

**CITY OF MERCER ISLAND
ORDINANCE NO. 02C-09**

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON AMENDING ORDINANCE NO. 99C-13 TITLED "CITY OF MERCER ISLAND UNIFIED LAND DEVELOPMENT CODE", AND CODIFIED AT TITLE 19 OF THE MERCER ISLAND CITY CODE, BY REPEALING SECTION 19.02.050 RELATING TO FENCES AND RETAINING WALLS IN RESIDENTIAL ZONES AND REPLACING IT WITH A NEW SECTION 19.02.050 TITLED "FENCES, RETAINING WALLS AND ROCKERIES"; REPEALING AND REPLACING SECTION 19.02.020(C) TITLED "YARD REQUIREMENTS"; AMENDING SECTIONS 19.07.050, 19.07.080 AND 19.09.020 TO ALLOW FENCES UP TO 48" IN THE SHORELINE SETBACK; AMENDING SECTION 19.16.010 TITLED "DEFINITIONS" TO CLARIFY "YARD"; AND AMENDING SECTION 19.07.080 TO RAISE THE THRESHOLD DEVELOPMENT COST FOR EXEMPTION FROM THE SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT.

- A. 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;
- B. MICC 19.02.050 relating to fences and retaining walls in residential zones is being repealed and replaced with a new Section 19.02.050 titled "Fences, Retaining Walls and Rockeries";
- C. MICC section 19.02.020(C) titled "Yard Requirements" is being repealed and replaced with a new Section 19.02.050 with the same title;
- D. MICC 19.16.010 titled "Definitions" is being amended to clarify the determination of front and side yards under the definition of "Yard";
- E. MICC 19.07.050(C) titled "Shoreline areas, Site Coverage", MICC 19.07.080(D)(1) titled "Shoreline management master program, Use Regulations" and MICC 19.09.020(U) are being amended to allow fences up to 48 inches in height within the 25 foot setback from the ordinary high water mark;
- F. MICC 19.07.080(C)(2), titled "Shoreline management master program Administration and Procedures, Permits and Decisions" is being amended to make the Mercer Island Code consistent with a recent change in state law that increases the threshold development cost for exemption from the shoreline substantial development permit requirement from \$2500 to \$5000;
- G. The City's Responsible Official reviewed the proposed changes to the Residential Zoning Code under the provisions of the State Environmental Policy Act, found they

did not have any significant adverse impacts on the environment and issued a Determination of Non-Significance on August 28, 2002;

- H. The City complied with all public notice requirements for the Planning Commission public meeting and the City Council public hearing;
- I. The Mercer Island Planning Commission held its public meeting consistent with MICC 19.15.010(E) on September 18, 2002 to consider the proposed amendments;
- J. After hearing public testimony and after deliberation, the Mercer Island Planning Commission issued its recommendation to the Mercer Island City Council that it adopt the proposed amendments;
- K. The City Council held an open record hearing consistent with MICC 19.15.010(E) on October 21, 2002; and
- L. 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: Repeal of MICC 19.02.050 "Residential, Fences and retaining walls". MICC 19.02.050 "Residential, Fences and retaining walls" shall be repealed in its entirety simultaneously with the adoption of a new MICC 19.02.050 "Residential, Fences, Retaining Walls and Rockeries".

Section 2: Adoption of MICC 19.02.050, "Residential, Fences, Retaining Walls and Rockeries". A new MICC 19.02.050 "Residential, Fences, Retaining Walls and Rockeries" is hereby adopted as follows:

MICC 19.02.050 Fences, Retaining Walls and Rockeries

- A. Location in Required Yard.** Fences, retaining walls and rockeries may be located within any required yard.
- B. Location in Street.**
 - 1. Fences.** No fence shall be located in any improved street. Fences may be allowed in unimproved public streets subject to approval of the city engineer and the granting of an encroachment agreement as required by MICC 19.06.060.
 - 2. Retaining Walls and Rockeries.** Retaining walls and rockeries may be allowed in any street subject to the approval of the city engineer and the granting of an encroachment agreement covering any public street as required by MICC 19.06.060.

C. Height Measurement.

1. **Fences.** The height of a fence is measured from the top of the fence, including posts, to the existing grade or finished grade, whichever is lower, directly below the section of the fence being measured.
2. **Retaining Walls and Rockeries.** The height of a retaining wall or rockery is measured from the top of the retaining wall or rockery to the existing grade or finished grade, whichever is lower, directly below the retaining wall or rockery.

D. Retaining Walls and Rockeries: Requirements:

1. **Building Permit.** A building permit is required for retaining walls or rockeries over four feet in height, as determined by UBC §106.2.
2. **Engineer.** Any rockery requiring a building permit shall be designed and inspected by a licensed geotechnical engineer.
3. **Drainage control.** Drainage control of the area behind the rockery shall be provided for all rockeries.
4. **Maximum Height in Required Yard - Cut Slopes.** No retaining walls or rockeries, or any combination of retaining walls or rockeries, to the extent used to protect a cut or cuts into existing grade within any required yard, shall exceed a total of 144 inches in height. All retaining walls and/or rockeries within a required yard shall be included in calculating the maximum height of 144 inches. Such retaining walls or rockeries, or combination of retaining walls or rockeries, may be topped by a fence up to 72 inches in height or, if within that portion of any required yard that lies within 20 feet of any improved street, by a fence up to 42 inches in height.
5. **Maximum Height in Required Yard - Fill Slopes.** No retaining walls or rockeries, or any combination of retaining walls or rockeries, to the extent used to raise grade and protect a fill slope, shall exceed a total of 72 inches in height within any required yard. All retaining walls and/or rockeries within a required yard shall be included in calculating the maximum height of 72 inches. A fence or guardrail may be placed on top of such retaining wall or rockery, but in no event shall the combined height of the fence and any retaining wall or rockery exceed 72 inches. Provided; rockeries, retaining walls, fences, or any combination thereof, are limited to a maximum height of 42 inches within that portion of any required yard which lies within 20 feet of any improved street.

E. Fences.

1. **Maximum Height in Required Yard.** Fences or any combination of retaining walls, rockeries and fences are allowed to a maximum height of 72 inches within the required yards, except as provided in (D)(4) above. All fences, retaining walls and/or rockeries within a required yard shall be included in calculating the maximum height of 72 inches. Provided; fences, rockeries or retaining walls used to protect a fill, or any combination thereof, are limited to a maximum height of 42 inches within that portion of any required yard which lies within 20 feet of any improved street.
 - a. **Exception.** Open latticework or a similar architectural feature up to 18 inches above the maximum 72 inch height allowed may be constructed, provided it is

of open work design with at least 50% of its total surface area consisting of evenly distributed open spaces. This exception does not apply to any fence, rockery or retaining wall, or any combination thereof, limited to a maximum height of 42 inches; however, where the height of any fence, rockery, retaining wall, or any combination thereof is limited to 42 inches, an architectural feature of open work design as described above that is limited to the entrance of a walkway may be allowed if its total height is no greater than 90 inches.

2. **Fill/Berms.** No person shall place fill upon which to build a fence unless the total height of the fill plus the fence does not exceed the maximum height allowable for the fence without the fill.
3. **Shorelines.** Fence, rockeries and retaining walls located within any shoreland shall also comply with Chapter 19.07 MICC.

F. Fence Height Deviations. Deviations from the 42-inch height limitation set out in subsection E(1) and D(5) of this section shall be reviewed in the manner set out below:

1. For nonregulated improvements, a request for a deviation up to 72 inches shall be reviewed by the code official under the following procedure:
 - a. The applicant shall submit to the code official two copies of plot plans and elevations, drawn to scale, showing size and construction of the proposed fence, the location of all existing structures, streets, driveways, and landscaping.
 - b. The code official shall review the submitted plans with the city engineer and shall base the decision to approve or disapprove the requested deviation on factors of traffic visibility and other public and private safety considerations, lot shape, location and topography, and the nature, location and extent of adjoining public and private structures.
2. For regulated improvements, deviations shall be reviewed by the design commission under the procedures and criteria set forth in MICC 19.15.040.

G. Electric and barbed wire fences. Electric fences and barbed wire fences are not allowed.

H. Exceptions. These provisions do not apply to fences required by state law to enclose public utilities, or to chain link fences enclosing school grounds or public playgrounds, or to screens used for safety measures in public recreation areas such as ballfields.

Section 3: Repeal of MICC 19.02.020(C) "Residential, Lot Requirements, Yard Requirements". MICC 19.02.020(C) "Residential, Lot Requirements, Yard Requirements" shall be repealed in its entirety simultaneously with the adoption of a new MICC 19.02.020(C) "Yard Requirements".

Section 4: Adoption of MICC 19.02.020(C), "Residential, Lot Requirements, Yard Requirements". A new MICC 19.02.020(C) "Yard Requirements" is hereby adopted as follows:

19.02.020 Lot requirements.

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

- 3. Intrusions into Required Yards.**
 - a. Minor Building Elements.** Porches, chimney(s) and fireplace extensions, and unroofed, unenclosed outside stairways and decks shall not project more than three feet into any required yard. Eaves shall not protrude more than 18 inches into any required yard. Provided, no penetration shall be allowed into the minimum five-foot setback abutting an interior lot line except where an existing flat roofed house has been built to the interior side yard setback line and the roof is changed to a pitched roof with a minimum pitch of 4:12, the eaves may penetrate up to 18 inches into the side yard setback.

- b. Platforms, walks, and driveways.** Platforms, walks, and driveways not more than 30 inches above existing grade or finished grade may be located in any required yard.
- c. Fences, Retaining Walls and Rockeries.** Fences, retaining walls and rockeries are allowed in required yards as provided in MICC 19.02.050
- d. Garages and Other Accessory Buildings.** Garages and other accessory buildings are not allowed in required yards, except as provided in MICC 19.02.040.
- e. Heat Pumps, Air Compressors, Air Conditioning Units, and Other Similar Mechanical Equipment.** Heat pumps, air compressors, air conditioning units, and other similar mechanical equipment may be located within any required yard provided they will not exceed the maximum permissible noise levels set forth in WAC 173-60-040, which is hereby incorporated as though fully set forth herein. Any such equipment shall not be located within three (3) feet of any lot line.
- f. Architectural Features.** Freestanding architectural features such as columns or pedestals that designate an entrance to a walkway or driveway and do not exceed 42 inches in height are allowed in required yards.
- g. Other Structures.** Except as otherwise allowed in this subsection (3), structures over 30 inches in height from existing grade or finished grade, whichever is lower, may not be constructed in or otherwise intrude into a required yard.

Section 5: Amend Definitions. MICC 19.16.010, "Definitions," "Y" "Yards" shall be amended as follows:

Yard: An open, unoccupied space, unobstructed from the ground to the sky, except where specifically provided by this code, on the lot on which a building is situated, required to be kept open by the yard requirements prescribed herein.

1. **Front Yard:** ~~The yard adjacent to the property line from which vehicular access is provided.~~ 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.
2. **Rear Yard:** The yard opposite the front yard.
3. **Side Yard:** ~~The yard adjacent to the property line.~~ All Any yards not otherwise designated as a front or rear yard shall be defined as a side yard.

Section 6: Amend MICC 19.07.050 "Shoreline areas". MICC 19.07.050(C), Site Coverage shall be amended as follows:

C. **Site Coverage.** The amount of impervious surfaces which will be permitted is as follows:

Distance from OHW	Impervious Surface Limitations
0-25 feet	10% - No structure(s) <u>building(s)</u> allowed
26-50 feet	30% - Structure(s) allowed

The illustration that follows the text of 19.07.080(D) shall remain unchanged.

Section 7: Amend MICC 19.07.080 “Shoreline management master program” and MICC 19.09.020 “Uniform Swimming Pool, Spa and Hot Tub Code”. MICC 19.07.080(D), Use Regulations shall be amended as follows:

D. **Use Regulations.** All development within the shoreline jurisdiction shall be in compliance with all development requirements specified in this section.

1. Table A. Requirements for Development Located Landward from the OHWM

Setbacks for All Structures (Including Fences over 30 <u>48</u> Inches High) and Parking	A*	25 feet from the OHWM and all required setbacks of the development code
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The remainder of the chart of the existing 19.07.080(D) and illustrations that follow shall remain unchanged.

MICC 19.09.020(U) shall be amended as follows:

Section 321. Fencing. Outdoor pools shall be fenced so that unsupervised children and animals cannot enter the area used by bathers. The fencing shall be a solid structure of fence material not less than ~~five~~four (~~54~~) feet in height...and all latches shall be placed at least ~~five~~ (~~5~~) feet 54 inches above the ground or shall be made inaccessible to small children from the outside.

Section 8: Amend MICC 19.07.080 “Shoreline management master program” MICC 19.07.080(C)(2)(b)(i), Administration and Procedures, Permits and Decisions, Shoreline Exemption Permit, shall be amended as follows:

C. Administration and Procedures

2. Permits and Decisions

b. **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 ~~\$2,500~~ \$5,000, if such development does not materially interfere with the normal public use of the waters or shorelines of the state.

Section 9: 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 portion 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 were unconstitutional or invalid.

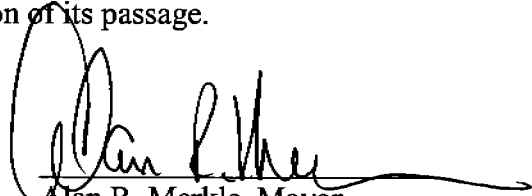
Section 10: Ratification.

Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 11: Effective Date.

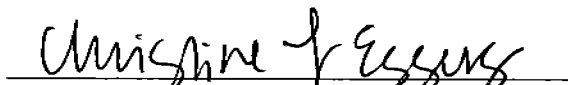
This Ordinance shall take effect and be in force thirty (30) days following passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 21st day of October 2002, and signed in authentication of its passage.




Alan R. Merkle, Mayor

ATTEST:



Christine L. Eggers, City Clerk

Approved as to form:



Londi K. Lindell, City Attorney
Date of Publication: November 6, 2002