# BUSINESS OF THE CITY COUNCIL
# CITY OF MERCER ISLAND, WA

**AB 4252**
**January 7, 2008**
**Regular Business**

| 2007 DEVELOPMENT CODE AMENDMENTS | **Proposed Council Action:** Conduct Second Reading of Ordinance No. 08C-01 and provide direction to staff. |
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| **DEPARTMENT OF** | Development Services Group (Steve Lancaster) |
| **COUNCIL LIAISON** | Steve Litzow |
| **EXHIBITS** | 1. Proposed Ordinance No. 08C-01<br>2. Matrix of Proposed Code Changes<br>3. Memorandum Regarding Placement of Temporary Signage |
| **APPROVED BY CITY MANAGER** | Rich Conrad 1-2-08 |

| | | |
|---|---|---|
| **AMOUNT OF EXPENDITURE** | $ | n/a |
| **AMOUNT BUDGETED** | $ | n/a |
| **APPROPRIATION REQUIRED** | $ | n/a |

## SUMMARY

On December 3, 2007, the City Council held a public hearing and conducted the first reading of Ordinance 08C-01. During deliberation and discussion, Council members requested staff to investigate the following items:

- Recommend a specific height for appurtenances in the Multi-Family Zone based on existing sections of the Mercer Island City Code.
- Would solar panels and windmills be allowed as an appurtenance to multi family residences?
- Provide an example of the effects of measuring building height in the Town Center from the final sidewalk elevation as opposed to "Average Building Elevation".
- Provide an analysis of potential changes to the Accessory Dwelling Unit section of the Mercer Island City Code.
- Investigate if placement of temporary signs between the curb and a park may be limited.

Staff has considered each of Council's requests and has the following analysis:

1. **Recommend a specific height for appurtenances in the Multi-Family Zone based on existing sections of the Mercer Island City Code:**

   Appurtenances are discussed and regulated in numerous sections of the Mercer Island City Code (MICC) including: Single Family Residential (19.02), Commercial (19.04), Town Center Development and Design Standards (19.11), Design Standards for Outside the Town Center (19.12) and definitions (19.16). Of these code sections, staff has determined that sections 19.02.010(D) and 19.12.060(B)(2)

most closely fit the rationale for inclusion of appurtenances in the multi-family zones. 19.02.010(D) states that appurtenances may extend up to a maximum of five feet above the height allowed for the main structure. MICC 19.12.060(B)(2) states that outside the Town Center, rooftop mechanical equipment must be hidden or screened from adjacent properties, public ways and parks. Because structures built in the MF zones are typically closer in height to a single family residence than the type of construction now seen in the Town Center, staff recommends a maximum allowed appurtenance height of five feet, as is allowed in the single family zones per MICC 19.020.010(D). The proposed change is reflected in the ordinance as well as Exhibit 2, item numbers eight and nine.

**2. Would solar panels and windmills be allowed as appurtenances to multi family residences?**

Depending upon the specific design, solar panels and windmills would likely be allowed as appurtenances subject to the maximum height requirements. This code provision allows for the mechanical needs of the building, such as areas for mechanical and elevator equipment, chimneys, antennas, communication facilities, smoke and ventilation stacks.

**3. Provide an example of the effects of measuring building height in the Town Center from the final sidewalk elevation as opposed to "Average Building Elevation".**

Staff has provided further clarification language in the proposed code text amendment, as a result of Council's request to provide examples to better understand the proposed change.

Further, staff has reviewed two structures in the Town Center to determine what height difference, if any, there would be if structure height was measured from the existing grade elevation verses final sidewalk elevation. Staff reviewed The Mercer, located at 7650 SE 27$^{th}$ St, and the proposed BRE property at the old Safeway site located at 2441 76$^{th}$ Ave SE. Because sidewalks exist at both properties prior to development, the total allowed height would be the same with and without the amendment.

The proposed change is reflected in the ordinance as well as Exhibit 2, item number 40.

**4. Provide an analysis of potential changes to the Accessory Dwelling Unit section of the Mercer Island City Code.**

Currently MICC 19.02.030(B)(4) limits the size of an Accessory Dwelling Unit (ADU) to 40% of the gross floor area of the primary dwelling unit or 900 square feet, whichever is less. At the December 3rd public hearing, Mr. Robert Thorpe requested that the City Council modify the 40% limitation. Mr. Thorpe put forward three options in a letter addressed to the City Council, as follows:

I. Remove 40% of principal structure text
II. Remove 40% of the principal structure text and replace with "shall not exceed 10% of lot area"
III. Leave 40% of the principal structure text and add "If the accessory dwelling unit is completely located on a single floor, the Director may allow the accessory dwelling unit to be 80 percent of the total square footage of the primary dwelling unit in order to efficiently use all floor area, so long as all other standards set forth in this chapter are met."

Staff was requested to examine and explain the potential effects of changing the maximum ADU size from 40% of the primary dwelling unit, to 80% of the primary dwelling unit.

The following table illustrates how the size of the primary dwelling translates into the size of the ADU based on the percentages.

| Primary Dwelling Unit Size (Excludes ADU and Garage) | 40% or 900 sq ft, whichever is less (Current Code) | 80% or 900 sq ft, whichever is less |
|---|---|---|
| 500 sq ft | ADU not allowed | 400 sq ft ADU |
| 550 sq ft | 220 sq ft ADU | 440 sq ft ADU |
| 1,125 sq ft | 450 sq ft ADU | 900 sq ft ADU |
| 2,000 sq ft | 800 sq ft ADU | 900 sq ft ADU |
| 2,250 sq ft | 900 sq ft ADU | 900 sq ft ADU |
| 2,500 sq ft | 900 sq ft ADU | 900 sq ft ADU |

As a fourth alternative, the City Council could choose to simply increase the percentage limit for all accessory dwelling units to 80%. In staff's opinion this would address Mr. Thorpe's concern while preserving consistency in the treatment of homes having differing layouts. This option would be accomplished by amending MICC 19.02.030(B)(4) as follows:

> 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 ~~40~~ 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. Investigate if placement of temporary signs placed between the curb and a park may be limited.**

Attached to this Agenda Bill as Exhibit 3 is a memorandum from the City Attorney addressing temporary signage. Additionally, as recommended by Council at the December 3, 2007 1st reading of the proposed code changes, staff has removed the 90 day limitation for temporary signs from the ordinance. This change is reflected in Exhibit 2, item number 10.

**Next Steps**

Staff requests that the City Council confirm or modify the changes to the draft ordinance described in this agenda bill, and provide direction to staff on any ADU or temporary sign regulation changes you wish to have incorporated. Staff will then finalize the ordinance and return for third reading at the next opportunity.

## RECOMMENDATION

*Steve Lancaster, Development Services Group Director*

ACTION: Conduct Second Reading and provide staff direction to finalize the Ordinance for third reading and adoption.

**CITY OF MERCER ISLAND**
**ORDINANCE NO. 08C-01**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON AMENDING MERCER ISLAND CITY CODE TITLE 19, UNIFIED LAND DEVELOPMENT CODE**

WHEREAS, the City of Mercer Island Municipal Code (MICC) contains Title 19, the Unified Land Development Code (ULDC), adopted on November 15, 1999 as Ordinance No. 99C-13;

WHEREAS, the City's Responsible Official reviewed the proposed amendments to the Chapter 19 under the provisions of the State Environmental Policy Act (SEPA) and issued a Determination of Non-Significance on October 3, 2007;

WHEREAS, the City complied with all public notice requirements for the Planning Commission open record public hearing and the City Council public hearing;

WHEREAS, the Mercer Island Planning Commission held an open record public hearing on November 7, 2007 consistent with ULDC 19.15.010(E) to consider the proposed amendments to Chapter 19;

WHEREAS, after hearing public testimony and deliberation, the Mercer Island Planning Commission issued a unanimous recommendation of approval of the proposed amendments to the Mercer Island City Council;

WHEREAS, the City Council held a public hearing consistent with ULDC 19.15.010(E) on December 3, 2007 and completed a first reading of this Ordinance;

WHEREAS, the City Council considered this Ordinance for second reading and adoption in January 2008; and

WHEREAS, after considering all public testimony and written comments, the City Council adopts the following Ordinance.

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

**Section 1:** **Chapter 19.02 Residential.** MICC 19.02.010 "Single-family", 19.02.020 "Lot requirements", 19.02.030 "Accessory dwelling units" and 19.02.040 "Garages and other accessory buildings" are hereby amended as follows:

**19.02.010 Single-family.**

A use not permitted by this section is prohibited. Please refer to MICC 19.06.010 for other prohibited uses.

… [sections (A) through (E) remain unchanged]

**19.02.020 Lot requirements.**

A. Minimum Lot Area.

R-8.4: The lot area shall be at least 8,400 square feet. Lot width shall be at least 60 feet and lot depth shall be at least 80 feet.

R-9.6: The lot area shall be at least 9,600 square feet. Lot width shall be at least 75 feet and lot depth shall be at least 80 feet.

R-12: The lot area shall be at least 12,000 square feet. Lot width shall be at least 75 feet and lot depth shall be at least 80 feet.

R-15: The lot area shall be at least 15,000 square feet. Lot width shall be at least 90 feet and lot depth shall be at least 80 feet.

1. Minimum lot area requirements do not apply to any lot that came into existence before September 28, 1960; however structures may be erected on the lot only if those structures comply with all other restrictions governing the zone in which the lot is located.

2. In determining whether a lot complies with the lot area requirements, the following shall be excluded: the ~~shorelands part~~ area between lateral lines of any such lot and any part of such lot which is part of a street.

B. Street Frontage. No building will be permitted on a lot that does not front onto a street acceptable to the city as substantially complying with the standards established for streets.

C. Yard Requirements.

1. Minimum. Except as otherwise provided in this section, each lot shall have front, rear, and side yards not less than the depths or widths following:

a. Front yard depth: 20 feet or more.

b. Rear yard depth: 25 feet or more.

c. Side yard depth: The sum of the side yards shall be at least 15 feet; provided, no side yard abutting an interior lot line shall be less than five feet, and no side yard abutting a street shall be less than 10 feet.

2. Yard Determination.

a. Front Yard. The front yard is the yard abutting an improved street from which the lot gains primary access or the yard abutting the entrance to a building and extending the full width of the lot. If this definition does not establish a front yard setback, the code official shall establish the front yard based upon orientation of the lot to surrounding lots and the means of access to the lot.

i. Waterfront Lot. On a waterfront lot, regardless of the location of access to the lot, the front yard may be measured from the property line opposite and generally parallel to the ordinary high water line.

b. Rear Yard. The rear yard is the yard opposite the front yard. The rear yard shall extend across the full width of the rear of the lot, and shall be measured between the rear line of the lot and the nearest point of the main building including an enclosed or covered porch. If this definition does not establish a rear yard setback for irregular shaped lots, the code official may establish the rear yard based on the following method: The rear yard shall be measured from a line or lines drawn from side lot line(s) to side lot line(s), at least ten (10) feet in length, parallel to and at a maximum distance from the front lot line.

c. Corner Lots. On corner lots the front yard shall be measured from the narrowest dimension of the lot abutting a street. The yard adjacent to the widest dimension of the lot abutting a street shall be a side yard. If a setback equivalent to or greater than required for a front yard is provided along the property lines abutting both streets, then only one of the remaining setbacks must be a rear yard. This code section shall apply except as provided for in 19.08.030(F)(1).

d. Side Yard. Any yards not designated as a front or rear yard shall be defined as a side yard.

… [the remainder of section (C) remains unchanged]

D. Lot Coverage.

1. Maximum Impervious Surface Limits for Lots. The total percentage of a lot that can be covered by impervious surfaces (including buildings) is limited by the slope of the lot for all single-family zones as follows:

| **Lot Slope** | **Lot Coverage** (limit for impervious surfaces) |
|---|---|
| Less than 15% | 40%* |
| 15% to less than 30% | 35% |
| 30% to 50% | 30% |
| Greater than 50% slope | 20% |

*Public and private schools, religious institutions, private clubs and public facilities (excluding public parks or designated open space) in single-family zones with slopes of less than 15 percent may be covered by the percentage of legally existing impervious surface that existed on May 1, 2006, as determined by the code official.

2. Exemptions. The following improvements will be exempt from the calculation of the maximum impervious surface limits set forth in subsection (D)(1) of this section:

a. Decks/Platforms. Decks and platforms constructed with gaps measuring one-eighth inch or greater between the boards which provide free drainage between the boards as determined by the code official shall be exempt from the calculation of maximum impervious surface limits so long as the surface below the deck or platform is not impervious.

b. Pavers. Pavers installed with a slope of five percent or less and covering no more than 10 percent of the total lot area will be calculated as only 75 percent impervious. Provided, however, that all pavers placed in driveways, private streets, access easements, parking areas and critical areas shall be considered 100 percent impervious.

c. Patios/Terraces. Uncovered patios/ terraces constructed of pavers shall be exempt from the maximum impervious surface limits.

d. Pedestrian-Oriented Walkways. Uncovered pedestrian walkways constructed with gravel or pavers not to exceed 36 inches in width shall be exempt from the maximum impervious surface limits.

e. Public Improvements. Open storm water retention/detention facilities, public rights-of-way and public pedestrian trails shall be exempt from the maximum impervious surface limits.

f. Rockeries/Retaining Walls. Rockeries and retaining walls shall be exempt from the maximum impervious surface limits.

3. Deviation. The code official may grant a deviation, allowing an additional five percent of lot coverage over the maximum requirements; provided, the applicant demonstrates through the submittal of an application and supporting documentation that the proposal meets one of the following criteria:

a. The proposal uses preferred practices, outlined in MICC ~~19.07.010(B)(2)~~19.09.100, which are appropriate for the lot; or

b. The lot has a unique shape or proportions (i.e., a flag lot, with a circuitous driveway corridor); or

c. The proposal minimizes impacts to critical areas and provides the minimum extent possible for the additional impervious surfaces.

The city shall provide notice for the proposed action as required by MICC 19.15.020 (D) and (E), Administration.

… [the remainder of section (C) remains unchanged]

… [sections (E) and (F) remain unchanged]

**19.02.030 Accessory dwelling units.**

… [section (A) remains unchanged]

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 40 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.

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

… [sections (C) through (G) remain unchanged]

**19.02.040 Garages and other accessory buildings.**

… [sections (A) and (B) remain unchanged]

C. Detached Accessory Building. Accessory buildings are not allowed in required yard setbacks; provided, one detached accessory building with a gross floor area of ~~120~~200 square feet or less and a height of 12 feet or less may be erected in the rear yard setback. If such an accessory building is to be located less than five feet from any property line, a joint agreement with the adjoining property owner(s) must be executed and recorded with the King County Department of Records and thereafter filed with the city.

… [sections (D) and (E) remain unchanged]

**Section 3:** **Chapter 19.03 Multiple-Family.** MICC 19.03.010 "Multiple-family" is hereby amended as follows:

**19.03.010 Multiple-family.**

… [sections (A) through (D) remain unchanged]

E. Building Height Limit.

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

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

… [sections (F) through (H) remain unchanged]

**Section 4:** **Chapter 19.06 General Regulations.** 19.06.040 "Wireless communications" is hereby amended as follows:

**19.06.040 Wireless communications.**

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

1. Permitted Use. Attached WCFs are permitted in the Town Center, commercial/office, Business Zone 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/Design Review. The approval process for WCFs in the Town Center, commercial/office and planned business zones shall be as follows:

a. Minor Exterior Modifications. An attached WCF shall be processed as a minor exterior modification with administrative review. The code official has discretion to send applications to the design commission for issues deemed significant.

b. Major New Construction. A WCF which requires a support structure shall be considered major new construction with review by the design commission.

… [sections (B) through (J) remain unchanged]

**Section 5:** **Chapter 19.07 Environment.** MICC 19.07.070 "Watercourses", 19.07.100 "Shoreline areas", 19.07.110 "Shoreline management master program" and 19.07.120 "Environmental procedures" are hereby amended as follows:

**19.07.070 Watercourses.**

… [section (A) remains unchanged]

B. Watercourse Buffers.

1. Watercourse Buffer Widths. Standard buffer widths shall be as follows, measured from the ordinary high water mark (OHW), or top of bank if the OHW cannot be determined through simple nontechnical observations.

| Watercourse Type | Standard (Base) Buffer Width (feet) | Minimum Buffer Width with Enhancement (feet) |
|---|---|---|
| Type 1 | 75 | 37 |
| Type 2 | 50 | 25 |
| Type 3 | 35 | 25 |
| Restored or Piped | 25 | Determined by the code official |

… [the remainder of section (B) remains unchanged]

… [sections (C) through (D) remain unchanged]

**19.07.100 Shoreline areas.**

Shorelands directly impact water quality as surface and subsurface waters are filtered back into the lake. Additionally, shorelines are a valuable fish habitat area characterized by lake bottom conditions, erosion tendencies, and the proximity to watercourse outfalls. These may combine to provide a suitable environment for spawning fish.

A. Critical Areas Delineations.

1. A survey to determine the line of ordinary high water (OHW) shall be current to within one year of the application for single lots, short subdivisions, long subdivisions, or lot line revisions.

2. The survey may be included in the site construction plan (see MICC 19.07.060, Reports and Surveys) or waived by city staff if the OHW has been delineated by an existing bulkhead.

3. Mark the shoreline setback on the site prior to the preconstruction meeting. ~~See MICC 19.07.010(A)(3), Performance for All Development.~~

… [sections (B) through (E) remain unchanged]

**19.07.110 Shoreline management master program.**

… [section (A) remains unchanged]

B. Shoreline Designated Environments.

1. Designated Environments. Different areas of the city's shoreline have different natural characteristics and development patterns. As a result, three shoreline designated environments are established to regulate developments and uses consistent with the specific conditions of the designated environments and to protect resources of the Mercer Island shoreline jurisdiction. They are:

a. Conservancy Environment. This environment constitutes large undeveloped areas with some natural constraints such as wetland conditions, containing a variety of flora and fauna. The purpose of this environment is to protect and manage the existing natural resources in order to achieve sustained resource utilization and provide recreational opportunities.

b. Urban Park. This environment consists of shoreline areas designated for public access and active and passive public recreation. It includes, but is not limited to street ends, public utilities and other publicly owned rights-of-way. The uses located in this environment should be water-dependent and designed to maintain the natural character of the shorelines.

c. Urban Residential. The purpose of this environment is to provide for residential and recreational utilization of the shorelines, compatible with the existing residential character in terms of bulk, scale and type of development.

2. Shoreline Environment Map. The map in Appendix F of this development code is the official map of the city designating the various shoreline environments and the shoreline jurisdiction within the city.

3. Permit Requirements for Shoreline Uses and Development within the Designated Environments. All proposed development within the shoreline jurisdiction shall be consistent with the regulations of this Shoreline Master Program, the Shoreline Management Act of 1971

and the Mercer Island development code. In addition all development shall conform to permit requirements of all other agencies having jurisdiction within the designated environments.

The following table specifies the shoreline uses and developments which may take place or be conducted within the designated environments. It also specifies the type of shoreline permit required and further states the necessary reviews under the State Environmental Policy Act (SEPA). The uses and developments listed in the matrix are allowed only if they are not in conflict with more restrictive regulations of the Mercer Island development code and are in compliance with the regulations specified in subsection D of this section.

Key:

CE: Categorically Exempt

SEP: Shoreline Exemption Permit

SDP: Substantial Development Permit

SEPA: Required Review under the State Environmental Policy Act

NP: Not Permitted Use

The regulations of the shoreline master program apply to all shoreline uses and development, whether or not that development is exempt from the permit requirements (CE, SEP, or SDP).

| | **Designated Environments** | | |
|---|---|---|---|
| **Shoreline Use** | **Conservancy Environment** | **Urban Park Environment** | **Urban Residential Environment** |
| Single-family residential and associated appurtenances | NP | NP | CE or SDP if the construction is not by an owner, lessee or contract purchaser for his/her own use or if alteration applies. |
| Multifamily residential | NP | NP | SDP, SEPA |
| Public and private recreational facilities and parks | SDP, SEPA | SDP, SEPA | SDP, SEPA |
| Moorage facilities (including piers, docks, piles, lift stations, or buoys) | SDP, SEPA | SDP, SEPA | SDP, SEPA |
| Commercial marinas, moorage and storage of commercial boats and ships | NP | NP | NP |
| Bulkheads and shoreline protective structures | SDP, SEPA | SDP, SEPA | SEP, SEPA |

| | | | |
|---|---|---|---|
| Breakwaters and jetties | NP | NP | NP |
| Utilities | SDP, SEPA | SDP, SEPA | CE, SEP or SDP, SEPA |
| Dredging | SDP, SEPA | SDP, SEPA | SDP, SEPA |
| Alterations over 250 cubic yards – outside the building footprint | SDP, SEPA | SDP, SEPA | SDP, SEPA |
| If a use is not listed in this matrix, it is not permitted. | | | |

C. Administration and Procedures.

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

a. Administering the shoreline master program.

b. Approving, approving with conditions or denying shoreline exemption permit, substantial development permits, variances and permit revisions in accordance with the provisions of this shoreline master program.

c. Determining compliance with Chapter 43.21C RCW, State Environmental Policy Act.

2. Permits and Decisions. No development shall be undertaken within the shoreline jurisdiction without first obtaining a permit in accordance with the procedures established in the shoreline master program. In addition such permit shall be in compliance with permit requirements of all other agencies having jurisdiction within the shoreline designated environment.

~~a. Categorical Exemptions. Construction and normal maintenance of a single-family dwellings by the owner, lessee or contract purchaser, for his/her own use, which complies with all requirements of this shoreline master program and the city of Mercer Island development code, including appurtenances, is categorically exempt (CE) from the substantial development permit. Construction authorized under this exemption shall be located landward of the ordinary high water mark.~~

~~b~~a. Shoreline Exemption Permit. A shoreline exemption permit (SEP) may be granted to the following development as long as such development is in compliance with all applicable requirements of this shoreline master program, the city of Mercer Island development code and WAC 173-27-040:

i. Any development of which the total cost or fair market value, whichever is higher, does not exceed $~~5,000~~5,718 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.

ii. 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 except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment. Normal maintenance of single-family dwellings is categorically exempt as stated above;

iii. 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;

iv. 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;

v. Construction or modification of navigational aids such as channel markers and anchor buoys;

vi. 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.

vii. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.

If a development is exempt from the requirements of the substantial development permit, but a deviation or variance from the provisions of the shoreline master program is required, the applicant must request said deviation or variance through the procedures established in this section.

c. Substantial Development Permit. A substantial development permit (SDP) is required for any development within a shoreline jurisdiction not covered under a categorical exemption or shoreline exemption permit. Requirements and procedures for securing a substantial development permit are established below. Compliance with all applicable federal and state regulations is also required.

d. Deviations and Deviation Criteria. The city planning commission shall have the authority to grant deviations from the regulations specified in Table B in subsection D of this section; provided, the proposed deviation:

i. Will not constitute a hazard to the public health, welfare, and safety, or be injurious to affected shoreline properties in the vicinity;

ii. Will not compromise a reasonable interest of the adjacent property owners;

iii. Is necessary to the reasonable enjoyment of property rights of the applicant; and

iv. Is not in conflict with the general intent and purpose of the SMA, the shoreline master program and the development code.

e. Variances and Variance Criteria. Variances to the shoreline master program requirements are only granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In addition, in all instances the applicant for a variance shall demonstrate strict compliance with all variance criteria set out in MICC 19.15.020(G)(4) and the following additional criteria:

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

ii. Variance permits for development that will be located landward of the ordinary high water mark may be authorized; provided, the applicant can demonstrate all of the following:

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

(b) That the hardship in subsection (C)(2)(e)(ii)(a) of this section 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 master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;

(d) That the requested 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

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

iii. Variance permits for development that will be located waterward of the ordinary high water mark may be authorized; provided, the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes reasonable use of the property not otherwise prohibited by the master program;

(b) That the proposal is consistent with the criteria established under subsections (C)(2)(e)(ii)(b) through (e) of this section; and

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

3. Permit Review Procedures.

Step 1. Application.

The applicant shall arrange a pre application meeting for all substantial development permits, deviations and variances. Upon completion of the pre-application meeting, a complete application including the required processing fees shall be filed with the City on approved forms to ensure compliance with development codes and standards. A complete application for the shoreline exemption permit (SEP), substantial development permit (SDP), or variance and SEPA checklist, if applicable, shall be filed with the city on required forms.

SEP Review Process: The city shall issue or deny the SEP within 10 calendar days of receiving the request, or after SEPA review. The city shall then send the SEP to the applicant and the Department of Ecology, pursuant to WAC 173-27-130, and to all other applicable local, state, or federal agencies.

Step 2. Public Notice.

Public notice of an application for a substantial development permit shall be made in accordance with the procedures set forth in MICC 19.15.020; provided, such notice shall be given at least 30 days before the date of final local action.

If an application is not exempt from SEPA and no prior SEPA notice has been given, the city shall publish the SEPA determination and a notice that comments on the SEPA documents may be made during the review of the SDP, deviation and variance application.

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.

Step 3. Review.

The Shoreline Management Act does not require that public hearing be held on SDP and/or variance application. The technical review of SDP and/or variance must ensure that the

proposal complies with the criteria of the shoreline master program, Shoreline Management Act policies and all requirements of the city of Mercer Island development code.

An open record hearing before the planning commission, as set out in MICC 19.15.020(F), shall be conducted on all deviation applications and may be conducted on the SDP or variance application when the following factors exist:

(a) The proposed development has broad public significance; or

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

(c) The cost of the proposed development, exclusive of land, will exceed $100,000.

Step 4. Decision.

After the 30-day comment period has ended, the city shall ~~within 15 days~~ decide whether to approve or deny any SDP, deviation and/or variance application, unless the applicant and any adverse parties agree in writing to an extension of time with a certain date.

The city's action in approving, approving with conditions, or denying SDP, deviation and/or variance shall be given in writing in the form required by WAC 173-27-120 (or its successor) and mailed to the applicant, all persons who submitted written comments, the Department of Ecology, the Washington State Attorney General, and all other applicable local, state, or federal agencies.

The city's action in approving, approving with conditions, or denying any SDP and/or deviation is final unless an appeal is filed in accordance with applicable law.

The final decision in approving, approving with conditions, or denying variance is rendered by the Department of Ecology in accordance with WAC 173-27-200, and to all other applicable local, state, or federal agencies.

Step 5. Filing.

The city's final action in approving, approving with conditions, or denying SDP, deviation and/or variance shall be filed with the Department of Ecology and Washington State Attorney General.

Step 6. Authorization to Commence Construction.

If the SDP and/or variance is approved, the applicant shall not begin construction until after the 21-day review period by the Department of Ecology is over and/or any appeals concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development, deviation and variance permits:

a. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years <u>of the effective date of a shoreline 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.</u> ~~after the approval of the permit or the permit shall terminate.~~

b. 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.

5. Suspension of Permits. The city may suspend any shoreline exemption, substantial development, deviation and variance permit when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a public nuisance. The

enforcement shall be in conformance with the procedures set forth in MICC 19.15.030, Enforcement.

6. Revisions. When an applicant seeks to revise a SDP, deviation and/or variance permit the

… [section (D) remains unchanged]

**19.07.120 Environmental procedures.**

… [sections (A) through (I) remain unchanged]

J. Determination of Categorical Exemption.

1. Upon the receipt of an application for a proposal, the receiving city department shall, and for city proposals, the initiating city department shall, determine whether the proposal is an action potentially subject to SEPA and, if so, whether it is categorically exempt. This determination shall be made based on the definition of action (WAC 197-11-704), and the process for determining categorical exemption (WAC 197-11-305). As required, city departments shall ensure that the total proposal is considered. If there is any question whether or not a proposal is exempt, then the responsible official shall be consulted.

2. If a proposal is exempt, none of the procedural requirements of this section apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal. The determination that a proposal is exempt shall be final and not subject to administrative review.

3. If the proposal is not categorically exempt, the city department making this determination (if different from proponent) shall notify the proponent of the proposal that it must submit an environmental checklist (or copies thereof) to the responsible official.

4. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

a. The city shall not give authorization for:

i. Any nonexempt action;

ii. Any action that would have an adverse environmental impact; or

iii. Any action that would limit the choice of alternatives;

b. A city department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

c. A city department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt actions were not approved.

5. The following types of construction shall be categorically exempt, except when undertaken wholly or partly on lands covered by water, or a rezone or any license governing emissions to the air or discharges to water is required:

a. The construction or location of any residential structures of four or fewer dwelling units;

b. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet or less of gross floor area and with associated parking facilities designed for 20 or fewer automobiles;

c. The construction of a parking lot designed for 20 or fewer automobiles;

d. Any landfill or excavation of ~~100~~ 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

i. Pursuant to MICC 19.07.040 (B)(3), projects requiring less than 100 cubic yards of fill in a wetland area shall be exempt from review under the State Environmental Policy Act.

ii. Pursuant to MICC 19.07.080 (B)(3), projects in a shoreline area that involve alterations under 250 cubic yards outside the building footprint shall be exempt from review under the State Environmental Policy Act.

… [sections (K) through (S) remain unchanged]

T. Administrative Appeals.

1. Except for SEPA procedural and substantive decisions related to permits, deviations and variances issued by the code official or hearing examiner under the shoreline management provisions or any legislative actions taken by the City Council ~~of the development code~~, the following shall be appealable to the planning commission under this section:

a. The decision to issue a determination of nonsignificance rather than to require an EIS;

b. Mitigation measures and conditions that are required as part of a determination of nonsignificance;

c. The adequacy of an FEIS or an SEIS;

d. Any conditions or denials of the proposed action under the authority of SEPA.

… [section (U) remains unchanged]

**Section 6:** **Chapter 19.08 Subdivisions.** MICC 19.08.010 "General provisions", 19.08.020 "Application procedures and requirements", 19.08.030 "Design standards" and 19.08.050 "Final plats" are hereby amended as follows:

**19.08.010 General provisions.**

… [sections (A) through (E) remain unchanged]

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

… [section (G) remains unchanged]

**19.08.020 Application procedures and requirements.**

… [sections (A) and (B) remain unchanged]

C. Applicants ~~for a long subdivision~~ shall prepare a concept sketch of the propose~~d~~al ~~long subdivision~~ for the preapplication meeting required under MICC 19.0~~7~~9.010(A)~~(1), Critical Areas, for all long subdivisions, short subdivisions, or lot line revisions~~.

… [sections (D) through (E) remain unchanged]

F. Preliminary Application Procedure.

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

a. The project does or does not make appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

b. The public use and interest will or will not be served by approval of the project; and

c. The project does or does not conform to applicable zoning and land use regulations.

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

3. Long Subdivisions.

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

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

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

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

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

5. Expiration of Approval.

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 ~~to the city council for approval~~. 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 revitalize an expired preliminary plat, a new application must be submitted.

6. No Construction before Application Approval. No construction of structures, utilities, storm drainage, grading, excavation, filling, or land clearing on any land within the proposed long subdivision, short subdivision, or lot line revision shall be allowed prior to preliminary approval of the application and until the applicant has secured the permits required under the Mercer Island Municipal Code.

**19.08.030 Design standards.**

A. Compliance with Other Laws and Regulations. The proposed subdivision shall comply with arterial, ~~community~~ capital facility, and land use elements of the comprehensive plan; all other chapters of the development code; the Shoreline Management Act; and other applicable legislation.

… [sections (B) through (F) remain unchanged]

G. Optional Standards for Development. In situations where designing a long subdivision or short subdivision to the requirements of subsections A through F of this section would substantially hinder the permanent retention of wooded or steep areas or other natural features; preclude the provision of parks, playgrounds, or other noncommercial recreational areas for neighborhood use and enjoyment; or would negatively impact the physiographic features and/or existing ground cover of the subject area, the applicant may request that the project be evaluated under the following standards:

1. The use of the land in the long subdivision or short subdivision shall be one permitted in the zone in which the long subdivision or short subdivision is located.

2. The number of lots shall not exceed the number that would otherwise be permitted within the area being subdivided, excluding the shorelands part of any such lot and any part of such lot that is part of a street.

3. An area suitable for a private or public open space tract shall be set aside for such use.

4. The lots may be of different areas, but the minimum lot area, minimum lot width, and minimum lot depth shall each be at least 75 percent of that otherwise required in the zone in which the long subdivision or short subdivision is located. In no case shall the lot area be less than 75% of that otherwise required in the zone. Lot size averaging must be incorporated if lot width or depth requirements are 75% of the minimum that would otherwise be required for the zone without utilizing the Optional Development Standards. Any designated open space or recreational tract shall not be considered a lot.

5. The ownership and use of any designated open space or recreational tract, if private, shall be shared by all property owners within the long subdivision or short subdivision. In addition, a right of entry shall be conveyed to the public to be exercised at the sole option of the city council if such area shall cease to be an open space or recreational tract.

6. The open space or recreational tract must remain in its approved configuration and be maintained in accordance with approved plans. Any deviation from the foregoing conditions must receive expressed approval from the planning commission.

**19.08.050 Final plats.**

A. Required Signatures.

1. Before the original or extended deadline for recording the final plat as set forth in MICC 19.08.020(F)(5), the applicant may file with the city the final plat of the proposed long subdivision, short subdivision, or lot line revision in the form prescribed by subsection C of this section.

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

3. After the final plat has been signed by the city engineer, it shall go to the ~~mayor, on behalf of the city council, in the case of a long subdivision, or the code official in the case of short subdivisions and lot line revisions,~~ code official for final signature.

4. Each long subdivision plat submitted for final signature shall be accompanied by the ~~following~~ recommendation~~s~~ for approval or disapproval of the~~:~~

~~a. Planning commission as to compliance with all terms of the preliminary approval of the proposed subdivision.~~

~~b.~~ City engineer as to the requirements of subsection (A)(2) of this section. The city engineer's signature on the final plat shall constitute such recommendation.

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

B. Recording of the Final Plat.

1. ~~When all signatures have been obtained, the city will transmit the mylar via U.S. mail to King County for recording or t~~The applicant ~~may~~ shall ~~personally~~ deliver the mylars to King County for recording.

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

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

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

Final plats submitted to the city shall consist of two mylars and four copies containing the information set out below. The mylars and copies shall be 18 inches by 22 inches in size, allowing one-half inch for borders. If more than one sheet is required for the mylars and copies, each sheet, including the index sheet, shall be the specified size. The index sheet must show the entire subdivision, with street and highway names and block numbers.

1. Identification and Description.

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

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

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

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

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

bearings, both distances and bearings shall be shown with the field distances and bearings shown in brackets.

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

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

2. Delineation.

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

b. Exact location, width, and name of all streets within and adjoining the plat, and the exact location and widths of all roadways, driveways, trail easements. The name of a street shall not duplicate that of any existing street in the city, unless the platted street be a new section or continuation of the existing street.

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

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

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

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

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

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

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

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

k. Building pads that meet the requirements of Chapter 19.07 MICC, Critical Areas, accurately shown with dimensions.

l. Critical slopes and watercourses as identified under Chapter 19.07 MICC.

m. Corner pins made of rebar with caps.

… [the rest of section (C) remains unchanged]

**Section 7:** **Chapter 19.09 Property Development.** MICC 19.09.010 "Preapplication meeting" and 19.09.070 "Street vacations" are hereby amended as follows:

**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, ~~for building permits for projects at least 500 square feet in area~~ and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under subsections 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.

D. 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 subsections 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.

**19.09.070 Street vacations.**

… [sections (A) through (C) remain unchanged]

D. City Council ~~Hearing~~ Meeting – Time Fixed.

1. Petition Method. If the petition for street vacation is signed by the owners of more than two-thirds of the property abutting upon the part of the street sought to be vacated, the city council by resolution shall fix a time when the petition shall be heard by the council. The date shall not be more than 60 days nor less than 20 days after the date of the passage of such resolution.

… [section (E) remains unchanged]

F. Public Notice. Public notice of a proposed street vacation shall be made in accordance with the procedures set forth in MICC 19.15.020; provided, at least 20 days prior to the city council ~~hearing~~ meeting on the proposed street vacation, and at least 20 days prior to consideration by the planning commission, the city clerk shall issue written notice of the hearings which shall be:

1. Posted in three of the most public places in the city and in a conspicuous place on a portion of the street proposed for vacation, or at a nearby location that can be viewed by the public; and
2. Mailed to residents of property located within 300 feet of the portion of the street or alley sought to be vacated.

… [sections (G) through (L) remain unchanged]

**Section 8:** **Chapter 19.10 Trees.** MICC 19.10.040 "Criteria" is hereby amended as follows:

**19.10.040 Criteria.**

… [section (A) remains unchanged]

B. Trees on Private Property. When a tree permit is required to cut a tree on private property, the tree permit will be granted if it meets any of the following criteria:

1. It is necessary for public safety, removal of hazardous trees, or removal of diseased or dead trees;
2. It is necessary to enable construction work on the property to proceed and the owner has used reasonable best efforts to design and locate any improvements and perform the construction work in a manner consistent with the purposes set forth in MICC 19.10.010;
3. It is necessary to enable any person to satisfy the terms and conditions of any covenant, condition, view easement or other easement, or other restriction encumbering the lot that was recorded on or before July 31, 2001; and subject to 19.10.080(A)(2).
4. It is part of the city's forest management program or regular tree maintenance program and the city is the applicant;
5. The permit seeks to cut one of the following common, short-lived "weedy" tree species: Alder, Bitter Cherry, or Black Cottonwood; or
6. It is desirable for the enhancement of the ecosystem or slope stability based upon professional reports in form and content acceptable to the city arborist.

… [section (C) remains unchanged]

**Section 8:** **Chapter 19.15 Administration.** MICC 19.15.010 "General procedures", and 19.15.020 "Permit review procedures" are hereby amended as follows:

**19.15.010 General procedures.**

… [sections (A) through (D) remain unchanged]

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions 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** | | | |
| 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 Adjustment Permit | Code official | Chapter 19.08 MICC | Hearing examiner |
| 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 | Design commission | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Hearing examiner |
| Final Short Plat Approval | Code official | Chapter 19.08 MICC | Planning commission |
| Seasonal Development Limitation Waiver | Building official or city arborist | MICC 19.10.030, 19.07.060(D)(4) | Building board of appeals |
| Development code interpretations | Code official | MICC 19.15.020(L) | Planning commission |
| Shoreline Exemption | Code official | MICC 19.07.010 | 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 | Planning commission |
| ~~Variance~~ | ~~Code official or hearing examiner~~ | ~~MICC 19.15.020(G)~~ | ~~Planning commission~~ |
| Deviation (Except Shoreline Deviations) | Code official ~~or hearing examiner~~ | MICC 19.15.020(G), and 19.01.070, 19.02.050.(F), 19.02.020(C)(2), 19.02.020(D)(3) | Planning commission |
| Critical Areas Determination | Code official | Chapter 19.07 MICC | Planning commission |

| | | | |
|---|---|---|---|
| Shoreline – Substantial Development Permit | Code official | MICC 19.07.110 | Shoreline hearings board |
| ~~Shoreline – Exemption~~ | ~~Code official~~ | ~~MICC 19.07.110~~ | ~~City council*~~ |
| SEPA Threshold Determination | Code official | MICC 19.07.120 | Planning commission |
| Short Plat Alteration and Vacations | Code official | MICC 19.08.010(G) | Hearing Examiner |
| Long Plat Alteration and Vacations | City Council via Planning Commission | MICC 19.08.010(F) | Superior Court |
| **Discretionary Actions** | | | |
| Conditional Use Permit | Planning commission | MICC 19.11.130(2), 19.15.020(G) | Hearing examiner |
| Reclassification (Rezone) | City council via planning commission* | MICC 19.15.020(G) | Superior court |
| Design Review – Major New Construction | Design commission | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Hearing examiner |
| Preliminary Long Plat Approval | City council via planning commission** | 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) and MICC 19.01.070 | Planning Commission |
| Variance from Short Plat Acreage Limitation | Planning commission | MICC 19.08.020 | City council |
| Critical Areas Reasonable Use Exception | Hearing examiner | MICC 19.07.030(B) | Superior Court |
| Street Vacation | City council via planning commission** | MICC 19.09.070 | Superior court |
| Shoreline Deviation | Planning commission | MICC 19.07.080 | City council |
| Shoreline Variance | Planning Commission | MICC 19.07.110(C)(2)(e) | State Shorelines Hearings Board |
| Impervious Surface Variance | Hearing examiner | MICC 19.02.020(D)(4) | Superior court |

| **Legislative Actions** | | | |
|---|---|---|---|
| Code Amendment | City council via planning commission** | MICC 19.15.020(G) | ~~Superior court~~Growth Management Hearings Board |
| Comprehensive Plan Amendment | City council via planning commission** | MICC 19.15.020(G) | ~~Superior court~~Growth Management Hearings Board |
| *Final rulings granting or denying an exemption under MICC ~~19.07.070~~ 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60). | | | |
| **The original action is by the planning commission which holds a public ~~meeting~~ hearing and makes recommendations to the city council which holds ~~an open record hearing~~ a public meeting and makes the final decision. | | | |

**19.15.020 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, 19.07.100, and 19.08.020).

… [sections (A) and (B) remain unchanged]

C. Determination of Completeness.

1. The city will not accept an incomplete application. An application is complete only when all information required on the application form and all submittal items required by code have ~~has~~ been provided to the satisfaction of the code official.
2. Within 28 days after receiving a development permit application, the city shall mail or provide in person a written determination to the applicant, stating either that the application is complete or that the application is incomplete and what is necessary to make the 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.
3. 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.
4. If the applicant fails to provide the required information within 90 days of the determination of incompleteness, 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.

… [sections (D) through (L) remain unchanged]

**Section 9:** **Chapter 19.16 Definitions.** MICC 19.16.010 "Definitions" is hereby amended as follows:

**19.16.010 Definitions.**

Words used in singular include the plural and the plural the singular.

**A**

Appurtenance:

1. Single-Family Residential: A structure which is necessarily connected to the use and enjoyment of a single-family dwelling. An appurtenance includes but is not limited to antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, garages, decks, driveways, utilities, fences, swimming pools, hot tubs, landscaping, irrigation, grading outside the building footprint which does not exceed 250 cubic yards and other similar minor construction.

2. Town Center and Multi Family Zones: A subordinate element added to a structure which is necessarily connected to its use and is not intended for human habitation or for any commercial purpose, other than the mechanical needs of the building, such as areas for mechanical and elevator equipment, chimneys, antennas, communication facilities, smoke and ventilation stacks.

Average Building Elevation: The reference point on the surface topography of a lot from which building height is measured. Elevation established by averaging the elevation at existing grade ~~prior to any development activity~~. The elevation points to be averaged shall be located at the center of all exterior walls of the completed building; provided:

1. Roof overhangs and eaves, chimneys and fireplaces, unenclosed projecting wall elements (columns and fin walls), unenclosed and unroofed stairs, and porches, decks and terraces may project outside exterior walls and are not to be considered as walls.

2. If the building is circular in shape, four points, 90 degrees apart, at the exterior walls, shall be used to calculate the average building elevation.

3. For properties within the Town Center: If a new sidewalk is to be installed as the result of a new development, the midpoint elevation for those walls adjacent to the new sidewalk shall be measured from the new sidewalk elevation, rather than existing grade prior to development activity. The City Engineer shall determine the final elevation of the sidewalk.

Formula:

Average Building Elevation = (Mid-point Elevation of Individual Wall Segment) x (Length of Individual Wall Segment) ÷ (Total Length of Wall Segments)

**S**

Subdivision: The division or platting of, or the act of division or platting of, land into two or more lots for the purpose of transfer of ownership, building development, or lease, whether immediate or future, and shall include all resubdivision of land.

1. Short Subdivision or Short Plat: A subdivision consisting of four or less lots on four or less acres.

2. Long Subdivision or Long Plat: A subdivision consisting of five or more lots on any number of acres or any number of lots on more than four acres.

… [all other definitions remain unchanged]

**Section 10:** **Severability/Validity.** The provisions of this ordinance are declared separate and severable. If any section, paragraph, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that they would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses or phrases may subsequently be fund by a competent authority to be unconstitutional or invalid.

**Section 11**: **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 12:** **Effective Date.** This Ordinance shall take effect and be in force on and after _____ ___, 2008 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 January, 2008 and signed in authentication of its passage.

CITY OF MERCER ISLAND

_____
, Mayor

ATTEST:

_____
Allison Spietz, City Clerk

Approved as to Form:

_____
Bob Sterbank, City Attorney

Date of Publication: _____

**Changes from the December 3, 2007 Council meeting are reflected in items 8, 9, 10, and 40.**

| # | CODE | EXISTING CODE | PROPOSED CHANGE | REASON FOR CHANGE |
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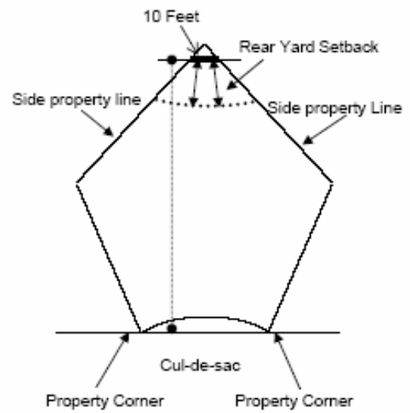
| **1.** | 19.02.010 | 19.02.010 Single-family. | **19.02.010 Single-family.**<br>A use not permitted by this section is prohibited. Please refer to MICC 19.06.010 for other prohibited uses. | Clarify that unless something is specifically allowed in the single family section of the code, it is not considered an authorized use. |
| **2.** | 19.02.020(A)(2) | In determining whether a lot complies with the lot area requirements, the following shall be excluded: the shorelands part of any such lot and any part of such lot which is part of a street. | In determining whether a lot complies with the lot area requirements, the following shall be excluded: the ~~shorelands~~area between lateral lines of any such lot and any part of such lot which is part of a street. | The word shorelands needs to be replaced with "Lateral line" per MICC 19.16.010 as well as previous code interpretations. |
| **3.** | 19.02.020(C)(2)(b) | b. Rear Yard. The rear yard is the yard opposite the front yard. The rear yard shall extend across the full width of the rear of the lot, and shall be measured between the rear line of the lot and the nearest point of the main building including an enclosed or covered porch. | b. Rear Yard. The rear yard is the yard opposite the front yard. The rear yard shall extend across the full width of the rear of the lot, and shall be measured between the rear line of the lot and the nearest point of the main building including an enclosed or covered porch. If this definition does not establish a rear yard setback for irregular shaped lots, the code official may establish the rear yard based on the following method: The rear yard shall be measured from a line or lines drawn from side lot line(s) to side lot line(s), at least ten (10) feet in length, parallel to and at a maximum distance from the front lot line. | To define how the rear setback is defined for irregularly shaped lots.<br>Example:<br>  <br> |
| **4.** | 19.02.020(C)(2)(c) | c. Corner Lots. On corner lots the front yard shall be measured from the narrowest dimension of the lot abutting a street. The yard adjacent to the widest dimension of the lot abutting a street shall be a side yard. If a setback equivalent to or greater than required for a front yard is provided along the property lines abutting both streets, then only one of the remaining setbacks must be a rear yard. | c. Corner Lots. On corner lots the front yard shall be measured from the narrowest dimension of the lot abutting a street. The yard adjacent to the widest dimension of the lot abutting a street shall be a side yard. If a setback equivalent to or greater than required for a front yard is provided along the property lines abutting both streets, then only one of the remaining setbacks must be a rear yard. This code section shall apply except as provided for in 19.08.030(F)(1). | The subdivision code allows for a variation for how corner lots are measured during the platting process. |
| **5.** | 19.02.020(D)(3)(a) | The proposal uses preferred practices, outlined in MICC 19.07.010(B)(2), which are appropriate for the lot; or | The proposal uses preferred practices, outlined in MICC 19.09.100~~19.07.010(B)(2), ,~~ which are appropriate for the lot; or | 19.07.010(B)(2) no longer exists in the City Code. Should be 19.09.100 |

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| **6.** | 19.02.030(B)(9) | 9. Parking. All single-family dwellings with an accessory dwelling unit shall meet the parking requirements applicable to the dwelling if it did not have such an accessory dwelling unit. | 9. Parking. All single-family dwellings with an accessory dwelling unit shall meet the parking requirements pursuant to MICC 19.02.020(E)(1) applicable to the dwelling if it did not have such an accessory dwelling unit. | The addition of the reference clarifies that further parking information for single family residences is included in the previous section. |
| **7.** | 19.02.040(C) | C. Detached Accessory Building. Accessory buildings are not allowed in required yard setbacks; provided, one detached accessory building with a gross floor area of 120 square feet or less and a height of 12 feet or less may be erected in the rear yard setback. If such an accessory building is to be located less than five feet from any property line, a joint agreement with the adjoining property owner(s) must be executed and recorded with the King County Department of Records and thereafter filed with the city. | C. Detached Accessory Building. Accessory buildings are not allowed in required yard setbacks; provided, one detached accessory building with a gross floor area of ~~120~~200 square feet or less and a height of 12 feet or less may be erected in the rear yard setback. If such an accessory building is to be located less than five feet from any property line, a joint agreement with the adjoining property owner(s) must be executed and recorded with the King County Department of Records and thereafter filed with the city. | This change is proposed so that City code matches that exemption allowed by the International building code previously adopted by the City of Mercer Island. |
| **8.** | 19.03.010(E)(1) | 1. MF-2L: No building shall exceed 24 feet or two stories in height (excluding daylight basements), whichever is less. | 1. MF-2L: No building shall exceed 24 feet or two stories in height (excluding daylight basements), whichever is less~~.~~, except appurtenances may extend to a maximum of five feet above the height allowed for the main structure. | All other mixed use and single family zones allow appurtenances (antennas, mechanical equipment, etc) to exceed building height as defined in 19.16.010.<br>Staff has recommended a five foot maximum for appurtenances in the MF zones. This most closely matches similar allowances in single family zones as described in MICC 19.02.010(D). |
| **9.** | 19.03.010(E)(2) | MF-2, MF-3: No building shall exceed 36 feet or three stories in height, whichever is less. | MF-2, MF-3: No building shall exceed 36 feet or three stories in height, whichever is less~~.~~, except appurtenances may extend to a maximum of five feet above the height allowed for the main structure. | Same change as above.<br><br>Staff has recommended a five foot maximum for appurtenances in the MF zones. This most closely matches similar allowances in single family zones as described in MICC 19.02.010(D). |
| **10.** | 19.06.020(A ) | A. General Provisions. All temporary signs in the city are subject to the following conditions:<br>1. Signs may not be placed on private property without permission of the owner.<br>2. All signs shall be unlit.<br>3. Signs shall not obstruct vehicular or pedestrian traffic.<br>4. It is the responsibility of the person posting a temporary sign to remove it.<br>5. Except as specified elsewhere in this section, temporary signs shall not exceed 60 inches above the ground and shall not exceed six square feet in area; provided, signs up to 16 square feet in area may be | A. General Provisions. All temporary signs in the city are subject to the following conditions:<br>1. Signs may not be placed on private property without permission of the owner.<br>2. All signs shall be unlit.<br>3. Signs shall not obstruct vehicular or pedestrian traffic.<br>4. It is the responsibility of the person posting a temporary sign to remove it.<br>5. Except as specified elsewhere in this section, temporary signs shall not exceed 60 inches above the ground and shall not exceed six square feet in area; provided, signs up to 16 square feet in area may be | 19.06.020 Define how many days a “Temporary Sign” can be hung before it is a code violation.<br><br>At the first reading of the proposed ordinance on December 3, 2007, Council requested removal of the time limitation for temporary signs. |

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| | | allowed subject to the issuance of a permit from the code official; further provided, both sides of an A-frame sign shall be counted in calculating the sign's area.<br>6. Signs in Public Rights-of-Way. Signs may not be placed on public property except for publicly owned rights-of-way. In addition to all other applicable conditions, signs placed in rights-of-way shall be subject to the following conditions:<br>a. Signs may be placed on rights-of-way adjacent to a single-family dwelling only with permission of the adjoining property owner.<br>b. Signs shall not create a traffic safety or maintenance problem, and the city may remove and dispose of any signs that do constitute a problem.<br>c. Signs placed on public property shall be freestanding and shall not be attached to any structure or vegetation. Signs attached to utility poles, traffic signs, street signs, or trees are specifically forbidden.<br>d. Signs shall be either an A-frame design or shall be attached to a stake driven into the ground well clear of tree roots, irrigation lines and any other underground vegetation or structures that could be damaged by such a stake. | allowed subject to the issuance of a permit from the code official; further provided, both sides of an A-frame sign shall be counted in calculating the sign's area.<br>6. Signs in Public Rights-of-Way. Signs may not be placed on public property except for publicly owned rights-of-way. In addition to all other applicable conditions, signs placed in rights-of-way shall be subject to the following conditions:<br>a. Signs may be placed on rights-of-way adjacent to a single-family dwelling only with permission of the adjoining property owner.<br>b. Signs shall not create a traffic safety or maintenance problem, and the city may remove and dispose of any signs that do constitute a problem.<br>c. Signs placed on public property shall be freestanding and shall not be attached to any structure or vegetation. Signs attached to utility poles, traffic signs, street signs, or trees are specifically forbidden.<br>d. Signs shall be either an A-frame design or shall be attached to a stake driven into the ground well clear of tree roots, irrigation lines and any other underground vegetation or structures that could be damaged by such a stake.<br>e. A temporary sign may only be erected for a maximum of 90 days during any 365 day period. | |
| **11.** | 19.06.040(A)(1) | A. Town Center, Commercial/Office and Planned Business Zones.<br>1. Permitted Use. Attached WCFs are permitted in the Town Center, commercial/office 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, Commercial/Office, Business Zone and Planned Business Zones.<br>1. Permitted Use. Attached WCFs are permitted in the Town Center, commercial/office, Business Zone 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. | Including the Business Zone in the Wireless communications section of the code allows location of wireless antennas in areas not zoned for multifamily and residential uses exclusively. |
| **12.** | 19.06.040(A)(1)(c) | Planned Business Zone (PBZ). 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. | 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. | See above code amendment. Other zones including the Town Center and Commercial/Office are outlined in previous sections of the code. |

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| **13.** | 19.07.070(B)(1) Table | Restored is a title in the left column under Watercourse Type. | Restored is changed to “Restored or Piped” | To implement Administrative Interpretation #07-04 intended to ensure that development near piped watercourses will preserve the 25’ buffer requirement intended by the MICC for piped watercourses that are daylighted in the future. |
| **14.** | 19.07.100(A)(3) | Mark the shoreline setback on the site prior to the preconstruction meeting. See MICC 19.07.010(A)(3), Performance for All Development. | Mark the shoreline setback on the site prior to the preconstruction meeting. ~~See MICC 19.07.010(A)(3), Performance for All Development.~~ | 19.07.010(A)(3) does not exist. A word search of the code for “Performance for all development” came up with no other results. Delete the sentence |
| **15.** | 19.07.110(B)(3) | Table, left column- Moorage facilities | Moorage facilities (including piers, docks, piles, lift stations, or buoys) | Adding detail from the definition in 19.16 into the table. |
| **16.** | 19.07.110(C)(2)(a) | Categorical Exemptions. Construction and normal maintenance of a single-family dwellings by the owner, lessee or contract purchaser, for his/her own use, which complies with all requirements of this shoreline master program and the city of Mercer Island development code, including appurtenances, is categorically exempt (CE) from the substantial development permit. Construction authorized under this exemption shall be located landward of the ordinary high water mark. | ~~Categorical Exemptions. Construction and normal maintenance of a single-family dwellings by the owner, lessee or contract purchaser, for his/her own use, which complies with all requirements of this shoreline master program and the city of Mercer Island development code, including appurtenances, is categorically exempt (CE) from the substantial development permit. Construction authorized under this exemption shall be located landward of the ordinary high water mark.~~ | To be consistent with WAC 173-27-050 – a letter of shoreline exemption is only required when a development is also subject to a US Army Corps of Engineers Section 10 Permit under the Rivers and Harbors Act of 1899 and/or a Section 404 Permit under the Federal Water Pollution Control Act of 1972. |
| **17.** | 19.07.110(C)(2)(b)(i) | Any development of which the total cost or fair market value, whichever is higher, does not exceed $5,000, if such development does not materially interfere with the normal public use of the water or shorelines of the state. | Any development of which the total cost or fair market value, whichever is higher, does not exceed $~~5,000~~5,718 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. | Pursuant to DOE letter dated August 14, 2007 based on inflation adjustment by Office of Financial Management. |
| **18.** | 19.07.110(C)(3) (Step 1) | Step 1. Application.<br>A complete application for the shoreline exemption permit (SEP), substantial development permit (SDP), or variance and SEPA checklist, if applicable, shall be filed with the city on required forms. | Step 1. Application.<br>The applicant shall arrange a pre application meeting for all substantial development permits, deviations and variances. Upon completion of the pre-application meeting, a complete application including the required processing fees shall be filed with the City on approved forms to ensure compliance with development codes and standards. | Clarify that a pre-application meeting is required as well as clarify application requirements. |
| **19.** | 19.07.110(C)(3) (Step 4) | After the 30-day comment period has ended, the city shall within 15 days decide whether to approve or deny any SDP, deviation and/or variance application, unless the applicant and any adverse parties agree in writing to an extension of time with a certain date. | After the 30-day comment period has ended, the city shall ~~within 15 days~~ decide whether to approve or deny any SDP, deviation and/or variance application, unless the applicant and any adverse parties agree in writing to an extension of time with a certain date. | To be consistent with MICC 19.15.020 (H) requiring project review to be completed within 120 days from the date an application is determined complete. |
| **20.** | 19.07.110(C)(4)(a) | 4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development, deviation and variance permits: | 4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development, deviation and variance permits: | This change is necessary to ensure compliance with WAC 173-27-090 |

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| | | a. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years after the approval of the permit or the permit shall terminate. | a. 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. 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. ~~after the approval of the permit or the permit shall terminate.~~ | |
| **21.** | 19.07.120(J)(5)(d) | Any landfill or excavation of 100 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder. | Any landfill or excavation of ~~100~~ 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder. | State law allows local jurisdictions to adjust this number to allow for up to 500 cubic yards as a SEPA threshold. Currently, this section is more restrictive than the fill allowance of 250 cubic yards within a shoreline area. |
| **22.** | 19.07.120(T) | T. Administrative Appeals.<br>1. Except for SEPA procedural and substantive decisions related to permits and variances issued by the code official or hearing examiner under the shoreline management provisions of the development code, the following shall be appealable to the planning commission under this section:<br>a. The decision to issue a determination of nonsignificance rather than to require an EIS;<br>b. Mitigation measures and conditions that are required as part of a determination of nonsignificance;<br>c. The adequacy of an FEIS or an SEIS;<br>d. Any conditions or denials of the proposed action under the authority of SEPA. | T. Administrative Appeals.<br>1. Except for SEPA procedural and substantive decisions related to permits, deviations and variances issued by the code official or hearing examiner under the shoreline management provisions or any legislative actions taken by the City Council ~~of the development code~~, the following shall be appealable to the planning commission under this section:<br>a. The decision to issue a determination of nonsignificance rather than to require an EIS;<br>b. Mitigation measures and conditions that are required as part of a determination of nonsignificance;<br>c. The adequacy of an FEIS or an SEIS;<br>d. Any conditions or denials of the proposed action under the authority of SEPA. | SEPA with shoreline actions are appealed to the Shorelines Hearings Board. SEPA with legislative actions are appealed under LUPA. |
| **23.** | 19.08.010(F) | F. Vacations of long subdivisions shall be governed by RCW 58.17.212. Alterations to long subdivisions shall be governed by RCW 58.17.215. All public hearings for both vacations and alterations of long subdivisions shall be before a hearing examiner, who shall make recommendations as to the vacation or alteration to the city council. | F. Vacations of long subdivisions shall be governed by RCW 58.17.212. Alterations to long subdivisions shall be governed by RCW 58.17.215. All public hearings for both vacations and alterations of long subdivisions shall be before ~~a hearing examiner~~ the Planning Commission, ~~who~~ which shall make recommendations as to the vacation or alteration to the city council. | 19.08.010(F) requires a recommendation by the Hearing Examiner to City Council for alterations and vacations of long plats. However 19.08.020 requires a alterations and vacations of long plats to be reviewed by the Planning Commission and the City Council. |

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| **24.** | 19.08.020(C) | Applicants for a long subdivision shall prepare a concept sketch of the proposed long subdivision for the preapplication meeting required under MICC 19.07.010(A)(1), Critical Areas, for all long subdivisions, short subdivisions, or lot line revisions. | Applicants ~~for a long subdivision~~ shall prepare a concept sketch of the propos~~ed~~al ~~long subdivision~~ for the preapplication meeting required under MICC 19.0~~7~~9.010(A)~~(1).~~, ~~Critical Areas, for all long subdivisions, short subdivisions, or lot line revisions.~~ | Delete the reference to long plats; all plats require the applicant to prepare a concept sketch for preapplication meetings.<br><br>19.07.010(A)(1) no longer exists. It should refer to 19.09.010(A). |
| **25.** | 19.08.020(F)(5)(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 to the city council for approval. 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. | 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 ~~to the city council for approval~~. 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. | Requiring city council approval conflicts with MICC 19.15.010(E), which is Ministerial Actions (code official approval) and current practice. |
| **26.** | 19.08.030(A) | Compliance with Other Laws and Regulations. The proposed subdivision shall comply with arterial, community facility, and land use elements of the comprehensive plan; all other chapters of the development code; the Shoreline Management Act; and other applicable legislation. | Compliance with Other Laws and Regulations. The proposed subdivision shall comply with arterial, ~~community~~ capital facility, and land use elements of the comprehensive plan; all other chapters of the development code; the Shoreline Management Act; and other applicable legislation. | The City of Mercer Island does not have a “community facility” element in the Comprehensive Plan. The City does have a Capital Facilities element. |
| **27.** | 19.08.030(G)(4) | The lots may be of different areas, but the minimum lot area shall be at least 75 percent of that otherwise required in the zone in which the long subdivision or short subdivision is located. Any designated open space or recreational tract shall not be considered a lot. | The lots may be of different areas, but the minimum lot area, minimum lot width, and minimum lot depth shall each be at least 75 percent of that otherwise required in the zone in which the long subdivision or short subdivision is located. In no case shall the lot area be less than 75% of that otherwise required in the zone. Lot size averaging must be incorporated if lot width or depth requirements are 75% of the minimum that would otherwise be required for the zone without utilizing the Optional Development Standards. Any designated open space or recreational tract shall not be considered a lot. | In order to avoid potential issues with minimum lot size, depth and width, the standards should be reduced proportionately to the allowed lot size reduction. |
| **28.** | 19.08.050(A)(3) | After the final plat has been signed by the city engineer, it shall go to the mayor, on behalf of the city council, in the case of a long subdivision, or the code official in the case of short subdivisions and lot line revisions, for final signature. | After the final plat has been signed by the city engineer, it shall go to the ~~mayor, on behalf of the city council, in the case of a long subdivision, or the code official in the case of short subdivisions and lot line revisions,~~ code official for final signature. | The change would allow the code official to sign all final plats. Final Long Plats would still be required to receive authorization by the City Council, but would now require the signature of staff rather than the mayor on the plat map. |
| **29.** | 19.08.050(A)(4) | Each long subdivision plat submitted for final signature shall be accompanied by the following recommendations for approval or disapproval:<br>a. Planning commission as to compliance with all terms of the preliminary approval of the proposed | Each long subdivision plat submitted for final signature shall be accompanied by the ~~following~~ recommendation~~s~~ for approval or disapproval of the~~:~~<br>~~a. Planning commission as to compliance with all terms of the preliminary approval of the proposed~~ | The proposed change is to reflect the proposed change made to 19.15.010 (E), as shown in Exhibit E for long subdivisions only receiving final approval by the City Council. |

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| | | subdivision.<br>b. City engineer as to the requirements of subsection (A)(2) of this section. The city engineer's signature on the final plat shall constitute such recommendation. | ~~subdivision.~~<br>~~b.~~ City engineer as to the requirements of subsection (A)(2) of this section. The city engineer's signature on the final plat shall constitute such recommendation. | To save two to four weeks of processing time for the applicant, additional Planning Commission meetings, and staff time, it is proposed that staff make a recommendation to City Council (as staff performs inspections and reviews the details of the plat to ensure the conditions of approval have been met.) |
| **30.** | 19.08.050(A)(5) | Final plats and final short plats shall be approved, disapproved, or returned to the applicant within 30 days from the date of filing, unless the applicant consents to an extension of such time period. | Final plats ~~and final short plats~~ shall be approved, disapproved, or returned to the applicant within 30 days from the date of filing, unless the applicant consents to an extension of such time period. | |
| **31.** | 19.08.050(B)(1) | When all signatures have been obtained, the city will transmit the mylar via U.S. mail to King County for recording or the applicant may personally deliver the mylars to King County for recording. | ~~When all signatures have been obtained, the city will transmit the mylar via U.S. mail to King County for recording or~~ tThe applicant ~~may~~ shall ~~personally~~ deliver the signed and approved mylars to King County for recording. | Remove City responsibility for recording final plats. |
| **32.** | 19.08.050(C)(2)(m) | No existing section. | m. Corner pins made of rebar with caps | Add language that corner stakes are required for subdivisions. Allowed by RCW 58.17 but not required. |
| **33.** | 19.09.010 | 19.09.010 Preapplication meeting.<br>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, for building permits for projects at least 500 square feet in area and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under subsections MICC 19.07.030(A)(1) through (5), (8) and (12).<br>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).<br>C. City staff are not authorized to approve any plan or design offered by the applicant at a preapplication meeting. (Ord. 05C-12 § 8). | 19.09.010 Preapplication and intake screening meetings.<br>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~~, for building permits for projects at least 500 square feet in area~~ and for any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under subsections 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.<br>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.<br>C. City staff are not authorized to approve any plan or design offered by the applicant at a preapplication or intake meeting. (Ord. 05C-12 § 8).<br>D. 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 | Clarify the purpose and requirements of a pre-application meeting. |

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| | | | or more; or any alteration of a critical area or buffer, except those alterations that are identified as allowed uses under subsections 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. | |
| **34.** | 19.09.070 | D. City Council Hearing– Time Fixed. | D. City Council ~~Hearing~~ Meeting– Time Fixed. | The public hearing for a street vacation is held before the Planning Commission. The City Council holds a public meeting which considers the public testimony given at the hearing along with the Planning Commission recommendation. |
| **35.** | 19.09.070 | F. Public Notice. Public notice of a proposed street vacation shall be made in accordance with the procedures set forth in MICC 19.15.020; provided, at least 20 days prior to the city council hearing on the proposed street vacation, and at least 20 days prior to consideration by the planning commission, the city clerk shall issue written notice of the hearings which shall be: | F. Public Notice. Public notice of a proposed street vacation shall be made in accordance with the procedures set forth in MICC 19.15.020; provided, at least 20 days prior to the city council ~~hearing~~ meeting on the proposed street vacation, and at least 20 days prior to consideration by the planning commission, the city clerk shall issue written notice of the hearings which shall be: | Change to the text for consistency with change above. |
| **36.** | 19.10.040(B)(3) | 3. It is necessary to enable any person to satisfy the terms and conditions of any covenant, condition or other restriction encumbering the lot that was recorded on or before July 31, 2001; | 3. It is necessary to enable any person to satisfy the terms and conditions of any covenant, condition, view easement or other easement, or other restriction encumbering the lot that was recorded on or before July 31, 2001; and subject to 19.10.080(A)(2). | For tree cutting permits, this additional language allows the City to recognize private covenants as a reason to allow tree removal while still adhering to critical area regulations referenced in 19.10.080 |
| **37.** | 19.15.010(E) | See Table on Page 38 | | |
| **38.** | 19.15.020(C)(1) | 1. The city will not accept an incomplete application. An application is complete when all information required on the application form has been provided to the satisfaction of the code official. | 1. The city will not accept an incomplete application. An application is complete only when all information required on the application form and all submittal items required by code have ~~has~~ been provided to the satisfaction of the code official. | Minor clarification language that an application is deemed complete when all materials required by the code are submitted, such as a completed application, fees, site plans, technical reports, etc. |
| **39.** | 19.16.110(A) | Appurtenance:<br>1. Single-Family Residential: A structure which is necessarily connected to the use and enjoyment of a single-family dwelling. An appurtenance includes but is not limited to antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, garages, decks, driveways, utilities, fences, swimming pools, hot tubs, landscaping, irrigation, grading outside the building footprint which does not exceed 250 | Appurtenance:<br>1. Single-Family Residential: A structure which is necessarily connected to the use and enjoyment of a single-family dwelling. An appurtenance includes but is not limited to antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, garages, decks, driveways, utilities, fences, swimming pools, hot tubs, landscaping, irrigation, grading outside the building footprint which does not exceed 250 | Include Multi Family Zoned areas to allow for mechanical equipment, fireplaces and similar items to be placed on the roof above allowed building height as allowed in other areas of Mercer Island. |

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| | | cubic yards and other similar minor construction.<br>2. Town Center: A subordinate element added to a structure which is necessarily connected to its use and is not intended for human habitation or for any commercial purpose, other than the mechanical needs of the building, such as areas for mechanical and elevator equipment, chimneys, antennas, communication facilities, smoke and ventilation stacks. | cubic yards and other similar minor construction.<br>2. Town Center and Multi Family Zones: A subordinate element added to a structure which is necessarily connected to its use and is not intended for human habitation or for any commercial purpose, other than the mechanical needs of the building, such as areas for mechanical and elevator equipment, chimneys, antennas, communication facilities, smoke and ventilation stacks. | |
| **40.** | 19.16.110(A) | Average Building Elevation: The reference point on the surface topography of a lot from which building height is measured. Elevation established by averaging the elevation at existing grade prior to any development activity. The elevation points to be averaged shall be located at the center of all exterior walls of the completed building; provided:<br>1. Roof overhangs and eaves, chimneys and fireplaces, unenclosed projecting wall elements (columns and fin walls), unenclosed and unroofed stairs, and porches, decks and terraces may project outside exterior walls and are not to be considered as walls.<br>2. If the building is circular in shape, four points, 90 degrees apart, at the exterior walls, shall be used to calculate the average building elevation. | Average Building Elevation: The reference point on the surface topography of a lot from which building height is measured. Elevation established by averaging the elevation at existing grade ~~prior to any development activity~~. The elevation points to be averaged shall be located at the center of all exterior walls of the completed building; provided:<br>1. Roof overhangs and eaves, chimneys and fireplaces, unenclosed projecting wall elements (columns and fin walls), unenclosed and unroofed stairs, and porches, decks and terraces may project outside exterior walls and are not to be considered as walls.<br>2. If the building is circular in shape, four points, 90 degrees apart, at the exterior walls, shall be used to calculate the average building elevation.<br>3. For properties within the Town Center: If a new sidewalk is to be installed as the result of a new development, the midpoint elevation for those walls adjacent to the new sidewalk shall be measured from the new sidewalk elevation, rather than existing grade prior to development activity. The City Engineer shall determine the final elevation of the sidewalk. | The sentence “prior to any development activity” should be removed due to ambiguity. For example what defines “any” development activity and at what point in the past should this activity be considered.<br><br>In the Town Center, lots are surrounded by, or will be required to be surrounded by approved sidewalks in the right-of-way. Because the new building will be located at grade, it makes sense to measure the building from the approved sidewalk elevation. |
| **41.** | 19.16.110(S) | Subdivision: The division of, or the act of division of, land into two or more lots for the purpose of transfer of ownership, building development, or lease, whether immediate or future, and shall include all resubdivision of land.<br>1. Short Subdivision: A subdivision consisting of four or less lots on four or less acres.<br>2. Long Subdivision: A subdivision consisting of five or more lots on any number of acres or any number of lots on more than four acres. | Subdivision: The division or platting of, or the act of division or platting of, land into two or more lots for the purpose of transfer of ownership, building development, or lease, whether immediate or future, and shall include all resubdivision and replat of land.<br>1. Short Subdivision or Short Plat: A subdivision or plat consisting of four or less lots on four or less acres.<br>2. Long Subdivision or Long Plat: A subdivision or plat consisting of five or more lots on any number of acres or any number of lots on more than four acres. | Added the proposed language to clarify code and be consistent with other sections that are worded similarly. |

# 2007 Proposed Code Amendments

## Proposed Changes to table 19.15.010(E)

| ACTION | DECISION AUTHORITY | CRITERIA | APPEAL AUTHORITY | Staff Comments |
|---|---|---|---|---|
| **Ministerial Actions** | | | | |
| 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 Adjustment Permit | Code official | Chapter 19.08 MICC | Hearing examiner | |
| 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 | Design commission | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Hearing examiner | |
| Final Short Plat Approval | Code official | Chapter 19.08 MICC | Planning commission | |
| Seasonal Development Limitation Waiver | Building official or city arborist | MICC 19.10.030, 19.07.060(D)(4) | Building board of appeals | |
| Development code interpretations | Code official | MICC 19.15.020(L) | Planning commission | |
| Shoreline – Exemption | Code official | MICC 19.07.010 | ~~City Council~~ Hearing Examiner * | This section is being moved to the ministerial action because it is a code official decision. Additionally, the hearing examiner is proposed to be the appeal authority for this type of permit. |
| **Administrative Actions** | | | | |
| Accessory Dwelling Unit Permit | Code official | MICC 19.02.030 | Hearing examiner | |
| Preliminary Short Plat | Code official | Chapter 19.08 MICC | Planning commission | Preliminary Short Plat approval is the Code Officials responsibility per MICC 19.083020(F)(2). |
| ~~Variance~~ | ~~Code official or hearing examiner~~ | ~~MICC 19.15.020(G)~~ | ~~Planning commission~~ | This section is proposed to be moved to discretionary actions. Variances are not administrative actions |
| Deviation (except Shoreline | Code official or ~~hearing~~ | MICC 19.15.020(G) and | Planning commission | The code does not define when the Code Official vs. Hearing Examiner hears the deviation. |

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| Deviations) | ~~examiner~~. | MICC 19.01.070, 19.02.050.F, 19.02.020.C.2, 19.02.020.D.3. | | |
| Critical Areas Determination | Code official | Chapter 19.07 MICC | Planning commission | |
| Shoreline – Substantial Development Permit | Code official | MICC 19.07.110 | Shoreline hearings board | |
| ~~Shoreline – Exemption~~ | ~~Code official~~ | ~~MICC 19.07.110~~ | ~~City council*~~ | Moving to Ministerial Actions Table |
| SEPA Threshold Determination | Code official | MICC 19.07.120 | Planning commission | |
| Short Plat Alteration and Vacations | Code official | MICC 19.08.010(G) | Hearing Examiner | |
| Long Plat Alteration and Vacations | City Council via Planning Commission | MICC 19.08.010(F) | Superior Court | This is proposed to be consistent with MICC 19.08.010(F) |
| **Discretionary Actions** | | | | |
| Conditional Use Permit | Planning commission | MICC 19.11.130(2), 19.15.020(G) | Hearing examiner | |
| Reclassification (Rezone) | City council via planning commission* | MICC 19.15.020(G) | Superior court | |
| Design Review – Major New Construction | Design commission | MICC 19.15.040, Chapters 19.11 and 19.12 MICC | Hearing examiner | |
| Preliminary Long Plat Approval | City council via planning commission** | Chapter 19.08 MICC | Superior court | |
| Final Long Plat Approval | City council via code official | Chapter 19.08 MICC | Superior court | The table does not currently specify Final Long Plat approval. RCW 58.17.170 requires City Council to approve the final plat.<br><br>RCW 58.17.150 does not allow a recommendation to modify the conditions of approval without the applicant's consent.<br><br>To save two to four weeks of processing time for the applicant, additional Planning Commission meetings, and staff time, it is proposed that staff make a recommendation to City Council (as staff performs inspections and reviews the details of the plat to ensure the conditions of approval have been met.) |
| Variance | Hearing examiner | MICC 19.15.020(G) and MICC 19.01.070 | Planning Commission | A Variance is a discretionary, not an administrative decision. |

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| Variance from Short Plat Acreage Limitation | Planning commission | MICC 19.08.020 | City council | |
| Critical Areas Reasonable Use Exception | Hearing examiner | MICC 19.07.030(B) | Superior Court | |
| Street Vacation | City council via planning commission** | MICC 19.09.070 | Superior court | |
| Shoreline Deviation | Planning commission | MICC 19.07.080, 19.07.110(C)(2)(d) | ~~City council~~State Shoreline Hearings Board | Change appeal authority to state board per WAC |
| Shoreline Variance | Planning commission | MICC 19.07.110(C)(2)(e) | State Shorelines Hearing Board | Previously omitted from the table. |
| Impervious Surface Variance | Hearing examiner | MICC 19.02.020(D)(4) | Superior court | |
| **Legislative Actions** | | | | |
| Code Amendment | City council via planning commission** | MICC 19.15.020(G) | ~~Superior court~~Growth Management Hearings Board | GMHB is the proper appeal authority for legislative actions per WAC |
| Comprehensive Plan Amendment | City council via planning commission** | MICC 19.15.020(G) | ~~Superior court~~Growth Management Hearings Board | GMHB is the proper appeal authority for legislative actions per WAC |
| *Final rulings granting or denying an exemption under MICC ~~19.07.070~~ 19.07.110 are not appealable to the shoreline hearings board (SHB No. 98-60). | | | | |
| **The original action is by the planning commission which holds a public ~~meeting~~ hearingand makes recommendations to the city council which holds ~~an open record hearing~~ a public meeting and makes the final decision. | | | | |

# *M E M O R A N D U M*

## *City Attorney's Office*

Date: December 31, 2007

To: City Council members

From: Bob C. Sterbank, City Attorney

**RE: Potential Amendment to Temporary Sign Code Provisions**

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**Introduction**

At the December 3, 2007 City Council meeting, the Council requested a legal opinion concerning whether the Mercer Island City Code provisions pertaining to temporary signs, specifically MICC 19.06.020, may be amended to prohibit temporary signs in the right-of-way adjacent to parks, unless approved by the City in advance. The short answer is that the Council likely may legally adopt such an amendment, so long as it is in the form of a blanket prohibition and the City's advance approval is not required on a case by case basis. Because the law in this arena is less than clear and subject to a great deal of debate, however, a lawsuit challenging the validity of such an amendment is also possible (if not likely).

**Analysis**

For purposes of evaluating free speech, courts place publicly-owned property into one of two categories. Different legal standards apply to restrictions on speech, depending on the category into which a particular piece of public property falls.

The first category is the "traditional public forum." As the Washington Supreme Court has noted, "At one end of the spectrum are streets and parks which 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Sanders v. Seattle*, 160 Wn.2d 198, 208 (2007).

At the other end of the spectrum lies the "nonpublic forum." Government property may be considered a nonpublic forum when it is not a traditional public forum and has not been otherwise designated by government as a forum for public communication. As the Supreme Court has observed, "the First Amendment does not guarantee access to property simply because it is owned or controlled by the government." Speech in nonpublic forums may be restricted if the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral. *Sanders*, 160 Wn.2d at 210.

Property within City rights-of-way adjacent to parks typically consists of a sidewalk or paved shoulder, and/or a planter strip. Such property is likely a "traditional public forum." *See, e.g.*,

*Collier v. Tacoma*, 121 Wn.2d 737, 747 (1993) ("The parking strips in which Collier and his supporters placed his political signs lie between the "streets and sidewalks" and thus are part of the "traditional public forum."). In *Sanders*, however, the Court indicated that part of the analysis to determine whether property is a traditional public forum or a nonpublic forum requires an analysis of whether a "principal purpose" of a particular piece of property is the free exchange of ideas, whether the property shares the characteristics of a traditional public forum, and the historical use of the property. If the Court has changed the test for identifying a traditional public forum, it is possible that the rights-of-way adjacent to certain parks (*e.g.*, Mercerdale) are a traditional public fora in light of historic uses of that property for expressive activities such as political signs, whereas the right-of-way adjacent to other parks might not be, depending on the facts pertaining to the particular property.

Assuming that the right-of-way that the proposed amendment would regulate is a traditional public forum, the next step is to determine the applicable legal test. Such a classification does not bar all regulation speech. Under the First Amendment to the United States Constitution, speech in a traditional public forum remains subject to reasonable time, place and manner restrictions, so long as they are: (1) content neutral; (2) narrowly tailored to serve a significant (rather than compelling) government interest; and (3) leave open ample alternative channels of communication. The public's interest in aesthetics and traffic safety has been recognized to be significant government interests. *State v. Lotze*, 92 Wn.2d 52, 58-60 (1979); *Collier v. Tacoma*. An amendment to MICC 19.06.020 to prohibit signs in right-of-way immediately adjacent to public parks would likely pass constitutional muster under the foregoing standard.

Less clear, however, is the applicable standard under the Washington Constitution. In *Sanders*, the Washington Court stated (citing *Collier*) that "Under the broad language of article I, section 5, we have held that restrictions on speech in a public forum can be imposed only on a showing of a compelling governmental interest." *Sanders*, 160 Wn.2d at 209-210 (emphasis added). In *Sanders*, the Court decided that the public easement from Westlake Mall to the monorail station was a nonpublic forum, despite its quasi-public status. Because it then applied the legal standard applicable to nonpublic fora, rather than the standard applicable to traditional public fora, it did not analyze further Collier's statement that a compelling (rather than merely significant) governmental interest is required to justify restrictions on speech under article I, section 5. The distinction is significant, because the Court in *Collier* concluded that a city's interest in traffic safety and aesthetics was not a compelling governmental interest sufficient to immunize its sign code from attack. Thus, if the "significant governmental interest" test applies, Mercer Island likely may exclude temporary signs from the rights-of-way adjacent to public parks. If the "compelling governmental interest" test applies, Mercer Island likely may not exclude temporary signs from such rights-of-way, unless a more compelling interest than traffic safety and aesthetics can be articulated.

*Collier* itself is less than clear as to which test would apply in this case. In *Collier*, the Court invalidated a City of Tacoma regulation that barred political signs in the right-of-way more than 60 days prior to an election. The Court reasoned that because the regulation distinguished between real estate signs, on the one hand, and political signs on the other, the regulation was subject matter based (*i.e.*, not content neutral), and therefore needed to meet the compelling interest test. *Collier*, 121 Wn.2d at 752-753. The proposed amendment contemplated by the Mercer Island Council, however, is entirely content neutral, which would suggest that it need

only further *significant* governmental interests, such as traffic safety and aesthetics. On the other hand, in a different part of the decision, *Collier* also states, without discussion, "We diverge from the Supreme Court on the state interest element of the time, place and manner test," as we believe restrictions on speech can be imposed consistent with Const. art. 1, Section 5 only upon showing a compelling state interest." 121 Wn.2d at 748 (emphasis added).

It is not possible to resolve this uncertainty without litigation. A good faith argument exists that the significant interest test applies.

The proposal that signs be permitted in those portions of the rights-of-way only upon governmental approval is more problematic. Code provisions that prohibit or limit speech in advance of the granting of discretionary approval are typically considered to be prior restraints on speech, which are typically *per se* unconstitutional under article I, section 5. *Sanders*, 160 Wn.2d at 224-225. (Recall that the City of Medina's solicitor / canvasser permit requirement was invalidated in part as an improper prior restraint). Where such permit schemes have been upheld (such as for parades or public gatherings), specific requirements stating the basis for any permit decision, mandating time limits in which decisions will be made, providing for appeal following denial, etc. are provided. In light of the additional uncertainty and complexity, it is recommended that if the Council desires to limit signs in rights-of-way adjacent to parks, it is recommended that it do so without imposing a permit requirement that would require discretionary decisions and approval on a case-by-case basis.

cc: Rich Conrad, City Manager

L:\Council\bcs-council re temporary sign code amendments