

**CITY OF MERCER ISLAND
ORDINANCE NO. 17C-12**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING
MERCER ISLAND CITY CODE TITLES 3, 15, 17 AND 19 AND
REPEALING CHAPTER 3.28 MICC REGARDING DEVELOPMENT
PERMIT APPEALS AND ACTIONS**

WHEREAS, the Mercer Island City Code (MICC) provides mechanisms to appeal land use actions and decisions made by various City decision makers, such as the hearing examiner, planning commission, design commission, city council, building board of appeals and superior court; and

WHEREAS, this appellate, “quasi-judicial,” role is often at odds with the city council’s and planning commission’s legislative powers and the separation of powers at the local government level; and

WHEREAS, since the 1970s, many counties and cities have moved away from the “quasi-judicial” role by utilizing a hearing examiner system to conduct public hearings on many quasi-judicial land use matters; and

WHEREAS, hearing examiners are professionally trained and have a background in land use law which enables them to avoid procedural or other errors that would undermine the legal sufficiency of the permit review and decision; and

WHEREAS, while council action is required on rezones, the law gives councils the option to assign to their hearing examiners authority to make final decisions on other types of quasi-judicial permits, such as conditional use permits, variances, design review approvals, site plan approvals, and short subdivisions; and

WHEREAS, the Washington Cities Insurance Authority, the risk pool for many cities in the state including Mercer Island, strongly encourages councils to divest themselves as much as possible of the quasi-judicial role; and

WHEREAS, quasi-judicial cases can be extremely time intensive, taking time away from the city council and planning commission to work on other issues with greater impact on the well-being of the entire community, such as matters which cannot be delegated to other bodies; and

WHEREAS, the quasi-judicial role can place city council members in an untenable position if caught between the need to be responsive to the desires of their constituents and their duty to be responsible to the clear legal criteria governing the permit decision before them; and

WHEREAS, the city council has determined the planning commission and city council’s time and attention to land use matters is best invested in adopting clear and effective policies and development regulations rather than in handling quasi-judicial matters; and

WHEREAS, the city council desires to amend development permit action and appeal procedures throughout the MICC for consistency and efficiency;

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

Section 1. Amendments to Chapter 3.40 MICC, Hearing Examiner. MICC 3.40 “HEARING EXAMINER” is hereby amended as follows:

3.40.010 Established.

There is established the office of hearing examiner. (~~Added during 1980 codification~~).

3.40.020 Purpose – Function and jurisdiction.

A. The hearing examiner will hear and decide upon all applications for variance requests from the provisions of MICC Title 19, Unified Land Development Code, and shoreline management master program (MICC 19.07.080) which are forwarded by the code official, and shall hear and decide upon all appeals as identified in MICC 19.15.010(E) applications and appeals as designated in this code.

B. The hearing examiner’s decision may be to:

1. Grant or deny the application or appeal; or
2. Grant the application or appeal with such conditions, modifications, and restrictions as the hearing examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the comprehensive plan, the Mercer Island City Code, and other official laws, policies and objectives of the City of Mercer Island; or
3. Remand the decision back to the decision maker for further consideration.

3.40.030 Appointment and Qualifications.

The city manager shall appoint the hearing examiner for an indefinite term. The hearing examiner shall be appointed solely with regard to qualification for the duties of such office and shall have such training or experience as will qualify the hearing examiner to conduct administrative or quasi-judicial hearings on ~~land use regulatory~~ matters assigned to the hearing examiner under this code. The hearing examiner shall hold no other appointive or elective public office or position in the city government except as provided in this chapter. The hearing examiner shall serve at the pleasure of the city manager. (~~Added during 1980 codification~~).

3.40.035 Pro tem hearing examiners.

The city manager may appoint qualified persons having the qualifications set forth in MICC 3.40.030 to serve as hearing examiner pro tempore, as needed, to expeditiously hear pending applications and appeals.

3.40.040 Hearing examiner – Conflict of interest and freedom from improper influence.

A. The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has direct or indirect personal interest which might interfere with his or her decision making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. ~~The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or substantial financial interest.~~

B. No council member, city official, or any other person shall attempt to influence or in any way interfere with the hearing examiner in the performance of his or her designated duties. (Added during 1980 codification).

3.40.050 Dismissal of untimely appeals.

On its own motion or on the motion of a party, the hearing examiner shall dismiss an appeal for untimeliness or lack of jurisdiction.

3.40.060 Consolidation of hearings for consolidated project permit process.

Whenever a project application is reviewed under a consolidated project review process that includes more than one City permit, approval, or determination for which an open, or closed, record hearing before the hearing examiner is required or for which an appeal is otherwise provided, the hearings and any such appeals shall be consolidated into a single proceeding before the hearing examiner to the extent permitted by law.

3.40.070 Prehearing conference on appeals.

A. An appeal prehearing conference may be ordered by the hearing examiner pursuant to this chapter upon motion by a party or “sua sponte” by the hearing examiner. The purpose of a prehearing conference shall be to identify, to the extent possible, the facts in dispute, issues, laws, parties, and witnesses in the appeal. In addition the prehearing conference is intended to establish a timeline for the presentation of the appeal.

B. Any party who does not attend the prehearing conference, or anyone who becomes a party of record after notice of the prehearing conference has been sent to the parties, may nevertheless present testimony and evidence to the examiner at the hearing if the examiner determines that allowing the presentation will not prejudice the rights of the other parties.

3.40.080 Hearings.

A. Before rendering a decision on any application or appeal, the hearing examiner shall hold at least one open, or closed, record hearing as applicable thereon.

B. The hearing examiner shall adopt rules of procedure for conduct of the hearing.

C. The city shall make an electronic sound or video recording with sound of the hearing.

D. Notification of the time and place of the hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given as follows:

1. Published and posted notice at least 15 days prior to an open record predecision hearing and 15 days prior to an open record or closed record appeal hearing; and
2. Mailed notice to all parties of record at least 15 days prior to an open record predecision hearing and 15 days prior to an open record or closed record appeal hearing.

3.40.090 Hearing examiner findings.

When the hearing examiner renders a decision, he or she shall make and enter findings of fact and conclusions from the record that support the decision. Said findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the comprehensive plan, the Mercer Island City Code, and other official laws, policies, and objectives of the City of Mercer Island as applicable.

3.40.100 Written decision.

Within 14 days of the conclusion of a hearing, the hearing examiner shall render a written decision to the City. The hearing examiner's decision shall identify the applicant and/or the owner by name and address, and the project file or permit number, if applicable.

Any judicial appeal of the hearing examiner's decision shall be filed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act ("LUPA"). The land use petition must be filed within 21 days of the issuance of the hearing examiner's decision.

3.40.110 Reconsideration of final decision.

A. Any final decision by the hearing examiner may be reconsidered by the hearing examiner, provided a request for reconsideration by a party of record is received within 10 days of the date of the decision by the hearing examiner, if:

1. The decision was based in whole or in part on erroneous facts or information;
2. The decision when taken failed to comply with existing laws or regulations applicable thereto; or
3. An error of procedure occurred that prevented consideration of the interests of persons directly affected by the decision.

B. The hearing examiner shall reconsider a final decision based upon the above criteria. The hearing examiner shall issue a decision on the request for reconsideration within 14 days of receiving a request for reconsideration, denying the request or correcting the decision as the examiner determines necessary.

Section 2. Amendments to Chapter 15.09 MICC, Stormwater Management Program. MICC 15.09 “STORMWATER MANAGEMENT PROGRAM” is hereby amended as follows:

15.09.090 Storm Water Management Program—Appeals Process.

Any person aggrieved by the decision of the city manager or his/her designee in administering this chapter may appeal the decision to the hearing examiner~~city council of the city of Mercer Island by complying with the procedures set forth in Chapter 2.30 MICC.~~ Appeals shall follow the process described in 19.15.020(J) MICC.

Section 3. Amendments to Chapter 17.07 MICC, International Fire Code. MICC 17.07 “INTERNATIONAL FIRE CODE” is hereby amended as follows:

17.07.020 Amendments and additions.

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H. IFC Section 108.1 Amended – Board of Appeals, Board of Appeals Established. Section 108.1 of the International Fire Code is hereby amended to read as follows:

Section 108.1 General. ~~In order to~~The hearing examiner shall hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of the International Fire Code,~~there shall be a building board of appeals as established in MICC Chapter 3.28.~~ Appeals shall follow the process described in MICC 17.14.020 and 19.15.020(J)

I. IFC Section 108.2 Amended – Board of Appeals, Limitations on Authority. Section 108.2 of the International Fire Code is hereby amended to read as follows:

Section 108.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of the International Fire Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the International Fire Code do not fully apply or an equally good or better form of construction is proposed. ~~The building board of appeals~~ hearing examiner shall have no authority relative to interpretation of the administrative provisions of the International Fire Code nor shall ~~the board be empowered~~ the hearing examiner have the authority to waive requirements of ~~the International Fire Code which are the~~ either this code or of other codes, appendices and referenced code standards adopted by ~~the jurisdiction, or~~ through this code.

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Section 4. Amendments to Chapter 17.14 MICC, Construction Administrative Code.
MICC 17.14 “CONSTRUCTION ADMINISTRATIVE CODE” is hereby amended as follows:

17.14.010 Adoption.

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SECTION 104

DUTIES AND POWERS OF BUILDING OFFICIAL

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104.1.1. Liability. The building official, ~~member of the board of appeals or hearing examiner, or~~ employee charged with the enforcement of this code, while acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties while acting in good faith and without malice and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

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SECTION 113

BOARD OF APPEALS

~~113.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of the construction codes or this administrative code, there shall be a building board of appeals as established in MICC Chapter 3.28.~~

~~113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of the construction codes or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the construction codes do not fully apply, or an equally good or better form of construction is proposed. The building board of appeals shall have no authority relative to interpretation of the administrative provisions of the construction codes nor shall the board be empowered to waive requirements of the construction codes which are the codes, appendices and referenced code standards adopted by the jurisdiction.~~

~~113.3 Summary of action and authorities. The table below sets forth actions that the city may take under its construction codes, the criteria upon which those decisions are to be based, and which boards or city staff have authority to make the decisions and to hear appeals of those decisions.~~

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Building Permit	Building official	Chapter 17.14 MICC, Section 105	Building board of appeals
Grading and Clearing Permit	Building official	Chapter 17.14 MICC, Section 105	Building board of appeals
Construction Code Interpretations	Building official (fire code official for International Fire Code), IBC Chapter 9 – Fire Protection Systems and IRC Appendix Q related to residential fire sprinklers	Chapter 17.14 MICC, Section 104; IFC Section 108 and MICC 17.07.020(F), (G), and (H)	Building board of appeals

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17.14.020 Appeals

A. Appeals to hearing examiner.

1. Appeals of orders, decisions and determinations of the building or fire code official issued pursuant to Title 15 MICC or Title 17 MICC that do not constitute enforcement actions shall be heard and decided by the city of Mercer Island hearing examiner pursuant to this section and Chapter 3.40 MICC.

2. To the extent the codes adopted by reference in this title refer to a “board of appeals” or a “building board of appeals,” those references shall be deemed to refer to the city of Mercer Island hearing examiner.

B. Limitations on authority.

An appeal shall be based on a claim that the true intent of this chapter or the technical codes adopted in Title 17 MICC (the “technical codes”) or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed. The hearing examiner shall have no authority relative to interpretation of the administrative provisions of this code nor shall the hearing examiner have the authority to waive

requirements of either this code or of other codes, appendices and referenced code standards adopted by or through this code.

On its own motion or on the motion of a party, the hearing examiner shall dismiss an appeal for lack of jurisdiction or authority.

C. Who can appeal, when to appeal and appeal fee.

For the purposes of this chapter, “appellant” shall be defined as the applicant and the owner of property to which the permit decision is directed, or anyone who is adversely affected by the order, determination, or decision. An appellant shall file an appeal of the order, decision or determination of the building or fire code official with the City Clerk within 14 days of the date of the decision of the building or fire code official, using a form provided by the City. An appeal fee established by resolution shall be payable at the time an appeal is submitted. Failure to timely file the appeal or pay the appeal fee shall result in dismissal of the appeal.

D. Contents of appeal.

At a minimum, the written filing of an appeal shall contain:

1. A clear reference to the matter being appealed, including code citations for the section(s) of code subject to the appeal;
2. A statement of the specific objections to the building or fire code official’s order, decision or determination disputed by the appellant; and
3. The relief sought by the appellant.

E. Notice of the appeal hearing.

1. The building official shall prepare a notice of the appeal hearing containing the following:

(a) The file number and a brief description of the matter being appealed;

(b) A statement of the scope of the appeal including a summary of the elements of the building or fire code official’s order, decision or determination that are contested in the appeal;

(c) The time and place of the hearing on appeal before the hearing examiner;

and

(d) A statement of who may participate in the appeal.

2. At least 15 days before the hearing on the appeal, the building official shall send a copy of the notice of appeal hearing to each person who has appealed the building or fire code official’s order, decision or determination.

F. Participation in the appeal.

Only those parties who have appealed the building or fire code official’s order, decision or determination may participate in the appeal. Appellants may participate in either or both of the following ways:

1. By submitting written comments or testimony to the hearing examiner prior to the commencement of the hearing; or
2. By appearing in person, or through a representative, at the hearing. The hearing examiner may reasonably limit the extent of oral testimony or oral argument to facilitate the orderly and timely conduct of the hearing.

G. Scope of appeal.

The appeal will be an open record appeal hearing. The scope of the appeal is limited to the specific elements of the building or fire code official’s order, decision or determination disputed by the appellant and the hearing examiner shall only consider comments, testimony and arguments on these specific elements.

Section 5. Amendments to Chapter 19.06 MICC, General Regulations. MICC 19.06
“GENERAL REGULATIONS” is hereby amended as follows:

19.06.080 Siting of group housing.

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C. Rooming Houses.

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2. Appeal. Determinations made by the code official pursuant to subsection C of this section may be appealed pursuant to MICC 19.15.020(JL).

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Section 6. Amendments to Chapter 19.07 MICC, Environment. MICC 19.07
“ENVIRONMENT” is hereby amended as follows:

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19.07.020 General provisions.

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B. Public Notice – Critical Area Determination. A critical area determination requires public notice pursuant to MICC 19.15.020(E) ~~and this action may be appealed to the planning commission.~~ A decision on a critical area determination may be appealed to the hearing examiner following the appeals process described in 19.15.020(J) MICC.

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19.07.040 Review and construction requirements.

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E. Appeals. Appeals of decisions made under the provisions of this chapter shall follow the procedures outlined in ~~MICC 19.15.010(E)~~ and described in 19.15.020(J) MICC.

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19.07.120 Environmental procedures.

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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, the following shall be appealable to the ~~planning commission~~hearing examiner 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.

2. How to Appeal. The appeal must be consolidated with any appeal that is filed on the proposal or action, and must conform to the requirements of MICC 19.15.020(J), Permit Review Procedures. The appeal may also contain whatever supplemental information the appellant wishes to include.

3. For any appeal under this subsection, the city shall provide for a record that shall consist of the following:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript.

4. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.

5. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

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Section 7. Amendments to Chapter 19.08 MICC, Subdivisions. **MICC 19.08
"SUBDIVISIONS" is hereby amended as follows:**

19.08.020 Application procedures and requirements.

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

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

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

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E. Notice.

1. Short Subdivisions and Lot Line Revisions. Public notice of an application for a short subdivision or a lot line revision shall be made in accordance with the procedures set forth in MICC 19.15.020.

2. Long Subdivisions.

a. Public notice of an application for a long subdivision application shall be made ~~at least 10 days prior to the open record hearing on the application~~ in accordance with the procedures set forth in MICC 19.15.020 ~~for an administrative or discretionary act~~; provided, notice shall also be published ~~at least 10 days prior to the hearing~~ in a newspaper of general circulation within the city.

b. If the owner of a proposed long subdivision owns land adjacent to the proposed long subdivision, that adjacent land shall be treated as part of the long subdivision for notice purposes, and notice of the application shall be given to all owners of lots located within 300 feet of the proposed long subdivision or the applicant's adjacent land.

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

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 the ~~planning commission~~ hearing examiner, which shall make recommendations as to the vacation or alteration to the city council.

Section 8. **Amendments to Chapter 19.10 MICC, Trees.** MICC 19.10 "TREES" is hereby amended as follows:

19.10.100 Trees--Appeals.

Any person or persons aggrieved by any action or decision of city staff made pursuant to any section of this chapter, may appeal such action or decision to the ~~planning commission~~hearing examiner in accordance with the appeal procedure set forth in MICC 19.15.020(J).

Section 9. **Amendments to Chapter 19.11 MICC Town Center Development and Design Standards.** MICC 19.11 "TOWN CENTER DEVELOPMENT AND DESIGN STANDARDS" is hereby amended as follows:

19.11.150 Administration.

B. Conditional Use Permit Review.

1. General.

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

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

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

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

d. Process.

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

ii. Notice.

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

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

(c) The notice shall identify the general project proposal and the date, time and location of the ~~planning commission~~ hearing examiner open record hearing, and shall be provided a minimum of ~~40~~ 30 days prior to the hearing.

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

iv. Expiration of Approval. If the activity approved by the conditional use permit has not been exercised within two years from the date of the notice of decision setting forth the conditional use decision, or if a complete application for a building permit has not been submitted within two years from the date of the notice of

the conditional use decision, or within two years from the decision on appeal from the conditional use decision, conditional use approval shall expire. The design commission or code official may grant an extension for no longer than 12 months, for good cause shown, if a written request is submitted at least 30 days prior to the expiration date. The applicant is responsible for knowledge of the expiration date.

2. Review Process.

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

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

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

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

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

the ~~planning commission~~ hearing examiner will forward the project to the design commission for the final design review.

ii. Change in Use and Minor Exterior Modifications. If the conditional use permit application proposes a change in use but is not part of a major new construction project, or is part of a minor exterior modification, then design review shall proceed administratively in accordance with the provisions in MICC 19.15.040(F), and the ~~planning commission~~ hearing examiner shall review the conditional use permit application at an open record hearing. If the staff determines that the minor exterior modification should be reviewed by the design commission as provided for in MICC 19.15.040(F), then the design commission's review and decision shall be conducted at an open record hearing separate from the ~~planning commission's~~ hearing examiner's open record hearing on the conditional use permit application.

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

i. General Criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Change After Conditional Use Permit Granted.

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

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

Section 10. Amendments to Chapter 19.15 MICC, Administration. MICC 19.15
"ADMINISTRATION" is hereby amended as follows:

19.15.010 General Procedures

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

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

2. Planning Commission. The role of the planning commission in administering the development code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated planning agency for the city (see Chapter 35A.63 RCW). ~~The planning commission is responsible for final action on a variety of discretionary permits and makes recommendations to the city council on land use legislation, comprehensive plan amendments and quasi-judicial matters. The planning commission also serves as the appeal authority for some ministerial and administrative actions.~~

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

~~4. Building Board of Appeals. The role of the building board of appeals in administering the construction codes is governed by Chapter 3.28 MICC. In general, the building board of appeals is responsible for hearing appeals of interpretations or application of the construction codes set forth in MICC Title 17.~~

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

- a. The code official is responsible for administration, interpretation and enforcement of the development code.
- b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.
- c. The city engineer is responsible for the administration and interpretation of engineering standards.
- d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.
- e. The fire code official is responsible for administration and interpretation of the International Fire Code.

56. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

D. Actions. There are four categories of actions or permits that are reviewed under the provisions of the development code.

1. Ministerial Actions. Ministerial actions are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

2. Administrative Actions. Administrative actions are based on objective and subjective standards that require the exercise of ~~limited~~ discretion about nontechnical issues.

3. Discretionary Actions. Discretionary actions are based on standards that require substantial discretion and may be actions of broad public interest. Discretionary actions are only taken after an open record hearing.

4. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to large geographic areas and are of interest to many property owners and citizens. Legislative actions are only taken after an open record hearing.

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 <u>Revision</u> 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 with a	Code official	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Design commission

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Construction Valuation (as defined by MICC 17.14.010) Less Than \$100,000			
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) \$100,000 or Greater	Design commission	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission Superior court
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals <u>Hearing examiner</u>
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.110 and 19.15.020(G)(6)(c)(i)	Hearing examiner ¹
<u>Major Single-Family Dwelling Building Permit</u>	<u>Code Official</u>	<u>Chapter 19.02 MICC but not Title 15 MICC or Title 17 MICC</u>	<u>Hearing examiner</u>
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 <u>Hearing examiner</u>
Deviation	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(4) and (D)(3)	Planning commission <u>Hearing examiner</u>
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning Commission <u>Hearing examiner</u>

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110 and 19.15.020(G)(6)	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission Hearing examiner
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission hearing examiner	MICC 19.08.010(F)	Superior court
Temporary Encampment	Code official	MICC 19.06.090	Superior court
Wireless Communications Facility	Code official	MICC 19.06.040	Hearing examiner
Wireless Communications Facility Height Variance	Code official	MICC 19.01.070, 19.06.040(H) and 19.15.020(G)	Hearing examiner
Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones	Code official via design commission and city engineer	MICC 19.01.070, 19.03.020(B)(4), 19.04.040(B)(9), 19.05.020(B)(9) and 19.15.020(G)	Hearing examiner
<u>Development Code Interpretations</u>	<u>Code official</u>	<u>MICC 19.15.020(L)</u>	<u>Hearing examiner</u>
Discretionary Actions			
Conditional Use Permit	Planning commission Hearing examiner	MICC 19.11.150(B), 19.15.020(G)	Hearing examiner Superior Court
Reclassification (Rezone)	City council via planning commission ²	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 ²	Chapter 19.08 MICC	Superior court

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
	<u>City council via hearing examiner</u>		
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Superior court
Variance from Short Plat Acreage Limitation	Planning commission <u>Code official</u>	MICC 19.08.020	City Council <u>Hearing examiner</u>
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via <u>planning commission²</u>	MICC 19.09.070	Superior court
Shoreline Conditional Use Permit	Code official and Department of Ecology ³	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Shoreline Variance	Code official and Department of Ecology ³	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
Legislative Actions			
Code Amendment	City council via <u>planning commission²</u>	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via <u>planning commission²</u>	MICC 19.15.020(G)	Growth management hearings board
¹ Final rulings granting or denying an exemption under MICC 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60).			
² The original action is by the <u>planning commission</u> or <u>hearing examiner</u> which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.			
³ Must be approved by the city of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10).			

19.15.020 Permit Review Procedures

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D. Notice of Application.

1. Within 14 days of the determination of completeness, the city shall issue a notice of application for all administrative, discretionary, and legislative actions listed in MICC 19.15.010(E) and major single-family dwelling building permits.
 2. The notice of application shall include the following information:
 - a. The dates of the application, the determination of completeness, and the notice of application;
 - b. The name of the applicant;
 - c. The location and description of the project;
 - d. The requested actions and/or required studies;
 - e. The date, time, and place of the open record hearing, if one has been scheduled;
 - f. Identification of environmental documents, if any;
 - g. A statement of the public comment period, which shall be not less than ~~14 days~~ ~~nor more than~~ 30 days following the date of notice of application; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights. The city shall accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;
 - h. The city staff contact and ~~phone number~~ contact information;
 - i. The identification of other permits not included in the application to the extent known by the city;
 - j. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan; ~~and~~
 - k. A link to a website where additional information about the project can be found; and
 - l. Any other information that the city determines appropriate.
- ...
3. Open Record Hearing. If an open record hearing is required on the permit, the city shall:
 - a. Provide the notice of application at least ~~15~~ 30 days prior to the hearing; and

b. Issue any threshold determination required under MICC 19.07.120 at least ~~15~~ 30 days prior to the hearing.

...

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

- a. Building permit other than a major single-family dwelling building permit;
- b. Lot line revision;
- c. Right-of-way permit;
- d. Storm drainage permit;
- e. Home occupation permit;
- f. Design review – minor new construction;
- g. Final plat approval;
- h. Shoreline exemption permit; and
- i. ~~Critical lands determination; and~~
- j-~~Seasonal development limitation waiver.~~

E. Public Notice and Information Availability.

1. In addition to the notice of application, a public notice is required for all administrative, discretionary, and legislative actions listed in MICC 19.15.010(E) and major single-family dwelling building permits.

2. Public notice shall be provided at least ~~40~~ 30 days prior to any required open record hearing. If no such hearing is required, public notice shall be provided ~~40~~ 14 days prior to the decision on the application.

3. The public notice shall include the following:

- a. A general description of the proposed project and the action to be taken by the city;
- b. A nonlegal description of the property, vicinity map or sketch;
- c. The time, date and location of any required open record hearing;
- d. A contact name and number where additional information may be obtained;

e. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal; ~~and~~

f. A description of the deadline for submitting public comments; and

g. A link to a website where additional information about the project can be found.

4. Public notice shall be provided in the following manner:

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

b. Legislative Action. Notice shall be published in a newspaper of general circulation within the city.

5. Every complete development permit application for which notice is to be provided under MICC 19.15.020(D)(1) together with all information provided by the applicant for consideration by the decision authority shall be posted by the City to a website accessible without charge to the public. Information shall be posted at the time the city issues the notice of application under MICC 19.15.010(D)(1) and shall be updated as needed and in any event within seven days after additional information is received from the applicant. The provisions of this subsection 5 shall only apply to development permit applications filed on or after May 29, 2017.

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J. Administrative Appeals.

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

a. The applicant and/or property owner;

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

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

d. The city of Mercer Island.

2. Appeals shall include the following information:

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

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

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

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

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

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

~~c. The total time allowed for oral argument on the appeal shall be equal for the appellants and the applicant (if not the appellants). If there are multiple parties on either side, they may allocate their time between themselves or designate a single spokesperson to represent the side. All testimony shall be given under oath.~~

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

- i. Reverse the decision.
- ii. Modify the decision and approve it as modified.

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

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

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

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

6. When an applicant has opted for consolidated permit processing pursuant to MICC 19.15.020(I), administrative appeals of ministerial, administrative or discretionary actions listed in MICC 19.15.010(E) for a single project shall be consolidated and heard together in a single appeal by the hearing examiner

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19.15.040(F)(2)(f and g) –Design Commission--Design Review Procedure--Review Process for Major New Construction

f. Final Design Commission Review.

i. Submittal of Final Plan. All materials pertaining to the final plan shall be submitted a minimum of ~~21~~ 37 days prior to the design commission final review hearing date. The final plans shall be in substantial conformity with approved preliminary plans.

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

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

19.15.040(F)(3)(d) –Design Commission-- Design Review Procedure--Review Process for Minor Exterior Modification

d. Appeal. The code official's or ~~design commission's~~ decision on an application for minor exterior modification is final unless appealed to the design commission pursuant to MICC 19.15.020(J). The design commission's decision on an

application (not an appeal) for minor exterior modification is final unless appealed to the hearing examiner pursuant to MICC 19.15.020(J).

Section 11. Amendments to Chapter 19.16 MICC, Definitions. MICC 19.16 “DEFINITIONS” is hereby amended as follows:

19.16.010 – Definitions

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Appeal, Closed Record: An administrative appeal ~~to the city council~~ following an open record hearing on a project application. Evidence for the appeal is limited to the record of the open record hearing. (See also “Open Record Hearing”).

Appeal, Open Record: An administrative appeal ~~to the planning commission or city council~~ when there has not been an open record hearing on a project application. New evidence or information is allowed to be submitted in review of the decision (See also “Open Record Hearing”).

Major Single-Family Dwelling Building Permit: A building permit for:

1. A new single-family dwelling on a vacant lot or as replacement of an existing or demolished building; or
2. Any change to a single-family dwelling that requires a building permit and results in any of the following:
 - a. An increase in the existing maximum building height above the highest point of the building, except for a reroof that increases the highest point of the building by 12 inches or less;
 - b. A reduction in any existing side yard;
 - c. An increase in the existing gross floor area of more than 500 sq. feet; or
 - d. An increase in the existing impervious surface on the lot of more than 100 sq. feet.

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Section 12. Repeal of Chapter 3.28 MICC, Building. Chapter 3.28 MICC “BUILDING” is hereby repealed.

Section 13: Severability. If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

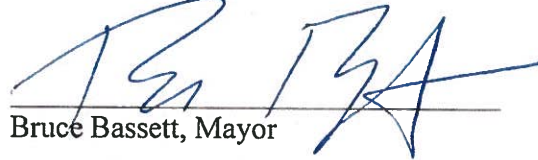
Section 14: Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 15: Effective Date. This Ordinance shall take effect and be in force on 5 days after its passage and publication.

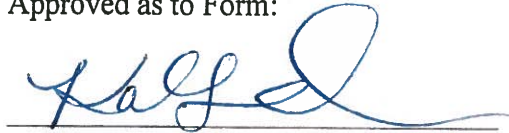
Section 16: Impact on Vested Applications. Unless agreed upon by the applicant, property owner, City Code Official, and appellant (if applicable), the amendments to the MICC in this ordinance shall not apply to any permit or approval application submitted to the city that has been deemed complete before May 29, 2017.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 15th day of May 2017 and signed in authentication of its passage.

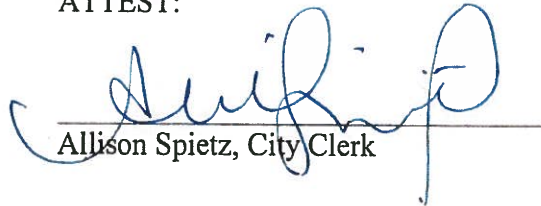
CITY OF MERCER ISLAND


Bruce Bassett, Mayor

Approved as to Form:


Kari Sand, City Attorney

ATTEST:


Allison Spietz, City Clerk

Date of Publication: 5/24/17