses including publicly
2 owned park or open space, commercial or noncommercial or private recreation facility; religious
3 institutions; public institutions; or uses which cater primarily to minors.

4 (b) No adult entertainment use shall be located closer than 400 feet to another adult entertainment use.
5 Such distance shall be measured by following a straight line from the nearest point of entry into the
6 proposed adult entertainment to the nearest point of entry into another adult entertainment use.

7 (c) The point of entry into adult entertainment use shall not be located along 78th Avenue SE.

8 (d) Signing shall be limited to words and letters only. Window or exterior displays of goods or services
9 that depict, simulate, or are intended for use in connection with specified sexual activities as defined by
10 Chapter 5.30 MICC are prohibited.

11 f. Appeal. The hearing examiner's decision is final unless appealed pursuant to MICC 19.15.020(J).

12 g. Change After Conditional Use Permit Granted.

13 i. Change of Ownership. Conditional use permits granted shall continue to be valid upon change of
14 ownership of the site.

15 ii. Change of Use. Modifications to the use shall require an amendment to the conditional use permit
16 and shall be subject to the above review process.

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Chapter 19.12
DESIGN STANDARDS FOR ZONES OUTSIDE TOWN CENTER

19.12.010 General.

A. Applicability. This chapter establishes design standards for regulated improvements in all zones established by MICC 19.01.040, except Town Center. Design standards for Town Center are set forth in Chapter 19.11 MICC. These standards are in addition to any other standards that may be applicable to development in the zone in which the development occurs. In the PBZ, the terms of the PBZ site plan as set forth in MICC 19.04.010 shall control; provided, to the extent not inconsistent with MICC 19.04.010, the provisions of MICC 19.12.010 [excluding (D)(2)(b) and (c)], 19.12.030, 19.12.060, 19.12.070 and 19.12.080 shall apply. These design standards are not intended to slow or restrict development, but to add consistency and predictability to the permit review process.

B. Design Vision.

1. Site and Context. Non-Town Center areas are largely characterized by residential settings that are heavily vegetated, topographically diverse and enhanced with short and long-range views that are often territorial in nature. The design of new and remodeled structures should respond to this strong environmental context. Site design should maintain the natural character of the island and preserve vegetation concentrations, topography and the view opportunities that make Mercer Island special.

2. Building Design. Development of new and remodeled structures should conserve Mercer Island’s special environmental characteristics, such as steep slopes, watercourses, and large concentrations of mature trees. Buildings shall be designed to be architecturally compatible with other structures in the neighborhood with respect to human scale, form and massing, and relationship to natural site features. High quality and durable materials, complementary colors, texture, and architectural detail should be incorporated into the design. Use of materials such as natural wood and stone, and design elements such as large building overhangs and window exposure to natural light, are encouraged.

3. Landscaping and Amenities. Landscaping should reflect the natural wooded character of Mercer Island and provide visual separation between different land uses. Amenities such as street trees, plantings, and other landscape design elements, including fountains or water features, and art features should be integrated into new and remodeled structures and their sites.

C. Applicant’s Responsibility. It is the responsibility of the applicant to design a project in compliance with the objectives and standards of this chapter and all other regulations applicable to the zone in which the development occurs.

1 D. Design Review Process. Design review shall be conducted by the city’s design commission or code
2 official consistent with the process provided in MICC 19.15.040 (F). The design commission or code
3 official shall review each regulated improvement and determine each project’s conformance with the
4 applicable objectives and standards of this chapter.

5 1. Full Application of Design Requirements: Major New Construction. All design requirements of
6 Chapter 19.12 MICC shall apply, except as provided in MICC 19.01.050 (D)(3)(a), when there is
7 new construction from bare ground, or intentional exterior alteration or enlargement of a
8 structure over any three-year period that incurs construction costs in excess of 50 percent of the
9 existing structure’s current King County assessed value as of the time the initial application for
10 such work is submitted; provided, application of Chapter 19.12 MICC shall not be construed to
11 require an existing structure to be demolished or relocated, or any portion of an existing
12 structure that is otherwise not being worked on as part of the construction to be altered or
13 modified.

14 2. Partial Application of Design Requirements: Minor Exterior Modification. The following design
15 requirements shall apply when there is a minor exterior modification, as defined in MICC
16 19.16.010:

17 a. MICC 19.12.030 pertaining to building design and visual interest;

18 b. MICC 19.12.040 (B)(5), (6), (7), (8), (9) and (11) pertaining to landscape design and
19 outdoor spaces: entrance landscaping; planting types; screen types and widths by use
20 and location; perimeter landscape screens; surface parking lot planting; and general
21 planting, irrigation and maintenance standards;

22 c. MICC 19.12.050 pertaining to vehicular and pedestrian circulation;

23 d. MICC 19.12.060 pertaining to screening of service and mechanical areas;

24 e. MICC 19.12.070 pertaining to lighting;

25 f. MICC 19.12.080 pertaining to signs;

26 The design requirements pertaining to structures shall be applied only to that portion of an
27 existing structure that undergoes minor exterior modification and shall not require any portion
28 of an existing structure that is otherwise not being worked on as part of the construction to be
29 altered or modified.

30 3. Value Measure When Structure Has No Assessed Value. For purposes of determining when a
31 project will be considered major new construction or minor exterior modification, and the
32 threshold for application of design requirements as set forth in subsections (D)(1) and (2) of this
33 section, if there is no current King County assessed value for a structure, a current appraisal of
34 the structure, which shall be provided by the applicant and acceptable to the code official, shall
35 be used as the value point of reference.

1 E. Shall/Should. When a standard uses the word “shall,” the standard is mandatory. When a standard
2 uses the word “should,” the standard is mandatory unless the applicant can demonstrate, to the
3 satisfaction of the design commission or code official, an equal or better means of satisfying the
4 standard and objective.

5 F. Development Agreements. An applicant may request modifications to any design and development
6 standards set forth in this chapter by requesting a development agreement consistent with RCW
7 36.70B.170 through 36.70B.210. All development agreements shall be in form and content acceptable to
8 the city attorney and will be reviewed and either approved or rejected by the city council after a public
9 hearing pursuant to RCW 36.70B.200.

10 G. Changes of Use and Tenant Improvements. It is the property owners and tenants’ responsibility to
11 ensure compliance with applicable development regulations when a change of use and/or a tenant
12 improvement occurs.

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Attachment 1.h.1

Chapter 19.15 ADMINISTRATION

Sections:

19.15.010 Purpose, intent and roles.

19.15.020 Land use review types.

19.15.030 Legislative actions

19.15.040 Summary of approval and authorities

19.15.050 Permit review procedures

19.15.060 Preapplication

19.15.070 Application

19.15.080 Determination of completeness

19.15.090 Notice of application

19.15.100 Public hearing notice

19.15.110 Response to Comments and Extensions

19.15.120 Notice of decision

19.15.130 Appeals

19.15.140 Open record public hearing

19.15.150 Expiration of approvals

19.15.160 Code interpretations

19.15.170 Vesting

19.15.180 Additional shoreline substantial development permit, shoreline conditional use permit, and shoreline variance procedures

19.15.190 Permit review for 6049 eligible facilities

19.15.200 Revisions

19.15.210 Compliance required

19.15.220 Open record public hearing

19.15.230 Enforcement *(Not part of this review)*

19.15.240 Design review and the design commission

19.15.250 Comprehensive plan amendments.

19.15.260 Reclassification of property (rezones).

19.15.270 Zoning code text amendments.

19.15.280 Review procedures for comprehensive plan amendments, reclassification of property, and zoning code text amendments.

19.15.010 ~~General procedures~~ Purpose, intent and roles.

A. Purpose. Administration of the development code is intended to be expedient and effective. The purpose of this chapter is to identify the processes, authorities and timing for administration of development permits. Public noticing and hearing procedures, decision criteria, appeal procedures, dispute resolution and code interpretation issues are also described.

B. Objectives. Guide customers confidently through the permit process; process permits equitably and expediently; balance the needs of permit applicants with neighbors; allow for an appropriate level of public notice and involvement; make decisions quickly and at the earliest possible time; allow for administrative decision-making, except for those decisions requiring the exercise of discretion which are reserved for appointed decision makers; ensure that decisions are made consistently and predictably; and resolve conflicts at the earliest possible time.

C. Roles and Responsibilities. The roles and responsibilities for carrying out the provisions of the development code are shared by appointed boards and commissions, elected officials and city staff. The authorities of each of these bodies are set forth below.

1. City Council. The city council is responsible for establishing policy and legislation affecting land use within the city. The city council acts on recommendations of the planning commission and hearing examiner ~~in legislative and quasi-judicial matters.~~

2. Planning Commission. The role of the planning commission in administering the development code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated planning agency for the city (see Chapter 35A.63 RCW). The planning commission makes recommendations to the city council on land use legislation, comprehensive plan amendments and quasi-judicial matters.

3. Design Commission. The role of the design commission in administering the development code is governed by Chapter 3.34 MICC and MICC 19.15.040. In general, the design commission is responsible for maintaining the city's design standards and action on sign, commercial and multiple-family design applications.

4. Development Services Group. The responsible officials in the development services group act upon ministerial and administrative permits.

a. The code official is responsible for administration, interpretation and enforcement of the development code.

- b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.
 - c. The city engineer is responsible for the administration and interpretation of engineering standards.
 - d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.
 - e. The fire code official is responsible for administration and interpretation of the International Fire Code.
5. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

19.15.020. Land Use Review Types.

There are four categories of ~~actions or permits~~ land use review that ~~are reviewed~~ occur under the provisions of the development code.

1. ~~Ministerial Actions~~ Type I. Ministerial ~~Type I actions~~ reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
2. ~~Administrative Actions~~ Type II. Administrative ~~Type II actions~~ are based on objective and subjective standards that require the exercise of discretion about nontechnical issues. 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 a Notice of Decision shall be issued for Type II decisions
3. ~~Discretionary Actions~~ Type III. Discretionary ~~Type III actions~~ are based on standards that require substantial discretion and may be actions of broad public interest. Discretionary actions are only taken after an open record hearing. reviews are based on objective and subjective standards that require the exercise of discretion about nontechnical issues.
4. ~~Legislative Actions~~ Type IV. Legislative ~~Type IV actions~~ reviews are based on standards that require substantial discretion and may be actions of broad public interest. Decisions on Discretionary Type IV reviews are only taken after an open record hearing.
5. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.
6. Consolidated Permit Processing. An application for a development proposal that involves the approval of two or more Type II, III and IV reviews, may be processed and decided together, including any administrative appeals, using the highest numbered land use decision type applicable to the project application. The following permits and land use reviews are excluded from consolidated review and approval:

a. Building permits associated with the construction of one or more new single family dwellings on lots resulting from the final plat approval of a short subdivision or long subdivision.

b. Building permits associated with shoreline conditional use permits and shoreline variance.

c. Project SEPA reviews shall be processed as a Type III land use review.

19.15.030. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to geographic areas and implement adopted City policy, promote the community interest, and are normally of interest to many property owners and citizens. Legislative actions are only adopted after an open record public hearing. Review procedures for legislative actions are located in subsection 19.15.280 of this chapter.

E.19.15.040 Summary of Actions-Reviews and Authorities. The following is a nonexclusive list of the ~~actions-land use reviews~~ that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, ~~elected officials~~, or city staff have authority to make the decisions and to hear appeals of those decisions.

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY |
|--|--------------------|--------------------|-------------------------------|
| Ministerial Actions | | | |
| Tree Removal Permit | Code official | Chapter 19.10 MICC | Hearing examiner ¹ |
| Right of Way Permit | City engineer | Chapter 19.09 MICC | Hearing examiner |
| Home Business Permit | Code official | MICC 19.02.010 | Hearing examiner |
| Special Needs Group Housing Safety Determination | Police chief | MICC 19.06.080(A) | Hearing examiner |
| Lot Line Revision | Code official | Chapter 19.08 MICC | Hearing examiner |

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY |
|--|------------------------------------|--|-------------------------------|
| Design Review – Minor Exterior Modification Outside Town Center | Code official | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Design commission |
| Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) Less Than \$100,000 | Code official | Chapters 19.11 and 19.12 MICC, MICC 19.15.040 | Design commission |
| Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) \$100,000 or Greater | Design commission | Chapters 19.11 and 19.12 MICC, MICC 19.15.040 | Hearing examiner |
| Final Short Plat Approval | Code official | Chapter 19.08 MICC | Superior court |
| Seasonal Development Limitation Waiver | Building official or city arborist | MICC 19.10.110, 19.07.060(D)(4) | Hearing examiner |
| Shoreline Exemption | Code official | MICC 19.07.110 and 19.15.020(G)(6)(c)(i) | Hearing examiner ² |
| Major Single Family Dwelling Building Permit | Code official | Chapter 19.02 MICC but not MICC Title 15 or 17 | Hearing examiner |
| Administrative Actions | | | |
| Accessory Dwelling Unit Permit | Code official | MICC 19.02.030 | Hearing examiner |
| Preliminary Short Plat | Code official | Chapter 19.08 MICC | Hearing examiner |
| Deviation | Code official | MICC 19.15.020(G) | Hearing examiner |
| Critical Areas Determination | Code official | Chapter 19.07 MICC | Hearing examiner |

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY |
|---|---|---|-------------------------------|
| Shoreline – Substantial Development Permit | Code official | MICC 19.07.110 and 19.15.020(G)(6) | Shoreline hearings board |
| SEPA Threshold Determination | Code official | MICC 19.07.120 | Hearing examiner |
| Short Plat Alteration and Vacations | Code official | MICC 19.08.010(G) | Hearing examiner |
| Long Plat Alteration and Vacations | City council via hearing examiner | MICC 19.08.010(F) | Superior court |
| Temporary Encampment | Code official | MICC 19.06.090 | Superior court |
| Wireless Communications Facility | Code official | MICC 19.06.040 | Hearing examiner |
| Wireless Communications Facility Height Variance | Code official | MICC 19.06.040(H) and 19.15.020(G) | Hearing examiner |
| Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones | Code official via design commission and city engineer | MICC 19.03.020(B)(4), 19.04.040(B)(9), 19.05.020(B)(9) and 19.15.020(G) | Hearing examiner |
| Development Code Interpretations | Code official | MICC 19.15.020(L) | Hearing examiner ⁵ |
| Discretionary Actions | | | |
| Conditional Use Permit | Hearing examiner | MICC 19.11.150(B), 19.15.020(G) | Superior court |
| Reclassification (Rezone) | City council via planning commission ³ | MICC 19.15.020(G) | Superior court |
| Formal Design Review – Major New Construction | Design commission | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Hearing examiner |

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY |
|---|--|----------------------|----------------------------------|
| Preliminary Long Plat Approval | City council via hearing examiner ³ | Chapter 19.08 MICC | Superior court |
| Final Long Plat Approval | City council via code official | Chapter 19.08 MICC | Superior court |
| Variance | Hearing examiner | MICC 19.15.020(G) | Superior court |
| Variance from Short Plat Acreage Limitation | Code official | MICC 19.08.020 | Hearing examiner |
| Critical Areas Reasonable Use Exception | Hearing examiner | MICC 19.07.030(B) | Superior court |
| Street Vacation | City council via planning commission ³ | MICC 19.09.070 | Superior court |
| Shoreline Conditional Use Permit | Code official and Department of Ecology ⁴ | MICC 19.15.020(G)(6) | State Shorelines Hearings Board |
| Shoreline Variance | Code official and Department of Ecology ³ | MICC 19.15.020(G)(6) | State Shorelines Hearings Board |
| Impervious Surface Variance | Hearing examiner | MICC 19.02.050 | Superior court |
| Legislative Actions | | | |
| Code Amendment | City council via planning commission ³ | MICC 19.15.020(G) | Growth management hearings board |
| Comprehensive Plan Amendment | City council via planning commission ² | MICC 19.15.020(G) | Growth management hearings board |

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY |
|--|--------------------|----------|------------------|
| 1 Tree removal associated with a development proposal and authorized through the issuance of a tree removal permit shall not commence until the later of the end of the appeal period associated with the tree removal permit, or a decision is issued on an administrative appeal of the tree removal permit. | | | |
| 2 Final rulings granting or denying an exemption under MICC 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60). | | | |
| 3 The original action is by the planning commission or hearing examiner which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision. | | | |
| 4 Must be approved by the city of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10). | | | |
| 5 The development code interpretation may be appealed as applied to a project review as part of an appeal of the land use action. | | | |

(Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 10; Ord. 13C-12 § 5; Ord. 11C-05 § 2; Ord. 11C-04 § 2; Ord. 10C-06 § 5; Ord. 10C-01 § 5; Ord. 08C-01 § 8; Ord. 06C-06 § 2; Ord. 06C-05 § 2; Ord. 05C-12 § 9; Ord. 04C-12 § 16; Ord. 04C-08 § 3; Ord. 03C-08 §§ 9, 10; Ord. 02C-04 § 5; Ord. 02C-01 § 6; Ord. 99C-13 § 1).

TABLE A
LAND USE REVIEW TYPE

| Type I | Type II | Type III | Type IV |
|---|---|--|---|
| Home business, seasonal development limitation waiver, non-major single-family dwelling building permits, tree removal permit, right of way permit, special needs group housing safety determination, tenant improvement/change of use, shoreline exemption, critical areas determination (steep slope alteration), final short plat, temporary | Modified wireless communication facilities (6409 per 47.CFR.1.40001), lot line revision, setback deviations, final plat, code official design review, accessory dwelling unit, parking variances (reviewed by city engineer). | New and modified wireless (non-6409) communication facility, SEPA threshold determination, critical areas determination (wetland/watercourse buffer averaging/reduction, temporary encampment. Short plat alteration and vacations, preliminary short plat, development code interpretations, major single-family dwelling | Conditional use permit, variance, critical areas reasonable use exception, long plat alteration and vacations, parking variance (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, site development permits. | | building permit, shoreline substantial development permit, shoreline revision (substantial development). | commerce on public property, shoreline conditional use permit (SCUP), shoreline variance, shoreline revision (variance and SCUP). |
|--|--|--|---|

TABLE B
REVIEW PROCESSING PROCEDURES

| | Type I | Type II | Type III | Type IV |
|--|---|--|---|---|
| | <u>No Notice of Application</u> <u>No Notice of Decision</u> <u>Code Official</u> | <u>No Notice of Application</u> <u>Notice of Decision</u> <u>Code Official</u> | <u>Notice of Application</u> <u>Notice of Decision</u> <u>Code Official</u> | <u>Notice of Application</u> <u>Public Hearing</u> <u>Notice of Decision</u> <u>Hearing Examiner / Design Commission</u> |
| <u>Pre-application meeting required</u> | <u>No</u> | <u>No</u> | <u>Yes</u> | <u>Yes</u> |
| <u>Letter of completion (within 28 days)</u> | <u>No</u> | <u>No</u> | <u>Yes</u> | <u>Yes</u> |
| <u>Notice of Application (mailing & posting)</u> | <u>No</u> | <u>No</u> | <u>Yes</u> | <u>Yes</u> |
| <u>Public Comment Period</u> | <u>None</u> | <u>None</u> | <u>30 days</u> | <u>30 days</u> |
| <u>Public Hearing (Open Record pre-decision)</u> | <u>No</u> | <u>No</u> | <u>No</u> | <u>Yes</u> |
| <u>Notice of Decision</u> | <u>Code official</u> | <u>Code official</u> | <u>Code official</u> | <u>Hearing examiner or</u> |

| | <u>Type I</u> | <u>Type II</u> | <u>Type III</u> | <u>Type IV</u> |
|---------------------------|---|--|-------------------------|---|
| | | (Except final long plats which go to City Council at a public meeting) | | <u>Design commission (Hearing examiner recommendation to Ecology for decision on Shoreline CUP/Variances)</u> |
| <u>Notice of decision</u> | No | Yes | Yes | Yes |
| <u>Appeal Authority</u> | <u>Hearing examiner or Superior court (TBD)</u> | <u>Hearing examiner</u> | <u>Hearing examiner</u> | <u>Superior court or Shoreline Hearings Board (Shoreline permits)</u> |

19.15.0250 ~~Permit~~ review procedures.

The following are general requirements for processing a permit application under the development code. Additional or alternative requirements may exist for actions under specific code sections (see MICC 19.07.080, 19.07.110, and 19.08.020).

~~A19.15.060. Preapplication. Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.~~

A. Purpose. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood to inform the neighborhood of the project proposal are encouraged prior to the formal notice provided by the city.

B. Optional Pre-application meetings. Applicants for development proposals are encouraged to participate in informal meetings with city staff. Pre-application meetings may be held for any other development proposal at the request of the applicant.

C. Required Pre-application meetings. Pre-application meetings are required for Type III and Type IV land use reviews. Pre-application meetings may be held for any other development proposal at the request of the applicant.

D. Application. Applicants shall prepare a concept sketch of the development proposal for the pre-application meeting along with any other information specified by the code official in the pre-application meeting form.

E. Validity. Successful completion of a pre-application meeting does not constitute approval of any plan or design. Pre-application meetings shall occur within one year of application submittal, or after a code change affecting the application has occurred.

B19.15.070. Application.

1A. All applications for permits or actions by the city shall be submitted on forms provided by the development services group. The department shall not commence review of any application until the applicant has submitted the materials and fees specified for complete applications. An application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of the applicable development regulations. The applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. All land use applications shall include the following:

1. All applications for permits or land use reviews by the city shall be submitted on forms provided by the City;
2. A site plan, prepared in a form prescribed by the code official;
3. A completed SEPA environmental checklist, if required;
4. Any studies or reports required for the processing of the application;
5. A list of any permits or land use review types necessary for approval of the development proposal that have been obtained prior to filing the application or that are pending before the City or any other governmental entity;
6. Drainage plans and documentation required by the Stormwater Management Manual for Western Washington as adopted by MICC Chapter 15.09;
7. Legal description of the site;

8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (1)(l) of this section shall satisfy the requirements of this subsection (1)(j); and

9. For Type II, III, and IV reviews, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement). If the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site. The code official may waive this requirement if the title report will not substantively inform the review of the development proposal.

10. All applications for preliminary design review shall contain all information and materials deemed necessary by DSG staff to determine if the proposal complies with this chapter. Such materials may include a site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; parking plan; color and materials board; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards established in Chapters 19.11 or 19.12 MICC. For new construction, submittal of lighting and sign master plans may be deferred to the public hearing.

2B. A determination of completeness shall not preclude the code official from requesting additional information or studies either at the time of determination of completeness or subsequently if new or additional information is required or substantial changes in the proposed action occur, as determined by the code official.

~~3C2.~~ All applications for permits or ~~actions~~ land use review by the city shall be accompanied by a filing fee in an amount established by city ordinance.

€19.15.080. Determination of Completeness.

~~1A.~~ Complete Application Required. The city will not accept an incomplete application for processing and review. An application is complete only when all information required on the application form and all submittal items required by the development code have been provided to the satisfaction of the code official.

~~2B.~~ Determination of Completeness. Within 28 days after receiving an ~~development permit~~ application for a Type III and Type IV land use review, the city shall mail, email, or provide in person a written ~~determination~~ Letter of Completion or Letter of In-Completion to the applicant, stating either that the application is complete or that the application is incomplete, ~~and if an application is incomplete, the Letter of In-Completion shall identify what additional documentation is necessary to make the result in a complete application complete.~~ An application shall be deemed complete if the city does not provide a written determination to the applicant stating that the application is incomplete.

~~3C.~~ Response to Letter of In-Completion. Within 14 days after an applicant has submitted all additional information identified as being necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary.

~~4D.~~ Completion Date. The date an application is determined complete is the date of receipt by the department of all of the information necessary to make the application complete as provided in this chapter. The department's issuance of a Letter of Complete application, or the failure of the department to provide such a letter as directed by this section, shall cause an application to be conclusively deemed to be complete as provided in this section.

~~45E.~~ If the applicant fails to provide the required information within 90 days of the ~~determination~~ Letter of incompleteness~~In-Completion~~, the application shall lapse. ~~The applicant may request a refund of the application fee minus the city's cost of determining the completeness of the application.~~

~~19.15.090.~~ Notice of Application.

1. Timing. Within 14 days of the determination of completeness, the city shall issue a notice of application for all ~~administrative, discretionary, and legislative actions~~ Type III and Type IV permits listed in MICC 19.15.010(E) ~~and major single-family dwelling building permits.~~

2. Distribution. Notice shall be provided in the weekly DSG bulletin, mailed to all property owners within 300 feet of the property, posted on the site in a location that is visible to the public right-of-way, and made available to the general public upon request.

~~If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that contiguous land shall be treated as part of the long subdivision for notice purposes, and notice of the application shall be given to all owners of lots located within 300 feet of the proposed long subdivision and the applicant's contiguous land. The city shall provide written notice to the Department of Transportation of an application for a long subdivision or short subdivision that is abutting the right-of-way of a state highway. The notice shall include a legal description of the long subdivision or short subdivision and a location map.~~

~~32.~~ Content. The notice of application shall include the following information:

- a. The dates of the application, the determination of completeness, and the notice of application;
- b. The name of the applicant;
- c. The location and description of the project;
- d. The requested actions and/or required studies;
- e. The date, time, and place of the open record hearing, if one has been scheduled;
- f. Identification of environmental documents, if any;
- g. A statement of the public comment period, which shall be not less than 30 days following the date of notice of application; 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. ~~The city shall accept public comments at any time prior to the closing of the record of an open record~~

~~predecision hearing, if any, or if no open record predecision hearing is provided, prior to the decision on the project permit;~~

- h. The city staff contact and contact information;
- i. The identification of other permits not included in the application to the extent known by the city;
- j. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan;
- k. A link to a website where additional information about the project can be found; and
- l. Any other information that the city determines appropriate.

~~D3. Open Record Hearing. If an open record hearing is required on the land use permit approval, the city shall:~~

- ~~a. Provide the notice of application at least 30 days prior to the hearing; and~~
- ~~b. Issue any threshold determination required under MICC 19.07.110 at least 30 days prior to the hearing.~~

~~4. Notice shall be provided in the bi-weekly DSG bulletin, posted at City Hall and made available to the general public upon request.~~

~~5E. All comments received on the notice of application must be received by the development services group by 5 pm on the last day of the comment period. Public Comment. The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or if no open record predecision hearing is provided, prior to the decision on the project permitland use review.~~

6. Except for a determination of significance, the city shall not issue a threshold determination under MICC 19.07.1120 or issue a decision on an application until the expiration of the public comment period on the notice of application.

7. A notice of application is not required for the following actions; provided, the action is either categorically exempt from SEPA or an environmental review of the action in accordance with SEPA has been completed:

- a. Building permit other than a major single family dwelling building permit;
- b. Lot line revision;
- c. Right of way permit;
- d. Storm drainage permit;
- e. Home occupation permit;
- f. Design review—minor new construction;
- g. Final plat approval;

- h. ~~Shoreline exemption permit;~~
- i. ~~Seasonal development limitation waiver; and~~
- k. ~~Tree removal permit.~~

19.15.100. Public Notice and Information Availability Hearing Notice.

~~1A. In addition to the notice of application, a~~ public hearing notice is required for all administrative, discretionary, and legislative actions Type IV land use reviews requiring a public hearing listed in MICC 19.15.010(E) and major single-family dwelling building permits. A Public Hearing Notice may be combined with a Notice of Application if all of the requirements of this section are met.

~~2B. Public hearing notice shall be provided at least 30 days prior to any required open record hearing. If no such hearing is required, public notice shall be provided 14 days prior to the decision on the application.~~

~~3C. The public hearing notice shall include the following:~~

- ~~a1. A general description of the proposed project and the action to be taken by the city;~~
- ~~b2. A nonlegal description address or parcel number of the property and a, vicinity map or sketch;~~
- ~~e3. The time, date and location of any required the open record public hearing;~~
- ~~d4. A contact name and number where additional information may be obtained;~~
- ~~e5. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal;~~
- ~~f. A description of the deadline for submitting public comments;~~
- ~~g6. A link to a website where additional information about the project can be found.~~

~~4D. Public hearing notices shall be provided in the following manner:~~

~~a1. Administrative and Discretionary Actions and Major Single-Family Dwelling Building Permits. Notice shall be mailed to parties of record, all property owners within 300 feet of the property, published in the weekly DSG bulletin, and posted on the site in a location that is visible to the public right-of-way.~~

~~ia. Long Subdivisions. Additional notice for the public hearing for a preliminary long subdivisions approval shall be provided as follows:~~

~~(a1) Public nNotice of an application public hearing for a long subdivision shall also be published at least 30 days prior to the open record hearing on the application in a newspaper of general circulation within the city.~~

~~(b2) If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that contiguous land shall be treated as part of the long subdivision for notice purposes, and the Public Hearing Notice notice of the application shall be given to all owners of lots located within 300 feet of the proposed long subdivision and the applicant's contiguous land.~~

~~(c) The city shall provide written notice to the Department of Transportation of an application for a long subdivision or short subdivision that is located adjacent to the right-of-way of a state highway. The notice shall include a legal description of the long subdivision or short subdivision and a location map.~~

~~b. Legislative Action Type V Reviews. Notice Public hearing notices for Type V reviews shall be published in a newspaper of general circulation within the city and published in the weekly DSG bulletin. If applicable, notices shall also be mailed to parties of record, all property owners within 300 feet of the property and posted on the site in a location that is visible to the public right-of-way.~~

~~5E. Every complete development permit application for which notice is to be provided under subsection (D)(1) of this section together with all information provided by the applicant for consideration by the decision authority shall be posted by the city to a website accessible without charge to the public. Information shall be posted at the time the city issues the notice of application under subsection (D)(1) of this section and shall be updated as needed and in any event within seven days after additional information is received from the applicant. The provisions of this subsection (E)(5) shall only apply to development permit applications filed on or after May 29, 2017.~~

~~F. Open Record Public Hearing.~~

~~1. Only one open record public hearing shall be required prior to action on all discretionary and legislative actions except design review and street vacations.~~

~~2. Open record public hearings shall be conducted in accordance with the hearing body's rules of procedures. In conducting an open record public hearing, the hearing body's chair shall, in general, observe the following sequence:~~

~~a. Staff presentation, including the submittal of any additional information or correspondence. Members of the hearing body may ask questions of staff.~~

~~b. Applicant and/or applicant representative's presentation. Members of the hearing body may ask questions of the applicant.~~

~~c. Testimony by the public. Questions directed to the staff, the applicant or members of the hearing body shall be posed by the chairperson at his/her discretion.~~

~~d. Rebuttal, response or clarifying statements by the applicant and/or the staff.~~

~~e. The public comment portion of the hearing is closed and the hearing body shall deliberate on the action before it.~~

~~3. Following the hearing procedure described above, the hearing body shall:~~

~~a. Approve;~~

~~b. Conditionally approve;~~

~~c. Continue the hearing; or~~

~~d. Deny the application.~~

19.15.110. Request for Information.

A. Request authorized. The official or entity reviewing a development proposal may request additional information or studies if:

1. New or additional information is required to complete a land use review and issue a decision;
2. Substantial changes in the development proposal are proposed by the applicant; or
3. The official or entity reviewing the development proposal determines additional information is required prior to issuance of a decision.

B. Deadline for response. The official or entity requesting information shall establish a time limit for the applicant to respond. The time limit for an applicant to respond to a request for information shall not be less than 30 days, provided an extension to applicant's time limit to respond may be authorized pursuant to section 3., below. If responses are not received within the established time limit and no extension has been authorized, the code official may cancel the land use review for inactivity.

C. Deadline extension. Applicants may request an extension to provide requested materials. Extension requests shall be in writing, shall include a basis for the extension and shall be submitted in writing prior to expiration of the time limit. The code official is authorized to extend the time limit in writing. There is no limit to the number of extensions an applicant may be granted, however the total time limit for a response shall not exceed 180 days unless there is an extenuating circumstance. An extenuating circumstance must be unexpected and beyond the control of the applicant.

19.15.120. Notice of Decision.

The city will make an effort to process permits and land use reviews in a reasonable time subject to constraints related to staff workload and resources. The city shall provide notice in a timely manner of its final decision or recommendation on development proposals requiring Type II, III and IV land use decisions, including the SEPA threshold determination, if any, the dates for any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to the applicant, parties of record, agencies with jurisdiction. Notice of decision shall also be provided to the public as provided in MICC 19.15.090. The notice of decision may be provided by email or a hard copy may be mailed.

19.15.130. Administrative Appeals.

1A. Appeals to Shoreline Hearings Board. Appeals to any shoreline substantial development permit, shoreline conditional use permit, or shoreline variance decision, shall be in accordance with RCW 90.58.180. Appeals to shoreline exemptions permits shall be filed in accordance with subsection 2 of this section.

2B1. Administrative Appeals. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision, if a notice of decision is required, or after the effective date of the decision subject to appeal if no notice of decision is required.

3C2. Appeals shall include the following information:

1. The decision(s) being appealed;
2. The development code interpretation, if any, associated with the proposed appeal;
3. The name and address of the appellant and his/her interest in the matter;
4. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;
5. The desired outcome or changes to the decision; and
6. Payment of the appeals fee, if any.

D. Authority for appeals is specified in MICC 19.15.040(E).

E. ~~Public~~ Notice of an open record public hearing for an appeal shall be provided in the manner specified in ~~subsection E of this section~~ consistent with the notice of public hearing provisions of MICC 19.15.100.

F. The rules of procedure for appeal hearings shall be as follows:

~~a. For development proposals that have been subject to an open record hearing, the appeal hearing shall be a closed record appeal, based on the record before the decision body, and no new evidence may be presented.~~

~~b. For development proposals that have not been subject to an open record hearing, the appeal hearing shall be an open record appeal and new information may be presented.~~

1. If the hearing body finds that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria, it may:

a. Reverse the decision.

b. Modify the decision and approve it as modified.

c. Remand the decision back to the decision maker for further consideration.

2. If the hearing body finds that none of the procedural or factual bases listed above exist and that there has been no substantial error, the hearing body may adopt the findings and/or conclusions of the decision body, concur with the decision of the decision body and approve the development proposal as originally approved, with or without modifications.

3. Final decision on the appeal shall be made within 30 days from the last day of the appeal hearing.

4. The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

G. When an applicant has opted for consolidated permit processing pursuant to subsection I of this section, administrative appeals of ministerial, administrative or discretionary actions listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner.

19.15.140. Open Record Public Hearing.

A. Only one open record public hearing shall be required prior to action on all Type IV actions.

B. Open record public hearings shall be conducted in accordance with the hearing body's rules of procedures. In conducting an open record public hearing, the hearing body's chair shall, in general, observe the following sequence:

1. Staff presentation, including the submittal of any additional information or correspondence. Members of the hearing body may ask questions of staff.

2. Applicant and/or applicant representative's presentation. Members of the hearing body may ask questions of the applicant.

3. Testimony by the public. Questions directed to the staff, the applicant or members of the hearing body shall be posed by the chairperson at his/her discretion.

4. Rebuttal, response or clarifying statements by the applicant and/or the staff and/or the public.

5. The public comment portion of the hearing is closed and the hearing body shall deliberate on the action before it.

C. Following the hearing procedure described above, the hearing body shall:

1. Approve;

2. Conditionally approve;

3. Continue the hearing;

4. Remand the application to staff; or

5. Deny the application.

19.15.150. Expiration of Approvals.

A. General. Except as stated below, or as otherwise conditioned in the approval process, land use review approvals shall expire three years from the date of notice of decision if the development

proposal authorized by the land use review is not commenced. For the purposes of this section, the development proposal shall be considered established if construction or substantial progress toward construction of a development proposal for which a land use review approval has been granted must be undertaken within two years of the date of notice of decision of the land use review. Where no construction activities are involved, the use or activity shall be commenced within three years of the date of notice of decision of the land use review.

B. Renewal. Renewal of expired land use approvals shall require a new application.

C. Long and Short Subdivisions. A final plat application meeting all requirements of this chapter shall be submitted to the code official and recorded within five years of the date of preliminary plat approval.

3D. Shoreline Land Use Reviews. The following time limits shall apply to all substantial development permits, shoreline conditional use permits and shoreline variance permits:

a1. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

b2. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

E. Design Review. If the applicant has not submitted a complete application for a building permit within ~~two~~ three years from the date of the notice of the final design review decision, or within ~~two~~ three years from the decision on appeal from the final design review decision, design review approval shall expire. ~~The design commission or code official may grant an extension for no longer than 12 months, for good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.~~

F5. Responsibility for knowledge of the expiration date shall be with the applicant.

19.15.160. Code Interpretations.

A. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:

1. The plain language of the code section in question;
2. Purpose and intent statement of the chapters in question;
3. Legislative intent of the city council provided with the adoption of the code sections in question;

4. Policy direction provided by the Mercer Island comprehensive plan;

5. Relevant judicial decisions;

6. Consistency with other regulatory requirements governing the same or similar situation;

7. The expected result or effect of the interpretation; and

8. Previous implementation of the regulatory requirements governing the situation.

2. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner.

19.15.170. Vesting

A. Purpose. The purpose of this section is to identify certain points in the land use approval process at which an applicant's rights become "vested." Vested rights is defined as the guarantee that an application will be reviewed and a development proposal can be developed (if a permit is issued) under regulations and procedures existing at one moment in time and regardless of changes that may have been made later and prior to final completion of a project or use.

B. Vesting for Land Use Reviews. Complete applications for land use review of Type 1 land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department's issuance of a Letter of Completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

C. Scope of Vested Rights.

1. Land use reviews that are subject to the provisions of this section shall be considered under the zoning and land use control ordinances (Titles 15 and 19 MICC) in effect on the date of complete application. Supplemental information and revisions to a development proposal design required by the City after vesting of a complete application shall not affect the validity of the vesting for such application.

2. An applicant must specifically identify a proposed land use or uses in the land use review application as the intended use of the development proposal site in order to vest the right to engage in a specific land use against an ordinance implementing a change in permitted land uses.

3. An application for a land use review may be denied or approved with conditions under the authority of the City to protect and enhance the public safety, health and welfare, and under the State Environmental Policy Act (SEPA) and the City of Mercer Island's SEPA regulations and policies as of the date of vesting, notwithstanding the fact that the applicant has attained a

vested right against enforcement of an ordinance implementing changes in regulations, codes or procedures affecting that land use review application.

D. Termination of Vested Rights.

1. Termination of vested rights associated with a land use review for a development proposal shall occur at the time of expiration of land use review approval, as established in MICC 19.15.140 or when an applicant withdraws the land use application.

2. Applicant-generated modifications or requests for revision(s) to building permits, short subdivision, or long subdivisions which are not made in response to staff review, public process, appeal, or conditions of approval, and which result in substantial changes to a development proposal design, which includes but is not limited to include the creation of additional lots, substantial change in access, substantial changes in project design, or additional impacts to critical areas shall be treated as new applications for purposes of vesting.

3. Applicant-generated proposals to create additional lots, substantially change access, increase critical area impacts, or change conditions of approval on an approved preliminary short subdivision or long subdivision shall also be treated as a new application for purposes of vesting.

~~G. Decision Criteria. Decisions shall be based on the criteria specified in the Mercer Island City Code for the specific action. An applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria. A reference to the code sections that set out the criteria and standards for decisions appears in MICC 19.15.010(E). For those actions that do not otherwise have criteria specified in other sections of the code, the following are the required criteria for decision:~~

~~1. Comprehensive Plan Amendment.~~

~~a. The amendment is consistent with the Growth Management Act, the county wide planning policies, and the other provisions of the comprehensive plan and city policies; and:~~

~~i. There exists obvious technical error in the information contained in the comprehensive plan; or~~

~~ii. The amendment addresses changing circumstances of the city as a whole.~~

~~b. If the amendment is directed at a specific property, the following additional findings shall be determined:~~

~~i. The amendment is compatible with the adjacent land use and development pattern;~~

~~ii. The property is suitable for development in conformance with the standards under the potential zoning; and~~

~~iii. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.~~

2. Reclassification of Property (Rezoning).

- a. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;
- b. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;
- c. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;
- d. The proposed reclassification does not constitute a “spot” zone;
- e. The proposed reclassification is compatible with surrounding zones and land uses; and
- f. The proposed reclassification does not adversely affect public health, safety and welfare.

3. Conditional Use Permit.

- a. The permit is consistent with the regulations applicable to the zone in which the lot is located;
- b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

4. Variances. An applicant or property owner may request a variance from any numeric standard, except for the standards contained within Chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (G)(4)(a) through (h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (G)(4)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (G)(4)(a) through (i) of this section:

- a. The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-12, and R-15 zoning designations, an “unnecessary hardship” is limited to those circumstances where the adopted standards of this title prevent the construction of a single family dwelling on a legally created, residentially zoned lot;
- b. The variance is the minimum necessary to grant relief to the property owner;
- c. No use variance shall be allowed;
- d. There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;
- e. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

- f. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;
- g. The variance is consistent with the policies and provisions of the comprehensive plan and the development code;
- h. The basis for requesting the variance is not the direct result of a past action by the current or prior property owner; and
- i. Public and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent may request a variance to increase the impervious surface to a maximum 60 percent impervious surface and such variance application will be granted if the hearing examiner determines that the applicant has demonstrated that the following criteria are satisfied:
 - i. There will be no net loss of permeable surface from the existing permeable surface. No net loss will be determined by the code official and may be achieved by off-site mitigation and/or by reconstructing existing parking areas to allow stormwater penetration. This replacement will be an exception to subsection (D)(2)(b) of this section prohibiting parking areas from being considered as permeable surfaces;
 - ii. All storm water discharged shall be mitigated consistent with the most recent Washington State Department of Ecology Stormwater Management Manual for Western Washington, including attenuation of flow and duration. Mitigation will be required for any and all new and replaced impervious surfaces. In designing such mitigation, the use of a continuous simulation hydrologic model such as KCRTS or WWHM shall be required; event based models will not be allowed. In addition, mitigation designs shall utilize flow control best management practices (BMPs) and low impact development (LID) techniques to infiltrate, disperse and retain stormwater on site to mitigate the increased volume, flow and pollutant loading to the maximum extent feasible;
 - iii. The director must approve a storm drainage report submitted by the applicant and prepared by a licensed civil engineer assuring the city that city infrastructure, in concert with the project design, is adequate to accommodate storm drainage from the project site, or identifying appropriate improvements to public and/or private infrastructure to assure this condition is met, at the applicant's expense; and
 - iv. The variance may not be used with other provisions to exceed this maximum 60 percent impervious surface coverage.

5. Setback Deviation. A setback deviation shall be granted by the city only if the applicant demonstrates all of the following:

- a. Setback Deviation Criteria. Setback deviations shall be subject to the following criteria:
 - i. No use deviation shall be allowed;
 - ii. The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;
 - iii. The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

- iv. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code;
- v. The basis for requesting the deviation is not the direct result of a past action by the current or prior property owner;
- vi. The setback deviation is associated with the approval of development of a single lot or subdivision that is constrained by critical areas or critical area buffers;
- vii. The building pad resulting from the proposed deviation will result in less impact to critical areas or critical area buffers; and
- viii. Yard setbacks shall not be reduced below the following minimums:
 - (a) Front and rear setbacks may not be reduced to less than 10 feet each;
 - (b) Side setbacks may not be reduced to less than five feet.

19.15.180. Additional Shoreline Permits Procedures for Shoreline Review.

a. a. Administrative Responsibility. Except as otherwise stated in this section, the code official is responsible for:

i. ~~Administering shoreline permits.~~

ii. ~~Approving, approving with conditions or denying shoreline exemption permits, substantial development permits, shoreline conditional use permits, shoreline variances and permit revisions in accordance with applicable provisions.~~

iii. ~~Determining compliance with the State Environmental Policy Act.~~

iv. ~~No development shall be undertaken within the shorelands without first obtaining a shoreline exemption permit, substantial development permit, conditional use permit, and/or a variance permit in accordance with all applicable procedures unless it qualifies under a categorical exemption. In addition, such permit shall be in compliance with permit requirements of all other agencies having jurisdiction within the shorelands. Compliance with all applicable federal and state regulations is also required.~~

b. Shoreline Categorical Exemption Decision Criteria and Process. Any development that qualifies as being a shoreline categorical exemption, as specified in MICC 19.07.110, shall not require a shoreline permit, but must still meet all requirements of the Mercer Island Unified Land Development Code.

c. Shoreline Exemption Permit Decision Criteria and Process.

i. Shoreline Exemption Permit Application Criteria. A shoreline exemption permit may be granted to the following development as long as such development is in compliance with all applicable requirements of the Mercer Island Unified Land Development Code and any of the following:

(A) Any development of which the total cost or fair market value, whichever is higher, does not exceed \$6,416 or as periodically revised by the Washington State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state; or

(B) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts established to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, including complete replacement of legally existing structures. Normal maintenance of single family dwellings is categorically exempt as stated above; or

(C) Construction of the normal protective bulkhead common to single family dwellings. A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single family dwelling and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings; or

(D) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this section; or

(E) Construction or modification of navigational aids such as channel markers and anchor buoys; or

(F) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family dwelling, for which the cost or fair market value, whichever is higher, does not exceed \$10,000; or

(G) Any project with a certification from the governor pursuant to Chapter 80.50 RCW; or

(H) Projects for the restoration of ecological functions.

ii. Shoreline Exemption Permit Application Process. The city shall issue or deny the shoreline exemption permit within 10 calendar days of receiving a complete application, or 10 days after issuance of a DNS, MDNS or EIS if SEPA review is required. The city shall send the shoreline permit decisions to the applicant and all applicable local, state, or federal agencies as required by state or federal law.

d. Substantial Development Permit Application Decision Criteria and Process. A substantial development permit (SDP) is required for any development within shorelands not qualifying as being subject to a categorical exemption or shoreline exemption permit. Requirements and procedures for securing a substantial development permit are established below.

i. SDP Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a shoreline development permit.

ii1. Substantial Development Permit (SDP) Application Process. The applicant shall attend a preapplication meeting prior to submittal of a substantial development permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.

~~(A)a. Once a complete application has been submitted, public notice of an application for a substantial development permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for administrative actions; provided, such notice shall be given at least 30 days before the date of final action by the city. The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or request a copy of the decision(s) to the city within 30 days from the last date the notice is published. If a hearing is to be held on an application, notices of such hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)b. Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.~~

~~A. Open record public hearing. An open record hearing before the code official, as set out in subsection F of this section, shall be conducted on the shoreline substantial development permits, shoreline conditional use permits, and shoreline variances when the following factors exist:~~

~~(1)1. The proposed development has broad public significance; or~~

~~(2)2. Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or~~

~~(3)3. At the discretion of the code official.~~

~~eB. Ecology filing. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

~~(C)c. The technical review of shoreline substantial development permits must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code.~~

~~Cd. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with conditions, or denying any substantial development permit or shoreline exemption is final unless an appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.~~

~~(E)e. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

~~e2. Shoreline Conditional Use Permit Application Decision Criteria and Process. The purpose of a shoreline conditional use permit is to provide a system which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the city of Mercer Island or the~~

Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the applicable city regulations.

~~i. Shoreline Conditional Use Permit Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a shoreline conditional use permit. Uses that require a shoreline conditional use permit may be authorized; provided, that the applicant demonstrates all of the following:~~

~~(A) That the proposed use is consistent with the policies of RCW 90.58.020 and the Mercer Island Uniform Land Development Code;~~

~~(B) That the proposed use will not detrimentally interfere with the normal public use of shorelands within the “urban park environment” shoreline environment designation;~~

~~(C) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses allowed for the area by the Mercer Island Uniform Land Development Code;~~

~~(D) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and~~

~~(E) That the public interest suffers no substantial detrimental effect.~~

~~(F) In applying the above criteria when reviewing shoreline conditional use applications, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the shoreline conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.~~

~~ii.a. Shoreline Conditional Use Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a shoreline conditional use permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.~~

~~(A)j. Once a complete application has been submitted, public notice of an application for a shoreline conditional use permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for discretionary actions; provided, such notice shall be given at least 30 days before the date of decision by the city.~~

~~The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.~~

~~If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)ii.~~ Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.

~~(C)iii.~~ The technical review of shoreline conditional use permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in subsection F of this section, shall be conducted on the shoreline conditional use permits when the following factors exist:

~~(1A)~~ The proposed development has broad public significance; or

~~(2B)~~ Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or

~~(3C)~~ At the discretion of the code official.

~~(D)~~D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit or shoreline variance is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal laws. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

~~(E)v.~~ The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

~~f3.~~ Shoreline Variance Permit Decision Criteria and Application Process.

~~i.~~ Shoreline Variance Criteria. Shoreline variances are strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable regulations where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the regulations will impose unnecessary hardships on the applicant or thwarting of the policy enumerated in RCW 90.58.020. Shoreline variances for use regulations are prohibited. In addition, in all instances the applicant for a shoreline variance shall demonstrate strict compliance with all variance criteria set out in subsection (G)(4) of this section and the following additional criteria:

~~(A)~~ In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

~~(B) Shoreline variance permits for development that will be located landward of the ordinary high water mark, and/or landward of any associated wetland, may be authorized; provided, the applicant can demonstrate all of the following:~~

~~(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes or significantly interferes with reasonable use of the property not otherwise prohibited;~~

~~(2) That the hardship in this subsection (G)(6)(f)(i) is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the applicable regulations, and not, for example, from deed restrictions or the applicant's own actions;~~

~~(3) That the design of the project is compatible with other authorized uses in the area and will not cause adverse effects to adjacent properties or the shoreline environment;~~

~~(4) That the requested shoreline variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and~~

~~(5) That the public interest will suffer no substantial detrimental effect.~~

~~(C) Shoreline variance permits for development that will be located waterward of the ordinary high water mark or within any associated wetland may be authorized; provided, the applicant can demonstrate all of the following:~~

~~(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes reasonable use of the property;~~

~~(2) That the proposal is consistent with the criteria established under subsections (G)(6)(f)(i)(B)(1) through (5) of this section; and~~

~~(3) That the public rights of navigation and use of the shorelines will not be adversely affected.~~

~~ii_a. Shoreline Variance Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a shoreline variance. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.~~

~~(A)_i. Once a complete application has been submitted, public notice of an application for a shoreline variance shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for discretionary actions; provided, such notice shall be given at least 30 days before the date of decision by the city.~~

~~The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.~~

~~If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.~~

~~(B)iii. Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.~~

~~(C)iii. The technical review of shoreline variance permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in subsection F of this section, shall be conducted on the shoreline variance permits when the following factors exist:~~

~~(1A) The proposed development has broad public significance; or~~

~~(2B) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or~~

~~(3C) At the discretion of the code official.~~

~~(D)iv. The final decision in approving, approving with conditions, or denying a shoreline conditional use permit is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal agencies. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.~~

~~(E)v. The applicant shall not begin construction until after 21 days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.~~

~~iiib. The reasonable use exemption provided in MICC 19.07.030(B) does not apply in the shorelands. The provision of reasonable use in the shorelands shall be accomplished through a shoreline variance.~~

~~g4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development permits, shoreline conditional use permits and shoreline variance permits:~~

~~ia. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.~~

~~iiib. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.~~

~~h5. Appeals. Appeals to any shoreline permit decision, except shoreline exemption permits, shall be in accordance with RCW 90.58.180. Appeals to shoreline exemptions permits shall be filed in accordance with subsection J1 of this section.~~

~~j. Revisions. When an applicant seeks to revise a substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met.~~

~~H. Notice of Decision.~~

~~1. Unless the city and applicant have mutually agreed in writing to an extension of time, project review shall be completed within 120 days from the date the application is determined to be complete. Time required for the submittal of additional information, preparation of environmental impact statement, and hearing of appeals shall be excluded from this 120-day period.~~

~~2. Written notice of the decision shall be provided to the applicant and all parties of record. Notice of decision shall also be provided in the biweekly DSG bulletin.~~

~~I. Optional Consolidated Permit Processing.~~

~~1. An application that involves two or more permits may be processed concurrently and the decision consolidated at the request of the project applicant. If an applicant elects the consolidated permit processing, the code official shall determine the appropriate application and review procedures for the project.~~

~~2. If a project requires action from more than one hearing body, the decision authority in the consolidated permit review shall be by the decision body with the broadest discretionary powers.~~

~~J. Administrative Appeals.~~

~~1. Any party of record on a decision that may be administratively appealed may file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days after the notice of decision, if a notice of decision is required, or after the effective date of the decision subject to appeal if no notice of decision is required. The term "party of record," for the purposes of this chapter, shall mean any of the following:~~

~~a. The applicant and/or property owner;~~

~~b. Any person who testified at the open record public hearing on the application;~~

~~c. Any person who individually submits written comments concerning the application for the open record public hearing, or to the code official prior to a decision on the project permit if there is no open record public hearing. Persons who have only signed petitions are not parties of record;~~

~~d. The city of Mercer Island.~~

~~2. Appeals shall include the following information:~~

~~a. The decision being appealed;~~

- b. The development code interpretation, if any, associated with the proposed appeal;
- c. The name and address of the appellant and his/her interest in the matter;
- d. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;
- e. The desired outcome or changes to the decision; and
- f. The appeals fee, if required.

3. Authority for appeals is specified in MICC 19.15.010(E).

4. Public notice of an appeal shall be provided in the manner specified in subsection E of this section.

5. The rules of procedure for appeal hearings shall be as follows:

a. For development proposals that have been subject to an open record hearing, the appeal hearing shall be a closed record appeal, based on the record before the decision body, and no new evidence may be presented.

b. For development proposals that have not been subject to an open record hearing, the appeal hearing shall be an open record appeal and new information may be presented.

c. If the hearing body finds that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria, it may:

i. Reverse the decision.

ii. Modify the decision and approve it as modified.

iii. Remand the decision back to the decision maker for further consideration.

d. If the hearing body finds that none of the procedural or factual bases listed above exist and that there has been no substantial error, the hearing body may adopt the findings and/or conclusions of the decision body, concur with the decision of the decision body and approve the development proposal as originally approved, with or without modifications.

e. Final decision on the appeal shall be made within 30 days from the last day of the appeal hearing.

f. The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

6. When an applicant has opted for consolidated permit processing pursuant to subsection I of this section, administrative appeals of ministerial, administrative or discretionary actions listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner.

~~K. Expiration of Approvals.~~

~~1. General. Except for long and short subdivisions, building permits or as otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised.~~

~~2. Long and Short Subdivision.~~

~~a. Once the preliminary plat for a long subdivision has been approved by the city, the applicant has five years to submit a final plat meeting all requirements of this chapter to the city council for approval.~~

~~b. Once the preliminary plat for a short subdivision has been approved by the city, the applicant has one year to submit a final plat meeting all requirements of this chapter. A plat that has not been recorded within one year after its preliminary approval shall expire, becoming null and void. The city may grant a single one year extension, if the applicant submits the request in writing before the expiration of the preliminary approval.~~

~~c. In order to renew an expired preliminary plat, a new application must be submitted.~~

~~3. Responsibility for knowledge of the expiration date shall be with the applicant.~~

~~L. Code Interpretations.~~

~~1. Upon formal application or as determined necessary, the code official may issue a written interpretation of the meaning or application of provisions of the development code. In issuing the interpretation, the code official shall consider the following:~~

~~a. The plain language of the code section in question;~~

~~b. Purpose and intent statement of the chapters in question;~~

~~c. Legislative intent of the city council provided with the adoption of the code sections in question;~~

~~d. Policy direction provided by the Mercer Island comprehensive plan;~~

~~e. Relevant judicial decisions;~~

~~f. Consistency with other regulatory requirements governing the same or similar situation;~~

~~g. The expected result or effect of the interpretation; and~~

~~h. Previous implementation of the regulatory requirements governing the situation.~~

~~2. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also appeal the code official's interpretation to the hearing examiner. (Ord. 17C-15 § 1 (Att. A); Ord. 17C-12 § 10; Ord. 16C-13 § 1; amended during 3/15 supplement; Ord. 13C-12 § 6; Ord. 10C-06 § 6; Ord. 08C-01 § 8; Ord. 02C-04 § 7; Ord. 02C-01 § 6; Ord. 99C-13 § 1).~~

19.15.190. Permit review for 6409 eligible wireless communications facilities

A. Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the city shall approve the application unless it determines that the application is not covered by 47 CFR 1.40001.

B. Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the city determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (l)(1) of this section.

2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

3. Following a supplemental submission, the city will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (l)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

C. Failure to act. In the event the city fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

19.15.200. Revisions. Revisions of approved permits are as follows. A complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards except for building permits which shall be reviewed in accordance with Title 17. All revisions shall be subject to the vesting provisions in MICC 19.15.170.

A. Revisions for approved Type I, II, and III land use permits, except shoreline permits, are as follows:

1. Revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. For the purposes of this section, substantial change includes changes to conditions of approval.

2. Approval of the following modifications by the code official shall not be considered revisions:

a. Typographical errors and minor omissions.

B. Revisions for approved Type IV land use permits, except shoreline permits, are as follows:

1. Revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. For the purposes of this section, substantial change includes the creation of additional lots, the elimination of open space, substantial changes in access, or changes to conditions of approval. Additionally, the need for the modification was not known and could not have been reasonably known before the approval was granted.

2. Approval of the following modifications by the code official shall not be considered revisions:

a. Engineering design, unless the proposed design alters or eliminates features required as a condition of preliminary approval.

b. Changes in lot or tract dimensions that are consistent with MICC 19.02.

c. A decrease in the number of lots to be created.

d. Typographical errors and minor omissions.

3. The code official shall have the authority to administratively review and approved modifications described in subsection (2) of this section through review procedures established by the department.

C. Revisions for shoreline permits are as follows. When an applicant seeks to revise an approved shoreline substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met. If these requirements are met, the decision will be processed per the following.

1. Revision of substantial development permit:

a. A decision will be provided to the applicant and parties of record and posted in DSG's weekly permit bulletin.

b. The city shall send the revised permit to all applicable local, state or federal agencies including the Attorney General, as required by state or federal law within eight days of issuing the decision.

c. Appeals shall be in accordance with RCW 90.58.180.

2. Revision of a shoreline CUP or shoreline variance:

a. The application for a revision shall be submitted to the Washington State Department of Ecology. Within 15 days of receipt, Ecology will issue a decision of approval, approval with conditions, or denial of the revision.

19.15.210. Compliance required.


A. It is the intent of this section to require that non-conforming sites, structures, lots, and uses, which were created without prior City approval, comply with the applicable provisions of Title 19 MICC.

B. If development inconsistent with the purposes and requirements of this Title 19 has occurred on a development proposal site without prior City approval, the City shall not issue any land use review

approvals for the development proposal site unless the land use review approval requires the restoration of the site to a state that complies with the purposes and requirements of Title 19 MICC are addressed.

C. Suspension of Land Use Approvals. The city may suspend any land use review approval, including shoreline permits, when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a code violation. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.230, Enforcement.

19.15.230 Enforcement (Not part of this review)

19.15.040240 Design Review and the Design commission. 

~~A. Intent and Purpose. These regulations are intended to implement and further the comprehensive plan of the city and are adopted for the following purposes:~~

- ~~1. To promote the public health, safety and general welfare of the citizens of the city.~~
- ~~2. To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government.~~
- ~~3. To protect, preserve and enhance the social, cultural, economic, environmental, aesthetic, and natural values that have established the desirable quality and unique character of Mercer Island.~~
- ~~4. To promote and enhance construction and maintenance practices that will tend to promote visual quality throughout Mercer Island.~~
- ~~5. To recognize environmental and aesthetic design as an integral part of the planning process.~~

~~B. Creation of Design Commission. A design commission is established as provided for in Chapter 3.34 MICC.~~

~~C. Rules and Records.~~

1. The design commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the city council.
2. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the design commission shall be by majority vote of the members constituting the quorum. A tie vote on a motion to approve shall constitute a failure of the motion and a denial of the application.
3. The code official shall serve as executive secretary of the design commission and shall be responsible for all records. All meetings of the design commission shall be open to the public. The design

commission shall keep minutes of its proceedings and such minutes and a copy of its rules shall be kept on file in the office of the city clerk and open to inspection by the public.

DB. Powers of the Design Commission and Additional Functions.

1. No building permit or other required permit shall be issued by the city for any major new construction or minor exterior modification of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E). Certain development and activities that do not require a permit are subject to design review as provided in MICC 19.15.240(C)(1)(c).

2. The design commission or code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to secure the installation and maintenance of landscaping, screens, and other similar site improvements.

3. When the city council deems it necessary to retain consultants for a proposed capital improvement, the council shall seek recommendations from the design commission as to the selection of consultants to provide design services.

4. Consultants or city officials charged with the design responsibility for a major capital improvement shall hold preliminary discussions on the proposed project with the design commission to obtain its preliminary recommendations as to aesthetic, environmental and design principles and objectives. In addition, the design commission shall review major capital improvements at the completion of the design development phase. A capital improvement approved by the city council after review and recommendations by the design commission may be implemented on a phasing basis without further review so long as the improvement is developed in substantial conformity with the reviewed plan. Significant deviations from an approved plan shall be submitted to the design commission for its further review and recommendations.

5. The design commission or code official shall complete its review and make its decision and/or recommendations pursuant to the process set forth in subsection F of this section, and the review and decision and/or recommendations shall be based upon the design objectives and standards set forth in subsection G of this section, with such amendments as may be made from time to time.

6E. Additional Functions. The Design Commission may undertake the following additional functions as needed:

1a. The design commission may assist any person, group, or agency who requests design advice on matters not requiring formal commission action.

2b. The design commission shall consult and cooperate with the planning commission and other governmental bodies on matters affecting the appearance of the Island. The design commission may offer recommendations to the appropriate city agencies and officials on legislation to promote aesthetic and environmental values.

3c. The design commission shall act as the appeal authority for design review decisions made by the code official ~~for minor exterior modifications.~~

~~FB.~~ Design Review Procedure.

1. General.

a. Intent. The intent of the design review process is to ensure that regulated development in all land use zones complies with design objectives and standards established in Chapters 19.11 and 19.12 MICC.

b. Scope. No building permit or other required permit shall be issued by the city for ~~any major new construction or minor exterior modification development~~ of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E)040. Deviations from a plan approved by the design commission or code official shall be permitted only upon the filing and approval of an amended plan. In no instance shall the design commission's or code official's action conflict with the city's development code or other applicable city ordinances or with state or federal requirements. Certain development and activities that do not require a permit are subject to design review as provided in MICC 19.15.240(C)(1)(c).

c. Review Authority.

i. ~~Major New Construction~~Design Commission Review. The design commission shall conduct the design review and make compliance determinations regarding ~~major new construction~~:-

(A) ~~New structures~~buildings

(B) New additions, remodels (exterior only), and roof and façade changes equal to or exceeding 50 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference. The applicant may use the King County Assessor's appraised value;

(C) Signs where a master sign plan has been approved for the site;

(D) Site plan layout resulting from an additional parking lot or structured parking lot, or the enlargement of an existing parking lot or structured parking lot;

(E) Landscaping modifications that diminish an existing perimeter landscape screen; and

(F) Other improvements such as paving and landscaping when they are made in conjunction with changes to a structure~~building.~~

ii. ~~Minor Exterior Modifications~~Code Official Review. The ~~design commission or the~~ code official shall conduct the design review and make compliance determinations regarding:

(A) New additions, remodels (exterior only), and roof and façade changes not exceeding 50 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference;

(B) Signs where an approved master sign plan has been approved for the site;

(C) Relocating, modifying or adding mechanical equipment;

iii. 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 change or modification; and

iv. The tenant and property owner are responsible for ensuring that all development and activities, including but not limited to painting and landscaping, comply with Chapters 19.11 and 19.12.

d. Process.

i. Time Frame and Procedure. Design review shall be conducted in accordance with the timelines and procedures set forth in MICC 19.15.040, Permit review procedures. Design review is not subject to the one open record hearing requirement or consolidated permit review processing.

ii. Written Recommendations. All decisions of the design commission and code official shall be reduced to writing and shall include findings of fact and conclusions that support the decisions.

~~iii. Expiration of Approvals. If the applicant has not submitted a complete application for a building permit within two years from the date of the notice of the final design review decision, or within two years from the decision on appeal from the final design review decision, design review approval shall expire. The design commission or code official may grant an extension for no longer than 12 months, for good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.~~

2. Review Process for Major New Construction.

~~a. Scope of Review. Design review of major new construction shall include new structures, new additions, remodeled structures, and site plan layout, and other improvements such as paving and landscaping when they are made in conjunction with changes to a structure.~~

~~b. Presubmittal Concept Review.~~

~~i. Required: Predesign Preapplication Meeting. A predesign preapplication meeting must be scheduled with staff from the development services group (DSG) prior to formal project development and application. The applicant may present schematic sketches and a general outline of the proposed project. This meeting will allow city staff to acquaint the applicant with the design standards, submittal requirements, and the application procedures and provide early input on the proposed project.~~

~~ii. A complete application on forms provided by the development services group (DSG) and all materials pertaining to the project shall be submitted at a formal preapplication meeting with DSG staff. A preapplication meeting shall not be required if the applicant is only seeking an exemption from Design Commission review pursuant to MICC 19.15.040(F)(3)(a).~~

~~iii. Acceptance. DSG staff shall determine if the required materials have been provided for preliminary design review. If so, the application will be accepted and the process for determination of completeness and review set forth in MICC 19.15.020 shall commence.~~

~~a. Optional: Study Session. In addition to the predesign-preapplication meeting, an applicant for a project that will require design review and approval by the design commission may shall meet with the design commission or code official in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.~~

~~c. Preliminary Design Review Submittal.~~

~~i. Preapplication Meeting. A complete application on forms provided by the development services group (DSG) and all materials pertaining to the project shall be submitted at a formal preapplication meeting with DSG staff. A preapplication meeting shall not be required if the applicant is only seeking an exemption from formal design review pursuant to MICC 19.15.040(F)(3)(a).~~

~~ii. Materials. All applications for preliminary design review shall contain all information and materials deemed necessary by DSG staff to determine if the proposal complies with this chapter. Such materials may include a site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; parking plan; color and materials board; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards established in Chapters 19.11 or 19.12 MICC. Submittal of lighting and sign master plans may be deferred to final design review.~~

~~iii. Acceptance. DSG staff shall determine if the required materials have been provided for preliminary design review. If so, the application will be accepted and the process for determination of completeness and review set forth in MICC 19.15.020 shall commence.~~

~~dc. SEPA Determination. The city environmental official will review the SEPA environmental checklist (if one is required), the project proposal and other information required for a complete application to assess the project's probable environmental impacts and issue a determination pursuant to MICC 19.07.120. Any SEPA appeal shall be pursuant to MICC 19.07.120. The design commission's decision on the preliminary plans shall represent an action on the proposal for SEPA appeal purposes.~~

~~e. Preliminary Design Commission Review.~~

~~i. Public Meeting. The design commission shall hold a public meeting to consider the completed preliminary design review application. The design commission may approve, approve with conditions or deny an application or continue the meeting. The commission may identify additional submittal items required for the final design review.~~

~~ii. Additional Requirements. If additional submittal items are required, or the preliminary design application is approved with conditions, the conditions must be addressed and any additional items must be submitted at least 21 days prior to the final design commission review.~~

~~fb. Final Design Commission Review Plan Submittal.~~

~~i. Submittal of Final Plan. All materials pertaining to the final plan shall be submitted a minimum of 370 days prior to the design commission final review hearing date any meeting dates including study~~

sessions, public meetings, and public hearings. The final plans shall be in substantial conformity with approved preliminary plans.

ii. Open Record Hearing. The design commission shall hold an open record hearing to consider the final proposal, at the conclusion of which it may approve, approve with conditions, deny the proposed final plans, or continue the hearing.

g. Appeal. Only the final design commission review decision may be appealed, in a closed record appeal to the hearing examiner, pursuant to MICC 19.15.020(J).

3. Review Process for Minor Exterior Modification.

a. Scope of Review.

i. Design review of minor exterior modifications shall include review of exterior modifications to any existing structures including paint, material, minor roof or facade changes, new additions, landscaping changes, and site plan modifications that do not qualify as major new construction or are undertaken independently from modification of an existing structure, and new or modified signs.

ii. The code official shall have the authority to determine if a ~~is not significant, and therefore does not require formal design review, based on factors such as the scope, location, context and visibility of the change or modification.~~ The ~~may determine that is not required for~~ including, but not limited to: repainting structures to similar colors; relocating, modifying or adding mechanical equipment; reorganization of portions of parking lots involving less than five spaces; modifications to existing signs pertaining to sign locations or minor changes to color or text; modifications to locations of existing lighting; or minor changes to existing, approved landscaping. iii. There shall be a rebuttable presumption of nonsignificance, and therefore no requirement of a formal design review, if all of the following conditions are met: (1) the cost of the work does not exceed 15 percent of the structure's current King County assessed value as of the time the initial application for the work is submitted (2) there is no additional structure or parking lot, or any enlargement of or addition to an existing structure or parking lot, (3) the work does not cause the landscape area to fall below or further below the minimum landscape area requirements in MICC 19.12.040(B)(4), (4) the work does not remove or diminish an existing perimeter landscape screen, (5) the work does not include new or additional service or mechanical areas referred to in MICC 19.12.060, and (6) the work does not include additional exterior lighting or a new or enlarged exterior sign. If there is no current King County assessed value for a structure, a current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference.

b. Application Submittal. A development application, accompanied by supporting materials, shall be submitted to the city, on a form provided by the development services group (DSG), for any proposed minor exterior modification. DSG staff shall meet with the applicant A preapplication meeting with DSG staff prior to submission of the application is optional to determine, depending on the scope of the project, what supporting materials are required. Such materials may include site survey; site plans; elevations; sections; architectural plans; roof plans; renderings and/or models; landscaping plan; lighting plan; sign master plan; parking plan; color and material samples; vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation plans; and written narrative describing the project proposal and detailing how the project is meeting the applicable design objectives and standards

set forth in subsection G of this section. No applicant shall be required to provide materials unless they are both necessary for design review and reflect a change in, or consequence of a change in, the existing development. For the purpose of making a determination of nonsignificance under MICC 19.15.040(F)(3)(a) under circumstances where the project is presumed to be nonsignificant as therein provided, the code official shall only require the submittal of materials demonstrating the entitlement to the presumption and the absence of other material impacts.

c. Review. The designated DSG staff shall determine administratively if the proposal is in compliance with the requirements of this chapter and may approve, approve with conditions, or deny the application. Staff has the discretion to send any minor exterior modification proposal to the design commission for review and decision at an open record hearing a public meeting.

d. Appeal. The code official's decision on an application for minor exterior modification is final unless appealed to the design commission pursuant to MICC 19.15.020(J). The design commission's decision on an application (not an appeal) for minor exterior modification is final unless appealed to the hearing examiner pursuant to MICC 19.15.020(J).

4. Criteria for Design Review Decisions. Following the applicable review process above, the design commission or code official shall deny an application if it finds that all the following criteria have not been met, or approve an application, or approve it with conditions, based on finding that all the following criteria have been met:

a. The proposal conforms with the applicable design objectives and standards of the design requirements for the zone in which the improvement is located, as set forth in subsection G of this section:

i. In the Town Center, particular attention shall be given to whether:

(A) The proposal meets the requirements for additional building height, if the proposal is for a building greater than two stories; and

(B) The proposal adheres to the required parking standards and a parking plan has been provided that demonstrates that the proposal meets the objectives of MICC 19.11.130.

b. The proposal is consistent with the comprehensive plan.

c. The proposal does not increase the project's degree of nonconformity.

G. Design Objectives and Standards.

1. Town Center. Design objectives and standards for regulated improvements within the Town Center are set forth in Chapter 19.11 MICC.

2. Zones Outside Town Center. Design objectives and standards for regulated improvements in all zones outside the Town Center are set forth in Chapter 19.12 MICC.

H. Appeals. Appeals shall be consistent with the appeal procedures specified in MICC 19.15.020(J). (Ord. 17C 12 § 10; amended during 3/15 supplement; Ord. 11C 04 § 3; Ord. 04C 08 § 4; Ord. 03C 10 § 6; Ord. 03C 06 § 4; Ord. 02C 04 § 4; Ord. 99C 13 § 1).

19.15.050250 Comprehensive plan amendments.

A. Purpose. The Growth Management Act (GMA), Chapter 36.70A RCW, requires that the city include within its development regulations a procedure for any interested person to suggest plan amendments. The suggested amendments will be docketed for consideration. The purpose of this section is to establish a procedure for amending the city's comprehensive plan text and maps. Amendments to the comprehensive plan are the means by which the city may modify its 20-year plan for land use, development or growth policies in response to changing city needs or circumstances. All plan amendments will be reviewed in accordance with the GMA and other applicable state laws, the countywide planning policies, the adopted city of Mercer Island comprehensive plan, and applicable capital facilities plans.

B. Application Requirements. Proposed amendment requests may be submitted by the public, city manager, city department directors or by majority vote of the city council, planning commission or other city board or commission. Proposed amendments submitted by the public shall be accompanied by application forms required by this title and by the code official and the filing fees established by resolution. All application forms for amendments to the comprehensive plan shall include a detailed description of the proposed amendment in nontechnical terms.

C. Frequency of Amendments.

1. Periodic Review. The comprehensive plan shall be subject to continuing review and evaluation by the city ("periodic review"). The city shall take legislative action to review and, if needed, revise its comprehensive plan to ensure the plan complies with the requirements of the GMA according to the deadlines established in RCW 36.70A.130.

2. Annual Amendment Cycle. Updates, proposed amendments, or revisions to the comprehensive plan may be considered by the city council no more frequently than once every calendar year as established in this section (the "annual amendment cycle"). During a year when periodic review of the comprehensive plan is required under RCW 36.70A.130, the annual amendment cycle and the periodic review shall be combined.

3. More frequent amendments may be allowed under the circumstances set forth within RCW 36.70A.130(2). Amendments processed outside of the annual amendment cycle under RCW 36.70A.130(2) may be initiated by action of the city council. The city council shall specify the scope of the amendment, identify the projected completion date, and identify and, if necessary, fund resources necessary to accomplish the work. Amendments allowed to be processed outside of the annual amendment cycle are not subject to the docketing process outlined within subsection D of this section.

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 in a manner that will ensure such suggested changes will be considered by the city and will be available for review 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 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 amendment process but will be held for the next eligible comprehensive plan amendment process.

a. The code official shall compile and maintain 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 proposing amendments to the comprehensive plan 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.

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

c. The code official shall review and assess the items placed on the final docket and prepare a ~~staff report~~ including recommendations for each proposed amendment. The code official shall be responsible for developing an environmental review of the combined impacts of all proposed amendments on the final docket, except that applicants seeking a site-specific amendment shall be responsible for submittal of a SEPA environmental checklist and supporting information. The applicant will need to submit SEPA and any other accompanying permits such as a rezone or a zoning code text amendment at this time. The code official may require an applicant to pay for peer review and/or additional resources needed to review the proposal. The code official shall set a date for consideration of the final docket by the planning commission and timely transmit the ~~staff report(s)~~ recommendation prior to the scheduled date.

d. The planning commission shall review the proposed amendments contained in the final docket based on the criteria set forth in MICC 19.15.022400(GF)(1). The planning commission shall hold at least one public hearing on the proposed amendments. The planning commission shall make a recommendation on the proposed amendments and transmit the recommendation to the city council.

e. After issuance of the planning commission's recommendation, the code official shall set a date for consideration of the final docket by the city council. The city council shall review the proposed amendments taking into consideration the recommendations of the planning commission and code official. The city council may deny, approve, or modify the planning commission's recommendations

consistent with the criteria set forth in MICC 19.15.020240(GF)(1). The city council's establishment of a final docket of proposed amendments is not appealable.

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

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

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

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

b. All of the following criteria are met:

i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan;

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

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

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.

F. Decision Criteria. Decisions to amend the Comprehensive Plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment -proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria

1. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies; and:

a. There exists obvious technical error in the information contained in the comprehensive plan; or

bi. The amendment addresses changing circumstances of the city as a whole.

2. If the amendment is directed at a specific property, the following additional findings shall be determined:

a. The amendment is compatible with the adjacent land use and development pattern;

b. The property is suitable for development in conformance with the standards under the potential zoning; and

c. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

G. Combined Comprehensive Plan Amendment and Rezone. In cases where both a comprehensive plan amendment and a rezone are required, both shall be considered together, and all public notice must reflect the dual nature of the request.

GH. Expansion of Land Use Map Amendment. The city may propose to expand the geographic scope of an amendment to the comprehensive plan land use map to allow for consideration of adjacent property, similarly situated property, or area-wide impacts. The following criteria shall be used in determining whether to expand the geographic scope of a proposed land use map amendment:

1. The effect of the proposed amendment on the surrounding area or city;
2. The effect of the proposed amendment on the land use and circulation pattern of the surrounding area or city; and
3. The effect of the proposed amendment on the future development of the surrounding area or city. (Ord. 16C-13 § 2).

19.15.260. Reclassification of Property (Rezoning).

A. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property from one zoning designation to another.

B. Process. A rezone shall be considered as provided in MICC 19.15.280.

C. Criteria. The city council may approve a rezone only if all of the following criteria are met:

1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;
2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;
3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;
4. The proposed reclassification does not constitute a “spot” zone;
5. The proposed reclassification is compatible with surrounding zones and land uses; and
6. The proposed reclassification does not adversely affect public health, safety and welfare.
7. If a Comprehensive Plan amendment is required in order to satisfy MICC 19.15.060(C)(1), approval of the Comprehensive Plan amendment is required prior to or concurrent with the granting of an approval of the rezone.

D. Map change. Following approval of a rezone, the City shall amend the zoning map to reflect the change in zoning designation. The City shall also indicate on the zoning map the number of the ordinance adopting the rezone.

19.15.270. Zoning Code Text Amendment

A. Purpose. The purpose of this section is to establish the process and criteria for amendment of this Code.

B. Process. Zoning Code amendments shall be considered as provided in MICC 19.15.080.

C. Initiation of zoning code amendment request. A zoning code amendment request may be initiated by the City Council, Planning Commission, or Code Official.

D. Criteria. The City may approve or approve with modifications a proposal to amend the text of this Code 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. Code change. Following approval of an amendment, the City shall amend this Code to reflect the change.

19.15.280 Review procedures for comprehensive plan amendments, reclassification of property, and zoning code text amendments

A. The city shall issue a notice for comprehensive plan amendments, reclassifications of property, and zoning code text amendments as described in MICC 19.15.250, 19.15.260, and 19.15.270. Notice shall be provided in the weekly DSG bulletin, 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 ~~property~~ 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:
 - i. The name of the party proposing the proposed amendment or change;
 - ii. The location and description of the project, if applicable;
 - iii. The requested actions and/or required studies;
 - iv. The date, time, and place of the open record hearing;
 - v. Identification of environmental documents, if any;

vi. 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.;

vii. The city staff contact and contact information;

viii. 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;

ix. A description of those development regulations used in determining consistency of the review with the city's comprehensive plan;

x. A link to a website where additional information about the project can be found; and

xi. 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.

D. Review at Public Hearing

1. At an open record public hearing the planning commission shall consider the proposed review for conformance with the criteria as listed in the applicable section, the comprehensive plan and other applicable development standards.

2. The planning commission shall make a written recommendation on the review to the city council.

3. The city council shall consider the planning commission's recommendation at a public meeting where it may adopt or reject the planning commission's recommendations or remand the review back to the planning commission.

Attachment 1.h.2

CROSSOUTS REMOVED

Chapter 19.15
ADMINISTRATION

Sections:

19.15.010 Purpose, intent and roles.

19.15.020 Land use review types.

19.15.030 Legislative actions

19.15.040 Summary of approval and authorities

19.15.050 Permit review procedures

19.15.060 Preapplication

19.15.070 Application

19.15.080 Determination of completeness

19.15.090 Notice of application

19.15.100 Public hearing notice

19.15.110 Response to Comments and Extensions

19.15.120 Notice of decision

19.15.130 Appeals

19.15.140 Open record public hearing

19.14.150 Expiration of approvals

19.15.160 Code interpretations

19.15.170 Vesting

1 19.15.180 Additional shoreline substantial development permit, shoreline conditional use permit,
2 and shoreline variance procedures

3 19.15.190 Permit review for 6049 eligible facilities

4 19.15.200 Revisions

5 19.15.210 Compliance required

6 19.15.220 Open record public hearing

7 19.15.230 Enforcement (Not part of this review)

8 19.15.240 Design review and the design commission

9 19.15.250 Comprehensive plan amendments.

10 19.15.260 Reclassification of property (rezones).

11 19.15.270 Zoning code text amendments.

12 19.15.280 Review procedures for comprehensive plan amendments, reclassification of property,
13 and zoning code text amendments.

14
15 19.15.010 Purpose, intent and roles.

16 A. Purpose. Administration of the development code is intended to be expedient and effective. The
17 purpose of this chapter is to identify the processes, authorities and timing for administration of
18 development permits and land use reviews. Public noticing and public hearing procedures, decision
19 criteria, appeal procedures, dispute resolution and code interpretation issues are also described.

20 B. Objectives. Guide customers confidently through the permit and land use review process; process
21 land use reviews and permits equitably and expediently; balance the needs of applicants with neighbors;
22 allow for an appropriate level of public notice and involvement; make decisions quickly and at the
23 earliest possible time; allow for administrative decision-making, except for those decisions requiring the
24 exercise of discretion which are reserved for appointed decision makers; ensure that decisions are made
25 consistently and predictably; and resolve conflicts at the earliest possible time.

26 C. Roles and Responsibilities. The roles and responsibilities for carrying out the provisions of the
27 development code are shared by appointed boards and commissions, elected officials and city staff. The
28 authorities of each of these bodies are set forth below.

29 1. City Council. The city council is responsible for establishing policy and legislation affecting land
30 use within the city. The city council acts on recommendations of the planning commission and
31 hearing examiner.

1 2. Planning Commission. The role of the planning commission in administering the development
2 code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated
3 planning agency for the city (see Chapter 35A.63 RCW). The planning commission makes
4 recommendations to the city council on land use legislation, comprehensive plan amendments
5 and quasi-judicial matters.

6 3. Design Commission. The role of the design commission in administering the development
7 code is governed by Chapter 3.34 MICC and MICC 19.15.040. In general, the design commission
8 is responsible for maintaining the city's design standards and action on sign, commercial and
9 multiple-family design applications.

10 4. Development Services Group.

11 a. The code official is responsible for administration, interpretation and enforcement of
12 the development code.

13 b. The building official is responsible for administration and interpretation of the
14 building code, except for the International Fire Code.

15 c. The city engineer is responsible for the administration and interpretation of
16 engineering standards.

17 d. The environmental official is responsible for the administration of the State
18 Environmental Policy Act and shoreline master program.

19 e. The fire code official is responsible for administration and interpretation of the
20 International Fire Code.

21 5. Hearing Examiner. The role of the hearing examiner in administering the development code is
22 governed by Chapter 3.40 MICC.

23 19.15.020. Land Use Review Types.

24 There are four categories of land use review that occur under the provisions of the development code.

25 1. Type I. Type I reviews are based on clear, objective and nondiscretionary standards or
26 standards that require the application of professional expertise on technical issues.

27 2. Type II. Type II- reviews are based on clear, objective and nondiscretionary standards or
28 standards that require the application of professional expertise on technical issues. The
29 difference between Type I and Type II review is that a Notice of Decision shall be issued for Type
30 II decisions

31
32 3. Type III. Type III reviews require the exercise of discretion about nontechnical issues.

1
2 4. Type IV. Type IV reviews require discretion and may be actions of broad public interest. Type
3 IV reviews are only taken after an open record hearing.

4 5. The types of land use approvals are listed in Table A of this section. The required public
5 process for each type of land use approval are listed in Table B of this section.

6 6. Consolidated review and approval. An application for a development proposal that involves
7 the approval of two or more Type I, II, III and IV reviews, may be processed and decided
8 together, including any administrative appeals, using the highest numbered land use decision
9 type applicable to the project application. The following permits and land use reviews are
10 excluded from consolidated review and approval:

11 a. Building permits associated with the construction of one or more new single family
12 dwellings on lots resulting from the final plat approval of a short subdivision or long
13 subdivision.

14 b. Building permits associated with shoreline conditional use permits and shoreline
15 variances.

16 c. Project SEPA reviews shall be processed as a Type III land use review.

17
18 19.15.030. Legislative Actions. Legislative actions involve the creation, amendment or implementation of
19 policy or law by ordinance. In contrast to the other types of actions, legislative actions generally apply to
20 geographic areas and implement adopted City policy, promote the community interest, and are
21 normally of interest to many property owners and citizens. Legislative actions are only adopted after an
22 open record public hearing. Review procedures for legislative actions are located in subsection
23 19.15.280 of this chapter.

24
25 19.15.040 Summary of Reviews and Authorities. The following is a nonexclusive list of the land use
26 reviews that the city may take under the development code, the criteria upon which those decisions are
27 to be based, and which boards, commissions, or city staff have authority to make the decisions and to
28 hear appeals of those decisions.

29 TABLE A

30 LAND USE REVIEW TYPE

| <u>Type I</u> | <u>Type II</u> | <u>Type III</u> | <u>Type IV</u> |
|--|---|---|--|
| <u>Home business,</u> <u>seasonal development</u> <u>limitation waiver, non-</u> | <u>Modified wireless</u> <u>communication</u> <u>facilities (6409 per</u> | <u>New and modified</u> <u>wireless (non-6409)</u> <u>communication facility,</u> | <u>Conditional use permit,</u> <u>variance, critical areas</u> <u>reasonable use</u> |

| | | | |
|--|---|---|--|
| <u>major single-family dwelling building permits, tree removal permit, right of way permit, special needs group housing safety determination, tenant improvement/change of use, shoreline exemption, critical areas determination (steep slope alteration), final short plat, temporary commerce on public property, site development permits.</u> | <u>47.CFR.1.40001), lot line revision, setback deviations, final plat, code official design review, accessory dwelling unit, parking variances (reviewed by city engineer).</u> | <u>SEPA threshold determination, critical areas determination (wetland/watercourse buffer averaging/reduction, temporary encampment. Short plat alteration and vacations, preliminary short plat, development code interpretations, major single-family dwelling building permit, shoreline substantial development permit, shoreline revision (substantial development).</u> | <u>exception, long plat alteration and vacations, parking variance (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), shoreline variance, shoreline revision (variance and SCUP).</u> |
|--|---|---|--|

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TABLE B

REVIEW PROCESSING PROCEDURES

| | Type I | Type II | Type III | Type IV |
|--|--------------------------|--------------------------|-----------------------|--------------------------------------|
| | No Notice of Application | No Notice of Application | Notice of Application | Notice of Application |
| | No Notice of Decision | Notice of Decision | Notice of Decision | Public Hearing Notice of Decision |

| | Type I | Type II | Type III | Type IV |
|---|--|---|------------------|---|
| Pre-application meeting required | No | No | Yes | Yes |
| Letter of Completion (within 28 days) | No | No | Yes | Yes |
| Notice of Application (mailing & posting) | No | No | Yes | Yes |
| Public Comment Period | None | None | 30 days | 30 days |
| Public Hearing (Open Record pre-decision) | No | No | No | Yes |
| Decision | Code official | Code official (Except final long plats which go to City Council at a public meeting) | Code official | Hearing examiner or Design Commission (Hearing examiner recommendation to Ecology for decision on Shoreline CUP / Variances) |
| Notice of Decision | No | Yes | Yes | Yes |
| Appeal Authority | Hearing Examiner or Superior Court (TBD) | Hearing Examiner | Hearing Examiner | Superior Court or Shoreline Hearings Board (Shoreline Permits) |

1

2 19.15.050 Review procedures.

1 The following are general requirements for processing a permit or land use review application under the
2 development code. Additional or alternative requirements may exist for actions under specific code
3 sections (see MICC 19.07.080, 19.07.110, and 19.08.020).

4 19.15.060. Preapplication.

5 A. Purpose. Meetings with the staff provide an opportunity to discuss the proposal in concept terms,
6 identify the applicable city requirements and the project review process. Meetings or correspondence
7 with the neighborhood to inform the neighborhood of the project proposal are encouraged prior to the
8 formal notice provided by the city.

9 B. Optional Pre-application meetings. Applicants for development proposals are encouraged to
10 participate in informal meetings with city staff. Pre-application meetings may be held for any other
11 development proposal at the request of the applicant.

12 C. Required Pre-application meetings. Pre-application meetings are required for Type III and Type IV
13 land use reviews. Pre-application meetings may be held for any other development proposal at the
14 request of the applicant.

15 D. Application. Applicants shall prepare a concept sketch of the development proposal for the pre-
16 application meeting along with any other information specified by the code official in the pre-application
17 meeting form.

18 E. Validity. Successful completion of a pre-application meeting does not constitute approval of any plan
19 or design. Pre-application meetings shall occur within one year of application submittal, or after a code
20 change affecting the application has occurred.

21 19.15.070. Application.

22 A. The department will begin review of any application for a development proposal after the applicant
23 has submitted the materials and fees specified for complete applications. An application shall contain all
24 information deemed necessary by the code official to determine if the proposed development proposal
25 will comply with the requirements of the applicable development regulations. The applicant for a
26 development proposal shall have the burden of demonstrating that the proposed development
27 complies with the applicable regulations and decision criteria. All applications for a development
28 proposal shall include the following:

29 1. All applications for permits or land use reviews by the city shall be submitted on forms
30 provided by the City;

31 2. A site plan and documentation supporting the development proposal, prepared in a form
32 prescribed by the code official;

33 3. A completed SEPA environmental checklist, if required;

34 4. Any studies or reports required for the processing of the application;

1 5. A list of any permits or land use review types necessary for approval of the development
2 proposal that have been obtained prior to filing the application or that are pending before the
3 City or any other governmental entity;

4 6. Drainage plans and documentation required by the Stormwater Management Manual for
5 Western Washington as adopted by MICC Chapter 15.09;

6 7. Legal description of the site;

7 8. Verification that the property affected by the application is in the exclusive ownership of the
8 applicant, or that the applicant has a right to develop the site and that the application has been
9 submitted with the consent of all owners of the affected property; provided, that compliance
10 with subsection (1)(l) of this section shall satisfy the requirements of this subsection (1)(j); and

11 9. For Type II, III, and IV reviews, a title report from a reputable title company indicating that the
12 applicant has either sole marketable title to the development site or has a publicly recorded
13 right to develop the site (such as an easement). If the title report does not clearly indicate that
14 the applicant has such rights, then the applicant shall include the written consent of the record
15 holder(s) of the development site. The code official may waive this requirement if the title
16 report will not substantively inform the review of the development proposal.

17 10. All applications for preliminary design review shall contain all information and materials
18 deemed necessary by DSG staff to determine if the proposal complies with this chapter. Such
19 materials may include a site survey; site plans; elevations; sections; architectural plans; roof
20 plans; renderings and/or models; landscaping plan; parking plan; color and materials board;
21 vicinity maps; site photographs; SEPA checklist; traffic study; pedestrian and vehicle circulation
22 plans; and written narrative describing the project proposal and detailing how the project is
23 meeting the applicable design objectives and standards established in Chapters 19.11 or 19.12
24 MICC. For new construction, submittal of lighting and sign master plans may be deferred to the
25 public hearing.

26 B. A determination of completeness shall not preclude the code official from requesting additional
27 information or studies either at the time of determination of completeness or subsequently if new or
28 additional information is required or substantial changes in the proposed action occur, as determined by
29 the code official.

30 C. All applications for permits or land use review by the city shall be accompanied by a filing fee in an
31 amount established by city ordinance.

32 19.15.080. Determination of Completeness and Letter of Completion.

33 A. Complete Application Required. The city will not accept an incomplete application for processing and
34 review. An application is complete only when all information required on the application form and all
35 submittal items required by the development code have been provided to the satisfaction of the code
36 official.

1 B. Determination of Completeness. Within 28 days after receiving an application for a Type III and Type
2 IV land use review, the city shall mail, email, or provide in person a written Letter of Completion or
3 Letter of In-Completion to the applicant, stating either that the application is complete or that the
4 application is incomplete. If an application is incomplete, the Letter of In-Completion shall identify what
5 additional documentation is necessary to result in a complete application. An application shall be
6 deemed complete if the city does not provide a written determination to the applicant stating that the
7 application is incomplete.

8 C. Response to Letter of In-Completion. Within 14 days after an applicant has submitted all additional
9 information identified as being necessary for a complete application, the city shall notify the applicant
10 whether the application is complete or what additional information is necessary.

11 D. Completion Date. The date an application is determined complete is the date of receipt by the
12 department of all of the information necessary to make the application complete as provided in this
13 chapter. The department's issuance of a Letter of Complete application, or the failure of the department
14 to provide such a letter as directed by this section, shall cause an application to be conclusively deemed
15 to be complete as provided in this section.

16 E. If the applicant fails to provide the required information within 90 days of the Letter of In-Completion,
17 the application shall lapse.

18 19.15.090. Notice of Application.

19 A. Timing. Within 14 days of the determination of completeness, the city shall issue a notice of
20 application for all Type III and Type IV permits listed in MICC 19.15.010(E).

21 B. Distribution. Notice shall be provided in the weekly DSG bulletin, mailed to all property owners
22 within 300 feet of the property, posted on the site in a location that is visible to the public right-of-way,
23 and made available to the general public upon request.

24 If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that
25 contiguous land shall be treated as part of the long subdivision for notice purposes, and notice of the
26 application shall be given to all owners of lots located within 300 feet of the proposed long subdivision
27 and the applicant's contiguous land. The city shall provide written notice to the Department of
28 Transportation of an application for a long subdivision or short subdivision that is abutting the right-of-
29 way of a state highway.

30 C. Content. The notice of application shall include the following information:

31 1. The dates of the application, the determination of completeness, and the notice of
32 application;

33 2. The name of the applicant;

34 3. The location and description of the project;

35 4. The requested actions and/or required studies;

1 5. The date, time, and place of the open record public hearing, if one has been scheduled;

2 6. Identification of environmental documents, if any;

3 7. A statement of the public comment period, which shall be not less than 30 days following the
4 date of notice of application; and a statement of the rights of individuals to comment on the
5 application, receive notice and participate in any public hearings, request a copy of the decision
6 once made and any appeal rights.

7 8. The city staff contact and contact information;

8 9. The identification of other permits not included in the application to the extent known by the
9 city;

10 10. A description of those development regulations used in determining consistency of the
11 project with the city's comprehensive plan;

12 11. A link to a website where additional information about the project can be found; and

13 12. Any other information that the city determines appropriate.

14 D. Open Record Public Hearing. If an open record hearing is required on the land use review, the city
15 shall provide the notice of application at least 30 days prior to the public hearing.

16
17 E. Public Comment. The city shall accept public comments at any time prior to the closing of the record
18 of an open record predecision public hearing, if any, or if no open record predecision public hearing is
19 provided, prior to the decision on the project land use review.

20 F. Except for a determination of significance, the city shall not issue a threshold determination under
21 MICC 19.07.120 or issue a decision on an application until the expiration of the public comment period
22 on the notice of application.

23
24 19.15.100. Public Hearing Notice.

25 A. A public hearing notice is required for land use reviews requiring a public hearing. A Public Hearing
26 Notice may be combined with a Notice of Application.

27 B. Public hearing notice shall be provided at least 30 days prior to any required open record public
28 hearing

29 C. The public hearing notice shall include the following:

30 1. A general description of the proposed project and the action to be taken by the city;

2. A address or parcel number of the property and a vicinity map or sketch;
3. The time, date and location of the open record public hearing;
4. A contact name and number where additional information may be obtained;
5. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal;
6. A link to a website where additional information about the project can be found.

D. Public hearing notices shall be provided in the following manner:

1. Notice shall be mailed to parties of record, all property owners within 300 feet of the property, published in the weekly DSG bulletin, and posted on the site in a location that is visible to the public right-of-way.

a. Long Subdivisions. Additional notice for the public hearing for a preliminary long subdivision approval shall be provided as follows:

(1) Notice of public hearing shall also be published in a newspaper of general circulation within the city.

(2) If the owner of a proposed long subdivision owns land contiguous to the proposed long subdivision, that contiguous land shall be treated as part of the long subdivision for notice purposes, and the Public Hearing Notice shall be given to all owners of lots located within 300 feet of the proposed long subdivision and the applicant's contiguous land.

E. Every complete application for which notice is to be provided under subsection (D)(1) of this section together with all information provided by the applicant for consideration by the decision authority shall be posted by the city to a website accessible without charge to the public. Information shall be posted at the time the city issues the notice of application under subsection (D)(1) of this section and shall be updated within seven days after additional information is received from the applicant.

19.15.110. Request for Information.

A. Request authorized. The official or entity reviewing a development proposal may request additional information or studies if:

1. New or additional information is required to complete a land use review and issue a decision;
2. Substantial changes in the development proposal are proposed by the applicant; or

1 3. The official or entity reviewing the development proposal determines additional information
2 is required prior to issuance of a decision.

3 B. Deadline for response. The official or entity requesting information shall establish a time limit for the
4 applicant to respond. The time limit for an applicant to respond to a request for information shall not
5 be less than 30 days, provided an extension to applicant's time limit to respond may be authorized
6 pursuant to section 3., below. If responses are not received within the established time limit and no
7 extension has been authorized, the code official may cancel the land use review for inactivity.

8 C. Deadline extension. Applicants may request an extension to provide requested materials. Extension
9 requests shall be in writing, shall include a basis for the extension and shall be submitted in writing prior
10 to expiration of the time limit. The code official is authorized to extend the time limit in writing. There is
11 no limit to the number of extensions an applicant may be granted, however the total time limit for a
12 response shall not exceed 180 days unless there is an extenuating circumstance. An extenuating
13 circumstance must be unexpected and beyond the control of the applicant.

14
15
16 19.15.120. Notice of Decision. The city will make an effort to process permits and land use reviews in a
17 reasonable time subject to constraints related to staff workload and resources. The city shall provide
18 notice in a timely manner of its final decision or recommendation on development proposals requiring
19 Type II, III and IV land use decisions, including the SEPA threshold determination, if any, the dates for
20 any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to
21 the applicant, parties of record, agencies with jurisdiction. Notice of decision shall also be provided to
22 the public as provided in MICC 19.15.090. ~~Written~~The -notice of decision may be provided by email or a
23 hard copy may be mailed.

24
25 19.15.130. Appeals.

26 A. Appeals to Shoreline Hearings Board. Appeals to any shoreline substantial development permit,
27 shoreline conditional use permit, or shoreline variance decision, shall be in accordance with RCW 90.58.
28 Appeals to shoreline exemptions permits shall be filed in accordance with subsection 2 of this section.

29 B. Administrative Appeals. Any party of record on a decision that may be administratively appealed may
30 file a letter of appeal on the decision. Administrative appeals shall be filed with the city clerk within 14
31 days after the notice of decision, if a notice of decision is required, or after the effective date of the
32 decision subject to appeal if ~~no~~a notice of decision is not required.

33 C. Appeals shall include the following information:

34 1. The decision(s) being appealed;

35 2. The development code interpretation, if any, associated with the proposed appeal;

1 3. The name and address of the appellant and his/her interest in the matter;

2 4. The specific reasons why the appellant believes the decision to be wrong. The burden of proof
3 is on the appellant to demonstrate that there has been substantial error, or the proceedings
4 were materially affected by irregularities in procedure, or the decision was unsupported by
5 evidence in the record, or that the decision is in conflict with the standards for review of the
6 particular action;

7 5. The desired outcome or changes to the decision; and

8 6. Payment of the appeals fee, if any.

9 D. Authority for appeals is specified in MICC 19.15.040(E).

10 E. Notice of an open record public hearing for an appeal shall be provided consistent with the notice of
11 public hearing provisions of MICC 19.15.100.

12 F. The rules of procedure for appeal hearings shall be as follows:

13 1. If the hearing body finds that there has been substantial error, or the proceedings were
14 materially affected by irregularities in procedure, or the decision was unsupported by material
15 and substantial evidence in view of the entire record, or the decision is in conflict with the city's
16 applicable decision criteria, it may:

17 a. Reverse the decision.

18 b. Modify the decision and approve it as modified.

19 c. Remand the decision back to the decision maker for further consideration.

20 2. If the hearing body finds that none of the procedural or factual bases listed above exist and
21 that there has been no substantial error, the hearing body may adopt the findings and/or
22 conclusions of the decision body, concur with the decision of the decision body and approve the
23 development proposal as originally approved, with or without modifications.

24 3. Final decision on the appeal shall be made within 30 days from the last day of the appeal
25 hearing.

26 4. The city's final decision on a development proposal may be appealed by a party of record with
27 standing to file a land use petition in King County superior court. Such petition must be filed
28 within 21 days of the issuance of the decision.

29 G. When an applicant has opted for consolidated permit processing pursuant to subsection I of this
30 section, administrative appeals of Type I, II or III approvals listed in MICC 19.15.010(E) for a single
31 project shall be consolidated and heard together in a single appeal by the hearing examiner.

32 19.15.140. Open Record Public Hearing.

1 A. Only one open record public hearing shall be required prior to action on all Type IV actions.

2 B. Open record public hearings shall be conducted in accordance with the hearing body's rules of
3 procedures. In conducting an open record public hearing, the hearing body's chair shall, in general,
4 observe the following sequence:

5 1. Staff presentation, including the submittal of any additional information or correspondence.
6 Members of the hearing body may ask questions of staff.

7 2. Applicant and/or applicant representative's presentation. Members of the hearing body may
8 ask questions of the applicant.

9 3. Testimony by the public. Questions directed to the staff, the applicant or members of the
10 hearing body shall be posed by the chairperson at his/her discretion.

11 4. Rebuttal, response or clarifying statements by the applicant and/or the staff and/or the
12 public.

13 5. The public comment portion of the public hearing is closed and the hearing body shall
14 deliberate on the action before it.

15 C. Following the hearing procedure described above, the hearing body shall:

16 1. Approve;

17 2. Conditionally approve;

18 3. Continue the public hearing;

19 4. Remand the application to staff; or

20 5. Deny the application.

21

22 19.15.150. Expiration of Approvals.

23 A. General. Except as stated below, or as otherwise conditioned in the approval process, land use
24 review approvals shall expire three years from the date of notice of decision if the development
25 proposal authorized by the land use review is not commenced. For the purposes of this section, the
26 development proposal shall be considered established if construction or substantial progress toward
27 construction of a development proposal for which a land use review approval has been granted must be
28 undertaken within two years of the date of notice of decision of the land use review. Where no
29 construction activities are involved, the use or activity shall be commenced within three years of the
30 date of notice of decision of the land use review.

31 B. Renewal. Renewal of expired land use approvals shall require a new application.

1 C. Long Subdivisions. A final plat application meeting all requirements of this chapter shall be submitted
2 to the code official and recorded within five years of the date of preliminary plat approval.

3 D. Shoreline Land Use Reviews. The following time limits shall apply to all substantial development
4 permits, shoreline conditional use permits and shoreline variance permits:

5 1. Construction or substantial progress toward construction of a development for which a
6 permit has been granted must be undertaken within two years of the effective date of a
7 shoreline permit. Where no construction activities are involved, the use or activity shall be
8 commenced within two years of the effective date of a substantial development permit. The
9 effective date of a shoreline permit shall be the date of the last action required on the shoreline
10 permit and all other government permits and approvals that authorize the development to
11 proceed, including all administrative and legal actions on any such permit or approval.

12 2. A single extension before the end of the time limit, with prior notice to parties of record, for
13 up to one year, based on reasonable factors may be granted, if a request for extension has been
14 filed before the expiration date and notice of the proposed extension is given to parties of
15 record and to the Department of Ecology.

16 4E. Design Review. If the applicant has not submitted a complete application for a building permit within
17 three years from the date of the notice of the final design review decision, or within three years from
18 the decision on appeal from the final design review decision, design review approval shall expire.

19 F5. Responsibility for knowledge of the expiration date shall be with the applicant.

20
21 19.15.160. Code Interpretations.

22 A. Upon application or as determined necessary, the code official may issue a written interpretation of
23 the meaning or application of provisions of the development code. In issuing the interpretation, the
24 code official shall consider the following:

25 1. The plain language of the code section in question;

26 2. Purpose and intent statement of the chapters in question;

27 3. Legislative intent of the city council provided with the adoption of the code sections in
28 question;

29 4. Policy direction provided by the Mercer Island comprehensive plan;

30 5. Relevant judicial decisions;

31 6. Consistency with other regulatory requirements governing the same or similar situation;

32 7. The expected result or effect of the interpretation; and

1 8. Previous implementation of the regulatory requirements governing the situation.

2 B. The code official may also bring any issue of interpretation before the planning commission for
3 determination. Anyone in disagreement with an interpretation by the code official may also appeal the
4 code official's interpretation to the hearing examiner.

5
6 19.15.170. Vesting

7 A. Purpose. The purpose of this section is to identify certain points in the land use approval process at
8 which an applicant's rights become "vested." Vested rights is defined as the guarantee that an
9 application will be reviewed and a development proposal can be developed (if a permit is issued) under
10 regulations and procedures existing at one moment in time and regardless of changes that may have
11 been made later and prior to final completion of a project or use.

12 B. Vesting for Land Use Reviews. Complete applications for land use review of Type 1 land use reviews,
13 building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall
14 vest on the date a complete application is filed. The department's issuance of a Letter of Completion for
15 Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide
16 such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be
17 vested as provided herein.

18 C. Scope of Vested Rights.

19 1. Land use reviews that are subject to the provisions of this section shall be considered under
20 the zoning and land use control ordinances (Titles 15 and 19 MICC) in effect on the date of
21 complete application. Supplemental information and revisions to a development proposal
22 design required by the City after vesting of a complete application shall not affect the validity of
23 the vesting for such application.

24 2. An applicant must specifically identify a proposed land use or uses in the land use review
25 application as the intended use of the development proposal site in order to vest the right to
26 engage in a specific land use against an ordinance implementing a change in permitted land
27 uses.

28 3. An application for a land use review may be denied or approved with conditions under the
29 authority of the City to protect and enhance the public safety, health and welfare, and under the
30 State Environmental Policy Act (SEPA) and the City of Mercer Island's SEPA regulations and
31 policies as of the date of vesting, notwithstanding the fact that the applicant has attained a
32 vested right against enforcement of an ordinance implementing changes in regulations, codes or
33 procedures affecting that land use review application.

34 D. Termination of Vested Rights.

1 1. Termination of vested rights associated with a land use review for a development proposal
2 shall occur at the time of expiration of land use review approval, as established in MICC
3 19.15.140 or when an applicant withdraws the land use application..

4 2. Applicant-generated modifications or requests for revision(s) to building permits, short
5 subdivision, or long subdivisions which are not made in response to staff review, public process,
6 ~~or~~ appeal, or conditions of approval, and which result in substantial changes to a development
7 proposal design, which includes but is not limited to include the creation of additional lots,
8 substantial change in access, substantial changes in project design, or additional impacts to
9 critical areas shall be treated as new applications for purposes of vesting.

10 35. Applicant-generated proposals to create additional lots, substantially change access,
11 increase critical area impacts, or change conditions of approval on an approved preliminary
12 short subdivision or long subdivision shall also be treated as a new application for purposes of
13 vesting.

14
15 19.15.180. Additional Procedures for Shoreline Review.

16 A. Open record public hearing. An open record public hearing before the code official shall be
17 conducted on the shoreline substantial development permits, shoreline conditional use permits, and
18 shoreline variances when the following factors exist:

19 1. The proposed development has broad public significance; or

20 2. Within the 30-day comment period, 10 or more interested citizens file a written request for a
21 public hearing; or

22 3. At the discretion of the code official.

23 B. Ecology filing. The applicant shall not begin construction until after 21 days from the date of receipt
24 by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant
25 shall also comply with all applicable federal, state and city standards for construction.

26 C. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with
27 conditions, or denying any substantial development permit or shoreline exemption is final unless an
28 appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to
29 the applicant, the Department of Ecology, the Washington State Attorney General and to all other
30 applicable local, state, or federal agencies. The decision shall be sent to the Department of Ecology by
31 return receipt requested mail or as regulated by WAC 173-27-130.

32 D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving,
33 approving with conditions, or denying a shoreline conditional use permit or shoreline variance is
34 rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable
35 local, state, or federal laws. The city shall send the shoreline permit decision to the applicant, the
36 Department of Ecology, the Washington State Attorney General and to all other applicable local, state,

1 or federal agencies. The decision shall be sent to the Department of Ecology by return receipt requested
2 mail or as regulated by WAC 173-27-130.

3
4 19.15.190. Permit review for 6409 eligible wireless communications facilities

5 A. Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking
6 approval under this section, the city shall approve the application unless it determines that the
7 application is not covered by 47 CFR 1.40001.

8 B. Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and
9 may be tolled only by mutual agreement or in cases where the city determines that the application is
10 incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

11 1. To toll the timeframe for incompleteness, the city must provide written notice to the applicant
12 within 30 days of receipt of the application, clearly and specifically delineating all missing
13 documents or information. Such delineated information is limited to documents or information
14 meeting the standard under paragraph (I)(1) of this section.

15 2. The timeframe for review begins running again when the applicant makes a supplemental
16 submission in response to the city's notice of incompleteness.

17 3e. Following a supplemental submission, the city will have 10 days to notify the applicant that the
18 supplemental submission did not provide the information identified in the original notice
19 delineating missing information. The timeframe is tolled in the case of second or subsequent
20 notices pursuant to the procedures identified in this paragraph (I)(3). Second or subsequent
21 notices of incompleteness may not specify missing documents or information that were not
22 delineated in the original notice of incompleteness.

23 C. Failure to act. In the event the city fails to approve or deny a request seeking approval under this
24 section within the timeframe for review (accounting for any tolling), the request shall be deemed
25 granted. The deemed grant does not become effective until the applicant notifies the city in writing
26 after the review period has expired (accounting for any tolling) that the application has been deemed
27 granted.

28
29 19.15.200. Revisions. Revisions of approved permits are as follows. A complete application, filing fees
30 and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance
31 with development codes and standards except for building permits which shall be reviewed in
32 accordance with Title 17. All revisions shall be subject to the vesting provisions in MICC 19.15.170.

33 A. Revisions for approved Type I, II, and III land use permits, except shoreline permits, are as follows:

34 1. Revisions that result in substantial changes, as determined by the code official, shall be treated
35 as a new application for purposes of vesting. For the purposes of this section, substantial change
36 includes changes to conditions of approval.

1 2. Approval of the following modifications by the code official shall not be considered revisions:

2 a. Typographical errors and minor omissions.

3
4 B. Revisions for approved Type IV land use permits, except shoreline permits, are as follows:

5 1. Revisions that result in substantial changes, as determined by the code official, shall be treated
6 as a new application for purposes of vesting. For the purposes of this section, substantial change
7 includes the creation of additional lots, the elimination of open space, substantial changes in
8 access, or changes to conditions of approval. Additionally, the need for the modification was not
9 known and could not have been reasonably known before the approval was granted.

10 2. Approval of the following modifications by the code official shall not be considered revisions:

11 a. Engineering design, unless the proposed design alters or eliminates features required as a
12 condition of preliminary approval.

13 b. Changes in lot or tract dimensions that are consistent with MICC 19.02.

14 c. A decrease in the number of lots to be created.

15 d. Typographical errors and minor omissions.

16 3. The code official shall have the authority to administratively review and approved modifications
17 described in subsection (2) of this section through review procedures established by the
18 department.

19 C. Revisions to shoreline permits are as follows. When an applicant seeks to revise an approved
20 shoreline substantial development permit, shoreline conditional use permit and/or shoreline variance
21 permit, the requirement of WAC 173-27-100, as amended, shall be met. If these requirements are met,
22 the decision will be processed per the following.

23 1. Revision of substantial development permit:

24 a. A decision will be provided to the applicant and parties of record and posted in DSG's weekly
25 permit bulletin.

26 b. The city shall send the revised permit to all applicable local, state or federal agencies including
27 the Attorney General, as required by state or federal law within eight days of issuing the
28 decision.

29 c. Appeals shall be in accordance with RCW 90.58.180.

30 2. Revision of a shoreline CUP or shoreline variance:

31 a. The application for a revision shall be submitted to the Washington State Department of
32 Ecology. Within 15 days of receipt, Ecology will issue a decision of approval, approval with
33 conditions, or denial of the revision.

1 19.15.210. Compliance required.


2 A. It is the intent of this section to require that non-conforming sites, structures, lots, and uses, which
3 were created without prior City approval, comply with the applicable provisions of Title 19 MICC.

4 B. If development inconsistent with the purposes and requirements of this Title 19 has occurred on a
5 development proposal site without prior City approval, the City shall not issue any land use review
6 approvals for the development proposal site unless the land use review approval requires the
7 restoration of the site to a state that complies with the purposes and requirements of Title 19 MICC are
8 addressed.

9 C. Suspension of Land Use Approvals. The city may suspend any land use review approval, including
10 shoreline permits, when the permittee has not complied with the conditions of the permit. Such
11 noncompliance may be considered a code violation. The enforcement shall be in conformance with the
12 procedures set forth in MICC 19.15.230, Enforcement.

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14
15 19.15.230 Enforcement (Not part of this review)

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17 19.15.240 Design Review and the Design commission. 

18 A. Rules and Records.

19 1. The design commission shall adopt rules and regulations for the conduct of its business,
20 subject to the approval of the city council.

21 2. A majority of the membership shall constitute a quorum for the purpose of transacting
22 business. Action by the design commission shall be by majority vote of the members
23 constituting the quorum. A tie vote on a motion to approve shall constitute a failure of the
24 motion and a denial of the application.

25 3. The code official shall serve as executive secretary of the design commission and shall be
26 responsible for all records. All meetings of the design commission shall be open to the public.
27 The design commission shall keep minutes of its proceedings and such minutes and a copy of its
28 rules shall be kept on file in the office of the city clerk and open to inspection by the public.

29 B. Powers of the Design Commission and Additional Functions.

30 1. No building permit or other required permit shall be issued by the city for development of any
31 regulated improvement without prior approval of the design commission or code official as
32 authorized pursuant to MICC 19.15.040. Certain development and activities that do not require
33 a permit are subject to design review as provided in MICC 19.15.240(C)(1)(c).

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2. The design commission or code official may require a bond or assignment of funds as set out in MICC 19.01.060(C) to secure the installation and maintenance of landscaping, screens, and other similar site improvements.

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3. When the city council deems it necessary to retain consultants for a proposed capital improvement, the council shall seek recommendations from the design commission as to the selection of consultants to provide design services.

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4. Consultants or city officials charged with the design responsibility for a major capital improvement shall hold preliminary discussions on the proposed project with the design commission to obtain its preliminary recommendations as to aesthetic, environmental and design principles and objectives. In addition, the design commission shall review major capital improvements at the completion of the design development phase. A capital improvement approved by the city council after review and recommendations by the design commission may be implemented on a phasing basis without further review so long as the improvement is developed in substantial conformity with the reviewed plan. Significant deviations from an approved plan shall be submitted to the design commission for its further review and recommendations.

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5. The design commission or code official shall complete its review and make its decision and/or recommendations pursuant to the process set forth in subsection F of this section, and the review and decision and/or recommendations shall be based upon the design objectives and standards set forth in subsection G of this section, with such amendments as may be made from time to time.

23

24

6. Additional Functions. The Design Commission may undertake the following additional functions as needed:

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a. The design commission may assist any person, group, or agency who requests design advice on matters not requiring formal commission action.

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b. The design commission shall consult and cooperate with the planning commission and other governmental bodies on matters affecting the appearance of the Island. The design commission may offer recommendations to the appropriate city agencies and officials on legislation to promote aesthetic and environmental values.

31

32

c. The design commission shall act as the appeal authority for design review decisions made by the code official.

33

C. Design Review Procedure.

34

1. General.

1 a. Intent. The intent of the design review process is to ensure that regulated development in all
2 land use zones complies with design objectives and standards established in Chapters 19.11 and
3 19.12 MICC.

4 b. Scope. No building permit or other required permit shall be issued by the city for any
5 development of any regulated improvement without prior approval of the design commission or
6 code official as authorized pursuant to MICC 19.15.040. Applicant proposed revisions to a plan
7 approved by the design commission or code official shall be permitted only upon the filing and
8 approval of an amended plan. In no instance shall the design commission's or code official's
9 action conflict with the city's development code or other applicable city ordinances or with state
10 or federal requirements.

11 c. Review Authority.

12 i. Design Commission Review. The design commission shall conduct the design review
13 and make compliance determinations regarding:

14 (A) New buildings;

15 (B) New additions, remodels (exterior only), and roof and façade changes equal
16 to or exceeding 50 percent of the structure's current appraised value as of the
17 time the initial application for the work is submitted. A current appraisal of the
18 structure, which shall be provided by the applicant and acceptable to the code
19 official, shall be used as the value point of reference. The applicant may use the
20 King County Assessor's appraised value;

21 (C) Signs where a master sign plan has not been approved for the site;

22 (D) Site plan layout resulting from an additional parking lot or structured parking
23 lot, or the enlargement of an existing parking lot or structured parking lot;

24 (E) Landscaping modifications that diminish an existing perimeter landscape
25 screen; and

26 (F) Other improvements such as paving and landscaping when they are made in
27 conjunction with changes to a building.

28 ii. Code Official Review. The code official shall conduct the design review and make
29 compliance determinations regarding:

30 (A) New additions, remodels (exterior only), and roof and façade changes not
31 exceeding 50 percent of the structure's current appraised value as of the time
32 the initial application for the work is submitted. A current appraisal of the
33 structure, which shall be provided by the applicant and acceptable to the code
34 official, shall be used as the value point of reference;

35 (B) Signs where an approved master sign plan has been approved for the site;

1 (C) Relocating, modifying or adding mechanical equipment;

2 iii. The code official shall have the authority to determine that an application normally
3 reviewed by code official shall require design commission review and approval, based
4 on factors such as the scope, location, context and visibility of the change or
5 modification; and

6 iv. The tenant and property owner are responsible for ensuring that all development
7 and activities, including but not limited to painting and landscaping, complies with
8 Chapters 19.11 and 19.12.

9 d. Process.

10 i. Time Frame and Procedure. Design review shall be conducted in accordance with the
11 timelines and procedures set forth in MICC 19.15.040, Permit review procedures. Design
12 review is not subject to the one open record hearing requirement or consolidated
13 permit review processing.

14 ii. ~~Written Recommendations~~ Decision. All decisions of the design commission ~~and code~~
15 ~~official~~ shall be reduced to writing and shall include findings of fact and conclusions that
16 support the decisions.

17 2. Review Process.

18 a. Study Session. In addition to the preapplication meeting, an applicant for a project that will
19 require design review and approval by the design commission shall meet with the design
20 commission in a study session to discuss project concepts before the plans are fully developed.
21 At this session, which will be open to the public, the applicant should provide information
22 regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The
23 design commission may provide feedback to be considered in the design of the project.

24 b. Plan Submittal. All materials shall be submitted a minimum of 30 days prior to any meeting
25 dates including study sessions, public meetings, and public hearings. The final plans shall be in
26 substantial conformity with approved preliminary plans.

27
28 19.15.250 Comprehensive plan amendments.

29 A. Purpose. The Growth Management Act (GMA), Chapter 36.70A RCW, requires that the city include
30 within its development regulations a procedure for any interested person to suggest plan amendments.
31 The suggested amendments will be docketed for consideration. The purpose of this section is to
32 establish a procedure for amending the city's comprehensive plan text and maps. Amendments to the
33 comprehensive plan are the means by which the city may modify its 20-year plan for land use,
34 development or growth policies in response to changing city needs or circumstances. All plan
35 amendments will be reviewed in accordance with the GMA and other applicable state laws, the

1 countywide planning policies, the adopted city of Mercer Island comprehensive plan, and applicable
2 capital facilities plans.

3 B. Application Requirements. Proposed amendment requests may be submitted by the public, city
4 manager, city department directors or by majority vote of the city council, planning commission or other
5 city board or commission. Proposed amendments submitted by the public shall be accompanied by
6 application forms required by this title and by the code official and the filing fees established by
7 resolution. All application forms for amendments to the comprehensive plan shall include a detailed
8 description of the proposed amendment in nontechnical terms.

9 C. Frequency of Amendments.

10 1. Periodic Review. The comprehensive plan shall be subject to continuing review and evaluation
11 by the city ("periodic review"). The city shall take legislative action to review and, if needed,
12 revise its comprehensive plan to ensure the plan complies with the requirements of the GMA
13 according to the deadlines established in RCW 36.70A.130.

14 2. Annual Amendment Cycle. Updates, proposed amendments, or revisions to the
15 comprehensive plan may be considered by the city council no more frequently than once every
16 calendar year as established in this section (the "annual amendment cycle"). During a year when
17 periodic review of the comprehensive plan is required under RCW 36.70A.130, the annual
18 amendment cycle and the periodic review shall be combined.

19 3. More frequent amendments may be allowed under the circumstances set forth within RCW
20 36.70A.130(2). Amendments processed outside of the annual amendment cycle under RCW
21 36.70A.130(2) may be initiated by action of the city council. The city council shall specify the
22 scope of the amendment, identify the projected completion date, and identify and, if necessary,
23 fund resources necessary to accomplish the work. Amendments allowed to be processed
24 outside of the annual amendment cycle are not subject to the docketing process outlined within
25 subsection D of this section.

26 D. Docketing of Proposed Amendments. For purpose of this section, docketing refers to compiling and
27 maintaining a list of suggested changes to the comprehensive plan in a manner that will ensure such
28 suggested changes will be considered by the city and will be available for review by the public. The
29 following process will be used to create the docket:

30 1. Preliminary Docket Review. By September 1, the city will issue notice of the annual
31 comprehensive plan amendment cycle for the following calendar year. The amendment request
32 deadline is October 1. Proposed amendment requests received after October 1 will not be
33 considered for the following year's comprehensive plan amendment process but will be held for
34 the next eligible comprehensive plan amendment process.

35 a. The code official shall compile and maintain for public review a list of suggested
36 amendments and identified deficiencies as received throughout the year.

1 b. The code official shall review all complete and timely filed applications proposing
2 amendments to the comprehensive plan and place these applications on the preliminary
3 docket along with other city-initiated amendments to the comprehensive plan.

4 c. The planning commission shall review the preliminary docket at a public meeting and
5 make a recommendation on the preliminary docket to the city council each year.

6 d. The city council shall review the preliminary docket at a public meeting. By December
7 31, the city council shall establish the final docket based on the criteria in subsection E
8 of this section. Once approved, the final docket defines the work plan and resource
9 needs for the following year's comprehensive plan amendments.

10 2. Final Docket Review.

11 a. Placement on the final docket does not mean a proposed amendment will be
12 approved. The purpose of the final docket is to allow for further analysis and
13 consideration by the city.

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

18 c. The code official shall review and assess the items placed on the final docket and
19 prepare ~~a staff report including~~ recommendations for each proposed amendment. The
20 code official shall be responsible for developing an environmental review of the
21 combined impacts of all proposed amendments on the final docket, except that
22 applicants seeking a site-specific amendment shall be responsible for submittal of a
23 SEPA environmental checklist and supporting information. The applicant will need to
24 submit SEPA and any other accompanying permits such as a rezone or a zoning code
25 text amendment at this time. The code official may require an applicant to pay for peer
26 review and/or additional resources needed to review the proposal. The code official
27 shall set a date for consideration of the final docket by the planning commission and
28 timely transmit the staff ~~report(s)~~recommendation prior to the scheduled date.

29 d. The planning commission shall review the proposed amendments contained in the
30 final docket based on the criteria set forth in MICC 19.15.240(F)(1). The planning
31 commission shall hold at least one public hearing on the proposed amendments. The
32 planning commission shall make a recommendation on the proposed amendments and
33 transmit the recommendation to the city council.

34 e. After issuance of the planning commission's recommendation, the code official shall
35 set a date for consideration of the final docket by the city council. The city council shall
36 review the proposed amendments taking into consideration the recommendations of
37 the planning commission and code official. The city council may deny, approve, or
38 modify the planning commission's recommendations consistent with the criteria set

1 forth in MICC 19.15.240(F)(1). The city council’s establishment of a final docket of
2 proposed amendments is not appealable.

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

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

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

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

10 b. All of the following criteria are met:

11 i. The proposed amendment presents a matter appropriately addressed through
12 the comprehensive plan;

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

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

19 iv. The proposal will serve the public interest by implementing specifically
20 identified goals of the comprehensive plan or a new approach supporting the
21 city’s vision; and

22 v. The essential elements of the proposal and proposed outcome have not been
23 considered by the city council in the last three years. This time limit may be
24 waived by the city council if the proponent establishes that there exists a
25 change in circumstances that justifies the need for the amendment.

26 F. Decision Criteria. Decisions to amend the Comprehensive Plan shall be based on the criteria specified
27 below. An applicant for a comprehensive plan amendment -proposal shall have the burden of
28 demonstrating that the proposed amendment complies with the applicable regulations and decision
29 criteria

30 1. The amendment is consistent with the Growth Management Act, the county-wide planning
31 policies, and the other provisions of the comprehensive plan and city policies; and:

32 a. There exists obvious technical error in the information contained in the
33 comprehensive plan; or

1 bi. The amendment addresses changing circumstances of the city as a whole.

2 2. If the amendment is directed at a specific property, the following additional findings shall be
3 determined:

4 a. The amendment is compatible with the adjacent land use and development pattern;

5 b. The property is suitable for development in conformance with the standards under
6 the potential zoning; and

7 c. The amendment will benefit the community as a whole and will not adversely affect
8 community facilities or the public health, safety, and general welfare.

9 G. Combined Comprehensive Plan Amendment and Rezone. In cases where both a comprehensive plan
10 amendment and a rezone are required, both shall be considered together, and all public notice must
11 reflect the dual nature of the request.

12 GH. Expansion of Land Use Map Amendment. The city may propose to expand the geographic scope of
13 an amendment to the comprehensive plan land use map to allow for consideration of adjacent property,
14 similarly situated property, or area-wide impacts. The following criteria shall be used in determining
15 whether to expand the geographic scope of a proposed land use map amendment:

16 1. The effect of the proposed amendment on the surrounding area or city;

17 2. The effect of the proposed amendment on the land use and circulation pattern of the
18 surrounding area or city; and

19 3. The effect of the proposed amendment on the future development of the surrounding area or
20 city. (Ord. 16C-13 § 2).

21
22 19.15.260. Reclassification of Property (Rezoning).

23 A. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property
24 from one zoning designation to another.

25 B. Process. A rezone shall be considered as provided in MICC 19.15.280.

26 C. Criteria. The city council may approve a rezone only if all of the following criteria are met:

27 1. The proposed reclassification is consistent with the policies and provisions of the Mercer
28 Island comprehensive plan;

29 2. The proposed reclassification is consistent with the purpose of the Mercer Island
30 development code as set forth in MICC 19.01.010;

1 3. The proposed reclassification is an extension of an existing zone, or a logical transition
2 between zones;

3 4. The proposed reclassification does not constitute a “spot” zone;

4 5. The proposed reclassification is compatible with surrounding zones and land uses; and

5 6. The proposed reclassification does not adversely affect public health, safety and welfare.

6 7. If a Comprehensive Plan amendment is required in order to satisfy MICC 19.15.060(C)(1),
7 approval of the Comprehensive Plan amendment is required prior to or concurrent with the
8 granting of an approval of the rezone.

9 D. Map change. Following approval of a rezone, the City shall amend the zoning map to reflect the
10 change in zoning designation. The City shall also indicate on the zoning map the number of the
11 ordinance adopting the rezone.

12
13 19.15.270. Zoning Code Text Amendment

14 A. Purpose. The purpose of this section is to establish the process and criteria for amendment of this
15 Code.

16 B. Process. Zoning Code amendments shall be considered as provided in MICC 19.15.2080.

17 C. Initiation of zoning code amendment request. A zoning code amendment request may be initiated by
18 the City Council, Planning Commission, or Code Official.

19 D. Criteria. The City may approve or approve with modifications a proposal to amend the text of this
20 Code if:

21 1. The amendment is consistent with the Comprehensive Plan; and

22 2. The amendment bears a substantial relation to the public health, safety, or welfare; and

23 3. The amendment is in the best interest of the community as a whole.

24 E. Code change. Following approval of an amendment, the City shall amend this Code to reflect the
25 change.

26
27 19.15.280 Review procedures for comprehensive plan amendments, reclassification of property, and
28 zoning code text amendments

1 A. The city shall issue a notice of application and a notice of public hearing for comprehensive plan
2 amendments, reclassifications of property , and zoning code text amendments as described in MICC
3 19.15.250, 19.15.260, and 19.15.270. The notice of application and notice of public hearing may be
4 combined as provided in MICC 19.15.100. Notice shall be provided in the weekly DSG bulletin,
5 published in the local newspaper of general circulation within the city, made available to the general
6 public upon request, and, if the proposed amendment will affect a specific property or defined area of
7 the City, mailed to all property owners within 300 feet of the ~~property~~affected property or defined
8 area, and -posted on the site in a location that is visible to the public right-of-way.

9 1. The notice shall include the following information:

10 i. The name of the party proposing the proposed amendment or change;

11 ii. The location and description of the project, if applicable;

12 iii. The requested actions and/or required studies;

13 iv. The date, time, and place of the open record public hearing;

14 v. Identification of environmental documents, if any;

15 vi. A statement of the public comment period, which shall not be less than 30 days. The
16 city shall accept public comments at any time prior to the closing of the record of an
17 open record predecision public hearing; and a statement of the rights of individuals to
18 comment on the application, receive notice and participate in any public hearings,
19 request a copy of the decision once made and any appeal rights.;

20 vii. The city staff contact and contact information;

21 viii. The identification of other reviews or permits that are associated with the review of
22 the proposed Comprehensive Plan, zoning text, or zoning map amendment, to the
23 extent known by the city;

24 ix. A description of those development regulations used in determining consistency of
25 the review with the city's comprehensive plan;

26 x. A link to a website where additional information about the project can be found; and

27 xi. Any other information that the city determines appropriate.

28 2. Timing of notice. The city shall provide the notice at least 30 days prior to the public hearing.

29 3 The city shall accept public comments at any time prior to the closing of the record of an open
30 record public hearing.

31 D. Review at Public Hearing

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1. At an open record public hearing the planning commission shall consider the proposed review for conformance with the criteria as listed in the applicable section, the comprehensive plan and other applicable development standards.

2. The planning commission shall make a written recommendation on the review to the city council.

3. The city council shall consider the planning commission's recommendation at a public meeting where it may adopt or reject the planning commission's recommendations or remand the review back to the planning commission.

19.16.010 Definitions.

Words used in the singular include the plural and the plural the singular.

Definitions prefaced with (SMP) are applicable only to the shoreline master program, MICC 19.07.110.

B

Base station: A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

3. The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

4. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

C

Change of Use: When a change in the specified land use of a property, building, or portion of a building occurs.

1 Collocation: The mounting or installation of transmission equipment on an eligible support structure for
2 the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

3
4 E

5 Eligible facilities request (6409 Wireless Communication Facility): Any request for modification of an
6 existing tower or base station that does not substantially change the physical dimensions of such tower
7 or base station, involving:

- 8 1. Collocation of new transmission equipment;
- 9 2. Removal of transmission equipment; or
- 10 3. Replacement of transmission equipment.

11
12 Existing Wireless Communication Facility: A constructed tower or base station is existing for purposes of
13 this section if it has been reviewed and approved under the applicable zoning or siting process, or under
14 another State or local regulatory review process, provided that a tower that has not been reviewed and
15 approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing
16 for purposes of this definition.

17
18
19 P

20 Party of record, appeals: The term party of record shall mean any of the following:

- 21 1. The applicant and/or property owner;
- 22 2. Any person who testified at the open record public hearing on the application;
- 23 3. Any person who individually submits written comments concerning the application for the
24 open record public hearing, or to the code official prior to a decision on the project permit if
25 there is no open record public hearing. Persons who have only signed petitions are not parties of
26 record;
- 27 4. The city of Mercer Island.

1 S

2 Substantial change, Wireless Communication Facility: A modification substantially changes the physical
3 dimensions of an eligible support structure if it meets any of the following criteria:

4 1. For towers other than towers in the public rights-of-way, it increases the height of the tower
5 by more than 10% or by the height of one additional antenna array with separation from the
6 nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible
7 support structures, it increases the height of the structure by more than 10% or more than ten
8 feet, whichever is greater;

9 a. Changes in height should be measured from the original support structure in cases
10 where deployments are or will be separated horizontally, such as on buildings' rooftops;
11 in other circumstances, changes in height should be measured from the dimensions of
12 the tower or base station, inclusive of originally approved appurtenances and any
13 modifications that were approved prior to the passage of the Spectrum Act.

14 2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance
15 to the body of the tower that would protrude from the edge of the tower more than twenty
16 feet, or more than the width of the tower structure at the level of the appurtenance, whichever
17 is greater; for other eligible support structures, it involves adding an appurtenance to the body
18 of the structure that would protrude from the edge of the structure by more than six feet;

19 3. For any eligible support structure, it involves installation of more than the standard number
20 of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for
21 towers in the public rights-of-way and base stations, it involves installation of any new
22 equipment cabinets on the ground if there are no pre-existing ground cabinets associated with
23 the structure, or else involves installation of ground cabinets that are more than 10% larger in
24 height or overall volume than any other ground cabinets associated with the structure;

25 4. It entails any excavation or deployment outside the current site;

26 5. It would defeat the concealment elements of the eligible support structure; or

27 6. It does not comply with conditions associated with the siting approval of the construction or
28 modification of the eligible support structure or base station equipment, provided however that
29 this limitation does not apply to any modification that is non-compliant only in a manner that
30 would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

31

32

33 T

34 Tenant Improvement: Changes made to the interior of a commercial or industrial property by its owner
35 to accommodate the needs of a tenant such as floor and wall coverings, ceilings, partitions, air

1 conditioning, fire protection, and security. A tenant improvement is not a change of use of the building
2 or tenant space; however, it often occurs when a new tenant occupies a building.

3 Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or
4 authorized wireless communication service, including, but not limited to, radio transceivers, antennas,
5 coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment
6 associated with wireless communications services including, but not limited to, private, broadcast, and
7 public safety services, as well as unlicensed wireless services and fixed wireless services such as
8 microwave backhaul.

9
10 W

11 Wireless Communication Facility Site: For towers other than towers in the public rights-of-way, the
12 current boundaries of the leased or owned property surrounding the tower and any access or utility
13 easements currently related to the site, and, for other eligible support structures, further restricted to
14 that area in proximity to the structure and to other transmission equipment already deployed on the
15 ground.

16
17 Wireless Communication Facility Tower. Any structure built for the sole or primary purpose of
18 supporting any Commission-licensed or authorized antennas and their associated facilities, including
19 structures that are constructed for wireless communications services including, but not limited to,
20 private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless
21 services such as microwave backhaul, and the associated site.

Design Commission and Code Official Review

Existing Code 19.15

19.15.010(E)

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY |
|--|--------------------|---|-------------------|
| Ministerial Actions | | | |
| Design Review – Minor Exterior Modification Outside Town Center | Code Official | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Design commission |
| Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.04.010) Less Than \$100,000 | Code Official | Chapters 19.11 and 19.12 MICC, MICC 19.15.040 | Design commission |
| Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.04.010) \$100,000 or Greater | Design commission | Chapters 19.11 and 19.12 MICC, MICC 19.15.040 | Hearing examiner |
| Formal Design Review – Major New Construction | Design Commission | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Hearing Examiner |

19.15.040

D. Powers of the Commission.

1. No building permit or other required permit shall be issued by the city for any major new construction or minor exterior modification of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E).

F. Design Review Procedure.

1. General.

b. Scope. No building permit or other required permit shall be issued by the city for any major new construction or minor exterior modification of any regulated improvement without prior approval of the design commission or code official as authorized pursuant to MICC 19.15.010(E). Deviations from a plan approved by the design commission or code official shall be permitted only upon the filing and approval of an amended plan. In no instance shall the design commission's or code official's action conflict with the city's development code or other applicable city ordinances or with state or federal requirements.

c. Review Authority.

i. Major New Construction. The design commission shall conduct the design review and make compliance determinations regarding major new construction.

ii. Minor Exterior Modifications. The design commission or the code official shall conduct the design review and make compliance determinations regarding minor exterior modifications to existing structures and sites.

2. Review Process for Major New Construction.

a. Scope of Review. Design review of major new construction shall include new structures, new additions, remodeled structures, and site plan layout, and other improvements such as paving and landscaping when they are made in conjunction with changes to a structure.

3. Review Process for Minor Exterior Modification.

a. Scope of Review. Design review of minor exterior modifications shall include review of exterior modifications to any existing structures including paint, material, minor roof or facade changes, new additions, landscaping changes, and site plan modifications that do not qualify as major new construction or are undertaken independently from modification of an existing structure, and new or modified signs.

The code official shall have the authority to determine if a minor exterior modification is not significant, and therefore does not require formal design review, based on factors such as the scope, location, context and visibility of the change or modification. The code official may determine that formal design review is not required for minor exterior modifications including, but not limited to: repainting structures to similar colors; relocating, modifying or adding mechanical equipment; reorganization of portions of parking lots involving less than five

spaces; modifications to existing signs pertaining to sign locations or minor changes to color or text; modifications to locations of existing lighting; or minor changes to existing, approved landscaping. There shall be a rebuttable presumption of nonsignificance, and therefore no requirement of a formal design review, if all of the following conditions are met: (1) the cost of the work does not exceed 15 percent of the structure's current King County assessed value as of the time the initial application for the work is submitted, (2) there is no additional structure or parking lot, or any enlargement of or addition to an existing structure or parking lot, (3) the work does not cause the landscape area to fall below or further below the minimum landscape area requirements in MICC 19.12.040(B)(4), (4) the work does not remove or diminish an existing perimeter landscape screen, (5) the work does not include new or additional service or mechanical areas referred to in MICC 19.12.060, and (6) the work does not include additional exterior lighting or a new or enlarged exterior sign. If there is no current King County assessed value for a structure, a current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference.

Design Commission and Code Official Review

Proposed Code Version 1

c. Review Authority.

i. Design Commission Review. The design commission shall conduct the design review and make compliance determinations regarding:

(A) New buildings;

(B) New additions, remodels (exterior only), and roof and façade changes equal to or exceeding 50 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference. The applicant may use the King County Assessor's appraised value;

(C) Signs where a master sign plan has not been approved for the site;

(D) Site plan layout resulting from an additional parking lot or structured parking lot, or the enlargement of an existing parking lot or structured parking lot;

(E) Landscaping modifications that diminish an existing perimeter landscape screen; and

(F) Other improvements such as paving and landscaping when they are made in conjunction with changes to a building.

ii. Code Official Review. The code official shall conduct the design review and make compliance determinations regarding:

(A) New additions, remodels (exterior only), and roof and façade changes not exceeding 50 percent of the structure's current appraised value as of the time the initial application for the work is submitted. A current appraisal of the structure, which shall be provided by the applicant and acceptable to the code official, shall be used as the value point of reference;

(B) Signs where an approved master sign plan has been approved for the site;

(C) Relocating, modifying or adding mechanical equipment;

iii. 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 change or modification; and

iv. The tenant and property owner are responsible for ensuring that all development and activities, including but not limited to painting and landscaping, comply with Chapters 19.11 and 19.12.

Design Commission and Code Official Review

Proposed Code Version 2

A. The following development proposals shall require Design Commission review:

1. New buildings;
2. Any additions of gross floor area to an existing building(s)
3. Any alterations to an existing building that will result in a change of 50%, or more, of the exterior surface area;
4. Any alterations to a site, where the alteration will result in a change to the site design that affects more than 50% of the development proposal site; and,
5. Any alterations to existing facades, where the building is identified by the City as an historic structure.

B. All other development proposals requiring design review and not requiring Design Commission review under subsection (A) of this section 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

C. Exemptions from Design Review – The following activities shall be exempt from either Design Commission or Code Official design review:

1. Any activity which does not require a building permit; or
2. Interior work that does not alter the exterior of the structure; or
3. Normal building and site maintenance including repair and replacement that involves no material expansion or material change in design. For example, replacement in kind of roof

mounted heating and cooling equipment or ventilation equipment does not require design review.

D. Compliance Required. The tenant and property owner are responsible for ensuring that all activities that do not require development proposal approval, comply with the provisions of Chapters 19.11 and 19.12.

**CITY OF MERCER ISLAND
ORDINANCE NO. 18C-__**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING
MERCER ISLAND CITY CODE TITLES 17 AND 19 MICC REGARDING
CODE AMENDMENTS TO CLARIFY DEVELOPMENT STANDARDS**

WHEREAS, the Mercer Island City Code (MICC) establishes procedures for the processing of permits as part of its 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 permit processing procedures were necessary to ensure that permit processing was clear to staff and to the public was occurring consistent 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 of the Mercer Island City Code and recommend amendments to clarify the regulations to the City Council; and,

WHEREAS, on April 16, 2018, a Public Notice of Application was published in the City of Mercer Island Permit Bulletin regarding the zoning code text amendment proposal to give public notice of the proposed text amendment; and

WHEREAS, a public comment period was provided from April 16, 2018 through May 16, 2018 to obtain public comments regarding the proposed zoning code text amendment; and

WHEREAS, the adoption of procedures related to the processing of permits is exempt from SEPA review pursuant to WAC 197-11-800(19)(a) which states that procedural actions relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment are exempt from SEPA review.

WHEREAS, on March 14, 2018, a Notice of Public Hearing was published in the Mercer Island Reporter, giving public notice of the open record hearing in front of the Planning Commission and encouraging public participation; and

WHEREAS, the Mercer Island Planning Commission held a public hearing on April 18, 2018, and held two public meetings to consider clarifying amendments to the development standards; and

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the development regulations on June XX, 2018;

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

- Section 1:** **Adoption of amendments to Title 19 of the Mercer Island Municipal Code.**
The amendments to the Mercer Island City Code as set forth in Attachment “A” to this ordinance are hereby adopted.
- Section 2:** **Codification of the regulations.** The City Council authorizes the Development Services Group 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 Development Services Group 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 municipal 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 5:** **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.
- Section 6:** **Effective Date.** This Ordinance shall take effect and be in force on 5 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the _____ day of _____ 2018 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

Kari Sand, City Attorney

Allison Spietz, City Clerk

Date of Publication: _____

PUBLIC NOTICE OF APPLICATION



NOTICE IS HEREBY GIVEN of a proposed Zoning Text Revision to several chapters of Title 19 MICC as described below:

File No.: ZTR18-001

Description of Request: The proposal is to amend sections of Title 19, the city's zoning code, to update procedural requirements for land use applications. The amendments will affect how applications are processed but will not affect criteria or standards of the code.

Applicant/Owner: City of Mercer Island Development Services Group

Location of Property: All properties on Mercer Island

SEPA Compliance: The project is exempt from SEPA review pursuant to WAC 197-11-800(19)(a) which states that procedural actions relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment are exempt from SEPA review.

Please follow this file path to access the associated documents for this project:
<https://mieplan.mercergov.org/public/ZTR18-001/>

Project Documents: Draft code sections: 19.06, 19.07, 19.08, 19.09, 19.11, 19.12, 19.15, and 19.16

Written Comments: **This may be the only opportunity to comment on the proposal.** Written comments on this proposal may be submitted to the City of Mercer Island either by email, in person, or by mail to the City of Mercer Island, 9611 SE 36th Street, Mercer Island, WA 98040-3732. Anyone may comment on the proposal, receive notice, and request a copy of the decision once made.

Only those persons who submit written comments or participate at the public hearing (if a hearing is required) will be parties of record; and only parties of record will have the right to appeal.

Public Hearing and Public Meeting: The public hearing will be held on April 18, 2018. A public meeting will be held on May 16, 2018.

Applicable Development Regulations: Applications for a Shoreline Exemption Permit are required to be processed as a Legislative Action, and applications for SEPA Checklist are required to be processed as an Administrative Action pursuant to Mercer Island City Code (MICC) 19.15.010(E). Processing requirements for an Ministerial Actions and Administrative Actions are further detailed in MICC 19.15.020. The Shoreline Management Master Program and SEPA procedures are contained in MICC 19.07 (19.07.110 and 19.07.120).

Other Associated Permits: None have been requested at this time

Environmental Documents: None required.

Application Process Information: Date of Application: N/A
Determined to Be Complete: N/A
Bulletin Notice: April 18, 2018
Date Mailed: N/A
Date Posted on Site: N/A
Comment Period Ends: 5:00 PM on May 16, 2018
Public Hearing: 6:00 PM on April 18, 2018

The application on file on this matter are available for review at the City of Mercer Island, Development Services Group, 9611 SE 36th Street, Mercer Island, Washington. Written comments and/or requests for additional information should be referred to:

Nicole Gaudette, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
(206) 275-7719
nicole.gaudette@mercergov.org

STATE OF WASHINGTON, COUNTY OF KING }
AFFIDAVIT OF PUBLICATION

PUBLIC NOTICE

Linda M Mills, being first duly sworn on oath that she is the Legal Advertising Representative of the

Mercer Island Reporter

a weekly newspaper, which newspaper is a legal newspaper of general circulation and is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a weekly newspaper in King County, Washington. The Mercer Island Reporter has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington for King County.

The notice in the exact form annexed was published in regular issues of the Mercer Island Reporter (and not in supplement form) which was regularly distributed to its subscribers during the below stated period. The annexed notice, a:

Public Notice

was published on March 14, 2018.

The full amount of the fee charged for said foregoing publication is the sum of \$57.30.


Linda Mills

Legal Advertising Representative, Mercer Island Reporter
Subscribed and sworn to me this 14th day of March, 2018.



Gale Gwin, Notary Public for the State of Washington, Residing in Covington, Washington



CITY OF
MERCER ISLAND, WA
NOTICE OF
PUBLIC HEARING

Notice is hereby given that the Mercer Island Planning Commission will hold a public hearing at the Planning Commission Meeting of April 18, 2018, at 6:00 pm. The Planning Commission will consider a zoning code text amendment (ZTR18-001) that would modify process and procedures for land use application processing.

The hearing will be held in the Council Chambers located at Mercer Island City Hall, 9611 SE 36th Street, Mercer Island, WA. For more information, please contact:

Nicole Gaudette
Senior Planner
206-275-7719
Published in the Mercer Island Reporter on March 14, 2018.
#2087416.



**CITY OF MERCER ISLAND
PLANNING COMMISSION**

AGENDA ITEM NO. 2

DATE: April 18, 2018

| | |
|----------------|--|
| File No.: | ZTR18-003 |
| Description: | This proposal is for an amendment intended to clean up the Mercer Island City Code in order to improve clarity and consistency between different sections of the Code. |
| Sponsor: | City of Mercer Island, Development Services Group |
| Exhibits: | <ol style="list-style-type: none">1. Draft Ordinance Amending MICC Titles 17 and 192. Draft Zoning Text Amendments (Attachment "A" to the Ordinance)3. Public Notice of Application and Notice of Public Meeting Issued by the City of Mercer Island on March 14, 20184. Public Re-Notice of Application and Re-Notice of Public Meeting Issued by the City of Mercer Island on April 16, 20185. Determination of Non-significance SEP18-004, dated April 16, 2018 |
| Staff Contact: | Andrew Leon, Planner |

I. SUMMARY

The City of Mercer Island is proposing amendments to Mercer Island City Code (MICC) Titles 17 and 19. The proposed amendments are intended to clean up the code in order to improve consistency between different sections of the code, to ensure that the code is consistent with the intent of the City Council, and to correct errors in typography and wording. The amendments will affect residential development standards, subdivision regulations, and definitions within the MICC.

Following adoption of the Residential Development Standards, the City Council directed staff to periodically review the MICC to ensure that it is consistent and free of errors. The currently proposed amendment is necessary to ensure that this objective is met. The proposed amendment consists of clarifying language in existing code, as well as ensuring that the code is consistent with the definitions found in MICC 19.16.

Staff has identified code sections that will require amendment. The code sections proposed for amendment at this time are simple in scale and involve minor edits to the code to improve consistency and correct errors. More complex code amendments will be addressed at a later date following creation

of the “user group”, and/or as the part of larger code update processes (i.e. Shoreline Master Program, Town Center, etc.).

II. PROCEDURAL REQUIREMENTS

The City issued a combined Notice of Application and Notice of Public Hearing on March 14, 2018. No letters of comment were received during the comment period, which ran from March 14, 2018 through April 13, 2018. It was determined that this proposal would not have a probable significant adverse impact on the environment, and a Determination of Non-Significance (DNS) was issued on April 16, 2018 (Exhibit 5). The DNS was published in the City’s permit bulletin and posted at City Hall on April 16, 2018. A Notice of Open Record Hearing was published in the Mercer Island Reporter on March 14, 2016, and re-noticed on April 16, 2018.

A Development Code amendment is a legislative action set forth in MICC 19.15.010(E). Applicable procedural requirements for a legislative action are contained within MICC 19.15.020, including the provision that the Planning Commission conduct an open record public hearing for all legislative actions. On April 18, 2018, the Planning Commission is scheduled to hold an open record public hearing on this matter to obtain comments from the public and deliberate on this proposed amendment. The Planning Commission will subsequently forward a recommendation for action to the City Council. As the final decision making authority for legislative actions, the City Council will then consider the matter in an open public meeting prior to taking final action. The date of the City Council’s first reading is yet to be scheduled.

III. CRITERIA FOR REVIEW

There are no specific criteria listed in the Mercer Island City Code for a code amendment. However, the proposed amendments cannot be inconsistent with the goals and policies set forth in the City’s Comprehensive Plan. Staff conducted a review of the Comprehensive Plan in light of the proposed amendments and has identified no areas of conflict or inconsistency.

Staff finds that the proposed code text amendments are consistent with the following comprehensive plan goals and polices:

Land Use Policy 15.1: Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments.

Housing 1.1: Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character.

Housing 1.2: Promote single family residential development that is sensitive to the quality, design, scale and character of existing neighborhoods.

Housing 1.4: Preserve the quality of existing residential areas by encouraging maintenance and revitalization of existing housing stock.

IV. FINDINGS & ANALYSIS

The following chart summarizes the proposed changes, which are fully contained within Exhibit 2:

| Regulation | Amendments |
|--------------------------------|---|
| 1. Variable Side Yard Setbacks | <p>a. MICC 19.02.020(C)(1)(c)(iii)((2))((b)) is proposed to be amended to require the lower of the existing or finished grade to be used to determine if a building’s wall height exceeds 25 feet, and therefore would require a 10-foot setback from an adjacent side property line.</p> <p>Basis for Change: <i>Setting the base line for the wall height measurement to the lower of the existing and finished grade will make this code consistent with other sections of the Residential Development Standards. In particular, this will ensure consistency with MICC 19.02.020(C)(1)(c)(iii)((2)).</i></p> |
| 2. Lot Coverage | <p>a. MICC 19.02.020(C)(3)(b) is proposed to be amended to change “Platforms, Walks, and Driveways” to “Hardscape and Driveways.”</p> <p>Basis for Change: <i>Patios and other types of hardscape are not currently included in MICC 19.02.020(C)(3)(b). Changing the text to “Hardscape and driveways” will include all types of hardscape in the allowed intrusions into required yards.</i></p> |
| 3. Final Plats | <p>a. MICC 19.08.050(C)(1)(e) is proposed to be amended to require “Scale shown graphically, datum, and north point” for final plats. The code currently requires “Scale shown graphically, date, and north point.”</p> <p>Basis for Change: <i>This amendment will correct a typo in the code. The correct work for this section is “datum.”</i></p> |
| 4. Definitions | <p>a. The definition for Major Single-Family Dwelling Permit in MICC 19.16 has been amended to be any change to a single-family dwelling that requires a building permit and results in an increase in the existing lot coverage of more than 100 square feet.</p> <p>Basis for Change: <i>Impervious surface is no longer used for lot coverage limitations on single-family residences under the revised Residential Development Standards code. The lot coverage limitations, as set forth in MICC 19.02.020(F), have replaced limits for impervious surface.</i></p> <p>b. The definition of Slope in MICC 19.16 has been amended to require lot slope to be measured using the high and low point of the lot as they existed before the proposed development. The definition is also being amended for clarity.</p> <p>Basis for Change: <i>Other sections of the code explicitly state that the existing or finished grade be used for calculations. As the definition for slope exists now a developer could grade a lot such that the overall slope is reduced, thereby allowing additional lot coverage.</i></p> |
| 5. Zoning Designations | <p>a. The abbreviation for the Public Institution zone has been changed from “P” to “PI.” This amendment affects various sections of Title 19, as well as MICC 17.07.010 and the City of Mercer Island zoning map.</p> <p>Basis for Change: <i>The current abbreviation for the Public Institution zone,</i></p> |

| | |
|--|--|
| | <i>“P,” does not clearly describe the zone. “P” can easily be mistaken for other meanings, such as “Park.” Changing the abbreviation of the Public Institution zone to “PI” will help to prevent such confusion.</i> |
|--|--|

V. STAFF RECOMMENDATION

Based on the analysis and findings included herein, staff recommends to the Planning Commission the following:

Recommended Motion: Move to recommend that the City Council approve the proposed amendments to Mercer Island City Code (MICC) Title 17 and 19, as detailed in Exhibits 1 and 2.

Alternative Motion: Move to recommend that the City Council approve the proposed amendments to Mercer Island City Code (MICC) Title 17 and 19, as detailed in Exhibits 1 and 2, provided that the proposed shall be modified as follows: *[describe modifications]*.

**CITY OF MERCER ISLAND
ORDINANCE NO. 18C-__**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING
MERCER ISLAND CITY CODE TITLES 17 AND 19 MICC REGARDING
CODE AMENDMENTS TO CLARIFY DEVELOPMENT STANDARDS**

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 consistent 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 of the Mercer Island City Code and recommend amendments to clarify the regulations to the City Council; and,

WHEREAS, the Mercer Island Planning Commission held a public hearing on April 18, 2018, and held two public meetings to consider clarifying amendments to the development standards; and

WHEREAS, the Mercer Island Comprehensive Plan Land Use Element and Housing 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 April 16, 2018; and,

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the development regulations on April 20, 2017;

Commented [AL1]: I'm not entirely sure what date to put here.

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

Section 1: **Adoption of amendments to Titles 17 and 19 of the Mercer Island Municipal Code.** The amendments to the Mercer Island City Code as set forth in Attachment "A" to this ordinance are hereby adopted.

Section 2: **Codification of the regulations.** The City Council authorizes the Development Services Group Director and the City Clerk to correct errors in Attachment A, codify the regulatory provisions of the amendment into Titles 17 and 19 of the Mercer Island City Code, and publish the amended code.

Section 3: Interpretation. The City Council authorizes the Development Services Group 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 municipal 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 5: Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6: Effective Date. This Ordinance shall take effect and be in force on 5 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the _____ day of _____ 2018 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

Kari Sand, City Attorney

Allison Spietz, City Clerk

Date of Publication: _____

PLANNING COMMISSION – RECOMMENDATION DRAFT
Draft Zoning Text Amendments
2018 Code Cleanup

17.07.010 Adoption

The 2015 Edition of the International Fire Code (IFC), as adopted and amended by the State Building Code Council in Chapter 51-54 WAC, as published by the International Code Council, is adopted by reference, together with the amendments and additions set forth below. The codes, appendices, and standards set forth in this chapter shall be filed with the city clerk and a copy made available for use and examination by the public, pursuant to RCW 35A.12.140.

The following appendices of the 2015 Edition of the International Fire Code are also adopted by reference: Appendix B – Fire-Flow Requirements for Buildings; Appendix C – Fire Hydrant Locations and Distribution; Appendix D – Fire Apparatus Access Roads; and Appendix J – Building Information Sign.

The geographic limits referred to in certain sections of the 2015 International Fire Code are hereby established as follows:

Section 6104.2 (geographic limits in which the storage of liquefied petroleum gas is restricted for the protection of heavily populated or congested areas): Zones TC, MF-2, MF-3 and PPI as defined in MICC Title 19, Unified Land Development Code.

...

19.01.040 Zone establishment.

| A. | Zone | Symbol |
|----|--------------------|------------|
| | Single-Family | R-8.4 |
| | Single-Family | R-9.6 |
| | Single-Family | R-12 |
| | Single-Family | R-15 |
| | Multiple-Family | MF-2L |
| | Multiple-Family | MF-2 |
| | Multiple-Family | MF-3 |
| | Business | B |
| | Planned Business | PBZ |
| | Commercial Offices | C-O |
| | Public Institution | <u>PPI</u> |
| | Town Center | TC |

...

G. When uncertainty exists as to the boundaries of any zones shown on any zone map, the following rules shall apply:

1 1. Boundaries shown on a map as approximately following street lines or lot lines shall be
2 construed as actually following such lines.

3 2. Where a boundary between zones divides a lot into two or more pieces, the entire lot shall be
4 deemed to be located in the first zone on the following list in which any part of the lot is
5 located: R-15, R-12, R-9.6, R-8.4, MF-2L, MF-3, MF-2, [PPI](#), PBZ, C-O, TC, and B. The location of the
6 zone boundary shall be determined by use of the scale appearing on the zone map unless the
7 location of the boundary is indicated by dimensions.

8 ...

9
10 19.02.020 Development Standards

11 ...

12 C. Yard Requirements.

13 1. Minimum. Except as otherwise provided in this section, each lot shall have front, rear, and
14 side yards not less than the depths or widths following:

15 a. Front yard depth: 20 feet or more.

16 b. Rear yard depth: 25 feet or more.

17 c. Side yards shall be provided as follows:

18 i. Total Depth.

19 (a) For lots with a lot width of 90 feet or less, the sum of the side yards'
20 depth shall be at least 15 feet.

21 (b) For lots with a lot width of more than 90 feet, the sum of the side
22 yards' depth shall be a width that is equal to at least 17 percent of the
23 lot width.

24 ii. Minimum Side Yard Depth.

25 (a) The minimum side yard depth abutting an interior lot line is five feet
26 or 33 percent of the aggregate side yard total depth, whichever is
27 greater.

28 (b) The minimum side yard depth abutting a street is five feet.

29 iii. Variable Side Yard Depth Requirement. For lots with an area of 6,000 square
30 feet or more, the minimum side yard depth abutting an interior lot line shall be
31 the greater of the minimum side yard depth required under subsection
32 (C)(1)(c)(ii) of this section, or as follows:

33 (a) Single-family dwellings shall provide a minimum side yard depth of
34 seven and one-half feet if the building:

1 (1) For nongabled roof end buildings, the height is more than 15
2 feet measured from existing or finished grade, whichever is
3 lower, to the top of the exterior wall facade adjoining the side
4 yard; or

5 (2) For gabled roof end buildings, the height is more than 18
6 feet measured from existing or finished grade, whichever is
7 lower, to the top of the gabled roof end adjoining the side yard.

8 (b) Single-family dwellings with a height of more than 25 feet measured
9 from the [existing or](#) finished grade, [whichever is lower](#), to the top of the
10 exterior wall facade adjoining the side yard shall provide a minimum
11 side yard depth of 10 feet.

12 ...

13 3. Intrusions into Required Yards.

14 a. Minor Building Elements.

15 i. Except as provided in subsection (C)(3)(a)(ii) of this section, porches,
16 chimney(s) and fireplace extensions, window wells, and unroofed, unenclosed
17 outside stairways and decks shall not project more than three feet into any
18 required yard. Eaves shall not protrude more than 18 inches into any required
19 yard.

20 ii. No penetration shall be allowed into the minimum side yard setback abutting
21 an interior lot line except where an existing flat-roofed house has been built to
22 the interior side yard setback line and the roof is changed to a pitched roof with
23 a minimum pitch of 4:12, the eaves may penetrate up to 18 inches into the side
24 yard setback.

25 b. ~~Platforms, Walks, Hardscape~~ and Driveways. ~~Platforms, walks, stairs, Hardscape~~ and
26 driveways not more than 30 inches above existing grade or finished grade, whichever is
27 lower, may be located in any required yard.

28 ...

29
30 Chapter 19.05 Special Purpose

31 Sections:

32 19.05.010 Public institution – [PPI](#).

33 19.05.020 Parking requirements.

34 19.05.010 Public institution – [PPI](#).

35 ...

1 19.05.020 Parking requirements.

2 A. The following parking requirements apply to all uses in the [PPI](#) zone.

3 ...

4

5 19.08.050 Final Plats

6 ...

7 C. Contents of the Final Plat. All final plats submitted to the city shall meet the requirements set out in
8 Chapter 58.09 RCW, Chapter 332-130 WAC, and those requirements set out below.

9 Final plat documents submitted to the city shall contain the information set out below. The final plat
10 documents shall be drawn on an 18-inch by 24-inch sheet size, allowing one-half inch for borders. The
11 index sheet must show the entire subdivision, with street and highway names and block numbers.

12 1. Identification and Description.

13 a. Name of the long subdivision, short subdivision or lot line revision.

14 b. A statement that the long subdivision or short subdivision has been made with the
15 free consent and in accordance with the desires of the owner or owners.

16 c. Location by section, township and range, or by other legal description.

17 d. The name and seal of the registered engineer or the registered land surveyor.

18 e. Scale shown graphically, [datedatum](#) and north point. The scale of the final plat shall
19 be such that all distances and bearings can be clearly and legibly shown thereon in their
20 proper proportions. Where there is a difference between the legal and actual field
21 distances and bearings, both distances and bearings shall be shown with the field
22 distances and bearings shown in brackets.

23 f. A description of property platted which shall be the same as that recorded in
24 preceding transfer of said property or that portion of said transfer covered by plat.
25 Should this description be cumbersome and not technically correct, a true and exact
26 description shall be shown upon the plat, together with original description. The correct
27 description shall follow the words: "The intent of the above description is to embrace all
28 the following described property."

29 g. A vicinity map showing the location of the plat relative to the surrounding area.

30 ...

31

32 19.10.060 Tree removal – Associated with a development proposal.

33 ...

1 B. Commercial or Multifamily Zoning Designations – Tree Removal.

2 1. In the [PPI](#), B, C-0, PBZ, TC, MF-2, MF-2L, and MF-3 zoning designations a tree permit is
3 required and will be granted if it meets any of the following criteria:

4 ...

5

6 19.16.010 Definitions

7 ...

8 Average Building Elevation: The reference point on the surface topography of a lot from which building
9 height is measured. The elevation in the R-8.4, R-9.6, R-12, and R-15 zoning designations is established
10 by averaging the elevation at existing grade or finished grade, whichever is lower. The elevation in the
11 [PPI](#) zoning designation is established by averaging the elevation at existing grade. The elevation points
12 to be averaged shall be located at the center of all exterior walls of the completed building; provided:

13 ...

14 Major Single-Family Dwelling Building Permit: A building permit for:

15 1. A new single-family dwelling on a vacant lot or as replacement of an existing or demolished
16 building; or

17 2. Any change to a single-family dwelling that requires a building permit and results in any of the
18 following:

19 a. An increase in the existing maximum building height above the highest point of the
20 building, except for a reroof that increases the highest point of the building by 12 inches
21 or less;

22 b. A reduction in any existing side yard;

23 c. An increase in the existing gross floor area of more than 500 square feet; or

24 d. An increase in the existing [impervious surface lot coverage on the lot](#) of more than
25 100 square feet.

26 ...

27 Slope: A measurement of the [average](#) incline of a lot or other piece of land calculated by subtracting the
28 lowest [existing](#) elevation from the highest [existing](#) elevation, and dividing the resulting number by the
29 shortest horizontal distance between these two points.

30 ...

CITY OF MERCER ISLAND, WA
NOTICE OF PUBLIC HEARING

Notice is hereby given that the Mercer Island Planning Commission will hold a public hearing at the Planning Commission Meeting of April 18, 2018, at 6:00 pm. The Planning Commission will consider a zoning code text amendment (ZTR18-003) that would improve clarity and correct errors in the Mercer Island Unified Land Development Code (Title 19).

The hearing will be held in the Council Chambers located at Mercer Island City Hall, 9611 SE 36th Street, Mercer Island, WA. For more information, please contact:

Andrew Leon
Planner
206-275-7720

PUBLIC NOTICE OF APPLICATION



NOTICE IS HEREBY GIVEN of a proposed Zoning Text Revision to several chapters of Titles 17 and 19 MICC as described below:

File No.: ZTR18-003

Description of Request: The proposal is to amend sections of Titles 17 and 19, the city's building and zoning codes, to increase clarity, to correct errors, and to improve consistency between sections of the code.

Applicant/Owner: City of Mercer Island Development Services Group

Location of Property: All properties on Mercer Island

SEPA Compliance: Following review of the submitted State Environmental Policy Act (SEPA) checklist, the City issued a SEPA Determination of Non-Significance (DNS) on April 16, 2018.

Project Documents: Please follow this file path to access the associated documents for this project:
<https://mieplan.mercergov.org/public/ZTR18-003/>

Draft code sections: 17.07, 19.01, 19.02, 19.05, 19.08, 19.10, 19.16.

Written Comments: **This may be the only opportunity to comment on the proposal.** Written comments on this proposal may be submitted to the City of Mercer Island either by email, in person, or by mail to the City of Mercer Island, 9611 SE 36th Street, Mercer Island, WA 98040-3732. Anyone may comment on the proposal, receive notice, and request a copy of the decision once made.

Only those persons who submit written comments or participate at the public hearing (if a hearing is required) will be parties of record; and only parties of record will have the right to appeal.

Public Hearing and Public Meeting: The public hearing will be held on April 18, 2018. A public meeting will be held on May 16, 2018.

| | |
|--|---|
| Applicable Development Regulations: | Applications for a Zoning Text Revision are required to be processed as a Legislative Action, and applications for SEPA Checklist are required to be processed as an Administrative Action pursuant to Mercer Island City Code (MICC) 19.15.010(E). Processing requirements for Legislative Actions and Administrative Actions are further detailed in MICC 19.15.020. The SEPA procedures are contained in MICC 19.07 (19.07.110 and 19.07.120). |
| Other Associated Permits: | None have been requested at this time |
| Environmental Documents: | None required. |
| Application Process Information: | Date of Application: N/A Determined to Be Complete: N/A Bulletin Notice: April 18, 2018 Date Mailed: N/A Date Posted on Site: N/A Comment Period Ends: 5:00 PM on May 16, 2018 Public Hearing: 6:00 PM on April 18, 2018 |

The application on file on this matter are available for review at the City of Mercer Island, Development Services Group, 9611 SE 36th Street, Mercer Island, Washington. Written comments and/or requests for additional information should be referred to:

Andrew Leon, Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
(206) 275-7720
andrew.leon@mercergov.org

DETERMINATION OF NON-SIGNIFICANCE (DNS)



Application No.: SEP18-003 and ZTR18-003

Description of proposal: Code Cleanup Amendment: The proposed amendments are intended to address inconsistencies and errors within the Mercer Island City Code. The proposed amendments could result in changes to existing regulations or add regulations governing building height, setbacks, landscaping, definitions, and other related amendments.

Proponent: City of Mercer Island

Location of proposal: The code revision would apply to all properties in the City of Mercer Island in all zoning districts.

Lead agency: City of Mercer Island

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to public on request.

X This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by April 30, 2018.

Responsible Official: Evan Maxim, Planning Manager
City of Mercer Island, 9611 SE 36th Street, Mercer Island, WA 98040
Phone: (206) 275-7605 FAX: (206) 275-7726

Date: April 16, 2018

Signature:

This decision to issue a Determination of non-significance (DNS) rather than to require an EIS, and mitigating measures and conditions required as a part of this DNS may be appealed to the City Council pursuant to Section 19.07.100 of the Mercer Island Unified Land Development Code, Environmental Procedures. Such an appeal must be consolidated with any appeal on the City's underlying permit action. Please contact the Responsible official for further information.



DEVELOPMENT SERVICES GROUP

9611 SE 36TH ST., MERCER ISLAND, WA 98040

(206) 275-7605

TO: Planning Commission

FROM: Robin Proebsting, Senior Planner

DATE: April 12, 2018

RE: Critical Areas Code and Shoreline Master Program Updates: Introduction to common terms and concepts

Summary

At the Planning Commission's April 18, 2018 meeting, staff will give a presentation on background information that will build on the introductory material provided to the commission. To be covered on the 18th are:

- Terms and concepts that will be used during the Critical Areas code update process
- Foundational information about critical areas
- Options for a decision-making framework

Background

Staff are in the processing of engaging a consultant to assist with gathering the best available science pertaining to critical areas protection. We expect to have reports for the Planning Commission in July of this year. To help put this technical information into context, staff are preparing background information to present to the commission on the 18th. Staff are also preparing binders to capture and organize this information.

Terms

A glossary of terms commonly used in the City's current critical areas code, as defined by the City's code, is attached to this memo and is intended to be saved in the Planning Commission's binders. Staff anticipates that this glossary will be an evolving document, with terms being added and updated as the code update process progresses. Staff urge commissioners to request additions to the glossary as questions on terms arise.

Concepts

At the April 18, 2018 meeting, staff will give a presentation on the different kinds of critical areas regulated by the City, including wetlands, Critical Aquifer Recharge Areas, geologically hazardous areas, fish and wildlife habitat, and watercourses. The presentation will cover definitions of these areas, as well

as a discussion of why regulating them is of value.

Note that the Critical Areas code update will include not only standards to protect critical areas (e.g. wetland buffers, or safety standards for development within geologically hazardous areas) but also requirements for procedure and administration of the code. Some of these administrative concepts were discussed in the March 15, 2018 memo to the commission (see the “Currently in Critical Areas Code/Currently not in Critical Areas Code” table); if commissioners have additional guidance on items to be flagged for further discussion, staff would appreciate hearing about these at our next meeting.

Decision-making framework

Lastly, staff will introduce ideas for a decision-making framework for the Planning Commission to use when discussion on policy guidance begins. Recall that state law requires cities to consider the best available science during the code update process, and to mitigate the risks of not following the best available science in cases where the adopted code departs from the scientific recommendation. Recall also that the critical areas code must be consistent with the City’s comprehensive plan, and that public comment should be considered. Staff are working on providing a tool that will help the Commission track these various inputs and will present decision-making options at the meeting.

Next Steps

Staff will provide a presentation at the Planning Commission’s April 18, 2018 meeting. If you have comments or questions before that time, please feel free to email me at robin.proebsting@mercergov.org.

Attachments

1. Glossary of selected terms from MICC 19.16, dated April 12, 2018

Glossary

Selected terms from MICC 19.16

Buffer: A designated area adjoining a critical area intended to protect the critical area from degradation

Critical Areas Determination: An administrative action by the code official pursuant to MICC 19.15.010(E) to allow reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope.

Critical Area Study: A study prepared by a qualified professional on existing conditions, potential impacts and mitigation measures for a critical area, consistent with MICC 19.07.050.

Development: 1. A piece of land that contains buildings, structures, and other modifications to the natural environment; or 2. The alteration of the natural environment through: a. The construction or exterior alteration of any building or structure, whether above or below ground or water, and any grading, filling, dredging, draining, channelizing, cutting, topping, or excavation associated with such construction or modification; b. The placing of permanent or temporary obstructions that interfere with the normal public use of the waters and lands subject to this code; c. The division of land into two or more parcels, and the adjustment of property lines between parcels.

Development Proposal: The application for a permit or other approval from the city of Mercer Island relative to the use or development of land.

Development Proposal Site: The boundaries of the lot or lots for which an applicant has or should have applied for approval from the city of Mercer Island to carry out a development proposal.

Ecological Functions or Shoreline Functions: The work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Erosion Hazard Areas: Those areas greater than 15 percent slope and subject to a severe risk of erosion due to wind, rain, water, slope and other natural agents including those soil types and/or areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" or "very severe" rill and inter-rill erosion hazard.

Geologic Hazard Areas: Areas susceptible to erosion, sliding, earthquake, or other geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology, vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard areas.

Landslide Hazard Areas: Those areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors, including: 1. Areas of historic failures; 2. Areas with all three of the following characteristics: a. Slopes steeper than 15 percent; and b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and c. Springs or ground water seepage; 3. Areas that have shown evidence of past movement or that are underlain or covered by mass wastage debris from past movements; 4. Areas potentially unstable because of rapid stream incision and stream bank erosion; or 5. Steep Slope. Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run.

Reasonable Use: A legal concept that has been and will be articulated by federal and state courts in regulatory takings and substantive due process cases. The decisionmaker must balance the public's interests against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, the reasonable use of the property remaining to the owner and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions. A reasonable use exception set forth in MICC 19.07.030(B) balances the public interests against the regulation being unduly oppressive to the property owner.

Seismic Hazard Areas: Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

Setback: *(Currently not defined in MICC)*

Steep Slope: Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run. Steep slopes do not include artificially created cut slopes or rockeries.

Watercourses: A course or route, formed by nature and generally consisting of a channel with a bed, banks, or sides throughout substantially all its length, along which surface waters, with some regularity (annually in the rainy season), naturally and normally flow in draining from higher to lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters that were naturally occurring prior to construction.

Wetlands: Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include artificial wetlands, such as irrigation and drainage ditches, grass-lined swales, canals, landscape amenities, and detention facilities or those wetlands, created after July 1, 1990, that were unintentionally created as a result of the construction of a road or street unless the artificial wetlands were created to mitigate the alteration of a naturally occurring wetland. For identifying and delineating a regulated wetland, the city will use the Wetland Manual.

Wildlife Habitat Conservation Areas: Those areas the city council determines are necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created consistent with WAC Title 365.

Yard: An open, unoccupied space, unobstructed from the ground to the sky, except where specifically provided by this code, on the lot on which a building is situated, required to be kept open by the yard requirements prescribed herein.



DEVELOPMENT SERVICES GROUP

9611 SE 36TH ST., MERCER ISLAND, WA 98040

(206) 275-7605

TO: Planning Commission

FROM: Evan Maxim, Planning Manager

DATE: April 18, 2018

RE: **2018 Comprehensive Plan Amendments Nos. 10 and 14 – 2nd Meeting**

Summary

Following Planning Commission confirmation of the direction on February 7, 2018, the City staff has prepared a draft amendment for Comprehensive Plan Amendment No. 10 – creating policy support for residential development that is accessible and incorporates universal design for further review by the Planning Commission on April 18, 2018 (Attachment A, Amendment No. 10).

City staff has also prepared a draft amendment for Comprehensive Plan Amendment No. 14 for Planning Commission review and further direction to city staff.

Presuming no further Planning Commission review is required prior to the public hearing, item No. 10 will be queued up for a final review with the Planning Commission in August 2018. Item No. 14 will return for further Planning Commission review on June 20.

Background

Amendment #10. The Housing Element of the Mercer Island Comprehensive Plan contains several goals and policies broadly related to creating support for aging in place, accommodating diverse family types, and supporting accessible residential development. However, none of the goals and policies speak directly to these subject areas, consequently this amendment focuses primarily on building upon the existing policies and goals.

Following the Planning Commission’s review on February 7, 2018, the City staff met with Commissioner Mechem. Following this discussion, staff shared a draft of the proposed Comprehensive Plan amendments for further review by Commissioner Mechem. On April 18, 2018, staff anticipates that the Planning Commission will review the proposed draft and provide direction to staff in advance of the public hearing scheduled for August 29, 2018.

Amendment #14. The City Council has requested that the Planning Commission create goals and policies that support the development of regulatory tools that would provide flexibility and facilitate the

creation of less expensive housing options (Attachment B, Resolution 1534). Staff understands that the policy support should include language that both: A) supports the use of innovative regulatory approval mechanisms (e.g. PUDs, pilot program ordinances, etc.); and B) allows for increased flexibility in the design standards applied to a proposed subdivision (e.g. reduced lot sizes, modified setbacks, etc.) in return for a specified public benefit (e.g. increased vegetated open space, accessible homes, sustainable home design, etc.)

The specific docket item refers to “Planned Unit Development” or PUD regulations. PUDs are used generally to allow for additional flexibility in the design of a subdivision or short subdivision; for example, by allowing for smaller lot sizes and integrated design of the lots and buildings. The additional flexibility in design typically requires that the developer commit to public amenities of the sort described above (e.g. open space preservation, sustainable design, etc.) While PUDs are a good approach to this type of discussion, there may be other tools (e.g. a pilot program ordinance) that would work better for the City of Mercer Island. City staff has drafted policy language (Attachment A, Amendment No. 14), which would support the creation of a PUD ordinance, or other land use entitlement tool, for Planning Commission review and discussion.

Next Steps

At the April 18th meeting, staff will provide a brief overview of the Comprehensive Plan Amendments, answer questions the Planning Commission may have, and seek any further input related to the draft amendments.

Presuming no further Planning Commission review is required prior to the public hearing, item No. 10 will be queued up for a final review with the Planning Commission in August 2018. Item No. 14 will return for further Planning Commission review on June 20.

I welcome questions you may have at this stage of the process, as well as topics that you would like covered during the April 18th meeting. If you provide questions in advance, staff will attempt to address them at the meeting. I can be reached at evan.maxim@mercergov.org or 206-275-7732.

Attachments:

- A. Draft Comprehensive Plan Amendments No. 10 and 14
- B. Resolution 1534

2018 Comprehensive Plan Amendment Nos. 10 and 14 – Draft Text

Amendment 10

Amend Goal 2 of the Housing Element, to read:

Goal 2: Provide a variety of housing types and densities to address the current and future needs of all Mercer Island residents. To address current and future needs, support the creation of a variety of housing types that will support different family living styles and aging in place.

Amend Policy 2.3 of the Housing Element, to read:

Policy 2.3 Emphasize housing opportunities, including mixed-use development, affordable housing, ~~and~~ special needs housing, and aging in place, in the Town Center.

Amend Goal 3 of the Housing Element, to read:

Goal 3: Support the adequate preservation, improvement, and development of housing for ~~all~~the diverse economic and social segments of the Mercer Island community.

Create a new Policy 3.25 in the Housing Element, to read:

Policy 3.25 Remove barriers to, and support the creation of, residential housing that is wholly or partially accessible.

Amendment 14

Amend Goal 16 of the Land Use Element, to read:

GOAL 16: Achieve additional residential capacity in single family zones through flexible land use techniques and land use entitlement regulations.

Create a new Policy 16.6 in the Land Use Element, to read:

Policy 16.6 Create flexible residential development regulations and entitlement processes that support, and create incentives for, subdivisions that incorporate public amenities. The use of flexible residential development design should be used to encourage public amenities such as vegetated open space, accessible homes, sustainable development,

**CITY OF MERCER ISLAND
RESOLUTION NO. 1534**

**A RESOLUTION OF THE CITY OF MERCER ISLAND, WASHINGTON,
ESTABLISHING THE CITY'S 2018 COMPREHENSIVE PLAN AMENDMENT
DOCKET**

WHEREAS, the City of Mercer Island is required to plan under the Growth Management Act of 1990, as amended, including adopting and regularly updating and amending its Comprehensive Plan; and

WHEREAS, the Growth Management Act allows the City to amend the Comprehensive Plan on an annual basis; and

WHEREAS, public notice of the opportunity to apply for Comprehensive Plan amendments for 2017 was provided on August 16, 2017; and

WHEREAS, on October 18, 2017, the City of Mercer Island Planning Commission held a public meeting to allow for interested parties to comment on a preliminary docket of amendments and made a recommendation to the Mercer Island City Council on a final docket of amendments to be considered in 2018; and

WHEREAS, on November 6, 2017, the Mercer Island City Council held a public meeting to consider the Planning Commission's recommended final docket of amendments to be considered in 2018;

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AS FOLLOWS:

1. The City Council directs City staff and the Planning Commission to analyze, study, and make recommendations to the City Council on the proposed Comprehensive Plan amendments listed on the final docket attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AT ITS REGULAR MEETING ON THE 6th DAY OF NOVEMBER 2017.

CITY OF MERCER ISLAND



Bruce Bassett, Mayor

ATTEST:



Allison Spietz, City Clerk

RESOLUTION NO. 1534—EXHIBIT A

2018 Preliminary Comprehensive Plan Docket

| Item No. | Proposed By | Potentially Affected Section, Goal or Policy | Summary of proposal |
|-----------------|---------------------|--|---|
| 1 | City | Land Use Element / Land Use Map | Update the Land Use Element / Land Use Map for clarity and accuracy of map designations |
| 2 | City | Capital Facilities Element / Capital Facilities Plan | Update the Capital Facilities Plan in conjunction with the budget |
| 3 | City | Transportation Element | Update to address traffic modeling, LOS, non-motorized, and I-90 changes. |
| 4 | City | Land Use Element | Add policy support for participation in the King County Public Benefit Rating System |
| 5 | City | Land Use Element | Develop goals and policies supporting the requirements of the City National Pollution Discharge Elimination System (NPDES) permit and supporting low impact development. |
| 6 | City | Land Use Element | Develop goals and policies supporting the cultural arts |
| 7 | City | Land Use Element | Critical areas ordinance update - placeholder |
| 8 | Citizen | Land Use Element / Land Use Map. Potentially Transportation & Housing Elements | Create a new land use map designation “Private Community Facilities” or similar, for the properties currently occupied by the JCC, French American School, and Herzl-Ner Tamid (approximately 18 acres). This amendment to be accompanied by a zoning map and zoning code amendment. |
| 9 | Planning Commission | Land Use Element | Develop goals and policies supporting disaster planning and recovery. |
| 10 | Planning Commission | Housing Element | Develop goals and policies to promote universal design, disability access, and age friendly planning on Mercer Island |
| 11 | City Council | Land Use Element / Housing Element | Green incentive for single-family residential new construction projects |
| 12 | City Council | Land Use Element / Housing Element | Star Communities – placeholder |
| 13 | City Council | Land Use Element | Develop goals and policies that would more closely tie Town Center height allowances to the encouragement of public amenities including an expedited procedure that would enable property owners/developers to get tentative approval of additional height allowances based on proposed amenities |
| 14 | City Council | Land Use Element | Develop goals and policies that would support Planned Unit Development (PUD) proposals for new subdivisions in order to facilitate lot sizes that would encourage less expensive housing options |